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Public Administration Reform over Time – Did Change Lead to a More Effective Integrity Management?

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ABSTRACT

The following discussion adds to the discourse regarding the relationship between public administration reform and ethics policies. In this theoretical paper, a narrative is employed that re-reads the old Weberian model as a model of 'institutional integrity', which is slowly replaced by a public management concept that focuses on individual integrity. Whereas the Weberian concept defined institutional integrity as a quality of institutions, more recent management concepts define institutional integrity as a quality of public officers within institutions. This also explains why the current focus of attention is ever more on individuals (as the main cause for unethical conduct) and the bad-person model of integrity. An alternative framing of this paper is about 'institutional ethics' over time. During the last decades, we are moving from an institutional, but mechanical and rigid Weberian model, to an individual, but more fluid New Public Management model. We are moving towards a version of institutional integrity that tries to use new behavioural mechanism to get back to some Weberian virtues, without its structures and technical focus. This novel 'integrity management' movement is really all about filling the gaps left by New Public Management doctrines. However, the reform of integrity management also develops into a specialised, sophisticated and professionalised ethics bureaucracy. Trends are towards ever more broader and stricter integrity requirements. Still, ethics policies are ineffective and shortcomings in implementing integrity policies are neglected.

Keywords: *integrity management, ethics, bureaucracy, public management reform, behavioural policies*

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1 Introduction and research question

Originally, this paper started as a desk-research paper at the University of Oxford (Blavatnik School of Government). The intention was to analyze the link between public management reform and ethics management reforms. How did the reform process changed the conceptualization of ethics policies and ethics management? How did the institutionalisation of ethics policies changed? Have ethics policies become more effective over time? And – which role and importance is allocated to individuals and which role to institutions? As the paper evolved, we also decided to use empirical insights from one of the most comprehensive empirical studies about the effectiveness of ethics policies and the institutionalization of ethics in the European Union (European Parliament, 2020). This study was carried out by the author in the year 2020. Overall, 18 Member States of the European Union contributed to the survey. The objective of the study was to survey and compare policies and implementation practices where they exist. Apart from this task, another objective was to discuss the emergence of integrity policies as a political topic with growing importance and the increasing difficulties to manage and to institutionalise ethics policies. Overall, the study concludes that current integrity policies are highly ineffective, despite the expansion of ethics policies and developments towards the emergence of a new ethics bureaucracy throughout the last years. There is no place here to further discuss the study in detail. As such, in this paper, we are interested in the (theoretical) interpretation of the results: Why are current integrity policies not more effective than traditional integrity policies? How did our understanding of ethics policies and the institutionalisation of ethics policies change over time – and why?

2 The weberian bureaucratic model as model of institutional integrity

Organizational theory claims that organizational settings influence people´s way of thinking and their behaviour, and hence the content of public policy. Therefore, an organizational theory approach of integrity policies assumes that it is impossible to understand integrity policies without the way public institutions work and without analysing how they are organized and their modes of working (Christensen, Laegreid and Rovik, 2020, p.1). Following this, institutional integrity can be defined as a quality of institutions that is supposed to promote the quality of public employees. Starting from this definition, we suggest to re-read the bureaucratic model as the first (ineffective) institutional model of 'institutional integrity'. This (failed) model is being replaced by highly professional integrity policies that are not integrated into new institutional logics.

In most countries worldwide, public institutions were created as distinct structures with the objective of making the public sector independent from the private sector and public officials independent from personal and political in-

terests. Originally, modern public institutions were conceptualized as rational machines which had democratic and ethical tasks of serving the society and the law, protect citizens, operate equitably and impartial. In almost all countries, constitutions, public organisations and civil service acts resulted in provisions that were loaded with legal obligations, values and principles and the need to have neutral, loyal and impartial state servants with very specific employment conditions and institutional features. This technical, legalistic and bureaucratic compliance and "ethics of neutrality" concept (Thompson, 1985) dominated until late in the 20st century. Traditional administrative theory also supported the view that administration should be a neutral body and separated from political interests. Some parts of these doctrines have survived until today: Experts still discuss how "policy capture" (defined as situations where public decisions over policies are consistently directed away from the public interest towards a specific interests) and can be avoided (OECD, 2017).

Still, one of the remnant of former times is that all countries share the understanding that no other institutional actor other than the public actor can combine public values such as expertise, continuity, professionalism, impartiality, equity, non-discrimination and fairness (van der Meer, Raadschelders and Toonen, 2015, p. 369; OECD, 2019).

Because of the specific ethical importance of certain state tasks, most countries are also reluctant to totally reverse, modify or change the specific institutional and employment features founded in the 19th century in order to protect the democratic liberal state. Bekke & van der Meer (2001) define modern public institutions as depersonalised systems which differ from traditional modes of "personalised" government. In the 19th century, the biggest changes included the introduction of centralized recruitment procedures, the adoption of civil service laws, the centralization of HR policies and the introduction of merit principles (including entrance examinations, job tenure, career service, political neutrality) which were adopted – as a moral guardian to democracy – and which should shield employees from politically inspired employment actions. Consequently, almost all countries designed their public organizations in specific ways because they expected a certain ethical behavior on the part of civil servants would result from specific organizational features. In the United States, according to Anechiarico and Jacobs (1996, p. 22), the progressive reform movement and the scientific administration reformers believed that government integrity would flow from sound administration. Therefore, in a next step (and well within the 20th century), countries introduced hierarchical organizational structures, scientific management methods, clear and rigid career paths, life-time tenure, full-time employment, seniority, advantageous pension systems and rigid remuneration systems in order to reduce as far as possible the risk of too much political influence, corruption, misconduct, the exercise of private interests and state capture for private interests. Administrative behavior was to follow hierarchical principles and doctrines which were based on the rule of law. Following this, at a minimal level, administration was considered to be good and ethical if it achieved the implementation and enforcement of the existing laws and policy goals of

the Government of the day. Moreover, ethically good or acceptable behavior was also defined in terms of rationality, impartiality and standardization.

For a long time, experts were convinced that these specific organizational structures, principles and compliance approaches implicitly "produce" a certain personality (Merton, 1987), public service ethos, and "public service motivation" for civil servants who – in exchange – would be committed to the public good, neutrality, impartiality and displaying expertise. Thus, the concept of a bureaucratic organizational structure was to produce a certain ethical climate and the commitment to the public good, neutrality, impartiality and to observing confidentiality and displaying expertise. Bureaucracy was a synonym for institutional integrity (Demmke, 2019). It was the last existing coherent institutional integrity concept, at least in theory. Until today, this traditional rational, technical and instrumental understanding of public institution and integrity has not completely vanished. Instead, whatever is the correct diagnosis of current reform trends, it is worth noting that until today, no government has completely abolished all bureaucratic features. Moreover, no government has privatized the delivery of public tasks, no public administration works like a private company, and no public institutional system entirely emulates private sector practices. Therefore, in all countries worldwide, despite ongoing reforms, Government institutional frameworks are still perceived as being *different* compared to private sector features. Institutional regimes based on the rule of law, impartiality, merit and freedom of the media and justice (should) offer constraints upon corrupt and arbitrary political power (Lane, 2014).

However, as we will see, almost all of these traditional "bureaucratic" and "integrity" features are about to change bureaucratic structures, distinctions between the public and private sphere, legal and institutional principles and values and (rational) logics. With very uncertain outcomes.

3 Why countries started to deviate from the traditional government models?

When looking back, the traditional technical, legalistic and bureaucratic compliance and *ethics of neutrality* (Thompson, 1985) approach was very influential until at least the 1970´s. "Bureaucracy was the model of public administration admired by Woodrow Wilson and other Progressives precisely because it promised to be an antidote to the corrupt spoils system" (Anechiarico and Jacobs, 1996, p. 173).

However, increasingly, almost all countries started to deviate from the classical bureaucratic model, because the concept underperformed on several fronts and not only as regards the classical dysfunctions of the classical bureaucratic model (too costly, discriminatory, too rigid, too hierarchical, not innovative, not performing, de-motivating effects). According to Anechiarico and Jacobs, "Public administration did not become professionalized like law and medicine" (Anechiarico and Jacobs, 1996, p. 21). Another problem with the concept of bureaucracy is, because as an ethical guideline, it is simply too narrow for to-

day's multi-level governance. Especially the importance of individuals was neglected because of the focus on the concept of "administrative neutrality" and the dominance of rational and legal approaches. Today, trends are towards the opposite and the growing importance of individuals. Insights from behavioral economy and motivation theory have indeed shown that work in the public sector is more value-laden and more unpredictable than ever.

Public institutions are also subject of changes, not only as a result of rational-, financial- and technological pressures but also as a result of changing attitudes, norms, fashions, changing cognitive-cultural patterns (Di Maggio and Powell, 1983). This change process not only challenges rational choice theories and emphasizes the role of values, norms, structures and processes – and people. Instead, it also changes the classical (at least in theory) coherent relationship between bureaucratic features and integrity. Today, institutional features are separated from integrity features. Modern integrity policies have become a proper public policy and current developments in the field of public management have expanded the meaning, importance and the practical expression of the concept of integrity policies and integrity management. Overall, integrity management is not only becoming more professional, better institutionalized, complex and costly. Instead, managerial instruments like value management, purpose driven management and value-scorecard´s are also becoming a fashion (in the sense of sociological institutionalism and isomorphism). As a result, the concept of integrity management develops into a popular, distinctive, specialized, sophisticated and professionalized policy that fills the ethical *gaps* that new management logics produce.

Still, it is difficult to say whether integrity management has also become more effective. Often, it seems, integrity policies are adopted as a reaction to mediated political scandals and because these policies are "cheap" and their implementation and monitoring is weak. Overall, integrity policies and integrity management can also be characterized as self-reinforcing processes that are highly change resistant and continue to follow the logic of ever more and ever stricter policies (Saint-Martin, 2006, p. 17). Change resistant means that it is simply impossible to call for a deregulation of ethics policies in certain areas, or – sometimes – even to criticize the ineffectiveness of chosen approaches. All of these trends, in turn, create a number of integrity-paradoxes (Nieuwenburg, 2007) such as the emergence of an ethics bureaucracy in times of de-bureaucratisation, attempts to enhance trust but – often – rising levels of distrust as a result. If in the past, there were seen to be regulatory gaps and a lack of enforcement, the more recent concern is that some governments have gone overboard in building an elaborate ethics apparatus that reflects the prevailing negative assumptions about the motivations and capabilities of both politicians and public servants. Today, trying to be ethical in every sense of the word, could mean that public organizations and their leaders end up pleasing no one.

Until today, there is indeed no evidence that bureaucratic structures have produced the intended integrity results. Evidence is growing that specific public working conditions and bureaucratic structures did not necessarily produce

less corruption and a specific public service ethos. Dahlström and Lapuente (Dahlström and Lapuente, 2017) examine the existing link between bureaucratic structures and corruption. Both authors also conclude that closed bureaucracies are negatively related to the quality of governance. In "The *Merit of Meritocratization: Politics, Bureaucracy, and the Institutional Deterrents of Corruption*" Dahlström et al (Dahlström et al., 2012; see also Rauch and Evans, 2000) concluded that only some factors (most notably the meritocratic recruitment of public employees) exert a significant influence on curbing corruption even when controlling for the impact of most standard political variables. Also, the above-mentioned study for the European Parliament concludes that bureaucratic countries have more ethics rules in place than non-bureaucratic countries. However, there is no evidence to suggest that more rules are also more effective.

In *Unmasking Administrative Evil*, Adams and Balfour (1998) developed the concept of administrative evil in connection with a modernized society and an administrative culture dominated by technical rationality. According to the authors, the Holocaust was only possible in a perfect system of extreme obedience, loyalty and technical rationality. Today, it is claimed that also institutions (as well as individuals) have responsibilities, rights and duties. For example, public institutions have the duty to contribute to public values. Institutions also have a corporate purpose. Thus, when rephrasing Milton Friedman´s claim that "The Social Responsibility of Business is to Increase Its Profits" (Friedman, 1970) this looks as follows in the case of public institutions: *The Social Responsibility of Public Institutions is to serve public values.*

Because of these many shortcomings, de-bureaucratization trends continue worldwide. However, there is no common trend towards an alternative universal administrative model. Rather, current reform modes are caught in an identity crisis. Countries know well what they want to leave behind. But they do not know where to go. There is – differently to what neo-institutionalists expected - no "isomorphism" logic and no trend towards a best-practice model. During the last decades, all countries worldwide have implemented new reforms, which have been successively defined as governance reforms leading to collaborative governance, a networking society, a co-production society, shared governance society, a digital-, or blockchaining society, or, even towards the partial return of a strong state, the Leviathan. In the meantime, we seem to be living in an era of flexible post-bureaucratic governance. In this scenario, government policy styles and public institutional reforms proceed from policy to policy and from sector to sector. Also the varieties of post-bureaucratic governance or New Public Management have been challenged owing to the focus on results and cost savings (Hood and Dixon, 2013), compounded by the tendency to downplay the importance of other values and principles such as quality, fairness, equality, and impartiality. According to Andersson (2019), NPM reforms did not live up to expectations (Kolthoff, 2007):

– First, evidence is mixed regarding if performance has improved or costs dropped,

– Second, the democratic nature of public administration was affected as the role of public service consumer substituted the role of citizens,
– Third, fairness as measured by service user´s perceptions seem to have worsen
– Fourth, in many cases vulnerability for corruption increased (Andersson, 2019, p. 9).

Thus, whereas the traditional bureaucratic model is dismissed for many reasons, the emerging institutional models (such as the new public management model) lack any integrated and implicit integrity logic. Consequently, many countries started to invest in new value-based integrity policies, ethics infrastructures and the institutionalisation of ethics in order to compensate for the integrity gaps that the emerging institutional and managerial logics produced. Anecharico and Jacobs (1996, p. 239) define this as the birth of a "panoptic vision" of integrity policies. "They have gone beyond the political, legal, and institutional legacies of their predecessors (…). The contemporary reformers adopt or invent technologies, institutions, and routines to monitor public employees closely" (Anecharico and Jacobs, 1996, p. 23). From here, the concept of institutional integrity developed into a policy. Also, the link between institutional design and integrity is changing. Whereas the traditional bureaucratic understanding supported the view that institutional design matters for individual integrity, examining today´s institutions from the "perspective of bounded rationality leads quickly to the understanding that the cognitive architectures of individuals affect the institutions they inhabit" (Shannon, McGee and Jones, 2019). And, not vice versa, as previously.

4 Beyond the new "old" public management: Institutional logics and new complexities

In the new public management context, traditional features like standardized procedures and the focus of law, regulation and administrative law are often seen as constraints that block policy choices, innovation, competition and individualism. Traditional administrative behaviour is held to be rigid, rule-bound, centralised and obsessed with dictating how things should be done – regulating the process, controlling the inputs – but ignoring the end results. In this perspective, legalism is seen as cold, rational and restricting individual discretion. Consequently, emerging public management models supported a certain decline of established "legalistic" principles that – originally – were established in civil service acts and enshrined in many constitutions.

Parallel to these developments, concepts and theories in the fields of organizational theory, organizational behavior, organizational justice, strategic management, ethics, leadership and HRM (including engagement and motivation theories), have grown in complexity. Within these trends, values and emotions play an increasing role, such as value-based management, purpose driven management, or – in the private sector, corporate social responsibility. Compared to the traditional bureaucratic concept of integrity, it is fair to con-

clude that, "there has been an "affective revolution" in public management since the mid-1990s, focusing initially on new behavioral insights, affective dispositions and HR-decisions based on (increasing) individual discretion of managers (Demmke, 2019). In the field of Public Management, Human resource management (HRM) is gaining popularity, especially as regards a quantification and psychologization of research (Godard, 2014; Budds, 2019). "The field has moved away from a simple mechanistic view of the effects of emotions via their associated action tendencies to a more sophisticated, nuanced, and contingent view of how emotions contribute to behavior" (Godard, 2014). These trends towards the growing importance of individuals in HRM studies are in conformity with the growing popularity of *micropolitics* (Burns, 1961) in the field of organizational theory, and the attention to the concept of a society of "singularities" (Reckwitz, 2017) in the field of sociology. Diversity and identity politics have become popular in Political Sciences. According to Fukuyama (2018), universal concepts are being challenged by the rise of identity politics (Fukuyama, 2018, xvi); whereas new forms of recognition based on nation, religion, sect, race, ethnicity, or gender play an increasingly prominent role. In the field of organizational justice, expert´s discussion focus on the responsibilities of people for their choices and the outcomes of their choices and whether new justice concepts should be made more sensitive to individual responsibility (Knight and Stemplowska, 2014). Take the case of the changing concept of equality and equity: Equality refers to a situation where everyone is given equal resources, whereas equity refers to achieving an equality of outcomes (that is, the resources are related to needs). Today, classical interpretations of both concepts are under pressure because of recent changes in the discourse about inequality and new discussions about another fundamental moral ideal in Western societies: people should be held personally responsible for the consequences of their choices (Greenfield, 2011). The idea of personal responsibility also seems to increasingly involve considerations of merit (choices, talent, and effort) and luck. Also perceptions of fairness and dignity are changing, employers and employees seem to re-evaluate distinctions between fair and unfair inequalities. As already mentioned, also public employees appear to relate fairness to some level of personal responsibility. And vice versa: Increasingly, employees are seen as responsible and called upon to be engaged, committed and continuously adapt their skills and competences. Thus, this change of (organisational justice) perceptions of values and principles has undeniably been fuelled by the growing influence of right-libertarian political views and the growing popularity of post-bureaucratic management reforms (Knight and Stemplowska, 2014, p. 1).

5 The effects of the institutional turn on integrity

The above-mentioned "affective", "behavioural" and "individualized" approaches can also be interpreted as counter-trends to the past: From rationality to bounded rationality, from hierarchical steering to individual discretion and job autonomy, from standardization to destandardisation, from central-

ized concepts of fairness to individualized concepts of fairness and from ethical decision-making to bounded ethicality.

Behavioural economics and behavioural ethics (Bazerman and Tenbrunsel, 2011; Bazerman et al. 2015; Tenbrunsel and Chugh, 2015; OECD, 2018) are viewed as important and increasingly inform policymaking. Approaches that are based on standardized assumptions, law and compliance-based approaches are believed to be ineffective since they guard only against intentional forms of unethical behavior (and not unintentional forms). Behavioral public policy and behavioural ethics have also become popular because these concepts offer psychological explanations about organizational and individual failure (and because people overestimate their ability to do what is right and why they (may) act unethically without meaning to (Bazerman and Tenbrunsel, 2011; Ewert, 2020).

As such, these trends are to be welcomed because they illustrate the shortcomings of the classical institutional models. However, the increasing popularity of behavioral sciences in public policies and public ethics are leading toward an individualization of integrity policies and a focus on the concept of "public-officer ethics" (Kirby, 2020). These developments run counter to the discussed grand administrative tradition of the ethics of impartiality and compliance-based approaches. Instead, today´s discourses focus on partiality, bounded awareness (Bazerman and Sezer, 2016) and value-based approaches. Consequently, the "bad apple" or "focus on the person as a root cause, is making a reappearance" (Tenbrunsel and Chugh, 2015, p. 207).

Behavioural approaches are also welcome as long as they do not lead to a new 'moral relativism' or the revision of rational thinking as such and the importance of classical instruments like rules, universal values and principles such as the rule of law and the importance of principles of administrative law are not being questioned. Moreover, new findings in the field are important as long as they do not only redress what philosophers (Immanuel Kant) or sociologists (such as Simon, 1997; Lindblom, 1990; Merton, 1936) said well before.

However, relativist approach to the principles of modern administration and rationality are emerging (Rutgers, 1999, p. 26), at least in some countries. According to Davies in *Nervous States – How Feeling Took Over the World* (Davies, *2019)*, we are entering a new era in which generalization and assumptions that there are laws, principles and values governing society as a whole and history as a whole, disappear (Davies, 2019, p. 162). Commitment to societal values, objectivity, impartiality and expertise increasingly mean old-fashioned group-thinking and the contrary of competition, speed and novelty. In the future, "the context for every life choice is that of competition, how to distinguish oneself from rivals, by qualification, image-seeking and management of oneself" (Davies, 2019, p. 169). Also, in the field of institutional integrity, some trends are even towards "spectacular outbursts of irrationality" (Smith, 2019, p. 7). An important part of the story of how we arrived here seems to be the collapse of traditional safeguards for the preservation of rational procedures and deliberation…." (Smith, 2019, p. 18).

At this point, it makes sense to refer back to the beginnings of our discussions and the definition of modern public institutions as depersonalised systems that differ from traditional modes of "personalised" government. Could it be that we return and move back to personalised modes of post-modern government?

If this analysis is correct, it is time to re-consider the pros and cons of - at least – some traditional and (post-) modern institutional features (and defend rationality against irrationality and principles against moral- and cultural relativism). After all, if rationality is dismissed and universal values are rejected, then institutional ethics will be grounded on something arbitrary and modern principles are becoming relative. These trends seem to give us the freedom to go with any epistemic principle we choose (Lynch, 2017, p. 223). So, what could this concept of rational institutional integrity be?

Here, we are moving back to our philosophical discussion at the beginning of our deliberations: While it is true that the shift towards a bounded rationality framework may provide scholars with more realistic models of political decision-making (Shannon and Zachary, 2019), it should not lose interest in the link between integrity and the sociopolitical context and power relations. Overall, public institutions must remain spaces of reasons and stick to those administrative principles that are still important, such as the principles of rule of law, impartiality, equity and fairness.

6 The expansion of the meaning of institutional integrity – new complexities and new confusion

In the meantime, almost everywhere, countries have expanded the meaning of the concept of institutional integrity. Governments invest in ethics policies and in fighting unethical behavior more resources than ever before. In many cases, governments have institutionalized ethics infrastructures as a reaction to political scandals and started to focus on the implementation of ethics policies. Overall, ethics policies have become wider, broader, stricter, better institutionalized and professionalized. According to the above-mentioned study for the European Parliament, trends are towards a) more ethics rules and standards per country, b) "ethicalisation of rules" (more rules include references to ethics and ethical standards), c) the broadening of ethical definitions and d) towards stricter ethical standards. Moreover, purpose-driven, value driven management approaches and public value management tools such as scorecards are high on the agenda. Overall, talking about the need to change corporate- and administrative culture via the implementation of values and principles has also become important but also trendy and fashionable and – following an utilitarian perspective - an effective marketing tool. In some cases, greedy institutions (Coser, 1974) and moral entrepreneurship inform employees how to behave (Anderson, 2017), place a stronger emphasis on intrinsic motivators and ask employees to be engaged, committed and value driven.

While evidence is indeed mounting that the nature of integrity policies is strongly related to changing cognitive and cultural patterns, significant meth-

odological and theoretical challenges still exist, especially in regard to the evaluation of the effectiveness of ethics policies.

For example, experts agree on the importance of ethical leadership for integrity. However, it is difficult to measure ethical leadership. Moreover, from a manager´s point of view, daily management is about managing conflicts and value dilemmas under high time pressure and financial constraints. From a managerial perspective, ethical leadership is a virtue which is difficult to realize in practice. Consequently, "dark leadership" is not going away easily.

As regards the effectiveness of ethics policies, methodologically, there is also no consensus regarding the various policies, instruments and mechanism and how they impact on ethical outcomes. Whereas sound empirical knowledge exists about the positive link between meritocratic structures and levels of corruption and politicization, too little evidence exists regarding the link between flexible Governance trends, HR-reforms, destandardisation, individualization and the impact on ethical leadership and organizational justice and fairness perceptions. Therefore, more empirical studies and more non-ideological deliberations are sorely needed if we are to better understand ethical promises, paradoxes, challenges, and limitations. One of these challenges is to understand how institutions are changing and how this affects institutional integrity and workplace behavior.

As we have seen, the institutional context of public ethics policies is continuously changing, but whether it is changing to the better is not easy to say (Mackenzie, 2002). Instead, the conviction grew that there is no truth, objectivity, and rationality, but instead diversity, best-fit, context, contingency, nominalism, bounded rationality, and individualism. The problem with this trend towards relativism and destandardisation is the parallel decline of universal standards and basic moral principles. This popularity of moral relativism easily deprives of moral confidence, of the sense that we are right to condemn the actions of wrongdoers, and relativism removes the sense of conflict between apparently conflicting moral judgments that since they are relative, they do not really conflict, or the conflicts don´t really matter (Lukes, 2008, p. 18).

At the same time, ministers and top-officials are subject to constant public and media scrutiny and (an exponential rise of) ethical and moral scandals. These scandals trigger discussions about trust. While it can be doubted that holders of public office have become more unethical as such, a generalised and inflated use of the term moral scandal, the increased (digital) media visibility of scandals, and the political abuse of moral issues have negative side-effects on trust perceptions. As a consequence, anti-corruption and moral campaigns against the elites have helped populists far more than it has helped politicians genuinely committed to fighting anti-corruption and conflicts of interest (Mungiu-Pippidi, 2020, p. 100).

The above mentioned study notes a relationship between Good Governance and the acceptability of corruption. As such, in countries with a higher democracy index, there is also less acceptance for corruption. Or, vice versa: In coun-

tries where the democracy index is lower, the acceptance for corruption is also higher. These findings are important because they allow for the conclusion that the acceptance of unethical conduct is higher in countries with a lower democracy index and lower in countries with a higher democracy index. Thus, if countries want to take the fight against unethical behaviour and corruption seriously, an important precondition for this is to – simultaneously – maintain or strengthen systems of good governance. We also note the same logic as regards the situation of the rule of law. The higher the rule of law index of a country, the less acceptance for corruption. Or vice versa: The lower the rule of law index in a country, the higher is the acceptance for corruption. Thus, there exists a positive relationship between Government Integrity and unacceptability of corruption. As such, this confirms the hypotheses that Good Governance and "ethics pay off". Moreover, the institutionalisation of ethics policies can be expected to lower tolerance for unethical conduct. From this, we also draw the conclusion that adoption rules and policies are not enough. Instead, it is important to invest in integrity policies and good governance policies. Of course, these findings are not new. More important is the (empirical) confirmation that effective integrity policies pay off in terms of satisfaction with the functioning of the democratic system. If people trust in the effectiveness of ethics policies, they are also likely to trust the public institutions and the political system, which is based on Good Governance principles. Apparently, there is a trade-off between the growing complexity of our societies, the need for more, better, clearer, and stricter rules and the increasing number of violations. "There are many more laws to be broken nowadays, prosecutors have become more zealous, and resources at their disposal have become more plentiful." (Thompson, 2006, p. 163).

Moral and ethical standards are also changing more rapidly than before. What was legal a generation ago is considered unethical today. As discussed, regulation in the field of conflict of interests also takes a stronger prophylactic approach. Prohibitions are regulated for an increasing variety of circumstances. Requirements for disclosure of interests have shifted from an (original) concentration on financial issues into other non-pecuniary commitments. Also, public opinion has shifted towards an objective conception of conflict and a subjective conception of personal interests. Finally, media coverage about scandals has dramatically increased and, thus, supports views that unethical behaviour is increasing.

Therefore, it is becoming ever more difficult to call for more rational approaches in the field of integrity and to question the ever-more, ever stricter = ever – better logic in the field.

In fact, there is no easy answer as to whether we have too much or too little ethics or what the precise impact of specific instruments is on trust, democracy, effectiveness, efficiency, performance and behaviour. At least, recent trends indicate a growing interest in evaluating the institutionalisation of ethics and in the right design of ethics infrastructures.

Thus, the concept of 'Integrity of Governance' is more complex than ever. Progress in the field is combined with new challenges, conflicts and dilemmas. As already mentioned, different experts observe trends are moving towards a "marketisation of societies", the return of the Leviathan, developments towards flexible forms of Governance, the emergence of a digitalized shared economy and a return to 'moral politics' – all in one. To this should be added trends to a diversification of institutional systems and organizational structures. This together presents a highly contradictory scenario.

7 Diverging opinions: Towards best fit- or best-practice institutional integrity?

Another trend make it more difficult to define institutional integrity from a public management perspective. One reason for this is the fragmented nature of approaches and the proliferation of integrity concepts and theories. Overall, academic publications about institutional integrity are becoming more complex (Schwartz, Harris and Comer, 2015; Kirby, 2020). According to Breaky, Cadman and Sampford (2015, p. 3), Sampford was actually the first academic to distinguish between institutional and individual integrity. Since then, Hoekstra and Kaptein are the leading experts in the field of institutionalising (public service) ethics. Also related to the issue of institutional integrity, Cropanzano and Folger (1991) were the first to invent the term of organizational justice and Linda Trevino the concepts of unethical behavior in the workplace and ethical culture (Trevino 1986). In the private sector, the concept of managerial ethics was founded by Schminke (1998). The notion of integrity systems seems to originate in the works by Jeremy Pope, the founder of Transparency International (Pope, 1996). Other concepts discuss organizational ethics integrity (Polowczk, 2017) or Handbooks on ethics infrastructure concepts (such as those published by the OECD, 2020). As regards the latter, the most important distinction between integrity systems (Huberts, Anecharico and Six, 2008, 2012) and ethics infrastructures seems to be that the former is a more technical concept and the latter relies on a discussion of much broader variables such as the importance of the rule of law, democracy and the judiciary (Fernandez and Camacho 2016; Martin and Kish-Gephart, 2014). Finally, according to the OECD (Maesschalck and Bertok, 2009) the concept of integrity management can be defined as the activities undertaken to stimulate and enforce integrity and prevent corruption and other integrity violations within a particular organization. Integrity management is the sum of systematic and integrated efforts to promote integrity within public-sector organizations (Kaptein, 1998).

"By definition, integrity management requires an integrated, systematic and coherent approach. Integrity instruments and initiatives are more effective when they are part of a systematic style (Van Tankeren, 2010). Although the importance of such a concerted approach seems almost a matter of course, this is not yet the case in many public organizations (Bowman 1990; Lawton et al. 2013). (...) Second, integrity management suffers from implementation

deficiencies. Integrity policies have repeatedly proven to be a somewhat paper issue that has not received a direct follow-up (Transparency International, 2012; Van Den Heuvel and Huberts, 2003). (…). (...). Third, it appears to be difficult to find a balanced integrity management approach combining both compliance and integrity strategies (Paine, 1994)" (Hoekstra and Heres, 2016).

Much of the literature assumes that institutional integrity systems constitute 'best practice' and are universally applicable management. The best-practice approach is based on the belief that ethics institutions and infrastructures can be used in any organisation and the view that all organisations can improve *ethical performance* if they identify and implement best practices. According to Huberts (2014), it is possible to stress the 'basics of an integrity system' (Huberts, 2012, p. 190): Suggested instruments include rules, disciplinary policies, standards, codes of ethics, codes of standards, value management, ethical leadership, whistleblowing, job rotation, risk analysis, training, integrity plans, integrity monitoring, scandal management, registers, disclosure policies, ethical climate surveys, self-assessments, integrity officers, ethics committees and good working conditions. It is also widely accepted that preconditions of effective ethics infrastructures include openness and independent control mechanisms because principles of ethics cast suspicion on any process. In the meantime, there is also considerable consensus on what constitutes bad practices, for example, the absence of free media and independent judicial systems, high levels of politicization, poor leadership, unfair HR policies, lack of training, unprofessional performance measurement etc. in which holders of Public Office and public officials discipline themselves.

Despite this listing of ingredients of integrity systems, the increasing interest in institutional integrity has not necessarily produced more clarity and consensus on the effectiveness of ethics policies in different contexts and the right choice of policy instruments within the best-fit design of ethics infrastructures. More work is also needed as regards what types of incentives, or sanctions and enforcement practices work best to create motivation for responsible behaviour. Finally, it is unclear what kind of institutional integrity systems works best in different sectors and for different holders of public office (for example, independent and outside control is still rare in the case of parliaments).

Since discussions on ethics were dominated for a long time by bureaucratic, rational and legal approaches, there is also uncertainty about the need for and the effectiveness of other instruments, the right instrument mix, the role of self-regulation, and the relationship to other political, psychological and economical approaches. Again, others point to the need for more intrinsic incentives for doing good and warn against a too strong focus on compliance approaches. Here the focus shifts back on forth between those who wish to design sound organizational structures and coherent integrity management in order to tackle the individual causes of unethical behavior whereas others believe that it is important to focus on organizational causes. Especially, the development of conflicts of interest- and disclosure policies raises the questions as to the clarity of concepts, definitions, and who monitors, supervises

and control the various "conflicts" and "interests" (Stark, 2000). This question is closely linked to the question whether and how public administrations manage and monitor integrity policies as such.

Institutionalization (Hoekstra and Kaptein, 2012) is an important aspect of integrity management and addresses the question of how these concerted efforts are thoroughly secured, anchored, embedded or safeguarded within the organization. Hoekstra "point out that there are two approaches to embed integrity measures within organizations: informal and formal institutionalization (Brenner, 1992). The nature of the informal approach is implicit, indirect and concerns less visible and tangible organizational aspects that, while affecting the ethical climate of the organization, are not primarily targeting ethics. This could include the behaviour of supervisors, the creation of shared values, fair remuneration, appraisal and promotion systems, and rewarding 'good' behaviour". The formal approach is, however, explicit, direct and visibly aimed at promoting ethical behaviour within organizations (Tenbrunsel et al., 2003).

At present, several reform trajectories exist which lead to innovations in the field of integrity management, but these highlight the existence of alternative models rather than a shift towards one common institutional reform model in the field of integrity. As already discussed, the search for a best-practice ethics infrastructure is confronted with a context and institution-based, fragmented-, situational and pragmatic reality. Overall, institutional differences – notably the levels of budgetary resources, social legitimacy, work systems, labour markets, education and training systems, work organisation and the collective organisation of employers and employees – mediate the impact of converging processes. Also, causes for unethical behavior may be found at individual, organizational, cultural- or societal level. Consequently, remedies, too, differ from case to case.

Consequently, the proposition for implementing institutional and organisational models such as ethics management systems and infrastructures is ambiguous. As discussed earlier, the political and institutional world is currently moving away from universal best-practice institutional configurations towards more specific best-fit and individualized context-related models. New developments lean more towards the testing of new organisational models and work systems that fit into the national, regional, local or even organisational and leader-follower context. Best fit schools are associated with this contingency approach and argue that organisations must adapt their strategies and implement reforms to the specific local strategy and to its environment. Thus, in most countries, the effectiveness of any particular institutional integrity system will be determined by the degree of consistency amongst its constituent elements and the way they fit into the specific culture, organisation, climate and leadership styles. Consequently, also the choice of policy instruments should be seen as a pluralist, non-deterministic and multipurpose approach that allows the application of behavioural insights 'throughout the policy process', but always in combination with (classical) policy instruments that address individual, organisational and systemic causes for unethical behavior (Ewert, 2020).

It is interesting to note that academic discussions in the field of institutional integrity have also turned away from the 'grand old' dichotomy: value-based approaches versus compliance-based approaches. In the meantime, also so-called "value based" countries wonder why new institutional designs and the search for "full integrity" did not produce the desired (superior) results. For example, Andersson claims for Sweden that corruption and conflicts of interest vulnerabilities have increased (Andersson, 2019, p. 9). Hoekstra notes that – despite being an international forerunner in the field of integrity – the Netherlands focus on economic values than all other countries and financial constraints and saving measures had a negative impact on integrity polices. In the meantime, also in all Nordic States, mediated ethical scandals and the "personalization of politics" have become a standard feature of political life, even as regards minor offences and small deviant actions (Pollack et al., 2018). As such, the relationship between public institutions and integrity is full of conflicting interests. It is not *a love affair* (Ortman, 2015, p. 72). However, the concept of institutional integrity is becoming ever more complex and separated from other institutional logics.

8 Conclusions

For a long time the concept of institutional integrity formed an integrated part of the bureaucratic concept. During the past decades, new ideas and concepts about institutional integrity are emerging. Today, concepts are expanding as a separate public policy. Differently to the past, they are also disconnected from modern public management concepts. As Thompson noted decades ago: "We should not expect the rules of government ethics to be simple or to become simpler in the future. As government has become more complex, government ethics (…) are also likely to become more complex" (Thompson, 1992, p. 254).

Whereas traditional "integrated" bureaucratic logics failed, even the best new institutional integrity design only fill the gaps that other public policies and (managerial) system logics produce. Many countries are good at filling some gaps, or even many. However, recent trends in the field of rule of law, justice, freedom of press, politicization, corruption and conflicts of interests show worrying trends in the respective fields (even if we consider that it is difficult to measure these issues). All of these issues influence integrity and institutional integrity. And, vice versa.

As current concepts of integrity policies focus on the misconduct of individuals (and not, for example, of organisations), the management of integrity policies requires sophisticated and complex interventions and high expertise of those who are in charge of monitoring the conduct of the individuals working inside the institutions. However, overall, individualised monitoring is difficult, complex, time consuming and – increasingly - costly. Because the management of integrity policies is becoming ever more complex and individualised, it is time to raise the question of whether or not it would be more effective to move from an individual "bad apple" approach to an institutional integrity

approach. Should, for example, the severity of integrity violations be judged by the impact and importance of the cases?

Also, from a governance approach, institutional integrity is a 'plug-in policy' that fills the gaps that other policies and other governance logics produce. It seems that different system logics in economy, law, politics and sciences contradict with each other. Consequently, progress in institutional integrity is not translated into more effectiveness of ethics standards as other system imperatives generate reform outcomes that are in conflicts with objectives of ethics policies. As such, also the field of public management is about managing conflicting objectives and values. The problem is clearly not with behavioural ethics nor with individualised approaches, but with individualisation and (moral) relativism as a trend becoming the dominant approach to understanding the very complex world of organisational behaviour and public service ethics. The problem is rather that expanding integrity policies should "repair" conflicting management logics. They can not.

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The Measurement Model of Professional Operation of State Administration

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ABSTRACT

This paper presents the study of a measurement model of professional operation of state administration. From the perspective of reliable performance of state functions, the professional operation of state administration represents one of the goals of social change. Based on theoretical-analytical findings, a measurement model of professional operation of state administration was designed. It consists of three dimensions, namely: reliability of state administration, professionalisation of the administrative profession, and competence of employees. The reliability dimension is represented by the element of legality and economic efficiency, the profession dimension is based on power, autonomy, knowledge and responsibility, and the competence dimension includes elements of leadership and ethics. The measurement model was tested in the Slovenian state administration. The results of the research confirm the connection between the three aforementioned dimensions of professional operation of state administration and, consequently, the validity of the designed model.

Keywords: *professional operation, state administration, reliability of state administration, administrative profession, competence, measurement model*

JEL: H83

1 Introduction

State administration encounters the same problems in all types of democracies: how to provide competent, effective, legitimate, responsible, responsive, professional and just public service. The two great questions about state administration in democracy are thus connected with legitimacy and effectiveness, which also includes professionalism. Both questions are connected to the concept of reliable administration (Hood, 1991; Brezovšek 2000; Toonen, 2005). Administration without professional officers is not reliable. Administrative reliability is well grounded on the quality of administrative reign (Leftwich, 1993, p. 614) and ensures the legitimacy of the regime, its stability and credibility. Sarker (2019, pp. 1–5) in connection with professionalism (as a one of the core values of public (state) administration) expose accountability, transparency, coordination of works, implementing legislation, advocacy, responsiveness, competence and conduct, ethics and bureaucratic behaviour, law implementation, professional autonomy, ...

The purpose of the research was to discover the existence of connection and mutual dependence of dimensions of the theoretical model of professional operation of state administration with a goal of shaping the measurement model. A hypothesis was created on the basis of the presented problem: The professionalism of Slovenian state administration operation is determined by the level of its reliability, profession and leadership.

The article presents the theoretical framework of the model of professional operation of state administration, which is designed on the basis of analysis of the development of state administration and the development of various models of administration connected to it. The central point of the research was taken by the question which elements contribute to professionalisation of state administration. This was followed by the test of the model in practice by Slovenian state administration in the example of administrative units. Administrative units perform most tasks of administrative decision-making of the state on the first level of administrative decision-making, therefore they represent the most direct link between citizens and the state. It is that part of state administration, which (due to the field of implementing administrative services on the first level) is most usually exposed in relation to customers. On the basis of the results of the research the measurement model was designed and the hypothesis check-up was carried out.

2 Model of professional state administration

Professional operation of state administration as the social subsystem represents an important prerequisite for stability, development and competitiveness of the state. In addition, like other public sector organizations, they 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 (Tomaževič, 2019, p. 1999). Considering the historical, incidence and

interest complexity, it is practically impossible to unanimously and comprehensively explain the complexity of the area of state administration; however, there is one key question: what makes the state administration effective in the eyes of citizens and political, decision-making authorities. By shaping the model of professional operation of state administration we wish to answer this question in particular. At this point, analysis of findings from the areas of professional administration as reliable administration was made (classic and modern concept of reliable administration, analytical model of reliable administration), characteristics of official profession (also from the perspective of leading people, human resources management, competences and career system) and ethics of operation. The theoretical construct of the model of professional state administration, designed on this basis, consists of three dimensions: reliability, official profession and competences.

2.1 Reliability

There are two main goals of the state administration on the abstract level in the concept of reliable administration: (1) legitimacy, when citizens respect decisions of the state administration and (2) efficiency, when decisions need to provide adequate results. From the perspective of legitimacy, professional state administration is the one, the operation of which the citizens accept as valid and justified in terms of values and interests. Legitimacy includes the aspect of legality and political control, efficiency, professionalism and capability of managing the expenses (Brezovšek, 2000, pp. 255–256). The importance the rule of law for state administration activity means that the rule of law guarantees the legality of administrative decisions. Effectiveness of state administration operation is to a large extent connected with expedience and economic efficiency of the state administration. The emphasis is on greater financial discipline and cost-effectiveness of operation, which has a goal of lowering direct expenses, rising the effectiveness and limiting the operational costs (Hood, 1996, p. 271). To achieve expedience and economic efficiency of use of public resources (Cardona, 1999, pp. 8–14), which is carried out through budgetary financing, different forms of monitoring the budget have been established.

On this basis we placed the reliability dimension into the model (theoretical construct), which is determined by two elements: legality and economic efficiency.

2.2 Profession

Professions are constantly evolving, albeit at a slower or faster pace depending on sector environments in which they operate (Gregory, 2020, p. 641). Development of professionalisation of state administration is importantly connected with transition from providers in organisations, who perform public tasks of laymen, to professional workers in administration (Pusić, 1996, p. 61). There are different opinions about whether professionalisation of administration is representing processes, as regarded by the classic model of

profession development. There are namely different viewpoints about official/administrative profession. Some say that justification of administration profession must originate from principles of democratic administration, while others express scepticism towards professionalisation of administration profession due to problems of clear definition of functions performed by state administration, and the third estimate that special administrative profession would be a threat to democratic administration and represent weakening of control of providers of administrative activities (McDonald III, 2010, p. 816). Public employees, as groups of professionals, they have been granted autonomies to regulate client and case treatment, to structure and strengthen knowledge and skills, and to improve assessment and action (Noordegraaf, 2016, p. 784).

Characteristics which mark professions are despite different treatments of processes of professionalisation (treatment of professionalisation through phases of development, Wilensky (1964) or treatment of certain characteristics, Leicht and Fennell (2001) remain similar. Knowledge, power and influence, autonomy, responsibility and ethics are exposed. While knowledge, responsibility and ethics can be treated as elements of old professionalism, in the context of social changes characteristics of power, influence and autonomy from the perspective of traditional professions in professionalisation of official profession mark its altered activity of new professionalism, when quality of service is in the foreground (Hargreaves, 1994, p. 437). Professionalism denote a bundle of HR practices that are generally considered in the normative literature as universal "good practices". Professionalism or professional identification is an important antecedent to public sector motivation (Battaglio and French, 2016, p. 129).

On this basis we placed the profession dimension into the model (theoretical construct), which is determined by four elements: power, autonomy, knowledge and responsibility.

2.3 Competences

Ability of professional operation of public employees is increasingly more often connected to the concept of competences. In the workplace, we use our competencies to perform a variety of behaviours and activities, which in turn generate outputs (products and services) that we provide to others (Stare and Klun, 2018, p. 82). Competences are a mix of motives, self-image, social roles, various skills, characteristics of an individual, which are used by the individual and lead to better activity at workplace (Boyatzis, 1982, p. 21). Competent people are those who can create valuable results without excessively costly behaviour (Gilbert, 1996, p. 17).

Concept of professional operation of state administration, considering reliability and profession, exposes particularly two elements of competence: leading people and ethical operation. Leading people is a multi-layered social phenomenon. Constant changes and influence on organisation (as a goal-oriented social system) in such way that it can carry out tasks are typical

of it (Stare and Seljak, 2013, p. 38). Social and technological changes in the twentieth century developed new approaches also on the area of leadership. In contrast to classic approaches, new approaches have some common characteristics: (1) they emphasise emotional and symbolic behaviour of leaders, (2) they discover ways, how leaders achieve loyalty of followers, (3) they emphasise complexity of leading and the aspect of a common person of leading (Robbins, 1998, p. 327).

This part of professionalism (not just this part, but in particular this one) is also defined by the ethical dimension of operation. Ethical behaviour in state administration is a constant process of leadership, which includes the concept of personal integrity and with personal honesty of leader, who has, together with consistency in his statements, rewarding ethical behaviour, just behaviour towards employees, the greatest influence on ethical operation of its subordinates (Pečarič, 2008, pp. 254–255).

On this basis we placed the competence dimension into the model (theoretical construct), which is determined by two elements: ethics and leadership.

3 Operationalisation of variables in the measurement model

With the purpose of translation of the existence of connectivity of individual dimensions, a measurement model was shaped, which consists of 8 sets of elements. Each element was operationalised with descriptive variables (and labels, used in empirical testing (Table 1).

Table 1: Operationalisation of variables

Legality	• The legal basis for the implementation of public tasks by officers is accurately determined. (leg1) • The content of legal relationships in material legislation between citizens and the state is stable and predictable. (leg2) • :
Economic Efficiency	• Economic efficiency of operation of state administration is limited by absence of marketing mechanisms of competitiveness. (eco1) • Mechanisms of budgetary use encourage expenditure economy and the economic efficiency of operation. (eco2) • :
Knowledge	• The type of degree is important for working in the state administration. (kno1) • Knowledge about development directions and reforms of state administration enables better quality of work with citizens and co-workers. (kno2) • :
Power	• The officers influence the development of legal state. (pow1) • The officers influence the implementation of principles of better legislation (elimination of administrative obstacles, simplification of legislation, preparation of new regulations). (pow2) • :
Responsibility	• State administration has established adequate forms of control of officers' work. (res1) • State officers are responsible for the cooperation in the co-creation of public policies and for contribution to regulations of better quality. (res2) • :
Autonomy	• Forming rules and legal requirements of officer's work are set by elected representatives of the political authority. (aut1) • Autonomy of officers' work is determined by the level of hierarchy in the administrative system. (aut2) • :
Leadership	• Leading significantly influences the development of professionalisation of state administration. (lea1) • Leading with introduction of entrepreneurial principles of success and effectiveness is limited by values of administrative leading of protection of general social benefits. (lea2) • :
Ethics	• When implementing public tasks, the officials act in accordance with values, responsibility and principles of ethical treatment. (eth1) • The officials know mottos and principles of obligatory ethical conduct. (eth2) • :

Source: own

The formed theoretical construct serves as the basis for identification of those key elements of state administration, which make it professional and for determining the existence of connection of individual elements.

4 Research methods

The research used quantitative method of research. In order to collect data, web questionnaire was used, which was structured and contained closed type questions. The measurement instrument consists of eight substantive sets with 39 statements. The respondents expressed their agreement with the statements on a five point Likert scale (1: "strongly disagree", 2: "disagree", 3: "neither agree nor disagree", 4: "agree", 5: "strongly agree". In the last, ninth part, the respondents answered five short questions of closed type, which refer to socio-demographic characteristics of respondents: their gender, age, years of service in public administration and private sector, and their course of study.

The data was collected through an online questionnaire (1ka web tool). The connection to the questionnaire was sent to 58 heads of administrative units in 2016. They were asked to solve the questionnaires and to forward the electronic message with the connection to the online survey to other officials at leading positions in their administrative unit. There were 229 officials on a position or leading work places in administrative units in Slovenia during the time of the research (MJU, 2016). The sample included 48.03% of the managerial structure of administrative units (AU). Actual state of persons of female gender in the leading structure of Slovenian AU is 73% and the sample included 69.1% of persons of female gender. Considering the responsiveness and the identification of gender structure of the sample it can be concluded that the sample represents in its important part the managerial structure of officials at the position in AU of Slovenia.

The sample has a little more than two thirds of persons of female gender (69.1%) and nearly a third (30.9%) of persons of male gender. The average age of a respondent is 51.56 years. The youngest respondent is 33 years old and the oldest is 64 years old. The "age" variable is quite normally distributed, while the distribution of the variable is somewhat asymmetric to the left and flattened. The smallest value of the "years of service in private sector" variable is 7 years, whereas the highest value is 39 years. On average, the respondents have 23.67 years of service in private sector. Also, the "years of service in private sector" variable is not normally distributed and the distribution of the variable is asymmetric to the right and pointed. The smallest value of the "years of service in private sector" variable is 0 years, whereas the highest value is 25 years. On average, the respondents have 3.55 years of service in private sector. The "years of service in private sector" variable is not normally distributed and the distribution of the variable is asymmetric to the right and pointed. Most respondents have legal education (42.4%), education in administrative science (18.2%) and the same part has economic education (18.2%). There is a smaller degree of respondents with a degree in natural sciences (9.1%), and the smallest one includes those who completed an organisational course of study (7.1%), sociology (4.0%) or other course of study (1.0%).

The collected data was processed in the statistics program IBM SPSS 23.0 and MS Excel, where univariate, bivariate and multivariate analyses were carried out. The structural equation modelling (hereinafter as: SEM) was carried out in program AMOS. The collected data was at first transferred into a database, where they were edited for further processing. To describe the examined phenomena, analysis of frequencies and descriptive analysis were used. Bivariate correlation analysis was carried out with the purpose of research of the link between the variables. To check the inter-connections between pairs of variables, Pearson's correlation coefficient was used.

In AMOS, confirmatory factor analysis was performed, where measurement model was created on the basis of findings from the bivariate correlation analysis and on the basis of content relevance of connections between constructs. Confirmatory factor analysis was carried out with measurement model in the context of structural equation modelling, in which manifest variables were included due to a small number of units in the sample, which were previously formed as averages of measured variables, which represent this construct. The adequacy of combining measured variables into newly formed variables, which represent constructs, was checked with confirmatory factor analysis, in the context of which we checked reliability and validity of combining measured variables into new ones.

In the SEM procedure, a measurement model was created, into which all new variables as averages of measured variables were placed, and then, in accordance with theoretically assumed conceptual model, latent variables were allocated to new variables. In this case we are talking about the measurement model, the purpose of which is performance of confirmatory factor analysis and validation of basic hypothesis of the research, that professionalism of state administration is determined by its reliability, competences of employees and their profession. In creating the measurement model we strived for creating such latent constructs, for which high values of weights at manifest variables which form these constructs would have been achieved, and at the same time towards high reliability and validity of formed constructs. The measurement model was formed on the basis of theoretically assumed links between constructs and its purpose was to check the hypothesis.

5 The results of the research

5.1 The results of the research with the descriptive statistics of variables

The basic descriptive statistics (Table 2) for variables with interval level of measurement or variables, which were considered as interval, include the numerus of responses, the smallest and the biggest value, the arithmetic mean (average value, AM) and the standard deviation (SD) from the arithmetic mean. The coefficient of skewness (CS) and coefficient of kurtosis (CK) are listed as indicators of normality of distribution. Normality of distribution was checked by Kolmogorov-Smirnov and Shapiro-Wilk test.

Table 2: Basic descriptive statistics

	N	min	max	AM	SD	CS	CK
leg1	110	2	5	3.73	0.812	-0.612	0.067
leg2	110	1	5	3.22	0.882	-0.445	-0.808
leg3	110	2	5	3.38	0.801	-0.259	-0.632
leg4	110	2	5	3.46	0.738	-0.57	-0.376
leg5	110	1	5	4.22	0.747	-1.053	2.322
ekn1	110	1	5	3.21	0.959	-0.051	-0.76
ekn2	110	1	5	2.96	1.013	0.02	-0.623
ekn3	110	1	5	3.28	0.92	-0.522	-0.198
ekn4	110	2	5	4.17	0.633	-0.376	0.419
knl1	108	1	5	3.48	0.87	-0.593	0.549
knl2	108	2	5	3.81	0.686	-0.454	0.499
knl3	108	1	5	3.14	0.87	-0.275	-0.387
knl4	108	1	5	4.06	0.74	-1.092	2.776
knl5	108	1	5	4.37	0.731	-1.585	4.363
pow1	108	1	5	3.28	0.905	-0.274	-0.163
pow2	108	1	5	3.23	0.781	-0.313	0.219
pow3	108	1	5	3.50	0.837	-0.876	0.913
pow4	108	1	5	2.93	0.839	-0.245	-0.279
pow5	108	1	5	3.64	0.932	-0.627	0.106
res1	107	1	5	3.63	0.795	-1.285	2.183
res2	107	1	5	3.46	0.883	-0.541	-0.399
res3	107	1	5	3.88	0.669	-1.013	3.171
res4	107	1	5	3.56	0.815	-0.946	0.903
res5	106	2	5	4.05	0.722	-0.535	0.404
aut1	107	2	5	3.89	0.828	-0.6	0.071
aut2	107	1	5	3.46	0.883	-0.29	-0.35
aut3	107	2	5	3.64	0.794	-0.63	-0.017
aut4	107	1	5	3.81	0.766	-0.948	1.648
aut5	107	1	5	3.63	0.83	-0.815	0.448
led1	102	1	5	4.1	0.622	-1.328	6.351
led2	102	2	5	3.73	0.733	-0.593	0.376
led3	102	2	5	3.69	0.689	-0.794	0.656
led4	102	1	5	3.71	0.726	-1.07	1.837
led5	102	1	5	3.56	0.683	-1.072	1.362
eth1	102	2	5	4.07	0.55	-0.323	1.925
eth2	101	2	5	4.1	0.592	-0.615	2.355
eth3	102	1	5	3.54	0.897	-0.791	0.578
eth4	102	2	5	4.35	0.639	-0.703	0.634
eth5	102	1	5	3.21	0.871	-0.233	0.006

N – number of answers; min – lowest value; max - highest value; AM – arithmetic mean; SD – standard deviation; CS – coefficient of skewness; CK – coefficient of kurtosis

Source: own

Descriptive statistics of individual groups of variables show relatively low values of standard deviations. The majority of values of coefficients of skewness and kurtosis is situated within the interval [-2,2], which means that distribution of variables does not significantly deviate from the normal one. A significant deviation from normal distribution has been detected only for the variables "leg5", "knl4", "knl5", "res1", "res3", "led1" (largest deviation) and "eth2".

In the context of "legality" the greatest degree of agreement (4.22) between respondents exists for the statement that the legitimacy of state administration is strengthened with its openness and transparency ("leg5"), and the smallest degree of agreement (3.22) for the statement that the content of legal relations in material legislation between the citizens and the state is stable and predictable ("leg2"). In the context of "economic efficiency" the greatest degree of agreement between the respondents (4.17) is about the statement that principles of economy, effectiveness and cost efficiency are important for work of the state body ("ekn4"), whereas the smallest degree of agreement (2.96) exists about the statement that mechanisms of budgetary use encourage cost efficiency and economic efficiency of business activities ("ekn2"). Generally, the greatest degree of agreement by respondents (4.17) is about the fact that officers' knowledge enables professional competence and independence in the process of decision-making ("knl5"), namely in the context of "knowledge". The smallest degree of agreement in this context (3.24) is about the fact that the state administration enables its officers target training and upskilling ("knl3"). However, disagreement with this statement remains quite high.

In the context of "power/influence" the greatest agreement among the respondents (3.64) exists about the fact that the public attaches greater influence to the officers for their regulation of social relations, than they actually have regarding their competencies ("pow5"). Significant agreement (3.5) among the respondents exists also about the fact that state administration contributes to competitive ability of the economy by the implementation of acquis ("pow3"). The smallest degree of agreement in this context and also in the entire research is about that the fact that the public appreciates and trusts the officers about their implementation of public tasks ("pow4").

In the context of "responsibility" among respondents, the highest degree of agreement (4.05) exists about the fact that the officer is responsible for serving the citizens and to solve their problems in legal administrative relations ("odg5"), whereas the lowest degree of agreement (3.46) occurs for the fact that state officers are responsible for co-creation of public policies and for contribution to regulative of better quality ("odg2"). In the context of "autonomy" the highest degree of disagreement among respondents (3.89) exists about the fact that forming rules and legal requirements of officer's work are determined by elected representative of political authority ("aut1"), and the lowest degree of agreement (3.46) about the autonomy of officers' work being determined by the level of hierarchy in the administrative system ("aut2"), but the agreement about this statement remains quite high. However, the

differences in respondents' agreements about individual factors in this context are very small (only 0.43).

In the context of "leadership", the greatest degree of agreement (4.1) among the respondents exists about the fact that leading significantly influences the development of professionalisation of state administration ("lea1"), and the smallest, but still quite high (3.56) about the fact that leading transforms from hierarchical individual paradigms into co-operative network activities ("lea5"). In the context of "ethics", the greatest degree of agreement (4.35) among the respondents is about the fact that the awareness of ethical responsibility and obligation is a human virtue, which cannot be reduced to regulated ethical conduct ("eth4"). The smallest degree of agreement (3.21) among the respondents, both in the entire research and in the context of "ethics", exists in the fact that an effective mechanism of control and responsibility has been established for the compliance of ethical practices of officers.

5.2 Analysis of validity and reliability

Because we want to perform further analyses on full data matrix, we check the pattern of repetition of missing values by Little MCAR test. The level of statistical characteristic x^2 ($x^2 = 128.8$; $df = 133$; $p = 0.586$) shows that the missing values for variables, which were measured on a five point Likert scale of agreement, are missing completely randomly ($p > 0,05$). Considering the fact that the percentage of missing values for individual variables are moving within 0% and up to 8%, and considering the previous finding that the missing values are completely randomly missing, values with EM (expectation-maximisation) algorithm are entered in the existing data matrix. All further analyses are made on full data matrix.

In the context of validity of the construct, which is related to the adequacy of measuring the phenomenon, we check the convergent validity. Convergent validity determines the level of connectedness of several variables, for which we assume that they measure the same construct. High connectedness shows actual measuring of the same construct. AVE values which are higher than 0.5 suggest the convergent validity of constructs. The reliability of measurements was checked from the perspective of internal consistency of measurement (Cronbach's alpha coefficient). For each individual construct (factor) confirmatory factor analysis was made in AMOS with the purpose to check the validity and the reliability of constructs. We used: AVE as the indicator of convergent validity, CR for composite reliability, Cronbach's α for internal consistency of the construct. Measurement models were simplified in the process of confirmatory factor analysis of modified in a way that certain fit was achieved. Thus, they were after the process of removing variables, which had low weight values or standardised regression coefficients. Variables, which were preserved in the analysis, are presented in Table 3.

Table 3: Indicators of validity and reliability of constructs in the mode

			λ	CR	AVE	Cronbach's α
leg1	←	legality (e1)	0.636	0.819	0.483	0.725
leg2	←		0.837			
leg3	←		0.587			
ecn2	←	economic efficiency (e2)	0.727	0.832	0.585	0.734
ecn3	←		0.801			
klg4	←	knowledge (e3)	0.721	0.793	0.526	0.689
klg5	←		0.729			
pow1	←	power (e4)	0.771	0.827	0.493	0.733
pow2	←		0.756			
pow3	←		0.560			
rsy1	←	responsibility (e5)	0.517	0.746	0.404	0.633
rsy2	←		0.842			
rsy3	←		0.484			
atn2	←	autonomy (e6)	0.416	0.71	0.406	0.571
atn3	←		0.389			
atn5	←		0.945			
lsp1	←	leadership (e7)	0.548	0.832	0.432	0.749
lsp3	←		0.723			
lsp4	←		0.691			
lsp5	←		0.654			
eth1	←	ethics (e8)	0.839	0.863	0.496	0.771
eth2	←		0.782			
eth3	←		0.588			
eth5	←		0.569			

Source: own

As is evident from Table 3, the CR values for all constructs are exceeding the limit values of 0.6, so the constructs achieve high composite reliability. The values of the average of extracted variances AVE, which refer to convergent validity of constructs, are approaching the limit values (0,5) or exceed them for most of the constructs. However, we estimate that AVE values for con-

structs, which are less than 0.5, are not critically low. When evaluating internal consistency of constructs with Cronbach's α coefficient, it shows reliability of constructs, by which an exception is only the "autonomy" construct, however on the other side of composite reliability is relatively high

5.3 Descriptive statistics of variables in a model

From variables, indicated in Table 3, we created new variables as the averages of all retained variables. Therefore, a presentation of descriptive characteristics of newly created variables in the model (Table 4) follows, with which detailed insight into the studied problem is enabled. At the same time, the purpose of this presentation is the display of basic characteristics of variables, on which further analyses are based (analysis of correlations and structural equation modelling), with which we answer the raised research question and check the hypothesis.

In the context of descriptive analysis we are interested into smallest and largest values, the arithmetic mean and the standard deviation. The kurtosis and the skewness of distribution of variables was also checked. The normality of distribution of variables was identified with Kolmogorov Smirnov test with Lilliefors correction and Shapiro-Wilk test. Descriptive statistics of new variables show relatively low values of standard deviations, since they are smaller than one (Table 4). For all formed variables, values of coefficients of skewness are negative, so the distributions are asymmetric to the left. Values of coefficients of kurtosis are negative in formed "legality" and "economic efficiency" variables, which means the distribution of variables is flat. For other variables, values of coefficients of kurtosis are positive, which shows the pointed distribution of variables. The majority of values of coefficients of skewness and kurtosis is situated within the interval [-2,2], which means that distribution of variables is acceptably asymmetric and flattened or pointed.

Table 4: Descriptive statistics of formed variables

	N	min	max	AM	SD	CS	CK
legality (e1)	110	2	5	3.44	0.668	-0.302	-0.283
economic efficiency (e2)	110	1	5	3.12	0.86	-0.213	-0.223
knowledge (e3)	110	2	5	4.22	0.636	-0.985	2.186
power (e4)	110	1	5	3.34	0.675	-0.669	2.005
responsibility (e5)	110	1	5	3.65	0.591	-0.8	1.988
autonomy (e6)	110	2	5	3.57	0.607	-0.323	0.046
leadership (e7)	110	2	5	3.75	0.498	-1.309	3.905
ethics (e8)	110	2	5	3.71	0.562	-0.182	1.482

Source: own

In the context of formed variables the highest average values for the "knowledge" variable imply that for the respondents, knowledge is the most important ingredient for professional state administration, whereas the lowest degree of agreement among the respondents was sensed in the area of economic efficiency of state administration.

The test of normality of distribution of formed variables, which was carried out with Kolmogorov-Smirnov and Shapiro-Wilk test is shown in Table 5. All values of statistics are statistically characteristic on level $p < 0.01$, which shows statistically typical deviation of distribution of these variables from the normal one.

Table 5: Normality of new variable distribution

	Kolmogorov-Smirnov			Shapiro-Wilk		
	Statistics	df	P	Statistics	df	P
legality (e1)	0.177	110	0.000	0.954	110	0.001
economic efficiency (e2)	0.128	110	0.000	0.956	110	0.001
knowledge (e3)	0.202	110	0.000	0.877	110	0.000
power (e4)	0.154	110	0.000	0.929	110	0.000
responsibility (e5)	0.155	110	0.000	0.932	110	0.000
autonomy (e6)	0.175	110	0.000	0.949	110	0.000
leadership (e7)	0.163	110	0.000	0.904	110	0.000
ethics (e8)	0.112	110	0.002	0.956	110	0.001

Source: own

The analysis of correlations was carried out with the purpose of checking interconnections between the variables (Pearson's correlation coefficient). As set out in correlation matrix of generated variables (table 6), there are statistically characteristic connections among almost all variables (except in case of the autonomy and legality pair of variables and the autonomy and power pair of variables). It has been discovered that there are moderate, medium positive connections between the following pairs of variables power and economic efficiency ($r = 0.541$), responsibility and economic efficiency ($r = 0.527$), responsibility and knowledge ($r = 0.477$), responsibility and power ($r = 0.596$), leadership and knowledge ($r = 0.435$), leadership and power ($r = 0.505$), leadership and responsibility ($r = 0.586$), ethics and knowledge ($r = 0.442$), ethics and responsibility ($r = 0.541$) and ethics and leadership ($r= 0.513$).

Table 6: Correlation matrix of generated variables

	legality	economic efficiency	knowledge	power	responsibility	autonomy	leadership
legality							
economic efficiency	0.397**						
knowledge	0.221*	0.218*					
power	0.336**	0.541**	0.291**				
responsibility	0.306**	0.527**	0.477**	0.596**			
autonomy	0.159	0.220*	0.276**	0.169	0.233*		
leadership	0.257**	0.386**	0.435**	0.505**	0.586**	0.314**	
ethics	0.382**	0.394**	0.442**	0.342**	0.541**	0.330**	0.513**

* - the connection is statistically typical on level $p < 0.05$

* - the connection is statistically typical on level $p < 0.01$

Source: own

The two variables, which form the latent variable "profession", i.e. "power" and "autonomy", are not statistically interconnected, and are at the same time statistically distinctly and strongly correlated with the remaining variables, which are distributed to other latent variables. Between the "legality" and "economic efficiency" variables, which form the latent variable "reliability" there is no visible prominent strong connection, by which the "economic efficiency" variable strongly correlates with some other variables, too. These findings are important for forming the measurement model in the SEM context.

5.4 Confirmatory factor analysis

In the context of confirmatory factor analysis (carried out in AMOS) we formed a measurement model, with which we are answering the set out hypotheses. Standardised regional weights (table 7) are higher than 0.5 for the majority of generated variables, except for the "autonomy" variable. The latter does not represent "profession" to such an extent as was intended at first. Through the analysis we have discovered that "knowledge" and "responsibility" as the ingredients of the professional state administration, should most appropriately be considered as a part of the "profession" construct in addition to "power" and "autonomy", as well as "ethics" as a part of the "competences" construct, together with "leadership".

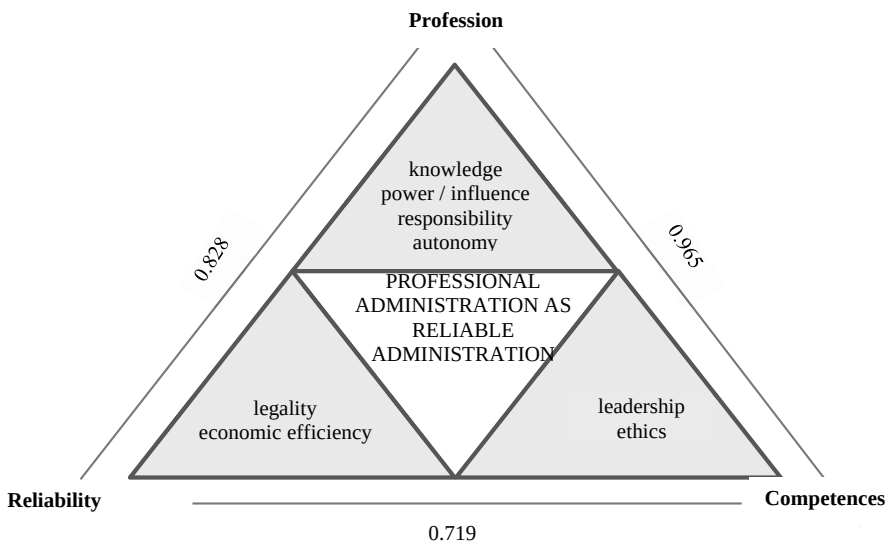
Table 7: Standardised regression weights of variables in the measurement model

			λ
legality (e1)	←	reliability	0.511
economic efficiency (e2)	←		0.777
knowledge (e3)	←	profession	0.543
power (e4)	←		0.688
responsibility (e5)	←		0.882
autonomy (e6)	←		0.357
leadership (e7)	←	competences	0.755
ethics (e8)	←		0.679

Source: own

It was discovered that we can confirm with high likelihood the existence of measurement model of professional state administration (Figure 1). By that it was found out that reliability, profession and competences are strongly connected and empirically proven ingredients of the model of professional state and are therefore an indispensable part of the model of professional state administration.

Figure 1: Connection of dimensions of professional state administration



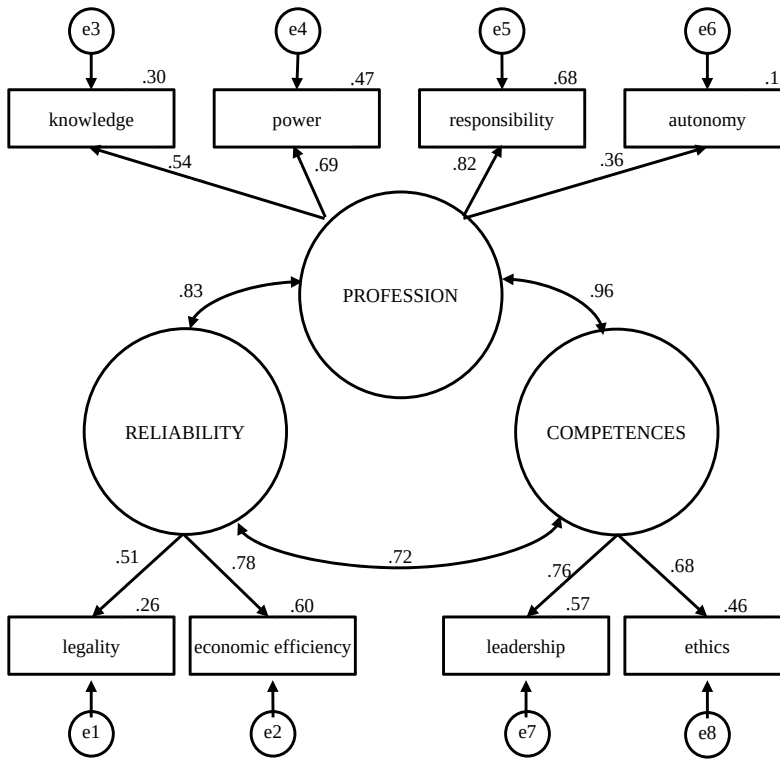
Source: own

On the basis of connection of dimensions of professional administration, defined by eight elements of substantive sets of variables, which were formed on the basis of theoretical work we can confirm the theoretical approach with an empirical result (Table 7).

6 Discussion

On the basis of descriptive approach, a theoretically analytical model of professional administration was created, which was checked in the research. From a total of 44 statements we formed eight elements of substantive sets and then, on the basis of executed confirmatory analysis, created the latent variables in accordance with theoretical findings in order to check the presumed conceptual model of professional administration. On the analytical model we discovered high values of connectivity of manifest variables with latent variables, as well as high values of interconnectedness of latent variables (Figure 2). Thus, with empirical evidence, we were able to confirm the main hypothesis that professionalism of Slovenian state administration is determined by the level of its reliability, profession and competency.

Figure 2: Connectedness of latent and manifest variables in the measurement model of professional operation of state administration



Source: own

The differences between the highest and the lowest degrees of agreement with descriptive variables were found out to be in the interval between 0.2 – 1.2. The highest difference in agreeing has been observed for the variable of legality of professional administration; the respondents do not statistically importantly agree with the statement that legal bases for solving public tasks of officials are precisely specified. Nicolescu-Waggonner (2016) says, in connection with defined legal bases for the implementation of public tasks, that without Rule of Law democracy basically does not exist, by which he particularly exposes conflicts of interest and corruption (which is sensibly exposed by the presented model). Dragu and Polborn (2013, p. 1038) additionally expose the meaning of adequate legal bases, because they think that the rule of men necessarily undergirds the rule of law since legal limits invariably rest upon the government's willingness to respect them. Professional operation of state administration is basically and inseparably integrated in the performance of regulative reforms, which are part of a comprehensive reform of the public sector. Professional state administration carries out quality regulation, by which the findings of the research point out the needs for better regulations. The state is becoming regulatory (Majone, 1997, p. 143) and quality regulation means professional activity of state administration.

For the economic efficiency variable respondents with low degree of agreement perceive absence of mechanisms of encouragement of cost-effectiveness and economics of the budgetary use. The meaning of (clearly) defined mechanisms of encouraging cost effectiveness and economic effectiveness of budgetary use is expressed in various areas and levels of public sector (Glassman and Silverman, 2016; NCSL, 2011; Posner, Kue Ryu and Tkachenko, 2009). Despite the fact that economic efficiency and target financing was one of the fundamental requests of the transition of the administrative system, the results of the research show the absence of necessary mechanisms. The detected marks can be seen as the impulse for changes, necessary for providing legality and with it professional operation of state administration.

In the profession dimension, respondents express the lowest level of agreement with descriptive value "knowledge", where target training and upskilling are not set. Working environment of public officers is constantly changing and requests for continuous and target training and upskilling are included in strategies of education, trainings and upskilling, which Slovenia accepts for individual periods. "Constant" incentives helped towards that, which come to the state administration for years from "external institutions". (OECD, 1997). In the same manner, the document Public administration 2020 – strategy of development of public administration 2015-2020 recognises targeted training as one of the key goals of human resources policy for improvement of professional operation of state administration (MJU, 2015). Professionalism is enabled by adequate professional competency, which provides adaptation, improvement, support, mobility, flexibility, management skills by officials (OECD, 1997).

The power/influence of the variable express the opinion that the public does not trust the officials with their implementation of public tasks. Trust is irrec-

oncilably connected with operation of democracy (Almond and Verba, 1963) and the citizens do not explain the acts of the administration and its officers in empty space (Peters, 2001, p. 34). The operations of the management board is strongly embedded into the social environment, with which it also shares an inseparable level of trust. A professional state administration will also enjoy the trust of its nationals.

Regarding the responsibility variable, respondents do not feel responsible for the cooperation in the formation of public policies and for contributing to a quality regulation. Results of the research warn on the problematic viewpoint of professional functioning of officers who do not feel bound to the participation in the formation of public policies, which is a core point of transfer from classic to modern management. The formation of policies assumes the combination of policy actors (Bevir, 2007). State administrations is obligated form regulations if these deviate from the social reality and are not in accordance with democracy. Based on the impact which public employees have on the government performance (Ingraham and Rubaii-Barrett, 2018; Perry, Mesch and Paarlberg 2006), an awareness needs to be established between them regarding their potential and actual impact on the formation of public policies.

Lowly estimated claim that autonomy of officers' work is determined by the level of hierarchy in the administrative system is a positive finding in terms of content. It confirms the finding that hierarchical structure of bureaucratic organisation does not limit professional and procedural independence of officers' work, which shows positive nature of leading competency, which is also based on trust and professionality. The results of the research in recognition of knowledge of independent officers' work, which is becoming autonomous, despite hierarchic organisational structure, confirm the findings (Pečarič, 2008, p. 243) that increasingly larger knowledge of employees and the complexity of their work lowers the needs of formal control, strict organisational structures and hierarchical commands, whereas ethics, values, trust and professionalisation are becoming more important.

In the dimension of competence, we have discovered the lowest estimate of agreement in descriptive variable that leading transforms from hierarchical individual paradigm into a co-operating network action. The results of the research completely confirm the findings that despite the fact that participation is being accepted as one of the fundamental social values, it does not mean that it would actually come to life in practice of state and other debates. There is also low estimate of agreement upon the fact that an effective mechanism of control and responsibility has been established for the compliance of ethical practices of officers. Warnings about ethical monitoring are related to wider issue of ethics in state administration (Georgescu, 2013; Raile, 2013; Tomescu and Popescu, 2013). In the research high values of awareness of the meaning of ethics for professional operation of state administration are confirmed, but the lack of effective mechanism of control and responsibility is critically exposed. Professional state administration is ethical only if it has adequate mechanisms of control and responsibility as well.

The highest average values of formed variables are ranging in the interval of 3.12-4.22 (Table 4), while it is important to warn about low values in the contribution of presented variables, which are ranging in the interval of 2.96-3.89 and in the model of professional state administration expose the so-called grey areas of professional operation with challenges and improvements in the area of quality of regulation, budgetary effectiveness, targeted training, mechanisms of ethical control and responsibility, trust in state administration, etc.

Despite using the measurement analytical model to confirm the high level of the model of professional operation of state administration, a warning about an important deficit needs to be exposed for all three dimensions, since it can potentially perceptionally threat the further development of professionalisation of Slovenian state administration. The latter can only develop its operation if (1) in material legislation larger stability and predictability of legal relations between the citizens and the state will be established, (2) if the state officers will recognise the important aspect of their responsibility, represented by co-operation in co-creation of public policies and their contribution to regulations of better quality and (3) if leading will be able to transform, also on the basis of expected competent model, from the prevailing individual paradigm to collaborating network operation, which is assumed by the concept of new public leadership and serving the citizens.

7 Conclusion

The article discusses the model of professional operation of state administration. On the basis of the research we can confirm the existence of such model. The check of the latent variable "reliability", which represents one of the three constructs of the measurement model of professional administration operation shows that the respondents confirmed high values of agreement with variables, which describe the existence of an adequate systematic legislative framework for the operation of reliable administration. Likewise, the results confirm the existence of the legislative framework for cost stance for reliable operation, since the principles of economy, effectiveness and cost efficiency are recognised as the most important for the work of a state body.

For the second latent variable of the measurement model of "official profession" power/influence and autonomy should be particularly exposed (in addition to knowledge and responsibility), which are also included in the model as indicators of the existence of profession, which is establishing reliable administration. By checking the answers for the power/influence variable, the highest value was achieved by the statement that the public attaches greater influence to the officers for their regulation of social relations, than they actually have regarding their competencies, while at the same time the results have discovered the power/influence of the state administration, which contributes to the competitive qualification of the economy by implementation of acquis. The answers appear to contradict each other, but are indicative, since they on one hand warn about not clear enough understanding of the relationship between the politics and the administration in the public, as well

as about the problem of own understanding of the position and the responsibility that the state administration has in shaping public policies and thus positive politicisation of its activity. The results of the estimated value of the variable autonomy are the highest in agreeing with the statement that forming rules and legal requirements of officer's work are set by decisions of elected representatives of the political authority. On the system level this finding shows low level of autonomy of official profession and opens the question of dichotomy between the politics and the administration and addresses the issue of the state of reliability.

The third latent variable "competence" is treated from the aspect of elements of leading and ethics. By confirming the carried out hypothesis, the elements of leading and ethics are shown as the most problematic variables. The greatest divergence is between the value of agreement in principle about the meaning of variables for the operation of reliable administration and perception about actual state in state administration operation.

From the measurement model of professional administration it can be concluded that the greater the degree of professionalism of the state administration, the greater the degree for which it will get recognised as reliable and competent, or the greater the degree of competency, the greater the professionalism or reliability of the state administration, or the greater the degree of reliability, the greater the degree of being recognised as professional and competent. Competences, profession and reliability are therefore necessary ingredients for state administration, when thought of as professional administration.

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Talent Management in the Public Sector

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ABSTRACT

Over the past decade, researchers and human-resource managers, particularly in larger private sector organisations, have shown an increased interest in talent management, while this issue has been overlooked in the public sector. The purpose of this paper is to present the literature review about talent management in the public sector and to show how the existing legislation allows the creation of a talent management system for Slovenian public sector organisations. The main methodological approach used was qualitative research with document analysis. The paper sought answers to three research questions: (How) are talented employees treated differently from other employees? What types of models or practices in the field of talent management are applied in European countries? What are the legal limitations in the field of civil servant talent management in Slovenia? The literature review shows that organisations that are aware of the importance and contribution to the ultimate organisational objectives treat talented employees differently from other employees in the organisation. Models or practices in the field of talent management vary widely among different European countries. The limitations in Slovenia are strict observance of the principle of equality and thus equal opportunities for inclusion in the system of talented civil servants with limited reward opportunities and, consequently, for the promotion of civil servants. In order to enable good practices in Slovenia, a change of the legal framework is necessary.

Keywords: *civil servant, human resource management, employee motivation, public sector, remuneration, talent management*

JEL: M50

1 Introduction

Although talent management is a relatively new concept in the field of human resource management, it is becoming increasingly important in practice and research. In defining the concept of talent management, literature often emphasises the role of talent in order to achieve performance, profit, and sustainable competitive advantage of the organisation (Collings, 2014); moreover, research analysing the field from the point of view of organisational behaviour is increasing (Björkman et al., 2013; Dries, 2013b; Meyers, van Woerkom and Dries, 2013; Tansley and Tietze, 2013). The authors mainly focused on the specificities of talent management in the private sector, and less on the position of civil servants. This is, in part, understandable, since the regulation enables enhanced possibilities for arrangements in the private sector compared with the public sector, which must follow strict rules on the payment of performance bonuses and other rewards to civil servants because of budgetary funding.

The purpose of this paper is to present the literature review about the importance of talent management in public sector and to show how the existing legislation allows creation of the talent management system for Slovenian public sector organisations. The paper first outlines the definitions of the concept of talent management, and further highlights the specificities and approaches in the field of talent management in the public sector. Specific focus is given to the legal aspect of talent management in public administration in Slovenia. Recommendations for the introduction of a talent management system in public administration in Slovenia based on the literature review of the foreign scientific literature, sources and the study of the existing legislation.

The contribution of the paper is to show the importance of talent management in the public sector and talent management systems in developed EU countries and encourage the legislators to pay attention to the problem of talent management in the Slovenian public sector and to make changes in this field.

2 Methodological approach and research questions

The main methodological approach that was used was the literature review and qualitative research with a document study. To show different definitions of a talent person, a talent management and existing talent management systems in developed EU countries, that stress the importance to the public sector, the literature review of the existing foreign scientific literature and sources and the study of the national and international sources was made. To find out what are the legal limitations in the field of talent management in Slovenia, the study of the relevant legal resource in the field of labour law and civil servant law was done.

The paper sought answers to the following research questions:

(1) *(How) are talented employees treated differently from other employees*? If organisations are to make the most of their employees' capabilities,

employees must be properly managed. Based on the analysis of literature and resources, we examined how organisations in general recognise and manage talented employees. The literature review of the foreign scientific literature and sources about the concept of the talented employees and talent management is presented in the third chapter.

(2) *What types of models or practices in the field of talent management are applied in European countries*? The literature review of the foreign scientific literature and sources about some indicated models or examples of different practices in the field of talent management in some European countries have been done. The summary of the existing literature about the different approaches to talent management in the public sector is presented in the fourth chapter.

(3) *What are the legal limitations in the field of civil servant talent management in Slovenia?* To answer the research question, the study of the relevant legal resource in the field of labour law and civil servant law in Slovenia has to be done. This particularly means the Employment Relationship Act, Public Employees Act and Public Sector Salary System Act as they present the legal framework of human resource management in the public sector. Based on the results of the study, the opportunities and obstacles for (special) treatment of talented civil servants in Slovenia were determined. The study is presented in the fifth chapter.

3 Definition of the concept of talented people and talent management

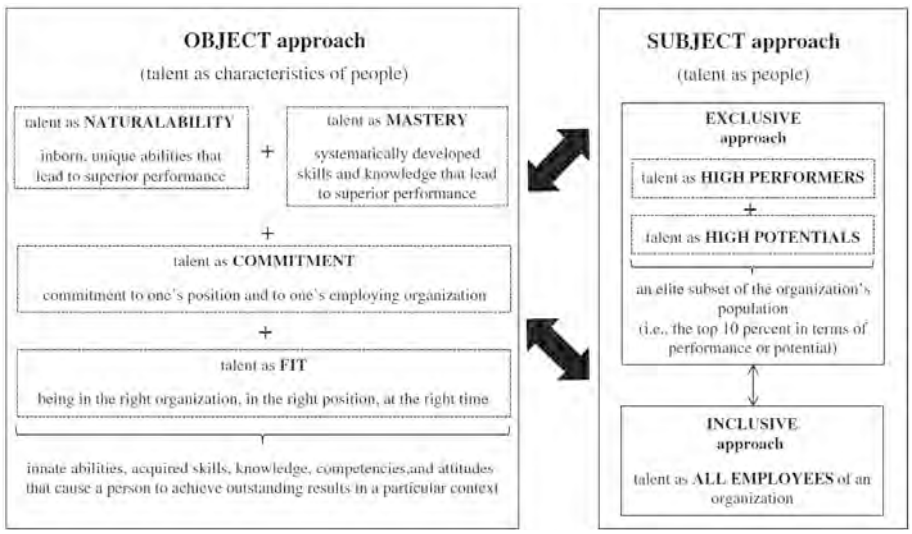
To answer the first research question (*how) are talented employees treated differently from other employees*? the literature review of the existing foreign scientific literature and sources about the concept of the talented employees and talent management is presented hereinafter in this chapter.

According to Dries (2013a), the concept of a *talented person* has different meanings for different people (e.g. researchers, organisations, HR professionals, employees) and it is hard to assess which one is more appropriate. In her research Tansley (2011) found out that ˝there is no single or contemporary definition of talent in any one language; there are different perspectives of talent.˝ According to her explanation, ˝the meaning tends to be specific to an organisation and influenced by the nature of the work undertaken. ˝

Zhengyuan and Gang (2011) claim that a talented person has expertise and specific skills, and contributes to the benefit of society with creative work. Petersone, Ketners, and Krastins (2014) define a talented person as highly skilled, well-educated, and prospective employee. Vural, Vardarlier, and Aykir (2012) argue that talent is partly innate and partly acquired through education, training, experience, and practice. Talent can be considered from the perspective of an individual or an organisation. In considering talent from the perspective of an individual, it is necessary to have an understanding of the current position of the employee in the organisation, and to determine where

and how he/she wishes to be positioned in the future (i.e. career planning). From the perspective of an organisation, talent is related to the concept of "the right people in the right positions"; thus, talented people must perform tasks directed towards achieving organisational goals. Silzer and Church (2009) argue that consideration from the perspective of an individual's potential is directed to the opportunity open to individuals to become something more than what they currently are. According to Dries and Pepermans (2007), considering talented people from the perspective of performance is directed to the results already achieved, and not the inputs needed to achieve the result, as this is the case in the aforementioned perspectives. The authors argue that this is a more common way of identifying talented people in organisations, as it is easier to measure results. Gallardo-Gallardo et al. (2013) designed a framework for the conceptualization of a talent within the world of work, shown in figure 1.

Figure 1: Framework for the conceptualization of a talent within the world of work



Source: Gallardo-Gallardo et al. (2013)

The term ″talent″ has different meanings, usually the reasons are different views and approaches by making a definition. From the human resources management view, the ″framework for the conceptualization of a talent within the world of work″ that Gallardo-Gallardo et al. (2013) designed, show the most relevant view by defining the term ″talent″. If the term ″talent″ is seen as an object, it presents different characteristics of people (abilities, skills, knowledge, competencies); that can be inborn or (systematically) developed; and people's attitudes to achieve the best results, that can be achieved if people are committed to the organisation and are employed in the right position at the right time. If the term ″talent″ is seen as a subject, it presents people (employees); dealing with ″talents″ as subjects is a part of talent management, which is explained below.

According to Meyers et al. (2013) *talent management* should be understood as a scientific discipline that falls within the field of human resource management. Depending on the perspective from which the term is considered, Meyers et al. (2013) agrees that the field of talent management usually focuses only on certain employees who are subjected to specific practices laid down in the field of human resource management. Thunnissen and Van Arensbergen (2015, pp. 182–183) claim that there are ˝five dimensions of the definition of the talent management, namely (1) division along the subject (talent is a synonym for people) vs the object (talent is a synonym for characteristics of people) dimension (Gallardo-Gallardo et al., 2013); (2) division ˝between inclusive view of talent and talent management (related to all employees) and exclusive view (related to selective group of employees)˝ (Thunnissen and Van Arensbergen, 2015, pp. 182–183) – or, as argued by Buttiens and Hondeghem (2015), all employees are part of the talent management policy (the inclusive view) or only a segment of the employees is part of the talent management policy (the exclusive view) – or, as argued by Nijs et al. (2014) ˝each person has a set of strengths (the inclusive view) or certain group (talents) makes relative contribution (the exclusive view) (Thunnissen and Van Arensbergen, 2015, pp. 182–183); (3) division according to talent – whether it is innate and stable or it can be acquired and developed through training (Meyers et al., 2013); (4) division along the input (abilities and motivation) vs output (excellent performance and success) (Ross, 2013); (5) division according to the extent to which talent is conditional on its environment – is it transferable or context-depended (Dries, 2013b)˝ (Thunnissen and Van Arensbergen, 2015, pp. 182–183).

Buttiens and Hondeghem (2015) define talent management as a process aimed at attracting, developing, and retaining talent, which includes the perspective of both the employee and the organisation. The authors argue that when developing talent, the right context, support, and a proper fit with individual, societal, and organisational goals are necessary. Gadsen et. al (2017) define talent management as the proactive recognition and development of employees at all levels in the organisation, to help them reach their full potential at their workplace. Petersone et al. (2014) define talent management as a strategy, activities, tools, and processes that lead to the identification, motivation, retention, and development of talented employees, in order to effectively perform tasks in line with future needs and trends.

Lewis and Heckman (2006) argue that: (1) talent management is not essentially different from human resource management; namely, both involve getting the right job done at the right time and managing the supply, demand, and flow of people through the organisation; talent management also includes recruitment, selection, training, and appraisal; however, an important question is how to strategically handle talent; (2) talent management is integrated in human resource management with a selective focus; talent management may use the same tools as human resource management, but the focus is on a relatively small segment of the workforce, defined as "talented" by virtue of their current performance or future potential; talent management also involves staffing processes, but all focused on talented individuals only; (3)

talent management is focused on developing competences by directing the "talent stream" within the organisation; the emphasis is therefore on "pipelines" rather than on "talent pools", which is closely linked to successful human resource planning, and focuses primarily on the permanence of talent; talent management is therefore the strategic management of the flow of talented employees through various roles and jobs within the organisation. According to Stahl et al. (2007), when deciding who to include in the talent pool in organisations, the most commonly used data comes from annual or bi-annual employee performance assessments. Mäkelä, Björkman, and Ehrnrooth (2010) emphasise that when including employees in the talent pool, other factors that affect the final decision in the talent recognition process should also be considered besides performance assessment. Fernández-Aráoz (2014) indicates the following criteria for determining highly talented employees:

- Motivation (a fierce commitment to excel in the pursuit of unselfish goals);
- Curiosity (a penchant for seeking out new experiences, knowledge, and candid feedback, and an openness to learning and change);
- Insight (the ability to gather and make sense of information and suggest new possibilities, solutions);
- Engagement (a knack for using emotion and logic to communicate and connect with people);
- Determination (the wherewithal to fight for difficult goals despite challenges and to confront challenges).

Vural et al. (2012) argue that talent management is to direct employees to their profession and expose and regulate their talents for it. The first step in the talent management process is to develop a strategy, whereby focus should be placed on key employees whose talent is needed to achieve strategic goals in the future. Managers should continuously improve the talents of employees, provide training, and ensure their satisfaction, and thus increase efficiency and competitiveness. Vladescu (2012) states that talent management has significant impact on recruiting the right people for the right jobs, in order to reach higher performance and to achieve the objectives; it involves maximising employee potential, promoting employee achievement, and investing in their development; it is aimed at improving efficiency, and reducing risks and costs. Mäkelä et al. (2010) argue that talent management is focused on a particular group of employees who rank at the top in terms of their abilities and efficiency, and therefore among potential managers either in the near or distant future. According to them, organisations usually combine a talent identification process with performance practices, and link them to decisions regarding investment in their education, training, development, additional benefits, and rewards.

According to Orrov et al. (2014), vertical and horizontal alignment is important for proper strategic talent management. Vertical alignment (strategic alignment) refers to the link between business needs and employee performance. Organisations should treat employees so as to enable them to de-

velop relevant competences and stay motivated. It is necessary to ensure that employees act in a way that is of utmost importance for achieving the organisation's business strategy. Horizontal alignment (talent management system) refers to the implementation of various practices in the field of talent management, which are integrated in the entire employee management system of the organisation. Investing in strategically important talented employees guarantees the success of the organisation. Therefore, strategic talent management is not a reflection of business strategy, but rather, it should support the business strategy and ensure the talented employees who will enable the achievement of the organisation's business strategy.

The term ″talent management″, similar to the term ″talent″, has different meanings. Most previously mentioned definitions focus on two differences of the meaning the term ″talent″, that are explained in the ″framework for the conceptualization of a talent within the world of work″, which Gallardo-Gallardo et al. (2013) designed. To sum, according to the ″framework for the conceptualization of a talent within the world of work, ″talents″ in ″talent management″ are ″people″ and there are two different ″approaches to talent management″ in organisations (by planning, attracting, selection, introduction, developing, evaluation, rewarding, and promotion); namely exclusive approach that gives attention to an elite subset of the organisation's population – high performers and high potentials, and inclusive approach that gives attention to all employees of the organisation. To highlight the importance of talent management in the public sector, different talent management systems in developed EU countries, that stress the importance to the public sector, are shown below.

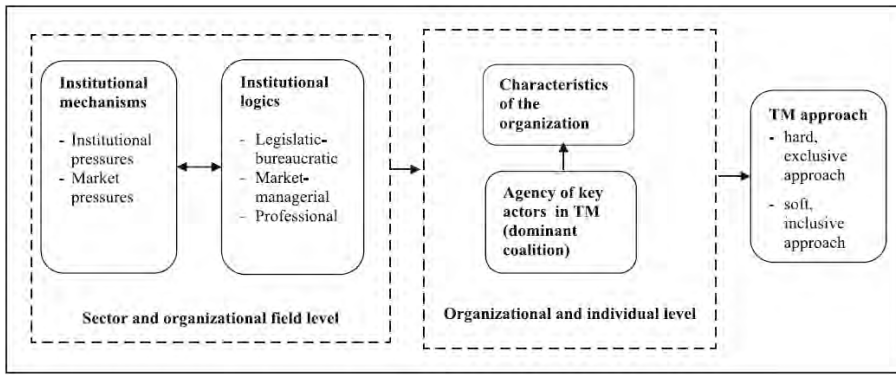
4 Approaches to talent management in the public sector

To answer the second research question, *what types of models or practices in the field of talent management are applied in European countries?* the summary of the existing foreign scientific literature and sources about the different approaches to talent management in the public sector is presented hereinafter in this chapter.

Vladescu (2012) highlights that the public sector is often faced with talent drain; therefore, according to her, talent management, as part of the human resource management, is one of the most important processes for achieving the success of organisations. Talent management should be harmonised with the organisation's strategy, ensure equal opportunities, and maintain diversity, notably based on the recognised performance and potential of employees. In the public sector, it is necessary to provide resources for employee development and to draw up a strategic plan with clearly defined goals. Public sector organisations should be aware of the necessity to have a precisely designed talent management system. The application of appropriate talent management software can be of assistance in different areas within the organisation: management, creation of "talent pools", performance assessment, education, career development, competences. A database of talented employees

should be created in order to avoid the consequences of talent drain. It is necessary to set goals, hire the right people in the right job, and draw up plans and strategies to bridge future gaps. The concept of talent management in the public sector should be designed in such a way that it can be adapted and applied in different ways in all public sector organisations. Thunnissen and Buttiens (2017) have developed a conceptual model, based on institutional mechanisms and logic as well as the characteristics of public sector organisations, which explains how an organisation's environment affects the selection of an inclusive or exclusive approach to talent management.

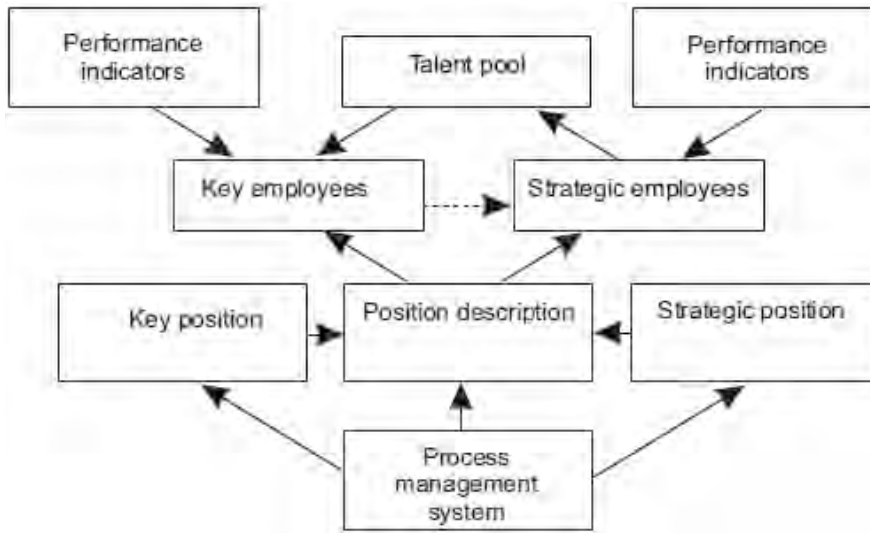
Figure 2: Conceptual model for the selection of talent management approach



Source: Thunnissen and Buttiens (2017)

Petersone et al. (2014) emphasise that public sector talent management systems are important for the better functioning of the state, and are a key factor in the development of the public sector. The authors highlight the Estonian talent management model designed to provide mechanisms for attracting, retaining, and evaluating performance, and rewarding and training especially those employees who are recognised as talented. Two groups of talent are identified; namely, the "key positions" group (involved in strategy development) and the "strategic positions" group (working on strategy implementation). The job profile defines the jobs well, which makes it possible to identify "inclusive employees". Similarly, a "talent pool" is created, within which "strategic employees" are trained for "key positions".

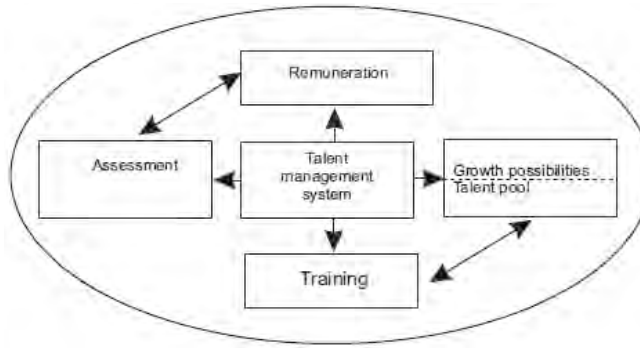
Figure 3: Key position identification scheme



Source: Petersone et al. (2014)

The authors aimed to create a Latvian model based on the Estonian talent management model. Most Latvian state and local institutions have not yet introduced talent management models; therefore, they suggested that it is necessary to develop an integrated model that would be implemented together with other human resource management systems.

Figure 4: Integrated talent management model



Source: Petersone et al. (2014)

An integrated talent management model enables the integration of different areas of human resource management, which ensures better efficiency, effectiveness, and leadership that enables the identification and development of talented employees. In contrast with the Estonian model, the authors suggest that "key employees" could be determined based on employee profiles that accurately specify the duties and capabilities of civil servants. They em-

phasise that, in order to identify talent, it is important to be familiar with the capabilities of employees.

Gadsen et al. (2017) studied the area and approaches to talent management in the public sector in Scotland. They observed that a major obstacle in this area is an inadequate commonly agreed definition of "talent management", and that, consequently, approaches to talent management are both inclusive and exclusive. Based on the research, they created a checklist of the key issues which organisations need to consider when developing or reviewing an existing talent management strategy and approach.

Van den Broek et al. (2018) studied the "innovative inter-organisational talent pool" of four Dutch hospitals within the same geographical area (south of the Netherlands). They examined opinions on inter-organisational cooperation in the field of talent management based on structured interviews with top managers, line managers, staff experts, employee representatives, or members of the project team in the field of talent management of all four hospitals studied. The hospitals are competitive in terms of financial resources, job candidates, and patients; however, they co-operate inter-organisationally through the exchange of employees via a "talent pool". Namely, they have an education and training agreement for a specific number of employees per hospital, with the aim to increase the number of qualified employees available to the hospitals in their region. The agreement enabled the hospitals to create an innovative way of talent management that offers career development opportunities to training participants in hospitals that cooperate inter-organisationally, and retain them in the "talent pool". In this way, hospitals endeavour to attract and retain more suitable candidates. It is expected that this will also reduce external employment costs. Developing inter-organisational cooperation and creating local "talent pools" are innovative strategies that help improve the performance of organisations. The "talent pool" is a virtual organisation (of medical and management staff), which operates at three levels. The first is a cooperating hospital, in which employees are exchanged within the organisation (hospital). The second is a virtual labour market between cooperating organisations (hospitals). The third level is an (external) labour market (when an employee from within the "talent pool" cannot fill a vacant post). The authors note that this is an opportunity for smaller organisations (e.g. nursing homes, IT organisations, etc.) that find it difficult to get talented employees; therefore, cooperation with other organisations, for example in the same region, is essential. Pools of talent for R&D, knowledge sharing, and co-creation between organisations, regions, etc., can be created.

Ingram and Glod (2016) provide assessments of the state in the field of talent management in healthcare organisations in Poland. They observe that talent management programmes are not appreciated (not even in large organisations). Although there are no special talent management programmes, organisations know which employees are of crucial importance to their success, and therefore try to do their best to treat them differently; above all, they are focused primarily on training and motivation. The acquisition of additional skills,

commitment, and motivation are expected benefits for employees classified as "talented". Less attention is being paid to job satisfaction and an overall understanding of an individual's well-being. The authors stresses, however, that organisations should focus their attention on developing a more strategic approach to talent management; programmes should focus on maintaining employee satisfaction; if the best employees are to be retained, their needs and goals must be taken into account and harmonised with the objectives of the organisation.

Buttiens and Hondeghem (2015) studied the development phase of talent management policies, approaches to talent management, and HR processes within the framework of talent management policies in Flemish government organisations. They observed that 20% of Flemish governmental organisations were developing a talent management strategy, and a quarter were implementing and evaluating talent management practices. More than half of the organisations under consideration apply an inclusive approach. Education and training, performance management, and commitment and engagement strategies, predominate in personnel processes within the framework of talent management policies; the least attention is paid to rewarding. Furthermore, they observe that talent management practices make it possible to meet the needs of employees, whereby organisational objectives can also be achieved.

Upon examining institutional mechanisms, institutional logic, and organisational characteristics, Thunnissen and Buttiens (2017) observe that Flemish (local) government organisations use an inclusive approach to talent management (management is targeted to all employees). The objective of organisations is to ensure the well-being of employees, which affects the well-being of organisations. Practices are focused on the performance and development of both employees and organisations. The external context affecting the fact that organisations apply an inclusive approach to talent management is associated with political pressure, notably focused on the principles of new public management; labour and employment regulations are strict; government organisations are in a weak position (therefore they are not "an attractive employer"); budgetary possibilities fail to attract new employees. The impact of the internal context or the characteristics of organisations, affecting the fact that organisations apply an inclusive approach to talent management, include strategy and task reforms, as well as needs for increased efficiency and flexibility; a large proportion of employees are permanently employed; an organisational culture of equality is also to be observed.

To sum, talent management depends on the sectors, organisations and people. For appropriate managing talents in the organisation, talent management must be part of the strategic human resources management. By (strategic) planning, attracting, selection, introduction, developing, evaluation, rewarding, and promotion, can in accordance with the ˝framework for the conceptualization of a talent within the world of work˝ (Gallardo-Gallardo et al., 2013), for dealing with ˝talents˝ (people) (so called talent management), inclusive and exclusive approach can be used, or as argued by Thunnissen and Buttiens

(2017) the "hard" approach, where the interests of the organisation outweigh the interests of the employees, and in the "soft" approach, where the interests of the employees are as important as the interests of the organisation.

5 Legal perspectives of talent management in public administration

To answer the third research question, *what are the legal limitations in the field of civil servant talent management in Slovenia?* the study of the relevant legal resource in the field of labour law and civil servant law is presented hereinafter in this chapter.

Regulation plays an important role in exploring talent management in the public sector, since the employment status of civil servants is legally significantly more defined and limited, compared to the private sector. The authors observe that regulation in the private sector significantly limits the potential for employee rewards (Franca, 2007; IMAD, 2018). However, in the public sector, this represents an additional significant limitation, since the creation of a development strategy and talent retention may only be created within statutory provisions. Within the framework of the research, an analysis of the Slovenian arrangement was carried out, which serves an example of regulation of civil servant relations and, within this, the options of talent management system creation.

To start with, it is of major importance to take into account one of the fundamental principles of labour and civil servant law; namely, the principle of equality, as laid down in the Employment Relationship Act.[1] The employer is to ensure equal treatment with regard to personal circumstances in employment, promotion, training, education and other rights from the employment relationship. Furthermore, Article seven of the Public Employees Act (hereinafter referred to as the PEA)[2] stipulates that the recruitment of civil servants is to be carried out so as to ensure equal accessibility to posts to all candidates on equal terms, and the selection of a candidate who is best qualified to carry out the post-related tasks. This implies a fundamental obligation to establish a talent management system in the public sector in such a way that all civil servants have the opportunity to participate, or the possibility to be included, and that the criteria for the (non) inclusion of an individual civil servant should not be discriminatory, but objective and work-related. At baseline, this may be contrary to the talent management system, because identification of a specific trait in talented people plays a key role that may not be immediately confirmed and verified with results, but may involve the potential for development, which is to be assessed upon employment. From a legal aspect, this can pose a considerable risk of unequal treatment, which is not in line with the fundamental principles of labour and civil servant law. Therefore, it would be more appropriate to identify an individual in the public sector as talented after a certain period of time, when he/she already shows tangible results

1 Official Gazette of the Republic of Slovenia No. 21/13, 78/13, 33/16, 52/16, 15/17, 22/19, 81/19.

2 Official Gazette of the Republic of Slovenia No. 63/07, 65/08, 69/08, 40/12.

based on which he/she is believed to be more professional and/or more effective than others. For example, the Establishment of a Civil Service Competency Model project (MPA, 2020), which lays down competences for groups of posts in public administration, establishes a competence assessment/identification system, and a required employee competence maintenance/upgrade system, is primarily focused on those who are already employed in the state administration, and not on the candidates for employment.

Moreover, the talent management system also requires the creation of financial assets for running the system, and for appropriate training. Generally, more funds are devoted to talented employees, which stirs up a problem of unequal treatment of civil servants. In employment relationship, education and training are a right and an obligation of both the employee and the employer (Employment Relationship Act, Article 170); however, in the civil service system, rights should not be ensured to a greater extent than is provided for by law, implementing regulation or collective agreement, if this is to the burden of public resources (PEA, Article 16). How to ensure equal access to education and training to all civil servants and a specifically adapted system for talent development, can be a problem in practice. One of the possible solutions is a properly designed bonus system, which is on the one hand thoroughly defined for the public sector with the Public Sector Salary System Act (hereinafter referred to as the PSSSA),[3] but on the other hand opens up opportunities to numerous anomalies (Vidič, 2018), and leaves little scope for autonomy management. Performance bonus systems and the possibility to pay additional awards for special accomplishments are essential for the proper development of talented people and their retention in the public sector. However, this creates several obstacles from a legal point of view. It cannot be disputed that a performance bonus system is one of the key aspects of proper management, not only for the talented, but for the employees in general. Nevertheless, this is not pursued in the civil servant system in Slovenia. Performance bonuses have been frozen for many years, although Article 17 of the PSSSA provides for performance-related bonuses for civil servants. This is due to many factors, including austerity measures during the economic and financial downturn, as well as the fact that unions in the public sector are increasingly engaged in raising basic salaries, rather than in the proper establishment of a performance bonus system. In general, social dialogue in the public sector is underdeveloped, and its ability to make such arrangements is questionable (Počivavšek, 2015). Another major obstacle is the promotion prospects for civil servants, which, pursuant to Article 16 of the PSSSA, is linked to three consecutive above-average annual grades. Taking into consideration the nonpayment of performance bonuses and the civil servants' desire for promotion (and thus a higher salary), the assessment system is fully undermined. Managers tend to succumb to the pressure exerted by civil servants; furthermore, in order to ease the work environment management, most civil servants are assessed as above average or excellent (Pečarič, 2014; Pečarič, 2019). This would imply that all civil servants are talented, which certainly fails to constitute a

3 Official Gazette of the Republic of Slovenia No. 108/09 – 84/18.

solid basis for the proper development of the talent development system, as argued in this paper. Moreover, it is necessary to take into account that the promotion of civil servants (and thus talented) is not only financially but also hierarchically limited; for example, pursuant to Article 16 of the PSSSA, a civil servant may be promoted a maximum of ten salary grades. Civil servants who perform work in legal and organisational forms, e.g. institutions, that can raise additional funds in the market, are in a slightly better position. Although their use of funds is also under the review of the authorities, there is still enough room for the creation of an employee management system.

Therefore, if we are to develop an appropriate talented employee management system, an appropriate legal framework would be a prerequisite. However, it is not advisable to leave too much discretion to the management, since the position of civil servants cannot be equated with employees in the private sector (Korpič-Horvat, 2014).

From a legal point of view, it would be relatively inadmissible to characterise a person as talented upon his/her arrival, as this would immediately put him/her in a better, more favourable position compared to others. It would be less controversial to do so after a certain period, e.g. after a few months, as is usually the case with traineeship and/or a probationary period. In practice talent management in the Slovenian public sector would be difficult to develop without some proper legislative changes. Especially, more flexible options for rewarding and promoting more successful civil servants should be considered. As regards for the current practices our conclusion is that the existing system does not offer much possibilities for management to develop talent management.

6 Discussion and conclusion

Within the survey, we examined: (1) (*How) are talented employees treated differently from other employees*? Based on the summary of literature and resources, we established that organisations which are aware of the importance and contribution to the ultimate organisational objectives, treat talented employees differently from other employees in the organisation. In continuation from the analysis, we examined (2) *What types of models or practices in the field of talent management are applied in European countries*? Based on the summary of the existing literature and resources, we established that models or practices in the field of talent management widely vary in different European countries. Talent management is largely regulated as part of the tasks of employee management in organisations; however, there is a case of talent management that is regulated between organisations engaged in the same activity at local level (the case of Dutch hospitals in the south of the country).

If organisations are to make the most of their employees' potential, the employees must be properly managed. The talent management system should be strategically formulated, and integrated into the employee management system. It should therefore include all personnel processes (planning, attracting, selection, introduction, developing, evaluation, rewarding, and promo-

tion), with a special emphasis on employees who are recognised as talented. In order to achieve this, talented individuals must first be recognised; therefore, the capacities of all employees should be considered. From the perspective of talented individuals, it is necessary to ensure that the "talented become the best they can", i.e. to have/develop the best capacities (competences). However, from an organisational point of view, it is necessary to ensure that talented employees perform tasks that significantly contribute to the realisation of organisational objectives. As argued by Petersone et al. (2014), employee profiles should accurately specify the duties and capabilities of talented civil servants.

Employees which the organisation recognises as talented, should be classified in the so-called "talent pool". Based on the literature review, it has been determined that the criteria for the classification of employees in a "talent pool" differs, and that besides achieving the capacities described in the formulated talent profiles (Petersone et al., 2014), (achieving) employee performance, as indicated by Stahl et al. (2007) and Mäkelä, Björkman, and Ehrnrooth (2010), other factors should also be considered, within which Fernández-Aráoz (2014) refers in particular to the "soft skills of the talented", encompassing high motivation, curiosity, ability to formulate solutions, cooperation, and persistence.

According to Altınöz, Çakıroğlu, and Çöp (2013) the process of talent management follows the steps listed in the continuation; particularly, (1) the identification of the objectives and strategy (answer to ˝where˝ and ˝how˝), (2) the identification of key positions, (3) the identification of the profile of the talented (ideal employees - knowledge, skills, ability, experience, interest, focus on results), (4) the identification of potential (internal and external candidates), (5) the analysis of the gaps in the talented (determination of possible development and required training), (6) the drawing up and implementation of development plans (training, mentoring, etc.), (7) the assessment of candidate success (stay in or leave the talent pool), (8) the process of assessment and promotion of the talented (within the talent pool).

Legal regulation in the public sector is greater than in the private sector, and significantly affects employee management; therefore, we sought the answer to the third research question, *what are the legal limitations in the field of civil servant talent management in Slovenia?* The first limitation is strict observance of the principle of equality, and thus equal opportunities for inclusion in the system of talented civil servants. In this respect, the time of recruitment, which calls into question the assessment of potential, as a factor for inclusion in the employee management system upon the existing legislation, is critical. The applicable legislation in Slovenia places professionalism and achievements at the core of the distinction between civil servants, and not the potential itself, which may or may not be realised in practice. Therefore, it is more appropriate, from a legal point of view, to include civil servants in the system of talented individuals after a certain period of employment, when they have demonstrated above-average results in practice. The second major limitation is related to limited reward opportunities, and consequently, the

promotion of civil servants. Currently, the applicable system is more obstructive than encouraging to the options of retaining talented employees; therefore, this would undoubtedly be the first step in the legislation amendment. Without proper rewards and other incentives, which the management could have, it is impossible to imagine a well-functioning talent management system. Thus good practices cannot be forms unless the legislative framework does not change.

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The Current Discussion on Austrian Family Benefits – Indicating a Major Dissensus on the Interpretation of EU Law

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ABSTRACT

In early 2018, Austria amended its family benefits law by introducing 'indexation' according to the average living costs of the country where the child actually resides. What seems to be, at first sight, a flagrant breach of EU law (in particular of Article 7 of Regulation [EC] 883/2004) is, when looking deeper, much more complicated and might very well be only a symptom of deeply rooted differences in the interpretation of current, post-Lisbon Union law,

(i) in particular with regard to the relationship between the traditional prohibition of "discrimination on grounds of nationality" (Article 18 TFEU, Article 21(2) CFR; the 'Leitmotiv' of the Treaties) and the "citizenship of the Union" (Article 9 second sentence TEU, Article 20(1), first and second sentence) on the one hand and the further role of the "nationality of a Member State" on the other, which shall, pursuant to Article 9 TEU, third sentence, as well as Article 20(1) TFEU, third sentence, not be replaced by the "citizenship of the Union",

(ii) but also with regard to Article 352 TFEU, the scope of which is, most probably, much smaller than that of its predecessor, Article 308 TEC,

(iii) and last but not least, with regard to a proper understanding of the principle of equal treatment, requiring not to treat alike factually different situations.

Giving a full picture not only in abstract terms but demonstrating the relevance of the said differences on the concrete example of the interpretation of the above mentioned secondary legislation, the author aims at contributing to bridging gaps and, thus, fostering a better mutual understanding as a vital precondition for the future legal cohesion of the EU.

Keywords: *family benefits, citizenship of the Union, nationality, principles of equal treatment/non-discrimination, rights of the child, principle of conferral, Treaties amendment clauses, assessment of validity of EU law*

JEL: K 30, K 33, K 36

1 Starting point: Facts, bewilderment, items to be discussed

1.1 The facts

As it is quite well known, the Austrian government formed in December 2017 on the basis of the result of the general elections held on 15 October 2017 – the so called „turquoise-blue" coalition (of reformed Christian Democrats with chairman – and Austrian federal chancellor *Sebastian Kurz* and right wing populists, then with chairman – and then Austrian federal vice-chancellor *Heinz-Christian Strache*) – had aimed right from the beginning at an „assessment of" the possibility of an „indexation of family benefits" – i.e. of specific State allowances destined to support the maintenance of children[1] , consisting in an adjustment to the real *costs of life of the respective child* in the respective EU Member States, *„in conformity with EU law*".[2]

Fairly one year later, on 4 December 2018, an amendment of the Family Benefits Act, via insertion of a new paragraph 8a, was published in the Federal Law Gazette (Art 1, point 1 of the Federal Act BGBl I 2018/83) and came into force the day after. In essence it was provided that since 1 January 2019 for all those children

– living *abroad* (i.e. in another EU Member State or in a State of the EEA or in Switzerland
– the carers of whom nevertheless were entitled to receive the *Austrian* Family Benefit

the actual amount of this benefit had to be fixed on the basis of the „comparative price levels" issued by EUROSTAT. By this means of an indexation, „effects of distortion" occuring when the said benefits were „exported without proper distinction" were to be avoided.[3]

From the „specific information" and the related, very detailed and elaborated argumentation given on (all the) five pages of the the Explanatory Memorandum[4], we learn that the government when proposing this amendment to Parliament was *fully aware* that, at least at that point in time, more EU lawyers than not held firmly that such an indexation was against EU law, but *did not share this mainstream opinion*.[5] How *sensitive* the issue was may be inferred from the fact that already six weeks after publication the European Commission started the first step of an infringement procedure, *Marianne Thyssen,* then Commissioner for Employment, Social Affairs, Skills and Labour, saying:

1 In fact this benefit has never been based on a specific federal competence allowing or even mandating State measures in the favour of *families* as such, but on Article 10 (1) (17) of the Austrian Constitution („Bevölkerungspolitik" = *demographic* measures"). This difference is now relevant, see infra fn 102.

2 See the Coalition Programme (2017), 116.

3 Cf the Explanatory Memorandum (RV 111 Blg NR XXVI. GP), 1: „main considerations ".

4 See previous fn.

5 Or, to put it differently: the aim of the government was *not to disregard EU law but to strive for a different interpretation.*

> „Our single market is based on fairness and equal treatment. There are *no second-class workers* in the EU. When mobile workers contribute in the same way to a social security system as local workers, they should receive the *same* benefits, also when their children live abroad. There are *no second-class children* in the EU."[6]

Austria replied in March 2019; after „[h]aving thoroughly analysed the arguments put forward by Austria, the Commission … concluded that the concerns ha[d] not been addressed. Therefore, the Commission … moved to the second step in the infringement procedure with a reasoned opinion" in late July 2019.[7]

End of October, the Commission had received the Austrian answer to this "reasoned opinion"[8] – this time no longer of the "turquoise-blue" coalition, but by the post Ibiza transitory government which, *nevertheless, maintained* the position of the former government (as does, up to now, the in early January 2020 newly formated current "turquoise-green" coalition). From that point in time on it took more than half a year until the Commission decided, on 14 May 2020, to refer the matter to CJEU under Article 258 TFEU.[9]

1.2 Questions

This is striking in particular because also when taking other, contingent factors into account[10] we should not have thought bringing this matter to the Court of Justice would raise any difficulty; right to the contrary, it could have been lodged quite easily still in the very last "infringement package" of the *Juncker* Commission end of November.[11] Moreover, it would have sufficed to refer bluntly to **Article 7** of Regulation (EC) 883/2004[12], stating: „Waiving of residence rules. Unless otherwise provided for by this Regulation, cash benefits payable under the legislation of one or more Member States or under this Regulation shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of his/her family reside in a Member State other than that in which the institution responsible for providing benefits is situated."[13], the more so,

6 See EC Press Release of 24 January 2019; emphasis added.

7 Cit EC Press Release of 25 July 2019; the personal statement of Commissioner *Thyssen* forming part of this release sounded quite the same as her statement of January („Equal treatment is a fundamental principle of the EU. EU citizens, who work in another Member State than their own and pay taxes and social security contributions, have a right to the same family benefits. "

8 Cf ORF (29 October 2019).

9 The No of this infringement decision is 20182372.

10 Mainly, we may consider two events:
(i) On 30 November 2019 the term of office of the Commission *Thyssen* formed part of ended
(ii) Since February 2020, whole Europe has suffered from the Corona crisis.

11 Cf EC Presse Release of 27 November 2019.

12 OJ L 166, of 30 April 2004, 1.

13 This item is addressed in the EC's Press Release of 14 May 2020, in the following paragraph: „Member States may not reduce the amount of any cash benefit granted to persons insured under their legislation for the sole reason that these persons or their family members are residing outside their territory. The Austrian indexation mechanism reduces the amount of family benefits and child tax credit granted for children residing in an EU Member State where the cost of living is considered to be lower."

because the Austrian „family benefits" do not form part of Annex X (referred to in Article 70 (2) (c) and having the effect of exempting the benefits listed there from the scope of Article 7).[14]

In contrast, there was no need at all to *address fundamental or primary law considerations* as mentioned by Commissioner *Thyssen*[15] or by the Austrian government in the said Explanatory Memorandum, or to *add* now a *consideration* like the following:

> „The fact that another Member State is considered to have lower cost of living than Austria is of no relevance for a benefit, which is paid out as a lump sum and is not linked to the actual cost of maintaining a child. In addition, Austria does not apply the indexation mechanism to persons working abroad for an Austrian public authority, whose children also reside in another EU Member State."[16]

Nor was it necessary to refer – as it was done now in the referral to CJ – in addition also to Regulation (EU) No 492/2011[17], in particular to Article 7 (2), stating that „[a worker who is a national of a Member State]" posted „[in the territory of another Member State] … shall enjoy the same social and tax advantages as national workers."

So we face at least three questions:

– Why did the Commission having been so sure already in *January* 2019 that the Austrian amendment would infringe even fundamental principles of EU law *need so much time to refer* the question to CJ, although at least infringement of Article 7 of of Regulation (EC) 883/2004 had always been evident?
– Why did Commissioner *Thyssen* not confine herself to state the obvious – the infringement of EU *secondary* law – but find it necessary to reach out to fundamental considerations?
– Why did the Austrian government(s) – aiming explicitly to *act in conformity* with EU law – nevertheless dare to neglect the obvious infringement of EU secondary law?

1.3 The specific context of „Brexit "

Of course, we should not overlook the short-term political context: Still in early 2016 the very same Commission *Thyssen* formed part of had committed itself, in the very specific political context of „Brexit"[18], to „make a proposal to

14 See, however, infra section IV/C/(ii).

15 Cf now also the following paragraph in EC's Press Release of 14 Ma 2020: „Further, the principle of equal treatment in social security coordination matters means that persons must be treated equally without distinction of nationality, by abolishing discriminatory measures in national legislation."

16 Cit EC Press Release of 14 May 2020.

17 OJ L 141, 1.

18 The elaboration of this proposal formed (as lit e) part of the „arrangements" which should „become effective on the date the Government of the United Kingdom informs the Secretary-General of the Council that the United Kingdom has decided to remain a member of the European Union", EC considering these „arrangements" constituting „an appropriate response to the concerns of the United Kingdom."

amend Regulation (EC) No 883/2004 … on the coordination of social security systems in order to give Member States, with regard to the exportation of child benefits to a Member State other than that where the worker resides, an option to index such benefits to the conditions of the Member State where the child resides. The Commission considers that these conditions *include the standard of living and the level of child benefits* applicable in that Member State."[19]

Although obviously envisaged as elements of bargaining and, thus, not entirely free from ad hoc tactics,

(i) *not all* of these „arrangements"[20] were meant as mere exceptions for the UK, in particular, not the amendment of Regulation (EC) No 883/2004 which was intended *to apply to all Member States*

(ii) no „arrangement" was considered to *need a modification of Primary Law*; right to the contrary, European Council itself had assessed all elements of the project being „fully compatible with the Treaties."[21]

1.4 Items of discussion

Exactly this assessment of both the European Council and the European Commission, however, indeed conversely raises severe doubts with regard to the specific *relationship of the regulation at issue* as it stands now *with current* (post-Amsterdam, in particular post Lisbon) *EU primary law.* These doubts which shall be discussed here in more detail (*section II*) – may have indeed prevented the European Commission from referring the matter to CJ – until a reference by an Austrian court (the Federal Tax Court – „Bundefinanzgericht")[22] carried the risk of a full assessment of the regulation at issue with current primary law by CJEU[23], thus making it advisable, from the Commission's perspective, to *balance* this reference by a reference of its own.[24] Besides, the Commission might have realized

Clearly enough, the Commission could not be amused when, still *before the „Brexit" had materialized*, another Member State tried to realize on its own initiative one of these „arrangements", thus devaluing the bargaining package. On the other hand, now, *after* the Brexit, at least this specific interest is obsolete.

19 Cit Annex V („Declaration of the European Commission on the indexation of child benefits exported to a Member State other than that where the worker resides") to the EC's Conclusions (18/19 February 2016).

20 See supra previous fn but one.

21 Cit section I/2 of the Conclusions (18/19 February 2016).

22 Decision of 16 April 2020, RE/7100001/2020. On pages 14 et seq (under the heading „Richtige Anwendung des Unionsrechts nicht offenkundig") not only a *chronology* of the political deliberation process, but also a *survey of the Austrian doctrine* assessing (mainly sceptically) the conformity of the Austrian legislation with Union law is given.

23 While being perfectly true that the Austrian court's reference did not yet explicitly address the questions raised here (so that CJ which lacks, in contrast to Austria's Constitutional Court, the competence to start the assessment of Article 267 (1) (b) TFEU on *its own motion*, is still not entitled to go in medias istas res), it is quite probable that this issue would be discussed in the further course of the proceedings, in particular during an oral hearing, and thus, eventually, provoke an explicit reference in that regard, too.

24 As it is well-known there is a remarkable difference between an *infringement* procedure (Article 258 f TFEU) and a *reference* procedure (Article 267 TFEU): while in the former it suffices to establish a breach of EU *secondary* law, in a reference procedure (Article 267 TFEU) CJ also the *conformity of secondary law with primary law is an issue; it is here* where CJ might *have to*

– the specific construction of the Austrian family benefits system against the backdrop of the EU Regulation system and, consequently
– the fact that the Austrian model is still a quite moderate one, compared with the opportunities provided by the Regulation itself.

These considerations – backed by the insight that the current Austrian position, although only quite recently adopted, is not at all an idiosyncratic peculiarity negating European values, but had, right to the contrary, even in the pre-Amsterdam era been European mainstream for decades (*section III*) will be developed here in more detail (*section IV*).

When scrutinizing this topic my intention is a double one (both elements enshrined likewise in Article 2 TEU):

– On the one hand it is already in *general* – under the paradigm of the principle of the rule of law requiring a homogenious „hierarchy of norms" – really vexing that lower ranking norms should not fully comply with higher ranking law
– On the other hand, however, the democratic principle in *particular* seems to require scrupulous endeavour that EU secondary law continues to comply with primary law, given the fact that EU primary law has been produced by the consent of *all* Member States and is, thus, democratically best qualified.

2 The specific relationship of Regulation (EC) 883/2004 with current EU primary law

2.1 Competence of the EU?

2.1.1 The primary law framework

The Regulation is based „in particular" on „Articles 42 and 308" of the EC Treaty[25], admitting – of central interest with regard to our topic[26] – „The Treaty does not provide powers other than those of Article 308 to take appropriate measures within the field of social security for persons other than employed

declare the respective secondary law norm *invalid* (under paragraph 1 [b]; cf CJ Judgment of 6 October 2015, C-362/14, *Schrems*, points 60 et seq, 106). This declaration, however, would, at least de facto, amount to an annulment, see not only *Edward/Lane (2013),* point 5.142*,* but already the Opinion delivered in Case 359/87, *Pinna II,* points 13 et seq, 41 (by analogy "). Hence, a *parallel referral* by the Commission offers at least a *practical chance* that *both* procedures (in particular when *combined* to a common procedure) *focus* more *on the surface*, i.e. the question of conformity with *secondary* law, leaving the validity issue in the shadow.
It may be added that Member States do not dispose of a direct opportunity to refer to CJEU when, as it has been the case with Austria in the situation at issue, they come to doubt whether a piece of secondary law is (still) fully in line with primary law. From this perspective, the strict time limit barring any complaint under Article 263 TFEU later than two months after publication really runs short of the principle of the rule of law, forcing Member States to adopt first national legislation which might infringe EU secondary law, but be fully in line with primary law, instead of being able to initiate a clarification of the legal situation beforehand by the competent court, the CJEU.

25 Cit recital 1 of the regulation.

26 As outlined supra we deal here only with allowances made for the sake *of children of* employed persons, not for the employees'own sake. This fact is of crucial importance also from a second perspective, see in more detail infra section 2.2.

persons." While making use of this clause – although softening and, thus, being in a „fundamental tension"[27] with the „principle of conferral" enshrined in Article 5 (1) TEU – was perfectly legal in the pre-Lisbon world[28], the post-Lisbon assessment is, most probably, different with regard to the insertion of Article 48 (6) (3) TEU, running: „The decision referred to in the second subparagraph shall not increase the competences conferred on the Union in the Treaties." Is it really conceivable that EU might increase its competences by a decision based on Article 352 TFEU whereas to achieve exactly this effect via the *more complicated* procedure[29] under Article 48 (6) TEU has been explicitly prohibited?[30] In CJ's Judgment of 26 September 2013, C-431/11, *UK/Council*, point 17, we read: „On 10 March 2011, the Commission submitted an amended proposal in order to change the legal basis cited. According to the explanatory memorandum to that proposal, as the Lisbon Treaty had *extended* the competence set out in Article 48 TFEU to self-employed migrant workers, Article 352 TFEU was *no longer necessary* as a legal basis." That statement is a clear indication that the purpose of Article 352 TFEU is „to extend the competence" of the EU in cases where no Treaty basis is available – thus pretty much the same what the term „increase" used in Article 48 (6) TEU means.[31] Now it is true that CJ accepted, in its Opinion No 2/94 of 28 March 1996, point 30, Article 308 EC Treaty (or, more precisely, then still, in the pre-Amsterdam version, Article 302 EC Treaty), the predecessor of Article 352 TFEU, as „an integral part of" the „institutional system based on the principle of conferred powers", thus discerning it on the one hand from the use of an „implied power" (point 29), on the other hand from an Treaty amendment (point 30). When assessing the *current relevance of this Opinion* properly we have, however, to take into account that (i) at the point in time when the Opinion was delivered there didn't yet exist „simplified revision procedures", so that the scope of Article 302 (308) EC Treaty was to be compared with what is now called the „Ordinary" Treaty „revision procedure" (ii) that the aforementioned prohibition of „increas[ing] the competences" is now enshrined in Article 48 (6) TEU, governing the newly created category of „simplified revision procedures."

Both elements taken together seem to indicate that the Lisbon Treaty, by inserting Article 48 (6) (3) TEU, has exactly prohibited what before had been the very purpose of Article 308 EC Treaty. If, however, this finding is correct there are very good reasons to assume that Article 352 TFEU, although itself amended (by adding limitations in the newly created paragraphs 2 – 4[32]) has

27 Cit *Irmscher* (2019), point 1718.

28 For the limits cf CJ's Opinion of 28 March 1996, No 2/94 (referred to in more detail infra in the main text).

29 Whereas the procedure under Article 352 requires in essence only a unanimous decision of the Council *of the EU*, Article 48 (6) TEU needs not only a unanimous decision of the *European* Council, but also *an adoption „by the Member States* in accordance with their respective constitutional requirements".

30 Cf for the opposite view already *Balthasar-Wach* (2020), 342; *Balthasar* (2017), 203, fn 143a. See also *Edward/Lane* (2013), points 6.52 et seq, in particular 6.54.

31 At least in the German version both documents referred to here use *the very same term* „ausgedehnt" bzw „Ausdehnung".

32 Cf *Edward/Lane* (2013), point 6.52.

no scope of application at all any more, at least *not in the meaning of former Article 308 EC Treaty*.[33]

2.1.2 Consequences for Regulation (EC) No 883/2004

Whereas Regulation (EC) No 883/2004 was adopted and entered into force long before the point in time when Article 48 (6) TEU entered into force on 1 December 2009, the Regulation nevertheless only applied from 1 May 2010 on, when the Implementing Regulation (EC) No 987/2009 – *adopted* on *16 September 2009*[34] *entered into force*.[35]

The Implementing Regulation itself, however, is based, in the same way as the Founding Regulation, i.e. Regulation (EC) No 883/2004, on Article 308 EC Treaty. If the reasoning presented supra is correct, then those parts of the Founding as well as of the Implementing Regulation based on Article 308 EC Treaty lacked a sufficient Primary law basis already from the very beginning of their actual operability.

Now it is settled case-law that „[t]e (appropriate) legal base of a measure must be in force at the moment of its *adoption*"[36] But apparently when using this term, CJ *did not have in mind to favour the moment of mere „adoption" to that one of the actual „entry into force" or even an even longer postponed start of „application";* right to the contrary, it held in its Judgment of 4 April 2000, C-269/97, *Commission/Council*, point 45:

> „Community measures must be *adopted* in accordance with the Treaty rules in force at the time of their adoption. It would be contrary to the principle of legal certainty if, in determining the legal basis of such a measure, account were to be taken of an alleged development in relations between institutions which does not yet find confirmation in any provisions of the Treaties *currently in force* or in the provisions of a treaty which has *not yet entered into force*."

This language fosters the assuption that in case of a discrepancy betwen the mentioned three points in time („adoption", „entry into force" and „application") as it is the very essence of any „legisative vacancy" the moment of the

33 The main counter-argument against the most radical assumption (that no scope at all was left) being, of course, that this result would counteract the intention of the „Masters of the Treaties" to keep this provision, I see a perfectly viable way out: why not **accept Article 352 TFEU as an explicit Treaty basis for the former doctrine of „implied powers**" (still referred to in CJ's Opinion No 2/94, point 29) or of **applying „analogy"** in order *„to fill the gap*" (cit Opinion no 2/94, point 29) in case of, in Austrian legal positivism, so-called „purely technical" „lacunas" (cf *Walter* [1972], 95 et seq)?!

34 OJ L 286, of 30 October 2009, 1. Is it really pure coincidence that this Implementing Regulation was, after five years of preparation, still adopted only less than three months before the entry into force of the Lisbon Treaty – or is this already an implicit admission (at least: worry) that adoption under post-Lisbon rules would no longer be possible?

35 Article 91 (2) of Regulation (EC) No 883/2004 read in conjunction with Article 97 of Regulation (EC) No 987/2009.

36 Cit *Edward/Lane* (2013), point 6.49, with references in fn 303; see also CJ's Judgments of 28 July 2011, C-309/10, *Agrana*, with references in point 31, of 3 September 2015, C398/13 P, *Inuit*, with references in point 22, and of 10 September 2019, C123/18 P, *HTTS,* with references in points 37, 39; Opinion of 18 January 2018 delivered in case C-528/16, *Confédération paysanne*, point 132, with references in fn 40.

beginning of the actual operability (i.e. when the status of being „*currently in force*" has been reached) would prevail.[37]

If that is true, however, the necessary implication would be that (i) the Implementing Regulation had to be declared „invalid" under the procedu-re of Article 267 TFEU[38] with regard to those parts based on Article 308 EC Treaty, (ii) already by this invalidation all parts of the Founding Regulation based on the same legal ground – among those, as said, in particular also the provisions concerning family benefits would become inoparable; (iii) what is more, the same reasons sufficient for invalidating parts of the Implementing Regulation would likewise apply also with regard to the respective parts of the Founding Regulation.[39]

2.1.3 Consequence for Regulation (EU) No 492/2011

In contrast to Regulation (EC) No 883/2004, Regulation (EU) No 492/2011 is not based on Article 352 TFEU.[40] This fact has to be taken into account when interpreting Article 7 (2) reg cit referred to by the Commission[41]: „Social and tax advantages" must, therefore, not include benefits the prescription of which would require to be based on Article 352 TFEU, as it is in particular the case with „family benefits" regarding a posted worker's family members residing in another Member State.

This finding (that „family benefits"are *not covered at all* by Article 7 [2] of Regulation [EU] No 492/2011) is, by the way, backed by „Section 10", where, under the heading „workers' families", we read: „Article 10.

The children of a national of a Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. …"

Because

- on the one hand, we find no allusion whatsoever to „family benefits" in *this* section (which is, compared with the general Article 7, *lex specialis*)
- on the other hand, exactly the condition that a Member State is responsible for children of a posted worker only insofar as they reside on its territory, is explicitly stated here.

37 At this stage of deliberation I fully neglect the consequences which might arise when the **newly emerged discrepancy** between the „settled case-law" discussed here and the oppsite view adopted with regard to the applicability of the EU Charter of fundamental rights (see infra lit B/2) is realized.

38 See supra fn 24.

39 The only, slight difference between the two regulations is that the Implementing Regulation *entered into force* after 1 December 2009, whereas the founding Regulation, although having entered into force prior to this date was only *applicable* after this date.

40 The preamble mentions only, although mitigated by an „in particular", „Article 46" TFEU.

41 See supra section I/B.

2.1.4 Conclusion

There are at least very good reasons to assume that not only Regulation (EU) No 492/2011 is not at all to be applied to the family benefits here at issue (i.e. regarding *children not residing* in the territory of the Member State called on), but that to the very same extent also the application of the Founding Regulation (EC) 883/2004 as well as of the Implementing Regulation (987/2009) runs counter the post-Lisbon primary law and, thus, had to be declared invalid in a reference procedure under Article 267 (1) (b) TFEU.

2.2 Compatibility with Article 24 of the EU Charter of Fundamental Rights?

2.2.1 Obtaining family benefits: right of the child or right of the carer?

If, however, contrary to what was suggested in section 2.1, the regulations at issue disposed in fact of a sufficient legal basis in the Treaties, , they had still to comply with EU fundamental rights, now in particular enshrined in the Fundamental Rights Charter (CFR), too.[42]

With regard to our topic: family benefits, meant to facilitate the maintenance of children – is of crucial interest Article 24 CFR, its first sentence (of paragraph 1) starting with:

> „Children shall have the right to such protection and care as is necessary for their well-being."

The main added value of this provision is to underline the position of „children as independent rights holders … rather than mere „objects of … law."[43]

Already this perspective is not met by the EU regulations at issue[44], because the right to obtain the „family benefit" is not perceived at all as a right of the respective child him-/herself, but only as one of – roughly speaking – his/her carer.[45] Or, to be more precise: what is really lacking is to make a difference between those kinds of „family benfits" which

(i) form, in one way or the other, *part of the salary* of a carer or are at least, in particular via an *insurance system, dependent of the status of an economically active person* and those which

42 Although the Founding Regulation refers several times to the „[principle of] equal[ity of] treatment" (see recitals 8, 17, 43), its preamble does *not yet contain a fully-fledged fundamental rights compatibility clause* (since the relevant policy of the Commission, although having already started in 2001, commenced only in 2005, see *Benoît-Rhomer* [2011], 30; cf also *De Schutter* [2011], 124 et seq), nor does the Implementing Regulation (!).

43 Cit *Lamont* (2014), points 24.39 (emphasis added), see also *Fuchs* (2019), points 18, 22, and *Hölscheidt* (2019b), point 18.

44 Also the Austrian law falls still short of this requirement, although only slightly (see infra text by fn 107).

45 Cf Article 67 reg cit. This is still a major flaw also in other related fields, e.g. in the „Brussels IIa Regulation" (Regulation [EC] 2201/2003, as amended by Regulation [EU] 2019/1111), cf *Balthasar-Wach* (2020), 63 et seq, 278 et seq, 409).

(ii) are handed over by the State (either directly to the child or, still more frequently, to the carer with a clear obligation to use this allowance for the benefit of the child only).

While within the first category it is perfectly correct to construe the obtaining of the „family benefit" as a right of the recipient of the salary (within the *horizontal* relationship of the employer and the employee[46], governed, at least to a large extent, by the principle of *private* [individual or collective] *autonomy*[47]) or of the insured person (in his/her relationship to the insurance, which is, dependent on the status of the owner of the insurance, of a horizontal or of a vertical kind), it is totally different within the second category: Even if here the direct recipient of the family benefit should still be the carer, it is clear that, from a fundamental rights perspective, in this paradigm the carer can only serve as a trustee while the real addressee of the *social policy* measure being always and only the child.

2.2.2 Assurance: applicability of the Charter?

But: given the entry into force of the CFR only, as part of the Lisbon Treaty, on 1 December 2009: which relevance can have a Charter provision with regard to the regulations at issue? At first sight we face the very same problem just discussed in the previous section: only if the decisive date were the 1 May 2010 (rather than the previous dates of adoption) reference to the CFR would be in conformity with the „settled case-law" mentioned supra.

Most strikingly, however, this view has not been adopted by CJ: right to the contrary, in its famous Judgment of 8 April 2014, joint Cases C-293/12 and C-594/12, *Digital Rights Ireland/Kärtner Landesregierung* (and likewise in its Judgment of 6 October 2015, C-362/14, *Schrems*) the Court explicitly measured a Directive adopted on 15 March 2006 and a Decision taken by the Commission already in 2000 respectively not only against the Data Protection

46 That this relationship is – at least apart from public service governed by public law – only a *horizontal* one, the employer thus lacking completely the former vertical responsibility of a feudal landlord with regard to his subjects, should also be inferred from Article 3 (3) TEU where we read that „[t]he Union shall establish … a highly competitive social *market economy*"; cf for the *prevailing of the market* paradigm in EU labour market law implying right from the beginning that employees are best served by their ability to *move themselves*, i.e. to make best use of the *competition among employers on the labour market*, *Barnard* (2011), 642 et seq. It may, however, very well be that just the subsequent aim „at *creating*" straitforwardly „an integrated European labour market … rather than correcting its outcomes in line with" „more traditional" „political standards of social justice" (cit *Barnard*, ib, 645; emphasis added) worked in the opposite direction (as it is nowadays the case in particular with Article 3 [1a] of Directive 96/71/EC as amended by Directive [EU] 2018/957 [OJ L 173, 16]), thus *blurring the border and charging enterprises again directly with the implementation of social policy goals* even without any underlying collective agreement (see next fn), at least not with one in the bargaining of which the respective enterprise had been represented.

47 Private autonomy implies that – at least within reasonable limits and provided an equal footing – the contracting *parties are free to agree* on the elements of their contract. Hence, apart from purely synallagmatic elements, also other considerations *may* gain ground, in particular as a result of *collective* bargaining between the *social partners* (see, e.g., infra fn 65).
That is also why it is – in both directions – inappropriate a limine to compare régimes applied in the public service (of EU or in Austria) regarding „family benefits" or allowances of living costs with measures of general social policy.

Directive, but also *against fundamental rights enshrined in the CFR*[48] (at least, as it was the case in the second Judgment, by reading secondary law „in the light of Articles 7, 8 and 47 of the Charter …"[49]). While being perfectly true that neither the Judgments nor the Opinions pondered on this problem of the applicability of the CFR ratione temporis[50], it may, in this context, suffice to have established that, apparently, Article 24 CFR would at any rate bear relevance for the CJ also with regard to regulations here at issue.[51]

2.2.3 Conclusion

Also from a fundamental rights perspective the current regime of family benefits (relating them in first line to the migrant worker instead of directly to the child) is, most probably, outdated in the post-Lisbon world.

2.3 Compatibility with Article 9 TEU/Article 20 (1) TFEU?

2.3.1 The former „core principle" and its subsequent counterweight

As already put forward at length about ten years ago[52], the former „core principle" („Leitmotiv") of the EC Treaty, the prohibition of „any discrimination on grounds of nationality", although still forming part even of post-Lisbon EU primary law[53], has been counterweighted[54] already by Article 2 point 9 of Part One of the Treaty of *Amsterdam* inserting a clarification[55] added to the

48 Cf *Digital Rights Ireland/Kärtner Landesregierung,* points 32 et seq (the heading right before point 32 runs: „Interference with the rights laid down in Articles 7 and 8 of the Charter").

49 Cit *Schrems*, ruling No 1; cf also points 67, 73, 78, 99.

50 One argument in favour of the Court's implicit position could be found in the fourth paragraph of the preamble to the CFR where we read that the purpose of the Charter was *not to create new law* but only to make already existing one „more visible".

51 Cf, however, in the same vein ECJ' s Judgment of 11 July 2002, C-224/98, *D'Hoop*, point 25 („The provisions on citizenship of the Union are applicable as soon as they enter into force. Therefore they must be applied to the present effects of situations arising previously "), still reproduced in CJ' s Judgment of 21 December 2011, Joined Cases C424/10 and C425/10*, Ziolkowski/ Szeja,* point 58).

52 See *Balthasar* (2011), 44, 51 – 75.

53 Cf not only Article 18 TFEU, but also Article 21 (2) CFR.

54 The formal link enabling the coexistence of these two opposite principles – which fact, by the way, excludes now a limine an „absolute" understanding of the former „Leitmotiv", as had indeed been argued before (cf *Balthasar* [1998], 160 et seq, referring to *v. Bogdandy's then given overview* in fn 58, and to ECJ's Judgment of 12 February 1985, C-293/83, *Gravier*, points 12 et seq; see in more detail infra section III/C) and, apparently, is still maintained by *Obwexer* (2019), 969 – is provided by the clause „*without prejudice to any special provisions* contained [in the Treaty/-ies]" forming part of Article 21 (2) TFEU and all its predecessors, back to Article 7 (1) EC Treaty (original version). What is more, "without prejudice" stipulating the prevalence of "any special provision", the former "Leitmotiv" itself now admits its subordinate role with regard to the role of the "national citizenship". When stating this we do not ignore that CJ *still long after Amsterdam* (in fact, this case-law – which might have been an appropriate interpretation of Article 8 of the EC Treaty [Maastricht version] did only *start after Amsterdam* [!], see Judgment of 20 September 2001, C-184/99, *Grzelczyk*, point 31; neither *Shaw* [2011], 576, nor *Obwexer*, ib, 958, 964, do cite a more ancient judgement) failed to give credit to this clear change of primary law when ruling that "the status of citizen of the Union is destined to be the fundamental status of nationals of the Member States" (cit Judgment of 26 February 2015, C-359/13, *Martens*, point 21; Judgment of 2 June 2016, C-233/14, *Commission/Netherlands*, point 75; Opinion of 10 May 2016, delivered in case C-182/15, point 36). Having, however, *not found more recent examples, this negative fact could indeed indicate recently increased caution of the CJ triggered perhaps by the step back carried out by the Judgement of 11 November 2014, C-333/13, Dano,* points 61 et seq (cf *Obwexer*, ib, 966 et seq).

55 When reading in particular point 63 of the Opinion given by GA *Léger* in C-214/94, *Boukhalfa* („If *all* the *conclusions inherent in that concept are drawn*, every citizen of the Union must, what-

definition of the „Citizenship of the Union" stating that this „shall be additional to and not replace national citizenship."[56]

2.3.2 Synthesis

When applying this insight to the assessment of the regulations here at issue it seems that a *fair balance between these two opposite principles*[57] would require – quite alongside what CJ had said (though not motivated properly) in *Dano*[58] – to differentiate[59] between (i)the function of citizenship of the Union to „open doors", i.e. to entitle a national of one Member State to make best use of the freedoms of the single market, or to take residence even without such a purpose in another Member State[60], (ii) the function of *domestic* nationality to provide the necessary support, in particular when it comes to the allocation of *financial ressources* of a Member State[61] which, belonging to *this*

ever his nationality, enjoy exactly the same rights and be subject to the same obligations"; emphasis added) we might be inclined to conclude that the Masters of the Treaties had exactly in mind to negate *Léger's* far reaching consequences; most remarkably, *Obwexer* (2019), 958, although referring to this Opinion, apparently fails to see this correlation. Cf, however, also infra section III/D.

56 Cit Article 9 third sentence TEU and Article 20 (1) third sentence TFEU: Article 17 second sentence of the EC Treaty (Amsterdam version) had, only slightly different: „Citizenship of the Union shall *complement* and not replace national citizenship."
Most strikingly, CJ did not even make use of this amendment when restricting its original formula in *Dano* (see previous fn but one); hence the (most reasonable) reasoning there lacks any *primary law* argument. But also doctrine has up to now shown remarkable reluctance to take notice of this primary law change: so we find *no reference at all* to the sentence cited in the main text (enshrined *twice* in the Treaties!) in the comments of *Kilpatrick* (2014), *Hölscheidt* (2019a) or *Köchle* (2019) to Article 21 (2) CFR; *Obwexer* (2019). Not even *Edward/Lane* (2013) who stress the "derived", even "parasitic" (!) nature of the status of a Union citizen (point 8.06) reconcile this insight with the traditional non-discrimination doctrine reproduced some pages before (cf points 8.02 – 8.04), whereas *Shaw* while indeed addressing the wording explicitly (ib, 598 et seq; emphasis added) remains dogmatically remarkably vague, although referring „that" it was meant by the Masters of the Treaties to „reinforce … that EU citizenship… cannot *detract* from national citizenship" (which finding can be easily understood in the sense that *Member States' responsibilities with regard to their own citizens may not be diminished* by the additional status of a Union citizen).

57 See *Balthasar* (2011), 64 et seq, in particular 67 et seq.

58 See supra fns 54, 56.

59 In contrast to the ECHR Article 1 of which clearly defines (alongside the criterion of „jurisdiction ") *which State is the addressee* of a human rights obligation, Article 51 CFR lacks such a provision. This lacuna can, however, be filled exactly by referring to the sentence just cited in the main text. Consequently, the main addressee also with regard to fundamental rights enshrined in the Charter is always the citizen 's own Member State (with in principle unlimited competence), whereas obligations of another Member State need a *specific reason* (either, in particular with regard to rights covered by Article 52 (3) CFR, Article 1 ECHR or a specific link to the Treaties) and are are *always limited in scope*.

60 This function is perfectly met by Articles 7 and 10 of Regulation (EU) No 492/2011.

61 This *crucial question* (why it should be solely the host Member State's task, not primarily the home Member State's to facilitate the position of a Union citizen aiming at taking advantage of the freedoms of the single market) was still *left open* in ECJ's reasoning in its Judgments of 22 February 1990, C-228/88 , *Bronzino* (point 12) as well as of 6 October 1995, C-321/93 , *Martinez* (point 21), apparently, answered – in the direction contrary to *Pinna I* (see infra section 3.1 and 3.2)– by the Masters of the Treaties in *Amsterdam* and *Lisbon* (and, finally, accepted, although in a dogmatically still deficient way, by CJ in *Dano* [fn 54]).

State's property, are, at least predominantly, destined to be used to the benefit of the respective State's members, i.e. its nationals.[62]

2.3.3 Conclusion

From that perspective, however, it would be hard to see why a Member State where a carer of a child resides should be responsible for this child at all even in case where neither the carer *nor* the child are *nationals* of that Member State and, furthermore, the child does *not even reside* in that Member State. Most interestingly, however, despite the understanding of this regulation by the Commission, we will see (infra in section 4.2) that this regulation indeed contains elements fully compatible with the perspective presented here.

2.4 Compatibility with the „principle of equal treatment "

2.4.1 The general principle

According to settled case-law of CJ, the principle of equal treatment (since Lisbon also enshrined in Article 20 CFR) „requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified."[63]

2.4.2 The application to the specific case at issue

In my view, Article 7 of the Founding Regulation cited supra infringes exactly this duty to differentiate[64] not only with regard to the examples already mentioned supra (2.2.1 and 2.3.3), but also when compulsorily prohibiting any reduction of benefits, according to the actual residence of family members the support of whose living situation is the very aim of the „benefit" at issue:

In sharp contrast to *synallagmatic* parts[65] of a salary (wage/remuneration) or even of an insurance system (with regard to unemployment, illness or old-age pension) predominantly based on individual contributions[66], the granting of „benefits" is not at all dependent on the individual performance (output,

62 To this reasoning two primary law based arguments may be added:
(i) That financial solidarity among Member States (as well as betwen the Union as a whole and Member States) is limited has been explicitly enshrined in Article 125 TFEU (afterwards only narrowly extended by Article 136 (3) TFEU); also separate action of Member States is limited, cf CJ's Judgment of 27 november 2012, C-370/12, *Pringle*, points 135 et seq).
(ii) Provisions as Article 43 TEU or Article 126 (1) TFEU or Decisions as those based on Article 311 TFEU (cf in particular Article 2 (b) of Council Decision 2007/436/EC, EURATOM) would be distorted if substantive secondary legislation were free to charge Member States with additional financial burdens.

63 Cit Judgment of 28 November 2019, C593/18 P, *ABB*, point 83 read in conjunction with point 84.

64 It may well be that this duty sometimes is neglected; cf, parte pro toto, *Obwexer* (2019), who, after having correctly reproduced the full formula (957) concludes: „Daraus resultiert ganz allgemein ein Verbot unsachgemäßer Differenzierung", thus *omitting completely the complementary half* (the prohibition given emphasis in the main text).

65 These parts are governed by the principle of „iustitia *commutativa*".

66 Obviously in every insurance system an aleatory moment (whether the payer of contributions will ever receive any equivalent in return) is inherent; but if the conditions for claiming are met the provision of the equivalent follows the paradigm of synallagma.

outcome) of the recipient, but of his/her specific *need*.[67] So Commissioner *Thyssen* was simply wrong when invoking the principles of „fairness and equal treatment" as an argument against „indexation", while exactly the opposite is true:

When the essential yardstick is the actual need, then we have to assess (measure) this need and to grant the help („benefit ") according to the actual amount of this need. Put it that way, it would run directly counter this principle of equal treatment to treat different living costs „in the same way".[68] Apparently exactly this view was also taken by the European Council (and the European Commission!) when assessing in February 2016 that indexation according to the „Member State where the child resides" is „fully compatible with the Treaties."

2.4.3 Further arguments

In this respect it is really telling that the Commission now argues[69] that „The fact that another Member State is considered to have lower cost of living than Austria is of no relevance for a benefit, which is paid out as a lump sum and is not linked to the actual cost of maintaining a child."

Because on the one hand the Commission seems to admit that if the benefit were actually „linked to the actual cost of maintaining a child" the Austrian position were correct also from an EU perspective; on the other hand the Commission seems to underestimate the needs of legislation, in particular in a democratic state, being not only under *technocratic* pressure of *standardizing*, but also of applying rather an *egalitarian* yardstick, in particular when it comes to benefits which are addressed to hugh parts of the population.

So the pure fact that the Austrian family benefit is not shaped individually in each particular case is not enough to show that there is no link whatever to the specific needs of families living in Austria.

Even if, however, the Commission's finding were true[70], exactly the *opposite conclusion* had to be drawn, the principle of equal treatment (forming part of Austrian national law as well as of EU law) requiring the proper adjustment of the benefit (as stipulated *by the Commission itself* in early 2016[71]), not to aggravate the discrepancy between the „lump sum" and the factual situation.

67 These parts are governed by the principle of „iustitia *distributiva*". A well-known example is the „individual right to parental leave" enshrined in Clause 2 (1) of the „Framework Agreement" of 18 June 2009 put into effect by Article 1 of Council Directive 2010/18/EU of 8 March 2010, OJ L 68, 13, which entitles everybody „on the grounds of the birth or adoption of a child to take care of that child …": On the one hand, nobody can make use of this right who is not in the specific position mentioned; on the other hand, in the whole Agreement synallagmatic parts play only a *minor* role (cf in this regard mainly Clause 3 [b]).

68 From this perspective it does not help either that – as Commissioner *Thyssen* put forward – all recipients payed taxes and contributed to the social insurance system: this is also the case with employees (self-employed persons) who have no family at all to take care of and, thus, have no right at all to any „family benefit".

69 See supra section 1.2, but also, for the source of this idea, infra section 3.2.

70 See, however, in more detail infra section 4.1.

71 See supra section 1.3.

2.4.4 Conclusion

It is not the Austrian position, but, in contrast, the one taken by the Commission, which infringes the principle of equal treatment – if, correctly, this principle is not understood in the way *Procrustes* did (i.e. treating different situations alike) but, right to the contrary, as a binding commandment to differentiate properly between different situations: i.e. treating synallagmata (salaries/insurance claims, following the paradigm of iustitia commutativa) and benefits meant to cover actual need (following the paradigm of iustitia distributiva) not alike, but differently.

3 The flash back

3.1 Article 40 Regulation (EEC) No 3, Article 73 Regulation (EEC) No 1408/71 and ECJ's Judgment of 15 January 1986, Case 41/86, *Pinna I*

Already in the very first chapter of our story, we find a model quite similar to the currrent Austrian indexation model[72], „Article 40 of Regulation No 3 of the Council of the EEC of 25 September 1958 concerning social security for migrant workers …"[73] having „provided that: 'A wage-earner or assimilated worker who is *employed* in the territory of *one* Member State, and has *children* who are *permanently resident* or are being brought up *in the territory of another* Member State, shall be entitled, in respect of such children, to family allowances according to the provisions of the legislation of the former State, up to the amount of the allowances granted under the legislation of the latter State'."[74]

Although „13 years later Regulation 1408/71[75] recast that provision"[76], this recast was not a general one: Instead, „Article 73 (1) of Regulation No 1408/71 provide[d] that: 'A worker subject to the legislation of a Member State other than France shall be entitled to the family benefits provided for by the legislation of the first Member State for members of his family residing in the territory of another Member State, as though they were residing in the territory of the first State'", whilst for workers subject to French legislation" – and thus, as we may fairly safely assume, for a quite considerable subset of workers posted in the then European Economic Community the former regime was kept.[77]

72 Although it is true, from a mere technical point of view, that the Austrian indexation depends on a decision of Austrian legislation only, whereas the former model of Regulation No 3 combined the legislation of two Member States, the *underlying ratio*: to meet the actual need – *is the same* (under the premiss that national legislation is in the best position to assess the real amount of need on its own teritory).

73 OJ of 16 December 1958, 561.

74 Cit Opinion delivered in *Pinna I*, point 3 (we make here use of this quasi-official translation the original text having not been published in English; emphasis added).

75 OJ L 149 of 5 July 1971, 2.

76 Cit Opinion delivered in *Pinna I*, point 3.

77 Article 73 (2) reg cit ran: „A worker subject to French legislation shall be entitled, in respect of members of his family residing in the territory of a Member State other than France, to the family allowances provided for by the legislation of such Member State; the worker must

This „dual system"[78] – and, thus, the original régime with regard to workers posted[79] in France[80] *lasted unaffected* (though not fully undisputed[81]) *until* ECJ's Judgment of 15 January *1986*, Case 41/84, *Pinna I*, by which Article 73 (2) reg cit was declared „invalid in so far as it preclude[d] the award to employed persons subject to French legislation of French family benefits for members of their family residing in the territory of another Member State." Still in the proceedings before the Court, however, not only the French government, but also the *Commission* and the *Council* firmly *defended the conformity* of the contested provisions with EEC primary law, while it was *only* the Advocate General (of *Italian* nationality) who, fully in line with the *Italian* claimant[82] of the main proceedings and the *Italian* (and Greek) government, considered the principle enshrined in Article 73 (2) reg cit *as such* as well as discriminatory and as lacking sufficient justification.

The Court, however, shared this view of the Advocate General, finding not only that the *difference* made in this provision *between France and the other Member States* (i.e. the „dual system") was contrary to the Treaty's aim[83] , but also that it amounted to a „covert discrimination."[84]

But even then the story had not yet come to an end: it needed a second judgement (of 2 March *1989*, Case 359/87) to secure compliance of *French* administration with the régime of Article 73 (1) reg cit.[85]

satisfy the conditions regarding employment on which French legislation bases entitlement to such benefits."

78 Cit Opinion delivered in *Pinna I*, point 3.

79 For the formal applicability of this provision also with regard to French nationals see infra text by fn 85.

80 For the *close vicinity of the current Austrian with the former French* approach cf also supra fn 1.

81 Cf Opinion delivered in *Pinna I*, point 3: „Member States themselves considered that the resultant dual system should be superseded, and in Article 98 (now Article 99) of Regulation No 1408/71 they determined that within two years the Council should, on a proposal from the Commission, take steps to amend it. In the result, the Commission played its part: it submitted an initial proposal on 10 April 1975 (Official Journal C 96, p. 4), which was followed on 15 January 1976 by the submission to the Council of a second proposal taking into account the amendments suggested by the Economic and Social Committee (Official Journal C 286 of 24 September 1975, p. 19) and by the European Parliament (Official Journal C 257 of 14 October 1975, p. 10). The proposal recommended that there should be a single system for the grant of family benefits and that the general criterion for coordination to be adopted to that end should be the law of the State in which the worker was employed. That proposal remained on the agenda for several Council meetings and was most recently considered at the informal Council meetings held in September and November 1983. Yet again, however, it was not possible to come to a unanimous decision in accordance with Article 51 of the Treaty. 5".

82 This *appearance of bias* would better have been avoided, „in accordance with the adage 'justice must not only be done, it must also be seen to be done'" (cit – in another context Opinion delivered in *Atanas*, point 78; apparently, the adage dates back to High Court England & Wales' Judgement of 9 November 1923, *Rex v Sussex Justices, Ex parte McCarthy*: „… a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done")).

83 Cf points 21 et seq.

84 Cf point 23.

85 The *subsequent* cases *Bronzino* and *Martinez*, both with regard to *Germany* (and in favour of again an *Italian* [C-228/88] and a *Spain* [C-321/93] worker respectively posted abroad), however, indicate that it was *not only* the French administration which opposed the strict line of *Pinna I*.

3.2 The Advocate General's arguments in *Pinna I*

By contending itself to state the obvious (that the provision at issue, although formally applicable also with regard to French nationals, was „by no means equally important for that category"[86]), the Court only proved the element of „covert", but failed to provide any argument why the contested régime discriminated against workers whose children reside abroad or, to put it differently, *why it was not even permitted*, not to speak of beeing mandatory, to apply the legislation of the state of residence of the family members for the shaping of the appropriate amount of family benefits. When, therefore, consulting the *Opinion* for guidance, we find indeed a couple of arguments, the quality of which shall be discussed here in detail:

– Quite convincing (at least in the pre-Lisbon era) is, in my view, only the hint that by virtue of other provisions French law family members of a French national staying abroad could still benefit from the full amount of the allowance paid in France.[87]
– Already much less convincing are, however, the arguments *completing* the assessment of „covert discrimination":
  – „[i]n reality" family benefits „in particular" were not tailored „specifically and directly to the cost of maintaining a family", but „an element *supplementary to basic pay*"
  – as also „tax deductions for maintenance of dependants"had to be taken into account, „[i]f the criterion of the country of residence were applied the worker would run the risk of paying tax in full while … receiving lower levels of benefit."[88]

Even if we refrain from leaving aside a limine the first argument due to the fact that, if taken seriously, it would deprive the term „*family* benefit" of any reasonable meaning[89], this first argument would *devaluate the second one*: because, even when „family benefits" paid by a specific State are meant to compensate in a broader sense not only for a level of wages felt to be inappropriately low, but also for deficiency of specific tax reductions, this State will, when assessing the situation, most probably take into account the „cost-of-living situation" in its own territory, thus not targeting the situation of a posted worker whose family lives abroad.

86 Cit *Pinna I*, point 24.

87 Cf point 6 B. If that were true French law would indeed favour its own nationals, treating them better than foreigners exactly in the situation that family members reside abroad. While such additional care for the nationals of a Member State may now be founded in Article 9 third sentence TEU/Article 20 (1) third sentence TFEU (see supra section 2.3), the assessment was, most probably, different before the creation of these provisions.

88 Cf point 7.

89 Even if the reference made in the Opinion to political practice (that, „as actually happened in Italy", „a given State offsets the low level of wages … by sharply increasing family benefits" [cit point 7]) were true that specific political practice could only be categorized as an abuse, for that reason alone not appropriate to serve as a premise for further legal reasoning. So the fact that the European Commission when referring the most recent Austrian case to CJ explicitly takes up this argument (see supra section 1.2) indicates the *lack of better arguments* and, thus, the inner wekness of the Commission's position.

Although we may understand the then preference for the State of „locus laboris" as the relevant reference[90], it seems to be outdated today in several respects:

– On the one hand, increase of *double income parents* (due to several reasons, among them female emancipation) increases the risk that there is, with regard to family benefits, not only one, but (at least) two loci laboris in two different Member States, while permanent residence of children is much more likely to be located only in one Member State
– On the other hand, free movement within EU territories is, already since Maastricht, no longer restricted to „workers "or any other form of professional activity, but open to all citizens of the Union as such, irrespective of any other element. Economically inactive citizens, however, lacking a „locus laboris", there is, with regard to them, no other „choice"[91] than to refer to the State of *residence (or, horribile dictu, of nationality)*. In this case, however, it is not only hard to see why, with regard to family benefits, the primordial reference should not be the State of reference where the family members reside (the nationality of which they have), but that of a pater (or mater) familias living in splendid isolation apart from his/her family; what is more, keeping for posted workers the responsibility of the „locus laboris"would mean to reintroduce exactly that sort of a „dual system" then rejected in *Pinna I.*

So, even if one could understand the reasoning of the time when *Pinna I* was delivered, subsequent change of the factual as well as of the primary law situation seem to require nowadays the opposite assessment.

Finally, even if still in 1986 a court (or, in our case, an advocate general) were in the position to downsize, quite relaxedly, the financial implications of a specific interpretation of EU law for a specific Member State[92], the language of *Dano*[93] is now a different one.[94]

3.3 ECJ' s Judgment of 12 February 1985, C-293/83, *Gravier*, and its offspring

Pinna I is by no means the only judgement where ECJ tempted to establish a rigid régime of disregard of factual cross-border differences, piling up all responsibility of facilitating the mobile citizen's situation solely on the host Member State: A quite famous example of this species being *Gravier*[95], we see, however, also the inherent limits of such an approach:

90 Cf Opinion in *Pinna I*, point 5.

91 Cf Opinion in *Pinna I*, point 6 A.

92 Cf Opinion, point 7: „… the finances of the French Republic do not seem to be threatened to such an extent as to warrant a special rule …"

93 See supra fn 54.

94 Cf points 71 („to prevent such persons from becoming an unreasonable burden on the social assistance system of the host Member State"), 74.

95 Despite the factual differences between the situation of home and guest students pointed out by the Belgian (federal and self-government) authorities (point 12) and disregarding also the „concerns" expressed by the Danish and the UK government (point 16) ECJ reduced the problem of providing State infrastructure (having to be financed either by taxes or by indebt-

Still 25 years later, the very same question (in essence, with only superficial modifications) was again referred to the Court, by the same country and by another one, and CJ had this time at least to *modify somewhat* its former, fully intransigent position.[96]

3.4 Conclusion

When suming up we realize that even in the merry old days of formally undisputed reign of the „Leitmotiv" it was more often than not mitigated (Article 40 of the Regulation [EEC] No 3 or circumvented (Article 73 of the Regulation [EEC] No 1408/71), whereas a rigid execution of the principle of non-discrimination on grounds of nationality had to be either based on a rather doubtful[97] or at least now outdated[98] reasoning (*Pinna I*) or raised problems not to be overcome for decades (*Gravier*).[99]

So when assessing this background – the poor quality of the core arguments of what is still nowadays the Commission's position even under the pre-Amsterdam paradigm – we understand perhaps better why the Masters of the Treaties felt motivated (and legitimated) to downgrade the bearing of the „Leitmotiv" in the Treaty of Amsterdam – only a decade after *Gravier* and *Pinna* by adding explicit limitations.[100]

A fortiori[101] there is no legitimation whatsoever any more to rely on this case-law still in the post-Lisbon world.

4 The Austrian law on „family benefits" measured against the yardstick of the Founding Regulation

4.1 The Act of 24 October 1967 (current version) itself

As already mentioned, this Act is based on the federal competence for *demographic* policy, enshrined in Article 10 (1) (17) of the Federal constitution (Bundes-Verfassungsgesetz; B-VG). Clearly enough, this policy aim was meant

ment, the liability for both instruments being much more likely borne by nationals and permanent residents than by mere hosts of the respective country) to the – very naïve – difference „that the cost of higher art education is not borne by students of Belgian nationality, whereas foreign students must bear part of that cost" (cit point 14).

96 See in more detail *Balthasar* (2011) with regard to Belgium [*Bressol* [C-73/08]) and to the parallel situation in Austria.

97 See supra text after fn 88.

98 See supra text after fn 91.

99 Also *Dano* (see supra fn 54) might be mentioned in this context because CJ declined, as stated, to enforce the „Leitmotiv" without any valid legal argument, just giving in to common sense (arg „unreasonable", cf fn 92).

100 While it may very well be that the immediate cause of reaction had been the Opinion of GA *Léger* referred to supra in fn 55, we see now the whole background.

101 Cf the additional arguments rooted solely in the Treaty of Lisbon and mentioned already supra section 2.1 and 2.2.

to foster the reproduction of the Austrian population (not that of the EU in general)[102], understood in a double sense:

– All people *residing permanently and lawfully* in Austria (carer as well as children)[103]
– Austrian *citizens* with regard to their children if their link to Austria is still closer than to any other State.[104]

Entitled are not only economically active persons, but everyone, by the sole virtue of either being a carer of a (minor) child[105] or being an orphan.[106]

That in essence it is the child itself who is the entitled person is shown by paragraph 14 (1), whereby *a child after having come of age may claim to obtain the benefit him/herself*. However, this modern idea has still not yet been realized perfectly insofar as subparagraph 2 requires the consent of the (former) carer.[107]

The actual amount of the benefit differs also apart from the „indexation" here at issue[108] in various dimensions (is, therefore, not simply a „lump sum" as the Commission has put it[109]):

– pursuant to paragraph 5, *separate income* of a child (maintenance by a spouse included) may bar the access completely
– pursuant to paragraph 8 (1), the benefit depends of the *number* of children in a family and of their respective *age*[110]
– pursuant to paragraph 8 (4), the amount of benefit is increased in case of a *disabled* child

102 Although ECJ had already ruled on 10 October 1978 in Case 237/78, *Caisse … Lille*, point 15, that „Regulation No 1408/71 does not make any distinction between the social security schemes to which it applies according to whether those schemes do or do not pursue objectives of demographic policy" (a fact hinted to also in the Opinion delivered in *Pinna I*, point 7) this specific aspect is now again relevant under the current Regulation (EC) No 883/2004, in particular its Article 70, see infra sections 4.2 and 4.3.

103 Cf paragraphs 2 (1), 3 (1), (2), 5 (3).

104 Cf paragraph 2 (8), 5 (3).

105 Cf paragraph 2 (1).

106 Cf paragraph 6.

107 In principle, however, this consent might be enforced by a civil law court.

108 See supra section 1.1.

109 See supra section 1.2.

110 Cf, however, also paragraphs 2s (2) et seq and 6 respectively, with regard to the conditions required for extending the payment after the child having come of age (until having reached the age of 21 or of 24 at the latest), as well as paragraph 32 et seq, concening a specific aid for babies (dependent on the income of the carer) and paragraph 38d et seq, concerning a „bonus", dependent on the one hand oft he income oft he carer, on the other hand whether the child had been proprerly presented to medical examination.

– The general benefit is *completed*[111] by quite detailed allowances on public transport (only partly full free ride is granted)[112], free access to school books[113], special grants in case of individual need.[114]

Contributions for these benefits flow, in a rather complicated way, from several sources; in essence, however, it is partly a *specific levy* imposed on (industrial and agricultural) enterprises (not, however, directly on employees!), partly a share of *general tax revenues.*[115]

4.2 The Regulation (EC) No 883/2004

While it is true that we start reading in the 16th recital of Regulation (EC) No 883/2004:

„Within the Community there is in principle no justification for making social security rights dependent on the place of residence of the person concerned;" the second part of this recital runs as follows:

„nevertheless, in specific cases, *in particular as regards* special benefits linked to the economic and social context of the person involved, the place of residence could be taken into account. "

This ambiguity (apparently paying already some tribute to the shift of primary law demonstrated supra in section 2.3) is also present in the operative part of this regulation:

– whereas Article 4 and in particular the abovementined Article 7 as well as Article 11 (3) (a)[116] and 67[117] speak the language of the first half of recital No 16,
– the priority rules enshrined in Article 68 seem to be much more inspired already by the post-Amsterdam/post-Lisbon logic:
  – Paragraph 1 lit a of this Article states that „the order of priority shall be as follows:
    – firstly, rights available on the basis of an activity as an employed or self-employed person,
    – secondly, rights available on the basis of a pension and
    – *finally, rights obtained on the basis of residence*; "

111 Clearly enough, by its very nature at least the allowances on ride and school books are confined to children atttending a school (or an apprenticeship) *in Austria.*

112 Cf paragraphs 30a et seq.

113 Cf paragraphs 31 et seq.

114 Cf paragraphs 38a et seq.

115 Cf in detail paragraphs 39 et seq.

116 Article 11 (2) continues to favour the principle of the prevalence of (as GA *Mancini* put it in *Pinna I*) the „locus *laboris*" (see supra fn 91; for objections based on the current state of Union law see supra section III/B after the mentioned fn).

117 Pursuant to this provision „a person pursuing an activity as an employed or self-employey person in a Member State shall be subject to the legislation of hat Member State; …"

– lit b (iii) of this Paragraph adds that „in the case of benefits payable by more than one Member State on the basis of residence" it is „the place of residence of the children" which matters.
– Paragraph 2 excludes explicitly any obligation of even only paying a „differential supplement"„for children residing in another Member State when entitelment to the benefit in question is based on residence only".

In addition, pursuant to Article 70 (1) - (3) reg cit its *Article 7* and all „special provisions concerning the various categories of benefits" of Titel III shall *not apply to „special non-contributory cash benefits* which are provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement, has characteristics both of the social security legislation … and of social assistance", are intended to provide" inter alia „supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article 3 (1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned" and „where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary …" provided that the respective benefit is „listed in Annex X".

4.3 The Austrian Act measured against the yardstick of Regulation (EC) No 883/2004

When carefully[118] assessing the Austrian legislation (section 4.1) against the yardstick of the Regulation (section 4.2), one could be tempted to qualify the Commission's referral as not much more than a veritable „tempête dans un verre d'eau":

– The Austrian benefits – at least in the category at issue (claim of a non-Austrian citizen of the Union living in Austria for obtaining Austrian family benefits for *children residing in another Member State*) depending solely on the criterion of residence (on Austrian territory), it is, on the basis of the priority rules enshrined in Article 68 (paragraph 1 lit a in conjunction with lit b [iii]) de facto impossible that Austria should ever be the competent State for paying family benefits at all[119], the more so, when also paragraph 2 is applied.

118 As far can be inferred from the reasons given in the abovementioned (fn 22) referring Decision of the Austrian Federal Tax Court (cf p. 16 et seq), Austrian practice
(i) fails, up to now, to apply Article 68 (2) reg cit
(ii) ignores the specific relationship between Article 53 (1) of the national Act and Article 68 reg cit (see next fn).

119 Even Article 53 (1) of the national Act, providing that
(i) nationals of Constracting Parties of the European Economic Area (EEA) have to be treated equally with Austrian citizens
(ii) the permanent residence of a child in the territory of one of the EEA has to be considered as if the child were permanently resident in Austria, does not alter the result, because provision (ii) is bound back to the „accordance with the provisions of EU law", thus yielding to Art 68 of the Regulation.

Moreover, the Austrian family benefits fullfilling all substantive requirements of Article 70 reg cit, only the formal step of inclusion in the Annex X is needed to make the result presented in (i) fully transparent.

Hence, it doesn't matter really whether the „indexation"now at issue is in conformity with EU law or not, because Austria's reaction *could always be to cancel* the „export" of family benefits almost (i.e. with regard to non national children residing abroad) *entirely*.

5 Conclusion

In my view, there are several serious flaws of the Regulation (EC) 883/2004, in particular when applied under the regime of the Treaty of Lisbon, due to mainly three reasons:

– inappropriate (over-simplified) application of the „principle of equal treatment ", by one-sided emphasis on the first element (prohibiton of treating comparable situations differently) and, correspondingly, *neglecting the second element* (prohibiton of treating different situations „in the same way")
– neglection of the reestablished importance of the „nationality"of a Member State
– discrepancy to Article 352 TFEU and to Article 24 EUCFR.

These elements taken together suffice to recommend that the European Commission, as already proposed in February 2016, although then only in the context of avoiding „Brexit", fulfills its promise to come forward with a proposal to amend the Regulation, in order to bring it in conformity with the principle of equal treatment as well as with other restrictions of current primary law just mentioned.[120]

On the other hand, already the current Regulation is much more in line with current primary law than one would have guessed at first sight; consequently, it is not so much the Regulation itself, but an *inappropriate domestic interpretation* (most probably triggered by the Commission's approach) which hinders Austria to minimize her obligations with regard to children of other than Austrian nationality living abroad.

This final finding is even more strange, showing the hugh gap between EU law as it is *presumed* to be in many parts even of Austrian academia[121] and in EU central institutions (in particular the European Commission) and as it *really has been made* quite recently by the Masters of the Treaties as well as by the ordinary legislator. This gap needs to be bridged very soon; otherwise we risk

120 As pointed out supra (fn 24) Member States do not dispose of direct legal remedies for having clarified the situation by CJEU. As to individuals: exactly if the view developed here were correct a claim for family benefit had to be lodged before an Austrian court but would, after this court having referred to CJEU, not be successful in substance. To rely on such a personal sacrifice (for the higher sake of the EU legal system) does not seem to be fair.

121 See supra text by fns 4 f and fn 22.

such a bulk of subsequent misunderstandings or of talking so often at cross purposes that in the end the Union itself could be on the ropes.[122]

122 Apparently the lessons told by „Brexit": that too rigid a centralization on EU level/too strongly erasing the importance of nationalities of the respective Member States/too heavily shaping the financial burdens of the „netto payers" may provoke the full exit of Member States were not yet learnt (or, even, the wrong conclusions are drawn by EU central institutions: that now, after Brexit, none of the concessions made by the European Council and the European Commission [see supra section 1.3] are necessary any longer with regard to other Member States).
Hence, the sad story is going on: a most recent telling writing on the wall is in this regard the judgement of Germany's Federal Constitutional Court of 5 May 2020, 2 BvR 859/15 inter alia, assessing a CJ's judgement being null and void due to
(i) excession of competences („ultra vires"), combined with
(ii) arbitrariness and
(iii) most serious methodic flaws.
This assessment is nothing less than a nuclear bomb in the sphere of intra-EU relations as laid down in Article 4 (3) TEU, putting the character of EU as a „community based on the rule of law" (cit ECJ, *Les Verts*, point 23) as now explicitly enshrined in Article 2 TEU at stake.

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Form over Substance: Possibilities to Prove Electoral Irregularities under Serbian Law

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ABSTRACT

The article analyses Serbian legislation and case law applicable to electoral disputes, in particular those relevant to the determination of facts in these disputes, and the potential influence of procedural rules on the efficiency of protection of constitutionally guaranteed electoral rights. Besides Serbian legislation and case law, the analysis leans on the relevant European standards, including the case law of the European Court of Human Rights. The results show that in practice, electoral commissions and courts use a limited circle of means of evidence and that the evidence submitted by complainants is not evaluated in the same way as the one coming from electoral boards. Although the application of general rules on administrative disputes is explicitly envisaged in electoral laws, the Administrative Court usually defers to the decisions and reasoning of electoral commissions, without supplementing the facts within court procedure, and relatively rarely or selectively decides in full jurisdiction. The author suggests amendments to the relevant legislation, aiming at a more explicit inclination towards the relevant procedural norms or, possibly, special regulation of evidencing in electoral legislation. In her view, a more explicit direction towards the application of the rules of general administrative procedure, in particular rules on evidencing, would lead to their more consistent application in practice.

Keywords: Administrative Court, administrative procedure, elections, electoral rights, evidence, Serbia

JEL: K16, K49

1 Introduction

In the beginning of July 2020, amidst the COVID-19 pandemic, the Serbian Administrative Court passed a number of identical judgements, annulling identical decisions of the Republic Electoral Commission (REC), finding shortcomings in their rationale, i.e. the way facts have been determined in the procedure of electoral rights protection before the REC (Danas, 2020). These decisions motivated the author to contemplate the deficiencies of current Serbian legislation governing electoral rights protection – in particular, determination of facts in these procedures.

Serbian Constitution guarantees electoral rights and their legal protection (Serbian Constitution 2006, A. 52, para. 3). More detailed regulation is in electoral laws, envisaging a two-instance protection - before the relevant electoral commission followed by an appeal procedure before the Administrative Court. This is a frequent combination in countries of Central and Eastern Europe (Nastić, 2016, p. 167) and some other European jurisdictions, while in some this is achieved before Parliament, a special parliamentary body or the constitutional court (Venice Commission CDL-EL(2019)001, pp. 9–12). Protection by at least one judicial instance is considered a European standard, recommended by the Code of Good Practice in Electoral Matters (Venice Commission, CDL-AD (2002)23; Fasone, 2017, p. 253).

It should also be noted that Serbian electoral administration is not fully professionalized, since electoral commissions they are appointed upon proposal of political parties (or candidate lists). They have permanent and extended compositions, in which they decide during the electoral process and which are usually quite numerous.[1] This solution was criticised in view of the level of independence, autonomy and professionality of these bodies, as well as the questionable legal status of REC (CRTA, 2018b), and the same is applicable to local electoral commissions.

With proportional elections and a single electoral unit (in elections on all levels of government) and no hierarchical relation between electoral commissions established under separate electoral laws (central, provincial and local), there is no control by a higher instance electoral commission, as in some other European countries (Venice Commission, CDL-AD, (2006)013).

The Constitutional Court has residual competence in electoral disputes (A. 167, para. 2, item 5 of the Constitution; see Vučetić, 2015a, pp. 156-157; Nastić, 2014, pp. 66-74), but that remains in the domain of theory, since all electoral laws envisage the competence of the Administrative Court in electoral disputes (Stojanović, 2012, p. 37) – from presidential elections[2] to elec-

1 According to A. 33 LEMP, permanent composition of REC consists of the president and 16 members, appointed by the Parliament, while its extended composition also includes one representative of each confirmed party list (in 2020 elections there were 21 lists). In 2018 Belgrade elections, the Belgrade Electoral Commission (BEC) had 12 permanent members, while 20 of the 24 candidate lists had their members in the extended composition (CRTA, 2018a, 9).

2 E.g. Conclusion of the Constitutional Court (CC), VIU-101/2017 of 13 July 2017, where the Constitutional Court declared itself incompetent to decide on the request of a presidential

tions for local neighbourhood districts (*mesne zajednice*).[3] The Constitutional Court remains competent to decide on constitutional complaints, as a remedy of last resort, if proven that acts of state bodies violated constitutionally guaranteed electoral rights (Stojanović, 2012, pp. 45–48) and for review of constitutionality and legality of general legal acts in relation to elections (Nastić, 2016, pp. 174–175).

The present system of electoral rights protection is set up by the Law on Election of Members of Parliament (LEMP, A. 93-97),[4] while other electoral laws lean on it, envisaging its analogous application in many aspects. This is the case with the Law on Local Elections (LLE, A. 58)[5] and the Law on Election of the President of the Republic (A. 8),[6] while the relevant provincial regulation essentially does the same, but in a less favourable manner in terms of its nomotechnique – by almost literally taking over the provisions of LEMP.[7]

Legal protection of electoral rights has been a current topic in Serbia since the re-introduction of multiparty elections at the end of the 20th century (Bieber 2003; Thompson and Kuntz 2004). Electoral disputes are always a striking feature of the electoral process and Serbian authors have expressed serious criticism towards the existing legal mechanisms to that end (Pajvančić, 2001; Nastić, 2014).

The right to legal protection belongs to every voter, candidate or nominator of electoral list (LEMP, A. 94). The author purports that standing should be understood widely, as to include the application of rules of general administrative procedure allowing the so-called representatives of collective interest and wider interests of the public to gain standing in procedures in which the outcome could influence the interests they represent (LGAP, A. 44, para. 3). This would be in accordance with comparative European practice (Venice Commission CDL-EL, (2019)001, pp. 17–18). However, application of these provisions in administrative procedure is not yet widely accepted and they have not yet been applied in electoral disputes. Moreover, earlier decisions of electoral commissions show that they take standing narrowly, allowing it only to persons explicitly listed in LEMP.[8]

The rules distinguish two types of complaints – against decisions of the electoral commission and for irregularities in the conduct of electoral activities (Vučetić, 2015a, pp. 140–141). Deadlines are short and competent bodies tied

candidate, since protection in these cases is provided before the Administrative Court.

3 Legal position of the Civil Law Section of the Supreme Court of Cassation adopted on 18 November 2014 (in Serbian only).

4 Zakon o izboru narodnih poslanika (Serbian only), Official Gazette No. 35/00 with amendments.

5 Zakon o lokalnim izborima (Serbian only), OG 129/07 with amendments.

6 Zakon o izboru predsednika Republike (Serbian only), OG 111/07 with amendments.

7 A. 54-58 Pokrajinska skupštinska odluka o izboru poslanika u Skupštinu Autonomne pokrajine Vojvodine (Serbian only), OG of AP Vojvodina 23/2014 with amendments.

8 For instance, during 2018 Belgrade elections, BEC dismissed 15 complaints of monitors of the organisation CRTA for absence of standing. See f.n. 25.

by demands of urgent proceedings, all in the aim of efficient termination of the electoral process.

During presidential and parliamentary elections (as well as local elections in Belgrade) usually several hundreds of complaints are submitted to the electoral commission, and a few hundred get their epilogue before the court.[9] Analysis of these proceedings is hampered by the fact that electoral commissions usually do not publish summary reports of received and decided complaints,[10] and the data in annual reports of the Administrative Court are given in aggregate, for all elections conducted in a given year (see e.g. Upravni sud, 2019, pp. 9–10).

This and earlier analysis show that every election is usually marked by a larger number of irregularities of a certain type: e.g. falsified signatures during the nomination process and the so-called "Bulgarian trains" or "carousel voting" in 2016 (Nastić, 2016); parallel voter registers (particularly evident from 2018 Belgrade elections; also see Pavlović, 2020, p. 26); an unusually big number of requests for insight into voter materials claiming irregularities in vote counting, which marked the June 2020 parliamentary elections. The last elections, held just after state of emergency proclaimed due to the COVID-19 pandemic was lifted, according to reports of foreign and domestic monitoring missions, was marked by almost twice as many irregularities in comparison to previous cycles (Cvejin, 2020).

Against the presented background, the author poses three main research questions. What are the relevant procedural rules, which electoral commissions employ to determine the facts of individual cases? What means of evidence are predominantly used by the commissions and the Administrative Court? What are the characteristics of the review carried out by the Administrative Court? The author's hypothesis is that these bodies do not make full use of available rules of general administrative procedure, thus hampering the procedural position of complainants and, bearing in mind the established European standards, possibly influencing the very effectiveness of available legal remedies.

9 E.g. according to some sources, during 2012 parliamentary elections, there were 633 appeals to the Administrative Court, while only 29 in 2014 (Vučetić, 2014, p. 1279). According to BEC, during 2018 Belgrade elections, there was a total of 197 complaints and 119 appeals to the Administrative Court. Other organisations reported that, only after the election day, there were 205 complaints and 94 appeals (CRTA 2018a, 24). The author had access to 190 complaints (out of which 3 were adopted, 18 dismissed and 169 rejected). Decisions of the Administrative Court were accessed from the web presentation of the Administrative Court (http://www.up.sud.rs/latinica/izborni-predmeti).
REC published all its rulings on complaints during 2020 parliamentary elections (https://www.rik.parlament.gov.rs/tekst/sr/2171/resenja-po-prigovorima.php). There were several thousands of complaints and a large portion related to fears for security during the COVID-19 pandemic and a very large number of complaints related to irregularities on the election day. Most were rejected.

10 Commissions usually publish only reports on final results of the elections, not containing detailed information on how the elections were conducted, nor on submitted complaints and appeals. International organisations stress the importance of databases on electoral disputes (Petit, 2000, pp. 17–19).

2 Methods

The author uses the method of legal analysis, i.e. normative analysis of legal norms and content analysis of selected case law of electoral commissions and the Administrative Court. The research is focused on Serbia, but the case law is analysed both in view of current Serbian legislation and the established European standards, as seen by international election observation organisations and the of the European Court of Human Rights (ECtHR). Similar analysis for other countries can be found in academic literature (e.g. for Russia see Popova, 2006).

The analysis covers case law concerning 2020 parliamentary elections, as well as a number of rulings of the electoral commission and the Administrative Court passed during 2018 elections for councillors of the Belgrade City Assembly,[11] while case law concerning earlier elections has been selected based on its subject matter, i.e. the influence of evidencing rules in determination of facts in electoral matters. Belgrade was chosen for its sizable electorate, making up more than 20% of the total number of voters in Serbia.

Issues around electoral governance in Serbia have been subject of research in fields other than law. Academic research is primarily in the field of political science (e.g. in relation to elections as an institution of the hybrid political regime, including the role of REC, see Pavlović, 2020; or on comparison of scale of electoral manipulations in the 2010s and during the authoritarian regime of the 1990s, see Castaldo, 2020), while organisational aspects are thoroughly analysed by national and international election observation organisations (e.g. OSCE/ODIHR or the local organisation CRTA). The author takes due notice of that and recognises that these aspects are as relevant to the wider theme of good electoral governance, but maintains a strict focus on legal rules and their influence on providing effective protection of electoral rights.

3 Results

3.1 Application of procedural rules by analogy

The LEMP only partly regulates the procedure for protection of electoral rights, directing towards analogous application of the Law on Administrative Disputes (LAD)[12] in the procedure before the Administrative Court. However, it does not envisage application of other procedural laws in the procedure before the competent electoral commission. Even though the LEMP has been amended several times, this legal gap was not filled.[13] Nevertheless, the rules of general administrative procedure are applied by electoral commissions and

11 Thanks to kindness of the president of BEC and the Belgrade city administration, the author gained insight into all complaints submitted to BEC during the 2018 elections for local councillors, as well as BEC's decisions on these complaints.

12 Zakon o upravnim sporovima (Serbian only), OG 111/09.

13 E.g. 2004 and 2011 amendments related to determination of competence of the court to decide on appeals (first by the Supreme Court and later by the Administrative Court), but not to analogous application of procedural rules in the procedure before the commission.

the gap left by the LEMP has been filled by their rules of procedure[14] and this has been accepted in the Court's case law.

There is no doubt in Serbian theory nor case law that the application of the Law on General Administrative Procedure (LGAP)[15] in electoral matters is both natural and logical. Some authors go so far to equate the work of electoral commissions with single case decision-making in administrative matters (Milenković, 2012, pp. 201–202), albeit there is no real need for that. Elections are a *sui generis* legal matter ant their similarity to classical administrative matters is enough for LGAP's analogous application.

Application of adequate procedural rules is necessary to secure effective legal protection of electoral rights. Their inconsistent application leaves the constitutionally guaranteed protection on the level of a proclamation without seriously affecting the electoral process and enjoyment of electoral rights by each individual voter. Therefore, in ECtHR case law protection of the right to free elections of A. 3 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is complemented by the guarantee of A. 13 on the right to an effective remedy (ECtHR. 2019, pp. 24–26; Popović, 2017; Beširević et al., 2017, pp. 173–206). According to the ECtHR, the procedure for electoral right protection should guarantee a fair, objective and reasoned decision and be able to prevent any form of abuse of power.[16] The reasoning of the Serbian Administrative Court in its July 2020 decisions mentioned at the beginning of this text is in line with that position.

In order to determine which provisions of LGAP and LAD can (or rather, should be) applied in electoral disputes, the notion of analogous application should be clear. Application by analogy, or application by similarity, is a common method of filling legal gaps (Lukić, 1994, pp. 323–327; Vasić et. al., 2019, pp. 368-371; Spasojević, 1991). This does not mean that to a certain legal situation (in this case legal protection of electoral rights) a specific law should be applied in full, but to the extent in which there is similarity, or to the extent that law is appropriate to the aim and legal nature of the concrete legal situation. It cannot be said in advance what is the measure or volume of that similarity – and, consequently, application – because analogous application demands a certain level of interpretation, where administrative or court case law play a key role. Some provisions cannot be applied at all, as they do not

14 E.g. A. 24 Rules of Procedure of the Republic Electoral Commission (Poslovnik Republičke izborne komisije – Serbian only), OG 16/20 with amendments; A. 22 Rules of Procedure of the Belgrade Electoral Commission (Poslovnik Gradske izborne komisije – Serbian only), OG of the City of Belgrade 37/18 with amendments; A. 22 KEC Rules of Procedure of the Kragujevac Electoral Commission (Poslovnik Gradske izborne komisije grada Kragujevca – Serbian only), OG of the City of Kragujevac 8/08. The same was envisaged in earlier REC rules (e.g. A. 22 of the 2000 rules and A. 22 of the 2002 rules). On the other hand, such a provision is not contained in the rules of procedure of the Provincial Electoral Commission (Poslovnik Pokrajinske izborne komisije – Serbian only), OG of the Autonomous Province of Vojvodina 11/20.

15 Zakon o opštem upravnom postupku (Serbian only), OG 18/16 with amendments.

16 It should be noted that ECtHR caselaw directly applies only to parliamentary elections. In Serbian circumstances, where LEMP applies by analogy to all other elections, ECtHR standards can be considered for those elections, as well.

suit the legal nature of the matter, while others cannot be applied literally, but in an adapted way. This is an established position in Serbian administrative practice (Pljakić, 2016, p. 247).

In Serbian law, numerous procedures are implemented according to the rules of LGAP. Their volume is measured in hundreds[17] and two types can be distinguished among them. The first being special administrative procedures (Lončar, 2017), when there is no doubt as to LGAP's application to them – it is applied as a subsidiary law,[18] *lex specialis*, whenever a specific law does not envisage differently.[19] Such derogation from general administrative procedure can be envisaged only by law, and never by an act of lesser legal force (Tomić, 2017, p. 106; Cucić 2011, p. 64). Other procedures, such as electoral disputes, demand application by analogy and are thus not special administrative procedures (that is, by their legal nature they are not administrative procedures at all). These are sometimes labelled as *sui generis* procedures (Dimitrijević, 2014, pp. 149–150). LGAP itself does not mention, nor regulate, rules for its own analogous application, but it is customarily prescribed by laws, and not by by-laws.

As said, analogous application of LGAP in complaint procedures before electoral commissions is not envisaged by law,[20] but by rules of procedure of electoral commissions. This solution can be criticized by three types of arguments. The first reside in the area of nomotechnique and are particularly obvious in the case of local elections, where analogous application of LGAP is reached in the "second step" - via rules of procedure of the republic electoral commission.[21] Such nomotechnical gymnastics seem quite unnecessary when there is a simpler and more elegant solution – referral to analogous application of LGAP in the electoral law itself.

Besides reasons of good legal technique, such a solution is not in line with the demand of legal certainty and the need to inform voters on possibilities for legal remedies. It is an established European standard that complainants should be aware, i.e. that the law should clearly point towards the type and number of evidence to be submitted in support of suspicions of electoral irregularities. Moreover, the law is to clearly state the basis for partial or full annulment of elections. Absence of clear and unambiguous standards con-

17 The list of laws regulating special administrative procedures compiled by the line ministry for purposes of their harmonisation with LGAP contains 265 laws, in 12 areas. Each of these laws regulates at least one procedure to which LGAP applies as subsidiary law (MDULS 2017).

18 There are also opinions that subsidiarity is not obligatory nor exclusive (e.g. Lilić, 2019).

19 However, even a special law cannot deviate from general principles of LGAP (see it's A. 3 para. 2).

20 Except in the case of the Law on National Councils of National Minorities (Zakon o nacionalnim savetima nacionalnih manjina – in Serbian only), OG 72/09 with amendments. This law, besides application of LEMP, envisaged the application of LAD, but also of LGAP (A. 43, para. 2) and not its analogous, but direct application.

21 LLE (A. 15, para. 2) envisages that the [local] electoral commission analogously applies instructions and other acts of the REC relating to conducting elections for members of Parliament, hence according to the established position of the Administrative Court, it is taken that this also includes its rules of procedure which, in its turn, envisages analogous application of LGAP (e.g. Judgement AC, III-1 Už. 55/20, 10 June 2020).
Therefore, one law refers to analogous application of a bylaw that refers to analogous application of another law!

cerning evidence could endanger the whole electoral process and render the protection of electoral rights meaningless (on OSCE standards in that respect see Petit, 2000, pp. 11–13).

The third group of arguments concerns the typology and hierarchy of legal acts. Rules of procedure are general legal acts of internal nature which usually regulate issues of significance for work and decision-making of collective bodies. Thus LEMP in A. 34 para. 2. empowers the REC to pass rules of procedure *for its work* [emphasis added] and not to regulate other issues. It is not customary even for bylaws of state bodies (e.g. state administration bodies, such as ministries) to determine analogous application of laws, let alone rules of procedure of electoral commissions.

Rules of procedure are susceptible to more frequent changes than laws and, even though it is hard to imagine that this provision would be omitted from the REC rules, that is not impossible, and thus carries a certain potential for legal uncertainty. Potential discrepancies between rules of procedure of over 150 local electoral commission is somewhat mitigated by a provision of the LLE which directs towards analogous application of acts of the REC.

Finally, the LEMP itself limits regulation of the procedure for electoral rights protection to the legislative realm and actually envisages that this is done by that law alone (A. 94), so it would naturally follow that it also contains a provision on analogous application of a certain procedural law. Moreover, in the case law of the Administrative Court one can find decisions in which analogous application of other laws (not LGAP) was rejected because the electoral law „did not envisage analogous application of other laws, besides the Law on Administrative Disputes".[22]

In regulating the complaint procedure before the electoral commission, the LEMP explicitly lists the persons who have standing (A. 94); names the remedy initiating the procedure (A. 95, para. 1) – complaint (*prigovor*, in contrast to *zahtev* – request in LGAP); lists grounds for complaint, which the LGAP as a general procedural law does not do, but leaves it to special laws (A. 95. para. 2); determines jurisdiction as to the substance of the matter to the electoral commission (A. 95 para. 3); envisages short deadlines for submitting complaints (A. 95. para. 4) and deciding (A. 96) by which it derogates from provisions of LGAP on deadlines for deciding (LGAP, A. 145) and envisages an exception from the general rule of a supposed negative act in case of administrative silence (LEMP, A. 96, para. 3).

Departures from LAD in the procedure before the Administrative Court are reflected in the different name of the remedy (*appeal* instead of the usual *claim*), shorter deadlines for its submission, for the response of the electoral commission and decision of the Court, exclusion of irregular legal remedies

22 E.g. Ruling AC II-4 Už. 2/20, 23 January 2020. In this case, the appellant called upon analogous application of rules on calculating deadlines in case of public holidays.

envisaged by LAD,[23] as well as a more concrete regulation of consequences of the Court's decision in full jurisdiction. As already said, the analogous application of LAD is expressly envisaged (LEMP, A. 97).

On all other aspects of the complaint and appeal procedures, provisions of LGAP and LAD could apply – and that relates to initiating procedure, determination of facts, i.e. the evidential process and deciding. Voluminous case law on that is available, both of the Administrative Court and the courts which were competent in electoral disputes in the past. However, it should be borne in mind that analogous application does not occur automatically and this fact necessitates analysis of relevant case law.

For instance, until 2012 the dominant legal position of the case law was that analogous application of LGAP does not apply to the whole election procedure, but only to the complaint procedure, so there is no place to apply the principle of officiality of the LGAP (see e.g. Vučetić, 2015a, pp. 152–153). However, in 2012 this position was partially revised, allowing the electoral commission to *ex officio* correct technical errors (for harsh criticism of such an opinion see Pljakić, 2012). In its *opinio iuris* adopted in 2016, the Administrative Court determined that there is no analogous application of LGAP's provisions on irregular legal remedies.[24]

On the other hand, the Administrative Court allows application of LGAP's provisions on the manner of determination of facts (now A. 102) and obligation of the competent authority to obtain data from official records (A. 103). By correctly applying LGAP, the electoral commission can, when in doubt, obtain data *ex officio* or oblige the complainant to provide the necessary evidence.[25]

3.2 Determination of facts before the electoral commission

Deciding electoral disputes is influenced by the specificity of electoral matters, as well as the character of electoral commissions as collegial bodies.

However, it suffices to say that proceedings before them are primarily governed by law (which is expressly stated in A. 28 LEMP). *In concreto*, these are

23 In case law, this provision was reasoned by calling upon "urgency and legal nature" of the procedure (Judgement of the Supreme Court of Serbia, Už. 78/02, 18 September 2002).

24 Legal position of the Administrative Court (Pravni stav Upravnog suda – in Serbian only) determined in the 58th session of all judges on 2 February 2016. Also in Judgement of AC, Už. 41/17, 27 April 2017.

25 Judgement of AC, III-27 Už. 29/16, 17 March 2016. In this case, the electoral commission claimed that it was not possible to determine the identity of the complainant. In the already described situation, also relating to determination of complainants' identity, BEC dismissed 15 complaints of CRTA monitors for lack of standing, even though their capacity as voters could have been ascertained either by insight into official records or by demanding them to supplement their complaints, in accordance with A. 59 LGAP on editing submissions. After appeals, the Administrative Court annulled 14 of those 15 rulings (e.g. Judgement AC, 4 Už. 41/18, 9 March 2018), but only after they were supplemented by statements of appellants that they are appealing in the capacity of voters (while one was dismissed for lack of standing, Judgement AC, 16 Už. 44/18, 8 March 2018). In the repeated proceedings before BEC, 12 complaints were rejected and two dismissed.

the rules of general administrative procedure on deliberation by collegial bodies (LGAP, A. 137), which is undisputed in case law.[26]

Our attention here is primarily directed towards the manner in which the electoral commission determines the facts of a case and decides on the basis thereof. Provisions of Part III of LGAP (A. 102–135) are eligible for analogous application related to that. LGAP's principle of truth and free assessment of proof (A. 10) is of particular importance here, since it demands the competent body to properly, truthfully and *completely* determine all the facts and circumstances relevant for a lawful decision in an (administrative) case. Thereby, the competent official (in this case, the electoral commission) decides according to its belief which facts are to be taken as proven, based on a *conscientious and careful assessment of each piece of evidence separately and all evidence taken together*, as well as the results of the entire procedure [emphasis added]. When the official places more trust in some evidence, and none in some other, such an assessment would have to be reasoned (Tomić, 2017, p. 129). By exception, some evidence is considered more credible than others, such as public documents determined by law, for which the presumption of accuracy applies (Ibid, pp. 129–130).

One could argue that, for reasons of urgency, and due to the need to react to a very large number of complaints in a very limited time, in electoral matters there is no place, nor need to conduct oral hearings (even though some international standards point towards the necessity of hearings, especially in case of judicial protection).[27] On the other hand, the same reasons cannot justify non-application of other LGAP's provisions offering a range of means of evidence (A. 116–135). Case law, however, shows that only a limited number of these means are used in electoral matters and that in procedures on complaints (and later on appeals) evidence submitted by complainants is often ignored.[28]

Except in the case of generally known facts, the LGAP obliges the party (in this case the complainant) to propose or, if possible, submit evidence for its allegations (A. 102, para. 2). All the more so, there is an obligation of the competent official to declare itself regarding this evidence. It was already said that in the opinion of the Administrative Court, in the procedure before election commissions there is room to apply these provisions of the LGAP, but also those obliging the official to obtain data from official records (now A. 103 LGAP).

Therefore, even in case of collegial bodies, it is not enough to secure a majority for a decision of a certain content (i.e. adopting or rejecting a complaint) – even then, the competent body is obliged to conduct an appropriate eviden-

26 E.g. Judgement of the Supreme Court of Serbia, Už. 67/00, 13 December 2000.

27 See further on in this section.

28 Recommendations for improving the electoral process by organisations monitoring elections, *inter alia*, relate to the need to change the practice of electoral commissions and the Administrative Court in the sense that they should "besides insight into minutes of the polling boards […] look into possibilities to obtain other evidence (statements of members of polling boards, accredited monitors and, when necessary, official representatives of other institutions)" (CRTA, 2019).

tiary procedure and to provide a reasoning based on legal arguments. This is exactly what the July 2020 judgments of the Administrative Court say.[29]

In these cases the complainant claimed that by gaining insight in the bags containing electoral material he determined that the number of ballots in the bags from a large number of electoral posts (and for every post a separate complaint was submitted) for one of the candidate lists is higher than the number stated in the minutes from those posts, while the opposite happened to data for another candidate (a lower number of circled ballots in comparison to the minutes), as well as that there is disagreement in the number of used ballots and the total number of ballots. REC reasoned its rejection of all these complaints simply by the fact that more of its members voted against their adoption (calling upon its rules of procedure). The Administrative Court found this to be a significant breach of procedure (namely A. 102 LGAP on the duty of the competent authority to determine facts and circumstances relevant to case and A. 141 obliging the authority to reason its decisions). The Court found that the reasoning given "does not constitute a legally acceptable reasoning [...] since it does not contain decisive reasons as to the legal basis for the authority's assessment that the complaint is ill-founded, nor an assertation of the established facts on which the decision is based."

However, the Administrative Court stopped at the mere annulment of REC's rulings and did not examine the allegations of the appellant and the proposed evidence, i.e. it did not decide in full jurisdiction. In the repeated procedure, REC rejected all the complaints, basing its new decisions on the minutes of the polling boards – exactly the ones whose incorrectness the complainant pointed toward.[30]

Although the starting assumption is that electoral commissions can use any of the means of evidence provided in the LGAP, in practice the minutes of the polling boards remain dominant. The content of the minutes is determined by the law and by acts of the electoral commission, but such preference to any other type of evidence has no basis in provisions of the LEMP or the LGAP. Even if the minutes had the force of a public document (which they do not have, as that is not prescribed by any law), their credibility should be subject to challenge.

For instance, during the 2018 Belgrade local elections almost 30% of all complaints submitted[31] related to suspicions of keeping parallel voter records, in most cases by members of polling boards, by entering personal data of those who came out to vote (ID numbers or numbers in the excerpts from the electoral roll). Such actions have previously been recognized in case law of the

29 E.g. Judgment AC, 20 Už. 2758/20, 4 July 2020.
It should be borne in mind that the Administrative Court delivered a great number of identical judgements, since the appeals addressed to it were in identical text and related to identical rulings of REC. All REC's rulings are available in Serbian at https://www.rik.parlament.gov.rs/tekst/sr/2171/resenja-po-prigovorima.php, accessed 24 October 2020.

30 For an example of dismissal see Judgement AC, 24 Už. 4603/20, 19 July 2020 and for rejections see Judgement AC, 12 Už. 4807/20, 23 July 2020.

31 The author analysed 59 of such complaints, out of total 197 which were submitted according to BEC's data.

Administrative Court as "violations of order at the polling station".[32] The Belgrade Electoral Commission (BEC) rejected all these objections and 16 rulings on rejection were appealed to the Administrative Court, which also rejected the appeals. In all cases, BEC's reasoning was based solely on minutes of the polling board, and the evidence proposed by the complainants was not considered. Although several complaints proposed examination of witnesses (observers or members of the polling board), and two included material evidence (photographs and videos which were also publicly available on YouTube), the reasoning was either that such an objection was not recorded by the minutes of the polling board or that such an objection exists, but that this is "not an irregularity that affects the course of voting and determination of results." Although the same evidence was attached to appeals, the Administrative Court gave full confidence to BEC's reasoning, mostly without referring to appellants allegations.[33]

Such judgements are not entirely in accordance with the Court's earlier case law by which if minutes of the polling board are signed by all board members without any objections, the complainant claiming otherwise has to provide evidence which "prove certain the existence of irregularities that occurred during the voting at that polling station".[34]

There are examples in which the Administrative Court pointed out to electoral commissions the need to clearly state the established facts in their decisions (e.g. by accurately listing the reviewed election documentation, when complaints indicate an excess of ballots in the ballot box or the absence of certificates of voting outside of the polling station).[35]

The issue of the range of permitted means of evidence, as well as the issue of potentially stronger probative force provided by election laws to minutes of polling boards, has been analysed by international election observation organizations (OSCE/ODIHR, 2013, pp. 72–73). Such restrictions are possible and can be justified, but it should be noted that Serbian legislation does not contain such restrictions, but that they have arisen in practice with no clear justification. In that sense, one should also keep in mind the practice of the ECtHR, which, referring to the Code of Good Practice in Electoral Matters, warns of excessive formalism in procedures for protection of the right to vote. Electoral commissions and courts, when considering appeals, should make a genuine effort to examine the appellant's allegations, and their decisions must be adequately reasoned. In this way, they show a "genuine concern" for the protection of the right to vote (ECtHR, 18705/06, paras. 86, 90). Election irregularities are very often recorded by accredited observer organizations, and their role in the evidentiary process has been recognized in relevant inter-

32 Judgment AC, III-7 Už. 34/17, 11 April 2017.

33 E. g. Judgement AC, 23 Už. 38/18, 8 March 2018; Judgement AC, 2 Už. 58/18, 9 March 2018; Judgement AC, 25 Už. 106/18, 10 March 2018.

34 E. g. Judgement AC, 4 Už. 3/18, 11 January 2018.

35 E. g. Judgment AC, 18 Už. 311/16, 4 May 2016; Judgment AC, 22 Už. 350/16, 6 May 2016 (also analysed in Vučetić, 2020, pp. 109-110).

national documents (Venice Commission CDL-AD (2002) 23), as well as in the practice of the ECtHR (Suksi, 2016).

The right to submit evidence is considered an integral part of effective protection of the right to vote. Moreover, if the complainant does not have access to suitable evidence, the securing of such evidence should be an obligation of the electoral administration. The burden of proof – on the side of the complainant or *ex officio* on the side of the bodies in charge of conducting elections – should be regulated by law (Venice Commission CDL-EL, (2019)001, p. 25).

3.3 The Administrative Court's review

Contribution of the Administrative Court to building case law in respect of electoral rights protection in general is undoubtable, as well as in respect of analogous application of LGAP, which was already elaborated here (also Vučetić, 2020, pp. 98–99). However, regardless of the explicit legal basis for analogous application of LAD in electoral disputes before the Administrative Court, it can be said that the case law analysed thus far mostly shows the Court's deference to argumentation and assessment of evidence by the electoral commission – if not in the first appeals, then in the cases of repeated appeals filed with it.

Deficiencies of Serbian legislation to that end have been earlier ascertained in reports of international organisations (Venice Commission, CDL-AD, (2006)013). This particularly relates to absence of a public hearing before the Court[36] and the non-existence of an express legal guarantee of a fair, public and transparent hearing in that phase of the procedure. Moreover, even if a public hearing would in theory be applicable through analogous application of LAD, the Administrative Court expressly excludes this option "having in mind the nature of electoral disputes".[37] This case law has already been criticized by Serbian authors, particularly in cases of serious claims of vote buying (Nastić, 2016, pp. 173–174).

By excluding a public hearing, the Administrative Court practically also excluded the possibility for presentation of evidence before it, or for supplementing the evidential process conducted before the electoral administration, which is otherwise possible according to LAD (LAD, A. 33; Tomić, 2010, pp. 475–480).

The Court still rarely employs the possibility to decide in full jurisdiction (Cucić, 2016, p. 19), even though there are authors who claim that this occurs in a significant number of cases in electoral disputes (Ivanović, 2013). Such claims are, nevertheless, still a matter of general impression, since there is no comprehensive analysis on that issue. What would probably be correct to say is that the Court does decide in full jurisdiction more often in electoral, than in other matters in its competence. Such examples have already been recognised in literature (e.g. Nastić, 2016, pp. 172–173; Vučetić, 2014, pp. 1290–1291; Vučetić, 2015b, p. 142; Vučetić, 2020, pp. 98–99). However, it can

36 In time of these reports, before the Serbian Supreme Court.
37 E.g. Judgement AC, 20 Už. 2758/20, 4 July 2020.

also be noted that appellants in electoral disputes regularly ask the Court to decide in full jurisdiction, but the Court does not do so in most cases. Judgements of the Court in full jurisdiction related to different issues – from rejection to proclaim an electoral list to ordering repeat voting. By deciding in full jurisdiction, the Administrative Court also adopted some important legal positions in electoral matters.[38]

As in case of analogous application of LGAP, the Administrative Court has a grounded position on the application of LAD in electoral disputes. Besides exclusion of public hearing, there is also no place for application of LAD's rules on silence of the administration;[39] on the interested persons[40] or analogous application on the law on civil procedure.[41] The Court's reasoning of the last decision is interesting in the sense that it held that it is not possible to draw the conclusion on analogous application of the Law on Civil Procedure "via" LAD (the only law whose analogous application is expressly envisaged). On the other hand, the same court has repeatedly allowed analogous application of LGAP "via" rules of procedure of REC, an act of a far lesser legal force.

Also, in cases analysed here in which the Administrative Court ruled that there is no place for analogous application of certain provisions of LAD (and this also applies to previously described decisions regarding application of the LGAP), the Administrative Court does not provide a more detailed reasoning of such a position, but simply states that it is not possible or "not appropriate" or that such a position is taken having in mind the nature of electoral disputes.

4 Discussion and conclusions

One could argue that in procedures for electoral rights protection, especially those initiated after the election day by election candidates, complaints are submitted by the losers, and that the winners get to decide on them. This view is enabled by the fact that electoral commissions are composed of party and candidate lists representatives.

However, such a completely simplified viewpoint would ignore the fact that both the electoral process and the protection of the right to vote are regulated by the Constitution and the law, and that the bodies in charge of conducting elections should be strongly bound by them. (Non)application of appropriate procedural rules substantially affects the degree and effectiveness of legal protection of the right to vote, having in mind the standards of the Venice Commission and the ECtHR. Moreover, it undermines the trust in the electoral process and conditions under which elections are conducted, which,

38 E.g. it was determined that each registered minority party can have such a status granted (Judgement AC, II-2 Už. 88/16, 6 April 2016) or that an electoral coalition cannot consist of a political party and a citizens' group (Judgement AC, Už. 88/12, 23 April 2012).

39 E.g. Ruling AC, II-3 Už. 28/14, 28 March 2014.

40 E.g. Judgement AC, 2 Už. 34/20, 29 May 2020.

41 E.g. Ruling AC, III-3 Už. 4/14, 31 January 2014.

inter alia, was the reason for the recent boycott of parliamentary elections by a large portion of the Serbian opposition.

Serious criticism *vis-à-vis* method of appointment and composition of electoral commissions have already been noted, and are, without a doubt, part of the problem of ineffective electoral rights protection. Although necessary, professionalization of electoral administration alone cannot compensate for deficiencies in procedural rules. These two sets of measures should, therefore be viewed as complementary. One should bear in mind that the Administrative Court, acting as a second instance in these procedures, does not suffer from same deficiencies in position and independence – it is a court of law, with all characteristics of an independent and impartial tribunal according to A. 6 of the ECHR.

Still, the analysis given here, mainly focused on relevant legislation and case law of both electoral bodies and courts, found a predominant use of a limited circle of evidence and that evidence provided by complainants are not equally considered and valued as the ones coming from polling boards. Even though analogous application of the LAD is explicitly provided by electoral legislation, case law of the Administrative Court shows a high level of deference to decisions and argumentation of electoral commissions, without complementing the facts already determined in prior proceedings, as well as still relatively rare or selective adjudication in full jurisdiction.

Although it is imaginable that the reasons for such an outcome come outside of the legal sphere, the solutions sought in this article are largely limited to proposals for amendment and specification of electoral legislation, at the same time recognising that changes are necessary in other aspects – primarily, selection and functioning of the electoral administration.

By only marginal application of procedural possibilities provided by rules of administrative procedure, electoral bodies and courts fail to provide, in the words of ECtHR, a "genuine effort" to examine allegations of electoral irregularities (even if they come in great numbers) and to prove they are genuinely concerned for the protection of the right to vote. It seems as if their efforts are simply focused on formally completing the procedure and not providing substantive protection. In view of constitutional guarantees (as well as ones under the ECHR) of every individual's right to vote, it is even irrelevant if these allegations if proven could have a direct influence on election results.

The Administrative Court (and before it, the Supreme Court of Serbia) did invest significant efforts during the past two decades to harmonise its case law regarding analogous application of the LGAP. However, disparities remain. Further harmonisation could be implemented on three levels: the level of legislation; level of electoral administration and level of case law.

First of all, there is a need for more detailed regulation of procedures rules for dealing with complaints - more explicit obligation of electoral commissions to apply the rules of the LGAP in establishing facts and taking of evidence, especially in cases where the complainant provides or proposes additional evi-

dence. This can be done by defining more specific rules in the LEMP, as the main law in the electoral field, and there is also a need to harmonize various electoral laws, or even to codify the entire electoral matter. The importance of minutes of the polling boards in the process of proving election irregularities is undoubted, but their place among all possible means of evidence must be specified.

Case law of electoral commissions should be harmonized – both at the level of the commissions themselves, and with the views of case law of the Administrative Court. Moreover, in line with the principle of predictability of LGAP, any changes in established case law would have to be sufficiently reasoned.

Finally, there is still room for harmonization of case law of the Administrative Court itself, delivered in various election cycles, and this can best be done through legal positions adopted by the session of all judges of this court.

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Is VAT Administration System Efficient?[1]
The case of the Czech Republic

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ABSTRACT

This paper is focused on the efficiency of VAT collection under the standard credit invoice method. It discusses several approaches on how to evaluate the efficiency of the VAT system. The authors create their own indicator called the C-Coefficient that determines how many times must one unit of currency be checked by the financial authority to collect it into public budgets. The C-Coefficient is calculated from the data on VAT revenues and total VAT paid on all taxable supplies performed in the economy. The concrete results are shown for the Czech Republic for the period 2005 to 2018. The C-Coefficient reaches the values between 7.92 and 11.56, meaning that in the most efficient year (2018) the tax authorities had to inspect each collected CZK more than 7 times, whereas in the least efficient year (2008) they had to audit each collected CZK more than 11 times. Authors also discuss what influences the C-Coefficient. Among important factors are measures against VAT fraud, especially the specific reverse charge, as well as the number of VAT payers in the pro-duction and distribution chain and the difference between the average VAT rates applicable on final and intermediate consumption.

Keywords: *C-Coefficient, definitive VAT system, final consumption, intermediate consumption, reverse charge, VAT efficiency, collection efficiency, Czech Republic*

JEL: H21, H26

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1 Introduction

Value added tax is an important source of public revenues for all European Union countries. However, its collection is affected by significant tax evasion. A recent study by (Poniatowski et al., 2019) estimated the so-called VAT gap in the EU at EUR 137 billion in 2019. In relative terms, it is 11.7% of theoretical tax liability. The VAT gap is an expression of tax evasion as we explain in more detail in next section. A significant part of total VAT gap is represented by chain or carousel frauds, which consist in not paying output tax by a supplier and claiming it by a customer. The imposters abuse the current system of cross-border supplies' taxation in the EU. More precisely, they exploit the VAT exemption of cross-border supply and effectively VAT free intracommunity acquisition of goods[2]. These fraudsters purchase the goods from other Member State, sell it locally without remitting the VAT due to the tax authority and become so called "Missing traders". The details on carousel fraud (further also "MTIC fraud") can be found in Ainsworth (2011), European Court of Auditors (2016) or Fedeli and Forte (2017).

To combat the alarming VAT fraud, Member States are trying various anti-fraud measures. Among other things, they implement reverse charge mechanism for VAT collection on certain commodities most threatened by VAT fraud. Also, the temporary application of general reverse charge to all goods and services is considered. An optional exception from the standard way of VAT collection was implemented in the European Council Directive 2018/2058. Reverse charge transfers the obligation to report the output tax payable from transactions to purchasers who at the same time claim input tax deduction. Suppliers in the distribution chain do not charge any output tax and the goods and services are effectively sold without VAT. This is completely different way of VAT collection from the standard VAT system where the suppliers apply output VAT on their sales and remit it to the financial authorities whereas buyers pay input VAT in the price of purchased goods and services and claim it back from the tax administrator. Thus, the VAT is collected in stages, each VAT payer in the supply chain remits only the amount of VAT from their added value because they calculate the VAT liability as the difference between total their output tax and input tax in the tax period. This method of VAT collection is called a credit invoice method (Terra and Kajus, 2015). In the reverse charge system, VAT is charged mostly by suppliers at the end of the supply chain when the goods or services are supplied to the end consumer; and in that moment, VAT is collected by tax authorities.

On the other hand, the European Commission has been working to find a conceptual solution to prevent tax evasion which was described for example in the Green paper on VAT (European Commission, 2010). After extensive discussions, the preferred route is taxing the supply of goods (and later also services) within the EU instead of exempting them from VAT, which should prevent carousel fraud. In the future, under so called "Definitive VAT system",

2 The purchaser must report the output tax but also have the right to claim the same amount as input tax in his VAT return.

supplies should be taxed by the supplier at the rate applicable in the country of destination (European Commission, 2018). The place of supply of cross-border sales would be newly determined in the country where the shipment ends. The supplier would pay VAT on the supply to another Member State through a special tax return, the so-called "One Stop Shop". This VAT would be collected by the Member State of the supplier but transferred to the Member State where the goods are transported to.

The Definitive VAT system uses for cross-border transactions a credit invoice method described above which is currently applicable on local supplies. This method consists in remittance of output VAT from each transaction by supplier to tax administrator and subsequent refund the same amount of VAT by tax office to buyer (Terra and Kajus, 2015). In theory, the credit-invoice method ensures a self-policing nature of VAT system because each VAT payer should be motivated to get a tax document from his supplier to claim back input VAT (Pomeranz, 2015). However, this system is also administratively demanding as the administrators must check the output tax reported by suppliers and also input tax claims of buyers. Therefore, it would be helpful to express how many inspections by the financial office are needed to collect VAT for public budgets.

The aim of this paper is to evaluate the efficiency of current VAT system based on the number of necessary checks of VAT remitted and refunded in the production and distribution chain. First, we describe the possible approaches how to measure tax collection efficiency, then we introduce our own indicator of efficiency. Subsequently, we calculate the values of this indicator for the Czech Republic for the period 2005 to 2018 and finally we discuss our results.

2 Literature review

Since the efficiency is not exactly defined term, different authors might focus on different efficiency interpretation. In literature, three main approaches to calculation of VAT collection efficiency were found.

First approach represents calculation of C-efficiency ratio and VAT gap. C-efficiency ratio constitutes a complex VAT effectiveness coefficient, which shows the difference between tax levied in theoretical standard VAT system[3] and actual VAT revenue (Keen 2013). C-efficiency ratio is basically influenced by the existence of exemptions, reduced rates and tax evasion. Aizenmann and Jinjarak (2008) explored economic factors affecting C-efficiency ratio and prove its relationship to the stability of political system, urbanization level, trade openness, GDP per capita and the share of agriculture on total production. The latter factor has inverse proportion on C-efficiency value (the higher the share of agriculture in the economy, the lower C-efficiency value), while all the remaining factors have direct proportion (e.g. the higher the urbanization level in the economy, the higher C-efficiency value).

3 System with only one standard rate and all consumption subject to VAT.

More frequently used indicator of VAT system efficiency is VAT gap. It results from decomposition of C-efficiency ratio into so called "policy gap" and "compliance gap". The policy gap is created by the application of reduced VAT rates and exemptions that cause lower VAT revenues than an ideal VAT system would generate. Compliance gap, in other words the VAT gap, represents the difference between theoretical tax liability of the current system and actual tax revenue. VAT gap consists from tax evasion, but it also contains VAT not collected by the state due to insolvencies. Therefore, VAT gap is used as the approximation of non-compliance level (Poniatowski, 2019). VAT gap is also influenced by many factors. These factors mainly constitute difference between cash and accrual VAT base and tax evasion existence (Keen 2013). The important figure for tax administrators is the share of tax evasion on total VAT gap, because tax evasion represents most undesirable factor. Fearing (2015) describes results acquired by nine EU Member States' Tax Authorities[4]. In average, the value of tax evasion on total VAT gap equate 36 %, while 24 % comes under MTIC frauds.

Second approach to VAT collection efficiency searches for administration costs. This approach associates efficiency with minimalization of costs incurred in tax collection. As there are two types of costs, both need to be calculated separately. First type of costs are administrative costs. These costs are spent on the side of tax administrator (public sector) and involves costs of revenue department, costs incurred by other public institutions, judiciary costs and interest costs incurred by loans represented as legal lags in collection (Barbone, Bird, Vázquez Caro, 2012). The other type of administration costs constitutes compliance costs, which are borne by private sector. These costs relate to complying with legal obligations (e.g. tax return filling, reporting, tax depreciation of specialized software).

In the literature, approach via administrative costs is described quite frequently (see e.g. Evans, 2008). However, restriction of this approach represent data, as there is no accurate evidence on VAT costs (or other taxes' costs) themselves. To give some perspective, Barbone, Bird and Vásquez Caro (2012) mention calculation of both types of costs as a ratio of VAT revenue: Administration costs in 2010 in United Kingdom reached value of 0.7%, while compliance costs in 2003 in four European states[5] equaled values between 0.3% in Denmark to 2.17% in Netherlands.

Both previously mentioned approaches are linked in Mello (2008). According to this study, VAT efficiency (measured by C-efficiency ratio) rises with the lower share of administrative costs in tax revenue.

The third approach is the calculation of efficiency through econometrical and statistical methods. Great example of such efficiency measure is a method called Data Envelopment Analysis (DEA). DEA compares inputs and outputs of decision-making units in order to obtain their relative efficiency and is of-

4 Austria, Bulgarian, Cyprus, Czech Republic, Finland, France, Slovakia, Slovenia and United Kingdom

5 Denmark, Netherlands, Norway and Sweden

ten used for the evaluation of public sectors, such as health sector (see e.g. Vitezić et al., 2017).

Despite not being frequently used for evaluation of tax administration, there are exceptions. Some authors utilize DEA to reach efficiency of tax administrator (Savić et al., 2015; Alm and Duncan, 2014). Such example is the study of Alm and Duncan (2014), who use DEA analysis to ascertain complex costs' efficiency of tax administrators in 28 OECD countries. Their analysis uses employee costs and IT costs as an inputs and aggregate tax revenue, VAT revenue, CIT revenue and PIT revenue as an outputs. Besides, the same study additionally uses second-stage analysis called Stochastic Frontier Analysis (SFA). SFA is utilized to eliminate influences, which are not under control of decision-making unit (tax administrator in this case). According to Alm and Duncan, such influences are ratio of services and agriculture on GDP and economy openness.

The result of the analysis (Alm and Duncan, 2014) shows that 13 out of 28 countries are relatively efficient at collecting of three types of taxes (CIT, PIT and VAT). Discussing only VAT, 7 of the 27 tax administrators were considered as relatively efficient while collecting this tax.

For the purpose of this paper, different approach was selected. We calculate administration efficiency through a collection coefficient (further referred as "C-Coefficient") using data in a model country (the Czech Republic) for a selected period. C-Coefficient defines the amount of currency units that need to be audited by the tax administrator to reach one currency unit of VAT revenue. The higher the coefficient is, the higher value of transactions needs to be checked by tax authority. Therefore, the higher value indicates less efficient administration system. Such coefficient was not found in the literature[6].

In standard VAT system, the coefficient must be higher than one. The reason lies in VAT deductions, since the associated remittances need to be controlled two times. Once on the side of suppliers, their output VAT is audited by the tax administrator whether it is reported and remitted in correct amount. For the second time, the recipient's input VAT deduction must be checked for its rightfulness. On the other hand, in the general reverse-charge mechanism, the coefficient might be equal to one due to actual VAT collection on the last link of the supplier chain and no need of auditing any VAT transfers within the distribution chain.

3 Methods

3.1 Calculation of the C-coefficient

For the purposes of C-coefficient calculation, consumption was divided into two parts: "final" consumption and intermediate consumption. In further text, the "final" consumption refers not only to the final consumption of households but also to transactions between VAT payers and any subjects

6 Only S. Kryl (2018) has mentioned an idea of the coefficient on the Prague's VAT Forum in 2018.

without VAT deduction right (entrepreneurs - VAT non-payers or a VAT payers who provide VAT exempt supply and, therefore, have no or only partial right to VAT deduction). The intermediate consumption represents transactions between subjects with full VAT deduction right (VAT payers performing fully taxable activity in general).

C-Coefficient is calculated by a top-down approach using macroeconomic data. The C-Coefficient estimates what amount of currency units needs to be audited by tax administrator to collect one currency unit to public budget within current European VAT system. The coefficient is expressed as follows:

Equation 1

$$C - Coefficent = \frac{2 * VRIC + VR}{VR}$$

Where *VRIC* stands for VAT remitted by suppliers in intermediate consumption and *VR* means final VAT revenue collected by tax administrator from "final" consumption in the economy, i.e the output VAT staying in public budgets.

Construction of the coefficient is derived from tax administrator's position in the system. The administrator is obliged to check tax payments for goods and services declared by taxpayers (output tax), but also VAT deduction claims (input tax) as required by credit-invoice method of collection. Consequently, there are two payments that need to be inspected in the case of intermediate consumption and one more payment must be audited at the end of the supply chain (or at the moment when the supply is provided to a recipient who does not have full right to deduct input VAT).

Since direct data on the amount of VAT paid from intermediate consumption are not available, these data were determined from total tax paid on local taxable supplies in the economy (in further text referred as "*TTO*"). *TTO* can be calculated from the aggregate tax bases contained in the summary statistics from all VAT returns filed with the tax administrator (see equation 3). The VAT paid in intermediate consumption (*VRIC*) can be calculated as follows.

Equation 2

$$VRIC = TTO - VR$$

TTO does not include VAT paid on cross-border transactions (i.e. intracommunity acquisitions of goods, imports of goods from non-EU countries and purchases of services from abroad). The reason is that cross-border transactions have different regime as described earlier. In such type of transactions, input and output tax are applied together (similarly to reverse-charge mechanism) in one VAT return by the same VAT payer. For the sake of our calculation, we assume that they do not have to be thoroughly inspected as they do not represent real money flows to/from the Financial Authorities. This would however change in the Definitive VAT system if the output tax was applied

on cross-border supplies by the supplier and the buyer claimed it back. We discuss this issue in the conclusion of the paper.

Accordingly, the calculation of total tax paid on output (*TTO*) is constructed as follows:

Equation 3

$$TTO = \sum (TB_i * r_i)$$

Where *TB* means tax base and *r* stands for corresponding tax rate. The '*i*' represents standard or reduced rate used in the economy.

Integrating the equations mentioned above, the C-Coefficient equals:

Equation 4

$$C - Coefficient = \frac{2 * \sum (TB_i * r_i)}{VR} - 1$$

Based on equation 4, the C-Coefficient was calculated for the period from 2005 to 2018. This was the longest time series possible to quantify administrative efficiency of VAT collection in time as there was different VAT regime before 2005 (the Czech Republic was not a member of EU).

3.2 Data sources and restrictions

We used several sources of data for calculation. Primarily, "Tax statistics" published by Czech Tax Administration Office (Financial Administration, 2020) were utilized. In terms of VAT, tax administration makes publicly available on its website the data from all VAT returns submitted in individual years. These contain the following items[7]:

- aggregate tax bases for local supplies divided for standard and reduced VAT rate
- total claim of VAT on input divided for standard and reduced VAT rate
- total declared tax liability or total excessive VAT claim

Aggregate tax bases from the above statistics were used as TB_i for the calculation of *TTO* in equation 3.

Secondary, VAT rates were found in the Czech Act No. 235/2004 (Czech VAT Act) and used as r_i in the calculation of *TTO* in equation 3. The development of Czech VAT rates is shown in next table:

7 All items are further classified into industries according to NACE classification.

Table 1: The progress of standard and reduced VAT rate in the Czech Republic

Year	Standard VAT rate	Reduced VAT rate
2005	19%	5%
2006	19%	5%
2007	19%	5%
2008	19%	9%
2009	19%	9%
2010	20%	10%
2011	20%	10%
2012	20%	14%
2013	21%	15%
2014	21%	15%
2015	21%	15% / 10%
2016	21%	15% / 10%
2017	21%	15% / 10%
2018	21%	15% / 10%

Source: Czech VAT Act, own processing

Since 2015, two reduced VAT rates were applied in the Czech Republic, but the tax base reported in VAT return was not divided accordingly. Consequently, the calculation of *TTO* based on equation 3 could not be executed accurately with publicly available data. Based on request with the Czech Tax Administration Office, more suitable data on total tax paid from goods and services subject to reduced rates were acquired. Therefore, the *TTO* for the years 2015-2018 were taken from these additionally obtained data (and not calculated by equation 3).

It should be noted that cash VAT revenues differ from accrual VAT revenues reported in VAT returns for the respective periods. In practice, the VAT payers remit their reported VAT liability to the tax authority bank account within certain period after the VAT return is submitted. Therefore, part of the year's VAT liability is being collected in the future (Keen 2013), which leads to shifting of the VAT collection (and associated tax audits) to following years. For the calculation of the C-Coefficient, the annual data on cash receipts to the financial administration bank account were used. These actual VAT revenues are published by Czech Tax Administration Office (Financial Administration, 2020a) as "Collection statistics". We inserted the data series from 2005 to 2018 from these statistics as *VR* in equation 2 and equation 1 to calculate the C-Coefficient.

4 Results

Based on the above described methods, C-Coefficient was calculated for the years 2005-2018. The C-Coefficient equates values between 7.23 and 11.56 in selected years in the Czech Republic. The result means that 7.23 (11.56 respectively) CZK need to be inspected by tax administrator to reach one CZK of tax revenue.

The results, including the necessary data obtained or computed for the calculation, are showed in following table.

Table 2: The C-Coefficient and data used for calculation

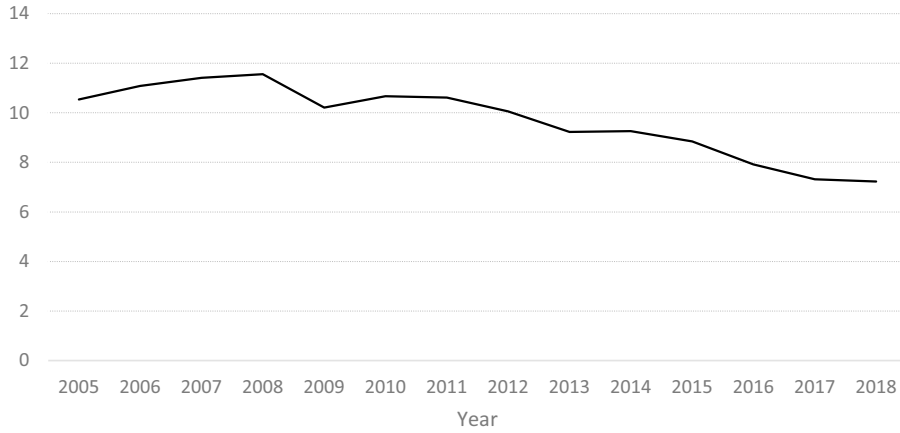
Year	TTO (CZK mil.)	VR (CZK mil.)	VRIC (CZK mil.)	C-Coefficient
2005	1,182,051	204,941	977,110	10.54
2006	1,313,412	217,394	1,096,018	11.08
2007	1,462,928	235,844	1,227,084	11.41
2008	1,600,753	254,939	1,345,814	11.56
2009	1,420,331	253,464	1,166,867	10.21
2010	1,573,219	269,582	1,303,637	10.67
2011	1,597,524	275,188	1,322,336	10.61
2012	1,537,185	278,052	1,259,133	10.06
2013	1,576,543	308,300	1,268,243	9.23
2014	1,655,127	322,662	1,332,465	9.26
2015	1,632,473	331,604	1,300,869	8.85
2016	1,558,538	349,460	1,209,078	7.92
2017	1,586,810	381,435	1,205,375	7.32
2018	1,698,770	413,013	1,285,757	7.23

Sources: Financial administration (2020) and Financial administration (2020a); own calculation

In 2018, total tax paid for goods and services (*TTO*) amounted to CZK 1,698,770 million, which equates approximately EUR 63,500 million. From this amount, over 76% represent VAT paid (and subsequently refunded) in intermediate consumption. That is the reason for rather high C-Coefficient representing the obligation of the tax administrator to audit one CZK collected to public budgets more than 7 times in the year 2018. The year with the highest (worst) C-Coefficient 11.56 was 2008. In that year the financial offices had to inspect each CZK of final VAT revenue more than 11 times.

It is clear from Table 1 that the C-Coefficient has a decreasing tendency, which shows the improving efficiency in VAT collection. The development of the C-Coefficient in the Czech Republic is depicted in the following chart.

Chart 1: The progress of collection coefficient in the Czech Republic



Source: authors

The decreasing tendency indicates that the relative value of audited payments declines, and collection administration efficiency thus improves throughout years 2005 and 2018 in the Czech Republic.

5 Discussion

Since 2010, C-Coefficient decreased every year except for the year 2014. In further discussion, we try to explain this decline and find what factors had an impact on it. We also compare our results to findings of other authors in the field of VAT efficiency.

Primarily, the pressure on the increase of VAT revenues and strong tax collection effort might have had impact on C-Coefficient. More effective tax audits and newly implemented anti-fraud technical instruments, e.g. VAT control statement or Electronic record of sales, could have helped to reduce VAT evasion and generate higher final VAT revenue. Increasing final VAT revenue with the level of intermediate consumption staying at the same level reduces the C-Coefficient value. Increasing VAT efficiency during this period reveals also the annually prepared Study on VAT gap for the European Commission (Poniatowski et al., 2019). According to this study, the relative VAT gap in the Czech Republic is gradually decreasing from 19 % in 2013 to 12 % in 2017.

Secondly, the average number of taxpayers in the production and distribution chain influences the coefficient's value. The fewer taxpayers are in the supply chain, the fewer transitions are effected in intermediate consumption. In such situation, the tax administrators do not have to check so many VAT

transfers and the value of the C-coefficient is lower. This can also be derived directly from the way how the C-Coefficient is constructed. VAT collected and subsequently refunded to VAT payers in the course of intermediate consumption does not enter into final VAT revenue (in the denominator of the C-Coefficient) but has to be inspected twice. Therefore, doubled amount of intermediate consumption is part of the C-Coefficient' nominator. It is apparent that higher number of VAT payers and resulting higher volume of intermediate consumption causes the increase of the C-Coefficient.

Thirdly, when considering proportion of the output tax paid on intermediate and "final" consumption, tax rates are also important. Since there is different consumption structure (in a simplified way, companies have different inputs in comparison to individuals), we cannot anticipate the same average VAT rate in both types of consumptions. Assuming certain given proportion of "final" and intermediate consumption that corresponds to the economic reality of the market, the lower is the average tax rate associated with intermediate consumption compared to average tax rate related to final consumption, the lower is collection coefficient. Explanation is following: Proportionally lower tax rate in case of intermediate consumption causes lower VAT paid in output and concurrently lower VAT deduction rights in intermediate consumption, which leads to a reduced volume of VAT to be inspected by the tax administrator throughout the supply chains. However, in practice, it can be expected that the final consumption of households is subject to lower average VAT rates than intermediate consumption. As VAT is considered to be regressive tax in the short term (Slintáková and Klazar, 2006), the reduced VAT rates are often applied on goods and services which are included relatively more in the consumption basket of poorer households. This policy should increase the progressivity of VAT and thus reduce income inequality. Caspersen and Metcalf (1994) discussed this topic in their paper which was focused on potential implementation of VAT in the U.S and elaborated on the nature of VAT and its potential progressivity in a long term/ lifelong perspective. Therefore, it is common tax policy that the items dedicated for final consumption are subject to reduced VAT rates rather than goods and services used in intermediate consumption (e.g. production).

Fourthly, specific reverse-charge applied to selected goods and services has positive impact on the C-Coefficient value. Under the reverse-charge mechanism, tax is levied by purchaser, who has simultaneously VAT deduction right from the same transaction. Thus, the transaction taxed under the reverse-charge mechanism is tax neutral and does not involve any money transfers between VAT payers and tax administrators. It is not necessary to inspect the tax neutral transactions. Therefore, the size of the C-Coefficient is decreasing. In recent years, the Czech Republic has extended the list of taxable supplies under the reverse-charge mechanism. In 2011, reverse-charge was applied on emission allowances, certain metals, scrap and waste, followed by reverse charge on construction works in 2012 as well as supply of mobile phones, integrated circuits, game consoles, tablets and other commodities in 2015 (Czech VAT Act).

6 Conclusion

Technical instruments against VAT frauds might have had a positive impact on the administration efficiency of VAT payment collection. They generally improve the VAT collection. One of the measures, the specific reverse charge, causes less payments in the system and, therefore, more effective-oriented control by tax administrator. This is particularly interesting finding for the discussion about the Definitive VAT system currently considered by the European Commission.

As explained earlier, the Definitive VAT system introduces the invoice credit method to cross-border transactions and is practically the opposite of the reverse charge. In the Definitive VAT system not only local transactions but also the sales and purchases between the EU Member States would have to be carefully inspected by the financial authorities. The C-Coefficient would increase because the volume of intracommunity supplies would have to be added to the nominator and doubled. The reason is that not only output tax remitted by the supplier through the One-Stop-Shop in the Member State of origin but also the VAT deduction claimed by the purchaser in the Member State of destination would have to be checked. Moreover, the tax authorities would incur additional administration costs associated with the clearance of VAT on the cross-border sales/purchases with other Member States to/from which the goods are delivered.

Another finding of our analysis is that reducing the average number of taxpayers in the production and distribution chain would improve the efficiency of the VAT collection. However, this would not be desirable in terms of competition. Less subjects in the chain would mean concentrating the suppliers and monopolizing the industries. It is believed that one of the VAT advantages is that it does not disturb the competition on the market (Terra and Kajus, 2015). Therefore, increasing the VAT efficiency by means of limiting the number of VAT payers in the chain would not be the right way forward.

The last point to mention is the importance of the average VAT rates applicable in the economy. Usually, the VAT rate on final consumption is lower than the average VAT rate on intermediate consumption which is the objective of the most tax policy makers. However, this setup further worsens the VAT collection efficiency as the C-Coefficient gets higher.

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Impact of Fiscal Policies in Western Balkan SMEs' Growth: Evidence from Kosovo

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ABSTRACT

This paper analyses the impact of fiscal policies on increasing the capacity of SMEs from the manufacturing sector in the Western Balkans, with particular emphasis on those in Kosovo. To achieve empirical results, the data obtained from the opinions of the 100 analysed SMEs were processed through logistic regression. The SPSS statistical software was also used for these statistics. Based on literature review and empirical results, it has been concluded that fiscal policies have an impact on Kosovo SMEs growth. Also in Kosovo and in other Western Balkan countries, fiscal policies and packages have been adopted to support SMEs and have had a significant effect on their activities. Despite the fact that under normal circumstances fiscal support for SMEs has been provided by the governments of these countries, in the near future there should be greater fiscal support to SMEs by means of fiscal incentives due to the devastating effects of the COVID 19 pandemic on each country's economy.

Keywords: fiscal policies, Western Balkans, SMEs, capacity growth, logistic regression

JEL: H20, H30, H32

1 Introduction

The Western Balkans is a geopolitical term and covers six countries which are in the process of accession to the EU (British Council, 2018; Jusufi and Ukaj, 2020). This six countries are: Albania, North Macedonia, Bosnia and Herzegovina, Kosovo, Montenegro and Serbia (Jusufi and Lubeniqi, 2019). Except for Albania, all other countries in this region have been part of Yugoslavia. According to Bartlett and Prica (2016) Western Balkans countries can be referred to as the "Super Periphery" of the European Union (EU). As a result of the bitter past, these countries have suffered greatly. Therefore, The European Union (EU) has contributed to the integration and regional reconciliation of these countries in order to achieve social and economic development through different programmes (Tošović-Stevanović and Ristanović, 2016; Ajdarpašić and Qorraj, 2019). This multiyear investment of the European Union (EU) has influenced the increase of administrative, human and financial capacities of the countries of this region (Ajdarpašić and Qorraj, 2020). Table 1 presents the economic indicators of the countries of this region.

Table 1: Main economic indicators of Western Balkan countries in 2017

Indicators	ALB	B&H	KOS	NMAC	MNE	SRB
Population (million)	2.87	3.50	1.83	2.08	0.62	7.02
Nominal GDP at current prices (EUR billion)	11.58	15.29	6.41	10.06	4.30	39.18
GDP per capita PPP (constant 2011 international $)	11 802	11 731	9 780	13 132	16 465	14 049
Unemployment (% of total active population)	14.1	20.5	30.5	22.4	16.4	13.5
Services, value added (% of GDP)	47.5	55.7	45.8	54.6	59.1	50.0
Industry (including construction), value added (% of GDP)	20.9	23.9	25.6	24.1	15.9	26.4
Forestry, agriculture and fishing, value added (% of GDP)	19.0	5.6	9.1	7.9	6.8	6.0
Employment in services sector (% of total employment)	41.1	48.7	n/a	53.8	74.3	56.6
Employment in industry (% of total employment)	18.6	32.2	n/a	29.8	18.0	24.4
Employment in agriculture (% of total employment)	40.3	19.1	n/a	16.4	7.6	19.0

Source: OECD et al. (2019)

The market of these countries of this region is small and is largely influenced by developments in global markets (Qorraj, 2018). None of the Western Balkan countries can be considered to have a functioning market economy because it does not have the competitive ability to compete in the world market (Holzner and Schwarzhappel, 2018; Jusufi and Bellaqa, 2019). According to Qorraj and Jusufi (2019) entrepreneurs in these countries have limited access to working capital along with limited managerial and technical expertise. Also the inadequate educational system is one of the causes of economic and social stagnation of region where unemployment rates are very hight (Vidovic et al., 2011; Jusufi and Ajdarpašić, 2020).

The global financial crisis has affected the countries of this region more than other world countries and the European average. The reasons for this are the low level of development of the financial system of these countries (Erić and Stošić, 2012). Whereas, restrictive monetary and fiscal policies have been used to achieve macroeconomic stability (Lorena, 2010) but the results in the reform of the economy and the public sector as well as of public institutions are insufficient. These problems continue to be challenges for this region in the future (Osmani, 2016, p. 6). The process of political and economic transformation in this region is based on the development of the private sector in particular on the development of entrepreneurial activities. Also creating a favorable environment for doing business for SMEs. However, the problems that these SMEs face are: Insufficient financial support, non-supportive tax system for SMEs, inadequate and insufficient institutional support (Džafić et al., 2008).

European Charter for Small Enterprises package has been endorsed also by the Western Balkan countries consist of ten key areas to which these countries are required to focus and harmonize their support for SMEs:

1. Proper education and professional training for entrepreneurs;
2. Faster and cheaper and start-ups;
3. Better system of legislation and regulation;
4. Availability of skills;
5. Improving access to the Internet system;
6. Not just single market but also many markets;
7. Financial and taxation matters;
8. Strengthen the technological capacity of small enterprises;
9. Successful e-models and top-class small business support;
10. Develop stronger, more effective representation of small enterprises' interests at national and EU level (Bartlett et al., 2005).

SMEs in WB are not in the best competitive position especially with regard to the international market, taking into consideration their limited capabilities, such as higher transaction costs, adaption costs, low level of technology, and low level of cooperation with international SMEs (Qorraj and Jusufi, 2018). For a long time SMEs did not have fiscal support from public institutions due

to ethnic conflicts fuelled further by expansionary fiscal and monetary policies related to the military conflicts (Uvalić and Cvijanović, 2018). Internal conflicts in the countries of this region have weakened public sector and justice institutions, weakening public confidence in the rule of law (Chapman et al., 2008).

The institutions of these countries, like those of the EU, constantly reformed their tax system by reducing tariffs, redefining tax bases and making changes and clarifications in the interpretation of existing laws. Simultaneously with the reduction of tax levels, the level of deductions and exemptions from taxes was reduced, as a counter-refund for the reduction of tax rates (Krešić et al., 2017, p. 8; Peci, 2013, p. 75; Syka and Kaduku, 2013, p. 150). Value added tax (VAT) is the main source of tax revenue for WB governments. One of the reasons for this is that corporate income tax rates and personal income tax rates are relatively low following widespread adoption of flat tax reforms. Governments of these countries implement policies for the development and growth of SMEs such as reduction of taxes by 65% if 1-10 new jobs are created; 70% if 10-99 new jobs are created; 75% if at least 100 new jobs are created (Bartlett et al., 2017). Also some of the countries of this region have created special economic zones to attract foreign investors (Krasniqi et al., 2019). In these areas international companies will not pay any taxes. These zones are particularly pronounced in Serbia, North Macedonia and Bosnia and Herzegovina. Details regarding the type of taxes applied in the Western Balkan countries are presented in Table 2. Table 2 presents basic data on the type and level of taxes in the 6 countries of the Western Balkans. It should be noted that no country applies anymore the only standard VAT rate, except the Bosnia and Herzegovina, where the tax policy has not changed so much in the last five years. So as can be seen, all of these countries have applied different tax levels in most cases.

Table 2: Tax levels and reduced VAT rates in Western Balkan countries

Countries	VAT	Corporate/ company (income) tax	Personal income tax	Withholding tax on:			Social and health contributions			Inheritance tax	Property tax
				Divident	Interest	Capital, gains	Total	Employer	Employee		
North Macedonia	5;18	10	10;18	0;10	0;10	0;10;15	27	27	0	2-5	0.1-0.2
Kosovo	8;18	3;9;10	0;4;8;10	0	10	5;10	10	5	5	0	0.05-1
Montenegro	7;21	9-11-15	9-11-15	9	0;9	0;9	32.3	8.3	24	3	0.25-1
Albania	6;20	0-13-23	0-13-23	8	15	15	27.9	16.7	11.2	15	1-8
B&H	17	10	10	0;5	0;10	0;10	41.5	10.5	31	2;10	0.05-0.5
Republika Srpska				0;10	0;10	0;10	33	0	33		
Serbia	10;20	15	10-25	15;20	15;20;25	15;20;25	37.05	17.15	19.9	1.5-2.5	0.3-2

Source: AL TAX, 2020

Meanwhile Table 3 presents the data related to the economic freedom of the Western Balkan countries. From the following figures it can be understood that these countries are approximately similar in terms of economic freedom.

Table 3: Index of economic freedom in Western Balkan countries

WB Countries	Tax Burden	Government spending	Fiscal health
Albania	85.9	74.6	86.3
Bosnia and Herzegovina	83.6	49.3	97.3
Kosovo	92.6	76.5	94.0
Montenegro	85.4	32.1	23.4
North Macedonia	91.5	71.0	87.7
Serbia	83.7	49.7	94.1

Source: 2020 index of economic freedom

Recently some WB countries have improved their fiscal sustainability by creating fiscal buffers. This enabled these countries to fund larger support programs. But the region entered the COVID-19 pandemic crisis with more debt than before the 2009 financial crisis. Borrowing needs to increase interest payments across the region as fiscal deficits and rising public debt and tightening financial markets. After overcoming the pandemic, fiscal policy must ensure a balance between supporting the economic recovery and ensuring the fiscal sustainability of these countries (World Bank Group, 2020, p. 1).

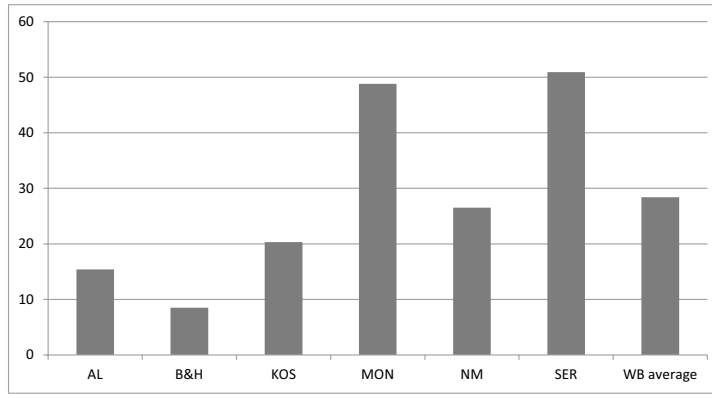
In the following sections the literature review will be done. The literature review will include the characteristics of WB SMEs, a summary of fiscal policies, and the impact of fiscal policies on various economic indicators of developing countries. Then the empirical analysis will be presented, specifically the results of the logistic regression. At the end will be presented the conclusions reached and the confirmation of the raised hypotheses.

2 Literature review

2.1 SMEs sector in Western Balkans

SMEs as economic entities act as catalysts for rapid change and restructuring of the economy in response to changing economic and social conditions (Giurcă and Popa, 2010, p. 1; Ruchkina et al. 2017, p. 260). Over the last decade in the Western Balkans region it has been realized that SMEs have an important role to play in the transition process. Of all the types of businesses, SMEs dominate the economies of the Western Balkan region (Džafić et al., 2007, p. 2). The graph 1 shows the number of SMEs per 1000 inhabitants in this region.

Graph 1: SMEs per 1000 inhabitants in WB region



Source: OECD et al. (2019)

According to Sanfey and Milatovic (2018), SMEs make up about 99% of businesses in this region. SMEs offer jobs for three quarters of the total number of employees, ranging from just under 70% in Bosnia and Herzegovina to more than 80% in Albania. On average, SMEs add one third of the annual value added of countries. This proportion is similar to the EU average, ranging from just over 50% in Serbia to just under 70% in Albania. Therefore, successful SMEs are of great importance to the economies of developing countries or transition economies. Krasniqi and Tullumi (2013) concentrated on a few sets of variables which influence the success of SMEs: Psychological traits, personality, managerial skills and training of entrepreneurs and the external environment. Instinct for independence, innovative orientation, risk attitude, competitive nature, mastery of business skills, availability of capital, previous experience and family support all have an impact on success (Kadriu et al., 2019, p. 401). The total number of SMEs in this region can be seen from the data in the Table 4.

Table 4: Number of SMEs and their share in Western Balkans total firms number

Country	Number of SMEs	Share
Albania	44,173	99.66%
Bosnia and Herzegovina	29,743	99.12%
Kosovo	37,115	99.86%
Montenegro	30,238	99.84%
North Macedonia	55,055	99.73%
Serbia	357,234	99.85%

Source: OECD et al. (2019)

Rehman et al. (2019) analyzed barriers to growth of WB SMEs. The region has great potential for growth and development of SMEs, especially those in the service sector. Within the services sector, retail and wholesale have the highest percentage of SMEs. Public institutions must play a crucial role in improving the conditions that promote better performance for SMEs. The tax system and the improvement of the regulatory environment should also be simplified. Access to finance is a significant factor that determines the growth of SMEs. Therefore, there must be adequate access to finance.

Properly educated workforce is a problem. This workforce must be trained. The most important role of government in this regard is to educate society at all levels of education to practice entrepreneurship. There should be a general policy coordination in this region, so that all measures taken result in a better performance of SMEs. Also according to Nizaeva and Coşkun (2018) there should be effective government policies aimed at increasing SMEs' access to external financing. SMEs need to rely on the following areas to combat slow growth: Credit facilitation, business support services, technology services, entrepreneurship skills and development, and specific initiatives (Bekefi, 2006, p. 13; Leitner, 2015).

From this sub-section it can be concluded that SMEs are of great importance for the economic development of many countries, especially the Western Balkans. Despite this, the number of SMEs in this region is still small and there is no capacity to alleviate unemployment and ensure overall well-being for this region. Also, the SME sector faces many different challenges and problems that hinder the normal development of this sector, which is so vital for the economy of region.

2.2 Fiscal policy and SMEs growth

There is a lot of research on the impact of fiscal policies on economic growth and SME growth of developing countries. However, there is a lack of literature on the impact of fiscal policies on SMEs of the Western Balkans, especially those of Kosovo. According to Korkmaz et al. (2019) there is a positive and significant impact of indirect taxes on economic growth of developing countries, and a negative and significant impact of direct taxes both in the short run and the long run. Taxation is also one of the main tools of governments to influence the enterprise with the aim of increasing its profit (European Commission, 2017, p. 5). Osmani (2014) analyzed fiscal decentralization as a way to achieve effectiveness in the economic system. In Western Balkans, the process of political and financial decentralization has had many shortcomings because this decentralization has not been analyzed from a functional point of view, but from an ethnic point of view. Examples are Bosnia and Herzegovina, North Macedonia and Kosovo. Easterly and Rebelo (1993) analyzed empirically the effect of fiscal policy on economic growth and evidences support a strong association between the development level of the country and the fiscal structure. In developing countries, international trade taxes are important, while in developed economies, income taxes are a priority. Fiscal policy is

influenced by the scale of the economy, measured by its population, investment in transport and communication is consistently correlated with growth. Therefore, the effects of the tax are difficult to assess empirically.

According to Alves (2019) different fiscal policies can have a decided impact on investment decisions of different SMEs. If the government imposes lower taxes on individual income, this could lead to increased aggregate demand for durable and non-durable goods. This brings higher profits and offers new investment opportunities. When the government decides to change corporate tax rates, this affects several sectors. In particular, tax benefits may lead to specialization in higher value-added economic activities for the economy. Moreover, tax raises in property and social security contributions reduce consumption. These tax policies affect the movement of interest rates. This promotes companies' investment decisions. Beca and Nişulescu-Ashrafzadeh (2014) has achieved similar results. Meanwhile Zhllima et al. (2013) emphasize that VAT reduction and excise exemption is very important for agricultural products such as greenhouses. Also Lešnik et al. (2018) confirms that the tax gap is reduced in conditions of economic growth.

The role that fiscal policy should play in promoting economic stabilization has changed in the last decade as a result of conditions and advances in economic research. Auerbach (2017) using a variety of valuation strategies for different countries and different time periods, has suggested that multipliers can be large for both tax and cost changes, and that the effects can be improved during periods of economic slowdown. Taxation in general deals with transferring a part of profits earned in one jurisdiction to the state budget of that jurisdiction (Grubišić and Ćevizović, 2008, p. 115). Balseven and Tugcu (2017) analyzed the impact and role of fiscal policy on the welfare and income of certain countries. Tax revenues alleviate income inequality in developing countries while social benefits alleviate income inequality in developed countries. Also, economic growth has a negative impact on income distribution in developing countries, while economic growth and inflation have a positive impact on income distribution in developed countries.

When public debt does not exceed the present value of the expected primary budget surpluses we have fiscal sustainability. Shevchuk and Kopych (2018) support fiscal policy aimed at increasing government revenues combined with cuts in public sector spending, in case the current policies are not sufficient to achieve fiscal sustainability. Any attempt to lower the interest rate and stimulate output growth from an expansionary monetary stance is likely to be counterproductive in the presence of significant public external debt at risk of exchange rate misuse. Ćorić et al. (2015) asserted that only coordinated monetary and fiscal expansion can stimulate economic growth in developing countries without compromising exchange rate stability. Both expansionary policies have positive effects on economic activity while the effects on the nominal exchange rate are in the opposite direction. In volatile conditions, public institutions need to implement more prudent fiscal policies in the expansive phase of the business cycle, to stimulate growth in

future economic slowdowns. The budget is a framework for expenditures on income and expenditures for one year. It defines policies and programs aimed at achieving government development objectives. Oke (2013) states that government should try to include more capital expenditures in that budget to accelerate the recording of an annual increase in the value of the growth process brought about by the future effect of capital investments.

Fiscal deficit is a problem that many countries face. As a result of expansionary fiscal policies, the fiscal deficit has increased significantly in developing economies. Tung (2018) showed that in all periods the fiscal deficit had a negative effect on the economic growth of developing countries. Policymakers need to make greater efforts to reduce spending. The public budget is not spent to maintain a large state-owned sector because government spending on this sector causes a prolonged budget deficit. The government should generate more revenue from domestic tariffs and taxes, which are obtained from luxury products and services from foreign countries. Similar results have been achieved by Velnampy and Achchuthan (2013). If government institutions aim to implement more effective fiscal policies that would be a useful part of investment policy, it is essential to provide tax law entrepreneurs with the security of using tax incentives that they can understand without much effort and extra risk. in their interpretation and implementation of the business. Thus, the sustainability of the implemented fiscal policy is ensured (Bogovac and Hodžić, 2014, p. 68).

Ezejiofor et al. (2015) concluded that taxation as an element of fiscal policy has a significant impact on the performance of SMEs. The performance of SMEs determines the amount of tax to be paid. Governments should be sensitive to changes in taxes and other macro-environmental elements, enabling productive sectors to adapt to the dynamic environment. Another study conducted by Eze and Ogiji (2013) claims that government expenditure have positive and significant effect on manufacturing sector output, while government revenue have negative and significant impact on manufacturing sector. The result also reveals that there is longrun relationship between fiscal policy and manufacturing sector output, as evidenced by the co-integration. Augustine and Asiedu (2017) reached a significant impact of monetary policy on the performance of SMEs in terms of employment growth. Despite the high interest rates, SMEs that manage to reduce lending rates have a higher growth in terms of employment. Fiscal policy in terms of tax perceptions is less related to the performance of SMEs. To empower SMEs, relevant institutions need to constantly monitor the financial system in order to minimize the large spread of lending in an environment with high rates. Atawodi and Ojeka (2012) studied the impact of tax policy on SME growth. Tax regulations should be simplified in order to facilitate the activity of SMEs. Tax administrators need to perform their duties more efficiently with integrity. This solves the problem of multiple taxes. SME owners should also be educated on tax payment issues.

Kukanja and Planinc (2018) analyzed the efficiency of SMEs in Slovenia after the government's implementation of fiscal cash registers. Revenue growth was achieved as a result of fiscal cash registers. This increased the efficiency

of financial data. Tee et al. (2016) asserted that changes in tax rates lead to changes in the prices of goods and services. Increasing tax rates cause higher costs of production, distribution and sales. These increase prices and with rising prices change consumer behaviors. People buy fewer products as a result of high prices. Whenever prices rise due to rising tax levels, the level of consumption falls and this affects the development of SMEs. Paying taxes reduces the purchasing power of an SME because a large amount of money raised is used to pay taxes instead of SME growth.

The results of Gbande et al. (2018) show that major determinants of SMEs growth are policies directed on tax rate reduction and stability, and government expenditure on infrastructure targeting. The policy insinuation therefore, is that fiscal policy should be set in such a way that the objective it wants to achieve is clearly and transparently defined in response to the dynamics of the domestic and global economic developments. The government should maintain its expenditure on infrastructural developments, as this will have a multiplier effect on the growth of SMEs activities and enhance the overall economic growth. Gupta et al. (2013) claim that among economic environment factors fiscal policies affect SMEs growth. Meanwhile Yusuph and Youze (2014) emphasize that the government should provide basic fiscal and monetary conditions for SME development, such as political stability, favorable macroeconomic conditions in terms of low inflation and a real exchange of interest and interest rates, low levels of import protection in the sense of the absence of quantitative restrictions and relatively low uniform tariffs and an efficient legal system. Policy instruments and support measures at the national sector and at the SME level should be well addressed and classified into three types: Enticement Policies, Supply-side policies and Bunch Policies.

According to Sivalingam and Bhaskaran (2005) VAT could lead to new investment opportunities for SMEs because in case many products inclusive of VAT costs is more to consumers in a location far away from the place of manufacturer as a result of value added by transportation, storage and trade chain margins, this would make it attractive for entrepreneurs to start a production facility near the last point of consumption and gain a share of the existing market. Mach (2018) analyzed VAT rates and their impact on business and tax revenue and he emphasizes that reducing a tax rate which is higher than the revenue maximizing rate would be good for everybody.

Manzo (2011) claims that the productivity growth of SMEs is more sensitive to changes in the corporate tax rate than that of larger and older firms. The reasons for this are not immediately clear although they suggest that this could be due to the difficulties that SMEs have in accessing debt finance. According to Wadesango et al. (2018) the self-assessment system requires constant education of taxpayers, as there are always new emerging laws and revision of tax legislation. Other factors that affect SMEs in compliance are the speculations of corruption within those charged with governance on the use of tax monies, the lack of transparency on public sector funds raises a negative attitude towards tax.

Other issues that affect SMEs on complying through Self-assessment system are complexity of the tax legislation and as previously stated the economic environment is a probable cause for tax evasion. The complexity of tax legislation has caused SMEs to fail in the application of exemptions and other benefits such as capital allowances, wear and tear and allowable deductions. A tax incentive grant to SMEs encourages a positive attitude towards tax and encourages SME growth and public funds transparency is also to be considered. Matarirano et al. (2019) studied impact of tax compliance costs on business performance. According to their findings internal tax compliance costs were found to have the heaviest burden on small businesses, and thus had the strongest impact on performance. External tax compliance costs were found to have a negative effect on business performance. These authors recommend proper tax planning for small businesses to enjoy the benefits associated with tax compliance costs. To improve on their performance, small businesses are advised to undertake tax tasks in-house.

The study of Pope and Abdul-Jabbar (2008) has shown that the most important policy area that should be addressed is to recognize fully the compliance burden of the SMEs at the national level. Accordingly, establishment of relevant committees, similar to the Beddall Committee and the Small Business Deregulation Task Force in Australia, involving all relevant parties, relevant SMEs organizations, tax professionals and academics, is recommended. Feyitimi et al (2016) claim that tax incentives are germane to the growth, development and continued sustenance of SMEs. Tax incentives play a vital role in ensuring that SMEs thrive. There was a significant correlation between taxation and SMEs' growth. The study recommends that there should be a friendly tax policy for all startup businesses preferably a tax holiday, or an introduction of a growth limit which can be said to be a level stable enough to sustain tax payment. Also Twesige and Gasheja (2019) in their study emphasize that there was a strong positive and significant relationship between tax incentives and the growth of SMEs. The study concluded that tax incentives are the key to the sustainable growth of SMEs. The government should design policies that specifically address issues related to the sustainable growth of SMEs.

Mungaya et al. (2012) studied the effect of tax incentives on SMEs growth and SMEs which are not registered cannot benefit from the tax incentives. The many SMEs that operate in the informal sectors cannot benefit from growth incentives. The findings of the study also show that SMEs that have not prepared books of accounts and payroll summaries as they have a small number of employees cannot benefit from tax incentives. The same applies to SMEs whose owners are business employees, who do not take into account the principle of business as a separate entity from the owner and employment status. Due to this fact the tax imposed on them is based on approximations which may not reflect the true picture of business' turnover. As a result, the business may be charged a huge amount of tax compared to what it would probably pay if books of accounts and payroll summaries were maintained.

3. Tax policy and system in Kosovo

Having in mind that Kosovo is transitioning from a socialist, centrally-planned economy to a capitalist, market economy, with a decade of existence as a parallel ineffective state, a devastating conflict in between the transition, and a half-decade rule of international community where the primary concern were human rights, it is not surprising that tax policies and their effect have not been a priority for researchers. In terms of tax incentives, it can be argued that other than basic tax incentives import tax exemptions and VAT exemptions for a few goods and services, there are no major tax incentives foreseen in the Kosovo laws. Recent developments regarding free economic zones are preceding changes in tax incentives. Tax rates in Kosovo are low compared to other countries in the region or in Europe but Kosovar manufacturers still find them to be high, mainly because they operate in an environment where the cost of doing business is already high. They are thus driven to informality, which among other adverse effects, such as lower opportunities to get credit, also makes them vulnerable to tax officials' arbitrariness and extortion, creates conditions that are conducive for unfair competition, and further increases their cost of doing business (Ministry for Foreign Affairs of Finland & UNDP, 2014).

In Kosovo creators of tax policy in 2009 did a reduction of tax norms in two main forms of direct taxes, Corporate Income Tax (CIT) from 20% to 10% and Personal Income Tax (PIT) from 0%, 5%, 10% and 20% to 0%, 4%, 8% and 10%. At CIT, the aim was through reduction of tax norm, to increase the competition capacity of Kosovo vis-à-vis Foreign Direct Investments, respectively CIT norm to be harmonized in the level of existing norms of CIT that were already existing in Western Balkan countries. At the case of PIT creator's aim was to achieve another objective, that of fighting fiscal evasion, respectively attracting tax subjects so that by stimulating with tax burden they move from subjects of gray economy to subjects that manage to carry out their tax obligations. At the increase of VAT norm from 15% to 16% designers had fiscal intentions, respectively the aim was to be done the compensation of public incomes that would be lacking along with decreasing of tax norms of CIT and PIT.

On September 2015, the amendments to the Law No. 05/L-037 on Value Added Tax (VAT) entered into force. The standard rate is 18% (previously 16%). This represents a 50% decrease from the initial standard rate of 16%. Considering the importance of VAT on budget revenues, in order to make up for the lost revenues with the introduction of the reduced rate, the Draft Law on VAT foresees an increase of the standard rate from 16 to 18% for all other remaining categories. In the meantime, the rate of 0% is applied to exports with the aim of stimulating export-oriented firms. At VAT, creator's aim was that through reduced rate of 8% tax policy to be more in realizing social equality. Except decreasing of tax norms, Kosovo has applied few numbers of tax incentives to CIT in order to simulate foreign investors. Tax incentives mainly are related to CIT. Therefore, Kosovo in comparison to the compared countries, it very little applies tax incentives, by making tax policy and tax system in this segment not being in function of economic development (Peci 2016).

Through the variable *Impact of the tax administration* we have tried to analyze the impact of the institution of tax administration on the business activity of SMEs. So how effective are the activities of this institution in increasing the functionality of the analyzed SMEs. From descriptive statistics it can be understood that this institution is often effective in performing its tasks towards SMEs. While this variable does not represent significance in logistic regression. According to World Bank Report (2014) Kosovo institutions need to strengthen the tax administration by developing the quality of tax inspectors, improving risk assessment modules, stepping up efforts to combat tax evasion, and increasing random audits to assess areas for improvement in risk assessments. To better understand Kosovo's tax system we can rely on the data in the Table 5.

Table 5: Tax types in Kosovo

Tax type	Turnover threshold	Tax rate
Value Added Tax- VAT	30000 E	8% and 18%
Corporate Income Tax- CIT Manufacturing, trading and transporting industry, etc Service industry	under 50000 Euro	 3% 9%
Personal Income Tax- PIT Manufacturing, trading and transporting industry, etc Service industry	under 50000 Euro	 3% 9%
Corporate Income Tax- CIT	over 50000 E	10%
Personal Income Tax- PIT Annual income from 0 to 960 Annual income from 960- 3000 Annual income from 3000- 5400 Annual income from 5400 and over	over 50000 E	 0 % 4 % 8 % 10 %
Tax on wages (monthly) Annual income from 0 to 80 Annual income from 80- 250 Annual income from 250- 450 Annual income from 450 and over		 0 % 4 % 8 % 10 %
Tax on rents, interests and Royalties.		10%
Tax on special categories		3%
Tax on non-residents		5%

Source: Tax Administration of Kosovo (2020)

The Government of Kosovo made a number of decisions for fiscal adjustment. Among other things, these decisions are related to the approval of new drafts:

a. Value Added Tax (VAT);

b. Corporate Income Tax;

c. Personal Income Tax.

Under Article 6 of the Draft Law on VAT, the threshold of VAT is reduced of 50 000 € as current law is 30 000 €. So any business that performs turnover over 30 000 € per year, will be obliged to register for VAT and pay the portion that exceeds this amount. Budget would benefit from this reduction in the VAT threshold because a greater number of businesses will be obliged to pay VAT. This fiscal policy will burden the new businesses and small businesses, especially those services that have lesser levels of supplies. It is exactly the new businesses that need fiscal incentives and which potentially create new jobs. VAT is charged with the standard rate of 18%. Notwithstanding paragraph 1 of this Article, the reduced VAT rate is calculated and paid 8% for the supply of goods and services, as well as their import (Statovci and Asllani, 2017).

In addition to these decisions, Fiscal package 2.0 has been approved by the government of Kosovo in 2017 and provides tax exemptions for new businesses, from three to seven years, depending on the amount invested and the number of employees. We have tried to get the opinions of Kosovo SMEs regarding the effects of this package through *Impact of fiscal package 2.0* variable. Most of the surveyed SMEs stated that this package has had a positive impact on their business activity. This variable is significant. The last variable is *Fiscal policy functionality* through which we have tried to obtain the opinions of SMEs analyzed on the functionality of fiscal policy. A large number of SMEs analyzed stated that fiscal policies in Kosovo are functional so they are at the service of businesses. Also the results of logistic regression show that this variable has a positive relationship with the dependent variable. So the more functional the fiscal policies in Kosovo, the more the capacities of SMEs will increase.

Asllani (2011), Asllani et al. (2020) claims that Kosovo's budgetary sustainability requires improvements in tax collection and administration processes, an increase in fiscal culture, the establishment of a complete, advanced and enforceable legal framework, better definition and full implementation of policy good government in terms of budget expenditures, elimination of corruptive phenomena, very good control of the movement of goods at the border and within the country and a continuous reduction of the informal economy and tax evasion. All this will enable better quality revenue collection, thus ensuring the growth of SMEs. According to Kryeziu (2019) one of the objectives of the tax policy norms in Kosovo, is to continuously improve and design tax system. Whereas, as far as trade relations between states are concerned, the primary purpose of this policy is to make efforts to harmonize taxes at EU level, as the pronounced difference in tax rates can break down and `regulate market competition at EU level. In addition to the improvements made, the countries of the Western Balkans also face many challenges in terms of fiscal

policy. The Table 6 is a summary of the challenges and recommendations to be made by the institutions of the Western Balkan countries.

Table 6: Challenges and policy recommendations of fiscal policies in Western Balkan countries

Country	Challenges	Recommendations
Albania	High debt and financing needs, heavily dependent on banks	Fiscal consolidation largely through revenue measures and phasing out energy subsidies
B&H	Balance the need for further fiscal consolidation with supporting growth; composition of spending	Contain current, non-disaster related spending, notably wages and benefits; improve the quality of public spending; continue ongoing efforts to improve revenue collection and administration
Kosovo	Safeguard fiscal sustainability, arrest the worsening composition of the budget	Wage and benefit moderation; improve tax compliance; shift tax policy gradually towards domestically collected taxes
North Macedonia	Rebuild buffers and safeguard sustainability of public finances and the exchange rate peg	Fiscal consolidation embedded in a comprehensive spending review
Montenegro	High and rising debt, preserving market access	Fundamental expenditure reform on pension system and public sector wages
Serbia	High debt, increasing debt dynamics	Ambitious and sustained fiscal adjustment through wages and pensions, reducing state aid to weak state-owned enterprises

Source: IMF 2015, 108

Abdixhiku et al. (2018) claim the importance of institutional elements and the tax rate. Slow reforms, high corruption and high tax rates reduce the amount of taxes paid by SMEs to transition economies. In these economies, government reforms are key to combating tax evasion. According to BSC Kosovo (2013), It is assumed that in Kosovo about 50% of turnover is not declared by businesses to the tax authorities. Despite this, tax collection has improved as a result of stricter control by tax administration officials. Therefore, based on these data, it can be said that the tax administration has a tremendous impact on the functionality and effectiveness of fiscal policies and the fiscal system in developing countries. Asllani (2015) claims that Kosovo has a poor

collection of the incomes. Mostly dominate border taxes (excise, customs fees, VAT) with tendency to fall down slowly and beside this a symbolic increase of internal taxes. The intention of government policy should be oriented in the collection of the taxes inside the country not to be collected at the border. Certainly to achieve the objective in collection of the incomes within the economy the country, needs time and to build institutional and economic capacities. Also, at the local level should be done more not only in the most incredibly completion in the field of harmonization of legislation but should increase the efficiency even in cases of collection of funds and also should be done the fiscal decentralization. Another important component is the issue of government spending, as those costs burden the budget and where they are oriented.

4 Methodology And Data

Empirical research has involved the collection of data using survey. The process of data collection took place between November 2019 and March 2020. We analyzed 100 Kosovo manufacturing SMEs that currently operate in Kosovo market. The target audience, focus on CEOs, and production managers of manufacturing SMEs in all regions of Kosovo. The interview of the respondents lasted 50 minutes. Due to the nature of the empirical problem, face-to-face interviews were conducted. We selected data for these SMEs from Ministry of Trade and Industry of Kosova. In logistic regression the dependent variable has two categories 1 and 0. Like ordinary regression, logistic regression can include some independent variables, which can be quantitative or qualitative. The logistic regression model can be written as follows:

$$\text{logit}\,(p) = a + b_1x_1 + b_2x_2 + \ldots + b_ix_i \quad (1)$$

Logistic regression makes it possible to understand the impact of the dependent variable on the independent variables. The suitability of the formulated model can be assessed using several methods (Bewick et al., 2005)

The logistic regression equation is as follow:

$$P\,(Y_i = 1) = (\beta_0 + \beta_1 \text{Business duration} + \beta_2\ \text{Education background} + \beta_3\ \text{taxes} + \\ + \beta_4\,\text{Impact of the tax administration} + \beta_5\ \text{Impact of fiscal package 2.0} + \\ + \beta_6\,\text{Fiscal policy functionality} + \varepsilon_i \quad (2)$$

Table 7: Variables of logistic regression

Dependent variable	Variables descriptions and measurement
Capacities growth	1- if the capacities increased, 0-otherwise
Independent variables	Variables descriptions and measurement
Business duration	1 to 5 years (reference category), 1. 6 - 10 years, 2. 11 - 15 years, 3. 16 - 20 years, 4. 20+ years
Education background	Low (reference category), 1.Secondary, 2.High, 3. Master of science level employee, 4. PhD level employee.
Impact of taxes on business constrain	Never (reference category), 1.Rarely, 2.Sometimes, 3.Often, 4.Always
Impact of the tax administration	Never (reference category), 1.Rarely, 2.Sometimes, 3.Often, 4.Always
Impact of fiscal package 2.0	1- Yes, 0-otherwise
Fiscal policy functionality	1- Yes, 0-otherwise

Source: own calculations

The model will be tested to determine if there is a relationship between the fiscal package 2.0 and SMEs capacity growth, as well as tax constraint and SMEs capacity growth. Therefore, the hypotheses of this paper will be:

H1: No relationship between tax constraint and SME capacity growth;

H2: Positive relationship between fiscal package 2.0 and SME growth.

H3:Tax administration has a positive impact on the functionality of fiscal policies in developing countries such as Kosovo.

SME capacity growth is the dependent variable. There is a lack of research that has used sales as a dependent variable to measure SME growth. SME growth is associated with strong survival and achievement of organizational goals (Rexhepi Mahmutaj and Krasniqi, 2020, p. 30). The dependent variable is capturing period of 2015–2019. SME representatives were asked if their capacities had increased during this period. 68 of the surveyed SMEs answered that YES have increased their capacities, while the rest answered that NO their capacities have not increased.

5 Results

The Table 8 presents the descriptive statistics for each analyzed variable. So in this table are presented the answers of the representatives of the analyzed SMEs.

Table 8: Descriptive statistics

Variables	Frequency
SME capacities growth	
1- if the capacities increased	68
0-otherwise	32
Business duration	
1 - 5 years	11
6 - 10 years	26
11 - 15 years	28
16 - 20 years	20
20+ years	15
Education background	
Low	6
Secondary	39
High	45
Master of science level employee	8
PhD level employee	2
Impact of taxes as business constrain	
Never	10
Rarely	5
Sometimes	44
Often	36
Always	4
Impact of the tax administration	
Never (reference category)	1
Rarely	13
Sometimes	7
Often	49
Always	30
Impact of fiscal package 2.0	
Yes	61
Otherwise	39
Fiscal policy functionality	
Yes	84
Otherwise	16

Source: own calculations

The Table 9 shows the data or results from the logistic regression. Their comments will show what impact each independent variable has on the dependent variable or on increasing the production capacity of the analyzed SMEs.

Table 9: Logistic regression results

Variables	B	Std. Error	Wald	df	Sig.	Exp (B)
Business duration						
1 - 5 years (reference category)						
6 - 10 years	1.167	1.046	1.222	1	0.068	0.954
11 - 15 years	1.230	0.566	1.296	1	0.042**	1.023
16 - 20 years	1.165	0.423	1.185	1	0.091	0.951
20+ years	1.241	0.863	1.327	1	0.085	2.032
Education background						
Low (reference category)						
Secondary	-1.006	0.556	1.185	1	0.062	1.942
High	1.422	0.423	1.369	1	0.058	0.133
Master of science level employee	1.216	0.359	2.066	1	0.126	1.011
PhD level employee	1.365	0.502	2.455	1	0.143	0.627
Impact of taxes as business constrain						
Never (reference category)						
Rarely	1.158	1.006	1.533	1	0.679	1.039
Sometimes	1.237	1.036	1.452	1	0.023**	0.827
Often	1.697	1.569	2.036	1	0.593	0.648
Always	1.324	1.098	1.556	1	0.752	0.863
Impact of the tax administration						
Never (reference category)						
Rarely	1.235	1.023	2.552	1	0.094	0.956
Sometimes	-1.558	0.856	2.435	1	0.103	0.639
Often	1.654	0.795	1.221	1	0.087	1.236
Always	1.698	1.033	1.563	1	0.076	1.498
Impact of fiscal package 2.0	2.356	1.008	2.030	1	0.047**	3.569
Fiscal policy functionality	1.876	0.963	1.783	1	0.075	1.911

Notes: **significant at 5%. Source: Own calculations.

The first category *1 to 5 years* of the first variable *business duration* is reference category. This category will not be included in the logistic regression calculations. While other categories of this variable will be compared with the reference category. Categories *6 to 10 years* and *16 to 20 years* are in negative relation to the reference category because their values are (0.954) and (0.951). With the increase of these values, the production capacities of SMEs decrease. *11 to 15 years'* category is significant category. Gashi (2014) has achieved similar results in terms of business experience or duration of Kosovo SMEs.

As for Education background variable *low education level* category is reference category. *High* and *PhD level employee* categories are in negative relation with reference category. As the values of these categories increase, the influence of the reference category decreases. The more these SMEs hire employees with higher education the more the number of employees with lower level of education will decrease. The average salary in Kosovo ranges from 350 to 450 Euros. The trend of the salaries has been increasing 5 to 10 percent during the last three years, and this trend is being expected to further increase in the coming years. An obstacle regarding employee recruitment is that of low qualified applicants in the field of food engineering. Therefore, in most of the SMEs outsource food-engineering experts from EU countries or from other neighboring countries. Another problem that SMEs face when recruiting and hiring new employees is considered the low willingness and low interest of youth for handicraft work (Riinvest Institute, 2016, p. 49).

Regarding *Impact of taxes as business constrain variable*, most SMEs (44) have declared that taxes sometimes pose a problem for their business activity. This category is also significant. Based on the responses of SMEs and the results of logistic regression, it can be said that taxes do not pose a major problem for the development of business activities in Kosovo. But this only applies to normal conditions, because in the current conditions where COVID 19 has hit the economy of every country hard, it cannot be said that taxes do not pose a major problem for SMEs. In the current conditions, SMEs are not carrying out normal activities and this will affect the payment of taxes. There is lack of research on the impact of tax rates or tax incentives on private sector investments and economic development in Kosovo. The lack of consistent, detailed and reliable data in Kosovo has made any such efforts difficult or even impossible. Kosovo has undergone a process of institution-building only recently and has only now started to accumulate tax records or enterprise surveys that can be used to build longer time series and analyze trends.

6 Conclusion

Fiscal policies are very significant for general development of all countries. Through them, social equality is achieved, the development of enterprises through their support by easing taxes and fees, etc. From the literature review it can be claimed that the countries of the Western Balkans have made considerable efforts to formulate fiscal policies in line with the contemporary needs of business and other stakeholders. Many reforms have been made

which have been requested by the EU institutions, with the aim of bringing the fiscal policies of this region closer to those of the EU. All this was done during the process of integration of these countries into the EU. Harmonization of fiscal policies is one of the key elements that enables faster integration of these six countries in the EU.

This region has similar economic indicators. Therefore, the empirical evidence obtained from the analysis of Kosovo SMEs can be applied to other countries, simply a comparison sample can be taken for further studies. Our first hypothesis is *No relationship between tax constraints and SME capacity growth* and based on the results achieved, it can be said that tax-related barriers or tax constraints are not a major barrier to the business activity of these SMEs. So the level of taxes in Kosovo does not hinder SMEs much to carry out their business activities. However, despite this result, it can be said that in the near future as a result of the crisis caused by COVID 19 taxes will be a major barrier to the development of business activities in Kosovo and other Western Balkan countries.

Our second hypothesis is *Positive relationship between fiscal package 2.0 and SME growth*, which can be proved to be accurate because it is significant and has a positive relationship with the dependent variable SME capacity increase. This package has had a positive role on the business activity of SMEs in Kosovo. Similar packages have been adopted in other countries of the Western Balkans, so any initiative taken by public institutions for fiscal relief is very beneficial for businesses in each sector. Despite the positive results, it is recommended that in the near future due to the crisis by COVID 19, the countries of the Western Balkans adopt special fiscal packages aimed at supporting SMEs to overcome the economic and financial consequences of this pandemic. In Western Balkan countries there are many fiscal and public policies aimed at increasing SMEs and expanding their business activity, but so far there have been very few such studies that have researched their effect on SMEs. Therefore, the added value of this paper lies in the research of such an important topic for the financial sustainability of these countries.

As for our last hypothesis Tax administration has a positive impact on the functionality of fiscal policies in developing countries such as Kosovo, it can be said that the tax administration plays an important role in this regard. Therefore, the more organized and legally strong this administration is, the more effective will be the fiscal policy and its instruments in developing countries. This assertion is also supported by the empirically obtained data of our paper.

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Formation of Territorial Community as a Subject of Local Development

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ABSTRACT

The study contains an analysis of the essence of decentralization and its impacts on the creation of territorial communities. Scholarly views on the essence of the concept of 'territorial community' are presented and its features mentioned. The factors that determine the regional development of the territorial community as a subject of economic relations in the region have been identified. The legislative regulation of the process of creation and development of territorial communities is analysed and the shortcomings of the current situation are pointed out. The degree of decentralization over the period 2018–2020 is briefly analysed and a description of the methodology for assessing the viability of the created territorial communities is given. It is emphasised that the methodology of formation of affluent territorial communities is described in the 2015 Ukrainian legislation and approved by the resolution of 8 April No. 214 "The methodology of formation of affluent territorial communities". The calculated indicators are given on the example of the Stepanivska united territorial community and its prospects of development are estimated. Recommendations for improving the conditions of formation and development of territorial communities in the conditions of decentralization in Ukraine have been developed. The empirical methodology used in the study proved to be liquid and can be applied in practice to the formation of the territorial community as a subject of local development.

Keywords: *administrative-territorial unit, decentralization, local self-government, territorial community*

JEL: R0, H70, H83

1 Introduction

The territorial community as the main subject of local self-government in Ukraine has been the subject of study of many scholars, in particular Baranovska T.M. (2014) defines a territorial community as a group of individuals who permanently reside in the relevant territory and are interconnected by territorially personal ties of a systemic nature. The scientist defines the territorial, integrative, intellectual, property and fiscal features as the main characteristic ones of the territorial community. This statement seems to be the most successful, so in the article the term "territorial community" will include this content and will consider the united territorial community in view of the features proposed by the scientist.

The understanding of the systemic changes in the environment, in which an objectively determined trend of increasing community autonomy is developing, which is taking place in world economics, has not yet been properly reflected in studies of decentralization in Ukraine. The available publications of a practical direction provide rich empirical material, however, unfortunately, do not advance in the direction of the theoretical comprehension of this phenomenon. Decentralization is deprived of a holistic scientific and theoretical justification, which leads to underestimation and disregard for its systemic consequences, which may contain both a multiplier potential for reform and significant risks.

The purpose of the study is to analyze the peculiarities of the formation of the territorial community as a subject of local development.

2 Methods

The research methods used in the study are**:** search on the available methodical and scientific literature with the analysis of the found material, comparison, classification, designing, clarification of causal relations, systematization, abstraction and concretization, analysis of documentation and results of activity of researchers on the problem of the conducted research.

3 Results

The decentralization reform aimed at creating a modern system of local self-government in Ukraine is based on European values of local democracy development, empowerment of territorial communities, ensures economic development of individual territorial communities and the region as a whole. Regional development depends on the results of the territorial community as a subject of economic relations in the region, the performance of functions by the territorial community, the financial basis for the functioning of the territorial community. The directions of further research on the impact of the development of united territorial communities on regional development are the improvement of planning and strategic documents of communities, local programs; administration of tax and non-tax revenues; optimization of

budget expenditures; settlement of procurement activities; deepening community asset management work; building an internal control system.

At the beginning of our study we will define the concept of "territorial community" in the views of scholars. According to the scholar-lawyer Bibik and Shapoval (2019), who accumulates the views given in the constitutional and legal literature regarding this term, the territorial community is the primary subject of the local government, consisting of individuals - residents (citizens of Ukraine, foreign citizens, refugees, internally displaced persons) who permanently reside , work in the territory of a village (or voluntary association in a common community of several villages), settlement or city, directly or through the municipal structures formed by them solve issues of local importance, have common communal property and are connected by individual-territorial ties of systemic nature . This definition reflects mainly the axiological and socio-political nature of municipal power.

Bulkovsky (2013) defines the territorial collective as a social community, which is formed within the common residence of citizens and based on socially necessary, socially conditioned activities carried out by a group of people united by interests in political, socio-economic and cultural life. Lipentsev and Yu. S. Zhuk in their study determined that the territorial community is the basis of local self-government in Ukraine and they revealed the process of formation of the local government system and the constitution of territorial community as its primary subject, which activates deep processes of political and socio-economic renovation of society and the state, which is objective and therefore an indispensable prerequisite and important factor in the reform process that takes place in our country and aims to build a democratic, legal and social state (Lipentsev and Zhuk Yu, 2015). Scientists Popok and Popov considered the territorial community (local community) as a set of individuals who permanently live in the certain territory and are interconnected by territorial-personal ties of a systemic nature (Popok, 2017). Thus, a feature of the territorial community is socio-demographic interaction, that is, neighborly relations, common rules and norms of behavior, a sense of belonging and involvement in community events, psychological identification of human interests with community interests, common moral and ethical values. Only such a social combination in the population makes it possible to understand such social cumulation, and hence the social orientation, the content of the municipal activities of the territorial community.

The Law of Ukraine "On Local Self-Government in Ukraine" determines the territorial community as a set of residents united by permanent residence within a village, town, city, which are independent administrative-territorial units, or a voluntary association of residents of several villages with a single administrative center (Article 1). It is the primary subject of local self-government, the main bearer of its functions and powers. Socio-legal structure of the multifaceted phenomenon "territorial community" contains the concept of population as a social community of inhabitants united by common activities, interests and goals to meet the needs of life, living environment, recrea-

tion, education, communication (The Law of Ukraine "On Voluntary Association of Territorial Communities", 2015).

Among other legislative documents of Ukraine concerning the organization and functioning of territorial communities, the following can be singled out: the State Strategy for Regional Development for 2020, approved by the Cabinet of Ministers of Ukraine; the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Decentralization of Powers in the Sphere of Architectural and Construction Control and Improvement of Urban Development Legislation"; the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine (Regarding Voluntary Accession of Territorial Communities)" facilitates the procedure of voluntary association of territorial communities, the right of communities to join the already established one under a simplified procedure; the Law of Ukraine "On Amendments to the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" and some other legislative acts of Ukraine on decentralization of powers for state registration of legal entities, individual entrepreneurs and public entities"; the Law of Ukraine "On Amendments to the Law of Ukraine "On State Registration of Corporeal Rights to Real Estate and Their Encumbrances" and some other legislative acts of Ukraine on decentralization of powers for state registration of corporeal rights to real estate and their encumbrances"; the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Expanding the Powers of Local Self-Government Bodies and Optimizing the Provision of Administrative Services" (The Law of Ukraine "On the Local Elections", 2015).

Today, the issues of amending the Constitution of Ukraine on decentralization of power and the principles and procedure for resolving issues of administrative-territorial organization of Ukraine remain unsolved. Such amending will provide a legal basis for the adoption of a chain of laws needed to implement local government reform and territorial organization, which will form the basis for the formation of promising territorial communities and ensuring the universality of local self-government, mitigate contradictions in relations between local self-government and executive power by delimiting their powers in accordance with the principle of subsidiarity, refusal to delegate powers of district and regional councils. M. O. Baimuratov, analyzing the legislation on the local government, identifies the following characteristics of territorial community: 1) territorial, which is associated with the "location" of the local government at the village, town, city level as a territorial basis of municipal democracy; 2) integrative, according to which territorial community forms on the basis of the association of all residents living in a certain territory, regardless of whether they are citizens of the state (stateless persons who permanently live in a certain territory).

Highlighting such a category of entities as administrative-territorial units (ATU), we note that they are the subjects of legal relations and have their own status. The basis of territorial formation as a separate component of the territory of the state, in which the relevant authorities operate, is a certain territory and the population living in this territory - the territorial collective

(part of the population of the state). Based on this, we can distinguish the following elements of the legal status of territorial entities: social purpose; competence (functions and powers); the order of formation (method of legitimization), change and liquidation; clearly defined administrative-territorial boundaries; internal organization (organization of power, its relationship with the central government and other territorial entities); responsibility. The content of these elements in their relationship allows determining the place and role of territorial entities in the system of territorial organization of states, in the process of their international cooperation.

Decentralization is the main, key reform for creating capable territorial communities and regional development of Ukraine. The Encyclopedic Dictionary of Public Administration defines that decentralization (from the Latin de - negation, centrum - the main center) is, first, the process of transferring some functions and powers from higher levels of government to lower ones (from central executive bodies to local executive bodies and local governments); secondly, in a broad sense, it is the weakening or abolition of centralization (European Charter of Local Self-Government, 2020), and the decentralization of state power is independence in approaches to governance, taking into account the diversity of local characteristics while maintaining unity in the main and essential; manifested in the delegation of powers from public administration to local government. In practice, decentralization is manifested as the transfer of part of the functions of public administration of central executive bodies to local executive bodies and local governments (Dudley, 2019).

The specificity of the territorial community as a subject of law should be determined in the context of existing theories of local self-government. It is noted that the territorial community is a common law category. Participation in various types of sectoral legal relations does not mean that it can be recognized as a subject only of different branches of law. At the same time, sometimes the relations in which the territorial community participates are so specific that it is expedient to consider them at once through the prism of several branches of law. To address this issue, it is advisable to talk about the existence of the right of the territorial community, which exists in two planes – objective and subjective. Most territorial communities emerged as subjects and gained the ability to participate in legal relations with the coming into force of the Basic Law of Ukraine. At the same time, the current legislation does not provide for a formalized procedure for their legal fixation in the unified state register of territorial communities. The territorial community becomes a subject of law from the moment of its origin, in accordance with the norms of the Constitution and laws of Ukraine (European Charter of Local Self-Government, 2020).

The territorial community as a subject of local self-government implements a number of functions, which are the main directions and activities of the territorial community to address issues of local importance. The functions of territorial communities should be classified: by objects (political, economic, social, cultural and environmental functions); by subjects (functions of territorial communities of villages, settlements, cities, districts in cities); techno-

logical functions (financial-budgetary, material-technical, normative, informational, and system-forming). Since the territorial community is the subject of management, among the technological functions it is advisable to distinguish the general functions of management: planning, organization, motivation, coordination and control. The given classification, which includes object, technological and subjective functions of the territorial community as a subject of local self-government, allows, first, to reveal the activity of the territorial community, its focus on a specific object. Secondly, the technology of realization of functions of territorial community is found out. Third, the specifics of the activities of specific entities – territorial communities of villages, towns, cities, districts in cities, is pointed out (Seryogin, 2016).

In the territorial communities that are part of the UTC (united territorial community), social relations between its members are already established; they have improved because of their direct communication. Each of the communities had its own special content of everyday life, its own culture, traditions, values and history, thus, its own local identity. In UTC, this intellectual element is absent, for its formation and development, time and coordinated actions are required. In practice, residents of territorial communities that have joined the UTC, continue to live their lives, follow their traditions and preserve their own culture. This indicates that the intellectual and volitional connection between UTC members is still weak. Only in capable UTCs, where the quality of public services has significantly improved, landscaping activities are carried out throughout its territory and the communication between local communities is established, there are tendencies to form the culture and traditions of the UTC itself. At the same time, the population of Ukraine as a whole is skeptical about the processes of decentralization, reform of the administrative-territorial system and the formation of UTC.

O. Moroz offers the following list of features of the territorial community:

- common territory of existence (may include residence, territory, and possession of real property holding);
- common interests in solving life problems;
- social interaction in the process of realization of these interests;
- psychological self-identification of each member with the community;
- common communal property;
- payment of utility taxes.

Researcher Zhalylo (2019) gives the following features of the territorial community:

- territorial - cohabitation of persons (residents) who belong to the community in a certain area:
- integrative - territorial community on the basis of unification of all inhabitants of a certain territory, regardless of whether they are citizens of this state or not;

– intellectual - the basis of the constitution of the territorial community is the common interests of residents, which have a specific nature and are manifested through a wide range of systemic individual-territorial bonds that arise between them;
– property - the territorial community is the subject of communal property rights;
– fiscal - members of the territorial community are payers of local taxes and fees (Svendsen, 2016).

However, in accordance with Art. 5 of the Law of Ukraine "On Local Self-Government in Ukraine" they constitute a system that includes: territorial community; village, settlement, city council; village, settlement, city mayor; executive bodies of village, settlement, city council; district and regional councils representing the common interests of territorial communities of villages, settlements and cities; bodies of self-organization of the population. Thus, the subjects (participants) of organizational and economic powers in the relations on privatization of communal property and relations on sale in the order of privatization of property are the bodies created by the corresponding local councils. The state commissions for commissioning of completed facilities (state acceptance commissions), the status of which is determined by the Procedure for commissioning of completed facilities approved by the Cabinet of Ministers of Ukraine 22 September, 2004 №1234, should be recognized as special subjects of organizational and economic powers in the field of construction (Skrypniuk, 2015).

The territorial community is the primary subject in the system of local self-government both in Ukraine and in foreign countries. Such associations are actively functioning in the countries with developed democracy, regardless of whether the state is federal or unitary in structure, and play an extremely important role in resolving issues of local importance. The necessity to focus on the experience of the world's leading countries in improving local self-government in Ukraine in general and the functioning of territorial communities in particular is substantiated. At the same time, the priority should be given to the issue of delimitation of the competence of local governments and public authorities.

The territorial community is active in various forms, the main of which are the forms of its direct expression of will: local elections, local referendums, general meetings of citizens at the place of residence, meetings, conferences, local initiatives, public hearings, recalls of deputies and elected officials of local self-government, individual and collective written appeals, surveys on local self-government, public examinations, public works, participation of residents in the work of local self-government, public discussions of draft acts of local self-government, rallies, demonstrations, campaigns, pickets, etc. In general, the forms of participation of members of the territorial community in addressing issues of local importance can be represented as:

– expression of residents' own interests, needs, requests (on the initiative of the population - rallies, marches, pickets, individual and collective appeals;

on the initiative of bodies and officials of local government - the study of public opinion through surveys, observations, analysis of documents);

– consultations of members of the territorial community with bodies and officials of local self-government on solving local problems (holding "round tables", public hearings, conferences, forums, seminars, etc.);
– participation of residents in the activities of local governments (service in local governments, public expertise, discussion of draft local plans and programs, their implementation, local initiatives);
– direct participation of citizens in solving local problems (local referendum, bodies of self - organization of the population).

The forms of participation of territorial communities through local governments in economic relations are provided in a large number of legislative acts of Ukraine. Thus, according to the provisions of Part 5 of Art. 60 of the Law of Ukraine "On Local Self-Government in Ukraine" local governments on behalf of and in the interests of territorial communities in accordance with the law exercise powers to own, use and dispose the objects of communal property, including all property transactions, may transfer objects of communal property rights for permanent or temporary use by legal entities and individuals, rent them out, sell and buy them, use them as collateral, resolve issues of their alienation, determine in agreements and contracts the conditions of use and financing of objects, which are privatized and transferred to use and rent.

As noted by V. Negoda, the right of the territorial community to manage communal property is more or less specific (but not absolute) among these elements of the legal personality of the territorial community, but in this case it is not only direct, but and indirect (through local governments) management. This fact was given special attention in the monograph by Voytovych, where the author points to the need to recognize such a phenomenon as economic (civil and financial) legal personality of the territorial community, "which provides a real guarantee of territorial communities and local government in Ukraine" (The Law of Ukraine "On Voluntary Association of Territorial Communities", 2015).

Administrative supervision of the activities of local self-government bodies may be exercised by higher authorities only in accordance with the procedures and in cases provided for by the constitution or law, and providing that it "is intended only to ensure compliance with law and constitutional principles" (Klymenko, 2019). the case when it is carried out properly due to the tasks of central authorities entrusted to local governments.

4 Discussion

The range of subjects of local self-government bodies, just as subjects of organizational and economic powers, require for their own legal regulation, especially in view of the requirements of Art. 19 of the Constitution of Ukraine, a certain convergence of the content of legislative regulation and its appa-

ratus on local self-government, as well as economic legislation in a single mechanism. We believe that for an extensive and effective legal mechanism of interaction between the two branches of national legislation - economic and municipal, it is necessary to make proposals for a number of additions to the text of the Civil Code of Ukraine, recognize local governments as a special subject of economic activity and to allocate economic activity of such bodies as a separate institute of economic and legal support of the activity of "local self-government bodies as a subject of economic legal relations". The Civil Code of Ukraine should define: first, the subjects and participants of organizational and economic powers; secondly, means and forms of state (communal) regulation of economic activity; third, methods of implementation, and so on.

By May 2020, there are 44 united territorial communities in Ukraine with an administrative center in cities of regional significance (hereinafter CRS), created from 133 councils and 982 UTCs, which were created from 4487 councils, including 564 rural, 262 town-settlement and 156 urban UTCs, while 49 united territorial communities are awaiting a decision on the first local elections. The highest index is observed in 2017, and since 2015, the dynamics of growth has been observed, and in 2018 the indicator decreased by 159 UTCs, and amounted to 140 united communities per year. The average number of councils united in one UTC is 4.5. Zhytomyr region has the largest number of united communities, namely 76, Dnipropetrovsk - 71, Cherkasy - 57, Zaporizhia – 56, Sumy region has 38 communities (Klymenko, 2019).

The peculiarity of voluntary unification of territorial communities is the unification of all territorial communities of the district, and the result of such unification is a situation, when the jurisdiction of the representative body of local self-government of the united territorial community completely coincides with the jurisdiction of the district council. The methodology for forming affluent territorial communities is described in Ukrainian legislation in 2015 and approved by Resolution No. 214 of 8 April "Methodology for Forming Capable Territorial Communities". The basis of this document is to develop a long-term plan of the territory and the formation of a mechanism for creating a viable community. The term "capable territorial community" is defined as a community that voluntarily seeks to unite with other nearby local communities, able to address local issues with the help of local sources of budget and qualified human resources in the interests of the inhabitants of such a community (The Law of Ukraine "On the Local Elections", 2015). The European experience shows that giving the right and resources to each already created community is not logical, because significant funds will be spent on the maintenance of the administration, but in the case of merging, several territories will reduce these costs, because such an apparatus will remain only one and will be in the most promising of the communities. It is clear that such a formation cannot be formed, for example, by a village council from Zaporizhia district and a village council from Ivano-Frankivsk, because this method takes into account the distance from the community center to the farthest village and should be no more than 25 km.

Criteria such as developed infrastructure, number of educational institutions, and availability of premises for various public services are taken into account, the number of school and preschool children should be not less than 250 and 100 people, in case of non-compliance of at least one of the above indicators with the calculation is not carried out (Klymenko, 2019). The calculation can be done independently, taking into account the indicators approved by the method, or online calculator, access to which is available from local councils. The disadvantage is the inaccessibility of the common people to it.

The main indicators of social and economic development that determine capacity are (Kyrylenko, 2015):

1. population (threshold quantity is 3000 people, indicating a low level and equal to 0.3 points, quantity above 7000 people is high level, which is 1 point, the intermediate value is between the previous two and is equal to 0.6 points);
2. the number of children enrolled in educational institutions (minimum value of 300 people, equal to 0.3 points, maximum more than 500 people – 1 point, intermediate – 0.6 points);
3. total integral area (threshold quantity – 200 sq. km., maximum more than 400 sq. km, intermediate from 200 to 400 sq. km. The number of points is similar to the mentioned above);
4. tax capacity index (up to 0.3, maximum more than 0.9, intermediate 0.3–0.9, the number of points is similar to the above);
5. the share of local taxes in the community's own income (maximum up to 20%, maximum more than 40%, intermediate 20–40%, the number of points is similar to the above).

According to the defined coefficients, the total number of points scored indicates the capacity of the community, for example, the range from 1.5 to 2.1 for low capacity, from 2.2 to 3.8 for medium and 3.9–5 for high one. All types can function, among the two comparable, the one with more points will be chosen, but also the one with a low level can work, the only condition is that the number of such communities is not more than 10% per area.

The main stages of creating territorial communities include:

1. putting forward a proposal to establish an UTC, approving the procedure for discussion of this proposal by the community council, then a meeting is held, where further actions are decided, the decision of the council at the session accepts this initiation and identifies potential allies;
2. a letter is sent to the neighborhood councils, with a proposal to become one UTC, in case of agreement, the neighborhood councils carry out similar actions in paragraph 1;
3. a group of employees, who are engaged in further planning of the draft decision, is formed and after its development there is a process of consideration, improvement and approval;

4. submission of documents for verification, after approval and compliance with all standards at the session make this decision on UTC;
5. the date of elections of all elected members of the community is approved.

In order to equalize fiscal imbalances in the socio-economic development of local areas, their financial equalization of tax capacity was introduced. The equalization process is specified in the Budget Code in Article 99. To determine the need for one of the grants, a tax capacity index is calculated, which provides for the use of such items (Voytovych and Vorona, 2018):

1. population in Ukraine and in the united community (data are used from the State Statistics Service at the beginning of the year preceding the planned one);
2. actual PIT revenues in Ukraine and in the united community (data are used from the State Treasury Service for the last reporting budget period, at the beginning of the year preceding the planned).

The index itself is calculated by the following formula:

$$Itc = \frac{PITUTC}{PUTC} \div \frac{PITUKR}{PUKR}$$

where Itc is tax capacity index (the amount of personal income tax per capita to the average value); PIT_{UKR}, PIT_{UTC} are the amount of received PIT in Ukraine and promising UTC, for example, the calculation is for 2020, the value is taken for 2018; P_{UKR}, P_{UTC} – population in Ukraine and promising OTG, for example, the calculation is conducted for 2020, the value is taken on 01.01.2019.

The results of the calculation may vary within the following limits:

1. the value of the index is more than 1.1 – promising UTC needs a reverse subsidy, which of course is a positive factor, because the community has enough resources for its own population, and therefore 50% of the excess will be sent to less affluent local communities;
2. the value of the index is 0.9–1.1 - the community is able to independently perform its own and delegated powers and does not require additional resources;
3. the value of the index is less than 0.9 – a promising community needs to receive additional funds, for which a basic subsidy of 80% of the amount will be provided.

The practical implementation of the above-mentioned method will be given on the example of the territorial community of Sumy region. In Sumy region, by May 2020, 187 councils of different levels – rural, township, city – expressed a desire to unite in 38 territorial communities (Kyrylenko, 2015). Among them is Stepanivka village united territorial community of Sumy district of Sumy region, which was formed on October 29, 2017 (Klymenko, 2019). It includes 10 settlements that were part of two councils: Stepanivka village and Pidlisnivka village. Stepanivka village council was determined as the community with a high level of capacity, the total number of points according to the method is

4.3. The population is more than 7 thousand people, namely on 01.01.2018 –7.4 thousand people, this is the first evaluation criterion that showed a high level. The second point is the number of students studying in educational institutions on the territory on 01.01.2018 – 1105 people, according to this indicator, it shows high level of capacity. The area is in the criterion of low level, because it is 129, 42 sq. km. The share of local taxes in UTC's own revenues is 42.66%. Tax capacity index as of 01.01. 2018 is 0.968, the community is fully provided with its own income. We can see from the calculations that the community has never received a basic or reverse subsidy during the three years of its existence. The value ranges from 0.95 to 0.99. The obtained data for Ukraine are almost identical to the data of the analyzed UTC.

The budget coverage ratio varies between 0.58-0.78, a sharp decline was detected in the second quarter of 2018, during another period the value of the indicator remains almost at the same level, indicating the inability of Stepanivka UTC to operate without transfers, i.e., to cover the expenses with only its own revenues. The value of the coefficient of budgetary stability exceeds the norm, only the fourth quarter of 2019 corresponds to the optimal value of 0.30. Such dynamics testifies to the still existing dependence of the local budget on financing from state transfers. At the same time, 2019 was marked by a decrease in this indicator compared to 2018, which has a positive impact on the stability of the budget. The value of the coefficient of general tax stability during the study period is kept above the normative value and ranges from 0.55 to 0.73, which indicates the fact that the community is partially able to cover local expenditures with tax revenues. The dynamics of the ratio of expenditures to transfers has a declining trend, in 2018 the value of the indicator exceeded the norm by 0.19 points maximum and minimum by 0.01 points, in 2019 by a maximum of 0.09 points, during the third, fourth quarters were in the normative value at 27 is 0.21, and in 2020 in the first quarter at 0.25. This trend is positive, as it notes that the impact of state support is gradually diminishing. It is impossible to calculate the share of subsidies in the total amount of transfers, because, as it was mentioned earlier, the community is self-sufficient and does not need equalization.

The interests of the territorial community itself arise and are manifested on the basis of the set of interests of its individual members (common interests, primarily in meeting social, communal, local cultural and other needs) and in the individualized interest of a particular individual - a member of the territorial community (personal interests that are manifested primarily in the field of communication at the local level, resulting in self-realization of the individual within the territorial community). The interests of a particular individual - a member of the territorial community are his municipal rights in the narrow sense, which arise in the process of realization of almost all their life aspirations. In this implementation, a particular resident is a subject-object of local self-government, concentrating in itself and showing outwardly its democratic charge and positive potential (Ignatenko, 2016).

Community development as a process consists of six main stages: social capital development, community organization, vision formation, asset identifica-

tion, planning, implementation and evaluation. In addition, the development of the community as a result is expressed in the improvement of the living conditions of the community through the collective actions of various stakeholders, primarily through the participation of the public, which has a major role to play in this (The Law of Ukraine "On the Local Elections", 2015).

Development of social capital. The development of social capital as "properties of individuals in the social context" is, on the one hand, a prerequisite (first stage) that ensures development in the "chain of community development", and on the other - the result of community development.

Community organization. This stage focuses on mobilizing people within a particular territory or community. Community organization should be seen as a way to mobilize small groups of people to perform specific tasks. Although we consider an asset-based approach to community development, in the first stage, a problem-oriented approach is often used to organize the community, as it is easier to mobilize community members to solve a problem that directly affects them.

Forming a vision is one of the many methods, such as determining the future, which shows what the community will look like in the medium term. The basic idea is to accept, often by reaching some form of consensus, a vision of what the community should become over a period of time for a wide range of individuals, associations and organizations within the community, and to prepare an action plan to achieve that vision.

Identification of assets. This stage should include the collection and analysis of information, in particular through surveys of community members, and the compilation of asset maps based on the information obtained. The collection and analysis of information is important for understanding the circumstances that exist, the changes that take place within the community over time, and the applicability of the data collected. Asset mapping is an ongoing process. Its purpose is to identify the skills, knowledge and resources that the community has, and it is the first step towards understanding what the community has.

Planning. After receiving and analyzing all the necessary information and drawing up an asset map, you can draw up a community development action plan based on the maximum use of available assets, taking into account the views of community members. The action plan identifies specific programs and projects, a set of specific measures to be implemented, deadlines, responsible persons, funding mechanisms and other important points that ensure the achievement of goals.

Implementation and evaluation. Progress in community development is obvious when change occurs and when people can see concrete results. This stage is when individuals, groups and organizations are active rather than passive participants in community life. Before the implementation of the community development process, individuals and organizations make great efforts to understand what they have, what their thoughts and commitments are, to come

to a common vision of their own future, to agree on priority future activities and strategies, but at the implementation stage all these efforts are realized.

Public participation. Determining the future of a community and how it will get from "point A" to "point B" is an important task. If community members do not want someone else to determine their future for them (and this happens very often), they must be proactive and involved in determining the directions of development of their community.

Regarding the specification of regional development in the context of the implementation of a consistently democratic concept, it is necessary to note the importance of the principle of subsidiarity, which can be defined as a line of growing subjectivity. That is, decision-making and its implementation is carried out from the basic level of activity of citizens to various forms of their associations and local governments, and then to higher levels of government. Thus, in accordance with the content of the European Charter of Local Self-Government, in the implementation of the latter to the highest level of government is transferred to address only those issues that cannot be resolved at the lowest level.

The challenge for reformers is that in districts where UTCs are formed throughout the territory, there is duplication of powers between UTC local governments, district councils and administrations. At the same time, the district state administration and the district council function there with the corresponding expenses for their maintenance, as well as the executive bodies of the UTC with the powers and financing defined by the legislation. Relevant district councils, as a rule, make decisions on monetary valuation of land and redistribution of transfers from the state budget. District state administrations are also deprived of the vast majority of powers, which by law are performed by the executive bodies of the UTC council.

An important result of the formation of local self-government in Ukraine was the understanding of the role of the territorial community in the system of Ukrainian statehood: a strong local community is the basis of a strong state. Local self-government can be the carrier of consolidation of human, local community, state power at the republican and regional levels, aimed at reviving everyone's vital forces, creating a favorable economic, social, ecological, spiritual living space for the majority of the population. This will relieve the government of the burden of day-to-day worries and enable them to focus on the main key issues of state building.

In order to improve the conditions for the formation and development of territorial communities in the context of decentralization, the following actions can be recommended:

1. it is necessary to strengthen the attraction of finance, for example through the inventory of property and assets, to conduct an audit of land plots, which will identify those lands on which there are no legal documents or misuse;

2. create favorable conditions for business so that companies register on the territory of UTC, and both income tax and personal income tax will remain in place;
3. to involve citizens in showing initiatives to increase the efficiency of the use of funds, to create a "public budget" that will have a purpose, and the best project will be realized;
4. to carry out optimization processes, for example, Stepanivka UTC has three secondary schools, one of which is hub, with a capacity of 700 students, two schools are at a distance of 2.5 km, the total number of students is 500, it is necessary to transfer students to a hub school, as the maintenance of premises, teachers' salaries, current repairs are millions that are spent additionally, because optimization cannot be avoided, the situation is similar with club institutions that carry out small activities and are still nearby, and their maintenance is too expensive. In this case, the premises will be vacated and may be rented;
5. it is necessary to calculate the cost of firewood for heating and implement energy efficiency measures;
6. to strengthen the control over the use of funds for major overhauls. Therefore, it is necessary to expand the revenue base, the community decides where to send funds, but for their effectiveness, it is necessary to carry out the optimization with the proposed method.

At the state level, the main ways to improve the conditions for the development of territorial communities can be:

1. adopting the basic law "On the administrative-territorial structure of Ukraine", which defines the principles of state policy in this area, the construction of a new administrative-territorial system, unified requirements and criteria for administrative-territorial units at all levels, clear procedures for the formation and elimination of administrative territorial units, the procedure for establishing and changing their boundaries, etc.;
2. preparing and adopting a new version of the Law of Ukraine "On Local Self-Government in Ukraine", improving the functioning of full-fledged local self-government at various levels of government, redistribution of powers in the system of local self-government and between local self-government bodies and state executive bodies;
3. adopting the law "On local referendum", because with the adoption of the Law of Ukraine "On all-Ukrainian referendum" in 2012 the legal mechanism of holding a local referendum, which is a form of resolving issues of local significance by direct will, was lost;
4. amending the Law "On Cooperation of Territorial Communities" regarding the introduction of the procedure for joining territorial communities to existing cooperation agreements;
5. amending the law "On regulation of urban planning activities" to include a plan of the united territorial community, which will include functional zo-

ning, formation of engineering and transport infrastructure, landscaping, etc. to the list of documents on spatial planning at the local level.

5 Conclusion

In this study, we revealed the essence of the concept of "territorial community". The interpretation of this term in the views of well-known scholars is given and a list with a brief description of the main legislative documents governing the formation of a territorial community is given. The main properties and characteristics of territorial communities are listed and the methodology for assessing the "viability" of UTC based on economic indicators is given. For Stepanivka UTC the calculated indicators are given and its prospects are estimated. The obtained indicators for the studied UTC show that this community has never received basic and reverse subsidies during the three years of its existence, and the data obtained in Ukraine are almost identical to the data of the analyzed UTC. The coefficient of budget coverage for the studied territorial community showed that Stepanivka UTC cannot function without transfers, i.e. to cover the expenses only with its own revenues. The value of the overall tax sustainability ratio indicates that the community is able to partially cover local expenditures with tax revenues. At the end of the work, the main stages of community development as a process are given and recommendations are made to improve the conditions of formation and development of territorial communities in the conditions of decentralization in Ukraine. The empirical method used in the study proved to be liquid for Stepanivka UTC and can be used in practice to assess the "viability" of other UTCs in Ukraine.

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Regulating the Urban Commons: A Romanian Case Study of Improving Building Facades

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ABSTRACT

This paper examines the effect of build environment regulations for facades emergency repairs and embellishment, as implemented by the city of Cluj-Napoca, the second largest municipality in Romania. The scope was to identify to what extent the over taxation measure was efficient in generating compliant behaviour and what secondary effects it may have generated in people's attitude towards the local authorities. We conducted structured interviews with 25 homeowners targeted by the policy. The qualitative analysis uncovers structural issues on how the policy was implemented and communicated to the population. It further acknowledges difficulties in managing mixed property and collective actions. We interpret the findings as a first step towards building a more comprehensive research framework focused also on included behavioural insights, as captured by our recommendations. Namely, they illustrate that homeowners were critical about the measure, both in its rationale and its implementation, and were unable to act upon a cost-benefit analysis given the ambiguous available information. The findings further acknowledge difficulties in managing mixed property and collective actions, but they also hint favourably towards the role of peer effects, expressed here as compliant neighbours' behaviour. We interpret the results of this exploratory case study as a first step towards building a more comprehensive approach to serve as a toolkit in examining the development of innovative local policies in post-communist environments, through a combined research framework including also the significant contribution of behavioural insights, next to the traditional rational actor theories. Naturally, the usual limitations of the method also apply to our study, in the sense

of non-generalizable conclusions. This fuels up the need for further research on similar regional and urban challenges in an extended multiple-case study scheme.

Keywords: *compliant behaviour, building facades, regulation, policy design, behavioural insights*

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1 Introduction

The modern urban environment poses less and less doubts about the need of land and building use regulation policies. Instead, what it does is to raise a lot of questions about the amount and intensity of such regulations, along with many challenges in estimating its real, and often confounding, effects on welfare (Turner et al., 2014). The increased level of adversity in both economic and political conditions generated by the 2008's crisis has exacerbated planning problems, especially in areas without sound urban policies, like Southern and Eastern Europe (Ponzini, 2016). For the case of housing, the region stands out by a much higher rate of homeowners, ranging from approximately 96% in Romania, 90% in Slovakia, Croatia and Lithuania, to roughly 80% in Bulgaria, Estonia and Czech Republic, by comparison to an average of 50-60% in Western Europe (Eurostat, 2017; Tsenkova, 2017). Partially, this is a result of the post-communist governmental endowments introduced in the early transition phase (Druica et al., 2014) as part of the housing privatization reform (Pichler-Milanovich, 2001). However, there is reason to include in the explanation the expansion of consumerist orientations (Druica et al., 2010) and social values associating real estate with wealth, expressed also through the proliferation of owner-build housing in rural and suburban areas (Soaita, 2013). All these factors kept homeownership rates at a very high level even some decades after transitioning to a market economy. Paradoxically, these rates coexist with overcrowded households (Chelcea and Druta, 2016), a very low percentage of build-up area (Pontarollo and Serpieri, 2020), respectively with evidence illustrating a significant lack of action regarding home improvement from the part of homeowners, either flat-owner or self-builders (Soaita, 2015).

Progressing towards the public policy responses and the role of regulatory control, it is noteworthy to start by mentioning the detailed account offered by Peter Marcuse (1996) on the differences between property, property rights and ownership, as the concepts are perceived in Eastern (specifically in light of the soviet model) and Western Europe. He emphasizes the permanent tension between the inclination to apply free market rules and the inclination to apply public control, following the assumption that urban development should firstly serve a collective interest. In the attempt to favour more the new model but without being aware of the remaining old habits, Romania is faced nowadays with a situation of degrading facades – both for houses and flats - and a lack of rule of law able to induce cooperation between the state

and the individuals in solving this issue for the benefit of all actors (Valsan et al., 2015; Luca, 2009): "a crisis of legitimacy regarding the planning by the lack of consistent specific measures for the city development" (Suditu et al., 2014, p. 135). Ojamäe and Paadam (2015) present a similar case for the process of flat owners' collective renovation in Estonia. They highlight trust, and subsequently communication, as significant variables for success, with emphasis on the capacity of the public sector to generate and sustain such trust between the involved parties. Another noteworthy case study belongs to Mandic and Clapham (1996) and it depicts the structure and meaning of home ownership in Slovenia, before and after the country's transition to a market economy. While the final results mirror the statistics of the region, the analysis reveals more details for what constitutes the foundation for housing preferences, from the overwhelming need for shelter (as opposed to a simple desire for possession) to strategic thinking in exploiting inflation and economic reforms. All in all, the literature niche devoted to regional initiatives focused on modernizing multi-apartment buildings is an emergent one (Andrews and Sendi, 2001; Bieksa et al., 2011; Korppoo and Korobova, 2012). However, the lack of reliable and comparable data is a significant barrier for the development of more evidence-based policies for this segment.

Our paper attempts to address this gap by illustrating the premises of public innovation through a particular intervention designed by the Romanian municipality of Cluj-Napoca with the purpose of acting as an enforcement mechanism to avoid public casualties and negative city image: an increased level of taxation for buildings that are in a derelict state and pose threats to public safety. We employed a qualitative approach, collecting data in the period July-September 2017 through physical structured interviews with 25 homeowners that fall under the scope of the experimental measure. We discuss the findings having as background the main theories consecrated to the understanding of compliance behaviour: the rational model of crime, social norms theory and the more recent behavioural insights. We complement the analysis with a set of recommendations for achieving behaviour change in a non-regulatory and non-fiscal manner, in the spirit of the current applications of behavioural economics to policy design.

2 Understanding compliance behaviour

2.1 Classical models

Becker's seminal paper of the rational model of crime (1968) stands out as a reference point for applying standard economic thinking to any type of decision-making process, including crimes. His framework postulates that if the estimated benefits of not abiding to the law action are bigger than the estimated costs (computed as the sanctions weighted by the probability of getting caught), it is economically rational for the individual to engage in the action. Thus, the standard economic response to such behaviour is none other than increasing the perceived costs – the threat of sanctions.

While the model has a strong theoretical appeal, the match with reality reveals a lot of prediction errors. The theory of planned behaviour (Ajzen and Fishbein, 1970) constitutes a refinement of rational decision-making models, emphasizing the role played by three majors elements: attitudes, subjective norms and perceived behavioural control. It is still considered a classical approach, where attitude is somewhat the equivalent of utility (by analogy with rational choice), but nonetheless it opens up to two more comprehensive factors. For example, in an analysis aimed at identifying compliance drivers for the case of urban water restrictions in Australian cities, Cooper (2017) highlights the strong and positive influence of perceived behavioural control, which is defined as an individual's understanding of their capacity to achieve a behaviour (d'Astous et al., 2005). Following this result, the recommendation set clearly suggests a reconfiguration of policies in the sense of supporting households to meet regulatory criteria, which is to increase their perceived behavioural control on the issue at hand.

This leads us to a number of alternative explanations, integrating next to the pure economic factors a larger spectrum of psychological and sociological variables. Sutinen and Kuperan (1999) propose a model of compliance including variables like morality, on the side of intrinsic motivators, and social influence, as an extrinsic motivator. Naturally, there are some difficulties in measuring moral development, personal values or perceived legitimacy of an intervention, but there is increasing empirical evidence for a positive impact in understanding generated by this class of models. Similar improvements are captured through the grasp of social norms and their function of signalling what may constitute an appropriate behaviour in a compliance situation (Dolan et al., 2012).

2.2 Behavioural interventions

A step further in the compliance philosophy is brought by the heterogeneous class of behavioural models proposing explanations rooted in cognitive biases (overconfidence, sunk costs, myopic time preferences etc.) or simply in new perspectives about human behaviour, like the acceptance of social preferences (e.g. people care about themselves and also about others). If the standard economic view is linked to deterrence and enforcement policies, the behavioural one is associated to growing evidence of behavioural interventions around the world (Ly and Soman, 2013), in areas such as employment (Hossain and List, 2012; Fryer et al., 2012), consumer policy (Bertrand et al., 2010; Goda and Manchester, 2013), health (Ianole, 2016; Volpp et al., 2009; Milkman et al., 2011), taxation (Torgler, 2004), environment (Shogren, 2012) or transport (Garcia-Sierra et al., 2015).

These interventions mostly employ nudging, under the choice architecture movement (Szaszi et al., 2017), along the more classical strategies of behavioural change (e.g. positive and negative incentives, persuasion, information etc.). We use as a reference point the "behaviour change interventions" taxonomy described in the 2011 Behaviour Change report of the House of Lords

Science and Technology Select Committee, which builds of the Nuffield Ladder of Interventions (House of Lords, 2011). This framework includes three main directions: (1) regulation of the individual, (2) fiscal measures directed at the individual, and (3) non-regulatory and non-fiscal measures with relation to the individual. The first category offers procedures that reflect upon the classical models, usually either eliminating choice or restricting it. Categories (2) and (3) have in common a certain level of choice guidance and choice enablement. At one end, in category (2), there are located the traditional measures of financial disincentives (e.g. they make behaviours more costly) and financial incentives (e.g. they make behaviours financially beneficial). At the other end, category (3) progresses from non-fiscal incentives and disincentives, and persuasion, towards nudges and choice architecture initiatives: provision of information, changes to physical environment, changes to the default policy and the use of social norms and salience.

In light of different experiences of applying behavioural public policy, the current perspective (Lowenstein and Chater, 2017) highlights a shift from the somewhat standard recipe that a behavioural solution is to be considered only after the implementation of habitual tools of conventional economics. Naturally, this may be quite a natural step in approaching a problem: after understanding the context and identifying the desired behaviour change, a major challenge is to asses if the targeted processes and structures are cleared from any issues requesting standard economic interventions (Ly et al., 2013), like taxes, regulations etc. Nonetheless, this is not a logic that necessarily excludes the possibility of putting to use nudges in situations explained by traditional economic circumstances and the reverse: applying traditional economic solutions to situations explained by behavioural factors. As an illustration of the interaction between traditional strategies for behaviour change and the more recent behavioural insights, Arcos Holzinger and Biddle (2016) identify two types of behavioural models used in practice to explain tax compliance: non-expected utility models and social interaction models. The first category incorporate a wide range of behavioural biases considered relevant for the tax compliance decision (anchoring, time discounting, framing etc.), while the second refers to the links between capacity and compliance on multiple levels (trust, fairness, power etc.).

3 Method

3.1 Research context

The objective economic factor that explains an important part of the poor results in respect with housing management is clearly household's reduced affordability (Council of Europe Development Bank, 2004). Furthermore, the market conditions for housing management are not necessarily favourable to competition and the legal framework still lacks certainty, thus maintain a low appeal for investments in maintenance and renovation planning (Butler et al., 2004). This converges into the fact that a significant part of the housing stock

in Romania is in precarious condition, due to lack of major renovations and improvements in the last few decades.

The situation is similar in Cluj-Napoca, the second most populous city in Romania, situated in the north-western part of the country and considered informally the capital of Transylvania. The case is even more salient in the historical city centre, where historical buildings are in advanced state of degradation. This poses a threat not only for the safety of building owners and tenants, but also for the general public. Building facades and roofs are an integrated part of urban commons, and have externalities on the quality of city life. While heritage and high quality architecture can have positive externalities and contribute to the authentic and pleasing aesthetic of a place, a derelict state of the building can have negative externalities risking injuries for passers-by or enhancing the risk of street criminality. Because of this, building facades and roofs are under additional public regulation, on top on the building codes they need to adhere to. National and local level public authorities have a mandate to regulate such urban commons in order to ensure public safety, heritage preservation and aesthetic coherence.

In fact, public policies connected to Romania's housing portfolio have been scarce since the country's transition to a market economy starting with 1990. As the World Bank background study on housing policies in Romania shows, new housing development is perceived as the responsibility of the private sector and private individual, with social and affordable housing stock diminishing and being neglected by national policies (World Bank Group, 2015). In part, this is a counter-reaction to the accelerated building pace of housing during communism with major state intervention, as well as the forced nationalization process of private properties that Romania experienced between 1948-1962. On the other hand, the same study outlines the perception that, for the existing buildings and housing dwellings, owners should care only about their private poverty and expect that a third party, preferably the public sector, takes care of any common spaces (from common access pathways, halls, gardens to roofs, basement and facades). Going beyond perception, current legislation gives powerful rights to housing owners, allowing them to effectively block a collective decision concerning their estate. For example, if a housing estate has ten owners, each owning their apartment, and nine of them agree to pay for rehabilitation works for the commons space of the estate, but one denies, then the process is blocked or discontinued. Referred by economists as an "anti-commons" problem, which describes a situation where many owners have the right to exclude others from use of a resource, resulting in the underuse of resource, it summarizes the present conundrum of Romania's housing policy (Buckley and Mathema, 2018).

Given this context, local public administration has limited policy instruments to intervene in issues concerning urban commons elements of the build environment. This is why, when a new fiscal instrument was introduced at national level in 2015, allowing local public authorities to increase taxation for build-

ings that are in a derelict state and pose threats to public safety, it seemed a concrete tool that cities could use for their housing and fiscal public policy.

The new instrument instructed local public authorities that they could increase the building tax to up to 500% for buildings not complying with measures for being in a good maintenance state. However, it was left to each municipal authority to design the guidelines for applying this measure.

Thus, at local level, the public policy intervention allowing tax increases for abandoned or mismanaged properties corresponds to a fiscal disincentive directed to the individual. By allowing tax increases of 500% it makes the behaviour of leaving your property abandoned or mismanaged costlier. In order to design the guidance on applying the prerogatives of the fiscal code and national level policy, Cluj-Napoca municipality decided in 2016 to entrust this process to two of its departments: the local police and the local tax office. The developed methodology that resulted at local level highly relies on a subjective appraisal of a local police officer, which visits the exterior of the building. According to local council decision HCL 343/31 May 2016, the municipality can increase the building tax by 500% for homeowners who fail to comply to the recommendations of the local police for repairing their building. The policy describes the assessment process by the local police of the building state and the recommended actions that need to be taken by the homeowners. If these recommendations are not followed by the homeowners, partially or fully, the local police inform the local tax department that the building tax needs to be increased starting from 2017 fiscal year.

The local police officer hand-fills an observation sheet naming the elements of the building that seem from her or his point of view in need of repairs. Depending on the element type, the methodology describes how the local police officer should assign a score from 1 (decent condition) to 5 (bad condition) or sometimes from a scale of 1 (decent condition) to 10 (very bad condition). For example, the roof cover can get 2 points if it is partially missing and maximum 10% of its surface is damaged and 10 points if 30% of the total surface is degraded and needs total replacement. If a building gets an overall score of 25 points or higher, it is deemed in poor state and the owners are issued the subpoena. After 6 months, a police officer checks again whether any improvements have been done in the building state and the overall score can be lowered under 25. If this is not the case, the police officer makes the final recommendation to the local tax office to increase the building tax.

In 2016, the local police identified 56 buildings in the city centre area and sent 1543 subpoenas to the homeowners to consider their recommendations for building repairs. Only 525 subpoenas were actually successfully delivered, the rest either returned by post or were rejected by the homeowners. 85 homeowners filled complaints to the Cluj-Napoca municipality for abusive regulation and impossibility of compliance, and 3 litigations were started. By the end of 2016, none of the targeted buildings by the subpoenas had followed complete retrofitting, with only 3 building undergoing emergency repairs of their facades. As a result, by the end of 2016, 53 buildings comprising a total

of 693 apartments had their building tax increased by 500%. In the end, after applying certain tax exemption cases for building owned by public entities, veterans, religious cults etc., 528 physical and judicial persons had their property tax increase by 500%. Depending on their surface and location, the new increase property tax ranged in 2016 between 35 to 3117 euros per year. Considering that the average monthly income in Romania in 2016 was around 595 euros, in most cases the increased property tax was generally a significant expense for a household. However, as later discussed in the article, the foreseen expenses for rehabilitation works are also high when compared to household's financial capacity.

3.2 Research design

Our initial endeavour was to work under a quantitative framework and to proceed by the means of a survey measuring the objective impact of the property-tax increase for the uncared-for buildings in the central area of Cluj-Napoca municipality The measure was not only stipulated in the official legal framework but the households received notifications from the Inspection and Control Department of the Cluj-Napoca Local Police However, as we have progressed in understanding the sensitivity of the topic and the narrow target group of the experimental extra-taxation measure, we decided to shift to a qualitative design and to build up a more flexible interview structure: "qualitative data tells what is happening and how and why, whereas quantitative data would indicate how much of each thing is happening" (Sunikka-Blank and Galvin, 2016). In consequence, we focused on understanding the decision to carry on, or not, maintenance works for rehabilitating the building or simply for keeping it in a good shape. This objective also mirrors contemporary recommendations for public administration research to elaborate more on the use of qualitative tradition with the aspiration to cultivate the interaction between researchers and practitioners (Ospina et al., 2017; Ashworth et al, 2019). In the context of the measure framed as an increased tax, conducting/not conducting maintenance work was our analogy case of compliance/non-compliance behaviour.

The general structure of the interview is presented in table 1 but it is essential to highlight that it served as a reference point. Namely, the interviews were semi-structured and participants were given the freedom to describe their experiences, both with the building and with the public administration, providing a more in-depth grasp of each case.

Table 1. Interview structure

1. Please describe why you think you have received the summon for the Inspection and Control Department of the Cluj-Napoca Local Police.
2. Have you performed any building maintenance/support works as a result of being summoned by the Inspection and Control Department of the Cluj-Napoca Local Police? (yes/no)
3. What factors determined your previous decision?
   – thinking of the benefits/costs associated to this action
   – thinking of the potential punishment associated to the lack of action (over-taxation)
   – the neighbours' behaviour or the behaviour of other individuals facing a similar situation
   – the belief that this action is good for the community (avoiding accidents for passing people, maintaining a good image of the city)
   – the belief that this action is not good for the community
4. (if applicable) To what degree, do you think you'll maintain the decision of not making maintenance works next year?
5. (if applicable) To what degree, do you think you'll be sanctioned for the decision of not making maintenance works next year?

Please use a scale from 0 to 10, where 0 means you are "completely unwilling" and a 10 means you are "very willing ".

6. To what degree, do you think your (street) neighbours will be sanctioned for the decision of not making maintenance works next year?
7. Please describe what support you would have needed in order to comply more easily to the summon for building maintenance?

As suggested in other studies on building care and preservation, our sample was purposive rather statistically representative (Neilsen and Pojani, 2020), respectively its size was dictated by thematic saturation (Onwuegbuzie and Leech, 2007). The 25 interviews were conducted during July-September 2017 in Cluj-Napoca in front of the buildings targeted by the public policy. Prior to arranging the interviews, we distributed, in collaboration with the Inspection and Control Department of the Cluj-Napoca Local Police, 150 leaflets in postboxes announcing the scope of this research and the time and date in the following week, when our research team would call on the owners. Each semi-structured interviews had a duration of 25 to 35 minutes and the answers were recorded on an observation sheet.

We used thematic analysis, considered among the most popular qualitative approaches for unveiling patterns from interview data (Clarke et al., 2015). We scrutinized interview transcripts having in mind codes derived from the theoretical models: on one hand the mechanics of the process and objective actions, on the other hand the feelings associated, perceptions, trust, so-

cial preferences and expectations. The analysis does not make use of direct quotes given the high level of reticence of the participants in giving consent for this specific practice. Furthermore, we adopted a realist method (Crouch and McKenzie, 2006) in analysing the data, in the sense of examining it with pre-defined research questions and not in the detached style assumed by grounded theory (Charmaz, 2006).

4 Results and discussions

4.1 Thematic analysis findings

We have identified five main recurring themes from the interviews, illustrating predominantly the lack of functionality of the existing processes and procedures. The first and most salient theme was the highly subjective process of assessment for implementing the policy. Interviews revealed the mistrust that the homeowners experience in relation with this assessment process, which also impacts their preference to a pro-social behaviour of compliance. Homeowners expressed the fact that they were able to communicate with other neighbours that failed to receive the official notice from the local police by pretending they were not at home, an experience that reinforced their belief in the subjectivity of the process of assessment. Moreover, interviewees felt distressed that the assessment process was not conducted by a specialist in civil engineering, architecture or related fields, claiming that in this way it becomes just a process of giving an opinion. Based on this, most interviewees were prone to take legal action against Cluj-Napoca Municipality.

The second discontent was that no provision of information was given to homeowners. Specifically, there was no official medium of communication that would explain the rationale of the policy or the clear steps that need to be taken for its compliance. Interviews with both homeowners and local police officers, revealed the need of additional communication, such as the municipal gazette and homeowner's meetings. The information needed ought to be connected with easy to use and transparent resources for compliance, as well as describing why such a policy is needed for avoiding public casualties, as well as concrete information about how other people have solved a similar problem.

The third issue was that compliance is depended on collective action. Each building targeted by the policy is composed by apartments privately owned, with all owners having the legal requirement to organize themselves in an owner's association. According to the national legislation regulating homeowner's associations, only when the majority of owners agree on building repairs, these can be implemented. Thus, any major decision concerning the entire building is subject to a complex, and oftentimes long, collective action process. Our interviews revealed several cases where a minority of owners wanted to comply with the recommendations for retrofitting the building and were also willing to pay of all the expenses, but they encountered resistance from one fellow neighbour. In such cases, a preference for pro-social behaviour was actually discouraged by the policies in place.

Closely linked to the previous factor, there were also mixed property issues resulting in a case of double standards for enforcing the policy. Several buildings targeted by the policy were mixed-property ones, with a share of apartments owned by entities that are tax exempt (public entities, veterans, religious cults etc.). Thus, these owners do not have any incentive to comply, and in some cases they are the ones from the homeowner's association failing to support a collective decision. Also, in some cases, depending on the legal status, they cannot advance financial resources for paying for the necessary retrofitting works. In return, they can only contribute to these expenses after they have already been completed.

Last, in some cases, the sanctions imposed were not higher than expected benefits. There is a case-by-case approach on the relative cost-benefit ratio between payment of the increased tax and payment of retrofitting costs. The baseline of calculating the increased 500% tax varies significantly, depending on the materials and location of the building. On the other hand, depending on the complexity of the necessary retrofitting works, the related costs can sometimes overweigh the payment of an increased tax even for a period of 10 years.

4.2 Proposals of improvement of the policy design at local level using non-regulatory and non-fiscal measures

Based on the information collected during the interviews with owners and on the compliance statistics communicated by Cluj-Napoca municipality, we looked on several complementary interventions that might be considered to accompany the fiscal disincentive already in place.

Persuasion. A possible policy intervention would be a public awareness campaign for all Cluj-Napoca residents to convey that immediate action is needed for retrofitting the buildings. In this way, all residents would become informed about the issue and actions needed for addressing it. The public awareness campaign should also be explicit on how the issue is a public interest one, with potential negative effects on all city residents, in case of no action. It should also have a specific call to action, in order to effectively persuade homeowners to retrofit their buildings. Possible calls to actions would be for homeowners to contact immediately a dedicated taskforce from the municipality or access general helpline or app through which residents can signal unsafe building. The campaign would not disclose personal data of inhabitants, thus being in conflict with the European Union regulations on privacy (also known as GDPR act). It would rather enable general awareness of the issue around Cluj-Napoca residents, as well as access to a helpline or other personalized support for residents that self-identify as owners or inhabitants in derelict or unsafe buildings.

Provision of information. Finding the necessary information about the appliance of increased taxes and ways to comply with the retrofitting requirements should be easy and accessible for every homeowner. Due to the diversity of the demographic profile of homeowners and renters living in the buildings, leaflets should be most effective medium, reaching both a digital

and non-digital generation. The leaflets and posters should also contain information on the impact of the tax increase beyond the current year. In this way, affected homeowners would be empowered to assess the full costs of non-compliance, rather than just focusing on a simple cost-benefit analysis of the current year, as most of the interviewees were considering. Similarly, there would be no disclosure of personal data of inhabitants, rather creating the mechanisms that residents self-identify as a potential beneficiary of the information contained by the leaflets, posters and other mass media outlets.

Change in physical environment. As buildings targeted by this local policy are dangerous for the general public, there should be visible displays that would make this reality explicit for every passer-by. Because the local public authority can impose and also operate changes in the facades of the building, an example of an intervention could be a mesh (textile cloth used for advertising on build environment) covering partially or totally the façade. On the mesh there should be a clear message about the derelict situation of the building, the implication for public safety and a reference that action is needed from owners. A tougher version of these interventions could also include disclosing the names of the owners that have failed to take action/comply to the local policy. Such a disclosure, although controversial, could tackle false perceptions that build environment is under the jurisdiction of the public authority, as some of the interviewees hinted. Also, it could use social norms to adjust perceptions on the number of owners willing to comply with the local public policy, in comparison to the non-compliers. This design element could prove particularly efficient for multi-owner buildings, where a consensus for covering the retrofitting costs was blocked only by a minority of owners.

Use of social norms and salience. Proactively tackling public perceptions of compliance and non-compliance can serve as a powerful tool for the collective action needed to retrofit derelict buildings. Each owner could receive a personalized letter in the same time she receives the notice that the building needs to undergo improvement work or risk a tax increase, providing information about actions of municipal owned building and their compliance. The letter could also provide information about neighbours willing to cover costs for retrofitting or information on how their buildings tax rates compared to the rest of the building tax from building on the street. In this way, owners are encouraged to change their reference point.

5 Conclusion

The effectiveness of public policies often depends on how people react to it and the extent to which people's real behaviour is taken into account when designing policies. The main objective of the present survey was to identify how Cluj-Napoca's homeowners of buildings evaluated to be in a derelict state and posing threats to public safety, have reacted to the new penalty regulation imposed by the municipality. Beyond observing their engagement behavior in a binary manner, the aim was to have a sense of their perception on the entire process and to identify critical points for improving future simi-

lar approaches. Our results show that, generally speaking, the interviewed homeowners were sensitive and critical to the assessment procedures underlying the taxation measure. The economic costs and benefits of their participation in building care were rather ambiguous given the strong asymmetry of information and weak communication with the public authorities. Thus, understanding the motivation for compliance in this particular case also confirms the limits of the rational actor approach, as suggested in the literature review section, revealing the stringent need to build and strengthen trust and social capital. This aspect is reinforced by recent research pointing to the fact that the perceptions of a weak state capacity, respectively of lack of distributive justice, are factors that enhance the level of tolerance towards tax evasion and informal economy practices (Vâlsan et al., 2020). More so, peer effects expressed as neighbours' behaviour have been shown to positively impact tax compliance (Alm et al, 2017), setting an important precedent for even more visible changes, like in the case of improving building facades.

Given that achieving a sustainable building stock and a positive city image in Cluj-Napoca, and in the rest of the country, significantly depends on the active engagement of the homeowners in building care, the findings of this case study advance valuable ideas for rethinking local policies in the arena of building management and maintenance in the city.

The use of a behavioural approach can point out directly to the critical aspects that need immediate reconsideration in order to further consider pro-social incentives mechanisms for designing programs related to the delivery of public services and urban policy. Our study manages to highlight best the difficulty of applying a behavioural research framework in the very grey case of a post-communist society (Ianole-Calin et al., 2017). At first glance, a superficial conclusion can be drawn: that behavioural insights are not appropriate for the very pragmatic problems of such societies. We believe this to be false and counterproductive. Difficulties in implementing alternative approaches are clearly hard to ignore but the mere exposure to them generates the start of a changing process that has an evidence-based nature. Furthermore, beyond cultural and institutional determinants, the success of behavioural public policy interventions is also partially deterred by the poor quality reporting of interventions and methods in some areas (Cotterill et al., 2020). On the positive side, the synergy achieved by using behavioral insights techniques in the framework of public innovation laboratories, as it is also the incipient position of the Urban Innovation Unit in Cluj-Napoca (Vrabie and Ianole-Calin, 2020), is a growing trend with promising outcomes.

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Povzetki (*Summaries in Slovenian Language*)

1. Reforma javne uprave skozi čas – so spremembe prispevale k učinkovitejšemu upravljanju integritete?

Christoph Demmke

Naslednja razprava dopolnjuje diskurz o razmerju med reformo javne uprave in smernicami etičnega ravnanja. Pričujoči teoretični prispevek obravnava znani Webrov model kot model »institucionalne integritete«, ki ga postopoma nadomešča koncept javnega menedžmenta s poudarkom na individualni integriteti. Medtem ko je Webrov koncept institucionalno integriteto štel za lastnost institucij, novejši menedžerski koncepti institucionalno integriteto opredeljujejo kot lastnost v institucijah zaposlenih javnih uslužbencev. To tudi pojasnjuje, zakaj je trenutna pozornost vse bolj usmerjena na posameznike (kot glavni vzrok neetičnega vedenja) ter na t. i. model integritete slabe osebe. Poleg tega članek preučuje razvoj »institucionalne etike« skozi čas. V zadnjih desetletjih prehajamo od institucionalnega, a mehaničnega in togega Webrovega modela k individualnemu in bolj tekočemu modelu novega javnega menedžmenta. Prehajamo namreč k različici institucionalne integritete, ki se skuša z novimi vedenjskimi mehanizmi vrniti k nekaterim Webrovim vrlinam, a brez njegovih struktur in tehničnih poudarkov. Ta novi trend »upravljanja integritete« je v resnici namenjen zapolnitvi vrzeli, ki jih za seboj puščajo doktrine novega javnega menedžmenta. Vendar pa se reforma upravljanja integritete razvija tudi v specializirano, dodelano in strokovno etično birokracijo. Trenutne težnje stremijo k vse večjim, širšim in strožjim zahtevam glede integritete. Kljub temu se etične smernice kažejo kot neučinkovite, obenem pa se zanemarjajo pomanjkljivosti pri izvajanju smernic integritete.

Ključne besede: *upravljanje integritete, etika, birokracija, reforma javnega menedžmenta, vedenjske smernice*

2. Model merjenja strokovnosti državne uprave

Milan Rman, Marjan Brezovšek, Janez Stare

Prispevek obravnava model merjenja strokovnosti delovanja državne uprave. Z vidika zanesljivega opravljanja državnih funkcij predstavlja strokovnost državne uprave enega od ciljev družbenih sprememb. Model merjenja strokovnosti državne uprave je zasnovan na podlagi teoretično-analitičnih ugotovitev. Sestavljen je iz treh vidikov, in sicer: zanesljivost državne uprave, strokovnost upravne stroke in usposobljenost zaposlenih. Vidik zanesljivosti vključuje element zakonitosti in ekonomske učinkovitosti, vidik strokovnosti temelji na pristojnosti, avtonomiji, znanju in odgovornosti, vidik usposobljenosti pa vključuje elemente vodenja in etike. Model je bil preizkušen v slovenski državni

upravi. Rezultati raziskave potrjujejo povezavo med omenjenimi vidiki strokovnosti državne uprave in posledično veljavnost zasnovanega modela.

Ključne besede: strokovnost, državna uprava, zanesljivost državne uprave, upravna stroka, usposobljenost, model merjenja

3. Upravljanje talentov v javnem sektorju

Tatjana Kozjek, Valentina Franca

V zadnjem desetletju raziskovalci in vodilni kadroviki, zlasti v večjih organizacijah zasebnega sektorja, izkazujejo povečano zanimanje za upravljanje talentov, medtem ko je v javnem sektorju to vprašanje povsem prezrto. Namen prispevka je podati pregled literature o upravljanju talentov v javnem sektorju in predstaviti možnosti za oblikovanje sistema upravljanja talentov v organizacijah javnega sektorja, ki jih ponuja obstoječa zakonodaja. Osrednji metodološki pristop je kvalitativna raziskava z analizo dokumentov. Prispevek skuša odgovoriti na naslednja tri raziskovalna vprašanja: (Kako) se z nadarjenimi zaposlenimi ravna drugače kot z drugimi zaposlenimi? Katere vrste modelov ali praks na področju upravljanja talentov se uporabljajo v evropskih državah? Kakšne so zakonske omejitve na področju upravljanja talentov javnih uslužbencev v Sloveniji? Pregled literature kaže, da organizacije, ki se zavedajo pomena in prispevanja k končnim organizacijskim ciljem, nadarjene zaposlene obravnavajo drugače kot druge zaposlene v organizaciji. Modeli ali prakse na področju upravljanja talentov se med evropskimi državami zelo razlikujejo. V Sloveniji omejitve predstavlja predvsem dosledno spoštovanje načela enakosti, ki vsem zagotavlja enake možnosti za vključitev v sistem nadarjenih javnih uslužbencev ter omejuje možnosti nagrajevanja in posledično napredovanja javnih uslužbencev. Da bi dobre prakse zaživele tudi v Sloveniji, je potrebna sprememba zakonodajnega okvira.

Ključne besede: javni uslužbenec, upravljanje s človeškimi viri, motivacija zaposlenih, javni sektor, prejemki, upravljanje talentov

4. Aktualna razprava o družinskih prejemkih v Avstriji – pokazatelj pomembnega nesoglasja pri razlagi zakonodaje EU

Alexander Balthasar

V začetku leta 2018 je Avstrija spremenila svoj zakon o družinskih prejemkih in uvedla indeksacijo s povprečnimi življenjskimi stroški države, v kateri otrok dejansko prebiva. Kar je na prvi pogled videti kot očitna kršitev zakonodaje EU (zlasti člena 7 Uredbe [ES] 883/2004), je, če pogledamo globlje, precej bolj zapleteno in bi lahko bilo zgolj simptom globoko zakoreninjenih razlik pri razlagi veljavne zakonodaje EU v času po Lizbonski pogodbi,

(i) zlasti v zvezi z razmerjem med tradicionalno prepovedjo »diskriminacije na podlagi državljanstva« (18. člen PDEU, drugi odstavek 21. člena Listine

EU o temeljnih pravicah; gre za rdečo nit ustanovitvenih pogodb) in »državljanstvom Unije« (drugi stavek 9. člena PEU, prvi in drugi stavek prvega odstavka 20. člena) na eni strani ter nadaljnjim pomenom »nacionalnega državljanstva« na drugi strani, ki ga v skladu s tretjim stavkom 9. člena PEU in tretjim stavkom prvega odstavka 20. člena PDEU ne nadomesti »državljanstvo Unije«,

(ii) pa tudi glede 352. člena PDEU, čigar področje uporabe je najverjetneje precej manjše od predhodnika, 308. člena PES,

(iii) in nenazadnje glede pravilnega razumevanja načela enakega obravnavanja, ki zahteva, da se dejansko različne situacije ne obravnavajo enako.

Avtor svojega pogleda ne poda zgolj abstraktno, temveč pomembnost omenjenih razlik utemeljuje na konkretnem primeru razlage navedene sekundarne zakonodaje, s čimer želi prispevati k premoščanju vrzeli in spodbujanju boljšega medsebojnega razumevanja kot bistvenega pogoja za prihodnjo pravno kohezijo EU.

Ključne besede: družinski prejemki, državljanstvo Unije, nacionalno državljanstvo, načeli enakega obravnavanja in nediskriminacije, otrokove pravice, načelo prenosa, spremembe ustanovitvenih pogodb, presoja veljavnosti zakonodaje EU

5. Oblika nad vsebino: možnosti dokazovanja volilnih nepravilnosti po srbski zakonodaji

Jelena Jerinić

Članek analizira srbsko zakonodajo in sodno prakso na področju volilnih sporov, zlasti tisto, ki se nanaša na ugotavljanje dejstev v omenjenih sporih, ter morebitni vpliv procesnih pravil na učinkovitost varstva ustavno zagotovljenih volilnih pravic. Analiza se poleg srbske zakonodaje in sodne prakse naslanja tudi na zadevne evropske standarde, vključno s sodno prakso Evropskega sodišča za človekove pravice. Rezultati kažejo, da volilne komisije in sodišča v praksi uporabljajo omejen krog dokaznih sredstev in da dokazi, ki jih predložijo pritožniki, nimajo enake vrednosti kot tisti, ki prihajajo iz volilnih odborov. Čeprav je v volilnih zakonih izrecno predvidena uporaba splošnih pravil o upravnem sporu, upravno sodišče običajno upošteva odločitve in obrazložitve volilnih komisij, ne da bi dejstva dopolnilo v sodnem postopku, v polni pristojnosti pa odloča razmeroma redko oziroma selektivno. Avtorica predlaga spremembe zadevne zakonodaje, usmerjene k večji naklonjenosti ustreznim procesnim normam ali celo posebni ureditvi dokazovanja v volilni zakonodaji. Po njenem mnenju bi bolj jasna usmeritev k uporabi pravil splošnega upravnega postopka, zlasti pravil o dokazovanju, pomenila njihovo doslednejšo uporabo v praksi.

Ključne besede: upravno sodišče, upravni postopek, volitve, volilne pravice, dokazi, Srbija

6. Ali je sistem upravljanja DDV učinkovit? Primer Češke

Hana Zídková, Tomáš Vrána

Prispevek se osredotoča na učinkovitost pobiranja DDV po standardni metodi kreditnega računa. Obravnavnih je več pristopov za ocenjevanje učinkovitost sistema DDV. Avtorja sta oblikovala lasten kazalnik, imenovan koeficient C, ki določa, kolikokrat mora finančni organ preveriti posamezno valutno enoto, preden jo razporedi v javne proračune. Koeficient C je izračunan iz podatkov o prihodkih iz naslova DDV in skupnem plačanem DDV za vse obdavčljive dobave v gospodarstvu. Prikazani so konkretni rezultati za Češko za obdobje med letoma 2005 in 2018. Koeficient C dosega vrednosti med 7,92 in 11,56, kar pomeni, da so morali davčni organi v najučinkovitejšem letu (2018) vsako pobrano češko krono preveriti več kot sedemkrat, v najmanj učinkovitem letu (2008) pa več kot enajstkrat. Avtorja razpravljata tudi o tem, kaj vpliva na koeficient C. Med pomembnimi dejavniki so ukrepi proti goljufijam na področju DDV, zlasti posebna obrnjena davčna obveznost, pa tudi število zavezancev za DDV v proizvodni in distribucijski verigi ter razlika med povprečnimi stopnjami DDV, ki veljajo za končno in vmesno potrošnjo.

Ključne besede: koeficient C, dokončni sistem DDV, končna potrošnja, vmesna potrošnja, obrnjena davčna obveznost, učinkovitost DDV, učinkovitost pobiranja, Češka

7. Vpliv fiskalnih politik na rast MSP na Zahodnem Balkanu: primer Kosova

Gezim Jusufi, Fillorete Gashi-Sadiku

Prispevek proučuje vpliv fiskalnih politik na krepitev zmogljivosti MSP proizvodnega sektorja na Zahodnem Balkanu, s posebnim poudarkom na podjetjih s Kosova. Za dosego empiričnih rezultatov so bili podatki, pridobljeni iz mnenj 100 analiziranih MSP, obdelani z metodo logistične regresije. Za njihovo obdelavo smo uporabili tudi statistični program SPSS. Na podlagi pregleda literature in empiričnih rezultatov je bilo ugotovljeno, da fiskalne politike vplivajo na rast MSP na Kosovu. Tako Kosovo kot druge države Zahodnega Balkana so sprejele fiskalne politike in svežnje ukrepov za podporo MSP, ki so pomembno vplivali na njihove dejavnosti. Čeprav v običajnih razmerah fiskalno podporo MSP zagotavljajo vlade teh držav, bi morala biti zaradi uničujočih učinkov pandemije covida-19 na gospodarstvo posameznih držav fiskalna podpora MSP v bližnji prihodnosti zagotovljena v obliki davčnih spodbud.

Ključne besede: fiskalne politike, Zahodni Balkan, MSP, krepitev zmogljivosti, logistična regresija

8. Oblikovanje teritorialnih skupnosti kot subjektov lokalnega razvoja

Mariana Blazhivska, Petro Petrovskyi

Prispevek proučuje bistvo decentralizacije in njenega vpliva na oblikovanje teritorialnih skupnosti. Predstavljeni so znanstveni pogledi na bistvo pojma ‚teritorialna skupnost' in navedene njegove značilnosti. Prepoznani so dejavniki, ki vplivajo na regionalni razvoj teritorialne skupnosti kot subjekta gospodarskih odnosov v regiji. Prispevek analizira zakonodajno ureditev procesa oblikovanja in razvoja teritorialnih skupnosti ter opozarja na pomanjkljivosti trenutnega stanja. Na kratko analizira tudi stopnjo decentralizacije v obdobju 2018–2020 in podaja metodologijo za ocenjevanje sposobnosti preživetja teritorialnih skupnosti. Metodologija oblikovanja naprednih teritorialnih skupnosti je opredeljena v ukrajinski zakonodaji iz leta 2015 in odobrena z resolucijo z dne 8. aprila št. 214 z naslovom Metodologija oblikovanja naprednih teritorialnih skupnosti. Izračunani kazalniki so podani na primeru združene teritorialne skupnosti Stepanivska, pri čemer so ocenjene tudi njene možnosti razvoja. Prispevek vsebuje tudi priporočila za izboljšanje pogojev oblikovanja in razvoja teritorialnih skupnosti v pogojih decentralizacije v Ukrajini. Empirična metodologija, uporabljena v študiji, se je v praksi izkazala za usklajeno in uporabno pri oblikovanju teritorialne skupnosti kot subjekta lokalnega razvoja.

Ključne besede: upravno-teritorialna enota, decentralizacija, lokalna samouprava, teritorialna skupnost

9. Urejanje urbanega okolja: romunska študija primera izboljšanja fasad stavb

Anamaria Vrabie, Rodica Ianole-Călin

Članek proučuje učinek gradbenih predpisov na sanacije fasad, ki so jih izvedli v mestu Cluj-Napoca, drugi največji romunski občini. Namen je bil ugotoviti, v kolikšni meri je bil ukrep višje obdavčitve učinkovit za dosego skladnega vedenja in katere sekundarne učinke je morda imel na odnos ljudi do lokalnih oblasti. Opravili smo strukturirane intervjuje s 25 lastniki, ki jih je ta ukrep zadeval. Kvalitativna analiza je nakazala na odprta vprašanja glede izvedbe ukrepa in obveščanja prebivalstva. Poleg tega je prepoznala težave pri upravljanju mešanega premoženja in kolektivni obravnavi. Ugotovitve vidimo kot prvi korak k oblikovanju celovitejšega raziskovalnega okvira, osredotočenega tudi na vedenjski vidik, kot ga zajemajo naša priporočila. Kažejo namreč, da so bili lastniki do ukrepa kritični tako glede njegove utemeljitve kot izvedbe, zaradi dvoumnih informacij pa niso mogli izvesti analize stroškov in koristi. Ugotovitve nadalje prepoznavajo težave pri upravljanju mešanega premoženja in kolektivni obravnavi, obenem pa pozitivno nakazujejo na vlogo medsebojnih učinkov, ki so tu izraženi kot skladno sosedsko vedenje. Rezultate raziskovalne študije vidimo kot prvi korak k oblikovanju celovitejšega pristopa, ki bo služil kot orodje za proučevanje razvoja inovativnih lokalnih politik v postkomunis-

tičnih okoljih s kombiniranim raziskovalnim okvirjem, ki poleg tradicionalnih teorij racionalnega akterja vključuje tudi vedenjski vidik. Seveda tudi za našo študijo veljajo običajne metodološke omejitve v smislu nezmožnosti posploševanja zaključkov. To pa kliče po nadaljnji raziskavi podobnih regionalnih in urbanih izzivov na podlagi razširjene sheme več primerov.

Ključne besede: *skladno vedenje, fasade stavb, predpisi, oblikovanje politike, vedenjski vidiki*

AUTHOR GUIDELINES

Central European Public Administration Review – CEPAR publishes original scientific papers on theoretical and practical issues in the development and function of public administration. All articles are published **only in English**. Papers should report significant advances of the state-of-the-art and the results should represent substantial progress toward improving our understanding of the public administration. Papers will be evaluated for the relevance and significance of the contribution, novelty, scientific approach rigor, clarity and understandability. First evaluation is done by editorial board, all those papers passing the first screening will proceed to the double-blind peer review process.

In March 2020, CEPAR started to cooperate in the pilot project organised by Research Data Alliance Node Slovenia (RDA Node). The project aims to support scientific publishers and journals based in Slovenia in introducing research data citations in scientific publications and the open access to primary data in their policies. In this context, RDA Node has developed draft Guidelines for the implementation of scientific publishing policies, based on existing international frameworks and recommendations.[1]

Consequently, the guidelines for CEPAR authors have been extended in order to comply to FAIR Guiding Principles for scientific data management and stewardship (2016), in force since May 2020. FAIR data are data that fulfills principles of ***findability, accessibility, interoperability***, and ***reusability***. Data that articles use as the base of their findings should be easy to find for both humans and computers. Once the user finds the required data, she needs to know how they can be accessed, possibly including authentication and authorisation. The data usually need to be integrated with other data; in addition, the data need to interoperate with applications or workflows for analysis, storage, and processing. The ultimate goal of FAIR is to optimise the reuse of data; to achieve this, data should be well-described so that they can be replicated and/or combined in different settings. The principles refer to three types of entities: data, metadata (information about the digital object), and data repository infrastructure.

Access to research data meets interests of various stakeholders in scientific publishing. Among others, such an approach enhances sound research in submitted manuscripts since data are transparent and can be reviewed and further referred to. In addition, it increases citations of published articles, and enables easier and broader knowledge dissemination, particularly when research is publicly co-financed. Hence, European Union and national research agencies enforce these principles through Open Science initiatives and assessments; however, also taking into account necessary exceptions.

1 https://zenodo.org/record/3757282#.XrLHLGj7SM8

The main improvements in CEPAR guidelines are therefore the following:

– authors submit information about access to original primary or secondary research data besides the main manuscript, the former deposited and indexed beforehand in relevant archives or sent as supplements to the later;
– authors refer to research data sources in appropriate citation form and list them in the bibliography;
– reviewers verify if articles and data used as base of their findings comply with FAIR principles;
– editors monitor, support and evaluate the whole process.

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The open research data, accompanying the scientific article, are the intact integral parts of data that underlie the presentation and conclusion of the article. Data integrity allows for various further analyses. Ensuring the integrity and comprehensive documentation of data for other uses means transferring the data to a disciplinary data centre. A scientific publication (eg. an article) should be accompanied by the information necessary to understand the data on which the authors based their findings, as well as information on where this information is available.

Data can be an image, a text, a numeric, etc. The data should be as full, detailed and comprehensive as possible to also include unused portions of the data collected, which may be useful for further analysis. They should also include any additional materials and tools that help to replicate and understand the published analyses.

Data may have been collected for publication purposes, in which case we are dealing with primary data. Alternatively, the authors may have used secondary data.

In the case of primary data, the authors should ensure that the data is available to the editorial staff when submitting the article for review, or, if this is not possible, in the appropriate institutional or general open-access infrastructure repository. In the case of secondary data, the authors cite the data in the article and indicate where they are available for re-use.

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Some data sharing exceptions are possible when:

– it comes to personal and sensitive data (that are protected according to GDPR and national legislation);
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In these cases, it is recommended to share the data in an anonymized manner, or under conditions of controlled and regulated access in appropriate data archive. Editors and reviewers must have the information available in agreement with the data archive, including the conditions of deleted information on authorship if the archive allows double-blind review. Exceptions and specifics for access to data should be explained by the author in the accompanying Data Access Statement and publicly available metadata.

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The data should be available to editors and reviewers when the article is submitted for review, and to all others by the publication of the journal at the latest. An embargo on access to data is permitted exceptionally, however only with reasonable provisions on the permissibility of such an embargo and with appropriate additional justification.

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The data must be submitted to a data repository, a data centre or a data archive. This may be disciplinary, institutional or general. Preferably, the research data should be submitted to a central disciplinary national or international data centres (national CLARIN.SI, ADP, international CESSDA, Zenodo), if no suitable community resource is available. Authors can use FAIRsharing and re3data.org to search for a suitable repository, both provide a list of certified data repositories.

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Under no circumstances shall a paper be simultaneously submitted to a second publication while still under review elsewhere, without a letter of notification to the Editor-in-Chief. Failure to adhere to this policy is cause for rejection of the manuscript.

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ARTICLE FORMATTING

Papers should include a **Title** (recommended length is up to 12 words), an **Abstract** (appropriately structured as set out below and up to 250 words), **Keywords** (up to 6), **JEL** classification codes, and the following sections (as suggested by **IMRaD** format): **Introduction, Methods, Results, Discussion,**

Conclusion, References and/or Appendices (if needed). Appendices are permitted, but limited to information that is not essential for the general understanding of the research presented in the main manuscript.

The paper must be formatted on A4 paper – portrait layout – with the following margins: left, right, top: 2.5 cm; bottom: 3 cm. **Do not add page numbering**.

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The title describes the content of the paper.

The article's title should be followed by:

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2. ABSTRACT – KEY WORDS, JEL:

The article must also include: a) an abstract; b) key words: up to 6 (small letters), and c) a JEL (Journal of Economic Literature) code – <https://www.aeaweb.org/econlit/jelCodes.php>.

An abstract is the integral part of the paper. It gives a brief summary of the paper and defines its content. Please note that abstract should be structured, set out under 5-8 sub-headings: Academic contribution to the field (mandatory); Purpose (mandatory); Design/methodology/approach (mandatory); Findings (mandatory); Research limitations/implications (if applicable); Practical implications (if applicable); Social implications (if applicable); Originality/significance (mandatory).

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An article must be submitted only in MS Word format (*.doc, *.docx) with single spacing, without special or highlighted characters. Do not indent paragraphs. Sections should be titled and numbered with Arabic numerals from the introduction to the conclusion.

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  Last name, First initial. (Year published). Title. Edition. (Only include the edition if it is not the first edition) City published: Publisher.

  Example: Kovač, P. and Bileišis, M. (eds.) (2017). Public Administration Reforms in Eastern EU Member States. Ljubljana, Vilnius: Faculty of Administration of University of Ljubljana, Mykolas Romeris University Lithuania.

- **Print Journal articles:**

  Last name, First initial. (Year published). Article title. Journal, Volume (Issue), Page(s).

  Example: Magliari, A. (2019). Intensity of Judicial Review of the European Central Banks's Supervisory Decisions. Central European Public Administration Review, 17(2), pp. 73-88. https://doi.org/10.17573/cepar.2019.2.04.

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  Directive 7/23/EC, OJ L 181, 9.7.1997, p. 1.

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Last revision: 6 May 2020.

Call for the Special Issue of the Central European Public Administration Review: "Public sector during and after the Covid-19 pandemic – Challenges in Central Europe and other countries, adopting European principles"

Guest Editors:

Assist. Prof. Nina Tomaževič, PhD (University of Ljubljana, Faculty of Public Administration, Slovenia),

Assist. Prof. Onur Kulaç, PhD (Pamukkale University, Department of Political Science and Public Administration, Turkey)

Editor-in-Chief: Prof. Maja Klun, PhD (University of Ljubljana, Faculty of Public Administration, Slovenia)

Special Issue Framework – a Brief Description:

In a period of just a few months, the Covid-19 pandemic radically changed the lives of millions of people and significantly affected almost all aspects of relations in societies worldwide, e.g. between the state or any other authority and citizens, businesses, NGOs and other service users/parties. Apart from the devastating health consequences for those directly affected by the virus, the Covid-19 pandemic holds major implications for the way all members of our societies live and work.

In the first half of 2020 – during the first wave of the pandemic – public sector organisations had to resort to various interventions and tactics and introduce new/different communication channels in order to continue to effectively play their roles in relation to service users/parties, as well as to efficiently organise civil servants' tasks. Some of these approaches immediately proved to be a value added also for the future, while others continue to cause problems when searching for a balance between protection of legally defined public interest and exercising private rights.

This calls for a detailed research of the main policy and organisational challenges of the Covid-19 pandemic faced by the heads of public sector organisations, public servants, service users/parties, and all other

stakeholders of public sector organisations, e.g. other institutions involved in specific administrative procedures. The research of the first wave of the pandemic can help us understand the most salient drivers and barriers for classically and remotely run activities, in order to formulate the recommendations for agile operations of public sector organisations.

Subject Coverage / Topics that are welcome in particular, but not limited to:

In order to better understand the future of public services during and after the next waves of the Covid-19 pandemic, we call for scientific theoretical and empirical papers reflecting on, but not limited to, the following issues:

- Public sector organisations' responses to the Covid-19 pandemic and related issues for tomorrow's better policy making on supranational, national, regional and local scales;
- Impact of the Covid-19 crisis on the future development of public governance models;
- Impact of the Covid-19 crisis on the regulation/legislation related to public services;
- Impact of the Covid-19 crisis on digitalisation of public services and internal processes of public sector organisations;
- Impact of the Covid-19 crisis on public sector values, ethics, and principles;
- Innovations in public services for efficient adaptation to the changes caused by Covid-19;
- Change management and crisis management approaches for an effective and efficient support of civil servants;
- Impacts of anti-Covid-19 measures – e.g. isolation, quarantine, lockdown – on public sector organisations' operations;
- Impacts of the Covid-19 crisis on the implementation of Sustainable Development Goals related to public services;
- Street-level bureaucracy and the critical role of street-level bureaucrats in the Covid-19 pandemic;
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Guidelines for Prospective Authors:

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All papers are refereed through a double blind peer review process. Manuscripts are to be **submitted online** at <http://cepar.fu.uni-lj.si/index.php/CEPAR/about/submissions>.

CEPAR's aim is to cover mostly Central European but also global settings, in not only geographical but mainly contextual terms, by supporting administrative reforms and public governance in accordance with European principles. CEPAR is indexed and referred to by ESCI (Emerging Sources Citation Index, Clarivate Analytics), HeinOnline, ECONLIT, CNKI SCHOLAR, EBSCO, IPSA, IBSS, WPSA, SSRN, CSA Proquest, ERIH+, ULRICH's and Google Scholar.

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Target Dates:

- Submission of full manuscripts: **1 February 2021**.
- Reviews and feed-back information to authors: **1 March 2021**.
- Submission of revised papers: **1 April 2021**.
- Publication: **May 2021**.

Papers submitted earlier than the submission date will be put through the review process on a rolling basis, and their authors may expect to hear back sooner.

Additional queries and information: cepar@fu.un-lj.si.