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CEPA CENTRAL EUROPEAN PUBLIC ADMINISTRATION REVIEW

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EDITORIAL POLICY
ON THE JOURNAL'S AIMS AND SCOPE

The mission of *Central European Public Administration Review* is to contribute to the **theoretical and practical progress of public administration in central European** and other countries, adopting European principles. Public administration is respectively understood as one of the vital social subsystems that directly affect the development of the whole societies and needs to be addressed in a **scientifically sound and multidisciplinary way**. In this respect, particularly contemporary issues are addressed, such as globalisation, crises, post-socialist transitions, digitalisation, delegation of powers, migrations, strive for rule of law, transparency and participation in public issues, efficiency and accountability issues and other similar challenges and reforms.

In addition, the editors and boards aim is to strengthen the awareness regarding **common European principles of good administration and public governance** in order to identify and exchange best practices on the field. However, specific administrative cultural traditions need to be respected when reforming administrative policies. Particularly, the focus is on central Europe, even though its limits are broadly defined to incorporate Eastern Europe, Balkans, and Western democratic legacies and practices. We also welcome papers from other regions of Europe and beyond to enable comparative insights in joint research topics.

Hence, the editors' standing on journal's aims are:

(1) **Openness across national and disciplinary boundaries, with diversity** regarding administration and governance related topics, geographical focus and contributors affiliation in central Europe and broader.

(2) **Focusing on the specifics and importance of public administration as a societal system** and its multilevel governance. In this framework, especially new studies, innovative approaches and addressing controversial issues are welcome to enable thought-provoking debate and further research.

(3) **The substantive and methodological scientific relevance and multidisciplinary** insight of selected current topics through robust review process. IMRaD (Introduction, Methodology, Results and Discussion) approach is recommended combining empirical research with qualitative and quantitative analyses. Although academic contribution is highly regarded, readability of articles is pursued by clarity of titles, key words and abstracts.

Finally, we wish to foster **collaboration and networking** among public administration scholars and experts from practice by supporting comparative articles, addressing pan European principles of public administration, multidisciplinary research, co-authorships, constructive and proactive members of advisory boards.

Central European Public Administration Review

FU UNIVERSITY OF LJUBLJANA
Faculty of Public Administration

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Central European Public Administration Review is a scientific peer-reviewed journal that publishes original articles, devoted to the development and analysis of public administration and governance. We are mostly interested in articles on integrative and multidisciplinary research on the field that includes related scientific disciplines, such as law, economics and management as well as political, organisational and information sciences. The journal's goal is to cover mostly central European space, in not only geographical but mainly contextual sense by supporting administrative reforms in accordance with European principles.

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Basic Information & Indexing

Central European Public Administration Review was launched in 2018 by Faculty of Public Administration, University of Ljubljana. Its first title "Administration", launched in 2003, was later changed to "International Public Administration Review". In 2018, it was revised again to address predominantly central European administrative space.

The publisher of the journal is a member of COPE – Committee on Publication Ethics, the European Association of Science Editors (EASE) and OpenAIRE.

The journal is also a member of CEE Network of Public Administration and Policy Journals.

The journal is indexed and referred to by SCOPUS, ESCI (Emerging Sources Citation Index, Clarivate Analytics), HeinOnline, ECONLIT, CNKI SCHOLAR, EBSCO, International Political Science Abstracts – IPSA, International Bibliography of the Social Sciences – IBSS, Worldwide Political Science Abstracts – WPSA, CSA Proquest, ERIH+, ULRICH's and Google Scholar.

The journal adheres to COPE ethical standards of best practice of journal policy.

There are no: "article processing charges" (APCs), "article submission charges", "membership fees" or "language editing fees". We do not charge authors for having colour photos or extra pages in their articles. There are no hidden costs whatsoever.All the published articles are double blind peer-reviewed and screened with plagiarism detection tools (Turnitin); content match of less than 20% is considered acceptable. Reviews are delivered promptly. Accepted papers are published in approximately three to six months from submission.

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Introductory Preface

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ABSTRACT

On the 20th anniversary of the Central European Public Administration Review (CEPAR), this study underscores the significance of the journal's inclusion in indexing. Employing scient metrics, bibliometric techniques, and knowledge mapping, the analysis offers a comprehensive overview of CEPAR's evolution over the past two decades, the challenges encountered following the journal's indexing in Web of Science, and the distinctive characteristics of authorship patterns. The data used in bibliometric analysis was extracted from Web of Science and covers the period 2018–2023 (103 papers), while the data for authoring analysis was collected from the archives of journal volumes covering the period 2003–2023 (425 papers). Over its 21 years of existence, CEPAR has published a total of 425 articles with an average of 20 articles per year. These contributions represent the collaborative efforts of 684 authors from different countries, with the average article written by 1.61 authors. The trend in annual citations is positive, with citations increasing tenfold following indexation in Web of Science. The publications in the sample (bibliometric analysis) were written by 175 authors affiliated with 75 institutions, of which 84% contributed a single article to CEPAR's evolution. In the five years since its indexing in Web of Science, CEPAR has garnered about 200 citations, approximately 33 per year. The most frequent topics include studies on performance, public administration, comparative analysis, e-government, administrative courts, and access to information.

Keywords: *authorship patterns, bibliometric analysis, CiteSpace, journal metrics, journal performance, knowledge map*

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1 Introduction

Central European Public Administration Review (p-ISSN 2591-2240, e-ISSN 2591-2259) is an interdisciplinary scientific journal dedicated to public administration and governance in Central Europe and other countries of Europe. The journal is published under the auspices of the University of Ljubljana (Slovenia), Faculty of Public Administration. The publication policy of the journal focuses on the approach of European values that lead to an efficient governance and public administration. CEPAR is a journal open to multidisciplinary research collaborations, but which go beyond the borders of a country, and which lead to fruitful benchmarking analyses applicable in public administration. The central goal is to identify the best practices in public administration by referring to the traditional specifics of the analysed countries and the integration of European principles in the field.

The journal was published for the first time in 2003, under the initial name of "Administration", which was changed to "International Public Administration Review". In 2018, the journal was renamed, receiving the current form "Central European Public Administration Review (CEPAR)". Ever since its first appearance, the publication frequency has been maintained at two issues per year. If in the first years after its appearance articles were accepted in Slovenian, now the publication is done exclusively in English.

CEPAR accepts manuscripts with scientific empirical research, qualitative and quantitative analyses, after being reviewed by an international advisory board, who works in an efficient manner with the editorial team. All publication ethics and guidelines for manuscript submission can be found on journal's website (https://cepar.fu.uni-lj.si/index.php/CEPAR).

CEPAR is indexed in 13 databases, among which they are found Web of Science - ESCI (Clarivate Analytics), SCOPUS, ECONLIT, EBSCO, ProQuest, ERIH+, etc. CEPAR publisher is a member of COPE - Committee on Publication Ethics, the European Association of Science Editors (EASE) and OpenAIRE. The review is also part of CEE Network of Public Administration and Policy Journals. In 2022 CEPAR has recorded the following metrics in Web of Science: Journal Citation Indicator 0.31, Article Influence Score 0.115, Rank 67 of 89 journals in Public Administration category. It is obvious that it has gone through several revisions by different international institutions, which leaded to some changes in focus and type of articles published. The most recent database that includes CEPAR into indexing is SCOPUS (from 2023). The current study is focused on analysing CEPAR's performance by using quantitative data downloaded from databases for bibliometric analysis and knowledge mapping (Web of Science 2018 – 2023) and collected from journal's archive (2003 – 2017) for extended authorship framework analysis. In the past one analysis about the journal was already done by Kovač and Jukić (2016), which focused on content analysis under the previous name of the journal. Bibliometric analysis focused on international journals is fashionable at the present in all sciences, including business and economics sectors. Here are some recent examples of this type of studies: Journal of Accounting and Public Policy (Baker

et al., 2023b), Journal of Financial Services Marketing (Bhaskar et al., 2023), Total Quality Management & Business Excellence (Singh et al., 2023), Journal of Public Budgeting, Accounting and Financial Management (Göksu, 2023), International Journal of Contemporary Hospitality Management (Sharma et al., 2023), Journal of Corporate Real Estate (Maggon, 2023), International Journal of Advertising (Ford et al, 2023), International Journal of Finance & Economics (Baker et al., 2023a), etc.

The presented work aims to offer a comprehensive overview of Central European Public Administration Review by using scient metrics and bibliometric techniques. The purpose is to describe how the journal has evolved in the last 20 years and what challenges are faced after journal indexing in Web of Science.

The rest of the paper is as follows: research methods and data collection procedure are covered in Section 2, the findings are detailed in Section 3, and the main conclusions, beside potential opportunities, and current weaknesses, of the study are covered in Section 4.

2 Research methods and data collection

Bibliometrics is a technique that uses the total amount of scientific literature produced to observe the condition of research and technology. It is a way to place a nation in relation to the rest of the world, an organization in reference to a nation, a scientist regarding their local community, and even a journal in relation to other journals that share a similar theme. Bibliometric analysis offers a more impartial assessment of the literature than traditional literature reviews, which may contain interpretation bias (e.g., systematic literature review, meta-synthesis) or publication bias (e.g., meta-analysis) (Dede and Ozdemir, 2022). Bibliometric analysis examines the social and structural connections among various research components to provide a summary of the bibliometric and intellectual structure of a field. Before researchers even begin reading, bibliometric analysis helps them find the best studies; it also helps them identify research gaps in the field quickly; it generates new research ideas; it reveals research trends; and it maps the research area to show the conceptual, social, or cognitive structure (Donthu et al., 2021).

Results from data analysis are presented using visual maps. Map visualization is used to analyse and display the correlated data and present it as maps, which are clearer and more intuitive. There is several software able to manage large quantities of bibliometric data in different data formats and to provide readable and colorful maps, networks, and connections (e.g. BibExcel, CiteSpace, Netdraw, Pajek, BiblioShiny, BiblioMaps, Sci2, SciMat, Publish or Perish RStudio, Sitkis, UCInet, VOSviewer). Science mapping analysis and general bibliometric and performance analysis can both be conducted with bibliometric instruments. Each software has its own strengths and weaknesses, but a very useful analysis was done by Moral-Muñoz et al. in 2020.

Evaluating scientific research is challenging and is done by using particular bibliometric indicators. Bibliometric indicators fulfil the need for objective and easily manipulable measures of scientific activities. Bibliometric indicators can be calculated for a publication, a researcher, a journal, an institution, a country, or a topic. The current research employs bibliometric indicators such as indicators of scientific production, indicators of collaborations, indicators of authorship, indicators for co-occurrences analysis.

In the study, Microsoft Excel is used to calculate indicators measuring CEPAR's performance. Excel is a Microsoft software application that arranges numbers and data using spreadsheets, algorithms and functions and it facilitates descriptive statistics. To visualize and map the sciences published in CEPAR it was used CiteSpace 6.1.R6 and CiteSpace 6.3.R1. CiteSpace assess the knowledge domain by various types of timeseries of networks to reveal interesting patterns or turning points of science (Chen, 2016). The development of a topic area, the most citations in the knowledge base, the automatic labeling of the various clusters using terms from citing articles, the geospatial collaboration network, and international collaboration are just a few of the options that CiteSpace provides to comprehend and interpret historical and network patterns.

CEPAR is indexed in two databases, Web of Science and Scopus, as was previously noted. As opposed to Scopus, which has one more year of indexing, Web of Science was the only database used for data collecting. Data collection took place on 22.01.2024 by using the following query strategy. In "Publication Title" field in Web of Science were introduced as query words "central European public administration review" without any temporal restriction. Therefore, 104 articles published by Central European Public Administration Review between 2018 and 2023 were indexed in this database. One editorial material is indexed, it was removed, resulting in 103 papers. Of these publications 92.2% are articles (95 publications) and 7.8% are review articles (8 publications). The data sample was downloaded in two formats: full record in Excel and full record in plain text with cited references. Deduplication procedure is not needed. All publications are written in English.

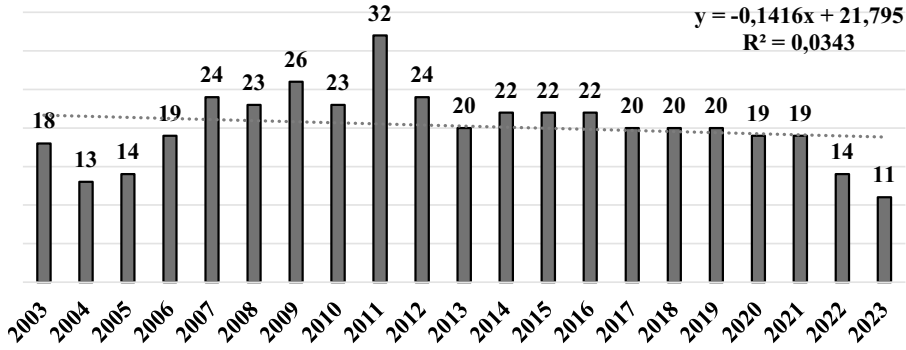
3 Results and discussions

3.1 CEPAR's publication dynamics

Throughout its 21 years of existence, a total of 425 articles have been published in CEPAR, with an annual average of 20.24 articles per year, even though journal volumes ranged between two or four issues per year. It cannot be seen an upward trend in the number of published articles, but on the contrary, there is a constant trend of them (around +/- 20 articles per year). The year 2011 is highlighted by the largest number of published articles, namely 32 articles, which represent 7.53% of the total publications and meant an increase of 39% compared to the previous year, this is the largest annual growth in the entire analyzed period. The change in the quantity of publications in the last

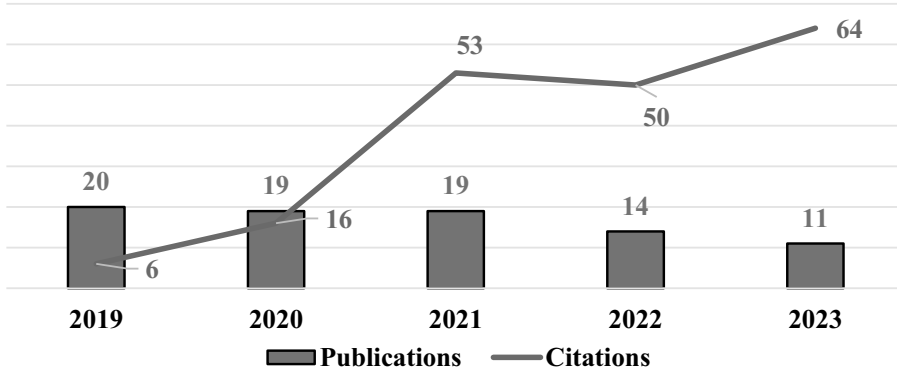
two years is not desirable, the journal faces a reduction in the number of published articles. These changes are the result of editorial decision to publish only scientific articles and only articles that include implications connected to the region (namely Central Europe). At the same time the rejection rate increased, especially because of the request to enter Scopus and its evaluation. Thus, in 2023, only 11 articles were published, the smallest number of articles published in a year, reflecting a decrease of about 50% of the annual average of the two decades analyzed. After the announcement of entering to Scopus the number of submitted articles increased, despite the rejection rate. The yearly variations in the quantity of articles released by CEPAR between 2003 and 2023 are depicted in Figure 1.

Figure 1. Annual quantitative evolution of articles published by CEPAR



Source: Authors

Figure 2. Evolution of publications and citations after WoS indexing



Source: Authors

In this study are integrated 103 publications which have an H-index of 6 and an average of 1.93 citations per article. They are associated with 148 citing articles (without self-citations) and were cited 170 times (without self-citations). In Figure 2 we can observe the simultaneous evolution of the number of published articles and the citations generated by them after indexing the

journal in Web of Science. A positive evolution of the number of annual citations is visible, they increased 10 times in the 5 years after the indexation in Web of Science. The 83 articles indexed in Web of Science brought 64 citations in 2023, the maximum number from 2019-2023. Entering the indexation of Scopus would probably improve the citations even more.

The publications in the sample were written by 175 authors, out of which 147 authors (i.e. 84%) contributed one article to the CEPAR evolution in the last 5 years analysed. To these we can add 26 authors (15%) who have published 2 articles in CEPAR. Among the authors we can identify the authors who have contributed most to the development of the journal, namely Androniceanu and De Vries . These two authors have each published a total of 3 articles during the period under review. Androniceanu A. is affiliated to the Bucharest University of Economic Studies (Romania) and has an WoS H-index of 17, respectively an H-index in Google Scholar of 36. De Vries M.S. is affiliated at Radboud University Nijmegen (Netherlands) and has a WoS H-index of 5, respectively a Google Scholar H-index of 28.

The 175 authors in the analysed collection of publications are affiliated to 75 institutions, of which 26% are professors at the University of Ljubljana (Slovenia), which places this institution on the first position in the top. On the 2nd position, with a contribution of 6 articles in CEPAR, are Masaryk University Brno from Czechia and University of Rijeka from Croatia. It should be remembered that over 65% of the involved institutions published only one article, and to these are added 24% of the institutions that published 2-3 articles in the 5 years analysed. Table 1 contains a list of affiliate institutions that have published more than 4 articles.

Table 1. List of institutions with more than 4 publications in CEPAR (2019-2023)

Rank	Institutions	Country	Publications	%
1	University of Ljubljana	Slovenia	27	26.21
2	Masaryk University Brno	Czech Republic	6	5.82
3	University of Rijeka	Croatia	6	5.82
4	Bucharest University of Economic Studies	Romania	5	4.85
5	Adam Mickiewicz University	Poland	4	3.88
6	Eotvos Lorand University	Hungary	4	3.88
7	University of Public Service	Hungary	4	3.88

Source: Data centralized by author

From a geographical perspective, the country of origin of most authors is Slovenia and it had a contribution of 29% in the total number of CEPAR publications. Table 2 shows the top 5 countries with the highest contribution in the

analysed journal. Out of the 25 countries involved in the publication, 42% of them contributed one article and 35% of them contributed between 2 and 5 articles. Both tables indicate that journal focuses on specific region as it is indicated by its name.

Table 2. Top 5 – most productive countries in CEPAR (2019-2023)

Rank	Countries	Publications	%
1	Slovenia	30	29.13
2	Hungary	14	13.59
3	Czech Republic	12	11.65
4	Croatia	11	10.68
5	Poland	9	8.74

Source: Data centralized by the author

In the 5 years of indexing in Web of Science, CEPAR collected about 200 citations, the articles being quoted, on average, about 33 times a year. Of the 103 items in the sample, 4 items are differentiated as having over 10 citations. Although the number of citations is small, they can still be ranked in the topmost cited articles published by CEPAR. Thus, the most cited work is published by Androniceanu A. and Marton D.M. in 2021, it is about how government decisions in the pandemic have psychosocially influenced citizens. Table 3 contains the list of works with more than 5 citations.

Table 3. List of the most cited papers published in CEPAR (2019-2023)

Rank	Title	Authors	Year	DOI	Citations
1	*The Psychosocial Impact of the Romanian Government Measures on the Population During the COVID-19 Pandemic*	Androniceanu A., Marton D.M.	2021	DOI10.17573/cepar.2021.1.05	15
2	*The Impact of Digitalization on Public Administration, Economic Development, and Well-Being in the EU Countries*	Androniceanu A., Georgescu I., Sabie O.M.	2022	DOI10.17573/cepar.2022.2.01	13
3	*E-Government Effectiveness and Efficiency in EU-28 and COVID-19*	Hodzic S., Ravselj D., Alibegovic D.J.	2021	DOI10.17573/cepar.2021.1.07	13
4	*Public Administration's Adaptation to COVID-19 Pandemic - Czech, Hungarian, Polish and Slovak Experience*	Horvat M., Piatek W., Potesil L., Rozsnyai K.F.	2021	DOI10.17573/cepar.2021.1.06	12
5	*Impact of the COVID-19 Crisis on the Regulation to Tourism in the Czech Republic*	Novotny L., Pellesová P.	2021	DOI10.17573/cepar.2021.1.09	8
6	*The Analysis of E-Government Services Adoption and Use in Slovenian Information Society between 2014 and 2017*	Decman M.	2018	DOI10.17573/cepar.2018.2.10	7
7	*Collaborative Governance Challenges of the COVID-19 Pandemics: Czech Republic and Slovakia*	Klimovsky D., Maly I., Nemec J.	2021	DOI10.17573/cepar.2021.1.04	6
8	*Efficiency of Medical Laboratories after Quality Standard Introduction: Trend Analysis of Selected EU Countries and Case Study from Slovenia*	Lamovsek N., Klun M.	2020	DOI10.17573/cepar.2020.1.07	6
9	*Public Sector Reform from the Post-New Public Management Perspective: Review and Bibliometric Analysis*	Ropret M., Aristovnik A.	2019	DOI10.17573/cepar.2019.2.05	6

Source: Data centralized by authors from WoS

3.2. CEPAR's authorship pattern

One kind of bibliometric analysis called authorship study is concerned with looking at the patterns and traits of authorship in academic publications. Authorship analysis aims to characterize the traits of authors and authorship of articles that are published in a particular publication or journal. It also computes the level of collaboration among these authors. All data were manually centralized in Table 4. Over the two decades, 425 articles or reviews papers have been published in CEPAR, representing the efforts of the work done by 684 authors from different countries. Thus, on average an article published in CEPAR was written by 1.61 authors.

Predominant are single author articles, which have a share of 57% in total, which means that about one tremor of authors prefers individual research activities. Moreover, 85% of the articles published in CEPAR involved research activities submitted by 71% of the authors who published 363 articles with 1 or 2 authors. The maximum number of co-authors of an article is 5, with only one such article published in 2019.

It is impossible to pinpoint a distinct evolution, over time, of the number of articles with multiple authors in the case of CEPAR. The 182 articles with multi-authors show a sinusoidal evolution, reaching a maximum value of 17 articles with multiple authors in 2012. A total of 441 contributors to the CEPAR journal (representing 64% of the total authors) were open to collaboration in their research activities, which generated the production of 43% from the articles published in the analyzed period.

Collaboration research refers to research in which any paper is being carried out by at least two persons with their intellectual efforts. Collaboration in research is fundamental to achieving the proposed goals and identifying the novelty elements. The collaboration brings together researchers with their own ideas, varied knowledge, and particular skills. The evaluation of the degree of research collaboration within CEPAR magazine involved the calculation of a set of indices presented in Table 5. The conceptual details and calculation formulas of the four indicators can be studied in the papers published by Neelamma and Gavisiddappa (2018) and Savanur, and Srikanth (2010). The annual evolution of collaboration indicators can be seen in Figure 3.

Table 4. Authorship patterns of CEPAR

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total papers	Total authors	*% Total papers*	*% Total authors*
Papers - single author	18	8	11	18	18	16	16	14	21	7	12	12	14	9	8	8	9	11	5	5	3	**243**	**243**	*57.18*	*35.53*
Papers - two authors	0	3	2	0	5	5	7	8	8	12	5	6	4	7	7	12	4	7	7	5	6	**120**	**240**	*28.24*	*35.09*
Papers - three authors	0	2	0	1	1	1	3	1	3	3	3	2	4	6	4	0	4	1	5	3	1	**48**	**144**	*11.29*	*21.05*
Paper - over four authors	0	0	1	0	0	1	0	0	0	2	0	2	0	0	1	0	3	0	2	1	1	**14**	**57**	*3.29*	*8.33*
Total papers	**18**	**13**	**14**	**19**	**24**	**23**	**26**	**23**	**32**	**24**	**20**	**22**	**22**	**22**	**20**	**20**	**20**	**19**	**19**	**14**	**11**	**425**	**684**	***100.00***	***100.00***
Total authors	**18**	**20**	**19**	**21**	**31**	**33**	**39**	**33**	**46**	**48**	**31**	**38**	**34**	**41**	**38**	**32**	**42**	**28**	**42**	**28**	**22**	**684**	-	-	-
% Total papers	*4.24*	*3.06*	*3.29*	*4.47*	*5.65*	*5.41*	*6.12*	*5.41*	*7.53*	*5.65*	*4.71*	*5.18*	*5.18*	*5.18*	*4.71*	*4.71*	*4.71*	*4.47*	*4.47*	*3.29*	*2.59*	***100***	-	-	-
% Total authors	*2.63*	*2.92*	*2.78*	*3.07*	*4.53*	*4.82*	*5.70*	*4.82*	*6.73*	*7.02*	*4.53*	*5.56*	*4.97*	*5.99*	*5.56*	*4.68*	*6.14*	*4.09*	*6.14*	*4.09*	*3.22*	***100***	-	-	-
Total papers with multi-authors	0	5	3	1	6	7	10	9	11	17	8	10	8	13	12	12	11	8	14	9	8	**182**	-	***42.82***	-
Total authors in papers with multi-authors	0	12	8	3	13	17	23	19	25	41	19	26	20	32	30	24	33	17	37	23	19	**441**	-	-	***64.47***

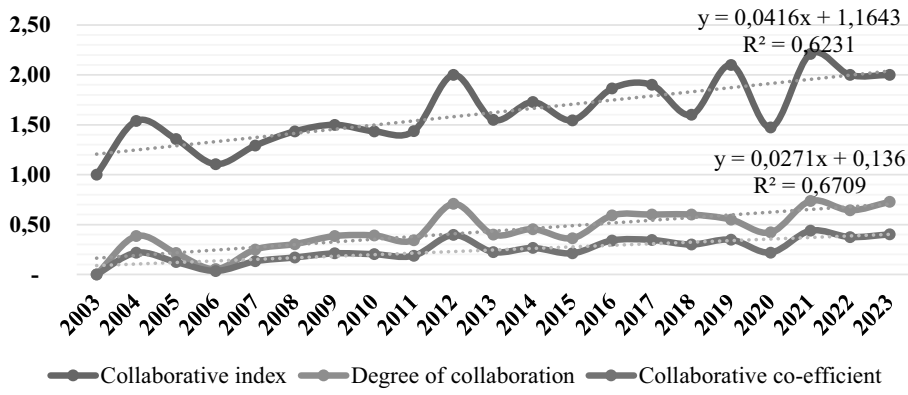
Source: Data centralized by authors from journal

Table 5. Collaborative research in CEPAR

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Collaborative index	1.00	1.54	1.36	1.11	1.29	1.43	1.50	1.43	1.44	2.00	1.55	1.73	1.55	1.86	1.90	1.60	2.10	1.47	2.21	2.00	2.00
Degree of collaboration	0	0.38	0.21	0.05	0.25	0.30	0.38	0.39	0.34	0.71	0.40	0.45	0.36	0.59	0.60	0.60	0.55	0.42	0.74	0.64	0.73
Collaborative co-efficient	0	0.22	0.13	0.04	0.13	0.17	0.21	0.20	0.19	0.40	0.23	0.27	0.21	0.34	0.35	0.30	0.35	0.22	0.44	0.38	0.40
Moderate Collaboration	0	0.23	0.13	0.04	0.14	0.18	0.22	0.21	0.19	0.40	0.23	0.27	0.22	0.35	0.36	0.31	0.36	0.23	0.45	0.39	0.42

Source: Calculations by authors archive

Figure 3. Time evolution of research collaboration indicators of CEPAR



Source: Authors

The Collaborative index indicates, on average, how many authors contributed to making an article. The calculations show that on average 1.61 authors contributed to the creation of an article published in CEPAR. The evolution of this index is remarkable, sinusoidal, but with a clear tendency to grow. In the first year of publication (2003) it had a minimum value of 1, and all published articles had a single author. The annual values increased in some years, in 5 years the value of collaborative index was at least 2, this indicates an average of 2 co-authors per paper during that period.

The percentage of works with multiple authors among all the articles published during the analysis period is shown by the degree of collaboration. Thus, a value of 1 of the indicators is framed as maximal and reflects the fact that all the items in the sample are developed in co-authoring. On the other hand, a null value of the indicator is classified as minimal and reflects the non-existence in the sample of an article with multiple authors. In the case of CEPAR, the degree of collaboration registers a slight upward trend, with constant growth, but without large variations (except for 2012 and 2020). The highest value is reached in 2023, when 73% of the papers published by the journal had more than 2 authors, double value as the one recorded in the first years of publication. The indexation of CEPAR in Web of Science did not increase the interest of authors to appear in greater numbers as co-authors.

Collaborative coefficient variates between the minimum value of zero (single authored publications are predominant) and the maximum value of 1 (multi-authored publications are predominant). In the present situation, the coefficient collaborative records annually small values, which does not exceed 0.5, signifying that the works with one or two authors are those that prevail in the annual volumes of the journal. The previous statement is confirmed by the average value of the indicator (0.25) in the two analyzed decades.

Moderate collaboration involves the calculation of a modified collaborative coefficient, that is, multiplying the coefficient with a parametric that depends

on the total number of authors. This indicator tends to 1 as the degree of collaboration becomes maximum when it is rich 1. Against the background of the 21 years analysed, these indicators are equal or almost equal values with the coefficient of collaboration, it confirms the conclusion revealed by the previous indicators.

Authorship analysis continues by studying co-authorship in CEPAR and using CiteSpace software. Time-slicing 2019–2022, years per slice = 1, Look Back Years (LBY) = -1, Link Retaining Factor (LRF) = -1, Top N% = 100%, Top N = 25, g-index = 20, and no pruning approach were the settings for the software. We employed authors, institutions, and nations as nodes for the collaboration analysis. Because of the tiny sample size and low number of links between nodes, a map cannot be effectively displayed. There is extremely little cooperation among the writers who published in CEPAR (67 linkages representing isolated partnerships and 110 nodes representing authors). With three collaborations a piece, Androniceanu A. and Janderova J. are the most cooperative authors.

From the perspective of the institutions to which the authors are affiliated, the network comprises 68 nodes – institutions and 39 connections. Three centers of collaboration can be identified: University of Ljubljana, University of Economic Studies of Bucharest, and Masaryk University of Brno. The most collaborative institution is the University of Ljubljana (27 collaborations), followed by the University of Rijeka, Masaryk University, and the University of Economic Studies in Bucharest. In Figure 4 are displayed the universities which are involved in more than 3 collaborative research relationships.

Figure 4. CEPAR – collaboration among institutions

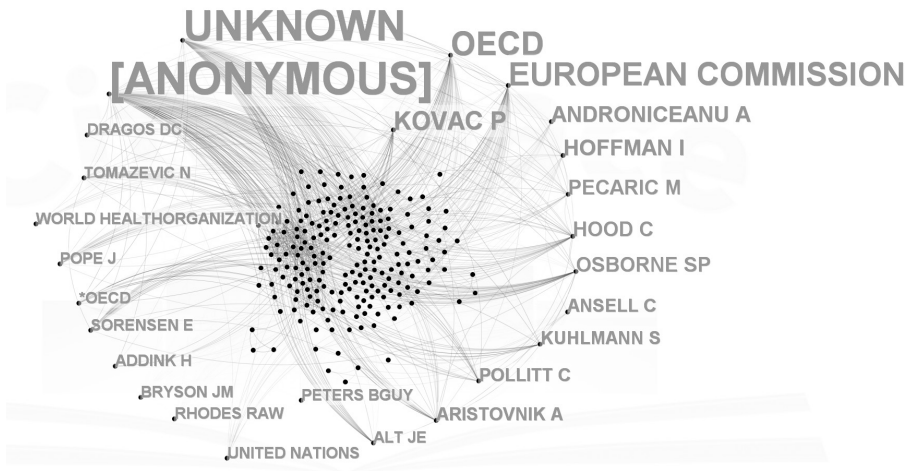
In terms of collaboration between countries, the network is 26 nodes and 20 collaborations. The most collaborative countries with publications in CEPAR are Slovenia, Hungary, the Czech Republic, and Croatia.

3.3. CEPAR's co-citation analysis

One technique to determine if two papers are comparable is co-citation coupling. When two documents are included in a third document's reference list, they are considered co-cited (Surwase, et al, 2011). An innovative technique for examining the cognitive structure of science is co-citation analysis, which develops paradigms to identify trends in multidisciplinary research in journals or institutions. The CiteSpace settings were maintained for this portion of the research, and references, authors, and journals were employed as nodes in the network. To cite references for all articles published in CEPAR and indexed in Web of Science, the first step is to examine networks. The network has 181 elements (cited references) and 412 connections with a density of 0.0253. The low number of co-cited references generated an isolated distribution of nodes, without a clear highlighting of the intensity of the connections between them. Therefore, it is considered irrelevant to have a graphical representation of this network. Moreover, the maximum number of co-citations of a work in bibliography is 3 and returns to a paper published by Ansell and Gash in 2008 on collaborative governance. The level of co-citation of references is so low that ¾ of the 181 co-citations have a single occurrence frequency, and the remaining ¼ have a frequency of occurrence of double. For the cited references, no burst was found.

Co-citation analysis continues with the approach of the co-cited authors network in the articles published in CEPAR. In this situation, a network of 240 nodes, 1448 connections with a density of 0.0505, was generated. Figure 5 contains the graphic representation of the authors who have been baked in CEPAR, and the intensity of the connections between them can be seen. Of the 240 authors co-cited in CEPAR, 58% were co-cited in one article, and 31% of them were co-cited in 2 articles. A ranking of the most co-cited authors can be found in Table 6. The most co-cited authors are unidentified, they appear in the database as anonymous or unknown. Abstracting from them, the authors' interest in the reports and publications of the two well-known organizations is noted: Organization for Cooperation and Development Economy and the European Union. On an individual level, the most co-cited author in CEPAR is Kovac P., affiliated with the University of Ljubljana. Kovac P. is distinguished by the registration of a 2.17 burst in the period 2018 – 2019 and a total of 8 co-citations. The burst in the case of Kovac P. means an increase in the frequency of co-citation during the two years mentioned above. No other author has a burst situation.

Figure 5. Co-cited authors in CEPAR



Source: Derived by authors in CiteSpace

Table 6. Top 8 most co-cited authors in CEPAR

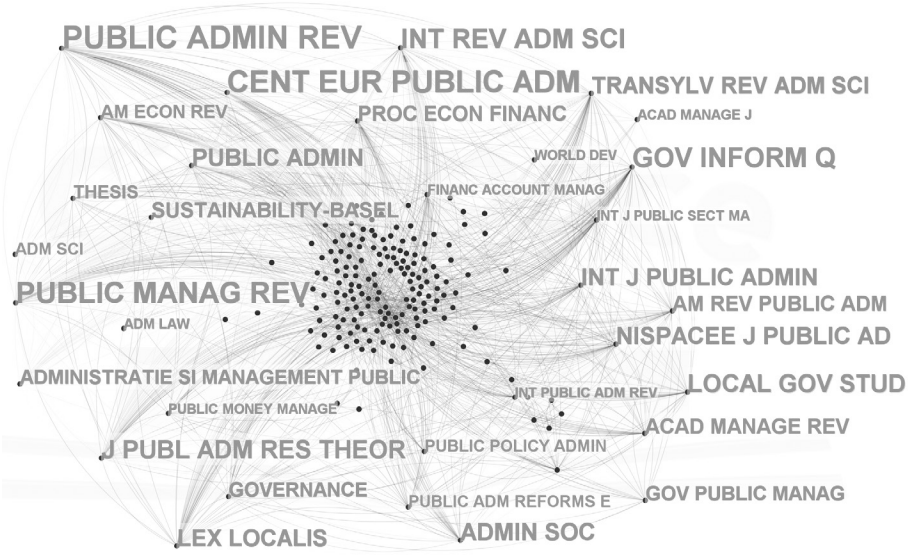
Rank	Author	Affiliation	Year	Frequency	Degree	Centrality	Burst
1	Anonymous	–	2018	64	183	1.02	–
2	Unknown	–	2018	47	128	0.45	–
3	OECD	–	2018	17	79	0.14	–
4	European Commission	–	2018	16	67	0.13	–
5	Kovac P.	University of Ljubljana	2018	8	31	0.01	2.17
6	Hoffman I.	Eötvös Loránd University of Budapest	2019	6	15	0.02	–
7	Androniceanu A.	Bucharest University of Economic Studies	2021	6	31	0.09	–
8	Pecaric M.	University of Ljubljana	2019	5	16	0	–

Source: CiteSpace network summary

Co-citation analysis continues with the observation of the network of journals co-cited in CEPAR. This time it is a network with 220 nodes, 1675 connections with a fairly high density, 0.0695. In Figure 6 are marked all the journals that were co-cited more than 3 times in CEPAR. Table 7 shows a ranking of journals with more than 10 copies in CEPAR. Of the 220 journals on the network, 49% have a single occurrence frequency of co-citation, to which are given another 38% of the journals that have a double occurrence frequency. Therefore, only 11 journals record more than 10 co-citations. Thus, the top 3 most co-cited

journals in CEPAR are occupied by the Public Administration Review, the Central European Public Administration Review and Public Management Review.

Figure 6. Co-cited journals in CEPAR



Source: Derived by authors in CiteSpace

We proceeded to check some periods of burst, periods in which the interest of CEPAR collaborators had in mind other trending journals at the time. Thus, an explosion of the quotations was obtained in the period 2021 – 2023 for two journals Central European Public Administration Review (3.36) and Sustainability (2.6).

Table 7. Top most co-cited journals in CEPAR

Rank	Journal	Category in WoS	JIF	Year	Frequency	Degree	Centrality
1	Public Administration Review	SSCI – Public Administration	8.3 (Q1)	2018	25	102	0.23
2	Central European Public Administration Review	ESCI – Public Administration	0.7	2019	22	84	0.21
3	Public Management Review	SSCI – Public Administration	4.9 (Q1)	2019	18	84	0.16
4	Government Information Quarterly	Information Science & Library Science	7.8 (Q1)	2018	15	78	0.13
5	International Review of Administrative Sciences	SSCI – Public Administration	2.3 (Q3)	2019	14	76	0.12
6	Journal of Public Administration Research and Theory	SSCI – Public Administration	4.2 (Q1)	2019	12	75	0.09
7	Local Government Studies	SSCI – Public Administration	1.9 (Q2)	2019	11	55	0.05

Source: CiteSpace network summary

In conclusion, this part of the study leads to the observation that CEPAR and the contributors to CEPAR's volumes are among the journals and authors that were co-cited in CEPAR. It is inferred that the authors study the journal's objectives and the articles published by it before submitting a manuscript. From Figure 6 it could be also observed that co-citation exists with the journals in the region, which is potentially the result of cooperation inside the CEE network of Public Administration and Policy journals in the last three years. Secondly it is obvious that authors follow the manuscripts in the highest-ranking journals in the field of Public Administration.

3.4. CEPAR's publication themes

It is known that each journal has a purpose and objectives of publication, so each editor targets some general topics of publication, adapted to the specifics of the magazine. In this last part of the research, we aim to identify and group the topics of publication predilect within CEPAR. Keywords co-occurrence will use the keywords set by the authors in their own works, and the network and connections will be represented using the same parameters in CiteSpace. Keywords are the ones that best summarize the topic of an article; therefor keyword co-occurrence helps to get semantic proximities inside CEPAR. Keywords co-occurrence reveals those topics that have a higher frequency of occurrence in the articles published by CEPAR in the analyzed period.

Again, we are faced with a reduced keyword network (153 nodes), with a reduced number of connections (198 links), obviously a corresponding density (0.0170). No burst has been identified for any keyword. Moreover, the keyword frequency in the articles does not exceed 5, so only 7 keywords have a repeated occurrence greater than or equal to 3. Therefore, the ranking of the most common topics of publication in CEPAR includes studies on performance, public administration, comparative analysis, e-government, administrative courts, access to information. The results are not surprising, since the journal tries to cover the brother issues connected to public administration and shows interdisciplinarity of administrative science. In Figure 7 is labeled all the keywords with a degree greater than 3. A keyword's degree in a network is determined by how many connections it has with other keywords.

Figure 7. Keywords co-occurrence in CEPAR

Source: Derived by authors in CiteSpace

Cluster analysis of keywords allows us to group the articles published in CEPAR on research topics. CiteSpace has generated 4 clusters, which only 1/3 of the keywords are integrated into. Therefore, we conclude that most of the papers published in CEPAR (about 2/3) address individual and random research topics that cannot be connected to the 4 central publishing themes: digital maturity, public sector, digital tools, collaborative governance. Therefore, it would be necessary that editors put attention to the use of proper keywords by authors, since going through the contents most of the paper address public sector, public administration, government, regulation etc., which are usually not included into keywords by the perception of authors that the journal cover mentioned topics. Cluster labels were generated using algorithm keywords, and Figure 8 and Table 8 show a detailed situation of the component on clusters.

Figure 8. Keywords' clusters in CEPAR

Source: Derived by authors in CiteSpace

Table 8. Groups of keywords

Cluster ID	Cluster label	Size	Silhouette	Publication's themes
#0	Digital maturity	15	0.980	Barriers, transparency, accountability, budget, compliance costs, porter hypothesis, environmental regulation, transparency
#1	Public sector	15	0.987	Consensus orientation, content analysis, governance models, social responsibility, online local budget transparency, local self-government, panel data analysis, eastern Europe, public governance models
#2	Digital tools	11	0.829	Public administration, government effectiveness, principal component analysis, comparative analysis, comparative analysis, public values, regional impact, government effectiveness
#3	Collaborative governance	8	1	Digital transformation, e-governance, collaborative governance, collaboration, collaborative digital transformation, bibliometric mapping, literature review

From a temporal perspective, in Figure 9 we can see the evolution over time of the themes published in CEPAR in the period 2018 – 2023. Thus, it is noted in 2018-2019 that the publication theme prevails in the journal the following topics: local administration, e-government, Central and Eastern European economies, administrative law and comparative analysis. After the pandemic, the topics of publication in CEPAR have changed, focusing on covid-19 measures, public administration costs, budget, performance, economic growth, efficiency, corruption.

Figure 9. Time zone view of keywords network in CEPAR

Source: Derived by authors in CiteSpace

What does the future of publications look like in CEPAR? It's hard to pinpoint, but it will follow the international research trend. Thus, we estimate that future publishing topics studies that integrate concepts such as: digital transformation, digital tools, artificial intelligence, administrative culture, and science-metrics.

4 Conclusions

This paper's objective is to offer an overview of the Central European Public Administration Review, especially after its 20th anniversary. The analysis has been structured in such a way that authors interested in publishing an article in this journal can discover its particularities, strengths, and weaknesses. This is why the content of our research harmoniously combines findings about CEPAR from the area of descriptive analysis, scient metric analysis and authorship analysis. In the following we aim to summarize the most important findings:

- Throughout its 21 years of existence, a total of 425 articles have been published in CEPAR, with an annual average of 20.24 articles per year. It cannot be seen an upward trend in the number of published articles, but on the contrary, there is a constant trend of them. The change in the quantity of publications in the last two years is not desirable, the journal faces a reduction in the number of published articles, mostly because of higher rejection rate and wish to accept qualitative papers. This is proved by a positive evolution of the number of annual citations, which is visible, they increased 10 times in the 5 years after the indexation in WoS. Androniceanu A. (Romania) and De Vries M.S. (Netherlands) are the authors who have contributed most to the development of the journal in the last 5 years. The largest number of authors are affiliated at the University of Ljubljana (Slovenia), followed by Masaryk University Brno from Czechia and University of Rijeka from Croatia. Among the most cited articles published by CEPAR can be found the papers published by Androniceanu A. and Marton D.M. in 2021.
- Over the two decades, CEPAR published papers done by 684 authors from different countries, in average an article published in CEPAR was written by 1.61 authors. Predominant are single author articles. 85% of the articles published in CEPAR involved research activities submitted by 71% of the authors, articles with 1 or 2 authors. The articles with multi-authors show a sinusoidal evolution. 64% of the total authors were open to collaboration in their research activities, which generated the production of 43% from the articles published in the analyzed period. In the case of CEPAR, the degree of collaboration registers a slight upward trend, with a constant growth, but without large variations. The most collaborative countries are Slovenia, Hungary, the Czech Republic, and Croatia.
- Co-citation analysis is the method used to evaluate academic performance generated by papers, authors, and institutions in CEPAR. The low number of co-cited references generated an isolated distribution of nodes, without

a clear highlighting of the intensity of the connections between them. The level of co-citation of references is so low that ¾ of the 181 co-citations have a single occurrence frequency. The most co-cited authors are unidentified, they appear in the database as anonymous or unknown. The core observation is that the authors study the journal's objectives and the articles published by it before submitting a manuscript to CEPAR.

– Keywords are the ones that best summarize the topic of an article. Therefore, keyword co-occurrence helps to get semantic proximities inside CEPAR. We are faced with a reduced keywords network and a reduced number of connections. No burst has been identified for any topic. The most common topics of publication in CEPAR include studies on performance, public administration, comparative analysis, e-government, administrative courts, access to information. Most of the papers published in CEPAR (about 2/3) address individual and random research topics that cannot be connected to the 4 central publishing themes: digital maturity, public sector, digital tools, collaborative governance. We estimate that future publishing topics studies will integrate concepts such as: digital transformation, artificial intelligence, administrative culture and scient metrics.

Any author interested in submitting a manuscript for publication could know the journal's performance and publication specificity. Throughout the research process, several challenges emerged that determine the interpretation of the research results in the context of the selection strategy of the reviewed papers. Among the challenges encountered are those specific to scient metric analysis, i.e. the short period of indexing in WoS generated a reduced analysis sample for bibliometric analysis, and the downloaded database is incomplete (e.g. unidentified authors). In the following years, the analysis can be continued by tracking the evolution of the journal in the next 5 years of indexing in WoS and the first five years in Scopus, so the policy of journal would be evaluated again. In conclusion, the Central European Public Administration Review has great potential for growth in the category of journals from the public administration area. Analysis shows some issues that should be addressed by the editorial team, so that potential for growth will be realized.

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Inter-Agency Analysis of EU Specialised Administrative Services: Insights from the Republic of Cyprus

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ABSTRACT

Purpose: The Republic of Cyprus is a small EU member state whose domestic administrative structures replicate an enduring tradition of centralisation. This study employs three Europeanisation processes to investigate the influence of European integration on EU specialised administrative services and explain possible differentiations.

Design: This research employs two methodological tools: a literature review of domestic and international literature on Europeanisation and historical institutionalism, and a field study employing interviews and questionnaires with public servants working within these services.

Findings: The results suggest that while Cyprus's EU membership has played a significant role in the Europeanisation of domestic administrative structures, this process remains incomplete due to historical continuities from previous eras. These have an enduring impact on formal and informal institutions, diminishing the role of the examined services and constraining the behaviour of public servants.

Academic contribution to the field: This study offers a theoretical contribution by providing a comprehensive understanding of moderate Europeanisation effects on EU specialised structures within the Cypriot administrative framework. It also highlights the consequences of historical continuities manifested through formal and informal institutional constraints (endogenous characteristics, tangible factors, and conservative attitudes) and their adverse effects on the promotion of institutional and administrative change.

Practical implications: The research findings underscore the relevance for future studies. They are particularly pertinent in assessing the effects of European integration and administrative change in other EU member states sharing similar historical experiences with Cyprus, such as Greece and Malta.

Originality/Significance/Value: This study is innovative in its focus on specific administrative actors in Cyprus whose role has not been examined so far. It sheds light on tangible and intangible factors that may influence the promotion of institutional and administrative change.

Keywords: *European Union, domestic administrative structures, Republic of Cyprus, Europeanisation, historical institutionalism.*

JEL: D73

1 Introduction

This research will attempt to assess the impact of European Integration on the domestic administrative structures of one of the smallest southern member states of the European Union (EU): The Republic of Cyprus (Cyprus). The latter, due to both its small size and historical experience, has a strong tradition of centralism and a limited degree of administrative autonomy. Previous research has highlighted the ongoing effects of these severe hierarchical structures vis-à-vis specific parts of Cypriot administration, such as local government. It has been proven that the effects of Europeanisation were filtered by this tradition, prolonging central control over local government, and intensifying internal differentiations among municipalities (Kirlappos, 2017; 2021; 2023).

Against this background, this research focuses on EU speciallised administrative services, to access the impact of Europeanisation on domestic administrative structures in Cyprus. Since previous research has highlighted the crucial significance of historical continuities (Sepos, 2008; Kirlappos, 2021; 2023) in mediating the results of the process, this research will adopt a similar approach. Even though Cyprus's membership in the EU has played a significant role in fostering the Europeanisation of domestic administrative structures, this process is not complete due to historical continuities derived from the Ottoman and British colonial eras. This study is therefore important as it tries to examine how EU membership has affected the process of Europeanisation in Cyprus and emphasises the influence of historical continuities and formal and informal institutional restrictions in this process.

The research hypothesis of this study views the Europeanisation of Cyprus's domestic administrative structures as highly dependent on the island's deeply rooted centralist domestic tradition. This heritage is demonstrated through historical burdens that are articulated through formal institutional constraints that limit the role and capabilities of the various services, as well as through informal institutional preferences that foster conservative attitudes and opposition to change. For these reasons, although the overall course of Europeanisation is expected to have positive effects on the various services under

consideration, the historical continuities inherited from previous historical periods place limitations on the whole process.

Our specific research questions are as follows:

– What is the impact of the EU, on the specific Cypriot domestic administrative services in terms of processes, personnel, and structures?
– What is the influence of long-established formal and informal restrictions in the process?

The population of the current research included all eleven Ministries and the Parliament of Cyprus (House of Representatives) with a particular interest in their internal administrative structures that specialise on EU issues.[1] This research utilised two methodological tools: a literature review of the domestic and international literature and a field study (February-April, 2023) using semi-structured interviews and structured questionnaires. The data derived from the field study were then analysed utilising both qualitative and quantitative analysis. For this reason, a total of 130 structured questionnaires were addressed to public servants that worked in these EU specialised domestic administrative services, with an average response rate of 40% (52 respondents). This enabled us to gather data from five key Ministries, such as those of Finance, Agriculture and Education and the House of Representatives to conduct an inter-agency analysis. Ten semi-structured interviews were also conducted providing additional data.

The examination of the influence of European Integration on Cypriot EU specialised administrative services utilised the various Europeanisation mechanisms associated with this process. The positive mechanism initiates change by requiring member states' conformity with European policy models and rules. The inconsistency between EU policies and rules and the internal institutional structures (goodness-of-fit) triggers pressure for change (Knill et al., 2009). On the other hand, soft Europeanisation focuses its attention to the role of ideas and actors in the procedure of change or resistance and to their expected and unintended outcomes (Eräranta and Kantola, 2016). Soft Europeanisation underlines the role of informal institutions in changing policy, as well as resisting change. Finally, more 'coercive ' mechanisms (Leontitsis and Ladi, 2018) were developed to cope with the eurozone crisis and monitoring bail-out member states.[2]

This work uses all three Europeanisation processes (top-down, bottom-up, and horizontal) to examine the influence of European Integration on Cypriot EU specialised domestic services. The effects of Europeanisation per process were measured by focusing on specific aspects of change, recognised by

1 The Republic of Cyprus has a total of 11 Ministries and five Deputy Ministries at present (2023 July). The Deputy Ministries were not included in this research since most of them were established during the last three years and therefore are still lacking resources and capacities.

2 "Coordinative Europeanisation" has been proposed (Wolff and Ladi, 2020). This can be described as a bottom-up process where the EU members participate actively in the formulation of policies from the beginning to ensure the highest degree of implementation possible, as opposed to the 'coercive Europeanisation' (Leontitsis and Ladi, 2018) that had defined the eurozone crisis with restrictions and monitoring of member states by the EU bodies.

other empirical studies. To measure change, we employed Marshall's (2005) work that links the effects of top-down Europeanisation with the implementation of EU legislation and securing EU funding and changes to institutions, preferences, policies, and personnel. To measure change associated with the bottom-up process, we focused on the attempts to lobby EU institutions, while change deriving from horizontal Europeanization was measured via the participation to Pan-European networks. Particular attention was focused on the application of specific research indicators focusing on differences in resources, personnel, and structures (Blume and Voigt, 2011). This was the case since domestic factors play a substantial role in mediating the effects of Europeanisation (Börzel and Risse, 2003).

This article linked Europeanisation with a Historical Institutional approach, focusing on history as a key element. This approach has been applied to assess the role of institutions in influencing EU integration (Abels et al., 2021). It constitutes an appropriate framework for this research, since it demonstrates the significance of initial institutional choices that trigger restrictions (Balint et al., 2008), cultivating specific historical institutional legacies (Hay, 2002). This work applied Historical Institutionalism to understand how formal and informal institutional rules, i.e., legal, institutional and resource limitations and the prevalence of conservative approaches between public servants, disable or enable the effects of Europeanisation. The importance of this work lies in its attempt to partially cover a key gap in the literature of Europeanisation that concerns one of the smallest southern EU member states: Cyprus. While there has been increasing literature on the influence of European Integration on Cypriot domestic policies and structures (Agapiou–Josephides, 2005; Sepos, 2008; Kirlappos, 2021), a clear gap remains on researching these challenges vis-à-vis Cypriot EU specialised administrative services.

This work covers a portion of this gap while proposing a theoretical contribution and a broad understanding of the moderate Europeanisation effects on these structures. It also highlights the consequences of historical continuities manifested via formal and informal institutional restrictions (endogenous characteristics, tangible factors and conservative attitudes) and their negative impact on the promotion of institutional change. The implications of these research results highlight the possible relevance of these findings for future research studies. In fact, these findings could be significant when assessing the effects of European integration in other EU member states with similar historical experiences to Cyprus, i.e., Greece and Malta.

2 Analytical frameworks

2.1 Europeanisation

Europeanisation was first characterised by Ladrech (1994) as a top-down transfer of EU legislation and practices to the domestic structures of EU member states. Having voluntarily ceded competencies to a supranational entity, member states have found themselves in a process of adaptation to

EU norms, policy instruments, and "ways of doing things," which has resulted in various scenarios of convergence, divergence, and norm contestation depending on domestic settings, actors, and policy domains (Abels et al., 2021). Here, European integration is the independent variable from which Europeanisation flows, and the changes brought about are the dependent variable.

Over the years, research on Europeanisation has developed, including a broader range of topics, from foreign policy issues like the current conflict in Ukraine (De Gruyter, 2023) or the reaction to COVID-19 (Cachia, 2021) to education policy (Robert, 2010) and gender equality at the municipal level (Kirlappos, 2023). As a result, new methodologies and study processes emerged, such as the bottom-up and horizontal approaches. The former involves the efforts of the member states to influence policy formation at the EU level by uploading preferences to reduce adaptation costs, while the latter emphasises the efforts of the states to share information and best practices among each other (Howell, 2004). In other words, European integration was also treated as a dependent variable, with domestic field change acting as the independent variable (Hix and Goetz, 2000). This highlighted Europeanisation's interactive character (Howell, 2004). According to the bottom-up approach of Europeanisation, member states tend to "upload" or "shape" the institutions, policies, and politics of the EU. By making its preferences known, a member state may increase the likelihood that an EU policy, political process, or institution will be tailored to its requirements (Börzel and Panke, 2010). The upload or export of national policies to the European level is an efficient method of maximising the advantages and reducing the costs of European policies.

The third type, horizontal Europeanisation, is less clear and far more indirect. This is based on interactions deriving from networks, where participants exchange best practices among them. Therefore, it is possible for practices, policies, and norms to be transferred horizontally across member states while they are transferred vertically inside the EU (from the EU to the states or vice versa) (Howell, 2004). Previous empirical research has made it obvious that reactions from member states rely on the unique internal configurations of those nations. Adaptation to the same European criteria is mediated by several elements and differs from country to country, which results in dramatic differences in Europeanisation procedures across the EU (Bursens and Deforche, 2008). Börzel (2005) emphasises the significance of domestic mediating factors in this setting, such as institutional veto points and/or supporting facilitating formal institutions at a domestic level. Schmidt (2002) recognises several additional domestic mediating factors in her effort to explain the varying impacts of Europeanisation on national economic policy. These include but are not limited to, economic precarity, the strength of political institutions, policy preferences, and political legacies. The progress of Europeanisation may be significantly impacted by corruption in certain governments. It may result in a loss of faith in authorities and institutions, which would make it difficult to put EU laws and regulations into effect. Furthermore, corruption may result in a lack of accountability and transparency, which can make it difficult to monitor and execute EU laws and regulations (Mungiu-Pippidi and

Toth, 2022). On the other hand, endogenous limitations reveal the extremely crucial role of the central state structures which act as gatekeepers (Pollack, 1995). The governments of the Member States prevent the various services from operating autonomously and at their own discretion in promoting their policies and demands in the EU.

According to Pollack (1995) the state firmly controls the uploading efforts, preventing efforts for more active involvement to ensure that national interests are first served. Domestic adaptation is more possible when norm entrepreneurs are present (actors who often lead social movements and create new norms (Wunderlich, 2019). They activate other domestic actors by convincing them to alter their identities and interests considering new European norms and regulations. Cooperative informal structures help local players adopt European standards and ideas (Bursens and Deforche, 2008).

This work also attempts to classify the possible influences of Europeanisation on the EU specialised administrative services in Cyprus. For this reason, various typologies will be utilised. Due to the influence of mediating factors, changes occur in the following ways: limited change through absorption, where member states adopt the required structures and policies without significantly altering their current structures; moderate change through accommodation of existing structures; and significant change through the complete transformation of existing structures and policies (Börzel and Risse, 2003). Radaelli also stresses that complete transformation and absorption are potential effects of Europeanisation. Finally, he adds two more outcomes: inertia when nothing changes, and retrenchment, where it may be feasible to lessen the impact of Europeanisation (2000, 2004).

2.2 Europeanisation and Public Administration

An important transformation in the study of Europeanisation's effects on public administration is clear during the last two decades. Initially, Europeanisation was utilised in attempt to trace and compare the effects of European integration on the structures between the Nordic States (Lægreid et al., 2002). On the other hand, Europeanisation was perceived as a facilitator of good democratic practices among the eastern EU members (Ágh, 2013), transforming public administration systems (Bátora and Klimovský, 2022). Europeanisation has also been associated with increasing participatory democracy on the civil service (Peters, 2023).

The adoption of a more targeted approach by the EU vis-à-vis public administration marked a shift from a conditionality logic that was primarily demonstrated between 2001 and 2010. The EU became a facilitator of administrative reforms by providing on-the-ground support and enabling public services management development in and by EU Member States between 2011 and 2021. This shift was a positive step for further European integration according to Ongaro (2022) since the EU adopted a (much) less coercive and (much) more enabling and supporting role to create the conditions for the Member States to develop stronger and more sustainable economic growth.

Thus, the EU started supporting the development of specific and localised administrative capacities as well as overall and comprehensive reforms of public administration (Ibid). Some administrative reforms where the European Commission is providing significant assistance are: The reform of the interior sector in Latvia, the implementation of the digital strategy in Italy, and the anti-corruption training programme in (European Commission, 2023).

2.3 Historical Neo-Institutionalism

The historical neo-institutional approach constitutes the second analytical and theoretical approach utilised by this work. This approach points out that history matters and considers institutions to be able to influence and shape behaviors, political processes, tactics, and preferences (Lecours, 2011). According to Pierson (2000), actions and decisions made in the past have a significant impact on current and future choices. The historical neo-institutional approach has been commonly used to assess how EU integration is shaped by institutions through the roles of institutional paths (history), discourses, and actors. This makes the traditional "domestic interests vs. bureaucratic expansion" opposition much more complicated (Abels et al., 2021). Historical Institutionalism has been employed by researchers to study specific aspects of the EU throughout the years, with a particular focus on its impact of the domestic administrative structures and policies of its member-states (Kallberg and Lakomaa, 2016; Schimmelfennig, 2018; Schimmelfennig et al., 2023). It has also been utilised to analyse the eurozone crisis (Dellmuth, Lundgren, & Tallberg, 2020; Ural, 2021). Additionally, this approach was utilised to highlight ongoing formal and informal institutional restrictions that reduce Europeanisation and gender equality in Cyprus (Kirlappos, 2023).

The historical neo-institutional approach employs the following analytical terms: path dependence, increased returns, and critical junctures. The first analytical term was created to demonstrate how choices made in the past still have an impact on choices made in the future, hence limiting the alternatives. The substantial costs of switching routes are seen as disproportionate to the benefits, as stated by Pierson (2000). Therefore, it is impractical to change paths due to the higher returns from remaining on the current path. The third term is the result of political scientists' attempts to dissect the factors that contribute to institutional changes. Political and economic crises, for instance, Brexit, the COVID-19 pandemic, and the war in Ukraine in 2022 may be a catalyst for change. Significant institutional changes are more likely to occur during these times, followed by extended periods of institutional stability (lock in) (Prado and Trebicok, 2009). Thus, critical junctures may set nations and institutions on courses that are difficult to alter later.

This approach represents an appropriate framework for this research since it focuses on historical legacies (Hay, 2002), and the initial institutional choices that produce specific restrictive characteristics (Balint et al., 2008). It attempts to explain the means in which historical burdens affect institutions themselves, which results in either accelerating or delaying institutional

change (Minto and Mergaert, 2018). This work applied this approach to comprehend the conditions under which formal and informal institutional rules, i.e., limitations in legal and institutional frameworks, resources and responsibilities and the prevalence of conservative approaches block or facilitate the effects of Europeanisation.

3 Public administration in Cyprus: A brief historical background

3.1 The Ottoman period

Following their takeover of the island, the Ottomans created government structures, which were marked by increased centralization and oppression. Central administration was handled by a Council of State (Divan) that merged the executive, legislative, administrative, military, and economic branches of government (Kyrris, 1996). This went hand in hand with harsh hierarchical monitoring and administrative control according to Mariti (1791) who described the process via which taxation was imposed. According to his reports, when the governor wanted to impose taxes on the Orthodox, he addressed the Dragoman and the Archbishop, who communicated with his bishops to check that they would take the necessary steps to avoid illegalities and fraud.

There was some degree of self-government, due to the millet system (Glogg, 2003) since each community was governed by its own religious authorities. Yet, non-Muslims were in essence second class "citizens". The fact that the testimonies of Christians were not taken into account when the accused was a Muslim, indicates the illiberal structures in this area of administration as well (Georgiou, 2012). It is also worth mentioning that while Turkish judges could be bought with bribes, the ecclesiastical courts were more rigid (Chatzidemetriou, 2005). Corruption also prevailed in the ranks of the magistracy and was commensurate with the gifts received by the officials.

The occupation of Cyprus by the Ottomans established a path with illiberal historical legacies (Hay, 2002). In this context, the initial institutional choices (Balint et al., 2008), reflected a relationship between rulers and subjects, thus establishing formal and informal institutional constraints. As will be demonstrated, these historical continuities have since been manifested in the administration of the island in the form of specific institutional legacies, i.e., centralisation and strict hierarchical control. Therefore, this background has created restrictive practices and a deep-rooted conservative culture which notably limits initiative.

3.2 The British colonial period

The British attempted to limit the outdated Ottoman administrative procedures during their colonial rule (1878–1960), which initiated some modernisation (Papageorgiou, 1996). As for the administrative system, the British occupation contributed to its reorganisation (Pantelidou and Chatzikosti, 2007), by

adopting an even more hierarchical organisational structure (Georgiou, 2012). There was an attempt to reduce corruption in all areas of government that was not entirely successful (Giorgallides, 1979). At the same time, the British appointed an Auditor General and started progressively implementing the English legal system. Gradually, many Cypriots were recruited into the Civil Service, increasing their involvement in public administration (Georgiou, 2012).

However, this restricted modernisation was aiming to foster the colonial regime's interests rather than the ones of the Cypriots (Vasileiou, 2019). Despite changes in the central system of Cyprus during the British rule, this was based on the pre-existing Ottoman structures and adapted to the needs of the British (Blondy, 2002). Referring to the British government, this was purely colonial, without any genuine participation of the native population in proportion to its numerical composition (Chrysostomides and Rakounas, 1994; Tornaritis, 1977; Chatzidemetriou, 2005). Tzermias (2004) stresses that the Legislative Council was structured in a way that assured a majority of its members supported the colonial administration's bills[3]. In this context, the British instrumentalised the competition between the two communities of Cyprus, as it was demonstrated by their decision to include Greek Cypriots and Turkish Cypriots into separate electoral catalogues. While the island had more freedom under British authority than it had under Ottoman rule, the initial institutional choices (Balint et al., 2008) of the British in essence adopted the illiberal and undemocratic features of the path. These historical continuities and formal and informal institutional constraints have been included in the administration of the island, especially since the British further promoted hierarchical organisational structures. Again, this background has founded restrictive practices and a deep-rooted conservative culture which notably limits initiative.

3.3 The Republic of Cyprus

The Republic of Cyprus was established in August 1960 as a result of the Zurich-London agreements. It is a small island located in the south-eastern Mediterranean whose domestic administrative structures reproduce an enduring tradition of centralisation (Hendriks et al., 2011). According to the latest census (2021) the population of Cyprus was 923,272 (Statistical Service of the Republic of Cyprus, 2021) that counted for 0.2% of the overall EU population (Trading Economics, 2023). Cyprus is considered a high-income country with nominal Gross Domestic Product (GDP) of approximately 30 billion USD and per Capita GDP of 31,114 USD in 2022 (CEIC Data, 2023). Nevertheless, due to the island nature of the country, several restrictions, especially in resources are obvious.

3 Decisions were taken by majority vote, combined with the 'winning' vote of the High Commissioner and the tendency of Turkish Cypriots to side with the colonial government meant that there was almost always a clear majority against the Greek Cypriots and in favour of the colonial government (Panteli, 2000). On the other hand, the practice of giving secondary authority to sections of Cypriot society was tried and tested throughout the Empire according to Katsiaounis (2008).

A number on internal and external abnormalities contributed to the establishment of the political problem of Cyprus (Tzermias, 2004). Initially, the Constitution was quite complicated since it constituted a compromise between third countries (Richter, 2010). Therefore, it included several bottlenecks that casted a heavy shadow on Cyprus and its effective political and administrative operation. The bicommunal conflicts of 1963 led to the withdrawal of Turkish Cypriots from their posts in the government, the House of Representatives, the civil service, and the judiciary. The coup by the Greek junta in July 1974 against President Makarios and the subsequent Turkish invasion dramatically affected the political and administrative structures of the island. These events led to the Turkish military occupation of over 37% of Cyprus's territory, which continues to this day (European Committee of the Regions, 2023). This situation contributed to a prevailing sense that Cyprus is in an interim stage, due to the pending resolution of the dispute. In this context, Hatzimihail, 2013 indicates that the prevalence of this perception has been postponing major reforms in Cyprus. Due to its history of strong centralisation of political and administrative power, Varnava and Yakinthou (2012) use Loughlin's typology[4] to categorise Cyprus in the Southern European state tradition. In terms of its involvement in the economy and society, the state tradition of Southern Europe reflects the fundamental ideas of the Napoleonic model, which is unmistakably interventionist. Sotiropoulos (2018) asserts that a state based on the Napoleonic model is centralised and hierarchical. Due to over a century of British colonial rule, Cyprus has assimilated Anglo-Saxon administrative heritage and culture. Within this framework, Cyprus has operated as a unitary state, mainly following the UK's system. Because of this, a significant part of Cypriot law is founded on the UK legal framework from that era (Mallouppas et al., 2018). In the years that followed Cyprus's independence, an inflexible, hierarchical administrative culture with an abundance of regulations, laws, and red tape arose, making civil servants less autonomous, flexible, and proactive (Ibid).

The accession of Cyprus in the EU in 2004 has constituted a critical juncture in the history of the island, triggering a modernising process of institutional adaptation and change in the overall administrative, political, and financial system (Agapiou–Josephides, 2005). This has also been challenging, up to an extent, the long-established centralist domestic tradition of Cyprus, improving the civil service in a wide range of subjects, such as transparency, human resource management and introducing e-government (Georgiou, 2012). In this context, several steps were taken by Cyprus to modernise its civil service that were funded by the EU. The Institute for Public Administration (Ireland) had a crucial role in this process producing functional reviews for a number of Ministries, such as those of Education and Health, that contained common European principles of good administration and public governance.[5] Yet so far (2023), this process has been met with resistance in some cases due to a

4 Loughlin and Peters introduced their classification in 1997, proposing the typologies of Anglo-Saxon, Germanic, French and Scandinavian state traditions. This later included the following typologies: the British Isles, the Rhinelandic states, the Nordic states, the Southern European states and the New Democracies (Hendriks et al., 2011).

5 This includes principles such as responsiveness, efficiency and transparency, rule of law, ethical conduct, innovation and openness to change, and accountability (Council of Europe, 2024).

strong rationale against constutional ammenments, due to its relevance to state building in Cyprus (Kombos and Shaelou, 2019). Therefore observed change has not been associated with changing established conservative attitudes, along with reducing the effects of formal and informal institutional restrictions. The following part will present and analyse the findings, underling the way in which the institutional legacies of centralisation, and strict hierarchical control restrict change, filtering the results of Europeanisation.

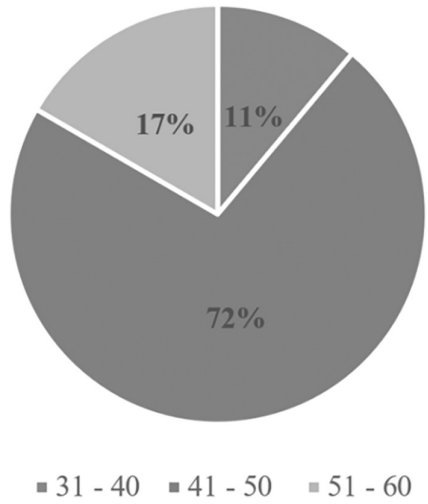
4 Presenting and analysing the findings

This research is designed in such a way to investigate the impact of the EU, via the three processes of Europeanisation on domestic administrative structures of a southern EU member state: the Republic of Cyprus. The findings provided by our Structured questionnaires (2023) and Semi-structured interviews (2023) allowed us to analyse on an inter-agency basis the specialised administrative structures of five Ministries and the House of Representatives. As it will be further analysed, the strong institutional legacies of centralization and strict hierarchical control continue to produce formal and informal restrictions, mediating the effects of Europeanisation.

4.1 Profile of public servants

Our findings demonstrate interesting information regarding the profile of the respondents. Most employees are women (52%), while men follow with 48%. Figure 1 indicates data regarding the age profile of the members of our sample. In this context, 72% are between 41 - 50 years old, 17% are between 51 - 60 years old while only 11% are between 31 - 40 years old (Structured questionnaires, 2023).

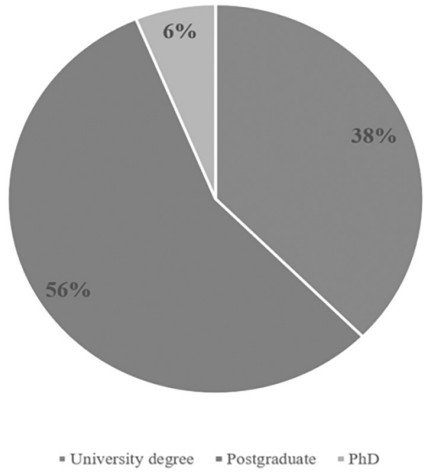
Figure 1. Age groups of the members of the sample.



Source: Structured questionnaires 2023.

The findings of the structured questionnaires reveal the high education level of the members of the sample. According to Figure 2, 56% of the sample holds a master's degree, 38% a university degree and 6% a PhD. Our findings also reveal excellent knowledge of computers with 61% and very good knowledge (39%).

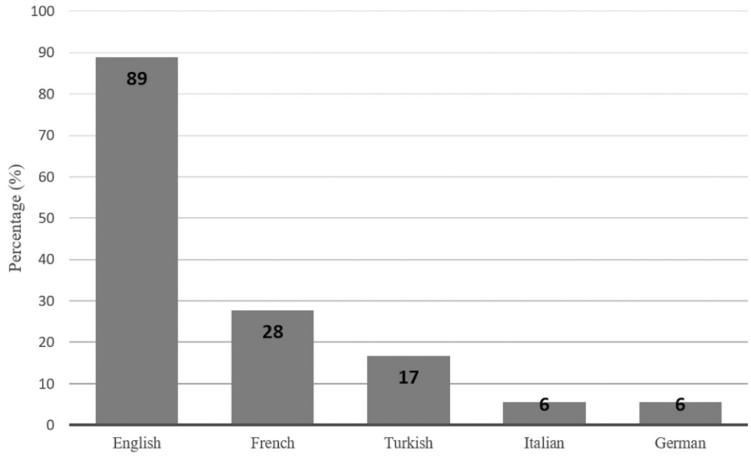
Figure 2. Education Level.



Source: Structured questionnaires 2023.

As seen in Figure 3, all the public servants of our sample speak at least one foreign language. Most of them use English as their second language (89%). The second most spoken language is French with 28%. The least spoken languages include Turkish with 17%, as well as Italian and German with 6% respectively (Structured questionnaires, 2023).

Figure 3. Foreign Languages.



Source: Structured questionnaires 2023.

4.2 Profile of the EU specialised services

As shown in Table 1, there is a direct association between the budget of the institutions included in our sample and the actual size of personnel in each service.

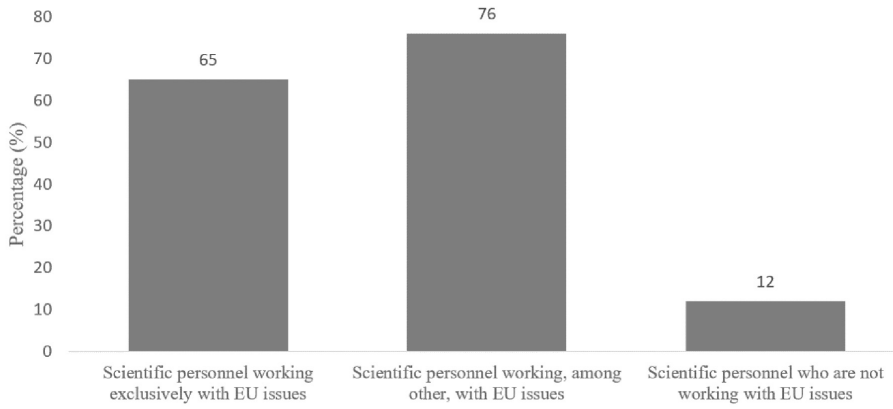
Table 1. Correlation between budget and personnel.

Budget (millions €)	Total number of personnel (%)	Number of Scientific Personnel (%)	Scientific personnel working exclusively on European issues (%)
0 - 0.5	3	4	0
0.5 - 1	6	3	0
1 - 5	12	10	11
> 5	78	83	89

Source: The returned structured questionnaires 2023.

Moreover, as the budget increases so does the number of total personnel, suggesting a parallel link between them. Furthermore, larger departments with higher budgets tend to demonstrate greater numbers of specialised personnel dealing with European issues. This can be explained by the greater responsibilities they have since they tend to demonstrate greater interactions with the EU. This seems to be verified by the literature, especially concerning local public administration (De Rooij, 2002). Figure 4 demonstrates the percentage of the personnel dealing with EU issues. In this context, 65% of the services in our sample have personnel that works exclusively with European affairs, while 76% have scientific personnel working, among other, on European affairs. It should be noted that a mere 12% of the services in our sample do not have scientific personnel working on European affairs. These were institutions with the smaller budgets (Structured questionnaires, 2023).

Figure 4. Percentage of Scientific personnel dealing with EU issues.



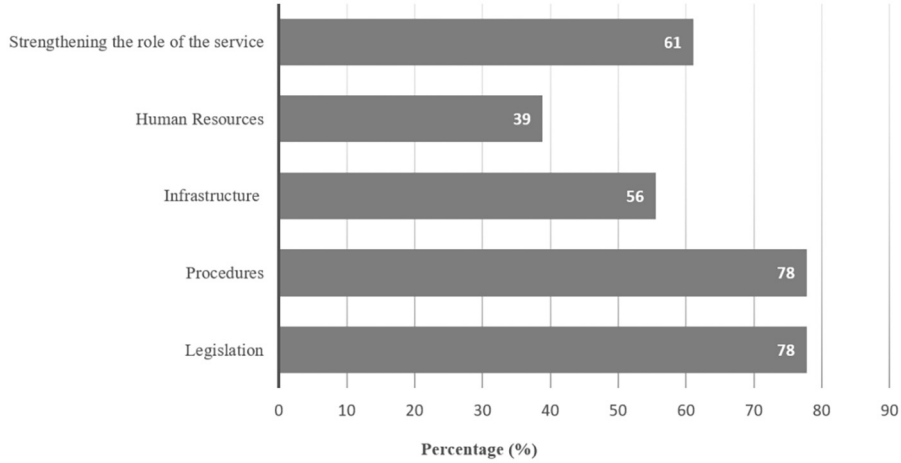
Source: Structured questionnaires 2023.

4.3 European Union

4.3.1 Top-Down process of Europeanisation

We begin the presentation of our findings by focusing on the top-down process of Europeanisation. It should be noted that the results of this process were relatively greater than those of the rest. Our findings reveal a significant number of changes vis-à-vis the services of our sample that were attributed to the EU. Generally, these effects were positively evaluated by the respondents, since they reported (61%) that the EU has been strengthening the role of their institutions (Structured questionnaires, 2023). According to Figure 5, changes in legislation and ways of doing things-procedures-were the most common ones with 78% respectively. These were followed by changes in infrastructure (56%), such as setting up new departments, and changes in human resources (39%), such as hiring people with degrees in EU studies or training personnel on these issues.

Figure 5. Changes attributed to the EU.



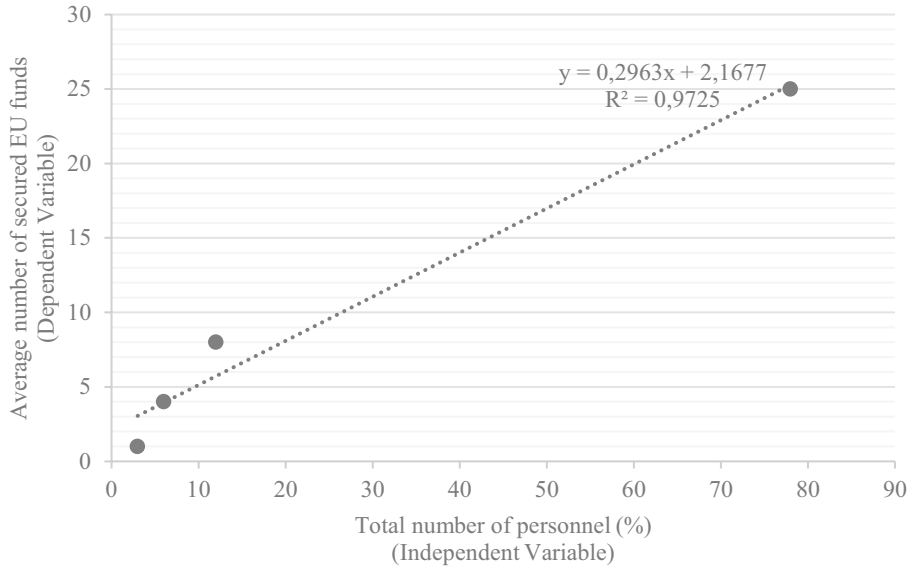
Source: Structured questionnaires 2023.

The respondents indicated the benefits associated with this top-down Europeanisation process, verifying the findings of Börzel (2005), Börzel and Risse (2012) and Heichlinger et al. (2018). In this context, securing EU funding and participating in projects was the most important effect with 57% (Structured questionnaires, 2023). This was described as an important motivation for active participation that largely promoted administrative reform (Ibid).[6] Other benefits included modernisation, improvement of operations and staff training with 40% respectively.

6 Heichlinger, A. et al. (2018) point out that the main target of EU support has been the central government regardless of the type of government structure in place, such as unitary, decentralised, or regionalised. They indicate that for the ESF 2007-2013, 90% of the funding went to national level beneficiaries (Ministries, central agencies etc.).

A possible explanation for these findings is offered by the differentiated capacities between the institutions of our sample, since only 45% have the infrastructure to attract European funds (Structured questionnaires, 2023). Quantitate analysis verifies the positive relation between the average number of secured EU funds and the total number of personnel. Secured EU funds are positively affected by an increase in number of total personnel. As is shown in Figure 6, two out of four of the observations are on the line of the equation, while the last two are just off (Structured questionnaires, 2023). In order to strengthen our results, we set the hypothesis that the independent variable (total number of personnel) does not affect the dependent variable (average number of secured EU funds). Then, we test the confidence level at 0.05 by calculating the P-value. If the P has a value greater than 0.05 the hypothesis is accepted. Otherwise, if the P has a value lower than 0.05 the hypothesis is rejected. In our case we calculate the P-value at 0.013 so the hypothesis is rejected. This result indicates a strong correlation between the total number of personnel and the average number of secured EU funds.

Figure 6. Linear Regression: Secured EU Funds and Total Number of Personnel



Source: Structured questionnaires 2023.

At the same time, great differentiations in terms of their specialised personnel and available budgets were obvious that typically function as indicators of higher accomplishment (Blume and Voigt, 2011). The findings also indicate the relation between, institutional capacity, i.e., the establishment of infrastructure and institutional capability, i.e., the ability to use them in an effective manner, since both requirements need to be met, as it was noted by Graziano and Vink (2006). For these reasons, the services of our sample were not as successful as expected in securing EU projects (55%) (Structured questionnaires, 2023). Besides tangible factors, other non-tangible ones have

been highlighted by research as having obstructive effects vis-à-vis Europeanisation and Cyprus. The prevailing perception of Cyprus being in an interim stage, due to the pending resolution of the dispute has been indicated as a decelerating factor (Hatzimihail, 2013). Domestic traditions, according to Callanan (2012), tend to be quite resilient when facing common obligations deriving from the EU that result in differentiations. In this context, domestic interviewing factors, such as state traditions, patterns of policy making and norms, seem to mediate and filter Europeanisation, by defining the strategy to respond to these pressures, especially in other centralists states, such as Greece (Hlepas, 2020). In the case of Cyprus, the Constitution has been a factor that has hindered modernising effects of the EU (Kombos and Shaelou, 2019). In this context, formal institutional constraints and strong path dependencies were noticed that greatly reduced the role and capacity of the various services of our sample. Indication shows that there was limited room to maneuver, since the members of our sample were obliged to secure official permission for almost everything (70%) (Structured questionnaires, 2023). Apart from formal institutional constraints, informal institutional preferences were noticed in the form of conservative attitudes that restricted public servants from questioning the role of higher administrative structures. In this context, bureaucratic resistance to change was observed in an attempt to avoid adjustment pressure (Semi-structured interviews, 2023). This was driven by the process's effects on the stakeholders' organisational identities and their desire to avoid having "outsiders" dictate to them what to do (van Dijk and van Dick, 2009).

This verified Ágh (2013) who noted the key role of national administrative tradition in relation to coping with the pressure of Europeanisation. Thus, regarding Cyprus, the prevalent administrative tradition of Southern Europe, with its centralized and hierarchical nature has been limiting the initiative and flexibility of public servants while also mediating the effects of Europeanisation. Besides internal factors, external influences also affected the capacities of the institutions of our sample, triggering reductions in their overall role. External factors included the financial and health crises that had major impacts on the services in our sample. Our findings reveal that these crises triggered restrictions on recruitment (85%), as well as restrictions on staff training (60%). Constraints on funding followed with 50%, while infrastructure constraints were the least important effects with 17% (Structured questionnaires, 2023).

4.3.2 Horizontal process of Europeanisation

We shift our attention to the effects deriving from the horizontal process of Europeanisation. In general, there was wide recognition (75%) of the increasing opportunities to develop bilateral relations with public administration from other EU countries and that of EU institutions (Semi-structured interviews, 2023), confirming similar findings (Nemec, 2016). The members of our sample (45%) indicated this process as the second most important procedure of Europeanisation (Structured questionnaires, 2023). It was pointed out that

the participation in the horizontal processes of Europeanisation was contributing, to some extent, to the reduction of the sustained formal institutional constraints (Structured questionnaires, 2023). This also seemed to cut down the influence of informal institutional preferences, by giving an additional role to public administration via European networks, promoting initiative (Semi-structured interviews, 2023).

In particular, the benefits of these contacts were mostly gaining knowledge, sharing experiences, know-how and best practices through interaction and cooperation with other EU states and their respective services. In addition, 57% of the respondents reported that participation contributes to indirect learning, change and the introduction of good practices (Structured questionnaires, 2023). Similar findings were derived from other Mediterranean EU member states, such as Greece, France, Italy, Portugal and Spain where indirect learning and socialization led to the adoption of new ideas and the promotion of Europeanisation's effects (Giannakourou, 2005).

On a more specific level, several benefits were highlighted by the interviews. The most common one had to do with getting new knowledge on the proper application of the requirements of the EU Regulatory Framework in each institution's areas of competence. This was indicated as an important means to reflect the national priorities of Cyprus during the design of the various procedures (Semi-structured interviews, 2023). Economic and social gains from these interactions were also emphasised. All the above led to modernisation and a better application of European regulations and legislation (Ibid). Regarding the European Affairs Service in the House of Representatives, the interaction with corresponding services of other parliaments as well as with EU institutions led to the acquisition of knowledge and exchange of experiences/best practices on how to handle and use incoming information regarding EU legislation and policies, as well as effective methods of examination of EU issues by national parliaments (Structured questionnaires, 2023).

4.3.3 Bottom-up process of Europeanisation

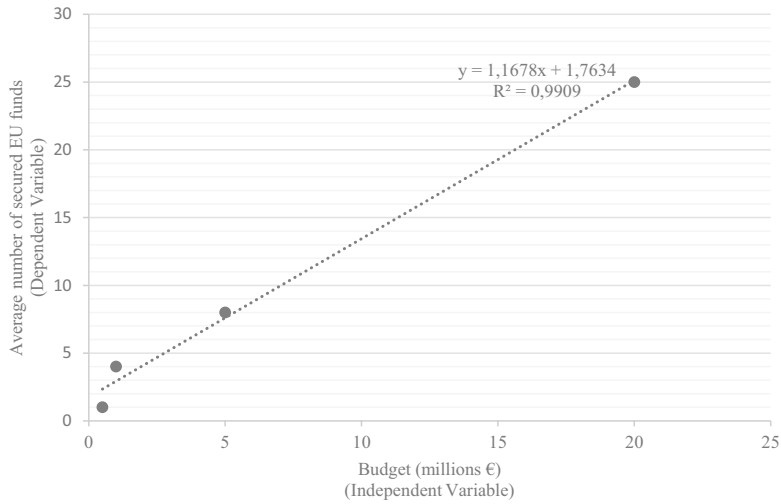
The most restricted effects of Europeanisation were observed in the bottom-up process, ranging from absorption to inertia. Generally, this process had to do with the role of internal factors, including the available resources and the existence of multiple institutional veto points within the institutions under examination. Our findings indicate that the efforts by the members of our sample to upload local preferences were very limited. Only 20% of the services in our sample tried to upload their policies and preferences to the EU. These had both the largest budgets and number of personnel. Quantitate analysis verifies the positive relationship between the average number of secured EU funds and the available budget. In this context, secured EU funds are positively affected by an increase in the budget. As is shown in Figure 7, three out of four of the observations are on the line of the equation, while the fourth one is just off (Structured questionnaires, 2023). Again, in order to strengthen our results, we set the hypothesis that the independent variable (budget) does not affect the dependent variable (average number of secured

EU funds) and we test the confidence level at 0.05 by calculating the P-value. In this case the P gets the value of 0.0045 so the hypothesis is rejected. This result indicates a very strong correlation between the budget and the average number of secured EU funds.

Prominent examples included the Ministry of Finance, which due to its role in the design and implementation of the Memorandum and the Cyprus Recovery Plan was better networked with the EU level. This gave it the chance to inform the European Commission of certain specific characteristics/national priorities of Cyprus, which were considered in the design of the various procedures (Semi-structured interviews, 2023).

Additional restrictive factors included understaffing, making it difficult or impossible to participate in European programmes and committees (Structured questionnaires, 2023). However, more comprehensive efforts to actively involve the remaining organisations in EU institutions were limited, due to the presence of multiple institutional veto points within the services under examination that demonstrated the very limited adaptation to the challenges of bottom-up Europeanisation. Our findings indicate that these multiple institutional veto points are placed in higher-level hierarchical structures and try to preserve their positions and interests, thus, inhibiting domestic adaptation, as it was noted by Haverland and Héritier (cited in Börzel, 2003). This confirmed the importance of endogenous constraints and the extremely critical role of central state structures that filter demands, preventing different agencies from operating autonomously within the bottom-up process of Europeanisation (Pollack, 1995). In the case of Cyprus these tendencies were related to its Southern European state heritage of strong intervention and dominance over society (Varnava and Yakinthou 2012; Hendriks et al., 2011; Sotiropoulos, 2018).

Figure 7. Linear Regression: Secured EU Funds and Number of Scientific Personnel



Source: Structured questionnaires 2023.

In this context, historical continuities and strong path dependencies sustained established formal institutional constraints, by obliging the members of our sample to secure official permission for almost everything (70%), prolonging central control (Structured questionnaires, 2023). Similar findings from other EU member states, such as Spain, verify the tremendous importance of central government structures, acting as a mediator between the EU and domestic administrative structures, guiding the process (Baraibar and Arregui, 2022). Even though Cyprus's membership in the EU has played a significant role in fostering the Europeanisation of domestic administrative structures, this process is still not complete because of historical continuities derived from the Ottoman and British colonial eras. These according to Sepos (2008) have been influencing Cyprus's social, political and financial advancement, mediating the effects of Europeanisation (Kirlappos, 2017; 2021; 2023). Another factor that has been postponing legal, institutional and political reform has been the tendency of being in an interim stage, due to the pending resolution of the political problem (Hatzimihail, 2013). This heritage goes hand-in-hand with strong path dependencies and historical burdens that are articulated through formal institutional constraints that limit the role and capabilities of the various services, as well as through informal institutional preferences that foster conservative attitudes and opposition to change. In fact, two decades of EU membership have not managed to significantly challenge this tradition.

5. Conclusion

This paper investigates the impact the EU on specific domestic administrative services of Cyprus that constitutes a highly centralised EU member state. Previous research has highlighted the ongoing effects of these severe hierarchical structures vis-à-vis specific parts of Cypriot administration. It has been proven that the effects of Europeanisation were filtered by this tradition, prolonging central control over local government (Kirlappos 2017; 2021; 2023).

In this context, the current research focused on internal institutions whose role remained uninvestigated to this day, those that are specifically assigned with the mission to deal with EU issues. For this reason, we have directed our attention to specialised services in the domestic administrative structures of Cyprus to access the impact of Europeanisation almost twenty years after the accession of Cyprus to the EU.

Regarding our first research question, our findings indicate that the results of Europeanisation were at best moderate with important differentiations per process. The effects of the top-down process of Europeanisation were relatively greater than those of the rest. Our findings revealed several changes vis-à-vis the services of our sample that were attributed to the EU. These included changes in legislation and procedures, securing EU funding and projects and promoting administrative reform. Other changes included modernisation, improvement of operations and staff training. Our findings also highlighted the role of differentiations in size, budgets, and specialised personnel between the institutions of our sample. These factors mediated

the results of top-down Europeanisation favouring those institutions that had them in greater quantities, further increasing inequalities between them.

Our findings indicate that the effects of the process of horizontal Europeanisation were the second most important. The benefits of these contacts included mostly gaining knowledge, sharing experiences, know-how and best practices through interaction and cooperation with other public administrations from other EU member states and that of the EU. All the above led to a better application of European regulations and legislation and provided an alternative means to the established formal and informal institutional constraints, by giving them an additional role via European networks.

The bottom-up process of Europeanisation had the most limited effects ranging from absorption to inertia. Generally, only a very small percentage of the services of our sample developed very limited initiatives in this process. These demonstrated some of the largest budgets and numbers of personnel. Because of this, relations with other EU agencies were unable to develop. Our findings reaffirmed the significance of endogenous constraints and the essential role of central state structures that filter demands, preventing various agencies from acting independently within the bottom-up process of Europeanisation.

To answer the second question, it should be stated that even though Cyprus's membership in the EU has played a significant role in improving domestic administrative structures, this process is still incomplete because of historical continuities resulting from the Ottoman and British colonial eras. These continue to have a long-lasting impact on both formal and informal institutions.

The occupation of Cyprus by the Ottomans and later the British established a restrictive path with illiberal procedures, creating a relationship between ruler and vassal. In this context, historical continuities established formal and informal institutional constraints that can be traced in endogenous characteristics, tangible factors and conservative attitudes. These factors in combination with the administrative tradition of Southern Europe further exacerbated the centralized and hierarchical nature of the administration of the island. Therefore, this background of over-centralisation has created restrictive practices and a deep-rooted conservative culture among public servants significantly limiting initiative, autonomy and flexibility, while also mediating the effects of Europeanisation. Our findings revealed formal institutional constraints and strong path dependencies as well as historical burdens that greatly reduced the role and capacity of the various services. In this context, it was indicated by the members of the sample that there was limited room to maneuver, since they were obliged to have clearance for everything. Besides the crucial role of formal institutional constraints, informal institutional preferences were equally important. In this context, conservative attitudes as well as the mentality of Cyprus being at an interim stage were putting obstacles to any attempt for change.

For these reasons, although the overall course of Europeanisation has produced some positive effects on the various services under consideration, the historical continuities inherited from previous historical periods place limitations on the whole process, mediating the effects of Europeanisation.

Disclosure statement
No potential conflict of interest was reported by the authors.

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Annex: Indicative questions derived from the structured questionnaire and the semi-structured interviews

A. Structured questionnaire

1. Have you noticed any changes in your service that can be attributed to the EU? If so, please indicate the most significant changes in your opinion.
- o Legislation
- o Procedures
- o Infrastructure (e.g., new departments)
- o Human resources
- o Strengthening the role of the service/department
- o All the above

2. Is there an infrastructure to attract European funds in your service/department?
- o YES (Creation date: .....)
- o NO

3. Has your service/department secured EU founded programs?
- o YES (Number: .....)
- o NO

4. In the case of participation in European programmes, what do you consider to have been the greatest benefits for your service/department?
- o Raising funding
- o Exchange of experience and cooperation with other European services/departments
- o Modernisation and improvement of operations
- o Staff training

5. Has your service developed contacts with services in other EU countries and/or EU institutions? If so, what were the benefits of these contacts?

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6. What have been the major impacts of the two recent crises (financial and health) on your service/department?
- o Restrictions on recruitment
- o Restrictions on funding
- o Infrastructure constraints (e.g., abolition of departments)
- o Restrictions on staff training
- o Reduction in the role of the service/department
- o All the above

7. Comments/ suggestions:

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B. Semi-structured interviews

1. Based on your experience what were the most important difficulties in terms of promoting change and administrative reform?

2. Has your service developed contacts with counterparts from other EU countries? What were the benefits of these interactions?

3. Has your service developed contacts with EU institutions? What were the benefits of these interactions?

4. What was the role of factors, such as centralisation and hierarchical control, in the process of change and administrative reform?

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Determination of Public Goals in Times of Volatility and Complexity

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ABSTRACT

Purpose: The purpose of this text is to critically analyse the traditional approach to the formulation and application of legal rules, arguing that they are outdated and insufficient for addressing the complexities and dynamics of modern society and technology.

Design/Methodology/Approach: Employing a qualitative research methodology, the paper adopts a case study approach, focused mainly on the practices of the legislature in determining public goals. The analysis identifies themes and patterns related to different practices regarding the determination of public goals and their impact on the legislature. The findings are discussed in relation to the theoretical framework established both in the literature review and this paper. The paper concludes with a summary of the findings, practical implications, and suggestions for future research.

Findings and Practical Implications: Although technology nowadays plays a central role in human life, legislative public goals are still determined statically, reflecting a traditional Newtonian mechanistic perspective grounded in the principle of causality. Looking ahead, the paper speculates on potential scenarios. It suggests that the balance between nature, technology, law, and humanity requires careful management to ensure a harmonious but flexible co-existence. In the realm of complex legal issues, certainly can, to some extent, be maintained through an array of innovative methods. These include results- and procedure-oriented approaches to interactions between individuals and collectives, a legal system informed by feedback mechanisms and thresholds, the use of collective intelligence, the anticipation of adverse scenarios, and the implementation of adaptable norms. Such methodologies are intrinsically better equipped to navigate the unpredictability and complexity of modern legal challenges than traditional legalistic frameworks.

Originality: The paper integrates insights from various disciplines, including law, system theory, and technology studies. This interdisciplinary approach offers a more comprehensive understanding of the intricate interplay between nature, technology, and law, a perspective often neglected

in more narrowly focused studies. The originality of the paper lies in challenging existing forms of regulation and proposing new regulatory approaches grounded in the evolving nature of facts and associated rights and obligations of individuals and groups.

Keywords: *complexity, flexibility, legislation, public goals, collective wisdom, negative scenarios, adaptable norms*

JEL: G18

All you need are these: certainty of judgement in the present moment; action for the common good in the present moment; and an attitude of gratitude in the present moment for anything that comes your way.

– Marcus Aurelius, Meditations, 9.6

1 Introduction

Public goals as reflectors of the aspirations and needs of society play a crucial role in legislation. Determining public goals is a crucial aspect, as it sets the direction and priorities for the government and its citizens. The process of determining these goals should be inclusive, transparent, and reflective of the needs and aspirations of people. An inclusive approach ensures that all segments of society have a say in shaping public goals. When setting these goals, it is crucial to consider common factors such as economic development, social justice, environmental sustainability, and healthcare. By effectively addressing these issues, governments can create a better future for their citizens. This narrative could go on, but it is mostly in theory; in practice, laws are closer to the twisted and paraphrased Tolstoy Anna Karenina saying: 'all bad laws are alike; each good law is good in its own way'. If we agree with Plato that the beginning is the most important part of the work, then the development/determination of public goals is of such importance for the responsive, efficient, and effective primary legislation. Legislation is such when goals are achieved. Despite of this knowledge, many times goals are still not achieved. This often occurs not because of the legislator's incompetence, but because of the matter of things per se.

Public goals depend on different contexts and priorities, but generally include promoting justice, protecting individual rights, ensuring social welfare, and advancing economic development. Despite their importance, such goals are still very broad in scope, general, and all-encompassing. Already Aristotle knew (it is now the common truth) that legislators are unable to anticipate every possible situation or scenario in which legislation may be applicable[1]

1 When law speaks universally, and a particular case arises as an exception to the universal rule, then it is right ... to correct the omission ... this is the very nature of what is equitable – a correction of law, where it is deficient on account of its universality. This is also the reason why not everything is regulated by law: about some things it is impossible to legislate, so that a

(Romans knew this in the saying *lex non curat de minimis*, i.e., the statute does not concern little things, but the latter often gives the "flavour" of goals). The primary legislation is hence many times broad in scope; due to these practical limitations, it is, on the other hand, per se, inherently incomplete. This gap can be further addressed in secondary legislation, adjudication, material acts, civil contracts, and other regulatory techniques, but equity, as outcome-to-input ratio, is rarely mathematically equal to the referent one. The Covid-19 epidemic is the example of this. Notwithstanding the similarity of actions taken in legal acts between countries (higher or lower on the rule-of-law scale), the epidemic spreads in a wavelike manner. This may be an indication that its nature of movement was outside of the legal scope. Complex situations as such do not react in the usual form of logical causation (also present in the binary "if → then" nature of the legal norm). Covid has demonstrated this repeatedly; similarly, knowledge is (and can be) revealed to us in waves. That man cannot know everything was already known to the Stoics, but without as much as possible an experimentally verified objective situation, on which legal drafts can be made, this can be even enhanced. Legislators are here faced with the Thomas theorem ("if men highly subjective situations define as real, they are real in their consequences") (Thomas and Thomas, 1928); this can be the older version of the fundamental attribution error, as a 'general tendency to overestimate the importance of personal or dispositional factors relative to environmental influences' (FAE) (Ross, 1977, p. 184). The unwanted consequences and side effects are *sine qua non* of such a stance and thus also of a situation not being determined with the recognised scientific research methods. The following sections of this paper will focus on some methods and approaches that could make the legislator's job easier in writing laws. They explore the process of determining public goals in legislation, examine various means and approaches employed by legislators, factors that influence goal determination, and challenges faced during this process. The paper delves into the complexities of legislation, public goals, and decision-making processes within societies and institutions. Key themes include public goals in legislation, evidence-based legislative decision making, result- and procedure-based approaches, collective wisdom and decision making, challenges in regulation and group engagement, and social identity. The next section is focused on the principles of stoicism that align with modern concepts in cybernetics, systems theory, and complexity; the third chapter deals with various adaptable means to determine public goals, while the conclusion follows in the fourth section.

2 The apparent stability of law in the flexible nature

The areas of great interest to the Stoics were the elements of virtue, morality, emotions, self-awareness, fortitude, right action, problem solving, acceptance, mental clarity, pragmatism, unbiased thought, and duty. All of these elements can be found also in the law, so it is valuable to see how Stoics framed their work: they did this around three critical disciplines: 'the discipline of Percep-

special decree is required. For when the object is indeterminate, so also is the rule ... so the special decree adapts to fit the circumstances (Aristotle, 2004, p. 100).

tion (how we perceive the world around us), the discipline of Action (the decisions and actions we take and to what end), the discipline of Will (how we deal with things that cannot be changed, attain clear and convincing judgement)' (Holiday and Hanselman, 2016, p. 4). Stoics' rules of thumb, that is, a) the control of personal perceptions, b) proper direction of actions, and c) willingness to accept what is outside our control, similarly express what has later become the essence of (a) cybernetics and/or control, (b) system theory, and (c) complexity. The first is the science of navigating, direction-finding (steering), regulation and control (of systems), the second is focused on interconnections among parts, while the third emerges out of various connections among parts.

These three areas can be used in the legal field that urgently needs different approaches. The nomotehnics of legislation/regulation in most cases still resemble the German *Allgemeines Landrecht* ("General State Law") of 1792, whose aim was to create a unified set of laws that should eliminate possible manipulations by different interpretation. This Act, with more that 17,000 articles (sic), is the clear example of "complexity in full action" and contradictory interpretations blossomed. Nowadays it is known that an approach to complex matters cannot be in the detailed enumeration and definition of things, as the latter always combined with others emerge as new ones and cannot be fully comprehended or completely administered at start. There will always be something 'out there' or 'outside' the frame. Due to numerous factors and influences, and their hypercomplex interactions, social systems exhibit the so-called spontaneous, dynamic (self-restructuring) order, known as the black box. Society can therefore be managed better indirectly through different inputs to desired outputs, feedback, and resulting patterns,[2] provided that the change of view is present: events per se do not change people, but the latter's point of view changes, that is recognise the former as such. This could be the stance of Stoicism, as it is also the essence of Perceptual Control Theory (PCT): 'the basic principle of control is control of perception, not action' (Powers, 2010, p. 129). Behaviour is the process by which we act on the world to control perceptions that matter to us (this is the so-called perceptual control, where the latter produces repeatable consequences by various actions). A similar stance is also present in the so-called socionomic insight, where social mood trends precede social action and not contrary (Prechter, 1999). This inverted causality stands at least in cases in which we are interested in something (e.g. needs, interests, motivations, events) to happen or to be changed. Similar to this is the measure-and-react approach rather than traditional strategic planning: 'planners should rely less on making predictions about long-term strategic trends and more on reacting quickly to changes on the ground' (Watts, 2011, p. 188).

2 Healthy growth is S-shaped growth. Any other kind of growth is unhealthy (Malik, 2016, p. 229). This sinusoid growth and decline resembles to Kondratieff cycle. This cycle lasts for 55 years and can be related to the mass-psychological, social mood, in research known as socionomics (Prechter, 1999) according to which peoples' mood and/or actions trigger external events and not contrary. In this line of thought people perceive especially things they intent to control. Intention frames what will be brought into experience. Causation does not work in the social sciences as it does in the natural sciences.

Stoicism was not interested in the high abstract words of Platonism and/or German Idealism; neither the law nor the law can cope with them, as the legal principles and other rules have in mind a real context of general or individual legal rules. As said, perceptions, actions, and willingness (to accept what can/not be done) should not be only as sine qua non present in the law, but they reveal a deeper denominator: the discipline of will acknowledges that some things are not known to us, are insufficiently or wrongly assessed at a time of enactment, in later phases change or connected, combined with others emerge as new/different things. Such a finding is known for centuries, even in religion: willingness to accept the fact that everything is impermanent (*anicca*) is present in Buddhism (as in other major Indian religions); there is no permanent self or soul in living beings (*anattā*). The misperception (*avijjā*) that anything is permanent leads to clinging (to otherwise impermanent states or things), which leads to dukkha (incapable of satisfying and hence painful). The paradox of impermanence (also in the sense of the absence of causation) therefore constantly evades the present, while at the same time representing a two-way street of the past and the future. It is a synonym of meaning as a fluid, a moving boundary between the expressive proposition and the thing (state of affairs) in its being (Deleuze, 1998). For Foucault, it is precisely the property of power as prescription that is expressive: 'power acts by making a prescription [...] Power speaks, and this is the prescription. The pure form of power will be found in the function of the legislator' (Foucault, 1978, p. 83). For Deleuze, sense manifests itself as 'a process of infinite reference back to a presupposition' (Deleuze, 1998, p. 37). Such a process of constant return to a certain, again prior, rule is also mentioned by Kant in relation to the power of reasoning.[3] If the latter has solved the problem by means of a comparison (of things, events, persons, etc.), by means of which an astute or precise person perceives differences, Foucault further tells us that these emergent differences, which indicate transformations of states, are based on observable signs. Foucault also confined himself to describing transformations rather than causes: 'no similarities are available without signatures. The world of similarities can only be a world of signs' (Foucault, 2002, p. 29). This does not lead us to causation, but to the relation between sense, prescription, reasoning, and measuring power: what is sensible is prescriptive in law (which is ascertainable through signs), and conversely, what is discerned is knowable through differences in measured signs (which are carried by things or processes). This philosophical understanding has found its basis also in the natural sciences: Carnap in the Philosophical Foundation of Physics claims

3 In the Critique of Pure Reason, Kant says that reason as 'ordinary logic contains no prescriptions for reasoning power [the subsumption of facts under a legal norm, i.e. the judgment of whether the observed facts of a concrete life event fit the description of an abstract situation given in a legal norm], nor can it contain them. For since it abstracts from itself all the contents of cognition, it is left with nothing but the task of analytically dismantling the bare form of cognition in terms of concepts, judgments, and conclusions, and thus formulating the formal rules of all rational use. If she wanted to show how we are to subsume things under these rules, i.e. to distinguish whether something stands under them or not, she could not do so again except according to a rule. While reason can be taught and equipped with rules, the reasoning power is a special talent that cannot be taught but only trained. Therefore, the power of reasoning is also that specific so-called innate acumen, the lack of which no school can compensate for' (Kant, 2001, p. 162).

that 'causality is not a thing that causes an event, but a process ... [in which] some processes or events cause other processes or events' (Carnap, 1966, p. 190). The flexible, changeable, and complex nature is the opposite of a stable, immutable conception of law in terms of legal certainty and thus also of such public goals. The idea that causality is not a static, unchanging force, but rather a dynamic interplay of events and processes is also echoed in the legal framework. In law, this perspective challenges the traditional notion of fixed and immutable rules. Instead, it suggests that legal principles and their applications are fluid and adapt to the changing contexts and complexities of human society. This fluidity in understanding causality and law aligns with the postmodernist critique of grand narratives and fixed truths. In the legal context, it implies that laws are not just prescriptive texts, but living documents that evolve with societal changes. This perspective is crucial to understanding the application of law in diverse contexts, where different cultural, social, and economic factors play a significant role. Moreover, this approach has implications for public policy and governance: if laws and their applications are seen as dynamic, then public goals and policies must also be flexible and adaptable. This challenges policymakers to be more responsive to the changing needs and complexities of society, rather than adhering rigidly to predefined objectives. Therefore, the next section aims to explore the methodologies and frameworks through which public goals are identified, evaluated, and pursued in an ever-changing societal context.

3 Means to determine public goals

There are several approaches that legislators can employ to determine public goals in legislation: among the means to determine public goals are public hearings and forums, surveys and polls, stakeholder meetings, constituent feedback, advisory committees, town hall meetings, focus groups, community outreach programmes, social media, and online platforms, collaboration with research institutions, feedback from local governments, public petitions, media monitoring, and the engagement of nongovernmental organisations. By using combinations of these means, legislators can gain a comprehensive understanding of public goals and ensure their legislative actions align with the needs and desires of their constituents. Balancing these factors is in theory crucial for effective decision-making, but in practice they are used not so often. Despite the multitude of possible means, balancing itself is just a notion that needs further understanding and implementation of means: conflicting interests among different groups or stakeholders can create complexities when trying to find common ground or compromise between divergent perspectives. Furthermore, ethical considerations arise when determining public goals, since it is essential to uphold principles such as fairness, justice, transparency, and accountability throughout the legislative process.

Most importantly, most draft laws are still drafted in the offices of different ministries, by different civil servants. A pragmatic view that considers actual practice, time and money spent on writing laws, can therefore focus primar-

ily on public officials' practices of using means to draft legal acts. Civil servants – regardless of the mentioned means as input (as "informal legislators") – should use the evidence-based approach that relies on empirical data and research findings to inform the legislative decision-making process. But still – what can be understood as evidence and why? Who provided the information, how it was framed and processed? There are no definitive answers in this area. If this were not the case, all major problems of society would have been solved long ago. Not only are they not, but new ones also emerge all the time. Thus, further sections point to additional perspectives worth considering when drafting public objectives.

The intricate balance of numerous factors is, in theory, paramount for efficacious decision-making; however, the practical application of this balance frequently presents challenges. Although a diverse array of methods for achieving this equilibrium exists, the concept of balance itself demands further operationalisation; moreover, most legislative proposals or bills continue to be formulated within the confines of various ministerial departments by distinct bodies of civil servants. A pragmatic perspective, cognizant of the real-world practices, as well as the temporal and financial resources expended in the legislative drafting process, would suggest a primary focus on public officials and their utilisation of methods when crafting legal statutes. Indeed, civil servants, often referred to as "informal legislators," should employ an evidence-based methodology predicated on empirical data and scholarly research to guide the legislative decision-making framework. Yet, this raises the question: what constitutes evidence, and why? From what did the information originate, how was it presented, and how has it been subsequently interpreted? Definitive responses in this domain remain elusive. If this was not the case, society's most pressing issues would have been resolved long ago.

Not only do these issues persist, but new dilemmas also continue to surface with regularity. Therefore, the following sections will suggest additional points of view that warrant consideration when delineating public objectives. These perspectives can illuminate the complexities inherent in legislative drafting and offer insights into how evidence can be more effectively integrated into the process, ensuring that the resultant laws are not only theoretically sound but also practically viable and responsive to the evolving needs of society.

3.1 The Results- and Procedure-Based Approach of an Individual Towards a Group

One of such perspectives points to the division between general and specific rules based on the difference between the information we have on situations and the division between individuals and groups. The social dilemma occurs in the latter demarcation, when short-term self-interest becomes widespread and negatively affects the well-being of a group. This inference gained its moment already in Greek democracy, as joint, participatory codetermination of objectives or influence on their content increases the likelihood of

their achievement and thus the success of the management of the group;[4] on the other hand, a broad consensus per se cannot be per se or automatically aligned with the objective situation. Sometimes an individual may (in the sense of Galileo *e pour si muove*) defy the (mis)beliefs of the broad masses; the decision-making of the broad masses on a given issue could be democratic, but not necessarily liberal, objectively correct – the way information is gathered and processed is more decisive. Based on two elements of an individual and a group, there are four result-based combinations that emerge when individuals decide on the extent and the way on which they will pledge to the group. Along the result-based approach (the upper four combinations in the table below), there is the procedure-based approach (the lower four combinations in the table below) because a procedure by which we arrive at results is also important), the importance is based more on a just procedure, because results are here (more or yet) unknown. This approach can be in the same line of thought – between justice as a personal, individual virtue/attitude, and fairness as the collective, group value – presented with four vertical combinations (a, a1, c, and c1; and b, b1, d, and d1):

APPROACH	Individual	Group
Result-based	a) a self-egoistic interest (regardless of the public) (individualism);	b) a self-fair interest (an individual interest according to what is justifiable to it, or a subjective opinion vis-à-vis opinions of others) (libertarianism);
	a.1) individual justice (a procedure that is "good" for my result) (personalism);	b.1) relative to other justice (people evaluate the quality of their outcomes by comparing them with the outcomes of others) (comparative equity);
Procedure-based	c) a public-egoistic interest (what is beneficial for the public, regardless of the individual interest) (collectivism);	d) a public-fair interest (public interest according to what is justifiable to it) (communitarianism);
	c.1) procedural justice, in which people are concerned with the equal quality of process for everyone (due process, rule of law);	d.1) distributive justice as an outcome received relative to those judged to be equitable to those who judge (equity).

Source: The result- and procedure-based approach of an individual towards a group

4 'For the many, who are not as individuals excellent men, nevertheless can, when they have come together, be better than the few best people, not individually but collectively, just as feasts to which many contribute are better than feasts provided at one person's expense. For being many, each of them can have some part of virtue and practical wisdom, and when they come together, the multitude is just like a single human being, with many feet, hands, and senses, and so too for their character traits and wisdom. That is why the many are better judges of works of music and of the poets. For one of them judges one part, another, and all of them the whole thing' (Book III, 1281a41-b10, Aristotle, 1998).

The relationship between a process and a result is explained in the fairness heuristic theory[5] with the (non-)availability of information: when the latter on outcomes is not available, procedural justice prevails,[6] and contrary, in the presence of information on outcomes, other (more substantive) versions of justice gain more importance: '[w]hen people do not have information on the outcomes of others, they use procedural fairness as heuristic substitutes to assess how to react to their outcome [...] but people rely less on procedure information when they are informed about the outcome of another person' (Van den Bos et al., 2000, p. 57). Based on this 'the information that comes first exerts a stronger influence on judgement [as it sets the stage for the interpretation on justice], then information that comes second' (Van den Bos et al., 2000, p. 59). Not only the information, but the timing, habits, norms, and questions i.e. the frame[7] of a decision, are crucial for decision-making. Along the (non)specificity of information, the impact of groups on individuals is frequently undervalued. It may be that (from the outcome-based view) 'it is usually easier to change individuals formed into a group than to change any one of them separately' (Lewin, 1951, p. 228), but from the procedural point of view, the way in which these opinions are processed is essential, bringing people together without any of them being felt that have been overlooked. A reaction of people to (individual) justice and (collective) fairness depends more on circumstances and/or a context of the case than on the abstract notions, whether on the distributive or procedural ones. In the presence of material information, the need for the democratic process is reduced, and vice versa. When more material information is available (the result), the need for more abstract and general legal rules increases; in the absence of them, information about the process is more appropriate, and along with the need for more specific, individual adjudication.[8]

What counts is what a man can do when information is available and how he acts in the absence of it. Based on the distinction mentioned above between material and process options, in the case of information scarcity, the combinations c, d, c1, and d1 could be taken (more) into account, and vice versa: when information is available, when a factual situation is reasonably clear, the combinations a, b, a1, and b1 come (more) into the fore (in both cases, the combination depends on collectivist or more individualistic values or views

5 To understand what people judge to be fair we have to carefully assess to what information they are reacting. To assess what is fair people react to the situation at hand. Less relevant but available information may be used as a heuristic substitute for more relevant yet missing information (Bos, 2001).

6 Justice judgments are [in the mentioned line of thought understandably] more sensitive to early fairness-relevant information than to later fairness-relevant information and that this primacy effect is more evident when group identification is higher (Lind et al., 2001).

7 The framing effect is when people's responses vary based on whether something is depicted as positive or negative. Our choices are swayed by the way the information is delivered, not necessarily by the actual content, or "questions affect answers" (Plous, 1993).

8 If, for example, pensions are adjusted for inflation, this information is relevant generally and equally for all, and applies as such to all, without the need for individual pension increase procedures. Conversely, when it is necessary to establish eligibility conditions for a pension, an individual procedure should be introduced to establish such conditions for each individual person. When criminal offences are defined in the Criminal Code, it is known in advance what is prohibited, contrary to the values of society, whereas it is necessary to establish during the criminal proceedings whether the alleged suspect has committed the offence of which he is accused.

of society). In the group engagement model procedures are important because they shape people's social identity within groups, and social identity in turn influences attitudes, values, and behaviours (T. R. Tyler and Blader, 2003). These three personal stances have a significant effect on cooperative behaviour, separate from the influence of reward and punishment systems: 'attitudes and values are the dominant motivations shaping discretionary behavior, with deference to social rules [accepting authority or following rules based on one's own volition] primarily shaped by values and extra-role behavior [performing nonrequired tasks] primarily influenced by attitudes' (T. Tyler and Blader, 2013, p. 191). If we try to link this model with fairness heuristic theory, the attitudes and values are more important when information (on results) is not available (the c, d, c1 and d1 combinations), while the reward and punishment come more to the fore when information is available (the a, b, a1 and b1 combinations).

For the legislator, it is thus preferable to apply general regulation when there is sufficient information on the actual situation and, consequently, the desired objectives (otherwise, such general rules are more likely to be doomed to failure in advance); on this basis, it is easier to determine the effective means (starting from combinations a, b, a1 and b1) to achieve the objectives. As fact finding can be quite difficult and time-consuming at the outset, and (at a given point in time) financially costly, it may be decided to adopt more process-based legislation (e.g. trade union bargaining, disaster damage inventory, application for certain rights), where (starting from combinations c, d, c1) and d1), the costs of conducting individual proceedings over an extended period of time, during which the facts are established, on the basis of procedural rules that are clear in advance and that are the same for all, should also be taken into account as far as possible. As the common denominator is needed to process different numbers, the same approach can be applied to general legal rules: to bring people on the same level of awareness on the importance on some matter, common grounds should be established. This is even more important when mandatory rules are imposed. If the outcome is unknown, emphasis should be placed on values, attitudes, fundamental legal principles, human rights, equal procedural rules, and if it is known, emphasis should be placed on equal criteria, means, and proportionality.

3.2 Systemic Law

The above-mentioned religious, philosophical, and even scientific views on dynamism and/or variability came forcefully to the fore in the systems theory. With an emphasis on processes, Bertalanffy as the founder of systems theory, believed that systems are governed by the dynamic interaction of their parts (Bertalanffy, 1968). Numerous links between the individual parts – which can be calculated using the equation n(n–1) (Beer, 1959) – do not allow classical causality or causal relationships to be established, but exhibit the main element of complexity,[9] which can be partially administrated with sensors and

9 Complexity can be shown using the very simple case of a statute that would have only 4 measures for achieving a goal. The number of their states is 12, and the number of connections

non/acceptable thresholds that trigger the preestablished actionable scenarios. Contrary to or without them, false hopes lead to disappointments, while the latter can be the fundamental reason to communicate expectations also in a normative legal style (Luhmann, 2004). Everything is connected differently or similar on different levels. Causality can sometimes be ex-post proven when our focus/perspectives, criteria, relations are determined, when data are gathered and statistically processed. Ex-ante can this be only presumed, as uncertainty and complexity come to the fore. In the law dealing with human rights and obligations, it is logical to have a say about them also the people who are subsumed by the law, but this 'logic' and even constitutional right, in most cases fails in practice. 'When entire systems keep getting more and more inefficient, clear signals are exhibited. These include more and more input being required to obtain less and less output, former liberties leading to excesses, and previously decreased regulation returning as exponential degrees of bureaucracy' (Malik, 2011, p. 24)and expert on Management in Europe (.... The increasing public resources spent on bureaucracy, a larger number of enacted regulations, and growing violations of human rights are signals not only that something must be done (within the existing systems), but that it should be done differently (with the new ones).

Notwithstanding the greatest democratic gains of the 18th and/or 19th centuries, most regulations are still enacted without the public participation.[10] As the design of any kind of a system should be focused on its function, the same stands for various legal (sub)functions expressed in the main one – its performance. A legal system based on freedom exhibits the very essence of a system: operating autonomously as much as possible in various subparts, and hierarchically at the same time where parts of different levels need "communication", cooperation, and coordination, where the elements 'common, general, free, open, public' are present in various types of (sub)actions grouped to achieve results. This combination of systemic 'auto-archy' (autonomy-hierarchy) and/or "auto-rules [gr. *nomos* – rules] based on principles" (fr. *archie* - principle) exhibits the main legal elements of law, ie, how rules should be understood, work, and be controlled within the framework of principles (this semantic combination of words was also assembled without causality, but nevertheless has meaning).

between the means is 6; the input variety () enables 16 possibilities (4^2=16), while the output variety () gives 2^{64} or 18446744073709551616 possibilities. By solving 4 problems, a statute itself produces 12 new, unsolved ones. Similar complexity applies to e.g. chess or the alphabet; the latter can be used to create poetry, sonatas, novels, etc. out of 25 letters, the contents of which cannot be based on causation (for 25 letters it is 8.8817841970e+34 combinations). The same applies to all things that are yet to happen in the future, and which are not based on naturalistic, mechanical, Newtonian laws of motion.

10 For Malik participation in management is not based on equality (as it is in the case of democracy), but on the principles of efficacious functioning, effective communication, right thinking and action. On the other hand, democratic equality means only the equal possilitiy to participate. If this is assured, the same benefits can occur as in management: 'participation is indispensable to functioning organisations because it interconnects knowledge, amplifies intelligence, enables better decisions (a viable consensus can be reached by an open discussion of dissenting opinions), meta-information (the transmission of knowledge in the way that everyone knows that everyone knows everything necessary to complete a task in a particular situation an) and effective learning' (Malik, 2020, pp. 86–89).

People as the main "parts" of legal systems could form such relations (between parts) that could be effective and efficient at the same time. Public participation understood in ancient democratic Greek meaning, where people were physically gathered in public forums, is a classical ideal, but practical experiments confirm that this kind of gathering cannot provide objective meaning; many times due to emotional, cognitive, and other elements lead to negative results in the form of violent mobs - which were the subject of Le Bon's research on crowd psychology – or extreme opinions (amplified by other participants, usually loud, or otherwise outstanding participants) (Sunstein, 2011). Here, a common saying can be placed "(some) garbage in, (more) garbage out". When considering a factual state of affairs, this kind of public gathering and decision making cannot give a real statistical average (but only binary yes-no decisions of majoritarian decision making - the same holds for all decision-making forums); here often a 'losing' side has almost the same number of votes as the 'winning' one (e.g. 51% vs 49%), although the same 'objective' decision is then 100% valid based only on <50% of subjective votes. This could/should be changed – it is not about rigid, linear votes as results; faced with the uncertain future, it is about the dynamic, changeable, and adaptable parts as asymmetrical relations. In the previous centuries formed knowledge-based successful decision-making techniques cannot cope with the complexity of the 21st century.

When taken to extremes or used in different contexts even so far effective systems will fail (past successes generate their own malfunctions). It is not about only changing some inefficient techniques or methods ("do something differently with the same essence" and/or "the more efficient you are at doing the wrong thing, the worse you become[11]), but to be effective and efficient at the same time on different (right) goals and on different (right) methods. Transferred into the legal language, this means that the (old) present general decision-making systems cannot be neither effective (as goals are not democratically closer to the real state of affairs, because public participation is still used in the classical way of votes or not at all) nor efficient (as methods or subjective votes are not independent and statistical elaborated, averaged, or used with median), as it simply does not incorporate enough variety into its decision-making systems. With the help of numerous different people with various perspectives there is no need for a host of expert opinions or is there any kind of 'higher' (hierarchical) or a better (based on 'merit') opinion maker? Everyone should have the same chances of participating. All these elements that can aggregate knowledge of numerous people and at the same time express the efficiency of small teams are present in the communication method, where synergy and integration (syntegration) are expressed in collective wisdom.

11 There is a difference between doing things right (efficiency) and doing the right things (effectiveness) (Drucker, 2002): it is more essential to do right things (this can also be done passively - do no harm) than doing right the wrong things, because '[t]he more efficient you are at doing the wrong thing, the wronger you become. It is much better to do the right thing wronger than the wrong thing righter. If you do the right thing wrong and correct it, you get better' (Ackoff, 2015)as Leslie Gelb observed in his article "Fresh Faces" (The New York Times, December 8, 1991.

3.3 Collective Wisdom

Decisions should be taken outside of social identity, in the sense that a decision should be taken by everyone alone, yet in the view of a whole collective. The usual majority decision-making could be complemented with the practices of collective wisdom, in which decisions are first processed individually and independently of others, and then statistically processed as a whole. Such decision-making is important also for implementation, where the individual is often not just an individual, but reacts toward a rule/decision as a member of a wider group. Democracy is not only a political instrument that legitimises the behaviour of the people's representatives, or a fundamental element in bringing people together peacefully to achieve common goals, but also an element of direct decision-making or participation in the management of public affairs (in the sense of new data and its transformation into grounds for legal change). The community, as the "wisdom of the crowds", can, through appropriate procedures and under certain conditions, be intelligent, able to distinguish between objectives (Briskin et al., 2009; Landemore and Elster, 2012; Pečarič, 2016; Surowiecki, 2005). What matters for the assessment of the situation as a basis for collective action is not so much what the individual (thinks), but what the people as a group think about an issue. The latter does not exist as such, since it only emerges with the existence of a system (communication) that captures a set of disparate data, connects them through a common denominator, and offers a solution by comparing the data and looking for their common patterns.

The concept that groups of individuals can generate predictions that are statistically more accurate than those made by single experts has been scientifically supported (Dawes, 1979; Grove and Meehl, 1996; Meehl, 2013). This idea, often referred to as crowdsourcing (Galton, 1907; Grove and Meehl, 1996; Meehl, 2013; Page, 2008) is increasingly feasible due to the advancements in information and communication technology. Certainly, a recognised expert will tend to provide better facts, predictions, or advice than a random individual, when a field in which the expert operates is not flexible, changeable. But when a few dozen random people are put together on the right kind of task, the facts, predictions, and advice that are then aggregated are better than what experts could produce alone. It appears that the crucial factor is that within a blend of correct and incorrect responses, the incorrect responses usually neutralise each other, allowing the correct answers to prevail (O'Reilly, 2010). Under appropriate conditions, the collective intelligence of a group can surpass that of its most intellectually gifted members. It is not a prerequisite for a group to be composed of individuals with exceptional intelligence to exhibit collective intelligence. The capacity of a group to make a prudent decision is not necessarily impeded by the presence of members who may lack significant knowledge or rationality (Surowiecki, 2005). According to Surowiecki, collective intelligence must overcome the challenges inherent in cognitive processes, coordination, and cooperative efforts. Moreover, it is essential to foster an environment characterised by diversity and autonomy, alongside a distinct form of decentralisation, to ensure that the collective

wisdom of the group is harnessed effectively. Diversity is ensured when we do not try to reach a consensus, but collect the independent and impartial conclusions or estimates of all the people and calculate the average or the medium of the group's opinion. This number represents collective wisdom. The focus lies on the understanding possessed by individuals in society who, in collaboration with official entities, display recurring behaviours. The reason for this is in the fact that in a mixture of correct and wrong answers, the latter are mutually exclusive (with the aggregation of data, and then through their statistical mean), which remains in effect only correct ones. The World Wide Web is no longer just a simple link that connects one to another. There are many of them who have the same or even greater amount of information and greater knowledge about individual things. Collective wisdom addresses both the result-based and process-based approach at their group level of decisions (b, b1, d, and d1). The study of collective social conduct within political and institutional realms should prioritise the consideration of the myriad preferences that emerge autonomously and precede individual decisions, rather than focussing solely on the rational choices of individuals.

3.4 Negative Scenarios

Confirmation bias, characterised by a focused and intentional pursuit of only evidence that supports one's own beliefs, stands as a primary barrier to effective regulation. This tendency is evident even in cataphatic theology, which seeks to understand God through the use of affirmative descriptions (Oxford, 2016). Alternative intuitive strategies, such as heuristics, informed speculation, and practical reasoning, are often used to generate acceptable outcomes. Conversely, the prohibitive method is epitomised in ancient edicts, notably the biblical Decalogue, and encapsulated in the foundational legal maxim of *neminem laedere*, which translates to 'injure no one'. In the realm of medicine, this principle is revered as *primum non nocere*, which means 'firstly, to do no harm'. This apophatic or negation-centred tactic also presents a resolution in Wason's renowned experimental puzzle known as the four-card problem, a challenge within the scope of deductive reasoning studies (Wason, 1968). Interestingly, it is rare for regulatory bodies or officials to employ an exclusionary system as an undesirable element that is incompatible with a specific grouping.

The essence of this perspective is illustrated in Ellenberg's narrative about 'the missing bullet holes story':[12] the only way to identify the weakest point is by looking for the absences, like searching for missing bullets. The principle

12 The primary concern in safeguarding American aircraft during the Second World War revolved around the reinforcement of the most susceptible regions. The ideal level of armour was to be determined by striking a balance between averting the downing of aircraft by opposing combatants and avoiding an increase in weight that would compromise the aircraft's agility and fuel economy. It was the military's logical intention to augment the armour in areas where perforations were most concentrated. However, Abraham Wald, a member of a secretive statistical analysis team, posed a critical question: 'Where are the absent perforations?' The absent bullet holes corresponded to aircraft that did not return. The observation that returning aircraft exhibited fewer impacts to the engine suggested that aircraft sustaining engine hits were lost in combat. Consequently, the areas devoid of any perforations were precisely those that required reinforcement with armour (Ellenberg, 2014).

was exemplified by the renowned Michelangelo, the eminent artisan responsible for the creation of the esteemed David statue, upon being queried by the pontiff to divulge the essence of his exceptional aptitude. Michelangelo articulated his response by stating, 'It's simple. I just remove everything that is not David' (Taleb, 2014). The idea has been acknowledged in the tradition of apophatic theology, also known as negative theology, which defines the divine by negation, focussing on what God is not (from the Greek *'apophanai'*, meaning 'to deny') rather than attempting to assertively describe God's essence (Theopedia, 2016). The apophatic method emphasises understanding through what cannot be explicitly expressed or indirectly referenced. In Latin, this approach is known as via negativa, or a negative path. It involves defining something by stating what it is not, particularly by rejecting the idea that any finite concept or attribute can be equated with or applied to God or the ultimate reality (Oxford Dictionaries, 2017). The negative path, or the concept of development through reduction instead of accumulation, can be particularly beneficial for regulators when dealing with uncommon, non-standard, or fluctuating conditions in their surroundings. The approach is to focus on vulnerability instead of trying to forecast and compute future possibilities, acknowledging that vulnerability and resilience exist on a continuum with diverse levels. The challenge is to construct a diagram of exposures (Taleb, 2014). In the process of regulation, regulators should be aware of the Conant-Ashby theorem; it states that any effective regulator of a system must have a comprehensive understanding or be a model of that system (Conant & Ashby, 1970). Consequently, a collection of corroborative details does not automatically qualify as a proof (Taleb, 2010); the hypnotic allure of internal consistency can often lull our reasoning faculties into complacency. To avoid this simplistic form of empiricism, a more reliable path to discerning the truth lies in the consideration of negative examples rather than the pursuit of verification. As the axiom goes, "It is with greater certainty that one can identify what is incorrect than affirm what is correct." Consequently, when envisioning future regulations, it is pragmatic to forecast their potential outcomes through the lens of adverse, hypothetically distant consequences, which are generally simpler to conceptualise than assured realities. Thus, delineating what is undesirable becomes an indirect strategy to determine feasible actions. Even when considering such pessimistic scenarios, it is feasible to devise guidelines that, upon their implementation, anticipate multiple undesirable outcomes and prescribe tailored countermeasures accordingly. For example, one might consider projected increases in traffic fatalities or the number of illegal immigrants by incremental percentages such as 10%, 50%, or 75% and establish regulations to address these specific increases. This is the essence of adaptable norms. Regulatory success suggests a model that mirrors reality closely enough. In other words, for it to be successful, governmental decision-making must accurately replicate societal structures.

3.5 Adaptable norms

The relatively unchanging nature of today's laws is only made flexible through traditional legal modifications of statutes, rules, and court decisions. Those in decision-making roles should replace this continuous and rigid adaptation process with more dynamic and adjustable methods that can better anticipate future needs. Adaptable norms[13] have the potential to be highly responsive to societal values, especially when their parameters or boundaries are modified through public involvement. Because of their pliable nature, adaptable norms bear a resemblance to responsive regulation. (Ayres and Braithwaite, 1995) or really responsive regulation (Baldwin and Black, 2007). This approach is based on a regulatory pyramid that applies to all parties involved in an activity, encompassing a range of sanctions or measures that are politically viable for different offences. Each escalation in non-compliance triggers a proportional increase in punitive or other preventive actions by the state. This framework considers the varied behaviours, attitudes, and cultures of those involved in regulation, the context of institutions, various strategies, and how a norm reacts to changes in the environment, potentially necessitating an altered version of the norm. Decision-makers and implementers must judiciously ascertain when pre-set threshold values are reached, aiming for as much accuracy as possible within a feasible time frame. In different situations, or under varying norms, the mechanism operates akin to an electrical relay, adapting its function in response to changing conditions. For Taleb, 'to understand the future to the point of being able to predict it, you need to incorporate elements

13 The text below presents the possible example of adaptable norm from the area of road safety. It is important to focus on paragraphs 3 to 7, as they demonstrate the adaptability integrated into the regulation, a feature not commonly seen in legal texts across various jurisdictions. The norm in (any kind of) Road Traffic Rules Acts could be:
"1. The highest allowed speeds for vehicles on roads outside urban areas are as follows: 130 km/h on motorways, 110 km/h on highways, and 90 km/h on other roads.
2. Penalties for exceeding speed limits on motorways or highways, which have separate lanes in each direction, at least two lanes per direction, and either a hard shoulder or sloping banks, are set out as follows:
– A EUR 40 fine for exceeding the limit by up to 10 km/h.
– A EUR 80 fine for exceeding by 10 to 30 km/h.
– A EUR 160 fine for exceeding by 30 to 40 km/h.
– A EUR 250 fine and 3 penalty points for exceeding by 40 to 50 km/h.
– A EUR 500 fine and 5 penalty points for exceeding by 50 to 60 km/h.
– A EUR 1,200 fine and 9 penalty points for exceeding by more than 60 km/h.
3. The penalties mentioned in paragraph 2 are applicable as long as the number of violations on these roads remains below a specified threshold (like a certain number, percentage, or number of casualties).
4. Should the violations surpass this threshold, the penalties outlined in paragraph 2 will increase by 50%. These heightened penalties will be effective from January 1 of the next year and will revert to the original amounts in paragraph 2 from the following January 1, provided the violations drop below the threshold set in paragraph 3.
5. If the violations further exceed a higher predetermined threshold, the penalties from paragraph 2 will rise by 75%. These increased penalties will be effective from January 1 of the subsequent year and will return to the amounts specified in paragraphs 2 and/or 4 if the violations during the year of increased penalties fall below the thresholds mentioned in paragraphs 3 or 5.
6. Alongside these increased fines, additional measures for ensuring road safety may be implemented, such as confiscation of the driving license, re-taking medical examinations, or mandatory safe driving courses.
7. The minister responsible for road safety is tasked with announcing any changes in penalties through the Official Gazette. Additionally, road maintenance companies are required to display these notices on electronic bulletin boards along the roads".

from this future itself' (2010). While the notion may be somewhat disconcerting, an individual responsible for making decisions can integrate prospective elements into their strategic model by constructing several (approximately three to four) scenarios. These scenarios are defined by specific parameters or threshold levels that, when reached, will catalyse distinct choices. Through the application of established values and recognised competencies, such a decision-maker is equipped to predict the measures that will be implemented upon encountering these predetermined boundaries.

4 Conclusion

Experts no longer have a monopoly on information or expertise anymore; this holds even more in areas where change, flexibility, or constant flux is present. The current approach to law studies is fundamentally flawed due to its reliance on a rigid and outdated analysis of legal systems. It is imperative that we advocate for a paradigm shift towards a more adaptable analysis of feedback systems. This transition, while challenging, is essential to moving from a static model of legal assurance to a dynamic model of legal foreseeability. The crux of the issue lies in the fact that traditional legal rules, steeped in centuries-old writing styles, are woefully inadequate for addressing the complexities of our rapidly evolving societal and environmental landscape. These regulations lack the essential feature of automatic updating or adaptability, rendering them ineffective in our current context. Furthermore, the process of determining public goals, which is central to shaping effective legislation, is currently hindered by a lack of utilisation of diverse and inclusive methods. Despite the availability of research, surveys, consultations, evidence-based approaches, participatory methods, and expert opinions, these tools are grossly underutilised in legislative processes. This oversight is a significant detriment to the creation of responsive and effective public policy. Moreover, the influence of political considerations, societal values, and economic factors on decision-making must be re-evaluated and aligned with the adaptive approaches proposed in this paper. The determination of public goals is not a static event but a continuous process that demands ongoing engagement with stakeholders and a keen responsiveness to the ever-changing dynamics of society. It is only through this rigorous re-evaluation and adaptation of our legal studies and legislative processes that we can hope to effectively address social issues and contribute to the betterment of society. The time for change is now, and it is our responsibility to ensure that our legal systems are equipped to deal with the challenges of the modern world.

In the contemporary epoch, the notion that experts retain exclusive dominion over knowledge and expertise has been increasingly challenged, particularly in domains characterised by perpetual change and malleability. It is imperative that legal education pivots from its entrenched focus on static legal principles towards a dynamic examination of (feedback) systems. Migration from legal certainty to legal predictability is fraught with challenges, but it is a necessary evolution. Normative frameworks ought to be congruent with the

human and biological zeitgeists that continuously recalibrate in response to their milieu. However, regulations that are articulated in a vernacular that has remained largely unaltered for centuries are ill equipped to grapple with the intricacies of our rapidly transforming landscape, due to their intrinsic rigidity and lack of inherent adaptability. The determination of public objectives is of paramount importance in the legislative process. It is the duty of legislators to explore a multiplicity of methods and modalities to ensure that public objectives are achieved with alacrity and inclusivity. Although research, surveys, consultations, evidence-based methodologies, participatory tactics, and specialist consultations are instrumental in forming the goal-setting agenda, they are rarely used to their full potential. Establishing public objectives is not a finite endeavour, but an iterative process that requires sustained interaction with stakeholders and adaptability to the vicissitudes of social dynamics. It is through this meticulous and considered approach that legislation can effectively tackle social quandaries and contribute to the improvement of the commonwealth. This can be done also by the result- and procedure-based approach of an individual towards a group, with the feedback- and thresholds-systemic law, collective wisdom, negative scenarios, and adaptable norms. Of course, these approaches are not magic bullets, but they are certainly better adapted to the flexible and complex nature of today's world.

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Revitalizing Ukrainian Cities: The Role of Public-Private Partnerships in Smart Urban Development

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ABSTRACT

Purpose: The article examines the role of public-private partnership (PPP) as a key tool for urban infrastructure restoration and the development of Ukrainian cities within the framework of the Smart City concept. It underscores the urgent need for effective mechanisms to restore urban infrastructure, especially in light of the challenges associated with the Russian military aggression and the resulting destruction in Ukrainian cities. The study explores key aspects of smart cities development, including the integration of digital technologies, the use of data, and innovative business models aimed at optimizing city functions.

Design/Methodology/Approach: The research employs a multi-stage methodological approach, encompassing elements such as gauging urban population satisfaction with municipal services, graphical analysis us-

ing CIMI, assessing the relevance of revitalizing Ukrainian cities and the need for mobilizing business resources, sociological surveys, developing a Smart City model based on PPP project outcomes, and formulating key elements of the national Smart City development strategy.

Findings: Emphasizing the importance of strategic planning and cooperation between public and private sectors, the study demonstrates the advantages offered by PPP-based projects. The obtained results highlight the pivotal role of PPPs in promoting urban development initiatives based on the Smart City concept. The study emphasises the potential of PPPs in shaping stable and prosperous smart cities in Ukraine. Through effective PPP utilisation, local governments can restore urban infrastructure, improve service quality, and enhance the quality of life for their citizens.

Practical Implications: The research results can serve as the basis for strategic planning and investment in infrastructure projects necessary for the creation of a smart city. The envisioned strategy will allow for the improvement of legislative acts covering a wide range of aspects of smart cities development while promoting collaboration between public and private entities. This includes bolstering the transportation system, deploying digital technologies, modernizing social institutions, and enhancing the efficiency of urban resource management.

Originality/Value: The originality and value of the study lie in its multifaceted approach to assessing and promoting the Smart City concept in Ukrainian urban development. It combines various research methods, including satisfaction assessments, CIMI-based graphical analyses, sociological surveys, and the development of a Smart City model based on PPP project results. This approach not only provides a comprehensive understanding of the state of urban infrastructure and citizen satisfaction but also offers a strategic framework for smart cities development.

Keywords: *infrastructure, public administration, public-private partnership, recovery, smart city, tools, Ukraine, rebuilding*

JEL: H41, H54, I38, R42, R58

1 Introduction

A significant number of factors associated with the constant shortage of resources, the impact of information and communication technologies on public life, and the growing need to integrate engineering and transport networks into a single management system encourage municipalities to seek modern approaches to the implementation of basic urban functions. This issue concerns the introduction of digital technologies based on energy-saving approaches, the organization of modern systems for the disposal and processing of domestic waste, the implementation of an e-governance system for providing administrative services and controlling the functioning of infrastructure. The indicated directions of the city's development determine the key goals: ensuring modern socio-economic standards, creating a high quality of life, and guaranteeing the satisfaction of needs for public services. The

trend in the development of large and medium-sized cities in recent decades has been projects united under the concept of a Smart City.

According to forecasts, urbanization processes will intensify, leading to increased population density in cities by 2050 (UN Department of Economic and Social Affairs, Population Division, 2022). This trend makes it necessary to introduce innovative solutions into the urban environment and form new relationships between stakeholders, with a strong focus on technology (Mattoni et al., 2019).

The concept of Smart City, it involves the control and integration of infrastructure elements such as roads, bridges, tunnels, subways, airports, sea and river ports, water supply, and drainage. These actions aim to optimize city resources and expand the provision of services to citizens, improving their quality while reducing costs. Smart City encompasses a combination of built-in infrastructures: physical, social, business, and IT (Kandt and Batty, 2021; Ejdys and Gulc, 2020).

The Russian military aggression in Ukraine and the subsequent destruction of infrastructure in Ukrainian cities have underscored the urgent need for effective mechanisms to restore and modernize these vital urban systems. As a result, finding innovative solutions that can contribute to the sustainable rehabilitation of infrastructure has become a critical imperative for policymakers, government officials, and urban planners.

In the context of Ukrainian cities, studying the potential of Public-Private Partnerships (PPPs) as a strategic tool for achieving infrastructure rehabilitation and urban landscape revitalization is highly relevant. The exploration of PPPs becomes even more crucial given Ukraine's aspirations for sustainable urban development, economic resilience, and overall public welfare after the war.

By integrating the perspectives of local communities, businesses, and civil society into the decision-making process, PPP projects can become more socially inclusive and better address the diverse needs of urban residents (Grimsey, Lewis, 2002; Hodge et. al. 2007; Andonova, 2010; Smith et. al. 2018).

Innovative financing mechanisms are essential to overcome budgetary constraints by mobilizing private capital to complement public investments in infrastructure. This financial collaboration not only accelerates project implementation but also minimizes the fiscal burden on public finances, ensuring a more sustainable and equitable distribution of resources (Stanimirović and Klun, 2021).

As the world increasingly emphasizes sustainability and resilience in urban development, PPPs should actively promote environmentally friendly infrastructure solutions. From eco-friendly transportation systems to energy-efficient utilities, PPPs can significantly contribute to creating a greener and more sustainable future for Ukrainian cities. Indeed, Ukraine will have to do a lot of work because recent evidence (Zapatrina, 2022) has shown that the low

institutional capacity of the public sector and lack of control in the implementation of PPPs allowed the initiation of only a few such projects.

By promoting collaboration, efficiency, innovation, and sustainability, PPPs hold the promise to drive transformative changes in urban landscapes, ensuring dynamic, sustainable, and prosperous cities for generations to come (Omitted for Peer Review, 2022).

Thus, the purpose of this study is to assess and analyse the implementation of the state's powers in providing public services in cities and to identify opportunities for local governments to form partnerships with the private sector for the development of Smart Cities in the post-war period in Ukraine.

2 Literature review

2.1 From Information to Transformation: The Smart City Evolution

The emergence of Smart City is a result of the intelligent use of digital information and addresses the following tasks: rational consumption of resources, increased investment in human and social capital, and the development of intellectual infrastructure. Furthermore, Smart City is characterized by social integration and the utilization of the Internet to foster new businesses, job opportunities, and the empowerment of citizens through information. By offering efficient and sustainable development, Smart City leverages information to make decisions on ecological issues, housing and communal services, waste management, the city's economy, and the integration of renewable energy sources, thereby shaping the urban environment. The digital foundation also provides an analytical technology for e-government to support social investment, fully aligned with the principles of behavioral economics (Gregor and Lee-Archer, 2016; Ogbodo et al. 2022). ICT companies also propose developing Smart City as a strategy that requires the provision of their own technological solutions and a collaborative model with local governments supporting the Smart City development strategy (Meyer, 2014; Grossi and Pianezzi, 2017; Shah, 2023).

Future changes in municipalities may focus on building a smart society in which the state can address the needs of both society and individuals, based on personalized services in various fields of activity (Bolívar and Meijer, 2016; Mills et. al. 2022; Chang, Smith, 2023; Vitálišová et. al. 2023). Innovative approaches are becoming increasingly important for accomplishing ambitious tasks, modernizing the education system, expanding functionality in the public administration system, and engaging citizens in digital transformation processes.

The pace of urbanization is currently leading to overcrowding of cities, resulting in a general decrease in the quality and comfort of life for each individual. To ensure that modern megacities are comfortable for their inhabitants, elements of the Smart City concept are being introduced worldwide, promoting a rational approach to the organization of living spaces. Creating comfort-

able conditions in urban areas is crucial for both residents and visitors, as the overall brand and attractiveness of a city depend on the quality of its urban environment across various market niches.

In recent years, the concept of Smart Governance has gained momentum in the theory and practice of territorial administration, with its most prominent representation being within the Smart City framework. The analytical agency Frost & Sullivan predicts that by 2022, the global market for information systems and services supporting Smart City functionalities will reach $1.5 trillion (Amarnath et al., 2013).

Smart City integrates technology, government, and society to achieve reasonability in various aspects, including economy, mobility, environment, population, life, management, energy, technology, infrastructure, healthcare, education, and construction (Basilio et al. 2019; Burksiene et al. 2020; IEEE, 2023). In the third stage (Smart City 3.0), a modern Smart city becomes a place where people's lives are significantly enhanced through the adoption of "smart" solutions. By leveraging technology and digitizing traditional services, individuals can utilize their resources and time more efficiently and productively.

Digital transformation entails organizational or social changes facilitated by the integration of digital technologies into all aspects of human interaction. The availability of knowledge and information has paved the way for a modern form of socio-economic development, optimizing the economy's structure and enhancing labor productivity. At the core of digital transformation lie technological advancements, data utilization, and evolving business models, serving as the driving forces behind this transformative process. The analysis of various policy domains plays a pivotal role in shaping the directions of digital transformation. The framework encompasses interrelated policy dimensions, including access, usage, innovation, workplaces, social prosperity, confidence, and market openness. To harness the benefits and effectively address the challenges of digital transformation, a coordinated effort across all policy domains is essential, considering issues associated with other aspects of structural policy and the implementation of the Smart City concept.

2.2 Public-Private Partnerships: Building Resilience in Critical Infrastructure

In the coming years, crises arising from social dynamics and society's reliance on reliable critical infrastructure will significantly impact citizens' well-being. The involvement of private companies is crucial, as they play a major role in managing critical infrastructure (Boyer, 2019; Bardarai et al. 2023; Liu et al. 2023). Consequently, city governments must make decisions that anticipate and mitigate future challenges by actively engaging the private sector (Petkovšek and Pevcin, 2017; Siokas et al., 2022; Srebalová and Peráček, 2022).

Businesses' services are pivotal for societal well-being, necessitating the incorporation of their operational expertise in bolstering urban resilience (Mc-

Knight & Linnenluecke, 2016). Promoting cooperation between stakeholders is vital to the development of Smart city infrastructure. Public-private partnerships(PPPs) emerge as a promising mechanism for enhancing the regional innovations and resilience of critical infrastructure networks (Maraña et al., 2020).

Public-private partnerships are essential mechanisms for regional development, fostering increased employment opportunities and serving as engines for the establishment of modern logistics infrastructure within a country. International practice exemplifies widespread adoption of PPPs in various economic sectors (Omitted for peer review 2019). Many cities in low- and middle-income countries have leveraged PPPs to attract private sector investments, effectively addressing a myriad of urban development challenges (Kristensen and Scherrer, 2016; Hoyos and Lopez, 2021).

Researchers emphasize that post-war urban recovery is a complex process, taking into account the needs of the historical urban landscape, cultural value (for example, post-war reconstruction of the city of Aleppo) (Dimelli and Kotsoni, 2023). Another example (post-war reconstruction of the city of Mosul in Iraq) illustrates the necessity for further development based on the strategy of integrating former old elements into a new 'smart' environment (Abdulla and Hussein, 2022). The comparison of post-war reconstruction in Sarajevo and Beirut underscores the importance of a well-defined state policy, international assistance, and funding for the transformation of the cities (Bădescu, 2017). The researches (Mishenina and Dvorak, 2022; Schulders, 2023) highlight the positive experience of using Public-Private Partnerships (PPPs) for sustainable developme and urban redevelopment in Poland.Despite the many advantages of PPPs, there are several disadvantages. Wibowo, Alfen (2015) found that only government support can determine whether PPPs in infrastructure development will be successful, as the government can create a favourable investment environment and ensure the attractiveness of the project to investors. According to Pomeroy (1998), there are such limitations of PPPs as capabilities, risk-taking and legitimacy. Regarding capabilities, it is noted that not all capabilities can be possessed by PPPs, and some of them belong exclusively to governments. Risk-taking is another limitation because the private sector needs to invest in new projects, so it takes financial and political risks. In the absence of cases of legitimation, it is rational to involve the private sector in the provision of services. As observed by Rosell, Saz-Carranza (2020), mistrust between the public and private sectors, lack of an enabling institutional environment, and a lack of project capacity are prerequisites for the unsuccessful implementation of PPPs.

Bloomfield (2006) found that public sector organizations are becoming dependent on a single contractor because PPPs are usually long-term contracts. On the other hand, for the same reason, the contractor may begin to perform worse because there is no competitive pressure. Likewise, Reynaers (2014), summarizing the works of other authors, found that PPP projects lack transparency, and the information provided is often inadequate, inaccurate, or

misleading. The research (Othman and Khallaf, 2022) covering different continents revealed that similar barriers exist everywhere, for example regulatory, political, and financial barriers to implementing renewable-energy projects.

The next section will present the methodological approach used in this study.

2 Methods

The study includes several stages of the methodological approach:

(1) Determination of the level of satisfaction of the population of cities of regional significance of Ukraine with public services in the areas of roads, healthcare and water supply;
(2) Analysis of selected cities of Ukraine, the Czech Republic and Poland by key parameters of the City in Motion Index (CIMI);
(3) Defining the Urgency of Restoring Ukrainian Cities;
(4) Identifying the Need for Business Resource Mobilization to Restore Ukrainian Cities
(5) Identification of factors contributing to the improvement of the situation in Ukrainian cities based on sociological measurements;
(6) Development of a model for the formation of a "Smart City" based on the results obtained from the use of public-private partnership projects;
(7) Formulation of Key Elements of the National Smart City Development Strategy.

Determining the level of satisfaction of the population of cities of oblast significance of Ukraine with public services in 2023 in the areas of roads, healthcare and water supply involves the use of a graphical comparison method. This method is based on the assessment of the quality of public services in 19 Ukrainian cities, where the index value ranges from 1 to 5, where 1 means "terrible" and 5 means "excellent" (International Republican Institute, 2023).

The analysis of the development of individual cities (Kyiv, Prague, Warsaw) in various economic and social aspects was based on the use of key parameters of the City in Motion Index (CIMI), which reflects the level of development in nine sectors (Economy, Human capital, social cohesion, Environment, Governance, Urban planning, international projection, Technology, Mobility and transportation) (Berrone and Ricart, 2020).

Based on the results of a sociological survey of residents in 20 cities (regional centers) (International Republican Institute, 2023), a graphical analysis was conducted to assess the urgency of city restoration needs and the necessity of involving additional business resources.

Based on the results of a sociological survey, the main factors that will contribute to improving the situation in Ukrainian cities are identified. Five main factors for improving the overall situation in cities with a population of more than 100,000 people (state aid, investment, government and community co-

operation, entrepreneurship development, and creation of a favourable business environment) were analysed (KIIS, 2021).

At the final stage, based on the results and trends obtained, a model for the formation of a "Smart City" was developed, which involves the use of public-private partnership projects. The research methodology included the use of comparison methods, graphical methods and sociological methods, which allowed us to determine the level of public service provision, the level of implementation of the Smart City concept, the main needs for the development of Ukrainian cities and to formulate key approaches to the use of public-private partnerships to restore infrastructure in the Smart City concept. Based on the developed models that incorporate the use of public-private partnership projects, key elements of a national strategy for the development of Smart Cities have been proposed.

3 Results

There are key aspects of smart information-driven approaches in Smart City:

- a modern digital infrastructure combined with secure access to public data, allowing citizens to access the information they need at any time.
- highlighting the needs of citizens and exchanging management information to ensure consistent service delivery.
- an intelligent physical infrastructure that enables service providers to inform about strategic investment opportunities in the community.
- openness to learning experiences, experimenting with new approaches and business models, and transparency of results (Department for Business, Innovation and Skills, 2013).

To implement the Smart City concept, having the necessary infrastructure is crucial. The term "infrastructure gap" is often used in global practice to refer to a situation in which the current level of infrastructure development is unable to fully meet the growing needs of society and the economy. According to experts, if the current global volume of investments in infrastructure is about 2.5 trillion US dollars per year, this figure should be increased to 3.3 trillion US dollars annually by 2030 to close the existing gaps (McKinsey Global Institute, 2016). Modelling indicates that, under the current scenario of world trends, it will be necessary to continue allocating the share of GDP to infrastructure spending at the previous level, or 3.0%. However, to meet the infrastructure needs identified in a more ambitious investment scenario, the share of GDP allocated to infrastructure investment should increase to 3.5% (Global Infrastructure Hub, 2017).

Given the consequences of Russian military aggression, the question of Ukrainian infrastructure recovery has become exceedingly complex. As of September 1, 2023, the damage inflicted by Russian military aggression amounted to $151.2 billion (reconstruction cost). The housing sector incurred losses of $55.9 billion, while the infrastructure and industrial sectors collectively suffered loss-

es of $48 billion. The war caused $10.1 billion in damages to the education sector, and losses in the healthcare field reached $2.9 billion (with 1,223 medical facilities either destroyed or damaged) (Kyiv School of Economics, 2023).

We will analyze the dynamics of capital expenditures in individual urban territorial communities that border the areas of active hostilities in the Kharkiv, Donetsk, and Mykolaiv regions (Table 1). We observe a significant decline in capital expenditures in 2022-2023, which is challenging to compensate for in the conditions of a budget deficit. This requires the search for alternative solutions. Thus, increasing the number of infrastructure facilities will be a key task in implementing the Smart City concept.

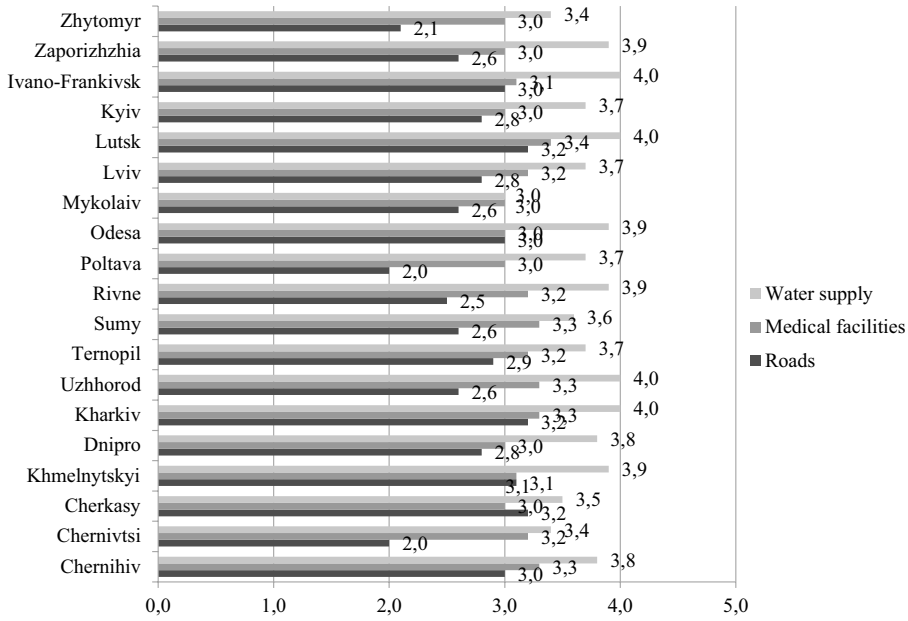
Table 1. Dynamics of capital expenditures of territorial communities bordering areas of active hostilities in Ukraine.

Territorial Community	Population, thousand people, 2023	Total expenses, thousand UAH, 2023	Capital expenditures, thousand UAH		
			2021	2022	9 months, 2023
Vovchansk city (Kharkiv region, Chuhuiv district)	35,542	78955,0	26019,1	39,9	106,0
Chuhuiv city (Kharkiv region, Chuhuiv district)	37,962	207007,6	90555,2	43644,5	63044,1
Zmiiv city (Kharkiv region, Chuhuiv district)	40,563	227200,2	56053,5	9251,7	14212,7
Bohodukhiv city (Kharkiv region, Bohodukhiv district)	36,348	244129,0	44810,9	14771,2	41266,9
Kupiansk city (Kharkiv region, Kupiansk district)	54,431	134586,7	44355,3	1,57	36494,3
Merefa city (Kharkiv region, Kharkiv distric)	25286	134758,4	33997,5	19716,3	18172,0
Bilozersk city (Donetsk region, Pokrovsk district)	15,417	67394,7	9230,4	481,344	4240,8
Novyi Buh city (Mykolaiv region, Bashtanka district)	18,078	93078,2	16856,12	2398,6	7368,1

Source: ULEAD with Europe, 2023

Another important indicator is satisfaction with the quality of public services in cities. The study (International Republican Institute, 2023) characterizes the level of quality of services in certain areas of activity (medical institutions, roads, and water supply) in 2023 (Fig. 1). The index value ranges from 1 to 5, where 1 means 'terrible' and 5 means 'excellent.'

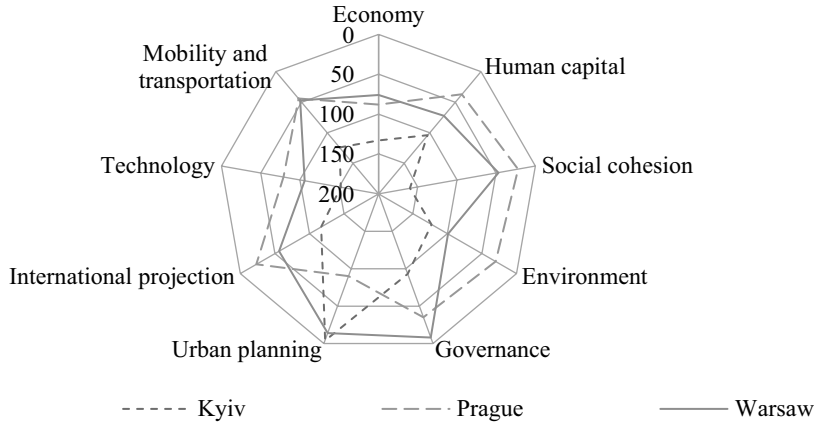
Figure 1. Assessment of the quality of public services provided in certain cities of Ukraine, 2023



Source: International Republican Institute, 2023.

There are various indicators and indices that demonstrate the development of cities in different economic and social aspects. One such index is the IESE City in Motion Index (CIMI) (Berrone and Ricart, 2020). The analysis of cities (Kyiv, Prague, and Warsaw) allows us to determine the level of development of the key parameters of the CIMI index (Fig. 2).

Figure 2. Analysis of the development of individual cities based on the CIMI index, 2020



Source: Berrone and Ricart, 2020.

It can be observed that Kyiv lags significantly behind Prague and Warsaw in almost all positions (except for urban planning). These data indicate the need for significant changes in the city's development policy and the search for new approaches to accelerate the implementation of the Smart City concept by attracting additional resources.

The sustainable development of the economy necessitates modern infrastructure facilities capable of meeting the needs of businesses and society. Unfortunately, the state's capabilities are not sufficient to fully address the existing requirements for developing the necessary urban infrastructure facilities. Cities must embrace strategic planning processes to identify paths to innovation and prioritize critical aspects of their future. This process must be active and flexible, defining a sustainable plan of action that will make the metropolis both unique and renowned.

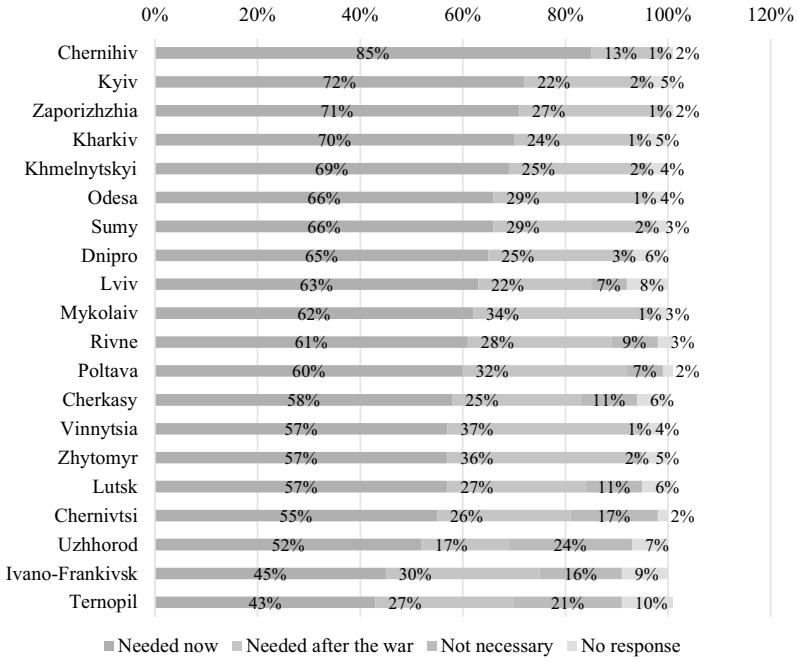
It is possible to propose strategic directions for achieving a sustainable Smart city ecosystem in a broad sense. Strategic directions for achieving a sustainable Smart city ecosystem for implementation in the public administration system can include:

– localization of resources and services through local centers;
– improved transport links to enhance mobility;
– rational mobility solutions for efficient transportation;
– a single window system for basic services to streamline access for citizens;
– use of alternative energy sources to promote sustainability;
– innovative waste management mechanisms for effective resource utilization;
– remote monitoring and control systems for efficient governance;
– localized management of water supply to ensure optimal use.

Meanwhile, in Ukraine, according to a conducted sociological survey, there is a significant demand for the urgent restoration of destroyed infrastructure in cities, without waiting for the end of the war (Fig. 3).

However, local governments may face challenges in independently implementing intellectualization and digital transition. To introduce smart technologies, building partnerships and engaging in cooperative actions with business entities are key at the initial stage. Nevertheless, it is essential to acknowledge that the fundamental challenge for the development of Smart cities in Ukraine and the successful implementation of digital transformation lies in resource constraints and the imbalance of powers faced by municipalities. Without reforming the current system of powers' delimitation, budget allocation, and tax legislation, the intensive development of smart digital cities will be significantly impeded.

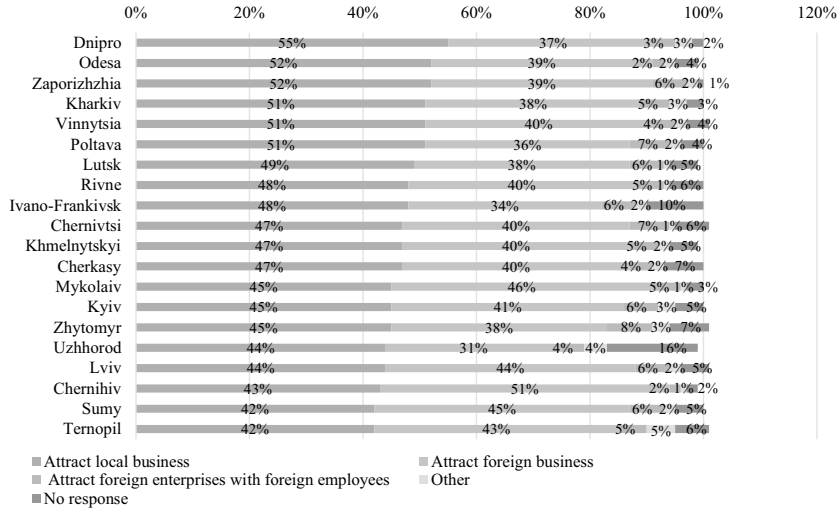
Figure. 3. The need for the restoration of destroyed objects in cities



Source: International Republican Institute, 2023

The sociological survey conducted in 2023 among residents of Ukrainian cities revealed that the majority of respondents believe it is necessary to involve both local and foreign businesses in the post-war recovery processes (Fig. 4).

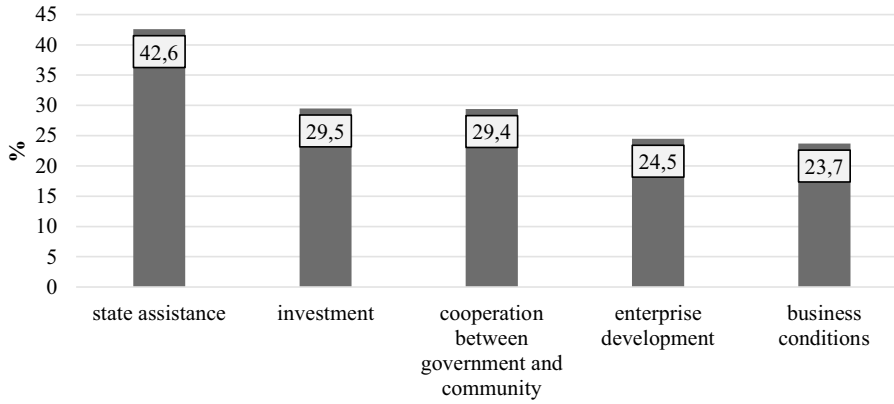
Figure. 4. Results of a survey of community residents regarding the need to involve businesses in the city's reconstruction



Source: International Republican Institute, 2023.

Analysing the five main factors that could improve the situation in large cities with populations of more than 100 thousand, they include state assistance, investment, increased cooperation between government and the community, enterprise development, and the creation of a favourable business environment (Figure 5) (KIIS, 2021). These data indicate the city's needs, which can be addressed through public-private partnerships, fostering increased cooperation, providing investment resources, enhancing the business environment, and expanding the number of enterprises.

Figure 5. Factors contributing to the improvement of the situation in the cities of Ukraine, 2021



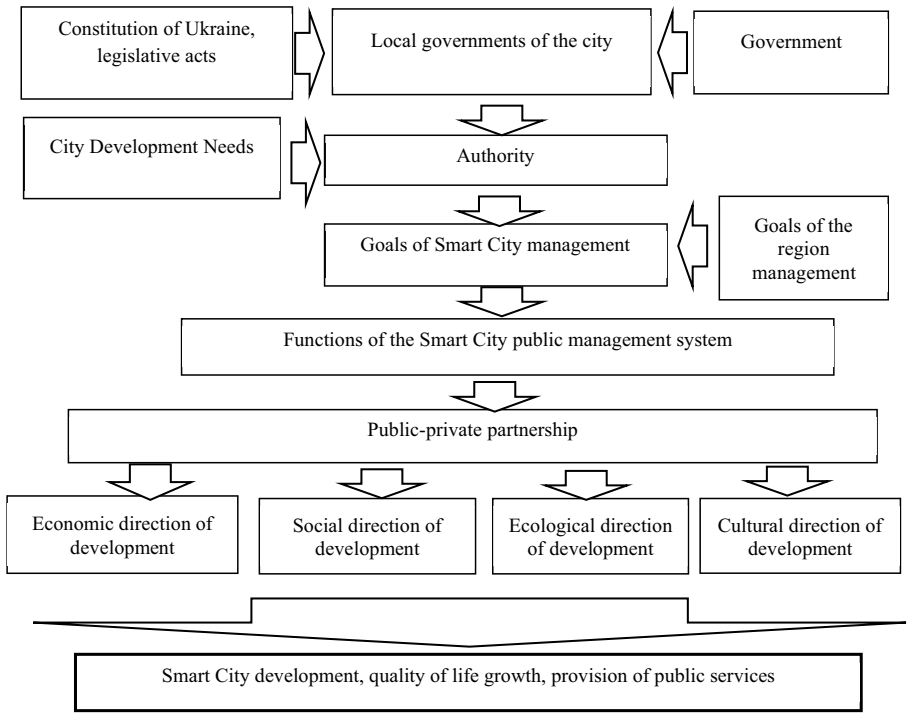
Source: KIIS, 2021.

First of all, the initiatives of local government and private businesses to develop the concept of Smart City encompass energy, public services related to transport, healthcare, and waste management (H-UTokyo Lab., 2020). Innovative technologies are expected to improve traffic, increase mobility, save energy, enhance environmental parameters, promptly identify and resolve issues, and facilitate information collection and data exchange for more effective decision-making and cooperation between governmental entities and territorial subjects.

4 Discussion

The model of government management for the development of a Smart City, using public-private partnerships to achieve key goals, is presented in Figure 6. The system (Fig. 4) entails the utilization of own and delegated powers, established goals, and management functions, allowing for public administration in the economic, social, environmental, and cultural spheres of the city through public-private partnerships.

Figure 6. Model for the implementation of powers in the public administration system of a Smart City



Source: Prepared by the authors.

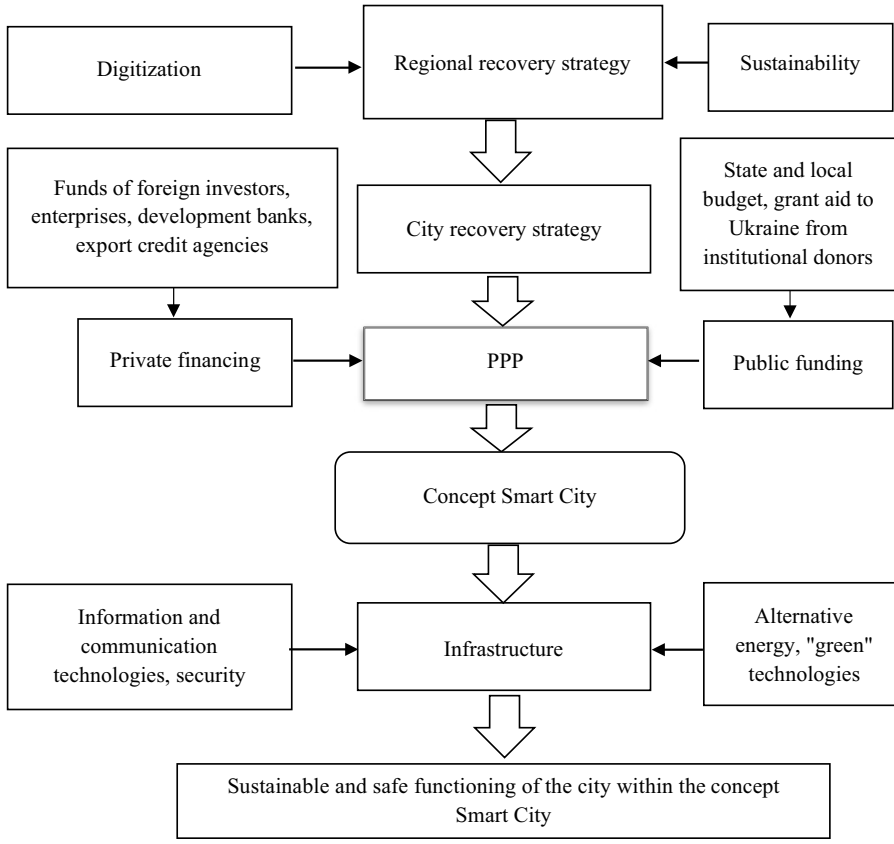
Modern research indicates that partnerships between the private and public sectors play a crucial role in the urban system, particularly when implementing initiatives focused on the Smart City concept. PPP provides the means to achieve desired outcomes and facilitates the successful implementation and completion of Smart City projects (Siokas et al., 2022). Other researchers have also confirmed the feasibility of financing Smart City projects with the help of PPP (Mirzaee and Sardroud, 2022). Joint policy-making could help develop projects to address these issues at a strategic level (Laufs et al., 2020).

In preparing and implementing PPP projects in the infrastructure sector, it is essential to consider the priorities of the local government concerning the economy and the direction of development. Key factors include institutional support for the development of public-private partnerships (having a legislative framework, policies, and sectoral strategies), the capacities of local governments (experience in participating in PPP models), communication readiness (organizational arrangements, internal interaction, approval processes), and available resources (technology, qualified personnel, consultants, and funding).

The main approaches to infrastructure construction are depicted in the model of financing and implementation of PPP-based projects in the Smart City concept (Fig. 7). These elements pertain to sustainable infrastructure (trans-

portation, education, medicine, and housing) in the formation of a Smart City, promoting sustainable and safe functioning through interconnected systems. The main moderating block is the city strategy, which considers the requirements of digitalization and the concept of sustainable development. This strategy ultimately determines the extent to which the city is focused on implementing the Smart City concept (Omitted for peer review, 2022).

Figure 7. Model of financing and implementation of infrastructure restoration based on PPP projects in concept Smart City.



Source: Prepared by the authors.

Of course, a smart society should be formed on the basis of the timely introduction of innovations; the functioning of new paradigms of public administration, interacting with most social and business processes; and the ability of citizens to influence the main processes of digital transformation and control these actions. The concept of Smart City is urgent, given the growing infrastructure needs of society. The combination of control over existing communications based on information and communication technologies will optimize the use of resources, increase the interaction of various areas of the functioning of city networks and the provision of necessary services, and simplify the mechanisms of communication between citizens and public authorities.

To implement the proposed models of public-private partnership in the Smart City concept, it is necessary:

- to ensure the priority of urban development in the regional development strategy;
- implement innovative components in the construction and reconstruction of engineering and logistics facilities based on information and communication technologies;
- carry out city development planning, taking into account the need to introduce the technological architecture of a Smart City (control over the operation of transport networks, the Internet of things platform, e-government resources);
- and identify promising areas in the system of city development on the basis of public-private partnership.

The use of public-private partnerships for the revitalization of Ukrainian cities is not devoid of potential drawbacks and challenges in the post-war reconstruction period. Large-scale Smart City projects, considering substantial infrastructure losses, are financially demanding. Funding these initiatives will require the search for significant investments in technology, infrastructure, and human resources. Ukrainian cities in the post-war period may face budgetary constraints that hinder their ability to secure the necessary resources, which could be a significant obstacle for the use of PPPs. Furthermore, Ukrainian cities may encounter issues related to outdated or insufficient technological infrastructure, necessitating investments in modernization or replacement of existing systems.

While Smart City initiatives have the potential to enhance sustainability and reduce environmental impact, there is the possibility of unforeseen consequences. For example, the proliferation of technology may lead to increased energy consumption or electronic waste. Simultaneously, changing the way cities are governed and managed may encounter resistance, both politically and administratively. Implementing new approaches to governance requires significant changes in the public administration system and models of public-private partnerships.

Addressing these challenges requires a comprehensive strategy that considers legal and regulatory reforms, investment strategies, and a commitment to addressing issues of equity and sustainability, which involves implementing new approaches to infrastructure project execution.

Based on the developed models, approaches can be proposed for the formulation of a National Smart City Development Strategy. This strategy serves as a comprehensive roadmap designed to harness the potential of digital technologies for the benefit of society, businesses, and government within the framework of the Smart City concept. The objectives encompass the transformation of various sectors, the improvement of citizens' lives, the stimulation of innovation, and positioning the country as globally competitive. Defining the objectives determines the envisioned digital future of the redeveloped

cities. The tasks outline specific goals that can range from the development of digital infrastructure to data security (Table 1).

Table 2. Elements of the National Smart City Development Strategy

Key Direction	Rationale for Necessity
Infrastructure development	Infrastructure development includes expanding high-speed internet connectivity, establishing data processing centers, enhancing cybersecurity measures, and ensuring digital access for all citizens. To efficiently achieve these goals, the government collaborates with private enterprises.
Data Management and Privacy	The strategy establishes the framework for data collection, storage, and utilization to ensure confidentiality and security. Adherence to international data protection standards is often integrated to facilitate data flow and encourage global partnerships.
E-Governance and Public Services.	Integrating technologies into public services enhances efficiency and transparency. The strategy prioritizes the development of solutions for e-governance, enabling citizens to access services online, reducing bureaucratic barriers, and promoting accountable management.
Innovations and Research.	Promoting innovations and research is an integral component to stay at the forefront of technological progress. The strategy encompasses incentives for research and development, collaboration between research institutions and industry, as well as support for startups and technology incubators.
International Cooperation.	The national strategy emphasizes partnerships with other countries, international organizations, and the private sector to exchange best practices, technologies, and knowledge.
Monitoring and Evaluation	To ensure the success and adaptability of the strategy, monitoring mechanisms are implemented to assess progress and evaluate outcomes. Regular assessments measure the impact of the strategy, enabling the necessary adjustments to achieve optimal results.

Source: Prepared by the authors

So, the national strategy for the development of Smart Cities is a comprehensive approach designed to guide Ukraine into a future with digital capabilities. Through infrastructure development, data management, e-governance, innovation promotion, international collaboration, and continuous assessment, it is possible to enhance economic growth incentives, improve citizens' well-being, and ensure competitive positions in the global digital landscape.

Given the multi-vector nature of urban systems, at the first stage, the key to the introduction of smart technologies should be building partnerships in certain areas of urban activity. However, a significant challenge for the develop-

ment of Smart Cities in Ukraine and the implementation of digital transformation now lies in the area of resource limitations and the imbalance of powers that local authorities face.

5 Conclusion and limitations

The current research of public-private partnership (PPP) as a tool for infrastructural development of Ukrainian cities in the context of the "Smart city" concept emphasizes the urgent need for effective mechanisms for the restoration and modernization of urban infrastructure, especially in light of the challenges caused by Russian military aggression and the destruction that Ukrainian cities have experienced.

The key factors that contribute to the implementation of "Smart city" initiatives are highlighted, including the integration of digital technologies, the use of data, and innovative business models to optimize city functions. Having analysed various policy areas, the potential advantages of PPPs in promoting sustainable urban development, economic stability, and public welfare are emphasized.

The analysis revealed challenges in the implementation of governmental responsibilities for providing quality public services in cities, technological gaps, a deficit in budgetary expenditures for capital construction at a time when the number of deteriorating infrastructures is increasing. As cities actively seek the involvement of the private sector and investments to restore critically important infrastructure, public-private partnership emerges as a perspective for combining managerial efficiency, technical expertise, and the financial resources necessary for the realization of modern Smart Cities projects.

The study highlights the importance of strategic planning and cooperation between the public and private sectors in implementing "Smart city" projects. Using PPPs, local governments can ensure optimal value for money, reduce financial burden, attract qualified professionals, and mitigate negative impact on the environment and social sphere. In addition, PPP contributes to the provision of quality and affordable services to local residents.

The partnership between the public and private sectors plays a crucial role in the implementation of urban development initiatives focused on the "Smart City" concept. Implementation of PPP projects can make a significant contribution to the development of sustainable infrastructure, creating interconnected systems for the safe and efficient functioning of cities. By effectively taking advantage of PPPs, local governments can develop and modernize urban infrastructure, improve services, and provide a better quality of life for their citizens. To achieve the goals of the "Smart City" concept, it is important to establish close cooperation, develop strategic plans, and create a favourable political environment that encourages collaboration between the public and private sectors. Reconstructing urban environments through multifaceted collaboration and innovation provides a unique opportunity to revive the

cities of Ukraine in the post-war period based on the national digital transformation of infrastructure

Limitations. In this study, we do not seek to provide a type of PPP contract and we are not looking for an answer to how to deal with the lack of administrative capacity in Ukraine cities, the problems of corruption, the issues of Value for Money, the budgetary implications in the long run and the problems of fiscal flexibility. During the research, an answer was sought about the role of public-private partnership (PPP) as a critical tool for urban infrastructure restoration and the development of Ukrainian cities within the framework of the 'Smart city' concept.

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Organisational Enablers of Artificial Intelligence Adoption in Public Institutions: A Systematic Literature Review[1]

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ABSTRACT

Purpose: The purpose of the presented study was to develop a set of recommendations for decision-makers (policymakers and public managers) and public employees to enhance the effectiveness and efficiency of organisational elements in the adoption of artificial intelligence (AI) in public institutions.

Design/methodology/approach: Utilising a systematic literature review following the PRISMA protocol, the study examines the organisational enablers of AI adoption in public institutions. Comprehensive search queries in the Scopus database identified relevant literature focusing on the

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intersection of AI technologies and various organisational elements. The analysis was facilitated by NVivo 12, enabling a structured examination of key organisational facets for people, culture, structure, processes, and technology within public institutions.

Findings: Previous studies on AI adoption in public institutions identified numerous enablers of AI adoption associated with organisational elements like people/employees, structure, culture, technology, and processes. Several surveys and case studies stress the importance of concentrating on the introduction or transformation of these organisational elements prior to or concurrently with the adoption of AI.

Academic contribution to the field: By applying a systematic literature review protocol, the study represents the first holistic and systematic review of specific organisational elements that can serve as enablers of AI adoption in public institutions.

Research limitations/implications: This systematic literature review was subject to several limitations. Firstly, the division of AI literature between natural and social sciences, with the former focusing on technical aspects and the latter on broader organisational themes, may have resulted in an incomplete depiction of the intersection of AI and organisational change. Secondly, despite the broad search queries, inherent limitations of keyword-based searches may have excluded some relevant studies. Thirdly, considering the rapid evolution of AI technology, our review may not fully encapsulate the very latest developments in the field as it covers literature published until May 2023. Finally, the interpretation and coding of literature, despite the use of NVivo 12, involved subjective elements that could affect the study's outcomes.

Practical implications: Drawing from experiences in the private sector, public institutions are increasingly adopting AI technologies across various subsectors such as public finance (taxation), research, healthcare, law enforcement, defence, education. This requires a transformation in both hard (structure, processes etc.) and soft aspects (people, organisational culture etc.). Therefore, the enablers identified in the study can serve as guidelines for decision-makers and implementers of AI at all levels of public institutions.

Social implications: If adopted effectively and efficiently and used professionally and ethically, the use of AI in public institutions can bring many benefits to society, such as transparency, justice, cost and time efficiency, high quality services, and improved collaboration between different stakeholders in society.

Originality/significance/value: Our study makes a distinct contribution by shifting the focus from technological barriers to organisational enablers of AI adoption in public institutions. It bridges a critical gap in the literature by integrating both technical and social science perspectives, providing valuable insights for theory and practice in the fields of organisation and management.

Keywords: *AI adoption, artificial intelligence, organisational changes, organisational enablers, public institution, systematic literature review*

JEL: H83, M12, O33

1 Introduction

The concept of "thinking machines" first emerged in the 1950s when the British mathematician Alan Turing posed the question of whether machines could engage in cognitive processes. In his seminar paper published in collaboration with Haugeland in 1950 (Turing and Haugeland, 1950), he introduced the "Turing test" to define thinking, requiring a machine to converse with humans in a manner indistinguishable from a human. The term "artificial intelligence" that is today widely used was coined by John McCarthy, a maths professor at Dartmouth in 1955. McCarthy employed this phrase as a neutral term to describe the then emerging field (Siebel, 2019). Following the conceptualisation of artificial intelligence (AI), interest, research and the volume of investments in these systems have grown tremendously, especially in the last decade, in both the private and public sectors to improve problem-solving and decision-making as well as implementation processes in high-uncertainty environments (Androutsopoulou et al., 2019; Desouza et al., 2020; Mikhaylov, 2018; Murko et al., 2023a).

Public institutions have already joined the wave of AI adoption (Murko et al., 2023b). First, this referred to systems that use AI to: a) enhance the quality of internal processes and public service delivery through automated decision-making and data analytics (de Sousa et al., 2019; Hodzic et al., 2021); b) improve the quality of public services (Ojo et al., 2019); c) identify the risks more effectively (Ojo et al., 2019); and thereby d) increase the accuracy of human decision-making, which is prone to biases and errors (Compton et al., 2022). Particularly during the COVID-19 lockdowns that also saw public administration buildings being closed, public services were chiefly provided through online platforms (Fischer et al., 2022; Mergel et al., 2023). The pandemic consequently heightened the demand for both proactive service delivery and a significant transformation of public institutions' digital services. Second, public institutions play the role of regulators and enablers of the efficient adoption of AI in private business entities. Still, the enthusiasm for introducing AI into the public sector is inevitably accompanied by some degree of uncertainty and possible challenges. Risks of AI include the widening of divides in society, infringing on citizens' privacy rights, and clouding public decision-makers' accountability (Floridi et al., 2018). AI-related challenges are frequently outlined and debated as lists of significant topics. These include considerations to do with policy, legal aspects, governance and ethics, all of which call for careful attention (Desouza et al., 2020; Dickinson and Yates, 2023; Leslie, 2019; Mikhaylov et al., 2018). AI can create new challenges or intensify existing policy concerns, especially in areas like job displacement, taxation, justice and equality, safety and privacy concerns, and the application of force (Gasser and Almeida, 2017). Avoiding or mitigating such risks requires thoughtful preparation, strategies and regulation (Dwivedi et al., 2019; Androutsopoulou et al., 2019; de Sousa et al., 2019), which are all closely connected with the organisational aspects of public institutions.

To introduce AI as smoothly as possible, policymakers and public managers must recognise and understand the range of possibilities for using this technology and, most importantly, the way that AI interrelates with the organisation's key elements, such as structure (Rudko et al., 2021), processes (Waardenburg et al., 2021), employees (Pan and Froese, 2022) and organisational culture (Farrow, 2020). Not even the best and latest technologies can guarantee effective and efficient operations if changes are not also introduced in areas of the organisation (e.g., horizontal and vertical mobility, agile project management), leadership (e.g., mentorship, change management) and human resources management (e.g., internal training, knowledge management). Public institutions may downplay the risks of adopting AI by misunderstanding the subsequent organisational changes required for their efficient transformation. This means more detailed insight is needed to understand the organisational changes that are required while adopting AI as seamlessly as possible.

The topic of AI in the public sector has become ever more relevant and is attracting greater attention among researchers around the world (Androutsopoulou et al., 2019; Bullock et al., 2020; Campion, 2022; de Sousa et al., 2019; Desouza et al., 2020; Mergel et al., 2023; Mikalef et al., 2022; van Noordt and Misuraca, 2022). Nevertheless, what is missing is a study that exclusively systematically and holistically distils the elements down to facets (sub-elements) within the gamut of the organisation with regard to public institutions. This makes addressing this gap through a focused literature review study essential. In our systematic literature review (SLR), we aimed to assess the increasingly relevant topic of AI in public institutions by compiling existing research covering various organisational elements, facets, and research contexts. The goal of the SLR was to consolidate scientific evidence to support the argument that a holistic and systematic organisational setting is a critical enabler of the effective and efficient adoption of AI in public institutions.

Accordingly, the main objective of the paper is to present analysis of AI adoption and associated organisational changes in public institutions to gain insight into the state-of-the-art and to design proposals for public managers and policymakers regarding the effective and efficient adoption of AI in public institutions together with organisational changes before and/or during AI adoption. The study presents a comprehensive Systematic Literature Review (SLR) of scientific literature retrieved from the Scopus database based on specific inclusion/exclusion criteria and limited to querying the context of AI adoption and changes in the extended (public) organisational setting. A descriptive evaluation of the body of literature is followed by content analysis based on a specific pattern of analytic categories derived from a typical research process. Finally, the findings are rigorously reviewed to identify, classify, interpret and summarise relevant literature in terms of changes in organisational elements while adopting AI and to identify implications for public sector institutions.

2 Literature review

2.1 Artificial Intelligence in General and in Public Institutions

Various definitions of AI can be found in the literature, each stressing the concept of programmed non-human intelligence designed to execute particular tasks (Dwivedi et al., 2019). Some definitions are based on the specific disciplines utilising AI systems, while others reflect different phases of the AI life cycle (Berryhill et al., 2019). Russell and Norvig (2016) characterised AI as systems that replicate human cognitive functions like learning, speech and problem-solving. Kaplan and Haenlein (2019) offered a more comprehensive definition, describing AI as holding the capacity to autonomously process and learn from external data, thereby achieving certain goals through adaptable methods (Dwivedi et al., 2019). Wirtz, Weyerer and Geyer (2019) examined various AI definitions and suggested a unified definition, seeing AI as a computer system's ability to exhibit problem-solving and human-like intelligent behaviour, supported by key competencies like understanding, perception, action and learning.

The European Commission (EC, 2019) defines AI as "systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals". AI technology identifies patterns in large amounts of data to predict outcomes for similar instances (Dwivedi et al., 2019). It can be defined as a technology for advanced prediction (Agrawal et al., 2017; Mergel et al., 2023). Artificial intelligence is a multifaceted field that includes numerous subsets and methodologies, encompassing machine learning, deep learning, artificial neural networks, natural language processing, automated decision-making, robotics, and computer vision, among others. Despite the diversity of these technologies, the papers selected for our study do not delineate a specific type or subset of AI. Instead, they broadly refer to the term "artificial intelligence." This observation aligns with the findings of Krafft et al. (2019) and van Noordt (2022), who noted that a significant portion of the literature (social sciences) does not explicitly define "AI." Consequently, our use of the general term "AI" throughout this paper reflects this ambiguity in the source material. We are, therefore, unable to provide a precise explanation of what subsets or types of AI the authors referred to, mirroring the broader trend of employing the term "AI" without specification. This approach underscores the need for clarity and specificity in scholarly discussions on AI to enhance the precision and applicability of research findings.

Various industries are increasingly adopting AI applications to improve decision-making and reduce costs by analysing vast amounts of data. The most obvious ones are technological giants that use AI on a large scale in areas like advertising placement and product recommendations. Other industries, such as financial services and healthcare, are also finding ways to use AI to reduce fraud, predict customer behaviour, improve patient outcomes, and discover new treatments. The use of AI in transportation, including autonomous vehi-

cles, promises safety, environmental benefits, and improved quality of life. The industrial, manufacturing, energy and military sectors are also incorporating AI applications to improve efficiency and streamline their operations (Siebel, 2019; Dwivedi et al., 2019; Stone et al., 2016; Li et al., 2017).

AI holds the potential to revolutionise numerous industries, including the public sector, which stands out as an area where AI could have a substantial impact. This impact is seen in enhancing public services, internal operations, and decision-making processes. Additionally, AI can positively affect process automation, cognitive insight generation, and cognitive engagement (Mikalef et al., 2023). In some instances, AI is already delivering considerable benefits and adding public value for citizens. This potential has sparked growing interest in employing AI within the public sector to transform internal service delivery and policy formulation (Misuraca and Van Noordt, 2020). AI-supported public services have become a key focus for policymakers, leading to substantial government investments in either procuring or developing AI solutions. These investments aim to explore the potential of AI in substituting or aiding human decision-making processes, either by completely automating decisions or assisting in decision preparation (Mergel et al., 2023). Public sector organisations generate large amounts of data, creating a lot of potential for applications of AI technologies (Dwivedi et al., 2019). When used ethically, AI and big data sources can improve the public sector's operations by freeing up workers' cognitive resources for higher-value tasks (Eggers et al., 2017). AI has the potential to increases the quality of public services, build citizens' trust, boost efficiency, reduce time and costs, handle complex tasks and enhance competitiveness and public value creation (Zuiderwijk et al., 2021; Criado and Gil-Garcia, 2019; Kankanhalli et al., 2019). Mehr (2017) discusses several challenges faced by public institutions for which AI applications are deemed highly suitable. These challenges include the allocation of resources, handling of large datasets, the shortage of experts, dealing with predictable scenarios, executing procedural and repetitive tasks, and aggregating and summarising diverse data.

To date, the typical instances of public sector AI adoption are virtual assistants, e.g., chatbots, providing information about public institutions or responding to queries, pattern detection to improve information modelling during disaster responses, analysis and early warning to combat fraud and increase accountability, facial recognition for surveillance and security purposes etc. (Androutsopoulou et al., 2019; Bassey et al., 2022; Mergel et al., 2023; Tan et al., 2021; OECD, 2022; van Noordt and Misuraca, 2022). Despite being studied by many academic disciplines, AI in the public sector has not yet been subjected to systematic and holistic research by organisational science scholars. A selection of partial studies that have already been conducted is presented in the next subchapter.

2.2 Research on Artificial Intelligence and Organisational Changes

A reasonable amount of prior research is already available with respect to use cases and lessons learnt, benefits, opportunities, challenges, barriers and enablers of AI adoption in public sector institutions (Androutsopoulou et al., 2019; Berryhill et al., 2019; Campion et al., 2022; Chatterjee, 2020; Desouza et al., 2019; Haug, et al., 2023; Mikalef et al., 2019; Mikhaylov et al., 2018; Tinholt et al., 2017). Some research studies looked at a specific public sector subsector, e.g., healthcare (Alhashmi et al., 2019), tax administration (Bassey et al., 2022) or municipalities (Mikalef et al., 2022; Schaefer et al., 2021), others at a particular field within a public sector institution, e.g., human resources management (Abdeldayem and Aldulaimi, 2020; Pan and Froese, 2022), some at a given technological solution within the AI family, e.g., chatbots (Androutsopoulou et al., 2019), and some at related scientific fields, e.g., law, ethics (Djeffal, 2020; Floridi et al., 2018; Ireni-Saban and Sherman, 2021; Leslie, 2019).

According to Berryhill et al. (2019) and van Noordt and Misuraca (2022), public sector institutions can use AI to: a) make better decisions and design better policies; b) improve engagement and communication with citizens; and c) improve the quality and speed of public public services delivery. Adopting AI in the policymaking process can make it more data-driven, enable the quicker detection of social issues and ensure better analysis of potential policy solutions with faster feedback loops following the deployment of new policy (Höchtl et al., 2016). On the other hand, internal processes can become more effective and efficient due to the automatising of common operations, while staff can also be augmented and empowered by the recommendations made by AI systems (Mehr et al., 2017).

Ensuring that the considerable benefits of AI in the public sector are achieved is a challenging endeavour. The public sector is lagging behind the private sector when it comes to AI adoption. The complexity of the field and the steep learning curve entailed further complicate matters. Moreover, the unique purpose and context of the public sector create distinct challenges that must be addressed. To understand the subject of AI adoption in the public sector, several detailed literature reviews have already been performed (e.g., de Sousa et al., 2019; Dwivedi et al., 2019; Haug et al., 2023; Ishengoma et al., 2022; Mergel et al., 2023; Pencheva et al., 2020; van Noordt and Misuraca, 2022; Zuiderwijk et al., 2022) in an effort to understand the dimensions of AI in public institutions and its associated challenges, opportunities, and agenda for research, practice and policy. Mergel et al. (2023) and Haug et al. (2023) strongly highlight the need to address the theoretical research gap with regard to AI adoption in the public sector. They stress that the future integration of AI into this sector will be intricately connected with inevitable changes that occur as natural processes over time, such as the ageing workforce that the job market cannot easily replace. The authors also note that changes will also arise as direct outcomes of AI adoption and advancements in the technology itself. While it is still too early to expect detailed insights into the results

of the public sector's AI-based digital transformation, analyses that are as holistic and as systematic as possible are extremely useful for further progress with AI adoption in the public sector.

Different frameworks/models have already been designed for the effective and efficient adoption of AI in the public sector (Holmström, 2022; Pechtor and Basl, 2022; Schaefer et al., 2021; Stenberg and Nilsson, 2020; van Noordt and Misuraca, 2020a; Wilson and van der Velden, 2022; Wirtz and Müller, 2019). The Technology Acceptance Model (TAM, along with its iterations TAM 2 and TAM 3) and the Unified Theory of Acceptance and Use of Technology (UTAUT and UTAUT 2) are among the most commonly used frameworks with respect to the adoption of technology. These models primarily concentrate on individual adopters' beliefs, perceptions and intentions to use technology (Neumann et al., 2022; Rondan-Cataluña, 2015). Yet, these frameworks have been criticised for being overly simplistic and having a narrow focus (Shachak et al., 2019). Shachak et al. (2019) and Chen et al. (2021) therefore proposed implementing multi-dimensional approaches that can better capture the complexity of issues surrounding the implementation and use of new disruptive technologies. Schack et al. (2019) recommended adopting and developing theoretical frameworks and methodologies that account for multiple, interrelated, socio-technical aspects.

A model that moved beyond individuals' point of view is the Technology-Organisation-Environment (TOE) framework designed in 1990 by Tornatzky et al. for organisational-level, decision-making adoption. It explains three types of factors: technological, organisational and environmental. The basic TOE framework has been widely applied to explain the development of innovative capabilities in both the private (Aboelmaged, 2014; Abhay et al., 2007; Kuan and Chau, 2001) and public sector (Al Hadwer et al., 2021; Desouza et al., 2020; Neumann et al., 2022), e.g., in healthcare (Chang et al., 2007; Yang et al., 2021) and in municipalities (Mikalef et al. 2022; Schaefer et al., 2021). According to this framework, institutions that adopt and implement technological innovations are influenced by organisational factors like a public institution's size, organisational structure, management support, culture, financial and human resources (Al Hadwer et al., 2021; Chang et al., 2007; Jöhnk et al., 2021; Kazley and Ozcan, 2007; Liu, 2011; Neumann et al., 2022). Technological factors include internal and external technologies, such as information and data risks, systems security and complexity, electronic records, and source risks (Al Hadwer et al., 2021; Chang et al., 2007; Yang et al., 2013). The environmental factors encompass industry or public sector subsector requirements, government regulation (e.g., GDPR), differences between urban and rural areas, customer readiness and citizen expectations (Kazley and Ozcan, 2007; Neumann et al. 2022; Yang et al., 2013). The TOE framework's popularity might lie in the holistic approach and the explicit emphasis on organisational and environmental factors – alongside the technological ones that tend to dominate in most other frameworks (Neumann et al., 2022). It is also focused on technology adoption on the organisational level, not only the individual one, which is the biggest novelty of the model. On the other hand, while discussing the or-

ganisational factors within the TOE, in many studies they were not only purely organisational, but also touched on the financial aspect (e.g., cost savings (Mikalef et al., 2020) or funding (van Noordt and Misuraca, 2020b)), regulation (e.g., regulatory support) (Al Hadwer et al., 2021) and end-user participation (van Noordt and Misuraca, 2020b). This explains why we decided to focus on a model that would delve more deeply into the factors that influence AI adoption from only the organisational point of view.

Further, when studying organisation as a scientific field we can find authors who have already looked at different organisational aspects concerned with the adoption of AI in the public sector. Such aspects were factors inhibiting the adoption of artificial intelligence on the organisational level (Alsheiabni et al., 2019), changes in the organisational structure (Rudko et al., 2021), change management (Jöhnk et al., 2021; Waardenburg et al., 2021), leadership (Effendi and Pribadi, 2021; Jahankhani, 2020), organisational performance (Mikalef et al., 2023), knowledge management (El Asri and Benhlima, 2020) etc. All of the above studies concentrated on a particular aspect of organisation and did not tackle other aspects in a way that would provide a holistic insight into the enablers/barriers (before) and consequences/benefits (after) of AI adoption in public institutions. The above considerations led us to design research that would study the organisation as a complex construct (not in the sense of an institution) in terms of all of its elements and facets in the role of enablers of AI adoption.

2.3 Organisational Elements and Related Facets

With the intention to systematically and holistically focus on the organisational enablers, our study is based on use of the Leavitt model as an initial framework for AI adoption in public institutions. Leavitt's model is an established model that includes all essential organisational elements, and was originally called the Diamond Model (Leavitt, 1964). Leavitt's Diamond is a widely accepted conceptual model in organisational literature that views an organisation as a system of four interconnected elements: people, structure, tasks and technology. The author states that these variables involve many transactions with each other. Thus, changing one of them results in a change in other components. The model therefore provides a holistic view of the complexities of organisation and has been widely used as the basis for understanding and realising organisational changes (Jamali et al., 2011). While planning for a change (e.g., the adoption of a new ICT) in any kind of business, many mistakes are often made and consequent problems/challenges must be tackled. Changes often fail due to a lack of planning and systematic preparation. The initiators of the change often treat the initiatives isolated from other parts of an institutional organisation, which implies that the change will probably be unsuccessful. It is almost impossible to implement any important change without it having an effect on other organisational units, processes, employees or other stakeholders, whether intentional or not. This makes it necessary to be aware of the effects any change can have on the entire institution and

its stakeholders, and to plan accordingly for the change to be as effective and efficient as possible.

Although initially designed for private sector organisations, Leavitt's model has proven to be a valuable foundation for understanding the factors that influence the development of public sector organisations as well (Nograšek and Vintar, 2014). Later, other authors extended the model, adding organisational culture as a fifth element and replacing "tasks" with "processes" (Burke and Peppard, 1995; Kovačič et al., 2004). All of these elements are interdependent, and a change in one element will affect the others (Nograšek and Vintar, 2014). Moreover, Nograšek and Vintar (2014) proposed a different perspective that combines two views. First, digital technology is an essential tool and an enabler that drives digital transformation and hence also AI adoption. Second, the potential for digital transformation depends on the 'readiness' of the socio-technical system's other critical components, namely processes, people, structure and culture, representing the basis of our research framework and a starting point for identifying the most relevant, state-of-the-art scientific literature.

The logic of the five organisational elements (structure, processes, people, culture, technology) of Leavitt's model therefore provided the initial framework within which we try to detect the facets that are facilitating and/or accelerating the adoption of AI in public institutions. Since AI is a technology itself, we were looking for facets within the "technology" element that were understood as prerequisites for AI adoption and represent the existing available technological infrastructure (hardware and software) that is needed for effective and efficient AI adoption in public institutions. In the text below, we describe the research methodology and results, and discuss the key findings concerning AI adoption from an organisational point of view.

3 Research methodology

To accomplish the study's research objectives, we conducted a systematic literature review as an adequate, comprehensive, transparent and replicable way of identifying, selecting and analysing scientific literature regarding our subject of interest (Fink, 2007; Okoli and Schabram, 2010; Page et al., 2021). The search was conducted between November 2022 and May 2023 by applying the Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) protocol (Moher et al., 2009).This approach was chosen because of its transparent procedures that allow for the findings to be replicated and verified (de Sousa et al., 2019). The PRISMA procedure entails four phases: (1) identification; (2) screening; (3) eligibility; and (4) inclusion (Knobloch et al., 2011; Liberati et al., 2009). The scope of relevant studies was established during the identification phase in line with our research objectives:

RO1: To study the organisational aspect of AI adoption in public institutions.

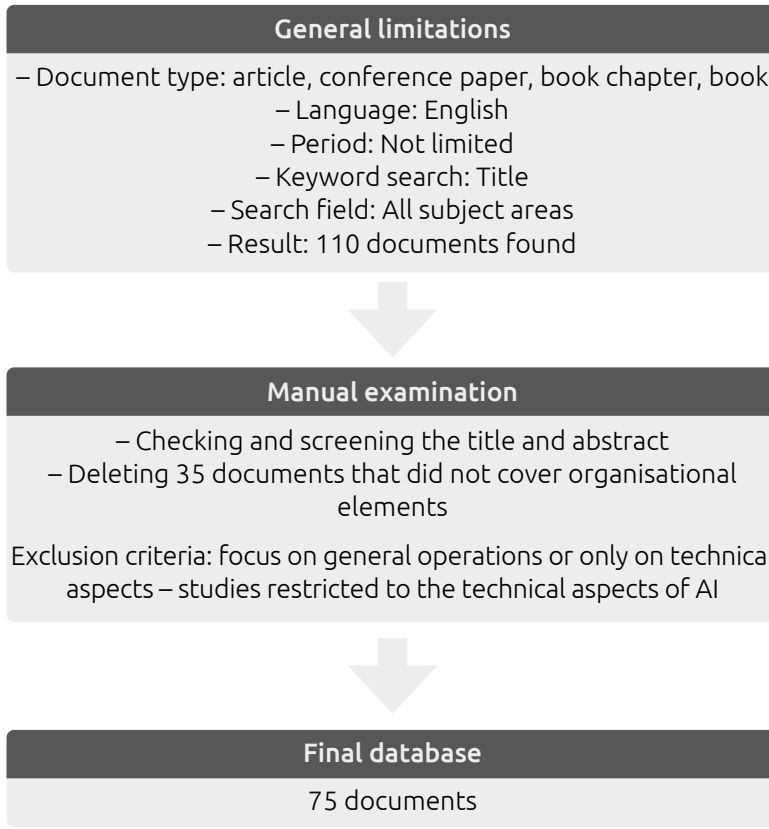
RO2: To identify the facets within organisational elements that enable (facilitate and/or accelerate) the adoption of AI.

Considering the set research objectives, the basis for our research framework was grounded on the extended Leavitt diamond model (Leavitt, 1964; Kovačič et al., 2004; Nograšek and Vintar, 2014), as presented in the literature review section (2.3). The mentioned model contains key organisational elements: people, structure, culture, technology and processes.

The scientific literature on artificial intelligence in public institutions' organisation research was extracted from the Scopus database, a world-leading academic literature collection, in January 2023. To capture all of the specifics and subdomains of AI on one side and organisation research associated with public institutions on the other, the search queries used in the advanced document search included a broad range of keywords related to several AI techniques and public sector levels, identified in the extensive literature review of existing studies in this research area. Accordingly, AI or artificial intelligence is considered to be an umbrella term, including several technologies belonging to the AI family (sometimes overlapping with statistical or data science domains), such as machine learning, neural networks, natural language processing etc.). However, despite the historical works on AI, there is still no commonly accepted definition, leading to many studies only searching for AI literature with the limited query "artificial intelligence" or "ai", possibly leaving out relevant literature.

The search queries for this study hence covered the following AI-related keywords: "artificial intelligence", "ai", "machine learning", "deep learning", "reinforcement learning", "supervised learning", "unsupervised learning", "neural networks", "natural language processing", "computer vision", "image recognition", "facial recognition", "speech recognition", "intelligence systems", "virtual assistant", "predictive analytics", "semi-supervised learning", "machine reasoning", "support vector machine", "chatbot" AND the following public institutions-related keywords: "government", "public management", "public governance", "public sector", "public administration", "public institution", "public policy", "public organisation", "society", "municipality", "ministry", "public service", "e-government", "smart government", "electronic government", "DEG", "digital era government", "digital government", "smart governance", "e-governance", "electronic governance", "digital era governance" and "digital governance". The selected keywords are consistent with different digital government transformation concepts and the general evolution of e-government discourse, including the most recent smart government (Criado and Gil Garcia, 2019). The identification of documents was further fixed with the keywords "organisat*" and "organizat*" and set to search within articles, conference papers, book chapters and books. In addition, the search was set to include titles containing the search words, not limited to any subject area. The initial search returned 110 documents. However, after checking and screening titles and abstracts (the second PRISMA stage) 35 papers were removed for not being related to organisational elements of public institutions (the third and fourth PRISMA stages). This led to 75 documents being identified as relevant to the study on AI and organisational transformation.

Figure 1: Flowchart of determining the database in Scopus



Source: authors' elaboration.

The complete versions of identified literature were retrieved and stored using the NVivo 12, a software program for qualitative and mixed-methods research. This software allowed us to code the key elements based on the research framework (people, culture, structure, processes, technology) while reading the identified literature. The coding system enabled us to link similar ideas from different articles, identify contradictions in arguments, compare (dis)similarities and build a structured overview of identified organisational facets when it comes to AI adoption, as is presented in the following section.

4 Results

The detailed systematic literature review revealed the main findings of authors concerning public institutions' adoption of AI. Different studies from numerous countries and public sector subsectors were selected according to the abovementioned methodology. In the analysed papers, the authors describe the enablers and the barriers to AI adoption. The following tables include the facets within the five elements of the Leavitt model (people, struc-

ture, culture, technology, processes) that were identified as the key enablers of AI adoption in public institutions.

Table 1: Enablers within the People element

Element – People	Authors
– Top managers' positive perceptions, previous experiences with AI and understanding regarding the application and value of AI – Top management support for integrating AI solutions (e.g., providing time and financial resources, overcoming resistances) – Top management support for the development of an AI adoption strategy – IT managers' openness and trust concerning AI – IT managers' understanding of AI's direct value and implications for citizens' lives beyond just the technological aspects – IT managers' plans for AI adoption – Leadership style – Opinion of an informal leader – High salaries for AI experts – Communication and intrinsic motivation of AI project members, other staff and external partners – Supporting employees to overcome fears of losing a job and de-humanisation or human replacement by robots at work, and fears of additional control – In-house staff knowledge of AI – trainings, tutoring and other knowledge transfers regarding AI and its capabilities, and other IT skills on all levels of the organisation – Employment of external AI specialists – The abilities of front-line officials to interpret data in order to explain the decision-making process and to assume responsibility for the outcomes of those decisions	Alshahrani et al., 2022, Campion et al., 2022, Chen et al., 2023, Criado et al., 2022, Effendi and Pribadi, 2021, Ishengoma et al., 2022, Mikalef et al., 2019, Mikalef et al., 2022, Neumann et al., 2022, Noymanee et al., 2022, Ojo et al., 2019, Peretz-Andersson et al., 2021, Plantinga, 2022, Schaefer et al., 2021, van Noordt and Misuraca, 2020a, van Noordt and Misuraca, 2020b, Wirtz and Müller, 2019.

Source: authors' elaboration.

Despite the technology (AI) and its adoption being discussed in the study, people (i.e., employees – public managers, public servants, external AI experts) must be put first while discussing ICT novelties/transformations that are being introduced into public organisations. Several authors (Alshahrani et al., 2022; Campion et al., 2022; Chen et al., 2023; Criado et al., 2022; Effendi and Pribadi, 2021; Ishengoma et al., 2022; Mikalef et al., 2019; Mikalef et al., 2022; Neumann et al., 2022; Noymanee et al., 2022; Ojo et al., 2019; Peretz-

Andersson et al., 2021; Plantinga, 2022; Schaefer et al., 2021; van Noordt and Misuraca, 2020a; van Noordt and Misuraca, 2020b; Wirtz and Müller, 2019) studied the enablers of successful AI adoption related to the human factor. Many of these authors stress that, first, top management's understanding and positive perception of the application and value of AI are the key enablers of AI adoption, followed by top management's support in terms of developing a strategy, providing resources, and change management activities. The second set of facets concerns IT managers who must be open and trust the AI and understand the AI's value and direct implications for citizens. After designing a strategy, IT managers are those who should be in charge and responsible for the preparation of plans for the AI adoption. Third, besides the formal leaders (managers along with their leadership styles), informal leaders can play a significant role in overcoming the challenges of introducing new technologies. Fourth, in the case of AI adoption, leadership should be focused on communication, motivation (extrinsic and intrinsic), remuneration and ensuring the psychological safety of employees and potential external partners. The fifth set of facets that enable AI adoption is related to the building of competencies in AI and other IT skills – either through training, tutorship or knowledge transfers across the organisation. If no internal capacities are available, external AI specialists must be hired. To sum up, the key sets of enablers of AI adoption related to the internal human factor are the attitudes and actions of top and IT managers, notably their leadership approaches (communication, motivation etc.), human resources management (hiring and HR development) and, last but not least, change management.

Table 2: Enablers within the Structure element

Element – Structure	Authors
– Establishing new/alternative organisational structures/ forms (roles) and processes – Engagement and collaboration across organisations, e.g., innovative public–private partnerships and procurement models – Strong exchange with other institutions regarding joint projects and the potential of AI – e.g., a governmental inter-organisational AI agency – Intra-governmental digital service units are increasingly becoming a vital alternative for introducing new technologies due to their capacity to attract talent and expedite the implementation process – The sharing of data and transferring of knowledge between organisations must be encouraged by: (1) understanding the data that are available and required; (2) inter-and cross-organisational alignment between project interests and expectations surrounding the data sharing; and (3) engagement within the organisational hierarchy, leading to the unification of expectations on the top and bottom levels of the organisation – Internal collaboration: data and knowledge from different departments along with a common understanding of the aims, benefits and goals of AI projects – Clarifying roles and responsibilities within the collaboration (e.g., by appointing champions) – Project-oriented measures, agile project management	Alshahrani et al., 2022, Campion et al., 2022, Chen et al., 2019, Chen et al., 2023, Ishengoma et al., 2022, Mikalef et al., 2019, Mikalef et al., 2022, Plantinga, 2022, Schaefer et al., 2021, van Noordt and Misuraca, 2020a, van Noordt and Misuraca, 2020b

Source: authors' elaboration.

While examining the changes in organisational structure that enable AI adoption, researchers (Alshahrani et al., 2022; Campion et al., 2022; Chen et al., 2019; Chen et al., 2023; Ishengoma et al., 2022; Mikalef et al., 2019; Mikalef et al., 2022; Plantinga, 2022; Schaefer et al., 2021; van Noordt and Misuraca, 2020a; van Noordt and Misuraca, 2020b) detected the following sets of enablers: (1) introducing new organisational structures, e.g., projects along with agile management approaches; (2) inter-organisational collaboration, e.g., public–private partnerships, joint projects etc.; (3) intra-governmental digital service units that attract talents and accelerate implementation; (4) knowledge transfer and data sharing between and within organisations (on all hierarchical levels); and (5) intra-organisational collaboration – between the organisational units (departments) – to ensure a common understanding of the goals, purpose and benefits of the AI adoption. Accordingly, the key enablers concerning the organisational structure are the collaboration between and within public institutions and other stakeholders, reorganisations, and the introduction of agile management.

Table 3: Enablers within the Culture element

Element – Culture	Authors
– Focusing on AI's public value rather than on AI as a technology itself – Cultivating awareness of what AI is, not only as a term but also its importance, tools, applications – Promoting awareness of the potential opportunities and risks associated with AI in governmental environments among general managers, political appointees and street-level bureaucrats – Cultivating a culture of cross-institution collaboration, developing collaborative management – Organisational culture as an important element in facilitating the adoption or rejection of new technologies – A culture of innovativeness and the right mix of financial and other incentives along with a push from higher levels – Innovations that all stakeholders perceive as 'value adding' – Innovations regarded as easy to use and to experiment with – Innovations compatible with the organisational values – IT managers guided by public values will implement more ethical AI technologies – IT managers developing an organisation-wide readiness perspective, not merely infrastructure investments and pools of data – Senior management allowing experimenting with new ideas and technologies – Methods of agile project management and a culture that allows a degree of failure – Individual motivation – identification of employees interested in AI and thinking flexibly and innovatively	Alshahrani et al., 2022, Campion et al., 2022, Criado et al., 2022, Ishengoma et al., 2022, Mikalef et al., 2022, Neumann et al., 2022, Ojo et al., 2019, Plantinga, 2022, van Noordt and Misuraca, 2020a, van Noordt and Misuraca, 2020b.

Source: authors' elaboration.

The vast majority of researchers who concentrated on facets within the "People" element, which are mostly related to top and IT management support, leadership style and staff competencies, stress that the "Culture" element is just as important as the formal aspects of management, leadership and human resources management. The key enablers of AI adoption in the findings of Alshahrani et al. (2022), Campion et al. (2022), Criado et al. (2022), Ishengoma et al. (2022), Mikalef et al. (2022), Neumann et al. (2022), Ojo et al. (2019), Plantinga (2022), van Noordt and Misuraca (2020a) and van Noordt and Misuraca (2020b) may be summarised as falling into six groups: (1) focusing on the

public value of AI along with its applications and benefits; (2) awareness of the opportunities and risks of AI, and fostering a culture of cross-institution collaboration; (3) building a culture of innovativeness where innovations are perceived as 'value adding' by all stakeholders, as easy to use and to experiment with, and are compatible with the organisation's existing values; (4) values of IT managers (ethics and the value of AI from an organisation-wide readiness perspective, not only relative to investments in technological infrastructure; (5) adaptability, agile project management, and a culture that tolerates failures and learning; and (6) individuals' values (flexibility, innovativeness) and their motivation to be involved in AI adoption projects. It may thus be concluded that the introduction of AI is not only about the changes in the organisational structure and human resources management, which are mainly focused on formal aspects of the organisation. It is important that managers on all levels engage in building a strong culture with values such as openness, innovativeness, agility, collaboration, trust and ethics to ensure that the changes brought by the AI adoption are as smooth as possible.

Table 4: Enablers within the Technology element

Element – Technology	Authors
– Highly developed digital government infrastructure with sufficient bandwidth, processing power of server hardware, memories, networks – Compatibility of existing information systems with new AI technology – A large network of interconnected computers – Devices that immediately process large amounts of data – Technologies for the easier storage and analysis of large data sets – A sufficient amount (big data) of reliable and high-quality data that must be cleaned, integrated, structured and secured for model learning – Privacy protection and mitigation of ethical risks – Governance and management of databases for the acquisition, management and storage of various data – Ability to easily connect different data in distinct systems – Inter-organisational and effective data exchange – Functioning data ecosystem, including Internet of Things (IoT) systems and digital services – Top-down approach – alignment of data infrastructure and data strategy – Possibility of data analytics – Coordinating the AI with potential users' actual needs	Alhashmi et al., 2019, Alshahrani et al., 2022, Campion et al., 2022, Ishengoma et al., 2022, Mikalef et al., 2022, Neumann et al., 2022, Noymanee et al., 2022, Ojo et al., 2019, Plantinga, 2022, Schaefer et al., 2021, van Noordt and Misuraca, 2020a, van Noordt and Misuraca., 2020b, Wirtz and Müller, 2019

Source: authors' elaboration.

While addressing the "technology" element, it is essential to view it broadly; namely, as infrastructure that is crucial when it comes to AI adoption. Several

authors (Alhashmi et al., 2019; Alshahrani et al., 2022; Campion et al., 2022; Ishengoma et al., 2022; Mikalef et al., 2022; Neumann et al., 2022; Noymanee et al., 2022; Ojo et al., 2019; Plantinga, 2022; Schaefer et al., 2021; van Noordt and Misuraca, 2020a; van Noordt and Misuraca, 2020b; Wirtz and Müller, 2019) highlight the presence of already mature digital infrastructure as an important enabler of AI adoption. Public institutions already functioning with higher degrees of eGovernment maturity and possess greater experience with ICT in their day-to-day work are better positioned for adopting AI due to their existing infrastructure, mindset and skills. A large network of interconnected computers is fundamental for supporting the complex computations and data processes inherent in AI systems. Moreover, devices capable of immediately processing large data sets are essential for real-time decision-making and service delivery, a vital component of public sector operations. On the other hand, less digitally mature organisations may need to first update their existing IT systems to make them compatible with new AI technologies.

Data is the lifeblood of AI systems. A sufficient amount of reliable, high-quality data is required for AI model learning and development. This data must be cleaned, integrated, structured and secured, underscoring the importance of robust data governance and management. Different datasets have to be integrated, and data sharing between different organisations is highly recommended. Further, a functioning data ecosystem, inclusive of IoT systems and digital services, is pivotal. The alignment of data infrastructure with an overarching data strategy, using a top-down approach, ensures coherence and direction in AI implementation. The ability for comprehensive data analytics further empowers public institutions to derive actionable insights and make informed decisions.

The fact that AI systems handle vast amounts of data, including sensitive information, makes privacy protection and the mitigation of ethical risks paramount. This entails not only technological safeguards but also policy frameworks that govern the use of data and AI applications. Effective governance mechanisms must be established to address these concerns, thereby maintaining public trust and assuring compliance with legal standards. Finally, the successful adoption of AI in public institutions crucially depends on the alignment of AI capabilities with potential users' actual needs. This user-centric approach ensures that AI solutions are tailored to meet specific public needs, in turn enhancing service delivery and public engagement.

The successful adoption of AI in public institutions' technological infrastructure is a multifaceted endeavour. It not only calls for technological advancement but also strategic planning, robust data management, ethical considerations, and user-centric design.

Table 5: Enablers within the Processes element

Element – Processes	Authors
– Development of a public business model for implementing AI solutions – Quantifying the organisation's AI maturity given that maturity is a measure that relates to the institution's readiness and AI capability – Strategy as the key factor in determining the success of AI adoption – Re-engineering of existing processes – Core processes must be as digital as possible to process large amounts of data usable for analysis – The integration of AI into existing processes – Implementing regulations and procedures to ensure that AI technologies function within reasonable and acceptable limits – Developing the capability to design AI initiatives that are goal-oriented and focused on citizens' needs – Establishing AI deployment guidelines that incorporate standards for data collection and sharing	Campion et al., 2022, Chatterjee, 2020, Ishengoma et al., 2022, Mikalef et al., 2022, Neumann et al., 2022, Noymanee et al., 2022, Ojo et al., 2019, Schaefer et al., 2021, van Noordt and Misuraca, 2020a, van Noordt and Misuraca, 2020b, Wirtz and Müller, 2019, Zheng et al., 2018.

Source: authors' elaboration.

While investigating the changes in processes associated with AI adoption, researchers (Campion et al., 2022; Chatterjee, 2020; Ishengoma et al., 2022; Mikalef et al., 2022; Neumann et al., 2022; Noymanee et al., 2022; Ojo et al., 2019; Schaefer et al., 2021; van Noordt and Misuraca, 2020a; van Noordt and Misuraca, 2020b; Wirtz and Müller, 2019; Zheng et al., 2018) detected several enablers. The suggested first step towards AI adoption is to develop a public business model tailored to AI solutions. This model serves as a blueprint, guiding the integration of AI technologies into public sector operations. Understanding an institution's AI maturity is pivotal in this transition. Maturity in this context refers to an institution's readiness to integrate AI into its processes and enhance its existing AI capabilities. Quantifying this maturity permits organisations to gauge their preparedness for AI adoption, identifying areas of strength and opportunities for development. It serves as a diagnostic tool that informs decision-makers about the steps needed to make them more AI-ready.

Strategy emerges as a key determinant in the success of AI adoption. A well-crafted strategy provides direction and clarity, aligning AI initiatives with the organisation's overarching goals. It ensures that AI adoption is not an isolated effort but part of the bigger organisational vision. Re-engineering existing processes is an essential step on this strategic journey. It involves a critical examination and redesign of current operational processes to make them more compatible with AI technologies. This re-engineering assures that core processes are digitalised to handle and analyse large volumes of data, a pre-

condition for effective AI functionality. Further, it facilitates the seamless integration of AI into existing workflows.

Adopting regulations and procedures is vital for ensuring that AI operates within reasonable and acceptable boundaries. The regulatory framework should address ethical considerations, data privacy and security concerns, providing clear guidelines on how AI technologies should be deployed and managed. Building the capacity to design goal-based and citizen-centric AI initiatives is another crucial enabler found in the literature. AI solutions should be developed with the end-user in mind, focusing on enhancing service delivery and citizens' well-being. This approach ensures that AI technologies are not merely advanced but also relevant and beneficial to the citizens.

Finally, establishing AI deployment guidelines is imperative. These guidelines should include criteria for standardising data collection and sharing, ensuring consistency and quality in data management. In conclusion, the successful adoption of AI within organisational processes is a multifaceted undertaking. It requires a strategic approach, process re-engineering, digital transformation, regulatory oversight, and a focus on citizen-centric solutions.

5 Discussion

Even though AI is still a relatively new technology, especially when talking about its implementation in public institutions, politicians, public managers, public servants and researchers are already aware that it will have a significant influence on decision-making processes and the design, delivery, quality and efficiency of public services (Mergel et al., 2023). According to Bartollotta and Gritt (2021) and Mergel et al. (2023), AI might lead to new public service models (externally), along with reorganisations, and changes in both employee skills and decision-making processes. On the other hand, the results of our research also indicate the opposite, which means the above-listed organisational elements must be viewed as important enablers of effective and efficient AI adoption.

Before commencing our research, similarly to Mergel et al. (2023) we had assumed that the adoption of new technology must always be considered in terms of the broader organisational context which public institutions are embedded in and that AI is no exception. Our research shows that the key organisational facets within Leavitt's organisational elements (Nograšek and Vintar, 2014) that influence/enhance AI adoption are: (1) top management support, IT managers' openness to AI, leadership (communication, motivation), the development of employee skills (all related to the People element); (2) reorganisations, inter- and intra-organisational collaboration, agile management approaches (all related to the Structure element); (3) building a culture of innovativeness, collaboration, ethics, flexibility and adaptability (all related to the Culture element); (4) mature digital infrastructure (both hardware and software), robust data management and privacy protection (all related to the Technology element); and (5) developing new business models based on a

maturity assessment and the design of strategies for process re-engineering, integrating the AI into existing processes, and developing new regulation and standards (all related to the Processes element).

While discussing the practical implications of our findings, we must bear in mind that public institutions' adoption of AI holds the potential to provide numerous benefits and public value to citizens, residents, businesses and NGOs. To gain insight into the state-of-the-art of AI adoption in public institutions, our study focused on organisational elements and their changes before and during the AI adoption. Each organisational element (people, structure, culture, processes etc.) enables/facilitates the adoption of AI. The findings reveal that to exploit the enablers and avoid numerous barriers while adopting AI, the complexity of AI adoption projects must be considered seriously, and these projects have to be managed carefully. Adopting AI in public institutions amounts to much more than simply implementing new technologies. Not purely technological, but several organisational elements dominate public innovation initiatives, such as AI. Practitioners should thus systematically and holistically plan, organise, lead and control AI adoption in public institutions. The results of the literature review may serve as useful guidelines for decision-makers (policymakers and managers) and employees in different types of public institutions while seeking to introduce new disruptive technologies such as AI, and when formulating policies, regulations, strategies and tactics for public institutions' adoption of AI. Moreover, public and private sector stakeholders will have to act as partners in the responsible use of new technologies, value (co)creation and risk sharing to ensure the greater success of businesses and citizens' well-being. In contrast, the biggest obstacles to effective and efficient digital transformation for private sector entities are non-digitalised public services and slow changes in regulatory frameworks. This means that public institutions must join in the digital transformation and, hand in hand with the private sector, not only follow the trends in private businesses but also support them with digital infrastructure (services) and regulation.

Although comprehensive, the presented systematic literature review may have limitations due to the quickly evolving nature of AI and associated organisational change literature. First, the division between the natural and social sciences in AI research creates a challenge. Technical studies in the natural sciences often overlook organisational change aspects, whereas the social sciences sometimes lack specificity while addressing AI's technicalities. Notwithstanding the use of an extensive range of keywords, the inherent limitation of keyword-based searches may have led to some relevant studies being missed out. Second, the dynamic and interdisciplinary nature of AI and public institutions organisation research means some pertinent literature could fall outside the chosen search terms. The reliance on Scopus, although valuable for its extensive collection, might also introduce a selection bias. Relevant studies, especially those published in less recognised journals or in non-English languages, may have been omitted. Third, the field of AI is rapidly evolving, with new developments occurring frequently. The timeframe of the literature search (until May 2023) means that the latest findings, advance-

ments and discussions might not have been captured. Fourth, while NVivo 12 facilitates systematic coding and analysis, the interpretation of literature is inherently subjective. Different researchers might code and interpret the same text in varying ways, potentially influencing the conclusions drawn. Lastly, the findings are based solely on identified scientific literature, which may not comprehensively cover all practical instances of public institutions' adoption of AI. Accordingly, the generalisability of the results could be limited.

Building on the findings of our study, we propose the following directions for further research. First, the research on AI adoption in the public sector should more intensively focus on numerous drivers of novelties' implementation, not only on the technology itself (e.g., on different parts of holistic organisational and business models). Second, multiple stakeholders' involvement while adopting AI should be studied (i.e., consultation and engagement before the change, and analysis of their satisfaction after the change). This means that the enablers and benefits of efficient AI adoption should be measured (quantified) through survey-based assessments by (at least) public managers, public servants and citizens in specific public sector subsectors. Third, while AI adoption is mostly seen as greatly benefitting the development of humankind in the sense of increasing efficiency, transparency etc., researchers should not forget about studying the negative aspects of the use (or even misuse) of new technologies, e.g., breaking values, ethical standards etc.

6 Conclusion

Artificial Intelligence (AI) is rapidly transforming business and private domains of our world. Its gradual adoption by public institutions is revolutionising their operations, resulting in higher efficiency and effectiveness. Numerous studies show that AI's adoption extends beyond the technological realm; it calls for a comprehensive transformation encompassing both tangible and intangible aspects of an institution's organisation, including the technological infrastructure (e.g., equipment, data management, maintenance, security), employee skills, management and leadership practices, organisational culture etc. Consequently, this underscores the importance of policymakers and other decision-makers on all levels considering these organisational elements while introducing new technologies, such as AI, in public institutions.

The successful adoption of AI in public institutions, as revealed by our systematic literature review, intertwines a spectrum of organisational facets on a seamless continuum. At the forefront are people – the essence of any institution – where the leadership of top management and IT professionals is vital. Their understanding, support, and proactive strategies set the stage for AI integration, fostering a culture of innovation and adaptability. This human-centric approach interlaces with structural transformations, advocating agile management and collaborative efforts within and across organisations. Simultaneously, the organisational culture paradigm is shifting towards embracing AI's potential, cultivating an environment in which risks are understood and opportunities are maximised. This cultural adaptability extends into the

technological realm where a robust digital infrastructure and data management become the bedrock for AI systems. The integration of AI demands not simply technical compatibility but also a strategic alignment, ensuring that technology serves genuine public needs while respecting privacy and ethical standards. In harmony with these elements are the processes – the operational backbone of AI adoption. Developing AI-focused business models, enhancing organisational AI maturity, and strategically aligning AI initiatives with organisational goals illustrate a conscious effort to mould processes that complement AI's capabilities. This strategic approach is underpinned by re-engineering efforts and (internal) regulatory frameworks, assuring that the integration of AI is smooth, ethical and citizen-centric. In essence, the journey of AI adoption in public institutions entails a harmonious orchestration of people, structure, culture, technology and processes. While distinct, each element is interconnected and collectively they driving the transition towards more responsive, effective and efficient public institutions.

Inspired by previous research, our study adopted a comprehensive approach to understanding the organisational elements linked to AI adoption in public institutions. It identifies five key organisational factors critical for integrating innovations: people (skills, motivation, change management), organisational culture (leadership, a culture fostering experimentation), structure (hierarchical changes, departmental involvement, agile methods), processes (process re-engineering, strategic planning for AI) and technological infrastructure (IT system maintenance, data management). The study points to the importance of addressing each of these elements because they present distinct opportunities and possible challenges in the context of adopting AI. It is crucial to meticulously study and maximise the use of enablers to optimise the benefits for all stakeholders in public institutions.

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A Court's Right to Moderate Administrative Penalty in Selected Central European Countries

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ABSTRACT

The purpose of this paper is to analyse the extent of a court's authority to moderate[1] penalties imposed by administrative bodies in several Central European countries: the Czech Republic, Slovakia, Germany, and Austria. The central goal is to investigate the legal frameworks within these nations and their relationship to Article 6 of the European Convention on Human Rights.

The methodology employed involves a comparative analysis of legal provisions in the aforementioned countries concerning judicial review of administrative penalties. The study scrutinizes the differences in the legal approaches taken by these nations, highlighting the diverse methods used to address the court's role in moderating administrative penalties. The investigation is grounded in the concept of full jurisdiction, emphasising the right of individuals to have their cases thoroughly examined by a court, which also includes assessing the legality, merit, appropriateness, and proportionality of the penalties imposed.

The findings reveal significant variations among the surveyed countries regarding the approach to judicial review of administrative penalties. These differences underscore the complex interplay between the executive and judiciary branches within legal systems, raising crucial concerns about principles such as legal certainty, proportionality, and the right to an effective remedy. The paper illuminates the varying degrees of court intervention in moderating administrative penalties across different legal contexts and makes a substantial academic contribution by shedding light on a relatively understudied aspect of administrative law within

1 This article uses the term „moderate" as a verb for situations, where a court (defined in Article 6 paragraph 1 of the European Convention on Human Rights), is by law authorized to lower the imposed administrative penalty at its discretion or to completely abstain from imposing a penalty while reviewing an administrative decision. Under these conditions, we are not talking about court moderation where the court is the body that directly imposes the administrative penalty.

Central Europe. It provides valuable insights into how different legal systems address the delicate balance between executive power and judicial oversight, particularly in matters of administrative penalties.

The study's originality lies in its comparative approach, offering a nuanced understanding of the court's role in moderating penalties and its implications for broader legal principles and human rights protection. Furthermore, the paper serves as a foundational resource for scholars and practitioners interested in exploring the origins and nuances of judicial moderation in administrative law, potentially inspiring further research and providing a schematic tool for navigating this complex legal terrain.

Keywords: *administrative penalty, comparison, moderation, full jurisdiction*

JEL: K

1 Introduction

This article aims to understand similar legal regulations in various countries and how they differ in a specific area - judicial moderation of administrative penalty. To the best of the author's knowledge, there is no similar article focusing on the addressed issue in several European countries. Therefore, this work can be suitable for possible further research purposes and as an introduction to the topic.

The first question that needs to be answered right at the beginning is why comparing the Czech Republic, Slovakia, Germany and Austria makes sense. The answer lies in the similarities and differences in the legal systems of the selected countries. Concerning the focus of the article, it is essential to note that in the countries under consideration, the prosecution of misdemeanours is the responsibility of public administration rather than the courts.[2] As a result, the court plays a more or less supervisory role (as will be explained further) and is tasked with rectifying "incorrect" decisions made by public administration. Each of the examined countries differs in the extent of authority that domestic courts possess in reviewing administrative penalties and the options available to the court to moderate the imposed penalty.

The common history of the administrative justice system accompanying the mentioned countries cannot be overlooked. As Macur[3] describes, the emergence and development of administrative justice in Czechoslovakia were essentially entirely dependent on Austrian administrative justice, both in terms of organisation and procedure. Austrian legal regulations significantly influenced the Czechoslovakian administrative justice established after 1918. Even further developments in administrative justice were influenced by Aus-

2 Except for Germany, where while primarily this task belongs to administrative authorities (Section 35 paragraph 1 *Ordnungswidrigkeitengesetz*), nevertheless, in some cases, courts can be called upon for this purpose.

3 Macur, 1992, p. 111.

tria and Germany. The changes in Czechoslovakian administrative justice after November 1989 were based on the

"positive aspects of the concept of the rule of law as envisioned by O. Bähr and his successors, which had been applied in Germany, Austria, and some other countries during its development for a certain period"[4].

Administrative law can be described as the law that concerns relations between the administration (governments) and private individuals[5]. According to Seerden,[6]

> "issuing of decisions (based on sectoral statutes) is probably the most important instrument of the administration to achieve public goals or to put more abstractly, serve the general interest".

One of the most essential areas of administrative decision-making is administrative sanctioning for offences (or misdemeanours). In the selected countries, that authority lies primarily with public administration. And the imposition of administrative fines is an expression of such discretion. The administration has discretion if it has the choice between several decisions, all deemed legal by the legislature. Wojciechowski describes discretion as a situation, where the deciding authority "*does not approach the process of applying the law in a strictly formalised and constrained manner*".[7] It then has to weigh which of the legal consequences fits best and best corresponds to the purpose of the law. This discretion only lies with the administration.

The power to decide who is guilty of a misdemeanour and what penalty the offender should receive is provided for by legal rules and is attributed to a public authority.[8] The question important for this article then is how the courts control such power. This article is limited to judicial review in misdemeanour cases only in selected countries.[9]

4 Macur, 1992, p. 123.
5 Seerden, 2012, p. 1.
6 Ibid.
7 Wojciechowski, 2023, p. 2.
8 Cananea and Andenas, 2021, p. 3.
9 Countries chosen for this article are the Czech Republic, Slovakia, Germany and Austria. The reasons for this selection are, that to have a relevant comparison we need countries with a similar revisionary system of public administration. In all countries, the simple principle applies – public administration issues a decision, which can be reviewed by an administrative court. Even though the system of reviewing public administration acts is somewhat similar, all states differ in reviewing administrative penalties (as will be explained in the following text).

The definition of a misdemeanour is similar in Czech Republic[10], Slovakia[11], Germany[12] and Austria[13]. The close affinity between criminal law and administrative law is well-known: "*The basic principles applicable to criminal punishment must also be respected in the field of administrative punishment*".[14] The jurisprudence of the ECtHR also indicates this proximity. There are frequent cases where the court navigates on the border between a misdemeanour and a criminal charge – instances where it must determine what can be subordinated to a criminal charge (which entails "higher" rights for the accused).[15] One of the main differences between administrative and criminal sanctioning is that administrative fines are easier to administer and impose.[16]

The issue of administrative penalties is not purely a matter of domestic concern. Administrative penalties and their judicial review frequently arise before the European Court of Human Rights (ECtHR). The ECtHR takes an active stance in this area, and the concept of administrative penalty is part of its jurisprudence. When talking about judicial review of public administration, one must not forget the influence of the European Convention on Human Rights (ECHR).[17]

What are the legal provisions in the selected Central European countries governing the court's authority to moderate administrative penalties? And how do countries differ in their approach to granting or limiting the court´s authority to modify administrative penalties? These questions are at the forefront of this article and provide the basic framework for the following text.

When discussing examination methods, it is necessary first to define the concept of moderation and identify what will be compared. Next, moderation in

10 In the Czech Republic a misdemeanour is a socially harmful unlawful act which is expressly designated as a misdemeanour in the law and which has the characteristics set out in the law unless it is a criminal offence (Section 5 of Act No. 250/2016 Coll., on Liability for Misdemeanours and Proceedings Thereon).

11 In Slovakia a misdemeanour is legally described as a culpable act which violates or endangers the interest of society and is expressly designated as an offence in this or any other law unless it is another administrative offence punishable under special legislation or a criminal offence (Section 2 para. 1 of Act No. 372/1990 Coll., on Misdemeanours).

12 German Act on Regulatory Offences in the version published on 19 February 1987 (*Ordnungswidrigkeitengesetz* – hereinafter referred to as "OWiG") contains this definition in Section 1: A regulatory offence shall be an unlawful and reprehensible act, constituting the factual elements set forth in a statute that enables the act to be sanctioned by the imposition of a regulatory fine.

13 If we look closely to the Austrian legal framework and mainly at the Act on Administrative Sanctions from 1991 (*Verwaltungsstrafgesetz* – hereinafter referred to as "VStG"), we discover that VStG does not provide a general definition of a misdemeanour, which we can find in three previous countries. VStG explicitly mentions only certain characteristics of an administrative offence: punishable by law (Section 1 VStG), culpability (Section 5 VStG), and punishable by administrative law only if the act is not a criminal offence (Section 22 VStG).

14 Prášková, 2017, p. 25.

15 ECtHR cases: Case of *Engel and others v. The Netherlands*, 8. 6. 1976, Application no. 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72; Case of *Malige v. France*, 23. 09. 1998, Application no. 27812/95; Case of *Mikhaylova v. Russia*, 19. 11. 2015, Application no. 46998/08; Case of *Ramos Nunes de Carvalho e Sá v. Portugal*, 6. 11. 2018, Application no. 55391/13. According to ECtHR, three *Engel criteria* are: (i) classification in domestic law, (ii) nature of the offence and (iii) severity of the penalty to the person concerned risks incurring.

16 Faure and Svatikova, 2012, p. 255.

17 The Importance of ECHR is also emphasized by Cananea and Andenas, 2021, p. 10.

administering penalties should be placed within the framework of administrative justice. The legal regulations of various countries will then be assessed based on applicable legal texts and literature. While this article will not provide a comprehensive overview of the differences in moderation, it aims to explain how countries with similar legal cultures approach the principle of full jurisdiction and the review of penalties and moderation. The legal framework and understanding of moderation will highlight how each country interprets the concept and integrates it into its administrative justice system, possibly within the requirement for full jurisdiction according to the ECHR. Areas of agreement and disagreement between different systems will be emphasised, and discussion points will be presented to encourage further debate and exploration.

2 Moderation of administrative penalty

Although the chosen topic is closely related to administrative law, this article deals with misdemeanour law. An administrative penalty is the outcome of an administrative proceeding, at the end of which administrative authority establishes the offender's guilt and imposes a penalty for it. Such penalties can take various forms, and it is unnecessary to elaborate on each form in different countries. An administrative penalty can be defined as "*measures of state compulsion imposed by the relevant administrative authority after proceedings have taken place, causing harm to the offender for the committed offence* "[18]. A universal form of penalty for misdemeanour is a monetary fine[19], although different administrative penalties are being recognised by the countries at hand. Other possible sanctions include a reprimand, prohibition of activity, forfeiture of property or substitute value, publication of the decision on the misdemeanour and even imprisonment.[20] An administrative penalty refers to a punitive measure imposed by a governmental or administrative authority in response to violating laws, regulations, or rules within a specific jurisdiction. Unlike criminal sanctions, administrative penalties are typically non-criminal. They are intended to address misconduct that falls short of criminal conduct, such as regulatory violations, breaches of administrative procedures, or infringements of statutory requirements.

Administrative law principles often govern the imposition of administrative penalties, and they may be subject to administrative review, adjudication, or other formal procedures to ensure procedural fairness and proportionality in their application.

Concerning the administrative decision and imposed penalties, it is also necessary to emphasise various legal flaws. Explaining these flaws can be important for understanding the subtle nuances that the discussed countries further dissect. Understanding of flaws in administrative decisions also paints

18 Prášková, 2017, p. 198.

19 Fine as an administrative penalty is common to all addressed countries – Slovakia (Section 11 of Act No. 372/1990 Coll., on Misdemeanours), Czech Republic (Section 35 of Act No. 250/2016 Coll., on Liability for Misdemeanours and Proceedings Thereon), Austria (Section 10 VStG) and Germany (Section 1 and 17 OWiG).

20 Section 11 VStG.

a picture where the court intervenes with the administrative penalty. As Kopecký describes,

> "Administrative acts, as a result of human activity, can be flawed in various ways. It happens that in their issuance, the procedurally established rules were violated by law, that officials incorrectly interpreted or omitted a legal norm, that the administrative act is based on inadequate factual findings, etc."[21]

Kopecký[22] and Skulová[23] describe four fundamental flaws of administrative decisions.

Firstly, the decision may exhibit formal flaws, such as errors in writing or calculations. These flaws are often very easily fixable and do not pose significant problems. Therefore, it is unnecessary to dwell on them in more detail.

Secondly, a decision may be unlawful - the decision conflicts with legal regulations (substantive or procedural law). A broad range of these flaws include jurisdictional flaws (an act issued by an incompetent authority) and substantive flaws (incorrect legal assessment).[24]

The third flaw can be described as the substantive incorrectness of the decision. As Kopecký[25] states, substantive incorrectness can manifest only in administrative acts resulting from administrative discretion. As mentioned earlier, administrative penalties are an area where discretion is often used. Therefore, a penalty may be disproportionate - this flaw can be understood as the administrative body considering the legal criteria. Still, the imposed fine, for instance, does not correspond to the offender's financial situation, or the administrative body did not adequately consider exceptional circumstances of the case under review. At the same time, imposing a penalty without considering all the conditions the law provides. For example, it may have overlooked mitigating circumstances or imposed a fine outside the legal range. Part of the third flaw of administrative decisions is also the destructive nature of the penalty. A penalty may be destructive if it can have a significant economic impact on the offender, potentially jeopardising their livelihood.

The fourth and last flaw of an administrative decision can be its nullity, which can be defined as the legal non-existence of an administrative decision which does not produce any legal effects. That is why nullity stands apart from other flaws, and some authors do not qualify nullity as a flaw of administrative decision stricto sensu – because such an act is not a decision at all.[26]

A similar view on flaws of individual administrative acts (decisions) is also held for example by Slovak doctrine, which recognises: correctable formal flaws

21 Kopecký, 2023, p. 184.
22 Ibid.
23 Skulová, 2017, p. 228.
24 Kopecký, 2023, p. 185.
25 Ibid (p. 186).
26 Skulová, 2017, p. 229.

(grammatical errors, mistakes in numbers), materially incorrect acts, unlawful acts, and void acts.[27]

The term moderation implies that the court does not deal with the offence as an authority of the first instance. In that case, it imposes the penalty. Moderation, on the other hand, comes into play when the court verifies a penalty imposed by another authority, and it is a matter of the court's authority as to what it can do with such a penalty. In misdemeanour cases, the administrative authority primarily decides on two aspects - guilt and penalty. The court´s right to moderate a penalty is typically applied where part of the decision concerning the offender´s guilt stands, and the court agrees with it. However, there is an issue with the penalty part of the decision that the court needs to address.

2.1 Principle of full jurisdiction v. Cassation principle

The principle of full jurisdiction, sometimes called full jurisdiction requirement under Article 6 of the ECHR, is the cornerstone of the court's authority to intervene with imposed administrative penalties. Since the 1980s, the ECtHR has emphasised the core significance of full jurisdiction to implement Article 6 in administrative law disputes.[28] In the cases falling under both civil and criminal limbs of Article 6, ECtHR has repeatedly argued that full jurisdiction means a tribunal having jurisdiction to examine the merits of the matter, which is thus capable of reviewing the facts as well as the law, point by point, without ever having to decline jurisdiction when replying to them or ascertaining various facts.[29] As Pomahač[30] further explains,

> "Subsequent judicial review must, however, be carried out by a body with full judicial authority when civil rights and obligation, or any criminal charges whatsoever, are being decided about. To be in conformity with the concept of full jurisdiction within the meaning of the ECtHR´s case law, both lawfulness and the quality of discretion must be reviewed."

According to ECtHR court (or tribunal) has to have the power to examine the merits of the case, to establish the facts and to assess the evidence[31], to rule on the rights of the interested party.[32] ECtHR has reasoned in its case law that an

> "administrative court having full jurisdiction must be as competent as an administrative body to the effect that it will be able to, item by item, reconstruct factually and evaluate legally what a civil servant considered"[33].

The principle of full jurisdiction is easily applicable (in most European countries) in ordinary court disputes in civil and criminal law. In these disputes, courts are not generally limited and have the role of finding the law, and their final decision is an expression of their deliberation. If we were to apply the

27 Hašanová and Dudor, 2019, p. 65; see also Bumke, 2012, p. 1211-1238.
28 Allena, 2020, p. 299.
29 Ibid.
30 Pomahač and Handrlica, 2017, p. 45.
31 ECtHR Case of *Grande Stevens v. Italy*, 4. 3. 2014, Application no. 18640/10.
32 ECtHR Case of *Segame SA v. France*, 7. 6. 2012, Application no. 4837/06.
33 Pomahač and Handrlica, 2017, p. 45.

principle of full jurisdiction to administrative justice fully, it would mean that administrative courts should have the right to make substantive decisions - that is, replace the decisions of administrative authorities with their own decisions. And as we will see further, Austria has successfully followed this path. It must be mentioned that the court's power to moderate administrative penalties is an expression of such a concept.

Undeniably, full jurisdiction requirement interferes with the principle of separation of powers between the judiciary and the executive.[34] If courts have the power to replace decisions of administrative bodies with their assessment, then it is courts who perform the role of administrative bodies, and administrative decisions result from judicial assessment, not the assessment of executive authority.

For further explanation, it is also important to clarify the cassation principle, which is equally significant and can intersect with the principle of full jurisdiction. The cassation principle, in general, refers to a legal concept where higher courts, typically appellate or supreme courts, have the authority to review and evaluate lower court decisions for legal errors or violations of procedural rules, rather than re-examining the case on its merits. This principle allows for a form of control and consistency in the legal system by ensuring that decisions rendered by lower courts adhere to the law and correct legal procedures while leaving decision-making to the first instance.

Cassation is one of the three main corrective systems, alongside appeal and revision. All these systems developed in Europe over time and their historical evolution is quite significant.[35] Even though the cassation principle originated in France and manifested itself in the name of *Cour de cassation*[36], it is nowadays a pretty common principle in administrative justice in many EU countries. The difference between the three principles mentioned above can be described as follows. Appellate jurisdiction allows for a comprehensive re-examination of a case's legal and factual aspects. Meanwhile, cassation jurisdiction focuses on correcting legal errors without re-examining facts. And finally, review jurisdiction provides a limited scope for revisiting a case based on specific grounds. Although these systems are primarily associated with the decision-making of higher courts[37], this system can also be applied to determine the underlying principle of administrative justice. While in the civil or criminal branches of judiciary, it is common for different systems to apply to different levels, in administrative justice (in most compared countries), it is relatively common for the cassation principle to apply to both the first instance court and the Supreme Administrative Court.[38]

34 Allena, 2020, p. 300.

35 Geeroms, 2002.

36 The history of the present French cassation systems with its specific features goes back to the period of the French Revolution of 1779. Its roots can, however, be traced back to the proceeding period of the Ancien Régime and even back to the Roman Empire. For more detailed history Geeroms, 2002.

37 Bobek, 2009, p. 36.

38 Kühn et al., 2016, p. 640.

Cassation is often contrasted (as mentioned above) with full jurisdiction, which involves a higher court re-examining a case's legal and factual aspects. In a system with full jurisdiction, the court can make an entirely new decision rather than simply identifying errors made by the lower court or administrative body. The cassation principle aims to balance achieving legal correctness and efficiency. It allows for reviewing legal issues and procedural matters without re-litigating the entire case, saving time and resources.

2.2 European Convention on Human Rights

The question, of course, is why the ECHR is relevant and how all of this is related. ECHR stands as a monumental testament to the commitment of European nations towards safeguarding fundamental rights and ensuring justice for all. The core motivation underlying the adoption of the ECHR was to prevent a recurrence of the atrocities witnessed during World War II and to establish a system of checks and balances that would preclude the arbitrary exercise of state power.

This work primarily concerns Article 6 of the ECHR, which guarantees the right to a fair trial. Article 6 is a bulwark against undue state intervention and guarantees individuals the right to a competent, independent, and impartial court. Article 6 underscores the significance of due process, ensuring that individuals are provided with the essential tools to defend their rights. According to Teleki[39], the right to a fair trial is the most important provision of the ECHR. Teleki further continues:

"Fair trial is the transmission belt that ensures the smooth functioning of power by presenting the problems that the individual encounters to the authority that has the competence, the tools and, hopefully, the will to solve it"[40].

From the presumption of innocence to the right to examine witnesses, procedural safeguards within Article 6 are instrumental in preserving the integrity of legal proceedings. Moreover, the principle of impartiality underscores the importance of an objective tribunal, free from bias and undue influence, thus nurturing public trust in the judicial system.

According to Article 6, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. From a *stricto sensu* perspective, Article 6 of the ECHR naturally applies to civil and criminal proceedings. Fair hearing requirements are stricter in criminal cases than civil law ones. Generally, we can state that even though Article 6 speaks only about civil and criminal proceedings, the rules of Article 6 of the ECHR are not exclusive to these two types of proceedings. As ECtHR stated, the words "civil" and "criminal" do not match their equivalents in domestic law,[41] and Article 6 (1) applies irrespective of the parties' status,

39 Teleki, 2021, p. 93.
40 Ibid.
41 ECtHR Case of *Grzęda v. Poland*, 15. 3. 2022, Application no. 43572/18.

the nature of the legislation governing the "dispute" (civil, commercial, administrative law etc.) and the nature of the authority with jurisdiction in the matter (ordinary court, administrative authority etc.).[42]

According to ECtHR, being charged with a misdemeanour is almost always equivalent to a criminal charge under Article 6 of the ECHR.[43] Because of that, misdemeanour cases are also ruled by the principle of full jurisdiction, as stated in the previous section. When reviewing a misdemeanour decision, the court is thus subject to the full jurisdiction requirement while considering the cassation principle typical of administrative justice. So, how do selected countries deal with this in their legislation?

3 Selected countries

There are several types of administrative judiciary in Europe, and before going into a detailed examination of selected countries, it is important to explain them. We can identify four basic types[44] of administrative judiciary:

I. The Prussian model, also known as the North German model, strongly emphasised fair decision-making by including civilian participation. Unlike solely safeguarding individual rights with limited oversight of administrative discretion, this model primarily aimed at protecting the legal framework from the influence of local authorities within the administrative judiciary system.

II. In the French type of administrative judiciary, specific entities within the public administration handle judicial matters. Although these bodies are not formally acknowledged for judicial independence, they practically possess it, owing to tradition and public sentiment. The apex of this system is the State Council, which not only exercises judicial review but also functions as an advisory body to the government.

III. The English model of administrative justice revolves around the role of general courts in protecting administrative actions. Unlike some other systems with specialized administrative courts, in the English model, regular courts (such as the High Court, Court of Appeal, and Supreme Court) handle disputes related to administrative law.

IV. The Austrian model of administrative justice is characterised by the presence of specialised administrative courts that are distinct from both the regular court system and the administrative bodies. This model involves a separate judicial structure dedicated explicitly to handling disputes related to administrative law.

42 ECtHR cases: Case of *Bochan v. Ukraine*, 5. 2. 2015, Application no. 22251/08; Case of *Naït-Liman v. Switzerland*, 15. 3. 2018, Application no. 51357/07.

43 ECtHR cases: Case of *Lutz v. Germany*, 25. 8. 1987, Application no. 9912/82; Case of *Marčan v. Croatia*, 10. 7. 2014, Application no. 40820/12; Case of *Lauko v. Slovakia*, 2. 9. 1998, Application no. 4/1998/907/1119; Case of *Balsyté-Lideikiené v. Lithuania*, 4. 11. 2008, Application no. 72596/01.

44 Mikule, 1993; Kozelka, 2022, p. 16-18.

Dogmatically adhering to these models is not very feasible in today's conditions, as they represent concepts of administrative justice from which administrative justice evolved. Today, it is more about a fundamental framework from which subsequent legislation on administrative justice emerges, which, however, may exhibit various characteristics from different models. The English and French models are not applied in the countries under review, as judicial review in all four countries is carried out by more or less specialized administrative courts. In the Czech Republic, the review of certain decisions in which administrative authorities decide on private rights is entrusted to general courts. However, this is an exception. The system of Austrian administrative justice naturally derives from the Austrian model, which, however, has undergone significant changes, as will be described below. Considering the shared history of the Czech Republic, Slovakia, and Austria, the Austrian model understandably influenced the first two named countries, whose administrative justice (as part of Czechoslovakia) after 1918 was based on the Austrian model. The Czech Republic subsequently returned to this model, as will be described below. The German model of administrative justice naturally derives from Prussian model, but has some common signs with Austrian model – administrative justice is being done by administrative courts and not general ones. The German model involves greater specialization of administrative courts (for example taxes, labour, social matters etc.), whereas the other examined countries do not have this specialization. Austria, during the aforementioned administrative justice reform, introduced a Federal fiscal court, but otherwise adhered to the general specialization of administrative courts.

3.1 Czech Republic

Moderation of administrative penalties has been known in Czech law since 2003, in connection with the enactment of Act No. 150/2002 Code of Administrative Justice ("CAJ"). It has remained unchanged for two decades. Before 2003, Czech administrative courts could not moderate administrative penalties and could not even examine their proportionality[45]. Therefore, disproportionate but legal penalties could not be remedied before the court. This situation led to an intervention by the Constitutional Court of the Czech Republic[46], which annulled legal provisions concerning administrative justice and, relating to Article 6 of the ECHR, essentially directed the legislature to establish full jurisdiction to review administrative penalties. Moderation was one of the outcomes of these efforts.

This is also obvious from the explanatory memorandum to the law above, according to which the legislator proceeded with this change to comply with Article 6 of the ECHR and Fundamental Freedoms. Specifically, the legislator states that

> "administrative jurisdiction should generally ensure jurisdiction in cases of full jurisdiction review of decisions of administrative bodies that fall under the re-

45 Act No. 99/1963, Civil procedure Code.

46 Decision of Constitutional Court of Czech Republic, 27. 6. 2001, Case no. Pl. ÚS 16/99, available at: https://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-16-99_1.

> gime of Article 6(1) of the European Convention, i.e., decisions on civil rights and obligations or criminal charges."[47]

At another point, the explanatory memorandum to Sections 64-77 of the CAJ adds that

> "a completely fundamental further change, which - in some cases with considerable reservation - fulfils the requirements of the Convention, is the opening of free administrative discretion to judicial review to a much greater extent than under the previous regulations."[48]

The primary goal of introducing moderation was thus to establish a regime of full jurisdiction by the court in reviewing decisions by which an administrative body imposed a penalty. This allows the court (under conditions that will be discussed later in this article) to replace administrative discretion.

Section 65(3) of the CAJ establishes separate standing to sue in actions against decisions of administrative authorities, according to which if an administrative authority has decided to impose a penalty for an administrative offence, the person on whom such penalty has been imposed may, by action, also seek its waiver or reduction within the limits allowed by law. This entails a relatively independent standing to bring a lawsuit, and the submitted proposal can therefore only be justified by a request for reduction of the penalty or a request for its complete waiver, without the plaintiff having to challenge the substance of the decision. However, as emphasized by Šuránek[49], it is not an entirely independent standing to sue per se:

> "The third paragraph does not regulate a new version of active procedural standing, but in essence, it is a special provision relating exclusively to persons authorized to bring a lawsuit based on Section 65(1)."

Moderation can be found in Section 78(2) of the CAJ, which introduces application criteria: If the court decides on a lawsuit against a decision by which an administrative authority imposed a penalty for an administrative offence, and if there are no reasons for annulment of the decision according to paragraph 1, but the penalty was imposed in a manifestly disproportionate amount, the court may waive it or reduce it within the limits allowed by law if such a decision can be made based on the factual situation on which the administrative authority relied, and which the court, if necessary, supplemented through its evidentiary proceedings in non-essential directions, and if such a procedure was proposed by the plaintiff in the lawsuit. The court can thus proceed with the moderation of the penalty if the above-mentioned criteria are met. These criteria can be summarised below. If the court:

(i) decide on a lawsuit against a decision by which an administrative authority imposed a penalty for a misdemeanour,

47 In Czech language available at: https://www.psp.cz/sqw/text/tiskt.sqw?o=3&ct=1080&ct1=0.
48 Ibid.
49 Jemelka et al., 2013, p. 509.

(ii) there are no reasons to annul the decision due to unlawfulness or procedural flaws,

(iii) imposed penalty is manifestly disproportionate,

(iv) the court may reduce the penalty within the limits allowed by law or waive it,

(v) moderation can be applied based on the factual situation on which the administrative authority relied, and which the court supplemented, if necessary, through its evidentiary proceedings in non-essential directions, and

(vi) if moderation was proposed by the plaintiff.

To extensively describe individual conditions would mean that the focus of this article would lie on details of Czech legal regulation rather than on comparing regulations in different countries. However, it is important to highlight one condition that is contentious in the Czech legal environment and can limit the application of moderation in comparison to other countries. The most contentious condition is the requirement of a manifestly disproportionate sanction. For moderation of a penalty, ordinary disproportionality is insufficient, as manifest disproportionality is required. Presumably, by this definition, the legislator wanted to limit the court's moderation right to truly extreme cases. In the spirit of the abovementioned, a penalty that is both manifestly disproportionate and illegal (for example due to disregarding one of the aspects of the offence) can only be annulled. This condition therefore applies to sanctions that are manifestly disproportionate but not illegal.[50] In the case law of administrative courts, a general and somewhat vague rule has been established that the purpose and aim of moderation is not to *seek the ideal amount of the penalty*[51].

Essentially, this only confirms what is already implied by the law. Imposing administrative penalties is the domain of the administrative authority, just as contemplating a specific penalty and its amount. Even if the court believes that a lower penalty would be more appropriate, it fundamentally cannot intrude into the deliberations of the administrative authority:

"In the course of judicial review, the courts cannot replace the essential activity reserved only for an administrative authority and public administration. They cannot 'step into the shoes' of the administrative authority and replace its activity with their own, even if it were accompanied by the best intentions."[52]

At the outset, the court must consider whether the imposed penalty is manifestly disproportionate in light of the specific circumstances of the case. Although there is no exact threshold for this manifest disproportionality, the Supreme Administrative Court generally rejects moderating fines at the lower

50 This ‚conflict' is resolved with general premise that there is a difference between the incorrectness or injustice of a decision and its unlawfulness; Hašanová and Dudor, 2019, p. 65; Skulová, 2017, p. 228.

51 Judgment of the Supreme Administrative Court of 19 April 2012, Case no. 7 As 22/2012-23, available at www.nssoud.cz.

52 Bohadlo et al., 2013, p. 119.

limit in the order of single-digit percentages, stating that "*a penalty that was imposed just above the lower limit of the statutory range cannot be considered manifestly disproportionate*".[53] In the present case, the Supreme Administrative Court did not accept the moderation of a fine imposed at a rate of 4% of the statutory rate, stating that *"a fine imposed at 4% of the statutory range will most likely not be considered 'manifestly disproportionate*."[54] Similarly, the Supreme Administrative Court rejected the moderation of a fine originally imposed at a rate of 0.3% of the statutory rate, which, however, considering the large statutory range, still amounted to a multi-million fine. The Supreme Administrative Court specified for precise quantification of manifest disproportionality that

> "it is not possible to quantify in advance, for all future cases, what percentage of the maximum possible rate expressed in the fine would be manifestly disproportionate. Although such an indicator may be a significant guide for the court's conclusion on the manifest disproportionality of the imposed sanction, one cannot rely on it completely and exclude the possibility that in certain cases, a penalty imposed at a rate of 1% of the statutory range could not be manifestly disproportionate."[55]

When contemplating moderation, the regional court must determine where the imposed penalty falls on a hypothetical scale of the statutory range. The closer to the lower limit, the less the fine is 'worthy' of moderation. Furthermore, it is up to the court to address the question of proportionality, that is, to balance the plaintiff's conduct (generally, the factual circumstances of the case) on one side and the imposed penalty on the other. What the court should consider when examining the factual circumstances of the case has also been defined by case law:

> "The imposition of a penalty is based on two fundamental principles - the principle of the legality of the penalty and the individualization of the penalty. … From the perspective of the individualization of the penalty in a given case, the seriousness of the administrative offence, the significance of the protected interest that was affected by the administrative offence, the manner in which the administrative offence was committed, its consequences, and the circumstances under which it was committed, are particularly relevant."[56]

Article 6 of the ECHR therefore empowers the court to evaluate both the legality and the proportionality of the penalty. This fully satisfies the condition that the court has the final say. However, on the other hand, the Czech regulation imposes very strict conditions and limits the court's power to moderate penalties (compared to other countries, as will be further explained). CAJ places a strong emphasis on the separation of public administration (administrative authorities) and administrative justice. In particular, the Supreme Administrative

53 Judgment of the Supreme Administrative Court of 21 August 2003, Case no. 6 A 96/2000-62, available at www.nssoud.cz.

54 Ibid.

55 Judgment of the Supreme Administrative Court of 20 December 2012, Case no. 1 Afs 77/2012-46, available at www.nssoud.cz.

56 Judgment of the Supreme Administrative Court of 30 September 2010, Case no. 7 As 71/2010-97, available at www.nssoud.cz.

Court strives to draw a clear distinction and appeal to lower courts that the imposition of penalties falls within the purview of administrative bodies, not the courts. Such a concept separates the executive power (administrative authorities) from the judicial power. Administrative authorities prosecute misdemeanours and impose penalties, while courts perform purely revisionary roles. However, strict separation can also represent one of the biggest negatives. Courts are often constrained by the "fear" of interfering with the discretion of administrative authority. Moderation of administrative penalty is seen as something "out of the ordinary", that must be thoroughly justified.

3.2 Slovakia

The administrative law and justice system in Slovakia is very similar to the Czech legal regulation. It is based on a two-tier administrative proceeding with the possibility of appealing to a superior authority.[57] Against decisions in the appellate proceedings, it is then possible to file lawsuits with administrative courts, and almost all decisions of administrative courts[58] can be challenged by cassation appeals to the Supreme Administrative Court.[59] A key principle of Slovakian administrative justice is, as in the Czech Republic, the cassation principle.[60]

The close connection between both countries is understandable due to their shared history. As to administrative justice, both countries had the same legal regulation[61] up until 2003, when the Czech Republic adopted CAJ (as explained above). Slovakia reformed its administrative justice system by adopting Act No. 162/2015, the Administrative Justice Code ("AJC") in 2015.

Even though the main principle of Slovakia´s administrative justice is the cassation principle, AJC is relatively lenient in terms of exceptions from that principle. AJC constitutes several types of moderation. As this article is aimed at misdemeanours, main focus will be on penalties. Although it is worth mentioning, that AJC allows the court to perform monetary moderation - the administrative court may, based on the results of evidence it has carried out, by judgment, reduce the amount of monetary performance or compensation for damage that was awarded by the contested decision of a public authority or by a measure of a public authority, if the plaintiff proposed it, and the awarded amount of monetary performance or compensation for damage is unreasonable or destructive towards the plaintiff.[62]

Moderation of administrative penalties can be found in Section 198 of the AJC. The conditions for it are as follows:

57 Act No. 71/1967 Administrative proceedings Code.
58 Slovakia currently has 3 administrative courts – in Bratislava, Košice and Banská Bystrica (Section 10 of the Act. No. 162/2015).
59 Baricová et al., 2018, p. 1589.
60 Baricová et. al., 2018, p. 956.
61 Act No. 99/1963 Civil procedure Code.
62 Section 192 of the AJC.

(i) decide on a lawsuit against a decision by which an administrative authority imposed a penalty for a misdemeanour,

(ii) imposed penalty is disproportionate to the committed misdemeanour, or can have a destructive effect on the offender,

(iii) the court may reduce the penalty within the limits allowed by law or waive it,

(iv) if such court´s procedure arises from the evidence presented by the court,

(v) and if moderation was proposed by the plaintiff.

When it comes to the nature of the penalty that can be moderated, the Slovakian legal regulation is, compared to Czech law, more favourable to plaintiffs. It allows for the moderation of a disproportionate penalty, and it doesn't have to be manifestly disproportionate as in the Czech law. Interestingly, Slovakian law allows the court to moderate a destructive penalty, which is a separate category of penalty alongside disproportionality. A penalty that is otherwise proportionate can still have a destructive impact on the offender. In contrast, a Czech administrative court can moderate a destructive penalty only if it's also manifestly unreasonable. This can present an obstacle, especially for moderating penalties at the lower limit of the range. On the other hand, a Slovakian administrative court can take into account only the financial situation of the plaintiff, without really having to deal with the proportionality of the penalty.

An intriguing aspect of the entire Slovakian regulation is that both monetary moderation and moderation of administrative penalties rely on a certain level of court procedural activity. Both aforementioned provisions[63] stipulate that the administrative court can engage in moderation based on the results of evidence it has carried out. Does this mean that the administrative court has to conduct evidence gathering to moderate? Clearly, yes. The essence of this condition (always significantly connected with any procedure within the full jurisdiction in a broader sense) is the fact that the administrative court not only issues a decision in the administrative matter itself but simultaneously secures the basis for it. Without the conducted evidence gathering, the change of a decision by a public authority regarding the amount of monetary performance or compensation for damage would essentially have the character of intervening in its administrative consideration, without the administrative court replacing the public authority's consideration with its consideration.[64]

3.3 Austria

The administrative judicial system in Austria significantly differs from the countries currently being compared. Therefore, it is appropriate to briefly mention its development[65] and current state. As was described above, Austrian administrative justice is one of the four main systems. Austrian conception lay in two-tier administrative proceedings with judicial review being per-

63 Section 192 and 198 of the AJC.

64 Baricová et. al., 2018, p. 956.

65 The Austrian Judicial System [online]. Available at: https://www.justiz.gv.at/file/8ab4ac8322985dd501229d51f74800f7.de.0/cover_und%20text_the%20austrian%20judicial%20system_neu.pdf?forcedownload=true.

formed by independent administrative courts. And Austrian system heavily influenced the form of the administrative judiciary in Czechoslovakia. As Hácha[66] states, the history of the former Austrian administrative court is also the history of the Czechoslovakian administrative court.

Administrative justice in Austria was based on the principle of cassation, which had been in place since its inception in the nineteenth century. In 1876, the Administrative Court was established, empowered to handle administrative matters. It made decisions based on facts established by administrative authorities. If severe breaches of lawful procedure occurred, the Court could nullify contested administrative acts. It developed fair procedural principles for administrative procedures. This led to the Austrian General Administrative Procedure Act in 1925. After World War I, the Administrative Court was established to ensure public administration's legality. It could handle appeals against final administrative decisions and address administrative inaction. These powers persisted with minor changes until the 2013 Administrative Jurisdiction Reform.[67] Needless to say, the administrative process in Austria was also (mostly) two-tiered and only after completion of the administrative procedure one could appeal to the administrative court. As Köhler[68] states, the Administrative Court in all those years was the only court to decide on administrative matters. The review of administrative acts had to be carried out concerning the legality of the contested act. Moreover, the Administrative Court had to restrict its examination to the possible breach of the rights of the applicant. It had no competence to decide on the merits of the (administrative) case (instead of the administrative authority) but could only quash the act in case of its illegality.[69]

Over a decade ago, Austria decided to transform the entire system of administrative authorities and administrative justice[70]. As of January 1st, 2014, an extensive reform was implemented in the realm of administration in Austria, resulting in a significant reshaping of its functional structure. As Storr[71] explains,

> "With effect from 1 January 2014, there was a fundamental reform of the administrative jurisdiction. Previously, legal protection against administrative rulings was as follows: generally, there was either the possibility of an internal administrative appeal (Berufung) to the next authority in the hierarchy or an appeal to the so-called Independent Administrative Senates (Unabhängige Verwaltungssenate – UVS). … Judicial relief against their decisions was possible from the Supreme Administrative Court (Verwaltungsgerichtshof) and/or the Constitutional Court (Verfassungsgerichtshof). In addition, there were special administrative courts such as the Asylum Court and special appeal bodies like the Independent Environmental Tribunal (Unabhängiger Umweltsenat) as well as the so-called collegial authorities with a judicial impact."

66 Hácha, 1932.
67 Köhler, 2015, p. 33.
68 Ibid.
69 Olechowski, 1999.
70 Köhler, 2015, p. 37-38.
71 Cananea and Andendas, 2021, p. 37.

This comprehensive transformation not only encompassed the restructuring of the Supreme Administrative Court (*Verwaltungsgerichtshof*) but also entailed the establishment of the Federal Administrative Court (*Bundesverwaltungsgericht*) as well as the introduction of the Federal Fiscal Court (*Bundesfinanzgericht*). In addition to these pivotal judicial bodies, the revamped administrative landscape now features nine regional administrative courts, each serving as an integral cornerstone of the reformed system. These regional administrative courts have assumed the roles and responsibilities formerly vested in the autonomous administrative panels (*unabhängige Verwaltungssenate*), which held jurisdiction within the various states before the comprehensive reform initiative. This monumental reform aimed not only to streamline and modernize the administrative judicial processes but also to establish a more coherent and efficient structure that could cater to the evolving demands of a dynamic administrative landscape. By unifying the roles and functions of various administrative entities under a more cohesive framework, Austria aspired to enhance the effectiveness of its administrative justice system while ensuring a higher degree of consistency and fairness in the adjudication of administrative matters. In essence, Austria's administrative system overhaul in 2014 marked a significant milestone in the country's legal and judicial evolution. By creating a harmonious and integrated administrative justice framework that encompasses the Supreme Administrative Court, the Federal Administrative Court, the Federal Fiscal Court, and the regional administrative courts, Austria aimed to foster a more just and efficient administrative judicial environment that could respond adeptly to the complexities and challenges of contemporary governance.

In terms of moderation, it is necessary to point out that the

> „administrative court of first instance generally decides on the merits of the case. Only in very exceptional cases does it set aside the contested act by the authority and refer the case back to it."[72]

As we have seen in cases of Czech and Slovakian regulation, moderation of penalties is somewhat an exception from the otherwise strict revisionary role of administrative courts. In Austria, however, administrative courts of first instance possess a much more active role and decide upon the merits of the case.

Under Section 50 (1) of the Administrative Justice Code[73] (VwGVG), unless the appeal to the court is to be dismissed or the proceedings discontinued, the Administrative Court shall decide on the merits of the appeal under Article 130 para. 1 subpara. 1 of Federal Constitutional Law[74] (B-VG).

Therefore, administrative courts can moderate penalties or completely waive punishment. Also, due to the system of administrative jurisdiction, there are no strict rules for the court to meet to moderate a penalty.

72 Ibid (p. 39).
73 Verwaltungsgerichtsverfahrensgesetz.
74 Bundes-Verfassungsgesetz.

3.4 Germany

The administrative judicial system in Germany is a bit more complicated. When Czech Republic and Slovakia administrative justice is being exercised by general administrative courts dealing with all issues of administrative law, Germany has a four-branch administrative judiciary, which divides into Tax law courts (*Finanzgerichte*), Labour law courts (*Arbeitsgerichte*), Social law courts (*Sozialgerichte*) and General administrative law courts (*Verwaltungsgerichte*). In misdemeanour cases, jurisdiction of general local courts also applies, as will be explained below.

In the field of administrative proceedings in Germany, it is necessary to emphasize the dichotomy between regular administrative proceedings and proceedings related to misdemeanours. Both types of proceedings have distinct legal regulations.[75] Such dichotomy exists in a way in the Czech Republic, Slovakia and Austria, which all have separate regulations for misdemeanour proceedings. During judicial review, however, legal regulations of other compared countries are unified, and the judicial review is governed by the general code regulating proceedings before administrative courts. The German Regulatory Offenses Act[76] (OWiG) not only regulates the procedures of administrative authorities but also governs subsequent judicial review.

According to Section 113 paragraph 2 Code of the Administrative Court Procedure[77] (VwGO), it is generally allowed for the court to alter the contested decision in part where the plaintiff is ordered to make a specific monetary payment. Such monetary payments can be fees, contributions, fines, administrative fines, penalties etc.[78] VwGO does not directly say, whether the court can moderate such payment. However, we can clearly say, that court has such authority.[79] From a relatively general law, we won't learn much about the conditions under which a court can proceed with the moderation of a penalty (and monetary obligations in general). The following conditions are inferred from the provisions:

(i) Only on plaintiff's request,

(ii) it concerns a decision imposing a specific monetary obligation,

(iii) the court may,

(iv) determine a different amount,

(v) as long as it does not require a significant effort for the court to quantify it.

From the text of the law alone, it appears that the court can proceed with moderating essentially anytime the plaintiff proposes it. That is, there seems to be no criterion. However, this is not the case.[80] The aforementioned provi-

75 Verwaltungsverfahren (VwVfG) for general administrative proceeding and Ordnungswidrigkeitenverfahren (OWiG) for regulatory misdemeanours proceeding.

76 Ordnungswidrigkeitengesetz.

77 Verwaltungsgerichtsordnung.

78 Redeker/v. Oertzen § 113 Rn. 32; Eyermann/Kraft § 113 Rn. 10.

79 BeckOK VwGO/Decker, 65. Ed. § 113 Rn. 54.

80 Ibid.

sion does not open the possibility to replace administrative discretion with judicial discretion, but rather to only grant the plaintiff's proposal if the monetary obligation is unlawfully high. Therefore, the court is bound by the plaintiff's proposal and cannot determine the fine at its discretion. This constitutes an exception to the cassation principle of administrative justice.[81] Also, we must not forget that the court is, of course, limited by the principle of the prohibition of reformation in peius - therefore, it cannot increase the monetary payment to the detriment of the plaintiff.[82]

In Germany, however, a large portion of misdemeanours do not follow the classic process of administrative authority - administrative court. Minor misdemeanours are prosecuted via OWiG, as the fundamental procedural code for misdemeanours. It establishes different conditions for judicial review than the aforementioned VwGO. OWiG primarily deals with regulatory offences or minor violations of law that are not considered serious crimes. It covers a broad spectrum of misdemeanours like traffic violations, environmental breaches, and violations of administrative regulations. OWiG also refers to other legislation on many issues[83], the most important of which is the Criminal Procedure Code (StPO).[84]

Under OWiG judicial review is quite different than under VwGO. According to Articles 65 a 66 of the OWiG administrative authority imposes a penalty, which can be appealed by the accused through an objection (Article 67 of the OWiG). Most importantly, according to Article 68 of the OWiG, the competent court to decide on objection is the local court (*Amtsgericht*) and not the general administrative court (*Verwaltungsgerichte).* The great influence of criminal law and its laws can be seen in Article 71 of the OWiG, which states that the provisions of StPO shall apply to the objection procedure. Therefore, the local court deciding on an objection against a penalty imposed by an administrative authority proceeds under StPO. The imposed penalty does not bind the court ,and it decides on penalty at its discretion.[85]

4 Conclusion

A comparative analysis of administrative penalties and their moderation in the legal systems of the Czech Republic, Slovakia, Austria and Germany provides valuable insights into the different approaches and fundamental principles governing administrative justice. As we learned from the comparison of legal provisions, all four countries are familiar with court intervention with penalties imposed by administrative authorities. Moreover, the influence of the ECHR and the principle of complete jurisdiction is evident as they strive to comply. It is already clear how broadly or, conversely, narrowly individual countries interpret this principle. Aim of this article is not to prove that the moderation

81 Ibid.
82 Redeker/v. Oertzen § 113 Rn. 33.
83 Section 46 (1) OWiG.
84 Krenberger/Krumm OWiG § 1 Rn.9.
85 Krenber/Krumm OWiG § 71 Rn. 4.

of administrative penalties should be the same in all countries. However, it is undoubtedly attractive to observe that what is unthinkable and violates the separation of powers in one country functions routinely in another.

In the Czech Republic, the development of administrative law, particularly the adoption of the CAJ, has marked a major shift towards complete jurisdiction in reviewing administrative penalties. It is important to note that these are not revolutionary changes, but rather small steps taken in the right direction. The introduction of moderation was an essential result of alignment with Article 6 of the ECHR. However, the Czech legislation sets strict conditions for the moderation of penalties, particularly requiring that penalties be disproportionate, thereby limiting the court's interference with administrative discretion. Such an approach pursues a strict separation of powers between the executive and the judiciary. Still, it raises questions as to whether it is necessary to draw such a tough line at all. The examples of other countries then show that this tough line is not the only way to go. Overall, it is clear that Czech law is the most rigid one and does not want to allow the court to substitute administrative discretion.

Slovakia, which has a legal framework similar to the Czech Republic, has adopted AJC, which provides moderation in the administrative justice system. Unlike the Czech law, the Slovakian AJC allows for a broader scope of moderation, including sanctions that may be disproportionate or potentially destructive to the offender. This more moderation-friendly approach will enable courts to moderate sanctions based on various considerations broader than Czech law.

Austria underwent a significant reform of its administrative justice system in 2014, restructured it to create a more integrated and efficient framework. In contrast to the Czech and Slovakian systems, Austrian administrative courts, in the first instance, have a more active role that allows them to decide on the merits of a case, including the power to moderate penalties without strict rules. Although the Czech Republic and Slovakia have followed the Austrian administrative justice system in the past, Austria itself has moved on. The Austrian example shows that dogmatic adherence to the separation of powers between the judiciary and the executive may not be necessary and that another model works in practice. Administrative courts do not have to act as public administration reviewers but can actively participate in it.

The German administrative justice system is more complex in misdemeanours, as administrative courts (deciding on certain offences under the VwGO) and general courts (deciding on misdemeanours under the OWiG) are involved. It is safe to say that in neither of these regimes is the court prevented from reducing the penalty if necessary. The VwGO regime is close to the Czech and Slovakian systems but does not provide for any condition of disproportionality of the sanction imposed. Therefore, it is at the court's discretion whether to agree with the administrative authority's assessment. In the case of OWiG, on the other hand, the general court is the determining authority, which effectively decides on the penalty anew (applying principles from criminal law). In the case of OWiG, we can also see a very close relationship with criminal

law – even procedural laws from criminal law are used (StPO). While other countries maintain a particular gap between misdemeanours and criminal offences (separate laws, administrative courts), German law, on the contrary, brings the two violations closer together.

Reviewing these legal systems highlights the varying degrees of judicial intervention in administrative sentencing. While some jurisdictions enforce strict limits on the moderating powers of courts, others provide courts with greater latitude to address the disproportionate or disruptive impact of sanctions. These differences reflect differing legal philosophies, with some systems emphasising preserving administrative discretion and others favouring judicial oversight. The comparative analysis sheds light on the different approaches adopted by these countries, contributing to the broader discussion on administrative justice and sanction moderation in other legal contexts.

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Public Benefit and Public Interest in the Slovenian Legal System – Two Sides of the Same Coin?

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ABSTRACT

Purpose: Driven by the question of how the concepts of public interest and public benefit differ, this paper delves into the Slovenian legal system. Through an in-depth analysis of legal concepts, national regulations, and case law from the Slovenian Constitutional Court and selected cases from the European Court of Human Rights, its aim is to illuminate the key differences between both terms. Ultimately, the paper seeks to establish fundamental guidelines for understanding the distinct meaning and application of each concept.

Design/methodology/approach: The research is based on a content analysis research design, reviewing secondary literature sources. It employs qualitative methods by analysing the relevant theoretical points, rules, and constitutional case law in the Slovenian legal system, as well as selected European Court of Human Rights case law. The analysis focuses on identifying and extracting key theoretical arguments, legal definitions, and practical applications of both concepts. To distinguish between public benefit and public interest, the analysis adopts a comparative approach, examining how each concept is defined, applied, and balanced in different legal contexts. Additionally, synthesis is used to identify commonalities and divergences between different perspectives on these concepts. Finally, conclusions about the relationship between public benefit and public interest are drawn based on the analysed data.

Findings: Public interest and public benefit are abstract concepts. The analysis of relevant Slovenian systemic regulations shows that the two are sometimes applied interchangeably. However, theory suggests that there are certain differences in terms of their tangibility and enforceability. Constitutional case law refers to both concepts in a general way without fully defining their content, yet it does not treat them as synonyms.

Academic contribution to the field: Public interest and public benefit are central concepts of public administration science. Public interest is

key in defining and shaping administrative relations decided in an administrative procedure. It represents the core value of the public sector, ensuring that its operations are legitimate. Public benefit, on the other hand, is the general benefit of an organised wider community, superior to the benefits of individuals and generally considered equivalent to substantive legality. As public and private interests collide, state intervention with appropriate regulation is necessary to protect the public benefit.

Originality/significance/value: This research contributes to the understanding of the concepts of public interest and public benefit within the Slovenian legal system and is a novelty in the field as no such overview has been undertaken before. Its value lies in the analysis of Slovenian constitutional case law over the last twenty-two years and insights into European Court of Human Rights case law. The focus on European Court of Human Rights and Slovenian legislation and case law limits the generalisability of the findings to other contexts. This approach was chosen as much of the relevant legislation for this research is independent of EU influences. Nonetheless, being an EU member state, Slovenia's legal framework shares some commonalities with other European systems. The added value of the analysis lies in its relevance for understanding how these concepts are treated in similar legal systems, offering valuable insights for comparative studies.

Keywords: *administrative decision-making, administrative-political process, constitutional case law, public benefit, public interest, Slovenia*

JEL: K 19

1 Introduction[1]

In a contemporary society, numerous intersecting interests are pursued in the everyday life. Firstly, we have individual interests, which revolve around personal preferences and desires, such as the pursuit of spiritual fulfilment or material possessions. Secondly, there are common interests that emerge when groups of people unite to achieve shared objectives. However, it is crucial to understand that groups do not always voluntarily unite. Various factors such as external pressures (e.g. threat of war), circumstances (e.g. economic crisis), or shared challenges can bring people together, even without their explicit choice. This means that common interests can also bring people together despite their differences, as can be seen in the case of groups fighting for general beliefs or principles (e.g. environmental protection or human rights). Thirdly, general interests take shape through the dynamic interplay of various individual interests, adapting and evolving through interpersonal relationships (Trpin, 2005). Moreover, general interests can be shaped also through the collective interests, which emerge from the shared needs, goals, and values of a group of individuals, and they can significantly influence the formation of general interests within a community or society (e.g. right to

1 This article is a revised and updated version of the paper entitled "Public interest and public benefit as guidelines on administrative action", presented at the NISPAcee Annual Conference, Ljubljana, 21 October – 23 October 2021.

drinking water, collective interest in environmental conservation, prohibition of torture etc.). The term "public interest" can refer to shared interests or values that can be either broad and indefinite or embody a universally accepted moral standard (Sorauf, 1957).

The concept of the public interest holds a central position in political science, law, and public administration, and is defended by public interest advocacy groups. The term also plays a crucial role in the legal realm, particularly in the domain of regulatory commissions (Cochran, 1974). However, the broad scope and vagueness of the concept pose challenges to its practical application (Bezemek and Dumbrovský, 2020). On the other hand, Miloserdov (2021) emphasizes the importance of establishing a legal definition for public interests to improve the efficiency of legal activities.

The public interest theory of regulation claims that the primary goal of regulation is to safeguard the public interest from the influence of private interests, with a particular focus on corporate entities (Balla, 2011). The classical public interest theory is positive theory focusing on what motivates policy makers and also normative theory focusing on what should motivate policy makers (Levine and Forrence, 1990). However, the effectiveness of regulatory measures in serving the public interest has been questioned, as some scholars argue that inherent flaws make regulatory efforts inherently unsuccessful (Posner 1974; Horwitz 1989). This viewpoint is based on the idea that regulatory authorities might be influenced by internal factors or the self-interest of regulators, hindering the achievement of the public interest. This critical perspective has initiated debates in the field of regulatory research, especially within the contexts of public-interest versus private-interest theories and actor-centered theories (Ginosar, 2012).

The definitions of the concept of public interest may vary depending on disciplines, as they derive from different intellectual traditions. Economic school of public interest is a traditional one, dealing with market failures and market absence, focusing on economic goals. Meaning that the market fails to generate actions or outcomes in accordance with the public interest. Social school further on deals with other social and political goals (e.g. equality, environment etc.) (Ginosar, 2012). Finally, the procedural school of public interest theory prioritizes the democratic issues and difficulties connected with the regulatory procedure rather than the regulatory objectives (Christensen, 2011).

Further on, the "common good" has traditionally driven political philosophy and it is considered to be the target of politics and public service. Already Locke and Rousseau regard the pursuit of the "common good" as the objective of society or governmental endeavors (Rousseau, social contract, 2001). The concept of common good, however, varies significantly among philosophical doctrines. Previously Aristotle defined the common good as "good proper to, and attainable only by, the community, yet individually shared by its members". At the same time, Aristotle recognizes that the common good may not coincide with the sum total of particular goods (Diggs, 1973; Dupre, 1993). A complete history of the concept is beyond the scope of the present

paper, but the base upon this paper is built on is to recognize that the common good is not simply the sum of individual benefits. In this broader context, public benefit can refer to what is beneficial for all or most members of a community, while public interest is a more general concept regarding issues of great importance to the society, like human rights or democratic principles which impact the welfare of an entire society (see Table 1).

Table 1: Public benefit v. Public Interest

	Public Benefit	Public Interest
Definition	Activities that enhance the general well-being of society	Matters of great importance to society
Scope	Specific and measurable	Broad and subjective
Consequences	Direct practical impact on individual lives	Supporting fundamental values and addressing societal matters

Source: own

In some cases, the two concept may be antithetic, like in the case of the realization of a big public infrastructure (e.g. a stadium). In specific cases, the public benefits generated by the infrastructure may collide with the public interest, by diverting public money from essential public services.

The case of Julian Assange illustrates even better the delicate balance between public interest and public benefit. Exposing illegal behaviors committed by governments, including violations of human rights is clearly in the public interest. Wikileaks revelations raised awareness about critical matters of transparency and accountability, helping the public to take more informed decisions. On the other hand, it may be argued that the release of sensitive information may have compromised military operations, damaged diplomatic relationships, and infringed privacy. The ongoing detention of Julian Assange is revealing the choice to privilege the public benefit derived from maintaining secrecy in certain areas and discouraging transparency over the public interest in freedom of press and the human rights to a fair trial (Springer et al., 2012; Driver, Andenæs and Munro, 2023).

The paper deals with the public interest as an institutional and normative phenomenon, which is particularly important in a state governed by the rule of law. To fulfil the criteria of the rule of law, the public interest should be shaped through a democratic process of policymaking. It must be noted that the public interest and the rule of law influence each other. The democratic process of policymaking is a crucial process through which these dynamics are negotiated and refined, aiming to achieve a harmonious balance between individual and collective interests within the biding framework of legal principles. The rule of law defines legal criterions within which public interest is defined and protected. It ensures that the decisions are made by the rules

within legal framework. On the other hand the concept of public interest is crucial for the foundation of the rule of law. Legal system needs to recognize and balance different interest within the legal system, which is vital for forming the rule of law. Moreover, the rule of law itself is a result of balanced various interests that are recognized by the system. The conclusion would therefore be that the rule of law and public interest are intertwined "concepts" that shape each other. The paper deals with the shaping of the public interest through the process of public governance based on the Parsons's theory of three levels of governance.

Law is one of the primary instruments for delineating the concept of the public interest. However, besides the public interest, Slovene legislation defines also the public benefit, sometimes even as a synonym thereof. Both terms are variable legal concepts, the content of which is yet to be given substance in each individual case in accordance with the purpose established by law. Normally, the concept of public interest should be interpreted with regard to the objectives of the law and the conditions it sets for acknowledging rights, legal entitlements, or obligations. For example, when public body in administrative procedure decides whether a party has a right to public money (e.g. social benefits, subventions etc.) in this case the public interest is *efficient use of public funds* in accordance with the purpose as defined by law (Kovač and Jerovšek, 2023). What will be the objectives of the law and the conditions it sets for acknowledging rights, legal entitlements, or obligations is up to the legislator in a given time and space and is subject to changes under the influence of social changes during specific time and specific space. Acknowledging inherent variability and complexities of the concepts allows for a more refined understanding of their application in diverse legal and social contexts.

In European law, public interest is not defined. Its application at the European level may correspond to the interests of public institutions and to private interests. Meaning that the public interest is not necessarily represented by public institutions, either common EU institutions or Member States, but also private entities. There were attempts to find a common definition of public interest at European level that would be based on national definitions. The research by Hossfeld et al. (2018) analyzed countries representing common law and civil law systems (United Kingdom, Germany, Spain, France, Italy, and Romania). However, no common definition could be derived. The terminology in the law among countries was diverse (e.g. public interest, common good, general interest etc.). None of these countries established a definition of the concept and have several different interpretations of the concept. In Romania, it correlates with the national interest, while in Spain it correlates with the interest of public institutions. In Italy similarly as in Slovenia, the concept is employed to administrative procedures or the public goods protection. It is deemed respected when the administration's decision-making procedure involves the representation of multiple interests, including private and collective interests, thereby granting legitimacy to the procedure (Hossfeld et al., 2018). Ultimately, in United Kingdom, the concept of the public interest predominantly serves as a means to validate or rationalize the actions of dif-

ferent private or public entities and is a suspect notion. Namely, in Anglo-Saxon jurisdiction the adjective "public" refers to society as a whole and not government or public entities. Things done in public interest are things done in the interest of society. On the other hand, also in continental Europe, the term "public" can be used this way, but more often, it is associated with governments and their institutions or agencies (Hossfeld et al., 2018). Based on comparative approach no common concept at the European level could be established, nor common definition. The same applies for EU (Hossfeld et al., 2018). According to Article 17 of the TEU "The Commission shall promote the general interest of the Union and take appropriate initiatives to that end." However, the EU law does not define what is general interest (Herault, 2009).

Based on the research by Hossfeld et al. (2018) there are several findings established with which we could strongly agree. In general, the concept refers to the interests that need to be protected or defended. As such, it makes it possible to legitimize an action and is therefore a tool applied by the policy. Finally, leaving the concept without clear definition can serve better to the functioning of the whole system (e.g. possibility to adapt the adoption of international accounting standard to the particularities of the European financial market) (Hossfeld et al., 2018). As argued by de Lima and de Fonseca (2021) the notion of public interest is subject to debate, and determining the criteria for effective regulatory outcomes should consider the socioeconomic disparities among the countries under examination. Since there is no common definition among countries and on EU level, the aim of the paper is to define situation in Slovene system.

Therefore, the paper analyses the meaning of public interest and public benefit in Slovenian legal system, since both of these concepts are relevant and present in Slovene law. The relevant regulation in the field of administrative law is identified (selected procedural as well as substantive law) and analyzed to determine the content of both terms. Since both terms are variable legal terms of which the content is yet to be determined by interpretation, the relevant Slovene constitutional case law of the last twenty-two years is studied and the differences between the concepts are identified. Furthermore, selected relevant case law of European Court of Human Rights is presented.

2 Methodology

Article uses a content analysis design, focusing on secondary literature sources related to public benefit and public interest. Data sources include academic journals, books, relevant national legislation, European Court of Human Rights case law and Slovene constitutional case law.

The analysis focused on identifying and extracting key theoretical arguments, legal definitions, and practical applications of both concepts. To distinguish between public benefit and public interest, the analysis adopted a comparative approach, examining how each concept is defined, applied, and balanced in different legal contexts and where relevant other multidisciplinary con-

texts. Additionally, synthesis was used to identify commonalities and divergences between different perspectives on these concepts. Finally, conclusions about the relationship between public benefit and public interest were drawn based on the analyzed data.

The choice to focus primarily on European Court of Human Rights and on Slovene legislation and case law limits the generalizability of the findings to other contexts. Such approach was performed since most of the relevant legislation for this research is absent from EU influences. On the other hand, being Slovenia an EU member state, its legal framework shares some commonalities with other European systems. The added value of the analysis is its relevance for understanding how these concepts are treated in similar legal systems, offering valuable insights for comparative studies.

3 Administrative-political process as a tool do define public matters

Every organization exercises its authority to determine its objectives and the methodologies employed to attain them, a process commonly referred to as governance process (Virant in Vlaj, 2006, p. 50; cf. Rahman, 2019). The process takes place in organizations and public law communities, of which the broadest community is the state.[2] According to Parsons, this governance function commences at the highest echelon, the institutional level, where the organization's overarching goals are established – encompassing what the organization and its members aim to accomplish within a specific timeframe (Šmidovnik, 1980, pp. 26–27). This crucial decision-making process revolves around the interests of the organization's members, guided by the value judgments that are fostered within the organization itself. Of course when taking perspective from the state as the broadest public law community we cannot ignore the democracy and the principle that sovereignty belongs to the people. The ultimate source of political power rests with the citizens, which have the right to participate in the political process, elect representatives and impact policy decisions.

The institutional level of an organization consists of its highest governing bodies, organized in accordance with political principles and vested with the authority to make decisions that influence all members of the organization (Šmidovnik in Vlaj, 2006, p. 37).[3] At this level, decision-making is predominantly guided by value guidelines. Consequently, members of highest governing bodies are not necessarily expected to possess specialized expertise but are required to possess a general understanding and political dedication to the advancement of both society and the organization, as well as their respec-

2 The state is the only one with political power and can empower narrower territorial public law communities such as municipalities, provinces, other local authorities and other public law communities to perform their tasks.

3 The distribution of power across institutional levels can be affected by different forms of state governance, such as centralized or federal structures. E.g. in a state system with strong level of autonomy granted to subnational entities, organizations may show a distributed power structure across various institutional levels, particularly in different fields or sectors.

tive interests. Bodies at this level usually do not deal with technical details of issues under consideration. Instead, they rely on the expertise of professionals who have compiled relevant information at lower organizational levels. Moreover, at this level, participants typically do not possess professional roles; rather, their roles are honorary and politically oriented. The established modus operandi involves engaging in deliberations during meetings, where decisions are reached through thorough consideration, either by consensus or majority vote (Šmidovnik in Vlaj, 2006, p. 37).

Subsequently, in pursuit of the objectives established at the institutional level, there exists what Parsons refers to as the instrumental level. At this stage, the focus is on identifying specific instruments or means to realize the set goals. Decisions made here revolve around particular technical issues, relying on fact-based decision-making grounded in expert premises (Šmidovnik, 1980, p. 27). At the operational level of governance, tasks are executed and decisions are taken by organizations comprising professionals who must meet specific professional criteria and possess relevant expertise and work experience. The indispensable qualities sought in these professionals are consistency, proficiency, and professionalism. A significant aspect of the instrumental level is the implementation or executive level, where decisions aimed at achieving the established goals are typically made by executive bodies representing the upper echelons of the organizational structure, whether administrative or professional in nature. Such decisions carry both political and professional implications. This stage of governance is characterized by the highest concentration of social power within the organization, as well as an equally significant concentration of responsibility (Šmidovnik, 1980, p. 28). Objectives pursued at the institutional level are the political goals that are to be realized through the instrumental level. Basis for successful achievement of these goals is democratic legitimacy, meaning that authority and actions of a government derive their legitimacy from the consent and will of the people. The political decisions will be considered legitimate if they are in accordance with the principles of democratic governance.

The final technical level of an organization falls outside the realm of governance. It serves as the operational layer responsible for producing direct products, effectively functioning as an effector (Šmidovnik in Vlaj, 2006, pp. 38–39; Brezovšek, Haček and Kukovič, 2014, p. 24).

Parsons's theory of governance levels finds applicability in the realm of administrative-political processes and decision-making concerning public affairs, encompassing multiple stages. When addressing public matters, the focus lies in fulfilling various social needs. Consequently, it becomes crucial to discern the specific social needs prevailing in a given time and space, prioritize them accordingly, and ascertain the responsible parties to meet and satisfy those needs in a well-defined manner. This process of public governance places significant emphasis on the role of political leaders. They wield the authority to shape the country's policies through the formulation of political goals, national programs, and strategic initiatives (see more in Sever, 2021).

Firstly, we need to decide in the process of public governance which needs are to be satisfied through public communities[4], which organize relevant public institutions to bring decisions. The public interest representing the need or interest of the social community organized at the state or local level needs to be defined.

The state is responsible for determining which matters require regulation to establish a legal order and prevent conflicts, and which matters are left to the discretion of private entities. When there is no necessity to safeguard the public interest, there is also no need for state regulation and supervision. In such cases, the relationship between parties is left to their own free will, allowing for voluntary agreements and arrangements without direct interference from the government. The state and its apparatus should do only what is expressly permitted by regulations, as opposed to individuals who are free in their actions, except in the case of matters that are expressly forbidden.

The administrative-political process or decision-making in public matters involves several distinct stages, with the institutional and instrumental stages being the primary ones. At the institutional stage, the community establishes its (political) goals, defining the overarching objectives it aims to achieve. On the other hand, during the instrumental stage, decisions are made regarding the implementation of the set goals (Virant, 2009, pp. 14–15). The institutional level of governance encompasses both the state and self-governing local communities, wherein the state delegates a portion of its political authority.[5] It is at this level where the goals of a public community are established through political decision-making processes. These goals are expressed and recognized as the public interest. At the state level, political decisions are primarily formulated and adopted through representative bodies (except in the case of a referendum), namely the National Assembly and the National Council.

The Constitution, as the highest legal act, determines the most general goals of the state. The legislative branch, however, also adopts other important acts laying down the general goals of the state. These include laws, the state budget, national programmes, and the like. Moreover, municipal councils adopt general legal acts (statutes, municipal ordinances) at the level of the self-governing local communities.

The content governed by these acts pertains to the pursuit of goals and the fulfillment of needs of a specific public community within a given time and context. As a result, these acts play a crucial role in defining the public interest of that particular community. The decision of which goals and needs to prioritize becomes a pivotal aspect of the administrative-political process, characterized by value-based, political decision-making (Virant in Vlaj, 2006, p. 53). Political decision-making must be founded on factual information and ways of achieving the set goal, even by renouncing certain other goals. It involves a trade-off between values, desires, benefits, and goals. Its essence is

4 See footnote 2 on the meaning of public communities.

5 This enables self-governing local communities to perform their municipal competences in accordance with the interests of local community.

not professionalism, but rather the evaluation of benefits. Political decisions are therefore a reflection of society's values in time and space (Virant in Vlaj, 2006, p. 53).

Following the institutional stage, the next phase is the instrumental stage, during which new decisions are made to achieve the goals previously set at the institutional level. Here, the government, as a component of the executive branch, assumes a crucial role in the public governance process at the state level. The transition towards the executive branch occurs due to the societal evolution and the increasing demand to regulate diverse and intricate aspects of life, often reliant on expertise and subject to rapid changes (Rakar and Tičar, 2017, p. 129). If the institutional stage represents the strategic political level, the instrumental stage corresponds to the executive political level. In this context, the Government is responsible for promulgating general legal acts like decrees and ordinances to enforce laws, while ministers, as members of the Government, issue specific rules. The power to issue general acts may also be delegated to bearers of public authority (e.g., public agencies, public chambers). At the level of self-governing local communities, mayors adopt general legal acts. These decisions encompass elements of both political and professional considerations.

The third stage in the governance process is the operational stage, where state administration bodies and bearers of public authority at the state level as well as municipal administrations and bearers of public authority empowered by municipalities enforce decisions made at higher levels (e.g., by issuing administrative decisions). This stage serves as the bridge between political decision-making and professional decision-making at the operational level.

The activity that implies the enforcement of a decision made during the operational stage is no longer part of the governance process, since it does not involve decision-making but can create goods which the organization can yield to the environment (Vlaj, 2006, p. 39).

4 The concepts of public interest and public benefit

The central idea of public administration science turns around the notion of public interest, although it lacks a precise definition (Bučar, 1969, p. 92). It is an abstract legal notion, which belongs in Slovene legal system to indefinite legal concepts. Definitions of the concept of public interest may vary depending on disciplines, as they derive from different intellectual traditions. When relating to the legal discipline, specific content of the public interest needs to be defined in individual cases, taking into account the relevant established facts, to which relevant legal norms are applied. Namely, the law follows certain objectives and sets the conditions for acknowledging rights, legal entitlements, or obligations.

As follows from the previous segment, the present political authorities determine the prevailing public interest within a specific society at the current moment and context. This involves identifying the prevailing or dominant so-

cial values during a particular timeframe. This is evident in positive law. As mentioned above, in Slovene legal system public interest is considered as an indefinite legal concept, which needs its content to be fulfilled based on the established facts of individual case. Indefinite legal concepts represent exceptions to the principle of legality in terms there is derogation from full legal binding. This means that the administrative authority is required to evaluate the content of the public interest in each individual case. It must apply the same criteria in all equivalent cases (Pečarič, 2018, p. 158).

Following the principle of legality, when utilizing an indefinite legal term in a specific case, the competent authority is obligated to define its essence based on the particularities of the case. In this way, the objective of the legal standard is attained (Constitutional Court Decision No. U-I-20/03-8 and Up-724/02-12, 23 September 2004). Hence, the concept needs to be concretely defined within the context of a specific case in time and space. The pivotal tool for achieving this is the administrative procedure, which functions as an instrument of public authorities for determining the rights, obligations, or legal entitlements of an individual. The public interest constitutes a fundamental element in the formulation and configuration of administrative relations determined through an administrative procedure. It serves as the central value of the public sector, guaranteeing the legitimacy of its operations (Bevir, 2011, p. 371).

The fundamental objective of public governance is to define the public interest, which is then shaped through public policies across diverse areas of life situations such as healthcare, environment, welfare, and the economy. Beyond contributing to the formation of the public interest, public administration also takes roles as its protector, spokesperson, and implementer. Since public interest is something that belongs to the public, community in general and from which the whole community should benefit the legitimacy of public administration actions depends on the substance of the public interest, which is formed through constant dialog between public and private authorities through democratic systems that allow freedom of speech, assembly and association (Pečarič, 2018, p. 49, 52).

An interesting example is Czech's Constitutional Court decision on public interest. Namely, there was a case where a legislator by law itself defined what is in public interest (Section 3a of the Inland Navigation Act stated that the development and modernization of the waterway defined by the Elbe watercourse is in public interest)[6], without leaving any space for discretion (assessment) by the executive branch. The Court considered declaring the public interest in a specifically defined matter by law unconstitutional. It found the contested provision unconstitutional because it violated the principle of separation of powers from the Czech Constitution. As stated by the Court: "By de-

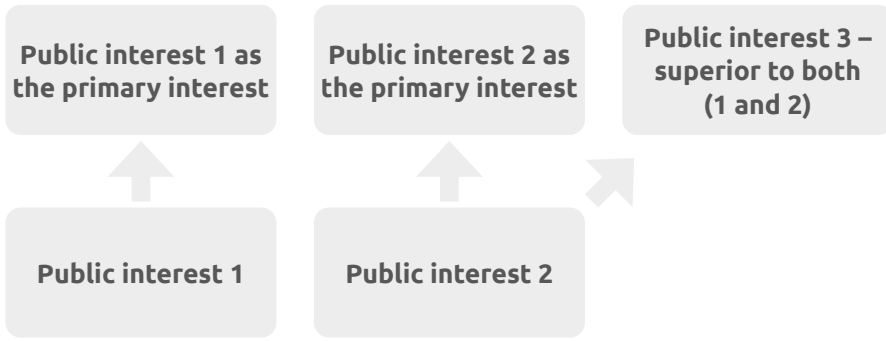
6 The Law stated: "It is in the public interest to develop and modernize the waterway defined by the Elbe waterway from km 129.1 (Pardubice), at the state border with the Federal Republic of Germany, and the Vltava waterway from km 91.5 (Třebenice), including the Vraňany - Hořín navigable channel up to the confluence with the Elbe waterway, including the outlet of the Berounka watercourse up to the harbor of the port of Radotín."

fining the development and modernization of a certain waterway as a public interest in the law, the Parliament did not take into account the requirement for the generality of the legal regulation, in a specific case it used an undefined legal term and thus encroached on the competence of the executive authority." Namely, the public interest should be ascertained through administrative procedure by weighing various particular interests, taking into account all contradictions and comments. The reasoning of the decision should justify the existence of a public interest and clearly show why the public interest outweighed a number of private, particular interests. This means that the public interest determination is performed in the procedure of deciding a particular issue (typically, for example, expropriation) and cannot be determined a priori in a particular case. Due to these considerations, the responsibility to determine the public interest in a specific case usually falls within the executive branch, rather than the legislature (See Czech's Constitutional Court Opinion Pl. ÚS 24/04 of 28 June 2005, 327/2005 Coll., N 130/37 SbNU 641, Lakes on the Elbe). Both branches have different competences within which the legislature issues general legal acts and the executive individual legal acts.

A potential hazard, irrespective of the degree of democracy within a specific system, is the promotion of the specific agendas of individual interest groups camouflaged as the public interest. This can lead to infiltration of these agendas into the existing regulations. As stated by Hayek (1982) "it is often mistakenly suggested that all collective interests are the general interests of society; but in many cases the satisfaction of the collective interests of certain groups may be in complete conflict with the general interests of society. The whole history of the development of democratic institutions is a history of the struggle to prevent individual groups from abusing government to benefit the collective interests of those groups".

Moreover, it is essential to understand that individual interests within the public sphere might collide. When this happens, it becomes imperative to assess which public interest holds greater significance within the specific context (see Figure 1). In other words, it needs to be determined what actions "most effectively advance the public interest" in that particular scenario. Applying the principle of proportionality in such situations is essential and in accordance with the legal principle of good and fair administration (cf. Letnar Černič, 2013).

Figure 1: Public Interests' Conflict



Source: own

A public benefit can be considered as a collective benefit of an organized broader community that exceeds the advantages of an individual (Jerovšek in Jerovšek and Trpin, 2004, p. 73); this denotes the objective effects arising from actions or conduct, carrying a more tangible nature than mere interest. It is enforceable and often viewed as equivalent to substantive legality (Kovač and Sever, 2016, 2017; more on principle of legality and administrative authorities see in Janderová, 2017, pp. 126–28). The legislative and executive branches individually establish, within the scope of their respective authorities, what qualifies as a public benefit within a specific circumstance. The essence of the concept evolves across various stages of social progress (cf. Androjna and Kerševan, 2006, p. 51).

Hereafter we explore specific regulations as part of Slovene domestic law within the domains of public administration and administrative law, which establish principles related to the public interest and public benefit. In certain cases, these two concepts are perceived as synonyms although there are elements in Slovene legislation that demonstrate a distinction between the concepts. The possibility of a differentiation between the two concepts becomes apparent in the formulation of legal norms. The legislator uses the two concepts distinctly or, in certain substantive and procedural determinations, applies the concept of the public interest at one time and the concept of the public benefit at another time, or even both mutually or complementarily (Seibert, 2010).

Our first example relates to the General Administrative Procedure Act (Official Gazette of the Republic of Slovenia, No. 24/06 – consolidated version, 105/06 – ZUS-1, 126/07, 65/08, 8/10, 82/13, 175/20 – ZIUOPDVE, 3/22 – ZDeb, hereinafter referred to as GAPA). This fundamental systemic law governs the administrative procedure as a fundamental tool applied by authorities in deciding on administrative matters, specifically relating to the rights, obligations and legal entitlements of parties engaged in administrative relationships.

Essentially, the fundamental criterion for categorizing a subject matter as administrative is the imperative requirement to safeguard the public interest

(Article 2 of GAPA). Significant in terms of defining the purpose of the administrative procedure is the fundamental principle of protection of the rights of the parties and public benefits (Article 7 of GAPA). Different or equal interest or needs of other entities require the state to limit a particular right. Consequently, a conflict arises between public and private interests, prompting the state's intervention through suitable regulations to ensure the protection of the public benefit.

An analysis of the individual clauses within the GAPA highlights the interchangeable use of the terms public interest and public benefit. The GAPA generally refrains from offering precise definitions for these terms, except in specific procedural situations. Thus, derived from the third paragraph of Article 18 of the GAPA, the second instance authority is empowered to take jurisdiction in cases where the first instance authority decision-making is delayed, if consequences detrimental to the human life, health, the environment, or property could follow. Another instance demonstrating this concept is the utilization of a summary fact-finding procedure, applicable when a situation involves urgent measures necessitated by the public interest and cannot be postponed. In such cases, the GAPA establishes the necessity for urgent measures to be demonstrated if risks are posed to human life, public safety, public order and peace, or to property of significant value (Article 144). Similar safeguards must be upheld in cases of an extraordinary annulment of a decision (Article 278). To safeguard these matters, the Act additionally includes provisions for delivering an oral decision (Article 211) and executing a decision against which the time limit for appeal has not yet expired or has an ongoing appeal (Article 236). Moreover, the GAPA demands the continuation of the procedure if it that is deemed essential in the light of public interest (Article 135 of the GAPA). If an evident limitation of public interest is observed in an administrative procedure, the GAPA also stipulates that an authorized individual should undergo additional training on conducting and making decisions within administrative procedures (Article 307b).

The GAPA also refers to the concept of public benefit in various instances: it mentions the representation of public benefit in procedures through the State Prosecutor and Higher State Attorney (Articles 45, 229, 261); the initiation of procedures ex officio when demanded by the public benefit (Article 126); the requirement that settlements must not be detrimental to the public benefit (Article 137); situations of lesser significance where a decision may consist solely of an official note, as long as the public benefit remains unaffected (Article 218); and the ex officio enforcement of actions when required by the public benefit (Article 286).

The commentary on Article 69 of the Constitution of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a and 92/21 – UZ62a, hereafter Constitution) introduces a separate differentiation, permitting expropriation in the interest of public benefit. This differen-

tiation underlines that public interest and public benefit are not interchangeable terms. It is up to the legislator to define more in detail what is the public benefit (i.e. expropriation purposes) in different fields in accordance with the Constitution (Virant in Šturm, 2002, p. 667). While public interest encompasses only the aspect of interest, public benefit requires a balance between public and private interests (i.e. inviolability of property). Namely, if we would understand public interest as a synonym of public benefit it would be sufficient for the expropriation to take place to define in a spatial plan an interest of a state or a municipality. Consequently, the term public benefit is inextricably linked with the principle of proportionality (Virant in Šturm, 2002, p. 668). This means that the expropriation is admissible if it is in public benefit, fulfilling the following elements: there is a concrete, specific real public need for which the expropriation is an appropriate inevitable means to fulfill it. Finally, public benefit needs to be proportionate with the weight of the intervention in the property right as a consequence of expropriation. In accordance with the principle of proportionality it is permissible to encroach on property only as much as it is needed to fulfill the expropriation purposes (Virant in Šturm, 2002, p. 668, 677). The latter are: public infrastructure; building for the defense; buildings needed for the public services such as healthcare, education, culture and science; protection of cultural heritage; protection from natural disasters; building non-profitable housing etc. (Virant in Šturm, 2002, p. 669–670).

The Inspection Act constitutes an upgrade of the fundamental principle in GAPA, which focuses on safeguarding the rights of the parties and promoting public benefits (Official Gazette of the Republic of Slovenia, No. 43/07 – officially consolidated text and 40/14). Inspection embodies the execution of the constitutional principle of the rule of law (Article 2 of the Constitution), necessitating adherence to relevant regulations. This commitment serves the public interest, and the state governs inspections to fulfil this objective (Jerovšek and Kovač, 2008, p. 170). Article 5 of the Inspection Act advances the aforementioned GAPA principle by introducing the principle of safeguarding both public and private interests. When conducting an inspection, any intervention into the affairs of the accountable parties is permissible only to the extent required for safeguarding the public interest. In accordance with the principle of proportionality, the responsibilities of inspection must be executed to uphold and harmonize both sets of interests, potentially achieving fulfilment in both areas or sustaining an optimal equilibrium (Pečarič in Kovač, 2016, p. 98). According to the Inspection Act, inspectors implement specific measures to safeguard the following categories: situations involving imminent threats to human life or health, animal health, or the immediate risk of harm to the natural and living environment, as well as potential damage to property. Case law establishes that the concept of public interest does not exclusively encompass immediate harm, but can also encompass demonstrated potential harm. (Supreme Court Decision, No. I Up 405/2004, 17 April 2008; Pečarič in Kovač, 2016, p. 100).

Additional significant systemic laws comprise the Government of the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia, No. 24/05 – of-

ficial consolidated text, 109/08, 38/10 – ZUKN, 8/12, 21/13, 47/13 – ZDU-1G, 65/14, 55/17 and 163/22), the State Administration Act (Official Gazette of the Republic of Slovenia, No. 113/05 – officially consolidated text, 89/07 – CC decision, 126/07 – ZUP-E, 48/09, 8/10 – ZUP-G, 8/12 – ZVRS-F, 21/12, 47/13, 12/14, 90/14, 51/16, 36/21, 82/21, 189/21, 153/22 and 18/23), and the Local Self-Government Act (Official Gazette of the Republic of Slovenia, No. 94/07 – official consolidated text, 76/08, 79/09, 51/10, 40/12 – ZUJF, 14/15 – ZUUJFO, 11/18 – ZSPDSLS-1, 30/18, 61/20 – ZIUZEOP-A and 80/20 – ZIUOOPE). However, these legislations do not provide precise definitions for the terms public interest and public benefit. These two concepts are also not mentioned in the Decree on Administrative Operations (Official Gazette of the Republic of Slovenia, Nos. 9/18, 14/20, 172/21, 68/22, 89/22, 135/22 and 77/23), which is one of the pivotal regulations governing the operations of public administration.

The Institutes Act is another relevant legislation concerning the organization of public administration (Official Gazette of the Republic of Slovenia, Nos. 12/91, 8/96, 36/00 – ZPDZC and 127/06 – ZJZP), which addresses the continuous and uninterrupted offering of public services in the public interest by the state, municipality, or town (Article 22).

The Public Employees Act (Official Gazette of the Republic of Slovenia, No. 63/07 – official consolidated text, 65/08, 69/08 – ZTFI-A, 69/08 – ZZavar-E, 40/12 – ZUJF, 158/20 – ZIntPK-C, 202/21 – Constitutional Court decision and 3/22 – ZDeb) outlines the categorization of individuals as public employees engaged in the execution of public duties within individual authorities. These responsibilities are closely associated with the exercise of authority or the protection of the public interest (paragraph one of Article 23).

Officials are required to carry out public duties with a focus on the public benefit, maintaining political neutrality and impartiality (referred to as the principle of political neutrality and impartiality; Article 28). Determining the specific public benefit within a given administrative domain is to be deduced from laws, implementing regulations, the budget and other legal acts issued by the National Assembly and the Government. This same approach applies to situations involving discretionary decisions, where the preferred legal decision should be the one perceived as to best safeguarding the public benefit (Virant in Pirnat, 2004, p. 114).

Another crucial systemic regulation is the Public Information Access Act (Official Gazette of the Republic of Slovenia, No. 51/06 – official consolidated text, 117/06 – ZDavP-2, 23/14, 50/14, 19/15 – CC dec., 102/15, 7/18 and 141/22), which guarantees the transparency and accessibility of governmental operations, enabling both individuals and legal entities to acquire information of a public nature (Constitutional Court Decision, U-I-45/16-50, Up-321/18-48, Up-1140/18-38, Up-1244/18-38, 16 September 2021, point 60: "The beneficiary can effectively exercise the right to receive and impart information if he has access to information in which the general public has an interest in knowing."). Restricting access to public information can impede the meaningful exercise of freedom of expression (Constitutional Court Decision, U-I-45/16-50,

Up-321/18-48, Up-1140/18-38, Up-1244/18-38, 16 September 2021, points 58, 60: "The effective exercise of the right to freedom of expression can only be ensured if the information in which the general public has an interest in being informed is accessible and public.").

It establishes that numerous public interests can coexist alongside. Consequently, despite certain exemptions from unrestricted access to specific information (such as classified data, professional confidentialities, personal information, etc. – for additional information, refer to paragraph two of Article 6 of the Public Information Access Act), the legislation permits access to such information when the public interest in disclosure outweighs the public interest or the interests of other individuals in not disclosing the requested information (paragraph two of Article 6). The Act also provides for the granting of an exclusive right for the re-use of information if this is absolutely necessary for the provision of a public service or other services in the public interest (paragraph four of Article 36a). Also, it allows collecting data on account balances and payment transactions debited to the accounts of the registered taxable persons (public utility institutes, public companies, etc. – see paragraph two of Article 10a) in order to strengthen the transparency and accountability of the management of the financial resources held by obliged entities under this law and because of the overriding public interest in disclosing information on the use of these resources,

As defined in the Public Procurement Act (Official Gazette of the Republic of Slovenia, Nos. 91/15, 14/18, 121/21, 10/22, 74/22 – Constitutional Court decision, 100/22 – ZNUZSZS and 28/23), public interest relates to matters concerning public health, the well-being of individuals, and the safeguarding of the environment (Article 75). Moreover, the Legal Protection in Public Procurement Procedures Act (Official Gazette of the Republic of Slovenia, Nos. 43/11, 60/11 – ZTP-D, 63/13, 90/14 – ZDU-1I, 60/17 and 72/19) specifies that, within the context of the same act, public interest is acknowledged to be present when there is a potential risk to human life and well-being, public security, or harm to property of great value (paragraph one of Article 6). Pursuant to Article 45, economic interests are deemed to be overriding reasons relating to the public interest, requiring that the contract remains in force, but only in exceptional cases where the consequences of the challengeability of the contract could disproportionately affect the performance of the contracting authority or the state.

Furthermore, there exists the Public-Private Partnership Act (Official Gazette of the Republic of Slovenia, No. 127/06), where point 19 of Article 5 outlines that public interest refers to a general benefit as defined by law or a derived regulation. It is established through a decision that identifies the public interest in establishing a public-private partnership and executing projects within the framework of the Act's various public-private partnership models. This decision is taken by the representative body of a self-governing local community or the Government (Article 11). The objective of the Public-Private Partnership Act is "to enable and promote private investment in the construction,

maintenance and/or operation of structures and facilities of public-private partnership and other projects that are in the public interest (hereinafter: promoting public-private partnership), to ensure the economically sound and efficient performance of commercial and other public services or other activities which are provided in a method and under conditions that apply to commercial public services (hereinafter: commercial public services), or other activities whose performance is in the public interest, to facilitate the rational use, operation or exploitation of natural assets, constructed public good or other things in public ownership, and other investment of private or private and public funds in the construction of structures and facilities that are partly or entirely in the public interest, or in an activity provided in the public interest" (paragraph one of Article 6). One of its principles, as established in Article 15, is the principle of balance, which mandates that a harmonious distribution of rights, responsibilities, and legal advantages between public and private partners is upheld within a public-private partnership. As derives from the Public-Private Partnership Act, safeguarding the public interest encompasses ensuring public commodities or services, a responsibility falling under the jurisdiction of the public partner. Public services deliver goods and services whose provision aligns with the public interest, as determined by the state or local community's decision (Pečarič and Bugarič, 2011, p. 19).

Another example is the Exercising of the Public Interest in Culture Act (Official Gazette of the Republic of Slovenia, No. 77/07 – official consolidated text, 56/08, 4/10, 20/11, 111/13, 68/16, 61/17, 21/18 – ZNOrg, 3/22 – ZDeb and 105/22 – ZZNŠPP), stipulating that public interest in culture means interest in the creation, transmission and protection of cultural goods at national and local levels which is exercised by providing the conditions for them (Article 2).

As a final option, an important source is also the Resolution on Legislative Regulation (Official Gazette of the Republic of Slovenia, No. 95/09), which stipulates that the reason for the retroactive effect of certain legal provisions can only be a justified public benefit, provided that the acquired rights are not interfered with (Chapter VII: Implementation of the Resolution). In accordance with the principle of legality, retroactivity is not allowed except in certain specific situations. This is explicitly written already in Slovene Constitution in Article 155, which defines that "Laws, regulations and general acts cannot have retroactive effect. Only a law may provide that individual provisions of the law have retroactive effect, if the public benefit so requires and if this does not prejudice acquired rights."

The aforementioned analysis underlines that the concept of public interest serves as a classic illustration of an indefinite legal concept. Its actual meaning needs to be established on a case-by-case basis, aligning with the intentions stipulated by the law or other regulations, and in accordance with the legal prerequisites for attaining rights, obligations, or legal entitlements (Jerovšek and Kovač, 2016, p. 48). Consequently, the competent state bodies are obliged to confer specificity to it on an individual basis, all while safeguarding the fundamental constitutional principles and provisions. Nonetheless,

the explanation of its essence should refrain from infringing upon absolute human rights (Letnar Černič, 2013). Only through this approach can we effectively prevent arbitrary decisions, misuse of public power, and the promotion of specific private interests (Letnar Černič, 2013).

This comparative analysis across selected Slovene legislation leads to the assumption that the assessed systemic regulations as well as other unmentioned sectoral regulations[7], define as public interest or acting in the public benefit the following: safeguarding human life and well-being, preserving animal health and life, preserving the natural environment, securing valuable property, ensuring public safety, among others. While we might expect a higher degree of specificity in the definitions of such concepts, they nonetheless remain categorized as indefinite legal concepts. Their substance will be concretized on a case-by-case basis through decisions taken by the competent administrative body.

In a broader context, we can argue that the definition of both public interest and public benefit predominantly resides within the realm of value-driven, political decision-making. Public interest signifies the interest of a specific societal group, carrying a wider, social interest. It embodies a normative aspect, where the general interest becomes public through legal norms. Its formation is formed by the impact of governmental bodies, informal collectives, ideological, and even subconscious influences. It stands as a fundamental value of the public sector. Public benefit represents objective effects because of an activity or behavior and is equalized with substantive legality (Kovač and Sever, 2016).

5 Notions of public benefit and public interest in the case-law of European court of human rights and Slovene constitutional court

As examples of relevant cases where there is a conflict between public interest and public benefit, we report two judicial decisions from the European Court of Human Rights.

Leander v. Sweden case (European Commission of Human Rights, 1985; European Court of Human Rights, 1987) set a precedent for protecting individuals from secret surveillance by government agencies. In 1979 Mr. Torsten Leander lost his new job as technician at the Naval Museum at Karlskrona, in the south of Sweden because he failed the state security vetting procedure. No more explanations were given even when Mr. Torsten appealed with the Commander-in-Chief of the Swedish navy and subsequently with the Swedish government. Mr. Leander submitted his case to the European Commission of Human Rights, which subsequently forwarded the complaint to the European

7 For example: Medicinal Products Act (Official Gazette of the Republic of Slovenia, Nos. 17/14 and 66/19); Decree on Protected Wild Animal Species (Official Gazette of the Republic of Slovenia, Nos. 46/04, 109/04, 84/05, 115/07, 32/08 – CC dec., 96/08, 36/09, 102/11, 15/14, 64/16 and 62/19) etc.

Court of Human Rights. Leander argued that the procedure violated Article 13 of the Convention, asserting that everyone is entitled to an "effective remedy". Mr. Leander supposed that the special surveillance was a consequence of his political beliefs. Subsequently, the Commission expanded the scope of the complaint to include Article 8, which pertains to the right to privacy and family life, and Article 10, which concerns the right to freedom of expression.

Among the key issues examined included whether the Swedish security vetting system was a) essential for national security and b) lawful, since, according to Swedish constitution: "no entry regarding a citizen in a public register may without his consent be founded exclusively on his political opinion" (According to Chapter 2, section 3, of the Swedish Instrument of Government (regeringsformen, which forms the main constituent of the Swedish Constitution)). Was the public benefit of national defense granted by such surveillance system enough to harm the public interest of the right to privacy and family life and the right to freedom of expression?

Mr. Leander argued that the vetting process was excessively broad, exceeding what could reasonably be considered necessary for national defense. He noted that the procedure applied to over 185,000 jobs, with more than 100,000 security checks conducted annually, a significant number given Sweden's population of about 8 million. The government, however, described to the commission that the numbers provided by Mr. Leander were exaggerations but maintained that the actual figures were classified to protect national security interests.

Mr. Leander lost in the European Commission of Human Rights (European Commission of Human Rights, 1985) and also in the European Court of Human Rights (European Court of Human Rights, 1987). In 1989 the Säpo (Swedish Security Police) commission disclosed the real figures on people under secret surveillance that were even higher than what Mr. Leander was suggesting (Sapo kommitten, 1990). More than a decade after the Court's decision, on October 29, 1997, Dennis Töllborg, Leander's attorney, was granted access to the entire file on the Leander case (see ECHR application 9248/81). The documents revealed that Leander was placed on file solely due to his political beliefs, indicating that the Swedish government had significantly misled both the Commission and the Court.

On November 27, 1997, the Swedish government officially declared that there were no valid reasons, either in 1979 or at present, to classify Mr. Leander as a "security risk." It acknowledged that his dismissal from the Naval Museum was unjustified. As compensation for the wrongful violation of his rights, the government awarded him 400,000 Swedish crowns.

Key takeaways from the Leander v. Sweden (1987) case to ensure a fair trade-off between public interest and public benefit:

– Secret surveillance without adequate legal basis and judicial supervision can violate the right to privacy.

– Governments must establish clear and explicit legal standards for surveillance activities and provide individuals with effective means of challenging unlawful intrusions into their privacy.
– In a democratic framework, transparency and accountability are essential to ensure that surveillance measures are proportionate and justified.

For a comprehensive description of Leander case, please see: ('The Leander case: challenge to European court decision', 1997).

As second judicial decision of the European Court of Human Rights, we report the case of the Sunday Times v. United Kingdom (European Court of Human Rights, 1979), as it concerns the balance between freedom of expression (public interest) and several aspects of public benefit.

Between 1958 and 1961, thalidomide was prescribed as a sedative also to pregnant women. In 1960 it became apparent that this treatment could result in severe birth defects and deformities (Mcbride, 1961). By November 1961, the drug's manufacturer, Distillers, pulled it from the UK market, facing lawsuits from 70 affected families. In 1972, the Sunday Times of London published an article to highlight Thalidomide cases in UK (Sunday Times of London, 1979). The article criticized the settlements as out of proportion for the injuries suffered. In 1972, a court injunction blocked The Sunday Times from publishing other articles on the topic, as it would constitute contempt of court. The issues sparked public debate in Parliament and media. In 1976, the court lifted the ban. As side effect of the Sunday Times publication, a new compensation deal worth £32.5m (around 10 times the original figures) was finally arranged. The Sunday Times exposed in 1976 that the drug's developers had not met basic testing requirements before unleashing it on the market (Sunday Times of London, 1979).

The European Court of Human Rights examined the case (European Court of Human Rights, 1979) through the lens of "prescribed by law" in Article 10 of European Convention on Human Rights. While acknowledging unwritten law's validity, the Court emphasized two key requirements: accessibility and precision. The law must be clear enough for citizens to understand potential consequences of their actions.

In this case, the Court found that while the applicants could foresee some consequences, the law lacked sufficient precision, making the interference not "prescribed by law." Next, the Court assessed the interference's purpose and necessity. While recognizing the legitimacy of protecting the judiciary's role, the Court considered the restriction excessive. The public interest in freedom of expression outweighed the need for such a broad injunction.

Here the balance was between the freedom of expression and its limitation by law, as foreseen in article 10 of European Convention on Human Rights, therefore, the Court settled that the injunction violated Article 10, citing both procedural ("prescribed by law") and substantive ("necessary in a democratic society") shortcomings. The Court concluded that the social need (public

benefit) for restricting the article did not outweigh the public interest in free speech, as protected by the European Convention.

Further on, our survey focuses on Slovene national system. To determine whether the concepts of public interest and public benefit have remained consistent or evolved over the past two decades, an analysis of the case law from the Constitutional Court of Slovenia spanning over the last twenty-two years was conducted. By examining the Constitutional Court's rulings, any variations or changes in these notions within this timeframe were sought and identified.

To study the various interpretations of the public interest, we analyzed Constitutional Court decisions available at https://www.us-rs.si/odlocitve/. The search was based on the following criteria:

- Use of the term: javn* int* (Slovenian abbreviation for public interest);
- Time period: 1 January 2001 – 1 January 2023;
- Type of act: decision;
- Type of matter: constitutional complaint;
- Legal areas, which are relevant for administrative law[8]: state regulation; local self-government; administrative law other; denationalization; social security; public finance (taxes).

The search engine gave 55 results. Out of these, only 11 decisions actually concerned the public interest.

The same criteria was applied to analyze the public benefit using the term javn* kor* (Slovenian abbreviation for public benefit). In this case, the search engine gave 88 results for the period 1 January 2001 – 1 January 2023. Out of these, 43 decisions concerned the public benefit. However, 29 of these decisions were dealing with the same matter (pensions) and thus were given the same interpretation by the Court (see e.g. decisions: Up, 273/14, 27 June 2015, point 5; Up-283/14, 27 May 2015, point 5 etc.).

Comparison of the two decades did not provide many differences. As a result, an overall case law analysis is conducted to explore the notions of public interest and public benefit over the last twenty-two years.

Based on this analysis, the conclusion drawn is that the Constitutional Court does not interpret the content of public interest or public benefit. Both concepts present indefinite legal concepts, which legislator applies to cover different factual events and situations which have in common semantic content.[9]

8 The search engine of Constitutional Case-Law offers to choose decisions in different areas (criminal law, civil law and administrative law). The paper is focusing on administrative law and related concepts of public interest and public benefit, therefore the chosen legal areas are the ones relevant for administrative law.

9 "The essence of indefinite legal concepts is that the legislator uses them in the description of an abstract factual situation when he wants to use such a concept to cover various factual events and situations that have a common semantic content. The use of indefinite legal concepts does not in itself mean a violation of the principle of definiteness of regulations. Even the definition of prohibited behavior with an indefinite legal term is not in itself constitutionally inadmissible." (Decision U-I-136/07, 10 September 2009, point 14).

The use of such concepts is not breaching the Constitution since already the rule of law principle requires general and abstract solutions (Constitutional Court Order U-I-413/98, 25 May 2000). Frequently, the Court refers to public interest or public benefit in a generalized way in the context of a specific administrative area (e.g. Up-2411/06, 22 May 2008: administrative area of inspection supervision, which is performed due to public interest). Below is given an analysis of the decisions that were identified as most valuable for the analysis of both concepts. Firstly, we begin with the case-law on public interest, which is followed by case-law on public benefit.

Decision Up-395/06, U-I-64/07, 21 June 2007 delves into the concept of public interest concerning denationalization, which is one of the typical administrative fields in Slovene law system. With Denationalization Act (Official Gazette of the Republic of Slovenia, No. 27/91-I and amendments) the legislator enacted the restitution of expropriated property in kind as the rule. On the other hand, this principle was limited by provisions under which the possibility of denationalization by restitution was excluded in individual cases where rather a compensation was foreseen. The Denationalization Act defined a differentiation between the beneficiaries to whom the nationalized property will be returned in kind and those who will receive a compensation. According to the Constitutional Court (see Decision U-I-140/94, 14 December 1995) the legislator had justified reasons to regulate differently the legal status of beneficiaries arising from public interest and objective obstacles to the restitution of property. In this way the legislator protected the acquired right of ownership of natural and civil persons on that property, the collections of galleries and other similar institutions, public museums, natural monuments and cultural monuments, public-law institutions and their undisturbed functioning, etc. According to the Denationalization Act the property cannot be returned if it is exempt from legal turnover or ownership cannot be acquired. The question is if this is applicable also to cultural monuments and natural attractions. According to the court restrictions on the return of cultural monuments and natural sites due to the importance of these properties cannot be without reasonable cause.

> "The Constitution within the framework of general provisions, i.e. in its 5th article, states some positive obligations of the state, among which also includes care for the preservation of natural wealth and cultural heritage. Article 70 The Constitution is intended for the protection of natural resources, while Article 73 is for the protection of natural and cultural heritage. The constitutional concept of property from Article 33 is only given substance by the statutory by which the legislator, by virtue of the power conferred on it by Article 67(1) of the Constitution determines the manner in which property may be acquired and enjoyed in such a way as to ensure its economic, social and ecological function." (Decision Up-395/06, U-I-64/07, 21 June 2007, point 53).

Therefore the Constitutional Court in its decision Up-395/06, U-I-64/07, 21 June 2007 interprets that the intensity of public interest varies depending on the nature of the assets involved. Consequently, distinct types of property are subject to varying legal regimes. The significance of a particular type of things

to the community influences the legislator's scope in defining the content of property rights associated with it. In essence, the more crucial a certain type of property is for the community, the greater the flexibility for the legislator to determine the scope and boundaries of property rights (Decision Up-395/06, U-I-64/07, 21 June 2007, point 53).

In terms of public interest Decision Up-1850/08, 5 May 2010 is of great interest. It explains the specifics of public law relations v. civil law. Precisely, the pursuit of public interest falls under the responsibility of the state, entailing specific obligations on its part. However, it is crucial to note that the state's obligation to serve the public interest does not automatically grant individuals the right to demand fulfilment of these obligations from the state. In other words, individuals do not possess a right or legally protected interest against the state. This situation is appropriately termed as a legal reflex, i.e. the reflexive effects of a legal norm. In public law, authorities must pursue defined public interests and follow prescribed methods. However, individuals lack the right to legally compel authorities to fulfill these obligations, even if it could benefit them. In the realm of public law, while addressing statutory obligations of administrative authorities, it is essential to assess whether a regulation grants individuals rights or legally protected interests that can be asserted and defended in administrative dispute or other judicial proceedings (Decision Up-1850/08, 5 May 2010, point 9).

There are instances where the protection of an individual's interest aligns with the broader context of the public interest. An illustrative example is Article 70 of the Constitution, which relates to public goods. According to this provision, the acquisition of special rights to use public goods is subject to conditions prescribed by law. Legal provisions defining the potential establishment of a special usage right on a public good aim to balance diverse interests. They not only outline the abstract possibility for a specific individual but also seek equilibrium between ensuring general use and the abstract interest in establishing a special usage right (Decision Up-267/11, U-I-45/11, 3 April 2014, point 12). State and local authorities play a crucial role in overseeing the management of public goods that fall within their ownership. Functioning both as proprietors and as regulatory entities, they are constrained by legal norms defining the public interest in this context. As proprietors, they must allow equal use of the public good according to its intended purpose, as specified by law. Simultaneously, when acting as governing authorities, the state or local entity must define and ensure the lawful conditions for acquiring specific usage rights for a public good (Decision Up-267/11, U-I-45/11, 3 April 2014, point 13). Moreover, local authorities are legally required to facilitate the widespread use of public roads as they are recognized as a public good. Secondly, they are obligated to permit individuals to obtain special usage rights on public roads, provided it aligns with legally specified conditions, thus balancing public interest with individual needs (Decision Up-267/11, U-I-45/11, 3 April 2014, point 16).

Indeed, the conclusions drawn from Decision Up-741/12, 2 July 2015, support the notion that a single legal norm can encompass the protection of multiple interests, including both the public interest and various distinct private interests. This indicates that an individual's legal interest can be safeguarded within a general legal norm[10] that prescribes specific actions to be taken by an authoritative body (e.g., in areas like health protection, environmental conservation, etc.). This protection is possible when the norm serves to safeguard both the collective interest and the individual's interests, and when the individual's entitlement can be clearly established (Decision Up-741/12, 2 July 2015, point 8; Kerševan, 2004, p. 82). Moreover, in this decision Constitutional Court indirectly gives substance to the public interest by giving examples such as coexistence in the immediate neighborhood, environment protection, quality living conditions and health protection as defined by legislator (Decision Up-741/12, 2 July 2015, point 14).

Finally, Decision U-I-309/13, Up-981/13, 14 January 2015 (point 23) establishes content of the public interest in the context of enabling immigrants the right to family life in accordance with Article 8 of the European Convention on Human Rights. The public interest in this administrative field is state and public safety and economic prosperity. As mentioned, Article 8 of the European Convention on Human Rights protects the right to respect for private and family life. This right imposes positive and negative obligations to the state (Ahmut v. Netherlands, no. 21702/93, 28 November 1996, point 67). To respect the right to family reunification the state has a negative obligation not to expel an alien when is required, and a positive obligation to allow an alien to enter and reside on its territory when it is required. In both cases, the appropriate balance needs to be struck between the competing interests of the individual and of society as a whole. In both cases, the state has a certain margin of discretion. To find the balance between private and public interest (to which the Court in this case refers as interest of society as a whole) protection of public security or the economic well-being of the country is relevant. To determine the extent of the state's obligation, the European Court of Human Rights requires that the factual circumstances of the case are assessed. To determine the extent of the state's obligation the specific circumstances of the individual involved and the public interest of the society as a whole, which is, supposed to receive that individual need to be taken into account. The State has a certain margin of discretion in this respect (Decision Up-1243/18, 3 June 2021, points 7 and 8).[11]

10 "If there is justified legal interest of a particular person in a norm of a zoning act, depends on the content of the norm; thus, it is possible that the norm protects only the public interest, that both the both public and private interests are protected, or that one or more private interests are protected. This may be explicitly stated in the particular norm or may depend on its interpretation." (Decision Up-741/12, 2 July 2015, point 10)

11 See Gül v. Switzerland (no. 23218/94, 19 February 1996, point 38) "The Court reiterates that the essential object of Article 8 (art. 8) is to protect the individual against arbitrary action by the public authorities. There may in addition be positive obligations inherent in effective "respect" for family life. However, the boundaries between the State's positive and negative obligations under this provision (art. 8) do not lend themselves to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and

In the field of taxes, the Constitutional Court states that the objective of raising tax culture is aimed at increasing the efficiency of the tax system and an efficient tax system is clearly in the public interest (Decision U-I-106/19-19, Up-190/17-22, 10 March 2022, point 15). In this decision the Court firstly decided on a petition for a review of the constitutionality of the fifth paragraph of Article 20[12] of Tax Procedure Act (Official Gazette of the Republic of Slovenia, No. 117/06 and amendments). It repealed this paragraph and upheld the Constitutional Court's appeal, annulled the contested Administrative Court judgment and referred the case back to the Administrative Court for a new decision. In its explanation the Constitutional Court established that the contested measure did not pass the proportionality test in the strict sense, i.e. weighing the benefits conferred by the contested measure against the gravity of the interference with the affected human right (Decision U-I-106/19-19, Up-190/17-22, 10 March 2022, point 22). The contested fifth paragraph of Article 20 of Tax Procedure Act was a substantive supplement to the regime set out in the first paragraph of Article 20, which provides for the public publication of information on legal persons who are tax non-payers. The Constitutional Court already established that goals of this regulation are raising tax culture, improving payment discipline and encouraging voluntary, correct and timely payment of tax obligations, and the objective of transparency (Decision U-I-122/13-13, 10 March 2016, point 9). The Constitutional Court established that the contested regulation pursues the first of the aforementioned objectives of the basic regulation (Article 20 of Tax Procedure Act), i.e. raising tax culture. The Constitutional Court concluded that the goal was evidently to enhance the efficiency of the tax system, and it is unquestionably in the public interest to have a tax system that operates efficiently. Therefore the regulation in question was pursuing an objective that was constitutionally permissible.

The weight of the public interest may justify a different legal regulation of a certain right and outweigh the principle of the protection of legitimate expectations (see Decision U-I-110/15, Up-568/15, 1 March 2018, point 27: "unification of rights of social protection nature or conditions for them, while ensuring reasonable (re)use of the funds intended therefor, are factual reasons substantiated in the prevailing and constitutionally permissible public interest"; cf. U-I-79/12, 7 February 2013, point 12). The principle of legitimate expectations in fact ensures to the individual that the state will not arbitrarily worsen his or her position, i.e., it will not worsen their position without reasonable grounds in the public interest.

> "The deterioration of an individual's legal position is therefore a *conditio sine qua non*, without which it is not possible to speak of a violation of the principle of the protection of legitimate expectations". (Decision U-I-78/16, Up-384/16, 5 June 2019).

of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation…"

12 The fifth paragraph of Article 20 of Tax Procedure Act defined the following: "the list of defaulters shall also include information on natural persons who became the beneficial owners of a legal person included in the list of defaulters after the legal person already had outstanding unpaid tax liabilities within the meaning of the second…"

The decisions referring to the public benefit tend to be more general in nature. In most cases, the Constitutional Court uses the term public benefit as a general term, without providing specific and detailed content (e.g., Decision Up-2501/08, 19 February 2009, in which the Constitutional Court only refers to provisions as set in Administrative Dispute Act, second paragraph of Article 32 (Official Gazette of the Republic of Slovenia, no. 105/06 and amendments), which define that if an applicant demonstrates that enforcing a decision (act) would cause irreparable harm, the court will temporarily halt the measure until a decision becomes final. The court must consider the balance between the applicant's potential damage, public benefit, and the interests of other parties, ensuring a proportional approach.). For example, the state can interfere with human rights only when permitted by the Constitution, or when the rights of others or public benefit necessitate it . The intervention must have a constitutionally permissible goal (legitimacy test), and its proportionality is evaluated by the Constitutional Court through a strict proportionality test based on established constitutional law judgments. The test is comprised of the assessment of three aspects of the intervention: appropriateness, necessity and proportionality in the strict sense of the word (Decision Up-1116/09, 3 March 2011, point 12; Decision U-I-106/19-19, Up-190/17-22, 10 March 2022, 14).

Decision Up-89/05, 7 December 2006 (point 6) is another case in which Constitutional Court refers directly to the legal provisions. This time of the Constitution. In accordance with article 69 of the Constitution, property rights to real estate can be revoked or limited for the public benefit upon compensation. This case is an interesting example of state interference in private ownership by building transmission line. Namely, the administrative bodies and lower courts stood on the position that if only electric lines are trespassing the land of the party, there is no need to prove that the investor of the transmission line construction is obliged to demonstrate the right to dispose of the land. The Constitutional Court concluded that this was not in the accordance with the right to private property from Article 33 of the Constitution. Further on, Constitutional Court established in Decision Up-395/06, U-I-64/07, 21 June 2007 that public benefit can be protected on goods under special constitutional protection (e.g. forests and land as part of natural resources)with the state being their owner The case deals with regulation of system issues of ownership and, in this context, the establishment of the state property on things that were in the social ownership , which should be in exclusive competence of legislator (Decision Up-395/06, U-I-64/07, 21 June 2007, point 32). The object of nationalization must be clearly defined by law or easily ascertainable based on it; otherwise, the law would not align with the rule of law principles (Article 2 of the Constitution). Consequently, the legislature cannot delegate the determination of nationalization subjects to the executive branch without specific criteria. This is to avoid contradicting the constitutional principle of the separation of powers (Article 3 of the Constitution) and the provision in the second paragraph of Article 120, emphasizing that administrative bodies must operate within the framework of the Constitution and laws (Decision U-I-312/96, 14 January 1999, point 13).

The right to compulsory basic education is essential for children's development (see case Timishev v. Russia, nos. 55762/00 and 55974/00, 13 December 2005). Individual's basic education besides the benefits it gives to the pupils, serves the public good (Decision U-I-45/16-50, Up-321/18-48, Up-1140/18-38, Up-1244/18-38, 16 September 2021, point 89; see also Ponomaryovi v. Bulgaria, no. 5335/05, 21 June 2011: "education is a right that enjoys direct protection under the Convention. It is expressly enshrined in Article 2 of Protocol No. 1 […] It is also a very particular type of public service, which not only directly benefits those using it but also serves broader societal functions."). Individuals have the right to education, which is also an obligation since they are obliged to attend primary school. In accordance with the second paragraph of Article 57 of Constitution they have the right to free compulsory primary school education. Mandatory minimum of primary school education must be uniformly determined. The goal is to guarantee that individuals, based on their preferences and abilities, acquire a level of compulsory primary school education that enables them to pursue further education after completing primary school. Additionally, the education should adequately prepare them for the demands of life in various societal situations (Decision U-I-45/16-50, Up-321/18-48, Up-1140/18-38, Up-1244/18-38, 16 September 2021, point 89). Parents have the right to enroll their child in a public or concessioned private school within the school district where the child resides. The primary school in that district is responsible for admitting the child upon parental request. Enrolling a child in a primary school in another district is only allowed in exceptional cases with the consent of both schools. The education system ensures that all children in a specific district have the opportunity to enroll in a public school in their residential area, offering them equal opportunities to achieve educational goals and standards (Decision U-I-45/16-50, Up-321/18-48, Up-1140/18-38, Up-1244/18-38, 16 September 2021, point 89).

The denial of the renewal of a temporary residence permit and the order to leave the Republic of Slovenia not only impact the foreigner but also affect the family members. The assessment of the measure's influence should consider its impact on the effective enforcement of the right to respect the family life of all individuals affected, including the applicant, her spouse, and their under-age child (Decision, Up-1243/18-15, 3 June 2021, point 12). The first-instance authority failed to assess key factors such as the duration of the applicant's spouse's residence in Slovenia, as well as the social, cultural, and family ties of the family in both the spouse's country of origin and Slovenia Decision, Up-1243/18-15, 3 June 2021, point 14). Additionally, the authority did not determine any potential obstacles the appellant might face if required to relocate to the spouse's country of origin, nor did it evaluate the severity of potential issues arising from such a move, particularly concerning the welfare of the under-age child Decision, Up-1243/18-15, 3 June 2021, point 14). The first-instance authority neglected to evaluate the potential for ongoing contact between the applicant's spouse and minor children if only the spouse were to leave Slovenia. Considering that this could impact personal contact between the children and their father and potentially affect the children's well-being in the event of parental separation, the authority should have determined

the existence of any obstacles to further contacts. Furthermore, the authority failed to assess the feasibility and proportionality of the adopted measure in terms of effectively protecting the interests of the children directly affected by the decision (Decision, Up-1243/18-15, 3 June 2021, point 15). Finally, the authority made poor judgment from the point of view of the best interests of the children (Decision, Up-1243/18-15, 3 June 2021, point 16). Therefore, when deciding on extending temporary residence permit in the Republic of Slovenia to the foreigner married to Slovene citizen, having together under-age children the Administrative Unit will have to weigh the respect for the family life of the appellant, her spouse and their children against the public benefit. The Constitutional Court annulled decisions of Administrative Court, Ministry of Health and the Administrative Unit of Ljubljana and returned the case for a new decision to the Administrative Unit, which will need to assess whether a measure is necessary in a democratic society and proportionate to the objective pursued (Decision, Up-1243/18-15, 3 June 2021, point 18). It will also need to assess the proportionality of the intervention in terms of safeguarding the utmost advantages for under-age children.

Decision U-I-6/13, Up-24/13 deals with tax enforcement on receivables outstanding of tax debtor. In a tax enforcement proceeding, a tax debtor faced tax foreclosure of their monetary claims initiated by the first-instance tax authority. Following the decision to introduce tax enforcement, the tax enforcement officer directed the appellant to pay the seized monetary claim to cover the prescribed amount bill. However, the appellant contested this decision, arguing that they had no outstanding debt to the tax debtor (U-I-6/13, Up-24/13, 11 February 2016, point 11). Resolving a dispute between a tax debtor and a third-party alleged debtor regarding a monetary claim is in the interest of the tax authority, the tax debtor, and the state acting as the creditor in the tax enforcement procedure. The tax debtor seeks the initiation and management of the procedure by the state authority for realizing their monetary claims and determining the repayment process. The Constitutional Court states, that "The state pursues public benefit to ensure effective tax collection and (as soon as possible) repayment tax debt." The Constitutional Court was tasked with examining whether the Supreme Court's position, which permits tax enforcement on a third party's property to recover a foreign tax debt, even when the third party disputes the existence of the tax debtor's claim, infringes on the third party's right to have their obligations judicially determined. This scrutiny was aimed to assess if such limitations amount to a violation of the right outlined in the first paragraph of Article 23 of the Constitution (right to judicial protection) (U-I-6/13, Up-24/13, 11 February 2016, point 15). The Constitutional Court found a violation of the right to judicial protection from the first paragraph of Article 23 of the Constitution and the first paragraph of Article 6 of the ECHR and annulled the contested judgment and returned the case to the Supreme Court for a new decision (U-I-6/13, Up-24/13, 11 February 2016, point 17).

Article 158 of the Constitution underscores the significance of upholding the finality of state decisions in legal relationships. The finality principle re-

quires that interference with the right obtained through an individual act or the obligation imposed in this manner should cease, as it would undermine confidence in the legal system. Case Up-195/13, U-I-67/16 (10 February 2017) dealt with the possibilities of reassessing the right to a pension and changing the final assessment in favor of the beneficiary due to erroneous or incomplete data on benefits. The Constitutional Court supported the government's emphasis on finality. Namely, The regulation that restricts extraordinary legal remedies to the minimum aims to reinforce the principle of finality of legal decisions. In doing so, it does not contradict the pursuit of the public benefit. However, the Constitutional Court asserted that such changes do not compromise private interests or erode trust in the legal order. It emphasized that the option for reassessment and error correction actually enhances confidence in the legal system, given the shared responsibilities between the beneficiary and the Pension and Disability Insurance Institute of Slovenia overseeing the pension assessment procedure (Decision Up-195/13, U-I-67/16, 10 February 2017, point 16).

As previously stated, two main conclusions emerge from the above analysis. Firstly, the Constitutional Court generally refrains from providing detailed interpretations of the terms public benefit and public interest in its decisions. Instead, these terms are commonly mentioned in a more generic manner. Secondly, significant differences between the two decades are not apparent. The Court typically uses public benefit or public interest distinctly, without treating them as interchangeable synonyms. The reason for this is that a decision explicitly interpreting the meaning of both concepts was not detected. Therefore, mostly the Constitutional Court mentions either one or the other term. Even if there are cases where both terms are mentioned in the same decision, the court does not go into details of their interpretation, but is rather referring to the terms existing in the law (e.g. public health, public safety, environment protection etc.) or general meaning e.g. public interest as an interest of society as a whole. Mainly, it refers to the expressions of either public benefit or public interest as it is mentioned in the law. An upgrade of current analysis could be performed by analyzing Constitutional Courts' decision in the procedure for the review of the constitutionality and legality of regulations or general acts. This Constitutional Court's procedure reviews the relevant legislation. Since the legislation is the one that applies indefinite legal terms of public benefit and public interest, it would be interesting to analyze Constitutional Court's interpretations in its decisions on constitutionality and legality of regulations or general acts.

6 Conclusion

Both public interest and public benefit are abstract concepts. The analysis of the relevant systemic regulations has shown that the two are sometimes applied intertwiningly. However, the theory presented above suggests that there are certain differences in terms of their tangibility and enforceability.

Thus, a public benefit is the general benefit of an organized wider community that is superior to the interests of an individual. As such, it indicates objective effects as a result of activities or behavior and is more tangible and, hence, more enforceable than interest. In the broadest sense, it is also equivalent to substantive legality. This means it is up to the legislator to define what public benefit is. The principle of legality in administrative law requires the final issued decision to respect both the substantive conditions of the substantive law and the principles of and the rules of procedure (formal legality). Substantive legality refers to decision-making on a right or obligation to the extent of the rights and obligations provided for in the substantive rules. Substantive legality is generally established by the Constitution and obliges the authority, when making a decision to apply the substantive rules which determine the nature, content and the nature and scope of the rights, obligations and legal interests of the parties in the administrative act issued. The authority is permitted to acknowledge rights and legal entitlements and impose obligations through an individual administrative act solely in alignment with the provisions stipulated by substantive rules. It is imperative that the law defines the authority's competence to issue individual administrative acts and defines the conditions or specifications of the abstract factual circumstances serving as the foundation for the issuance of individual administrative act (Kovač and Jerovšek, 2023).

Public interest denotes a subjective attitude towards certain benefits or in a particular situation. It is the interest of a certain social community and implies a general, broader social interest. It is a normative phenomenon, i.e., the general interest becomes public on the basis of a legal norm through the institutional level of governance. It encompasses both the state and self-governing local communities, wherein the state delegates a portion of its political authority. It is at this level where the goals of a public community are established through political decision-making processes. These goals are expressed and recognized as the public interest.

Finally, as seen in the case of expropriation (see chapter 4) it is up to the legislator to define more in detail what is public benefit (i.e. expropriation purposes) in different fields in accordance with the Constitution (Virant in Šturm, 2002, p. 667). While public interest encompasses only the aspect of interest, public benefit requires a balance between public and private interests (i.e. inviolability of property). Different public interest represent different importance for public benefit (e.g. building a new traffic infrastructure can be beneficial to fulfill certain public needs, but on the other hand it contributes to the higher pollution). Namely, if we would understand public interest as a synonym of public benefit it would be sufficient for the expropriation to take place to define in a spatial plan an interest of a state or a municipality. Consequently, the term public benefit is inextricably linked with the principle of proportionality (Virant in Šturm, 2002, p. 668, 676).

The analysis of the Constitutional Court case law over the past two decades did not yield any significant tangible results in terms of giving substance to

these two concepts. The decisions often refer either to the public interest or the public benefit, but mostly in a very generalize way without interpreting the substantive elements for a particular administrative area. Nevertheless, we may understand from certain decisions that both public benefit and public interest refer to concepts such as natural wealth, care for the environment, and health. Similar results were obtained in the analysis of systemic regulations.

In the future, it would be interesting to analyze the substance of both concepts as given in the case law of the Administrative Court and the Supreme Court and Constitutional Courts' decision in the procedure for the review of the constitutionality and legality of regulations or general acts.

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Talent Management in the Public Sector – Empirical Evidence from the Emerging Economy of Romania

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ABSTRACT

Purpose: This paper aims to investigate how talent management is conceptualized and practised within Romanian public sector organizations. Just like their private sector counterparts, public sector organizations need talented employees or high performers to support their operations and enhance public service delivery. However, research on talent management in the public sector, particularly in Eastern European countries, remains limited.

Design/Methodology/Approach: The study was conducted through a series of semi-structured interviews with employees in public sector organizations. The results were analysed using thematic analysis.

Findings: The study reveals that talent management practices in the public sector are still in a nascent state of development. Furthermore, there appears to be a lack of understanding of talent management among HR practitioners, and implementation efforts have yielded less-than-desirable results.

Practical Implications: The results of our study suggest that while talent management practices are widely embraced by a growing number of private sector companies, their conceptualization and implementation in the public sector differ. In the case of Romania, implementation is hindered by the bureaucratic structure of the public sector and the legacy of previous communist regime.

Originality/Value: The study represents one of the initial attempts to investigate the impact of talent management practices in the Romanian public sector, leveraging empirical evidence to support its findings.

Keywords: public sector, talent, talent management, theory of bureaucracy

JEL: O15

1 Introduction

Whether talent management (TM) applies to public sector organizations (PSO) has piqued the interest of many researchers. Coulson-Thomas (2012), posits that TM applies to all organizational types, including those in the public, as well as their private sector counterparts as it can help them become more adaptable and better-performing organizations (Coulson-Thomas, 2012). In line with this premise, researchers like Glen (2012) have argued that since TM advocates a more comprehensive approach to human resource management, it should be relevant to the public service (Glen, 2012). Researchers have long asserted that TM provides organizations with a systematic process for attracting, identifying, developing, retaining and deploying high-potential individuals who can add value to the organization and enhance its performance (Ansar and Baloch, 2018). By stressing the importance of attracting the right talent for the right jobs, the literature argues that TM enhances the performance of individuals, allowing the organizations with whom they are working to better achieve their objectives and gain a competitive advantage in the market place (Valdescu, 2012).

While there has been an increase in the number of studies on TM, several scholars have pointed out that many of these discourses do not explicitly cover the public sector (Berger and Berger 2011; Cappelli, 2008; Boselie and Thunnissen, 2017). This point was underscored by Thunnissen et al. (2013) who noted that TM research has mostly focused on large multinational organizations with limited attention to the different contextual settings in which some organizations operate (Thunnissen et al. 2013). Delbridge and Keenoy (2010) noted that public sector organizations not only operate under different situational contexts, but they cater to differing interests (Delbridge and Keenoy, 2010). Public sector organizations, the authors stated, are driven by different motivations and operate with more rigid rules and norms (Delbridge and Keenoy, 2010). Notwithstanding this, public sector organizations, like their private sector counterparts, also strive to recruit, retain, reward, and develop their employees to enhance organizational performance (Poocharoen and Lee, 2013). This paper adds to the ongoing discourse given the calls to undertake more examination of this construct within the context of the public sector (Buick et al. 2015). Through the lens of the theory of bureaucracy, this study highlights some pertinent barriers and constraints to TM practices in public sector organizations through empirical data from Romania.

In reviewing the work by Buick et al. (2015) that highlighted some challenges of TM in the public sector, we believe this paper will add value to the ongoing discourse given the calls to undertake more research on this construct within the context of the public sector (Buick et al. 2015). While the literature has a limited number of studies on TM in public sector organizations, our search has not unearthed any prior study that examined the construct within the emerging European country of Romania. This study, therefore, seeks to fill the gap in the literature by exploring TM in public sector organizations at the municipal level. This level of the public sector is selected due

to its close proximity to the people in the community and the collaboration that often takes place between entities at this level and researchers. Our approach is carried out in two steps. First, we examine the extant literature on TM in public sector organizations in an effort to glean some insights from prior investigations of the subject. Second, we present findings from an empirical study conducted in several public sector organizations operating in Romania and then articulate some theoretical and practical implications emanating from these findings.

The remainder of this paper is organized as follows. First, we present our literature review. Second, we discuss the theoretical foundation and highlight some differences that separate TM practices in public and private sector organizations. Third, we outline the methodology that was utilized. Finally, we present the findings and discuss them in light of their theoretical and practical implications.

2 Literature review

The conceptualization of talent management has evolved over the years. Lewis and Heckman (2006) posited that it is a human resource practice that focuses on high performing or the talented employees in an organization (Lewis and Hechman, 2006). Collings and Mellahi (2009) viewed it in terms of human resource development, practices and functions (Collings and Mellahi, 2009). Scullion et al. (2010) regarded it as a systematic process for attracting, identifying, developing and retaining those employees who an organization regards as being talents (Scullion et al., 2010). Thus, Ballesteros (2010), opined that the goal of TM is to boost the performance of organizations through the implementation of HR strategies designed to attract, develop and retain individuals who possess the skills needed to meet the current and future needs of the organizations (Ballesteros, 2010). Meyers et al. (2013) regarded it as a branch of human resource management that focuses on those employees who the organization views as talented (Meyers et al., 2013). Tarique and Schuler (2010) asserted that the focus of TM should be on the identification and development of talents, who they liken to high potential and high performing individuals whom the organization regards as crucial to its success (Tarique and Schuler, 2010).

In elaborating on how an organization identify these talents, Buttiens and Hondeghem (2015) conceptualized talent management as "the systematic attraction, identification, development, engagement/retention and deployment of those individuals who are of particular value to an organization" (Buttiens and Hondeghem, 2015, p. 1186). Gadsen et al. (2017) broaden this conceptualization by suggesting that TM may be summed up as the proactive identification and advancement of employees at all organizational levels to help them realize their maximum potential (Gadsen et al., 2017). But, scholars like Powell et al. (2012) have noted the paucity of studies on the construct within the public sector (Powell et al., 2012).

In regards to TM practices in public sector organizations, one definition that was offered by Kravariti and Johnston (2019), is to regard it as "the implementation of key procedures to ensure public sector employees possess the competencies, knowledge and core values in order to address complex contemporary challenges and fulfill public sector strategic objectives for the common good" (Kravariti and Johnston, 2019, p. 8). The public sector is acknowledged as an important employer of talents in many countries (Vladescu, 2012). They operate largely as non-profit organizations and are generally renowned for the job security offered to workers as well as the long tradition of promoting equality and fostering diversity among their employees (Leisink et al. 2013). While both private and public sector organizations face similar challenges in finding the right talent, TM in PSO has been an area that is understudied (Boselie and Thunnissen, 2017).

Some scholars have argued that operationalizing TM in the public sector faces several obstacles (Rana et al. 2013; Thunnissen and Buttiens, 2017). One obstacle according to Harris and Foster (2010), is that implementing talent management practices that prioritize talented employees may encounter difficulties given the public sector's pursuit of equity and diversity within its ranks (Harris and Foster, 2010). The issue of how talent management is conceptualized in the public sector was another obstacle raised by Rust and Lesego (2012). Another obstacle highlighted by Gregoire et al. (2015), is the disparities in career and personnel development possibilities within the public sector (Grégoire et al. 2015).Other scholars have asserted that these challenges are even more acute in public sector organizations, given the established hierarchical levels and bureaucratic procedures that are characteristic of many public sector entities (Thunnissen and Buttiens, 2017). The authors highlighted some of the problems that have plagued HR practitioners in the public sector, including difficulties finding and hiring the right talents as well as concerns with employees' commitment, engagement, and productivity (Thunnissen and Buttiens, 2017).

Public sector organizations are regarded as being complex in their design, facing distinctive challenges relating to their ownership, and multiple stakeholder interests alongside the influence of government, politics, and the public who they are mandated to serve (Leisink et al., 2013). Delbridge and Keenoy, (2010) posited that they operate under different conditions than their private sector counterparts, and are subject to divergent interests and motives, with their own set of rules, logics, and norms (Delbridge and Keenoy, 2010). Rainey (1991) highlighted distinctive differences in organizational roles, structures, and processes of both public and private sector organizations with consequential impact on how HR functions are executed in each (Harel et al., 2001). Solomon noted differences in management perception about HR procedures in public and private organizations (Rainey, 2009). Gould-Williams (2003) stressed differences in managerial practices (Gould-William, 2003). Milkovich and Newman (1990) pointed to differences in the reward systems, appraisal methods and the compensation benefits offered to employees with similar education and skill levels in both groups (Milkovich and Newman, 1990). Vla-

descu (2012) posited that public sector organizations are often plagued by talent drain and shortage and often experience challenges in securing the right talents that they need.Harel et al. (2001) underscored differences in the recruitment and selection strategies of the two types of organizations. Still, another impediment mentioned by Gadsen el al. (2017) is the absence of a commonly agreed definition of who is a talent in the public sector.

In summing up these differences, Knies et al. (2022) suggested that approaches to HR in the public sector have historically been more focused on the welfare of employees than on management's desire to increase organizational and employee performance (Knies et al., 2022). The authors further explained that public sector organizations have traditionally used HR practices to focus on welfare management and promote equal opportunities, career management, and development, with less focus on performance, compensation and benefits, when compared to private sector organizations (Knies et al., 2022).

One of the central tenets that has dominated the general discourse on TM practices is how do organizations view and treat individuals they regarded as talent (Meyers and Van Woerkom, 2014). Two diverging views have emerged on this, with different scholars viewing talent as either inclusive or exclusive (Iles et al., 2010; Stahl et al., 2012). Supporters of the exclusive TM viewpoint posit that only a select set of employees within an organization have talent and only these employees should be considered as high potential and high performers (Dries, 2013).Proponents of the inclusive TM viewpoint hold that all employees should be regarded as talents, and it's the duty of the organization to develop all its employees so that they can take advantage of the opportunities available (Swailes et al., 2014). Researchers have found that while both viewpoints are present in private sector organizations, the exclusive viewpoint seems to predominate in public sector organizations (Swailes et al., 2014; Cappelli & Keller, 2014; Anlesinya and Amponsah-Tawiah, 2020).

This difference has been further highlighted by researchers like Gallardo–Gallardo et al. (2013) who have pointed to the different contextual settings of both organizational types (i.e. public or private sector) and have posited that these settings do have an impact and as such should be considered when examining how TM is conceptualized in them (Gallardo –Gallardo et al., 2013). Despite this, in order to improve organizational performance, public sector companies, like their private sector counterparts, also strive to hire, train, reward, and develop their workforce (Poocharoen and Lee, 2013). Given the call for further research on this construct in the context of the public sector from scholars like Buick et al. (2015), this study contributes to the current conversation (Buick et al., 2015). Through the lens of the theory of bureaucracy, this study identifies certain significant impediments and limits to TM practices in public sector organizations through empirical data from Romania. Through the presentation of the findings from this research that was conducted on public sector organizations in Romania, we attempt to close this gap in the literature.

2.1 Talent management in the Romania's public sector

As noted by Bouckaert et al. (2008), Romania is an emerging economy that is located among Central Eastern European (CEE) countries (Bouckaert et al. 2008). Similar to many of the countries in this region of Europe, Romaniahas emerged from a communist past where remnants of its socialist past continue to strongly influence some of its current HR and labour practices (Stan and Vancea, 2015). While the Romanian state has cast aside the communist system, embraced a market-led economy, and has started to reform and modernize its economy, the government continues to play a central role in the county's economy and remains a large employer of labour at both the municipal and central government levels (Cristescu et al., 2013).

Hesitancy among Romanian public workers about reforming many elements of the Romanian work environment to make it more market-oriented has raised doubt about the capacity of public sector managers to implement the HR reforms needed (Profiroiu et al. 2006). Issues relating to the lack of decentralization reforms leading to duplication of work tasks, administrative bottlenecks, as well as lack of cohesion among staff within different public sector departments leading to inconsistent service delivery to the public were some of the factors highlighted (Baba et al., 2007).

The perceived high level of politicization was also identified as another stumbling block affecting the transformation of the public sector into a more professional sector (Sandor and Tripon, 2008). The authors also pointed to the lack of consistency and coherence in the rollout of new HR approaches along with excessive legalism which they viewed as additional impediments to public sector reforms in the country. (Sandor and Tripon, 2008). Other stumbling blocks highlighted were issues relating to staff motivation, poorly thought-out civil service legislation and the general lack of trust within the civil service (Linder, 2011).

Romania adopted the UN 2030 Agenda for sustainable development goals (SDG) and set itself the aim of reducing the development gaps between itself and other EU members (Firoiu et al., 2019). One critical goal within this plan is the development of its human capital, including programmes for public servants and high performers in the government sector (Madar and Neaşu, 2020). While there have been ongoing reforms in the public sector in Romania, questions still remain about the pace of implementation, its impact on staff morale as well as its ultimate impact on service delivery to the public. It is the responsibility of public sector managers to promote standards where responsibility and objectivity are equally important (Dumitrescu, 2014). So, while there have undoubtedly been some strides, there still remain several challenges to TM for public sector organizations in Romania as it relates to attracting, developing, rewarding and motivating the right talents needed to improve services to the citizenry. But, while some researchers have acknowledged that progress has been made, arguing that remnants of its communist past and the long tradition of bureaucracy continue to exert influence on the work environment in the public sector (Lonescu and Robertson, 2016).

3 Theoretical foundation

To better understand how TM is operationalized in different contextual settings, researchers advise that we need to both appreciate the contextual setting in which it takes place and how the actions of critical stakeholders and actors are shaped by existing norms, rules and historical practices (Tyskbo, 2021). For this reason, the Theory of Bureaucracy postulated by German sociologist, Karl Emil Maximilian Weber, more commonly known as Max Weber, in 1921 provides an essential framework to explain operations in the public service as well as an appropriate lens through which to conduct our study. As posited by one researcher, Weber's Theory of Bureaucracy focuses on the organizational structure that divides the organization into hierarchies and creates strong lines of authority and control (Ferdous, 2016).

To the layperson, the word bureaucracy is synonymous with government operations and is often viewed in a less-than-positive light. It conjures negative thoughts of inefficiency, red tape and delays and is often one of the main reasons given for how government works and delivers its services to the public (Goodsell, 2014). But, what is bureaucracy, and how is it relevant to our understanding of how TM is operationalized in the public service? As posited by Im (2016), bureaucracy is not only applicable to government, it also describes the administrative structure of many private-sector companies as well as other non-governmental entities like universities, and hospitals as well as explains how large organizations like the military and police work (Im, 2016). Clegg et al. (2007) noted that bureaucracies have traditionally been thought of as systems created to increase the efficiency of organizational practices and procedures (Clegg et al., 2007). As theorized by Weber, bureaucracy achieves organizational efficiency by enforcing norms and coordination mechanisms that contain instrumental systems intended to rationalize administrative efficiency (Erkoc, 2017). Weber contended that bureaucracy exerts enormous influence over public administration specially and society in general (Im, 2016).

In elaborating on his thesis about bureaucracy, Weber viewed it not as a form of government but as rather as a system of administration carried out continuously by trained professionals according to established rules and regulations (Erkoc, 2017). Weber outlined six commonalities that are characteristic of bureaucratic organizations; (1) hierarchy, (2) division of labour, (3) impersonality, (4) technical qualifications, (5) procedural specifications and (6) continuity (Beetham, 1991). Weber opined that bureaucracies are the ideal organizational type that is rational and efficient, where goals are clear, positions are hierarchically arranged, authority resides in one's position rather than in the office holder and progressively increases higher up the organization (Beetham, 1991). He further noted that staff are recruited based on their qualifications, promotions are largely determined by seniority and performance, and employees strive to provide a continuous and neutral service to the public (Benington and Moore, 2010).

Lonescu and Robertson (2016), noted that for many European countries, bureaucracy is an important phenomenon that has considerable effects on

both public and private sector organizations (Lonescu and Robertson, 2016). The authors acknowledged the negative connotation normally associated with bureaucracies but argued that an efficient bureaucracy helps prevent disasters and inconveniences to the public due to the stability and certainty that its rules and structures provide. This they argue, is especially crucial for countries transitioning from a socialist to a market-led economy (Lonescu and Robertson, 2016). As noted by Page and Jenkins (2005), bureaucrats performed a pivotal role in policy formulation by first supplying legislators with the crucial information needed for making new laws and once enacted, taking responsibility for the execution and enforcement of these laws (Page and Jenkins, 2005). This point was stressed by Coyne, (2008), who noted that the development of modern society involves overlapping public bureaucratic structures which he argued is necessary for the proper functioning of government (Coyne, 2008).

In summarizing this discourse on bureaucracy, the following conclusions can be drawn from the literature. First, we posit that the theory of bureaucracy impacts how TM is operationalized in public sector organizations and as such, it is crucial to a better understanding of the dynamics of how and why employees act in relation to certain HR practices (Thunnissen and Buttiens, 2017). Second, TM strategies typically flow from an organization's business strategies, which in the case of bureaucracies would emanate through the hierarchy down to employees, which is a key tenet of Weber's Theory of Bureaucracy (Mahmood et al. 2012; McNamara, 2010). Third, despite decades of ideological and structural reforms in the public sector, bureaucracy has survived both in concept and practice and has thus proven its durability due in part to the obedience of civil servants to confirm to its organizational rules (Jackson, 2001). Finally, although the literature on TM practices in public sector organizations is still an understudied area, many tenets of the theory of bureaucracy have been co-opted by other management practices, and thus practices such as written rules, paperwork, punishment, and reward systems are well accepted (Sow, 2019). Additionally, we argue that the public administration model in Romania has several traits common to bureaucratic organizations, including a strict hierarchy, a clear division of labour, and the regular and ongoing performance of these tasks. (Ghindar, 2009). As a result, this lens offers a useful prism through which to view TM practices in public sector organizations.

3.1 Research questions

For this research on TM in the Romanian public sector, we attempted to address four research questions as follows:

- Research Question 1 (RQ1): What philosophical approach to TM predominates among public sector organizations?
- Research Question 2 (RQ2): What effects does TM have on employees' responsibilities and performance?

– Research Question 3 (RQ3): How do public sector organizations identify, select and recruit, the talents they need?
– Research Question 4 (RQ4): How do public sector organizations identify and develop the talents they need?

4 Methods

To arrive at the answers to the research questions, we followed the guidelines recommended by Eisenhardt (1989). The grounded theory approach proposed by Glaser and Strauss (1967) when compared to Eisenhardt's (1989) preposition differ primarily in that the latter calls for a more meticulous preparation of the research questions and assumptions regarding the state of the knowledge (i.e., constructs and relationships) as well as the various forms of data analysis that are carried out (Glaser and Strauss, 1967; Strauss and Corbin, 1997).

We have chosen this approach, as while the TM discipline is fairly new, its impact and influence in public sector organizations remain an understudied area (Thunnissen and Buttiens, 2017). Additionally, we believe it may produce biases that could undermine the findings of the grounded theory technique. Thus, in our investigation, we adhered to the highly structured Eisenhardt (1989) approach, which is still related to the grounded theory proposed by Glaser and Strauss (1967).

The process of developing a theory begins with a straightforward research topic. In this case, our focus is on TM practices in public sector organizations. The next stage was to identify relevant and suitable organizations or departments in the public sector where components of TM practices can be studied. In Romania, we selected a mix of public sector departments and organizations that operated at the municipal level for our case studies. Respondents were employees drawn from a wide cross-section of public administration in Romania. One hundred and thirty-nine employees were surveyed from municipal offices, social care services, statistical offices and the mayor's office across multiple cities in Romania.

These entities were selected on purpose to cover as many facets of TM as possible, but with a focus on organizations that operate at the municipal level. These local entities were selected for a number of reasons. First, we wanted to first assess TM conceptualization at the municipal (local level), given the paucity of studies at this level of the public sector. Second, it was convenient to contact the organizations due to their proximity. Third, the management team of each entity was receptive to the idea of participating in the survey. Forth, and final, most of the organizations have reported varying levels of familiarity with TM practices and few had incorporated aspects of it within their broader HR practices. Consequently, we theoretically selected the organizations in a manner that satisfies Eisenhardt's (1989) prescription.

The third phase involves creating a research questionnaire on TM in public sector organizations based on our literature review. As a result, we were able to undertake the research and collect the data using open-ended, semi-

structured interviews. To triangulate the data and thoroughly analyze the results, we asked respondents to record their responses using already-existing documents in this step. For each organization, the respondents interviewed were either department heads, supervisors, or line employees with extensive knowledge of the organization's strategies, policies, and practices, especially regarding HR. Each interview was taped, and the information was transcribed into Word documents.

The transcribed information served as the foundation for a two-step qualitative analysis that was subsequently undertaken. First, we coded the transcripts by giving codes to different textual components. Second, we carefully examined individual cases to determine the TM practices, along with the HR policies and procedures for each entity for those instances where TM may still be relatively new to the staff. Thirdly, we analyzed the results to identify trends and differences between cases. This exercise served as the foundation for the arguments we put forward in the paper's concluding section.

The process's conclusion involved comparing the research findings to what was already known about TM in public sector organizations and gleaned from the literature. The conclusion of the investigation assumes a critical review of the theory, and the study is complete when newly discovered findings cannot be fully explained by prior evidence. To ensure theoretical soundness, respondents from the organizations were re-contacted in cases where the data received was incomplete or where we needed to better better understand their knowledge of TM practices.

5 Results

Based on our research questions, the following responses were received from respondents and we added the subsequent discussion as follows.

Research Question 1 (RQ1): What philosophical approach to TM predominates among public sector organizations?

"Based on the analysis of the responses received, generally, most organizations appear to embrace an inclusive TM approach. Employees reported that they largely receive equitable treatment from management with little to no discrimination shown between employees. This they explained extends further, with no differentiation shown either between the high-performing employees and those rated as average performers".

The revelation that many of the public sector organizations embrace the inclusive philosophical approach to TM is probably not unexpected. This situation could be a side effect of Romania's socialist/communist past, which emphasized the equalitarian principles and equality between individuals (Irimie, 2014). Chun and Rainey (2005) argued that an exclusive philosophical approach that regards only some employees as being talents may be less acceptable in public sector organizations due to its perception of being elitist and the perceived inequalities that it may create among employees (Chu-

nand Rainey, 2005). Poocharoen and Lee (2013) suggested that the inclusive approach to TM better aligns with the egalitarian culture that exists in the public sector and which seeks to foster common values among employees (Poocharoen and Lee, 2013). This has prompted some scholars to argue that given concerns about potentially discriminatory practices and the possibility of workforce differentiation among employees, the concept of inclusive talent strategies appears more suited to public sector organizational contexts (Ford et al., 2010; Powell et al., 2012).

Research Question 2 (RQ2): What effects does TM have on employees' responsibilities and performance?

"People are strongly focused on implementing the duties according to the prescribed procedures and regulations, and in the deadline time frame. They are not at all encouraged to innovate or to do things differently. They are afraid of doing things wrong, so they expect to get procedures or clear legislation for each duty they get".

Innovation is an essential asset of an organization that can enhance its competitiveness and give it a sustained advantage in the marketplace (Marin-Garcia et al., 2011). One crucial ingredient for innovation to take place is the competencies of its workforce, a factor alluded to by Fernandez and Moldogaziev (2013) and Marin-Garcia et al. (2011). Another critical requirement according to Goffin and Mitchell, (2010) is the right environmental setting (Goffin and Mitchell, 2017). Innovation outcomes are influenced by factors such as organizational structure and culture (Goffin and Mitchell, 2017). Innovation in public sector organizations is not a fully understood topic since employees have to traverse between the practices and norms that are expected of organizations that operate under strong institutional settings (Vickers et al., 2017).

Furthermore, according to Jackson (2001), the hierarchical structure that is characteristic of bureaucracy ensures that the employees who manage the regulations and rules have clearly defined tasks (Jackson, 2001). This chain of command allows public sector managers to closely monitor the organization's performance and effectively address problems that arise (Coyne, 2008). It is generally accepted that TM can help organizations identify and develop the competencies of its employees so that they assist the organizations to meet the current and future demands for their services (Hayton and McEvoy, 2006; Camps and Luna-Arocas, 2012). But, given a situation where TM practices are not implemented, then it is likely that this may have a negative impact on the innovative output of staff within the organizations (Vickers et al., 2017).

"Employees seemed to be motivated by the good working conditions, regular working programmes, and respected days off that their department offered."

Some features of bureaucratic organizations may explain this. Weber submits that in a properly functioning bureaucracy, there must be duties, roles or functions for every worker and each worker must be clear about their duties, and job function and know to whom they have to report (McNamra, 2010). In addition to these prerequisites, it has been suggested that effective TM prac-

tices can aid in the development of the skills and competencies that workers need to improve their performance (Dixit and Arrawatia, 2018). Carpenter (2019) argued that motivation can be a crucial factor in helping employees to improve their performance (Carpenter, 2019). Tella (2016) supported this assertion as they view motivation as an important ingredient that can align the employee's action to his performance (Tella, 2016). The author noted that motivation is a person's drive or desire to perform a task of his own volition (Tella, 2016). But, motivation is multidimensional, a point highlighted by Damarasri and Ahman (2020) who asserted that a person's motivation is enhanced if his work environment is conducive and if he feels some sense of belonging to the organization (Damarasri and Ahman, 2020).

Some theories on motivation operate on the premise that by offering employees the right opportunities and applying the appropriate stimulation, individuals will perform well and to the satisfaction of the organization (Yagyagil, 2015). Herzberg's theory of motivation posits that a person's motivation is composed of motivators and hygiene factors (Herzberg et al., 1959). Damarasri and Ahman (2020) explained that motivators are personal factors relating to a sense of achievement, job interest as well as the level of responsibility and scope for advancement. Whereas, hygiene factors relate to the conditions within which the persons work and the factors that influence the work environment. Damarasri and Ahman, (2020) list the eight hygiene factors as; 1) company policy, 2) working conditions, 3) job security, 4) salary and benefit, 5) job status, 6) job security, 7) office and personal life, and 8) supervision and autonomy (Damarasri and Ahman, 2020). While Tella (2016) suggested that motivation can be viewed a solution to drive higher level of performance from employees, the relationship between TM and motivation is multidimensional and a far more complex one (Tella, 2016). As such, a deeper analysis of the relationship between both constructs falls outside the scope of this research.

Research Question 3 (RQ3): How do public sector organizations identify, select and recruit, the talents they need?

When recruiting, organizations do not aim to attract the best candidates on the market. Respondents stated that the purpose is to find candidates who meet the minimum requirements and who are willing to accept the low salary that comes with the job. They stated organizations follow the legislation when advertising job vacancies, but do not put extra effort into attracting the right candidates.

Recruiting the right talent is a critical step in the TM practice of an organization. When organizations fail to exercise due care in their recruitment, they can encounter problems such as selecting unsuitable talents, poor job performance, excess cost and high levels of attrition (Cole and Kelly, 2011). While this is true for all organizations, it is especially relevant to public sector organizations that face major challenges in attracting talents due to their inability to offer competitive salaries to lure qualified candidates (Okeke-Uzodike and Subban, 2015). The authors highlighted what they saw as a trending away from the principle of meritocracy in recruitment in public sector organizations due to political considerations (Okeke-Uzodike and Subban, 2015). Ber-

man et al. (2010) underscored the point that the effective delivery of government services requires that they hire, reward and manage good people (Berman et al. 2021). Kumar el al. (2010) asserted that good HR practices can have a positive impact on the performance of an organization (Kumar el al. 2010). McCourt (2007) echoed similar sentiments, pointing out the beneficial impact on organizations when they hire people with the right skills (McCourt, 2007). This point was emphasized by Okeke-Uzodike and Subban (2015) who noted that when executed, effectively, staff recruitment is critical to the "performance and achievement of organizational goals" (Okeke-Uzodike and Subban, 2015, p. 27).

Research Question 4 (RQ4): How do public sector organizations identify and develop the talents they need?

"The promotion system does not differentiate the best employees. The term talent is not used in the organizations that were surveyed. Instead, the universal term used is "high-performing employees". Respondents reported that no matter the performance, each employee may move to a higher level of their job every 3 years. But, they get a higher payment (very small increase), but not increased responsibilities and no increased decision-making power. The high-performing employees get more work to do but are not rewarded accordingly for their extra work. Plus, there are no differentiating benefits for the more hard-working employees".

One of the fundamental premises of TM is that talent must be identified, cultivated, and placed in key positions that are crucial to the operations of a company (Boudreau and Ramstad, 2005). Hartmann et al. (2010) were more pointed, in positing that organizations need to first discover and identify its talent before engaging in TM (Hartmann et al., 2010). Wiblen (2016) advised that organizations must have a clear grasp of who and what constitutes talent to do this effectively (Wiblen, 2016). The essence of talent identification is that it allows organizations to funnel their scarce resource to attract, choose, develop, and keep high-potential employees who are more productive than non-high-potential employees (Farndale et al., 2022). While some scholars have debated whether an employee should be classified as a talent, proponents of TM generally agree that talent identification can have beneficial effects on the organization (Cappelli, 2008; Guthridge et al., 2008). Bjorkman et al. (2013) found that talent identification can increase employees' affective attachment to the organization and motivate them to work harder at their job (Bjorkman et al., 2013). Meyers et al. (2013) reported similar findings, stating that individuals designated as talent by an organization generally exhibit more positive work attitudes and display a higher commitment to the organization (Meyers et al., 2013).

However, researchers like Davis and Frolova (2017) urged caution, noting that the job of identifying talents in an organization is not easy (Davis and Frolova, 2017). Dries (2013) suggested that one of the dangers in identifying talent is that subject reviews such as performance appraisals that are often used can lead to bias (Dries, 2013). Rowland (2011) argued that this method is problematic and can result in charges of unfairness and elicit resentment from

staff (Rowland, 2011). Bjorkman et al. (2013) highlighted the issue of unfavourable reactions from those employees who were not identified as talent or high performers (Bjorkman et al., 2013).

Most studies on the subject have taken place in private-sector companies and the topic thus remains understudied in the public sector (McDonnell el al., 2017). Thunnissen and Buttiens (2017) underscored this point and noted that the idea of public sector talent is in its infancy, in contrast to private sector talent (Thunnissen and Buttiens, 2017). Kravariti and Johnston (2019) offered a possible explanation for this, positing that public sector talent is conceptualized with a greater emphasis on the contextual setting and the guiding principles that view public service as serving the public good (Kravariti and Johnston, 2019).

Given the infancy of talent identification in the public sector generally and the communist past of Romania, it is probably not surprising that talent identification and designation remain underdeveloped areas. One of the features of communism in Romania was to promote an egalitarian work environment where all workers were treated as equals (Catana and Catana, 2012). Remnants of this legacy seemed to have remained and continue to influence the work environment in the public sector.

Weber theorized bureaucracy as being indispensable to the workings of modern society and public administration with its characteristically hierarchical structures and rational controls (Cole, 2004). He viewed bureaucracies as being the most successful kind of organizational type because they possess specialized expertise, certainty, continuity, and unity of purpose (Page and Jenkins, 2005). But, he cautioned that unfettered bureaucracy could threaten individual liberties by enclosing people in an "iron cage" of impersonal, unreasonable, and strict regulations.

Lonescu and Robertson (2016) echoed similar sentiments, noting that many European countries have experienced the negative effects of bureaucracy at multiple levels of public management, many documents, corruption in the public sector, and lack of transparency because useful information is sometimes lost in multiple forms and paperwork (Lonescu and Robertson, 2016). Lonescu (2012) asserted that Romania has a legacy of a socialist economy and an outdated bureaucracy that has hindered or slowed attempts to modernize the public service (Lonescu, 2012). It is not surprising that examples of these were unearthed in our findings.

6 Conclusion

The findings show that TM practices in the Romanian public sector are at a stage of infancy with many of its elements largely underdeveloped. These findings are not surprising since they mirror the results that researchers in other countries have found (Al Jawali et al., 2022; Ananthan, 2019; Thunnissen and Buttiens, 2017). While several of the respondents and organizations reported some familiarity with the tenets of TM, the information unearthed suggests

that the conceptualization and operationalization of TM in the public sector has a far way to go. Various factors can be advanced for this state of affairs. However, based on the reading of the literature and the data we analyzed, we posit two central prepositions for the low infusion of TM in the public sector.

Preposition 1: First, as a number of earlier scholars have mentioned, the institutional context of the public sector, which is embedded in its institutional setting and bounded by multiple institutional logics, serves as a barrier to the introduction of new HR concepts and practices, like those advocated by TM (Vandenabeele et al., 2014; Kehoe and Wright, 2013).

Preposition 2: Second, efforts to modernize and change the public sector in Romani are hindered by some lingering cultural traditions from the country's socialist and communist past. As a result, new HR practices like TM may find it difficult to establish a strong foothold (Dixit and Arrawatia, 2018). Longley (2021) argued that due to the rigid structure that exist in bureaucracies, they offer limited flexibility to employees to deviate from these rules (Longley, 2021). The author further argued that bureaucracies are often slow to embrace new practices and adapt to changing social conditions, which may explain why new HR practices like TM have a long gestation period in civil services like those in Romania.

As attractive and beneficial TM is to many organizations, some scholars have questioned aspects of the practice and its suitability to public sector organizations. Swailes (2013) questioned whether the ethics of TM in focusing only on a small proportion of relatively high-performing employees aren't at variance with the policies of many public sector organizations that often promote inclusiveness and equality among all its employees (Swailes, 2013).

7 Practical contribution

This paper contributes to the under-researched field of TM in public sector organizations. The results generated from this study may have some useful insights and implications for researchers, policymakers, and HR practitioners in other countries with a similar history to Romania. Much has been written about the beneficial effects of TM, but HR professionals and public sector managers may well encounter some of the same barriers to its implementation. Attracting, developing and retaining talent remain a challenge for many public sector organizations in Eastern Europe. This is against the urgent need to reform and modernize the public service to make it more efficient in the delivery of services to the public. Talent management has proven beneficial to many private sector companies and may do the same for the public service if properly implemented and operationalized. For the public sector to be transformed, it will need talented workers who are committed to service, motivated to serve the public and eager to assist the organization in delivering on its mandate. For workers, it highlighted several deeply held beliefs that they have and which may stand in the way of improving their output and embracing a new mode of working. For HR practitioners and public sector

managers, it highlighted the barriers that they will need to overcome to implement TM and get worker buy-in.

8 Limitations and research

This study has some limitations. First, only public servants in municipal administrations were surveyed. We surveyed no public servants attached to the national civil service, and it is possible that their inclusion could have generated different results. Second, there may be diversity among the different municipal administrations which was not accounted for in the study. Third, being a qualitative study done in Romania, the findings are not intended for transferability to other countries where different cultural and institutional settings may exist. Finally, the study can be considered exploratory and the sampling chosen was based on convenience. We also opted to focus on how TM is conceptualized and impacts employees at the municipal level. As such further research is required to explore it at the central government level as well as to probe reasons for some of the insights that we unearthed and to compare the extent to which these findings are mirrored by public servants in central government in other similar countries in Europe. Similarly, researchers need to investigate the benefits of TM to different stakeholders in the public sector.

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Povzetki (*Summaries in Slovenian Language*)

1. Namesto uvoda: vzorci objavljanja v reviji CEPAR – bibliometrična analiza

Liliana Bunescu, Maja Klun

Študija, ki sovpada z 20. obletnico revije Central European Public Administration Review (CEPAR), poudarja pomen vključitve omenjene revije v indeksiranje. Analiza z uporabo scientometrije, bibliometrije in kartiranja znanja ponuja celovit pregled razvoja revije CEPAR v zadnjih dveh desetletjih, izzivov, s katerimi se je revija soočala po vključitvi v Web of Science, in posebnosti vzorcev avtorstva. Podatki, uporabljeni za bibliometrično analizo, so bili pridobljeni iz Web of Science in zajemajo obdobje 2018–2023 (103 članki), medtem ko so bili podatki za analizo avtorstva zbrani iz arhivov revije in se nanašajo na obdobje 2003–2023 (425 člankov). V 21 letih obstoja je revija CEPAR objavila skupaj 425 člankov, v povprečju 20 na leto. Ti članki predstavljajo skupna prizadevanja 684 avtorjev iz različnih držav, pri čemer je povprečen članek napisalo 1,61 avtorja. Trend citiranj je pozitiven, saj se je število citatov po indeksiranju v Web of Science povečalo za desetkrat. Prispevke v izbranem vzorcu (bibliometrična analiza) je napisalo 175 avtorjev, povezanih s 75 institucijami, od katerih jih je 84 % prispevalo po en članek. V petih letih od vključitve v Web of Science je revija CEPAR dosegla okoli 200 citiranj, kar je približno 33 na leto. Med najpogosteje citiranimi so študije o uspešnosti, javni upravi, primerjalni analizi, e-upravi, upravnih sodiščih in dostopu do informacij.

2. Analiza upravnih služb, specializiranih za zadeve EU: primer Republike Ciper

Andreas Kirlappos, Stefanos Iacovides

Namen: Republika Ciper je manjša članica EU, kjer so upravne strukture že tradicionalno centralizirane. Prispevek skozi tri procese evropeizacije proučuje vpliv evropske integracije na upravne službe, specializirane za zadeve EU, in morebitne razlike med njimi.

Zasnova: Uporabljeni raziskovalni metodi vključujeta pregled domače in tuje literature na temo evropeizacije in zgodovinskega institucionalizma ter intervjuje in vprašalnike za zaposlene v omenjenih službah.

Ugotovitve: Rezultati kažejo, da je članstvo Cipra v EU sicer pomembno vplivalo na evropeizacijo ciprskega upravnega okvira, vendar ta proces zaradi kontinuitete vzorcev iz prejšnjih obdobij še zdaleč ni zaključen. Ti vzorci imajo trajen vpliv na formalne in neformalne institucije, zmanjšujejo vlogo obravnavanih služb in omejujejo delovanje javnih uslužbencev.

Akademski prispevek k znanstvenem področju: Študija omogoča celovito razumevanje učinkov evropeizacije na specializirane službe v ciprskem upravnem okolju. Poudarja tudi posledice kontinuitete vzorcev iz preteklosti, ki se kažejo v formalnih in neformalnih institucionalnih omejitvah ter zaviranju institucionalnih in upravnih sprememb.

Vpliv v praksi: Ugotovitve te študije so lahko iztočnica za prihodnje raziskave, saj predstavljajo pomembno podlago za ocenjevanje učinkov evropske integracije in upravnih sprememb v drugih državah članicah EU s podobno zgodovinsko izkušnjo kot Ciper, npr. v Grčiji in na Malti.

Izvirnost/Pomen/vrednost: Gre za inovativno študijo, ki se osredotoča na posebne upravne akterje na Cipru, katerih vloga doslej še ni bila preučena, in osvetljuje dejavnike, ki bi lahko vplivali na spodbujanje institucionalnih in upravnih sprememb.

Ključne besede: Evropska unija, notranje upravne strukture, Republika Ciper, evropeizacija, zgodovinski institucionalizem

3. Določanje javnih ciljev v nestanovitnih in kompleksnih časih

Mirko Pečarič

Namen: Namen prispevka je podati kritično analizo tradicionalnega pristopa k oblikovanju in uporabi pravnih pravil z argumentom, da je ta za obravnavo kompleksnosti in dinamike sodobne družbe in tehnologije zastarel in nezadosten.

Zasnova/metodologija/pristop: V članku je uporabljena kvalitativna raziskovalna metodologija, in sicer študija primera, ki se osredotoča predvsem na prakso zakonodajalca pri določanju javnih ciljev. Analiza opredeljuje teme in vzorce, povezane z različnimi praksami določanja javnih ciljev, in njihov vpliv na zakonodajalca. Ugotovitve so primerjane s teoretičnim okvirom, pridobljenim iz pregleda literature in navedenem v tem prispevku. Članek se zaključi s povzetkom ugotovitev in vplivov v praksi ter predlogi za prihodnje raziskave.

Ugotovitve in vpliv v praksi: Ne glede na vlogo tehnologije v življenju sodobnega človeka se zakonodajni javni cilji še vedno določajo statično, kar odraža tradicionalno newtonovsko mehanistično perspektivo, ki temelji na načelu vzročnosti. Prispevek predstavlja možne scenarije za prihodnost in izpostavlja, da je treba odnos med naravo, tehnologijo, zakonodajo in človeštvom skrbno uravnavati, da bi zagotovili harmonično in fleksibilno sobivanje. Področje zapletenih pravnih vprašanj je vsekakor mogoče do neke mere ohraniti z vrsto inovativnih metod. Te vključujejo k rezultatom in postopkom usmerjene pristope k interakciji med posamezniki in kolektivom, pravni sistem, ki temelji na mehanizmih povratnih informacij in pragov, uporabo kolektivne inteligence, predvidevanje neugodnih scenarijev in izvrševanje prilagodljivih norm. Takšne

metode so po svoji naravi bolj primerne za obvladovanje nepredvidenih in zapletenih sodobnih pravnih izzivov kot tradicionalni legalistični okviri.

Izvirnost: V prispevku so združena spoznanja različnih disciplin, vključno s pravom, sistemsko teorijo in tehnološkimi študijami. Tak interdisciplinarni pristop omogoča celovitejše razumevanje zapletenega odnosa med naravo, tehnologijo in pravom, kar je v ozko usmerjenih študijah pogosto spregledano. Prispevek je izviren, saj oporeka obstoječim oblikam regulacije in predlaga nove regulativne pristope, ki temeljijo na spreminjajoči se naravi dejstev ter s tem povezanih pravic in obveznosti posameznikov in skupin.

Ključne besede: kompleksnost, fleksibilnost, zakonodaja, javni cilji, kolektivna modrost, negativni scenariji, prilagodljive norme

4. Revitalizacija ukrajinskih mest: vloga javno-zasebnih partnerstev pri pametnem razvoju mest

Vitalii Kruhlov, Jaroslav Dvorak, Volodymyr Moroz, Dina Tereshchenko

Namen: Članek obravnava vlogo javno-zasebnega partnerstva kot ključnega orodja za obnovo mestne infrastrukture in razvoj ukrajinskih mest v okviru koncepta »pametnih mest«. Poudarja potrebo po učinkovitih mehanizmih za obnovo mestne infrastrukture, zlasti v luči izzivov, povezanih z rusko vojaško agresijo in posledičnim uničenjem v ukrajinskih mestih. Študija obravnava ključne vidike razvoja pametnih mest, vključno z uvedbo digitalnih tehnologij, uporabo podatkov in inovativnimi poslovnimi modeli, namenjenimi optimizaciji mestnih funkcij.

Zasnova/metodologija/pristop: Uporabljen je večstopenjski metodološki pristop, ki med drugim vključuje merjenje zadovoljstva mestnega prebivalstva z občinskimi storitvami, grafično analizo z uporabo indeksa CIMI, oceno pomembnosti oživljanja ukrajinskih mest in potreb po mobilizaciji poslovnih virov, sociološke raziskave, razvoj modela pametnega mesta na podlagi rezultatov projektov javno-zasebnega partnerstva ter oblikovanje ključnih elementov nacionalne strategije razvoja pametnih mest.

Ugotovitve: Študija izpostavlja pomen strateškega načrtovanja in sodelovanja med javnim in zasebnim sektorjem ter poudarja prednosti projektov, ki temeljijo na javno-zasebnem partnerstvu. Dobljeni rezultati kažejo na ključno vlogo javno-zasebnih partnerstev pri spodbujanju pobud za razvoj mest, ki temeljijo na konceptu pametnega mesta. Predstavljen je potencial javno-zasebnih partnerstev za oblikovanje stabilnih in uspešnih pametnih mest v Ukrajini. Z učinkovitimi javno-zasebnimi partnerstvi bodo lokalne oblasti uspešneje obnovile mestno infrastrukturo ter izboljšale kakovost storitev in življenja svojih državljanov.

Vpliv v praksi: Rezultati raziskave lahko služijo kot podlaga za strateško načrtovanje in naložbe v infrastrukturne projekte, potrebne za oblikovanje pametnih mest. Predvidena strategija bo omogočila izboljšanje zakonodajnih

aktov, ki se nanašajo na razvoj pametnih mest, hkrati pa spodbuja sodelovanje med javnimi in zasebnimi subjekti. To vključuje krepitev prometnega sistema, uvajanje digitalnih tehnologij, posodabljanje družbenih institucij in izboljšanje učinkovitosti upravljanja mestnih virov.

Izvirnost/vrednost: Izvirnost in vrednost študije vidimo v njenem večplastnem pristopu k presoji in spodbujanju koncepta pametnih mest v urbanem razvoju v Ukrajini. Združuje različne raziskovalne metode, vključno z ocenami zadovoljstva, grafičnimi analizami na podlagi indeksa CIMI, sociološkimi raziskavami in razvojem modela pametnega mesta na podlagi rezultatov projektov javno-zasebnega partnerstva. Ta pristop ne omogoča le celovitega razumevanja stanja mestne infrastrukture in zadovoljstva državljanov, temveč ponuja tudi strateški okvir za razvoj pametnih mest.

Ključne besede: infrastruktura, javna uprava, javno-zasebno partnerstvo, okrevanje, pametno mesto, orodja, Ukrajina, obnova

5. Organizacijski dejavniki spodbude za uvedbo umetne inteligence v javnih institucijah: sistematičen pregled literature

Nina Tomaževič, Eva Murko, Aleksander Aristovnik

Namen: Namen študije je oblikovati niz priporočil za odločevalce (oblikovalce politik in javne menedžerje) in javne uslužbence za povečanje uspešnosti in učinkovitosti organizacijskih elementov pri uvedbi umetne inteligence (UI) v javnih institucijah.

Zasnova/metodologija/pristop: Študija s sistematičnim pregledom literature po protokolu PRISMA proučuje organizacijske dejavnike, ki omogočajo uvedbo UI v javnih institucijah. Z obsežnim iskanjem smo v podatkovni zbirki Scopus opredelili ustrezno literaturo, ki se osredotoča na prepletanje tehnologij UI in različnih organizacijskih elementov. Analizo je olajšal program NVivo 12, ki je omogočil strukturirano preučevanje ključnih organizacijskih vidikov – ljudje, kultura, struktura, procesi in tehnologija – v javnih institucijah.

Ugotovitve: Dosedanje **študije o** uvedbi UI v javnih institucijah so pokazale številne dejavnike, ki spodbujajo uvedbo UI in so povezani z organizacijskimi elementi, kot so ljudje/zaposleni, struktura, kultura, tehnologija in procesi. Številne raziskave in študije primerov poudarjajo pomen osredotočanja na uvajanje ali preoblikovanje teh organizacijskih elementov pred ali vzporedno z uvedbo UI.

Akademski prispevek k znanstvenem področju: **Š**tudija predstavlja prvi celovit in sistematičen pregled izbranih organizacijskih elementov, ki lahko služijo kot spodbujevalci uvedbe UI v javnih institucijah.

Omejitve/pomanjkljivosti raziskave: Tovrsten sistematični pregled literature je podvržen določenim omejitvam. Iz tega vidika je možno, da je prikaz povezave med UI in organizacijskimi spremembami zaradi delitev literature o

UI na naravoslovno in družboslovno, pri čemer se prva osredotoča na tehnične vidike, druga pa na širša organizacijska vprašanja, nepopoln. Prav tako je možno, da so bile zaradi omejitev, povezanih z iskanjem po ključnih besedah, nekatere pomembne študije izpuščene. Glede na hiter razvoj UI naš pregled morda ne odraža zadnjih dognanj na tem področju, saj zajema literaturo, objavljeno do maja 2023, poleg tega pa sta interpretacija in kodiranje literature kljub uporabi programa NVivo 12 vključevala subjektivne elemente, ki bi lahko vplivali na rezultate.

Vpliv v praksi: Na podlagi izkušenj iz zasebnega sektorja tudi javne institucije vse bolj uporabljajo tehnologije UI na področjih, kot so javne finance (davki), raziskave, zdravstvo, kazenski pregon, obramba, izobraževanje. To zahteva spremembe tako »trdih« (struktura, procesi itd.) kot »mehkih« elementov (ljudje, organizacijska kultura itd.). Zato lahko dejavniki spodbude, opredeljeni v študiji, služijo kot smernice za odločevalce in izvajalce UI na vseh ravneh javnih institucij.

Vpliv na družbo: Če bo UI v javnih institucijah uvedena učinkovito in uspešno ter se bo uporabljala strokovno in etično, lahko družbi prinese številne koristi, kot so preglednost, pravičnost, stroškovna in časovna učinkovitost, visoka kakovost storitev ter boljše sodelovanje med različnimi deležniki v družbi.

Izvirnost/pomen/vrednost: Študija predstavlja poseben doprinos, saj se namesto na tehnološke osredotoča na organizacijske dejavnike spodbude uvedbe UI v javnih institucijah. Z vključevanjem tehničnih in družboslovnih vidikov zapolnjuje kritično vrzel v literaturi ter zagotavlja dragoceno podlago za teorijo in prakso na področju organizacije in upravljanja.

Ključne besede: uvedba UI, umetna inteligenca, organizacijske spremembe, organizacijski dejavniki spodbude, javna institucija, sistematični pregled literature

6. Omilitev upravne kazni s strani sodišča v izbranih srednjeevropskih državah

Nikolaj Zakreničnyj

Namen prispevka je analizirati obseg pristojnosti sodišča za omilitev kazni, naloženih s strani upravnih organov, v naslednjih srednjeevropskih državah: na Češkem, Slovaškem, v Nemčiji in Avstriji. Osrednji cilj je proučiti pravne okvire v teh državah in njihovo povezavo s 6. členom Evropske konvencije o človekovih pravicah.

Uporabljena **metodologija** vključuje primerjalno analizo pravnih določb glede sodnega nadzora nad upravnimi kaznimi v navedenih državah. Študija natančno proučuje razlike v pravnih pristopih teh držav in poudarja različne metode, ki se uporabljajo za obravnavo vloge sodišča pri omilitvi upravnih kazni. Raziskava temelji na konceptu polne pristojnosti, pri čemer je poudarjena pravica

posameznika, da njegov primer temeljito prouči sodišče, kar vključuje tudi presojo zakonitosti, utemeljenosti, primernosti in sorazmernosti izrečene kazni.

Ugotovitve razkrivajo precejšnje razlike med obravnavanimi državami glede pristopa k sodni presoji upravnih kazni, kar kaže na kompleksnost odnosa med izvršilno in sodno vejo oblasti. Pri tem se pojavljajo pomisleki glede načel, kot so pravna varnost, sorazmernost in pravica do učinkovitega pravnega sredstva. Članek osvetljuje različne stopnje posredovanja sodišč pri omejevanju upravnih kazni v različnih pravnih kontekstih in predstavlja pomemben akademski prispevek, saj proučuje razmeroma slabo raziskan vidik upravnega prava v Srednji Evropi. S tem zagotavlja dragocen vpogled v to, kako različni pravni sistemi uravnavajo odnos med izvršilno oblastjo in sodnim nadzorom, zlasti v primeri upravnih kazni.

Izvirnost študije vidimo v njenem primerjalnem pristopu, ki ponuja diferencirano razumevanje vloge sodišča pri omilitvi kazni in njenih posledic za širša pravna načela in varstvo človekovih pravic. Članek bo koristen tako za raziskovalce kot za izvajalce, ki jih zanima raziskovanje izvora in posameznih vidikov pravice sodišča do omilitve upravnih kazni, saj spodbuja nadaljnje raziskave in ponuja shematično orodje za proučevanje tega zapletenega pravnega terena.

Ključne besede: upravna sankcija, primerjava, omilitev, polna pristojnost

7. Javna korist in javni interes v slovenskem pravnem sistemu – dve plati istega kovanca?

Tina Sever

Namen: Prispevek proučuje razliko med pojmoma javni interes in javna korist v slovenskem pravnem sistemu. S poglobljeno analizo pravnih pojmov, nacionalnih predpisov ter sodne prakse Ustavnega sodišča RS in izbranih primerov Evropskega sodišča za človekove pravice je namen prispevka osvetliti ključne razlike med navedenima pojmoma ter vzpostaviti temeljne smernice za razumevanje njunega različnega pomena in uporabe.

Zasnova/metodologija/pristop: Raziskava temelji na vsebinski analizi sekundarnih virov. Uporablja kvalitativne metode z analizo relevantnih teoretičnih izhodišč, pravil in ustavnosodne prakse v slovenskem pravnem sistemu ter izbrane sodne prakse Evropskega sodišča za človekove pravice. Analiza se osredotoča na opredelitev ključnih teoretičnih argumentov, pravnih definicij in praktične uporabe omenjenih konceptov. Za razlikovanje med javno koristjo in javnim interesom je uporabljen primerjalni pristop, ki prikazuje, kako je posamezen pojem opredeljen, uporabljen in uravnotežen v različnih pravnih kontekstih. Podana je sinteza podobnosti in razlik med različnimi pogledi na ta pojma. Na podlagi analiziranih podatkov so oblikovani zaključki o razmerju med javno koristjo in javnim interesom.

Ugotovitve: Javni interes in javna korist sta abstraktna pojma. Analiza relevantnih slovenskih sistemskih predpisov je pokazala, da se včasih uporabljata

kot sinonima, a glede na teorijo med njima obstajajo določene razlike. Ustavnosodna praksa ju navaja na splošno in ju vsebinsko ne opredeljuje v celoti, vendar ju ne šteje za sinonima.

Akademski prispevek k znanstvenem področju: Javni interes in javna korist sta osrednja pojma upravne znanosti. Javni interes je ključen pri opredeljevanju in oblikovanju upravnih razmerij, o katerih se odloča v upravnem postopku. Predstavlja temeljno vrednoto javnega sektorja in zagotavlja zakonitost njegovega delovanja. Javna korist pa je splošna korist organizirane širše skupnosti, ki ima prednost pred koristmi posameznikov in na splošno velja za enakovredno materialni zakonitosti. Ker so si javni in zasebni interesi pogosto nasprotni, je za zaščito javne koristi potrebno posredovanje države z ustreznimi predpisi.

Izvirnost/pomen/vrednost: Raziskava prispeva k razumevanju konceptov javnega interesa in javne koristi v slovenskem pravnem sistemu in predstavlja novost na tem področju, saj takšen pregled doslej še ni bil opravljen. Njena vrednost je v analizi slovenske ustavnosodne prakse v zadnjih dvaindvajsetih letih in vpogledu v sodno prakso Evropskega sodišča za človekove pravice. Zaradi osredotočenosti na slovensko zakonodajo in sodno prakso ter judikaturo Evropskega sodišča za človekove pravice ugotovitev ni mogoče posploševati na druge kontekste. Ta pristop je bil izbran, ker je večina zakonodaje, pomembne za to raziskavo, neodvisna od vplivov EU. Kljub temu pa ima pravni okvir Slovenije zaradi njenega članstva v EU določene skupne značilnosti z drugimi evropskimi sistemi. Analiza je pomembna za razumevanje, kako so omenjeni koncepti obravnavani v podobnih pravnih sistemih, kar ponuja dragoceno podlago za primerjalne študije.

Ključne besede: upravno odločanje, upravno-politični proces, ustavnosodna praksa, javna korist, javni interes, Slovenija

8. Upravljanje talentov v javnem sektorju – empirični dokazi iz razvijajočega se romunskega gospodarstva

Barrington Graham

Namen: Prispevek proučuje upravljanje talentov v organizacijah javnega sektorja v Romuniji. Tako kot v zasebnem tudi organizacije v javnem sektorju namreč potrebujejo talentirane ali visoko potencialne kadre, da bi okrepile svoje delovanje in izboljšale zagotavljanje javnih storitev, a so raziskave o upravljanju talentov v javnem sektorju, zlasti v vzhodnoevropskih državah, še vedno precej skope.

Zasnova/metodologija/pristop: Študija temelji na polstrukturiranih intervjujih z zaposlenimi v organizacijah javnega sektorja. Rezultati so bili analizirani z uporabo tematske analize.

Ugotovitve: Analiza razkriva, da je upravljanje talentov v javnem sektorju še vedno v začetni fazi razvoja. Zdi se, da kadrovske službe upravljanja talentov

ne razumejo, prizadevanja za izvajanje tovrstnih praks pa niso prinesla želenih rezultatov.

Vpliv v praksi: Rezultati naše študije kažejo, da so prakse upravljanja talentov sicer dobro sprejete v vse več podjetjih zasebnega sektorja, povsem drugačna pa je situacija v javnem sektorju. V primeru Romunije izvajanje ovirata birokratska struktura javnega sektorja in zapuščina nekdanjega komunističnega režima.

Izvirnost/vrednost: Študija je eden prvih poskusov proučevanja vpliva praks upravljanja talentov v romunskem javnem sektorju. Ugotovitve so podprte z empiričnimi dokazi.

Ključne besede: javni sektor, talenti, upravljanje talentov, teorija birokracije

In memoriam

Since the publication of our last issue, we have seen the passing of three esteemed members of the CEPAR community: Associate Prof. Rudi Kocjančič, PhD, and Prof. Gyorgy Jenei, PhD, former members of the CEPAR Editorial Board, and Prof. Allen Rosenbaum, PhD, a member of the CEPAR Advisory Board.

Prof. Gyorgy Jenei, PhD, served on the CEPAR Editorial Board from 2009 to 2019. He held the title of Emeritus Professor at the Hungarian Academy of Sciences and served as President of NISPACee for one term. Beyond his editorial duties, Prof. Jenei contributed to the journal as a reviewer.

Rudi Kocjančič, PhD, was among the founding members of the CEPAR Editorial Board, offering unwavering support during the journal's formative years. He served on the Editorial Board until 2016. As an esteemed expert in constitutional law, he contributed significantly to the peer review process, particularly in his area of expertise.

Prof. Allan Rosenbaum, PhD, joined the CEPAR Advisory Board in 2017. Previously serving as President of ASPA, he is renowned for his contributions to administrative science. Prof. Rosenbaum played a pivotal role in advancing administrative sciences in Central and Eastern Europe and generously shared his expertise in the development of CEPAR.

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