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SUPPORTIVE AND OBSTRUCTIVE JUDICIARY INSTITUTIONS OF THE LABOUR LAW REGARDING WORK- FAMILY BALANCE

GÖNDÖR, Éva*

“Although more and more women work, their obligations at home have not decreased. In many cases men in the family are not very much involved in family tasks. In fact the changes in the composition of families- the increase of single parent, maternal households in particular and the decrease of extended families – and changes of other social and economic factors, often causes reduction in informal care. In some cases family responsibilities have intensified for women”

(Work and family: A way to arrange for the share. ILO.)

Introduction

Our research concerns the harmonisation of family and work responsibilities. It explores concepts, including the Hungarian labour legislation, the labour legislation for the protection of maternity including related social benefits. We analyze those labour and social security rules, which have significant influence on the financial situation of families and on the internal family life as a whole. Furthermore, we examine the related international and European Union standards, recommendations and initiatives.

The European Commission drew attention to the importance of the reconciliation of family and working life, the work-life balance. In particular, the demographic development and its impact on social security systems require improvements in the employment conditions of women. According to the European social partners, the harmony among profession, family and private life represents an important contribution to the economic growth, prosperity and competitiveness.¹ In their opinion, the harmonization of work and family life, as well as equal opportunities for women and men in the workplace, must be given a central role to the political debate because of their important roles in demographic development. A great emphasis must be put on overcoming stereotypes of gender roles. Without this the expected results are hardly achievable. According to European surveys, child rearing has much larger impact on the employment prospects of women, than on of men. The employment rate for women with dependent children is only sixty-five percent, while this rate for men is more than 90 percent.

Women still suffer from stereotypical assumptions about their motherhood and their ability to work. This in turn may lead to fewer returns to labour market by women after

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¹ The Economic and Social Committee (2007/C 256/19.)



giving birth.² The responsibility for reconciliation of work and parental occupation is still mostly of women. The Hungarian society, as is the case in many other countries, follows the traditional family patterns. That means discrimination against women in the labour market still exists, both in terms of access to employment and in working conditions. The researchers defined several family models, based on the role of women and the work division within the family. In general, traditional societies are strongly committed to following the model of 'the male breadwinner and woman as the traditional housewife roles'.³ To the contrary of that there is the model of the 'dual earner' family in which both women and men participate in keeping the family. In this model state benefits are aimed at individuals, rather than families, and in the tasks of care there is a significant social role.⁴ In addition, there is a market-oriented family model, when the roles of state in supporting families are insignificant and the level of social children care services is low.⁵

On this basis, a joint model can be observed in Hungary, that we can call "dual earner model with traditional approach". In the Socialist period, "dual earner" model has been developed, although the roles of women have not changed in the family. Thus women are subjects to a "double burden" style of model. The hypothesis of this research is that equal treatment of men and women in work cannot be achieved till the work in the family, especially in children's care, are not equally distributed. However, significant changes in the behaviour of large social groups, by purely legal means are not achievable. For the right approach, other instruments are also needed. The mindset of the society related to parental tasks depends on the cultural and historical heritage of the society. Societies tend to see the origin of gender roles natural, not social.

In most European countries the role model is the breadwinner husband and father and the caring wife and mother.⁶ In this model, mothers are responsible for the emotional and physical developments of children. This approach examines the bonding relationship only in the mother-child dimension. The father's role concentrated solely on the breadwinner function, he is not involved in caring roles. According to Clare McGlynn, there is a great need for changing this approach by leaving the ideology of classical motherhood and fatherhood independent parental role. These new kinds of parents would be free to choose their roles in work, in the society and in the family as well, based on the needs of the family and the individuals. The research of the "Future

² The Economic and Social Committee (2010/C 339/01).

³ SURÁNYI, Éva: Historical view: Welfare systems and ideas around the world. In SURÁNYI, Éva – DANIS, Ildikó – HERCZOG, Mária (eds.): *Family matters can have a different eye*. Different viewpoints, approaches, with varying practices in the domestic and international family politics. Budapest, 2010, Gazdasági és Szociális Tanács, p. 38.

⁴ SURÁNYI: p. 38.

⁵ SURÁNYI: p. 39.

⁶ MCGLYNN, Clare: Work, Family, and Parenthood: The European Union Agenda. In. CONAGHAN, Joanne – RITTICH, Kerry: *Labour Law, Work, and Family*. New York, 2005, Oxford University Press, p. 218.

insights” Committee of the Hungarian Academy of Sciences – which aims to make predictions on the future of the Hungarian Society prognoses significant changes in family roles.⁷ Mrs *Pongrácz Tiborné* notes that in today's Hungarian families the traditional approach is prevalent in relation to gender roles. The latest research also confirmed that in this area there has been no change during the last years. Despite of the traditional model which held to be ideal, in reality the "dual earner" family model lives. Moreover, needs for employment of women, in these uncertain economic and labour market conditions, got even more emphasis.⁸ A new, more equal division of work, acceptable to both sides will develop as a result of a longer conflict process, in which the main issue is the change in men's role, even more so because this question is rather neglected.⁹ There are several researches dealing with women's family, maternal and working roles but there are very limited discussions about how men can adopt to the new social and family roles.¹⁰

Our objective is: to uncover the past, discover the history of the development of Hungarian legal instruments regarding women's labour status. During the analysis, it cannot be overlooked that the legislation is essentially influenced by the era's characteristic mindset, ideology and the economic and social environment. We take the position that the history of women's work greatly differs from the history of men's work, although the process is similar to the development of both force. Both men and women knew about slavery, bondage, handicrafts, the industrial revolution and the conflicts of the working class for better conditions, reduction of working time and higher wages. Nevertheless, the situation is that neither social history nor the development of production and work organization methods explain the deep differences of working problems of genders.¹¹

Women have always had a different relationship with work, there had always been different conditions, than for men. The professionals' analyses of the human work could never be deemed for women's work fully.¹² While in socialist regimes, the dual role of women was the basis of gender inequality in western democracies the family itself was responsible for women's subordinate roles in society. In western democracies feminists are looking for new privacy by escaping from the old family model.¹³ Western feminists intended to enforce their interests as common interests. While socialist

⁷ NOVÁKY, Erzsébet (eds.): *Magyarország 2025. 1-2. kötet. Tanulmánykötet a Magyarország 2025 című akadémiai kutatás alapján.* Budapest, 2010, Gazdasági és Szociális Tanács.

⁸ PONGRÁCZ, Tiborné: A magyar családok jellemzői demográfiai sajátosságai 2025 körül. In NOVÁKY: pp. 77–178.

⁹ PONGRÁCZ: p. 177.

¹⁰ PONGRÁCZ: p. 177.

¹¹ SULLEROT, Evelyne: *A nő munka története és szociológiája.* Budapest, 1971, Gondolat Kiadó, pp. 13–14.

¹² SULLEROT: p. 14.

¹³ EINHORN, Barbara: *Cinderella goes to market. Citizenship, Gender and Women's movements in East Central Europe.* London, 1993, Verso, p. 39.

emancipation forced women to sacrifice privacy for family and social interests.¹⁴ Simone de Beauvoir was one of the first Western feminists who first idealised the socialist emancipation, but soon recognized its contradictions. Feminism is not an ideology, which treats women as an asset, but is used as a means for enforcing women's interests. In a civil society this is based on the civil activity, which includes not only the harmonization of legal rights, but the choice of rights assumed. Different feminist movements perceived maternity differently. According to some views, the fulfilment of motherhood hurts women's independence. Others said that maternity fulfil women's life. However all agreed that except for pregnancy and breast feeding fathers are capable to do the reproductive work of childcare.¹⁵

In our opinion, certain feminist movements' trap is that their thinking is not based on cooperation of men and women, rather they see them in conflicts. According to Maria Kopp instead of 'feminist' movements, 'familist' movements are needed, which strengthen the unity of family, man, woman and children.¹⁶ However, this approach also raises the question as how to reconcile family life to the broader social role of women. "Child bearing is a non transferable role of women and also establishing a secure mother-child relationship. In parallel, the interest of society is that their efforts, invested in their professional and social roles should not be wasted. For women the key issue is to be able to make use of their studies and also to have as many children as they wish."¹⁷ In addition to the historical analysis, the other point is the consideration of whether the regulation of labour law, concerning the role of women in the workplace carries stereotypes or not. Whether they are hidden by the individual provisions and how they are linked to certain prejudices.

The third question to be answered, what is the needed level of protection for pregnant women and women with small children. What limit is neither too low, to expose women, nor excessively high, which can strike back in the labour market and result in discrimination. We try to find answer for the question, whether the provided benefits help equal participation in work or not? In this regard, we pay particular attention to the fact the extra benefits, coming from the socialist labour law, resulted in high extra costs for new capitalists companies, which led to negative discrimination of women in the marketplace. However, we know that in practice, formally equal rules can cause serious inequalities, and therefore the correct legal framework must rely on countervailing rules. The question arises, whether the legal concepts designed to coordinate work and family life, only for women or they mean support for both parents and the whole family? Why do women need equal rights at all? Naturally women and

¹⁴ EINHORN: p. 6.

¹⁵ TÓTH, Zsófia Eszter: *Kádár daughters. Women in the Socialist period*. Budapest, 2010, Nyitott Könyvműhely, p. 80.

¹⁶ KOPP, Mária – SKRABSKI, Árpád: Women's roles in today's Hungarian society. *Vigilia*, 2007. sz. p. 513.

¹⁷ KOPP – SKRABSKI: p. 514.

men are born equal, or not? The basis for this issue is, that the concept of biological and social gender should be separated and they need to be considered differently in legal rules.

Problem of Identification

Child rearing is an important factor of economic activity of women. For men, child rearing role is independent from their job market activity. Women with small children are much less active on job market than women with no children or older children. According to surveys, the chances of employment for women with small children decrease by 37 per cent, while for men it increases by eight percent.¹⁸

In Hungary the proportion of inactive women are extremely high. The 2005 data shows the inactivity rate for women in the 15-64 age class reached 46 per cent.¹⁹ The inactivity rate of men and women are the closest in Hungary among EU countries which means quite high inactivity level for men as well.²⁰ Those people on child care benefits are among the inactive and almost half of the women in inactive status, are on child care benefits. In 2005, thirty-two percent of women with small children were employed. In the case of other women this ratio was more than double, seventy-six percent.²¹ In our country, such a low participation in work of women with small children is due to the fairly long stay home childcare system.²² Child rearing means more financial support needs for the family, therefore men tend to go for employment. While the value of child care role is increases for women, they rather tend to stay at home. As men earn more, that solution is more economical for the family.²³ Sociologists draw attention to the inflexibility of the labour market. That means that women do not have the opportunity to choose clearly between work and family, thus, their role remains two-fold. There is usually a financial constraint in the background.²⁴ Family ties are disadvantages for women in the labour market. Employers would require full attention and time from the worker. However, women in dual earner families are compounded to meet these expectations.²⁵ This approach was based on the traditional family, therefore contends that the choice between work and family is only a problem to be solved by women.

¹⁸ KOLTAI, Luca – VUCSKÓ, Bernadett: *Supporting and hindering factors of work – family life balance in Hungary*. Prepared by the Fővárosi Esélyegyenlőség Módszertani Iroda Műhelyében, a Szociális és Foglalkoztatási Minisztérium megbízásából. Budapest. 2007, p. 4.

¹⁹ DRJENOVSKY, Zsófia: *The absence of women in the labour market after childbearing*. PhD értekezés. Budapest, 2009, p. 31.

²⁰ Drjenovszky: p.31.

²¹ Drjenovszky: p.33.

²² DRJENOVSKY: p.33.

²³ DRJENOVSKY: p.33.

²⁴ DRJENOVSKY: p.33.

²⁵ DRJENOVSKY: p.35.

It should also be taken into account that a number of different family types emerged as a result of social changes. The regulations must be valid for all family types. (ex.: educators of their children alone, new families after divorce, parents and adoptive parents, working students). In addition, the proportion of elderly people is increasing therefore both in the family and outside it will increase the demand for care services.²⁶ In contrast to men women are still take a major part of the house work. For this reason, they are in stress, and suffer from constant overload. In such circumstances, women often feel that they forced to accept part-time jobs with lower income, with worse pension options and és worse career opportunities.²⁷ We agree with the European economic and Social Committee opinion on the positions according to which the decision of having a child is a private issue and also for taking care of the elderly, however the consequences of such decisions effect the society as a whole. The decreasing number of children means shrinking number of future employees, consumers and so on.

This Thesis is built up with eight chapters that are built on the following structural units. The first chapter is the historical background, which examines the participation of women in work, the protection of maternity and the labour and social security instruments from the end of the 19 Century till the end of the Second World War. The second chapter of the historical background examines the time of state socialism, in particular, the rules of labour law and childcare institutions.²⁸ We agree with Ferenc Glatz's position according to which the scientific research is desirable after the 1945 era. We also want to apply his guidelines, and be factual in the research. In connection with the assessment of the era, the research should recognise the contemporary realities.²⁹ In the evaluation of the era, in addition to the situation in Hungary, we included the findings of the Czech, which was based on the summary of interviews of Czech women.³⁰

The next two chapters analyse labour and social security provisions after the change of regime. With regard to labour law concepts the act of I. / 2012. is also under examination. In examining the legislation after 1992, analytical method has been applied, in the course of which we took the perspective of our hypothesis. We examined the protective institutions and child care solutions. In our research we did not take the position of the traditional family. On the contrary, we took the approach of those families in which the father would like to share child bringing tasks equally. In

²⁶ See European economic and Social Committee views on the profession, in reconciling the family and private life. 2007/C 256/19.

²⁷ See European economic and Social Committee views on the profession, in reconciling the family and private life.

²⁸ KÉRI, Katalin: *The situation of women in Hungary during the first half of the 1950s*. p. 2 In <http://kerikata.hu/publikaciok/text/nok50ben.htm>. (date of download: 15.07. 2011)

²⁹ GLATZ, Ferenc: *About the researches of the Kádár Era* In. *História*, 1991. vol. 4. p. 2.

³⁰ HEITLINGER, Alena – TRNKA, Susanna: *Young Women of Prague*. London, 1998, Macmillan.

addition, based on the sociological and economic researches, we examined whether the given standards support or hinder the work of women.

The other backbone of the presentation is the review of international regulations. We have examined the international conventions adopted by the ILO, the European Social Charter, as well as the policy of the European Union legislation in relation to the support of child rearing families. The last chapter of the paper deals with the maternity and parental protection regulation of Germany. A critical analysis of the international norms relating to the positions elaborated on the basis of foreign language studies. We focused on analysing both the legislative practice and the low enforcement practice, the latter was found rather in Union law. That suggests that the ability of women to get support in advocacy and law, are weak. It also shows that the traditional family model is still adopted by most women. That means, with regard to the division of labour within the family, there have been no significant changes in the past twenty years.

In Hungary there is a long history of legal and social instruments protecting women and mothers. Legal norms focused on keeping women at home during pregnancy and after the birth to ensure safety and health for both women and children. The government provided the necessary labour instruments and also the social security benefits for women. There was a tendency of granting longer and higher-paid benefits to the parent women. Hungary has already acted as a lead before the period of socialism in consideration of the interests of women, providing, among others, the possibility of higher education of women. In the period before the Second World War, traditional family model was dominant. Women worked only temporarily, because they discontinued work after wedding or giving birth. Despite this, in legislation, special attention has been given to protect the rights of women working. Risks associated to pregnancy and giving birth were also in focus. We found that the development of international law, and in particular the Hungarian labour law have historical similarities. The fully-paid maternity leave or the breastfeeding time off, are not guaranteed even today in some countries.

The historical period of socialism could not be ignored, since today's child support scheme, a large part of the protective standards of pregnant women and parent women are the same today. We considered important to analyse the effects of the Socialist heritage. It was found that the involvement of women in the labour market has led to the dual-earner family model, creating women's double burden of work and family responsibilities. The introduction of childcare benefits has made it possible for women to be involved in child care only. The 'GYES' Child Care Benefit still only a concept for women in the eyes of the society. The 'GYES' and the Socialist Labour legislation have strengthened the perception of women's traditional role, in addition to the role of women in the working world. Father's responsibility in child care was simply ignored, which suggested that the responsibility of child rearing is only for the mother. Fathers have no role in that and this is not even expected from them. Therefore, the working

women scheme has not resulted in real economic independence for women but instead, women and men were consigned to the system and to each other.³¹

Full-time equivalent employment became dominant, and there was little possibility of part-time work. Women's full-time employment in addition to the traditional maternal role caused significant stress for women. This has led to the reality of phenomena called working mother.³² Stress arising from the dual responsibility caused underperformance, and constant 'sense of guilt' in both roles. These ruined the career opportunities of women and they stayed at the lower level of the career ladder.³³

In this context we tried to get answers to the question, whether the legal legislation of work and social security still based on stereotypes regarding child bringing responsibilities? In our opinion the norms, after the changes of regimes, have not changed and the legal instruments are still built on the historical family model. Our determination is confirmed by the roundtables of the UNITED NATIONS Commission on eliminating discrimination against women.

The Committee expressed its concern over the fact that regarding the roles of women and men in the family and society, patriarchal attitudes are still prevalent. The deeprooted stereotypes persist, which are reflected in the decisions relating to women's education, their situation in the labour market and their underrepresentation in decision making positions. A further question was where the protection level should be for pregnant and parent women? We expressed our opinion on the need for change at each rule. It should be noted, however, that if the legal regime concerning responsibility for the men in childcare was mirroring any change, discrimination against women would be reduced. According to some researchers, gender equality, the time spent with the family, quality care for children may improve side by side, without reducing women's choice.³⁴ The solution should be the dual-earner, dual-care family in which both women and men take equal responsibility for family and for work.³⁵

For us, Gornick and Meyers's vision of equal norms' society is the model to be followed. Decision makers should also retain in mind this model, in order to make real change in women's equality. The real social system based on equality in which both parental care and market work are valuable. The involvement in family and work, for women and men are symmetric; parents have the right to care for their children themselves, or they can entrust someone to do it. For mothers and fathers alike there are realistic options for child care and coordination of the work.³⁶ This kind of family model optimizes the childcare leave system, so both the mother and the father are

³¹ LEHOCZKYNÉ, Kollonay, Csilla: *The Significance of Existing EU Sex Equality Law for Women in the New Member States. The Case of Hungary*. In: *Maastricht Journal*, 2005, vol. 4., p. 471.

³² LEHOCZKYNÉ: *The Significance of Existing EU Sex Equality Law for Women*, p. 471.

³³ *Ibidem*

³⁴ NEMÉNYI: p. 96.

³⁵ *Gornick és Meyers family policy model*. *ivi.*, NEMÉNYI: p. 99.

³⁶ NEMÉNYI: p. 98.

entitled to six months paid leave after the birth or adoption of a child. Parental leave is non transferable for each-other. Parents are entitled for taking the leave either they are full-time or part-time workers. Agreeing with this approach as well as on the basis of sociological and economic studies, the need for changing the Hungarian child care system rules seems to be justified. According to our position, more flexible and greater choices for parents should be enacted. The child care leave without pay may be reduced. The regulations should reflect the possibility of care sharing between parents, encouraging fathers to take part in child care.

This would facilitate faster return of women to the labour market which would also reduce discrimination of women in the working world. However, for fathers, to be absent from work for a specified period, would not be a disadvantage, since there are no deep-rooted stereotypes against them. European Union Member States provide varying degrees of absence for parents to care for their children at home. However, it may be difficult to answer, what is the ideal length. Those who argue about women's greater participation at work, say that a shorter but well paid period is the best solution. In others' opinion a much longer period of care supports the development of children better.³⁷ In addition, a variety of approaches exist, but usually the economic and child development aspects are the main arguments in the course of the debates. The economic policies can also affect the question depending on whether advocating for women work, or not.

The main elements of the current child support system are the legacy of the Socialist era. Its bigger reforms were rather ideological, after the system change.³⁸ Neither those who regard child care benefits social security issues, nor those who stand for the historical family model examined what are the real effects of this unique system.³⁹ *Mónika Bálint* and *János Kölli* pointed out that from 1993 to the present, more and more people accepted child allowances, for longer and longer time. The analysis suggests that among those, who accepted the benefits, the number of women with no work experience and no higher education, increased to the multiple. According to their analysis, the current system is not serving its original reasons. Despite of all changes of motivating work, those who receive these child care benefits are not active in the workforce. According to *János Kölli*, a system which has a high preference towards cash payments of benefits cannot support work-family life balance properly. But there is no guarantee either, that it serves the high fertility and the survival of the traditional family model.

In the second half of the twentieth century, the aftermath of the massive employment of women has already brought changes to Western Europe with regard to the sharing of parental roles. In the 1970s there were already families wherefor a

³⁷ KORINTUS: p. 67.

³⁸ BÁLINT– KÖLLI: p. 4.

³⁹ Ibidem

shorter or longer period, fathers were of children's' primary care instead of mothers⁴⁰. Examining this sort of role switching effects, psychological researches brought a number of surprising results.

On the one hand, it turned out that in those families where the father participated more in actions around children, the biological differences between the educational style of mother and father disappeared. One of the surprising discoveries of research examining the "mother's substituting" role of the father was that children in almost every area exceeded the results of children of traditional families.⁴¹ They achieved better study results, they had higher EQ and they were more popular in their age group.⁴² Psychological theories of the role of the father's stress that men are capable of taking care of children in the same way as women. On the other hand, children are able to securely bind to those from whom they receive care and attention – regardless of whether it is a woman or man. Consciousness of equivalence is important for not only the single, but for those fathers who live separately. In addition, there may be situations where, in the case of any family, fathers must play the key role in child care⁴³

The study also pointed to international rules in which the responsibility for bringing up children must be shared. We agree with the opinion of *Korintus Mihályné* according to which the reconciliation of work and family life can be successful only if there are choices for both men and women to ensure the appropriate balance. Based on the above we recommend a system transformation of maternity leave and parental leave by the coordination of the labour law and social security legislation. We propose a maternity leave for father right after the child birth, and a much more flexible system of child care leave. The allocation of child care leave between parents would have to be legally regulated. Parents should inform the employer about when and for how long they would like to be absent. The communication of the worker and the employer need legal regulation for ensuring dialogue and cooperation on setting up the best work-life solution for both the family and the employer. This would facilitate a smooth return to work for both and also it would help to take into account each other's interests.

⁴⁰ BALOGH, Lídia: (eds.): *Men's in father's role*. Budapest, 2007, Magyarországi N1 Alapítvány, p. 4.

⁴¹ BALOGH: p. 5.

⁴² Ibidem

⁴³ Ibidem

IMMIGRATION, INTEGRATION, MULTICULTURALISM

AN OVERVIEW OF IMMIGRATION POLICIES OF GERMANY IN THE CONTEXT OF ETHNIC CONFLICTS DURING THE SECOND HALF OF THE 20TH CENTURY

GULYÁS, Éva*

Introduction

Shortly after the wave of refugees to Europe had reached its peak in 2015, a book with the following peculiar title was published by political scientist Herfried Münkler and literary historian Marina Münkler: *The new Germans. A country looks to its future*.¹ The book examines the issues of immigration, as well as the inclusion and integration of refugees from outside Europe from the perspective of the immutability of national identity – joining a long-lasting discourse and leading to further debates after its publication.²

The overriding idea of the book is that the refugee crisis has not only revealed the fundamental problems of the German society but has also shown that old Germany is, irrevocably, a thing of the past. The authors argue that although immigration and the mass influx of refugees are not exceptional and untroubled phenomena, Germany has always managed to reposition and readjust itself. “We are the new Germans” – proclaim the authors in their slightly provocative work. The provocation of the book lies in the authors’ emphasis on the fact that Germany has to become an *immigration country*. It is common knowledge that this issue has been debated for decades in Germany wherein one of the oddest responses was formulated in 1984: “the Federal Republic is not a country of immigration, with

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¹ MÜNKLER, Herfried – MÜNKLER, Marina: *Die neuen Deutschen. Ein Land vor seiner Zukunft*. Berlin, Rowohlt, 2016, in newer edition: Rowohlt Taschenbuch, 2017.

² MINNAARD, Liesbeth analyzed the nation-forming effects of immigration through literary examples: *New Germans, New Dutch. Literary Interventions*. Amsterdam, Amsterdam University Press, 2008. See in particular the first chapter on national identity („National Identity. The Discursive Production of Germanes and Dutchness”), pp. 15-50, WUNDERLICH, Tanja: *Die Neuen Deutschen. Subjektive Dimensionen des Einbürgerungsprozesses*. Stuttgart, Lucius & Lucius, 2005, in newer edition Berlin, Walter de Gruyter, 2016, TIBI, Bassam: *Islamische Zuwanderung und ihre Folgen. Der neue Antisemitismus, Sicherheit und die „neuen Deutschen”* (Wer sind die neuen Deutschen?) Stuttgart, ibidem-Verlag, 2017. See in addition Gülsüm Serdaroglu’s documentary *Die Neuen Deutschen. Dokumentarfilm über Kulturen, Menschen und Identität* (2015), as well as the audio book *Die neuen Deutschen. Vom Dreißigjährigen Krieg bis heute. 400 Jahre Einwanderung nach Deutschland*, 2017 of Die Zeit’s series „Geschichte”.



immigrants”.³ However, if Germany is (going to be) an immigration country, it will be populated by a different German people – sounds a possible objection that transforms the assumptions into an issue of the integration of immigrants.

Is the integration of the masses immigrated to Germany going to be successful? The Müncklers answer this question by recalling the logic of Pascal’s wager. According to Pascal, if we are to decide whether believing or not believing in God is more rational we should bet the former without hesitation since this way if we gain, we gain all; if we lose, we lose nothing.⁴ According to the authors of *The new Germans*, it is rational to bet the success of the integration of refugees on the same basis since – in their opinion – this is the only option with social benefits, while those betting its failure gain nothing. They add that in this case, bettors themselves influence the outcome of wagers because those betting the failure will, rationally, not do anything for its occurrence. It is not our job here to decide on the reliability of this logic; it is sufficient to note that the Pascalian argumentation – whose persuasion strength alone can be a matter of debate – cannot be employed in this case as it assumes that integration takes place within the culture of today’s Germans. However, the characterization of the German people as a *multiethnic* society does not preclude that it moves into a *multicultural* direction which would have a fundamental impact on the conditions of integration.

An interesting feature of the book is that it approaches this issue from the perspective of *change and identity*. Certainly, this issue has been part of human reflection for a long time in diverse areas. For instance, this general issue is touched upon by asking the question how long a person is identical with himself – acknowledging that his body’s cells are replaced every seven years and that during his spiritual development, his habits, disposition and personality go through a significant change every six or seven years entering a new phase. The question of identity in circumstances of change can also be raised in respect of collective entities. The most well-known of these questions concerns the problem of state identity: in what circumstances can, for instance, today’s Republic of Serbia be considered identical with the former State Union of Serbia and Montenegro or with the Serbian member state of former Yugoslavia? Similarly, is the Hungarian State of 1920 identical with the Hungarian Kingdom prior to 1918? Recently, issues of this kind have been intensively discussed mainly in the context of constitutional identity: if a state enters an international integration – which

³ “Die Bundesrepublik ist ein Nichteinwanderungsland mit Einwanderern”, cf. Die Zeit. 1984. Issue 39. For the list and source of the answers characteristic for the period between 1973 and 2015 concerning Die Zeit see (<https://www.zeit.de/2015/38/deutschland-einwanderungsland>) in Die Zeit Online. For the German “immigration machine” see Heins, Volker: Spiegel der Menschheit? Die Zukunft der Migrationsmaschine Deutschland. In: Populismus und Extremismus in Europa. Gesellschaftswissenschaftliche und sozialpsychologische Perspektiven. BRÖMMEL, Winfried – KÖNIG, Helmut – SICKING, Manfred (eds.). Bielefeld, Transcript Verlag, 2017, pp. 149-166.

⁴ Cf. PASCAL, Blaise: Gondolatok [Pensées]. Trans. PÖDÖR, László. Budapest, Gondolat Könyvkiadó, 1983. Note 233. There is a massive academic literature on Pascal’s wager and this particular problem; see e.g. HÁJEK, Alan: Pascal’s Wager. The Stanford Encyclopedia of Philosophy. Zalta, Edward, N. (ed.) 2017. <https://plato.stanford.edu/.../pascal-wager>.

inevitably shapes its characteristics – how long can its constitution be considered identical with the constitution it had before the entry? The issue of “new Germans” is interesting because it raises the above mentioned questions in the context of one *people* and one *nation*: how long can a community with a significant number of other peoples and ethnic groups – including extra-European ethnic groups with their particular skin colors, slanted eyes and dreadlocks – be considered identical with the *German* people and nation? Anticipating these introductory thoughts, I examine below the immigration and integration policies that have characterized Germany’s (until 1990, West Germany’s) social-political life.

1945–1955: The Age of Forced Displacement

The post-World War II German society has been characterized by several factors. One of its most significant characteristics is related to the protocol of the Potsdam Conference, according to which 8-12 million ethnic German people were displaced to Germany between 1945 and 1955 by the great powers. Or to put it differently: by endorsing the principle of collective guilt, that many people were forced out of East-Central Europe and “accepted” by Germany (with modified territories on its eastern borders after the war).

Giving in to the coercion from public authorities, 3 million people from Czechoslovakia, 1.4 million from the pre-war Polish territories, 300 thousand from the free city of Danzig, 200 thousand from Hungary, and 130 thousand people from Romania were displaced to the German “motherland”. The expulsion was incited not only by the revenge of the victorious powers and collective guilt (which was always denied) but also by the will to create an ethnically clean territory: something that was not completely rejected in those times, or at least was not alien to the (Western) great powers. According to the protocol of the Potsdam Conference, German ethnic groups had to leave former East Prussia, Poland (which was in formation according to the decision of the great powers), Czechoslovakia, and Hungary. The protocol suggested that displacement needs to be carried out “in an organized and humane way”; however, practice, it very often materialized in a different way. It is well known, for instance, that many of the Germans displaced from Hungary fled back to their homeland.⁵

⁵ See MERTEN, Ulrich: *Forgotten Voices. The Expulsion of the Germans from Eastern Europe after World War II*. New Brunswick, Transaction Publishers, 2013. From the relatively massive literature on the displacement of Hungarian Germans see – inter alia – FEHÉR, István: *A magyarországi németek kitelepítése, 1945-1950* [*The Displacement of Hungarian Germans, 1945-1950*]. Akadémiai Kiadó, 1988 APOR, Balázs: *The Expulsion of the German Speaking Population from Hungary. = The Expulsion of the ‘German’ Communities from Eastern Europe at the End of the Second World War*. PRAUSER, Steffen – REES, Arfon (eds.). EUI Working Paper. [<http://cadmus.eui.eu>] HEC No. 2004/1, pp. 33-46; ZINNER, Tibor: *A magyarországi németek kitelepítése* [*The Displacement of Hungarian Germans*]. Budapest, Magyar Hivatalos Közlönykiadó, 2004; KIRSCH, András: *A soproni németek kitelepítése* [*The Displacement of Germans from Sopron*]. Sopron, Escort, 2006; and KISARI, Miklósné: 1946: *A mezőberényi németek kitelepítése. Hiánypótló történelemkönyv* [1946: *The Displacement of Germans from Mezőberény*. A Niche History Book]. Mezőberény, Mezőberényi Német Hagyományápoló Egyesület, Mezőberény öröksége 3, 2014. It needs to be pointed out that on the basis of an international agreement – after the so-called Beneš decrees had practically deprived them of their citizenship,

Forced displacements in the 1950s and 60s amounted to more than 60% of the population growth in Germany. Although the newly arrived usually got low-skilled jobs they could still contribute to the growth of the economy.

1955–1973: The Rome Convention and the Recruitment of Guest Workers

The phase following the displacement of ethnic Germans was characterized by the recruitment of guest workers. It commenced in 1955 with the conclusion of a so-called German-Italian recruitment agreement in Rome. As a prelude to the agreement, in November 1954 German Minister of Economy Ludwig Erhard held a meeting with the Italian Minister of Foreign Affairs and negotiated the temporary(!) admission of 100-200 thousand workers despite the relatively low unemployment rate of 7% (in certain federal states, 5%). It was followed by subsequent agreements in the period between 1960 and 1965: in 1960 with Greece and Spain, in 1961 with Turkey, in 1964 with Portugal, in 1968 with Yugoslavia, in 1963 and 1966 with Morocco, and in 1965 with Tunisia. As a result, Turkish, Greek, Portuguese, Yugoslavian, Spanish, Moroccan, and Tunisian guest workers were invited mainly to those sectors of the economy in which low qualifications were sufficient for getting a job, and thus “guests” could also contribute to the development called “German economic miracle”. The invited guest workers partly increased labor supply, compensated for its deficiencies,⁶ and performed so-called buffer functions.⁷ Due to the *increasing* function, the number of foreign workers in Germany between the years 1959 and 1968 was in constant growth, amounting to an increase from around 166 thousand to more than 1 million. On the basis of the *compensating* function guest workers replaced low-skilled, unskilled, and uneducated German workers, thus pushing German skilled workers toward more highly qualified jobs. The *buffer function* meant that in the case of a decrease in demand or layoffs it was foreign workers who were dismissed in the first place. The 1966/67 recession very well illustrates this: in areas of highly cyclical production, the decrease in foreign workforce was around 30% in total.

In the 1970s, these led Germans to realize that although they wanted to invite *workers*, they got *people* – with their respective social, economic, cultural and, most importantly,

basic rights and goods – some 76 thousand Hungarians in Slovakia were displaced to Hungary and thousands of Slovaks in Hungary to Czechoslovakia. For this issue, see *A szlovákiai magyarok kényszertelepítéseinek emlékezete 1945–1948. Visszaemlékezések, tanulmányok, dokumentumok* [The memory of forcible displacement of Hungarians from Slovakia 1945–1948. Memoires, Studies, Documents]. László SZARKA (ed.). Komárom. MTA Etnikai-nemzeti Kisebbségkutató Intézet – Kecskés László Társaság, 2003; *A felvidéki magyarok kitelepítése és deportálása 1945–1948 között. Szöveggyűjtemény a korszak tanulmányozásához* [Displacement and Deportation of Hungarians from Slovakia between 1945 and 1948. A Text Book for Studying the Period]. Komárom, Kecskés László Társaság, 2014.

⁶ See HERBERT, Ulrich: *Geschichte der Ausländerpolitik in Deutschland. Saisonarbeiter, Zwangsarbeiter, Gastarbeiter, Flüchtlinge*. Bonn, Bundeszentrale für politische Bildung, 2003, pp. 203–207.

⁷ For the so-called buffer function see BADE Klaus J. 2000. *Europa in Bewegung. Migration vom späten 18. Jahrhundert bis zur Gegenwart*. München, C.H. Beck, pp. 317–331.

religious systems.⁸ The originally planned rotation policy never materialized in the Federal Republic of Germany. The main reason for this was that the forced displacement of workers was rendered impossible by the recruitment agreements concluded with Greece, Italy and Spain – mainly due to the rights granted in the European Community. Only a clause in the German-Turkish agreement enabled the subsequent displacement of foreign workers. Eventually, the main and strongest opponents of the displacement of workers were German companies that did not want to replace their already trained workforce.

Nevertheless, the policy changed, and more and more political forces tried to reduce “immigration” which at that time stood for the employment of foreigners as guest workers⁹ and for their establishing themselves in Germany. In October 1965, a political slogan was formulated (for the first, but not last time) declaring that the Federal Republic of Germany is “not a country of immigration”.

1973: Guest worker stop. 1973–1990: The Age of Adjustments

In the period between 1968 and 1973, the proportion of foreign workers in Germany rose further, reaching its peak: in only a couple of years’ time, the number of guest workers rose from 1.014 million to 2.595 million.

Since 1972, Turks have constituted the biggest national group of guest workers in Germany. The number of foreigners who arrived in Germany for reasons other than employment increased from 815 thousand in 1967 to 1.37 million in 1973. More and more guest worker-immigrants started to have a habitual residence in Germany demonstrating their aim to settle down in the country in the longer term. The situation caused many conflicts; due to the problems that had arisen but could not be solved, Germany ordered the *stop of guest worker recruitment* on 23 November 1973. However, it did not have a significant effect,¹⁰ or only negative effects, namely, that the employment of foreigners already in Germany decreased but illegal immigration¹¹ and the proportion of foreigners living in the country for more than 10 years increased. Foreigners living permanently in Germany received the social benefits of the welfare state that was created in the first decade

⁸ “Wir wollten Arbeitskräfte importieren und es kamen Menschen” [We wanted workers, but we got people]. Cited in: MEIER-BARUN, Karl-HEINZ: *Deutschland. Einwanderungsland*. Frankfurt a. Main: Suhrkamp Verlag, 2002, p. 408.

⁹ But who is a “guest worker”? In the 1960s, low-skilled Portuguese guest workers with poor German knowledge were invited to Germany, while 40 years later, highly qualified workers from leading industrial sectors like digital and information technology with German knowledge.

¹⁰ See BOMMES, Michael: *Die Planung der Migration*. In: Michael BOMMES: *Migration und Migrationsforschung in der modernen Gesellschaft*. Institut für Migrationsforschung und Interkulturelle Studien, Themenheft IMIS-Beiträge 338, Universität Osnabrück, pp. 115-136.

¹¹ For a comparison of the German and Italian illegal immigration, see FINOTELLI, Claudia: *Illegale Einwanderung, Flüchtlingsmigration und das Ende des Nord-Süd-Mythos: zur funktionalen Äquivalenz des deutschen und des italienischen Einwanderungsregimes*. Münster, LIT Verlag, 2007, pp. 58-61.

of the second half of the 20th century and entered into its golden age in the subsequent two decades.

As a consequence, from the perspective of immigration and integration, the 1970s and 80s became the so-called *age of adjustments* wherein – apart from the declaration that “Germany is not a country of immigration” – there was an attempt to find a solution to the contradictions of immigration policies. For instance, on the grounds of family reunification, a grant was provided to guest workers returning to their home countries. The underlying concept was simple: 10.500 German Marks of “repatriation grant” (*Rückkehrhilfe*) was provided to foreign workers who return to Turkey.¹² As a result, the return of workers to Turkey commenced; however, those who returned had to face unemployment.¹³ The consequences of the ill-considered political decision regarding the repatriation grant soon became apparent on the German side, as well: many availed themselves of the grant, returned home, but after becoming unemployed there, returned back to Germany in a few years’ time. Due to the constantly rising number of immigrants, xenophobia showed its first signs in the 1980s. In the early 1980s, a study of the so-called Sinus Institute¹⁴ – the first social survey in this area – showed that a considerable part (13-15%) of the population in West-Germany had far-right political views. For instance, 14% (assuming representativeness, 5 million Germans) of the respondents said that they want the Führer back; according to 16% Germany’s welfare was overshadowed by parties and trade unions; while 18% agreed with the following statement: „As a matter of fact, Germany was better under Hitler”. In the same period, Golo Mann – Angelus Gottfried, i.e. Thomas Mann’s son – put it the following way: *Das Boot ist voll!* (The boat is full). These – namely, right-wing political views and xenophobia on the one hand and the disappearance of solidarity on the other – were two interrelating answers, none of which proved historically fortunate.

1990–2000: The Age of Xenophobia

Xenophobia further increased until the early 1990s leading to mass demonstrations as well as racist and xenophobic atrocities. Although immigration data remained moderate in the 1980s relative to the earlier periods, the numbers swiftly increased again in the 1990s.

¹² Cf. SCHROEDTER, Julia HENRIKE: *Ehemuster Von Migranten in Westdeutschland. Analysen Zur Sozialen Integration Auf Basis Des Mikrozensus*. Berlin, Springer, 2012. 115-117. The repatriation grant was sometimes combined with the educational and training support of those staying in Germany. For a detailed analysis on this system see OLTMER, Jochen: *Migrationsregime vor Ort und lokales Aushandeln von Migration*. Berlin, Springer, 2017, pp. 333-337.

¹³ As a result of the grant, some 300 thousand foreigners per year returned home. For the repatriation grant, see HERBERT, U.: *ibid.* (2003), pp. 254-255.

¹⁴ See Fünf Millionen Deutsche: „Wir sollten wieder einen Führer haben...” Die SINUS-Studie über rechtsextremistische Einstellungen bei den Deutschen. Sinus Institut Reinbeck bei Hamburg (ed.), 1981. Although some authors argue that the methodology of the analysis was disputable they agree with the relevancy of the alarming results of the survey.

During the Helmut Kohl administration, the number of immigrants grew from 4.6 to 7.3 million amounting to a 73% growth in 17 years. The ratio of immigrants from time to time exceeded that of the “guest worker era”. It was mainly the result of the massive changes taking place in world politics such as the dissolution of the Soviet Union, the wars concerning the dissolution of Yugoslavia, as well as human rights abuses in Turkey’s Kurdish regions. The reunification of Germany in 1989-90 further complicated the relations with immigrants. The increasing number of immigrants led to racism and xenophobia giving way to violent mass demonstrations in cities like Heuersverda, Rostock, Möln or Sollingen.¹⁵ In the mid-1990s, with the decrease in the number of immigrants, these mass demonstrations and atrocities (burning down of houses, murder of Turks, bombings) came to an end. The decreasing number of immigrants in the mid-1990s was, in the first place, a result of the so-called “asylum compromise”. Its 1993 implementation led to a situation in which Germany granted asylum to those fleeing persecution but deprived those passing “a safe third country” this right arguing that in such a way they lose their right to asylum in Germany.

2000-2010: Uneven Integration, Uneven Multiculturalism

In the 2000s, dual citizenship became available which meant that children of foreigners, who were permanent residents in Germany and had the possibility to settle down there, could – under certain conditions – get a German passport. It was a major change that marked a significant “reinterpretation” of German citizenship. Formerly, only those could acquire German citizenship who were either born to German parents or met special conditions. After 2000, however, – under certain conditions – also those born in the *territory* of Germany could get dual citizenship in case their parents’ homeland had a special agreement with Germany. The specification of the conditions obviously referred to Turks. They could acquire and hold dual citizenship on the long term; children, who obtained German passports and were born to parents with long-term residence permits, could and had to choose between the citizenships when reaching adulthood.

In 2005, a new immigration law was enacted declaring that integration became the legal obligation of immigrants. The law enabled the acquisition of temporary residence permits (*Aufenthaltserlaubnis*, *Niederlassungserlaubnis*). This was the first time that attending a language course became the legal condition for acquiring a residence permit.

¹⁵ For a summary of right-wing movements and an overview of early research, see special issue 27 of the year 1996 of the journal *Politische Vierteljahresschrift: Rechtsextremismus. Ergebnisse und Perspektiven der Forschung*. Hans-Gerd JASCHKE – Jürgen FALTNER – Jürgen WINKLER (eds.). For the correlations between immigration and xenophobia, see in particular FIJAKOWSKI, J.: *Transnationale Migration und Rechtsextremismus*, *ibid.*, pp. 211-231., as well as KÜCHLER, Manfred: *Xenophobie im internationalen Vergleich*, *ibid.*, pp. 248-264. For this issue see also *Rechtsextremismus und Fremdenfeindlichkeit. Bestandsaufnahme und Interventionsstrategien*. DÜNKEL, Frieder – GENG, Bernd (eds.). (Volume 6 of *Schriften zum Strafvollzug, Jugendstrafrecht und zur Kriminologie*) Mönchengladbach, Forum Verlag Godesberg, 1999.

In 2006, an integration summit was held in Germany, which was attended by the chancellor, representatives of religions, as well as representatives from different communities, the media, trade unions, employers, employees, various charity organizations and immigrants. It was motivated, among others, by a so-called PISA study measuring the educational progress of students. The summit saw the adoption of the National Integration Plan and a dialogue with Muslims. As a result, an “Islam conference” was held in 2006, attended by the government, Muslim associations, as well as individuals. The National Integration Plan was implemented in 2007 when a new residency claim (“long-term residence permit”) was introduced for the tolerated (*gedultete*) in case they met certain criteria. In 2008, citizenship exams were introduced requiring knowledge of the German language, history, law and culture. The standard for language requirements was also raised. These steps suggest that German immigration policies considered the reassuring settlement of the status of those living in Germany to be inevitable on the long run, as well.

In 2013, around 16.5 million people – amounting to 20.5% of the total population (in cities, 46% of children) – had a migrant background. In 2011, the same ratio was 19.5%. In statistics, the term “migrant background” is often debated. According to the Federal Statistical Office, this background is to be attributed to people who moved to the territory of the Federal Republic of Germany after 1949 as well as to foreigners who were born there as such and at least one of whose parents immigrated to Germany or was a foreigner born in Germany. (This term is used since 2005 in statistics.)¹⁶ As of 2013, 1.5 million people immigrated to Germany – parallel to 780 thousand emigrants –, thus, amounting to a population growth of 403 thousand in that year. This was the highest population growth since 1993. Out of the 1.5 million immigrants in Germany, 750 thousand came from member states of the European Union, and more than half of them were Poles. In 2012, a “blue card” was introduced as a kind of permanent residence permit for the highly qualified coming from outside the EU. The card received a lot of criticism because its holders earned a minimum annual wage of 66 thousand Euros. Another changing trend in the 2000s was the growth of immigrants from Southern Europe: accordingly, the number of Greek immigrants increased by 78% in 2011. Furthermore, 86 thousand of students have studied at German universities who obtained their high school certificates elsewhere. In 2012 and 2013, the number of asylum seekers increased by 70%, whereas in 2014 and 2015, 23-24% (thus, one fourth) of the asylum seekers came from Syria (10% from Serbia, 8% from Eritrea, 14% from Kosovo etc.).

The facts outlined above clearly illustrate that on the level of an immigration or integration analysis it is impossible to answer the question whether the changes between

¹⁶ The source of data is the Statistische Bundesamt <http://www.destatis.de>. For the developments in the 2000s, see Handbuch Staat und Migration in Deutschland seit dem 17. Jahrhundert. OLTMER, Jochen (ed.). Berlin, Walter de Gruyter, 2015, and particularly the studies of Barbara DIETZ (pp. 999-1020) and Holger KOLB (pp. 1021-1039). Concerning integration policies – with an extensive outlook on integration theories – cf. HECKMANN, Friedrich: *Integration von Migranten. Einwanderung und neue Nationenbildung*. Berlin, Springer, 2014.

1945 and 2010 created a *new* German *people* or *nation* or not. However, the question can be raised whether the changes in the last two or three decades have transformed the German nation state or not.

In order to answer this question, it needs to be taken into consideration that nation states generally have two major periods. The first one is the period of homogeneous or *homogenizing* nation states that balance their respective societies on linguistic, cultural, religious, economic, and social grounds. This period – lasting for around two or three hundred years – was *the* characteristic for nation states until the mid-20th century. As a result of the catastrophes and various crises in the 20th century, nation states in Western Europe started to pursue a *poliethnic* nationality policy by the middle of the century. It meant that national differences and traditions – for instance, various local autonomies in Spain, different regions in Belgium, as well as countries in Great Britain which gave up their autonomy a few centuries ago – were tried to be politically harmonized. Regional states were born, and *poli-* as well as *multiethnic* policies became the norm. In the 2000s, the general consequence was that *multicultural* societies were born. The vast majority of Western European states did, for a while, support a version of multiculturalism which was considered a way of maintaining the various national, ethnic and social cultures. However, – with the parallel growth of populist far right groups – this led to certain problems in the 2010s that politicians attempted to solve with well-known statements.¹⁷ Despite the fine words, the main tendencies have remained unchanged ever since: immigrants arrive in large numbers and their integration is only partly successful. In view of all this, below I examine in detail the meaning of multiculturalism from the perspective of the state.

Detour: A State Theoretical Interpretation of the Concept of Multiculturalism

Multiculturalism is well-known for its undefined and indefinable nature.¹⁸ The reason for this is that it refers at the same time to a certain, undefined range of *facts* and *values (norms)*,

¹⁷ “Attempts to create a multicultural society have failed” – declared Angela Merkel in 2010. Similarly, David Cameron argued in 2011 that “multiculturalism has failed”. For its journalistic analysis see, inter alia, WEAVER, M.: *Angela Merkel: Multiculturalism has „utterly failed”*. In: Guardian. 17 October 2010. See www.guardian.co. As a general theoretical problem cf. TARAS, Raymond: *Challenging Multiculturalism. European Models of Diversity*. European. Edinburgh, Edinburgh University Press, 2012.

¹⁸ “The terms »multicultural« and »multiculturalism« have no clear or fixed meaning. They may be used simply to record the fact that all contemporary societies – or at least all contemporary liberal democracies – contain a plurality of distinct cultural groups, and that this cultural pluralism is going to persist for as far ahead as we can reasonably foresee” MILLER, David: *On Nationality*. Oxford, Oxford University Press, 1995, p. 130. For the debated nature of the term see Multikulturalität in der Diskussion. Neuere Beiträge zu einem umstrittenen Konzept. EROL, Yildiz (ed.). Wiesbaden, VS Verlag für Sozialwissenschaften. 2008; and EGEDY, Gergely: *(Multi)-kultúra – konzervatív olvasatban [(Multi)culture – in a conservative reading]*. In: Konzervativizmus az ezredfordulón [Conservatism at the change of the millennium]. Budapest, Magyar Szemle Könyvek, 2001, pp. 53-70; and EGEDY, Gergely: *A multikulturalizmus kihívása: értjük-e Európát? [The Challenge of Multiculturalism: Do we understand Europe?]*. In: Kommentár. Issue 2016/2, pp. 73-86.

and – in some countries – to both *reality* and *ideology*.¹⁹ One of the most visible consequences of this dichotomy is that politicians – if they are smart enough – can easily maneuver between them. The so-called multiculturalism policy index²⁰ illustrates that Western societies – despite some deadlocks²¹ – have become more multicultural than ever. Multiculturalism in Western Europe is not only a demographic fact or an everyday (culinary and consumer)²² experience but also part of the political order of the society. In political sense, multiculturalism stands in the first place for certain policies and not for institutions. It is present in countries where positive steps are taken for the equality and acceptance of immigrants or other groups in the following areas in a certain way and to a certain extent:

- 1) constitutional, legislative, or parliamentary affirmation of multiculturalism,
- 2) the adoption of multiculturalism in school curriculum, especially regarding the so-called culture mediation,
- 3) the inclusion of ethnic representation in the mandate of public media,
- 4) exemptions of certain groups from religious dress codes,
- 5) facilitating the acceptance of dual citizenship,
- 6) the funding of ethnic organizations to support cultural activities,
- 7) the funding of bilingual education or mother tongue instruction of the respective groups, and
- 8) affirmative action for disadvantaged immigrant groups.²³

If steps are taken in all eight areas the respective country is considered the most multicultural (policy score: 8); however, if only in one, it is regarded the least multicultural (policy score: 1). Nonetheless, some analysts argue that even the lowest scoring countries can be considered multicultural. On this basis, the following countries were regarded multicultural in 2010:

¹⁹ FEISCHMIDT, Margit (ed.): *Multikulturalizmus [Multiculturalism]*. Budapest. Osiris Kiadó-Láthatatlan Kollégium, 1997, pp. 8-9. Multiculturalism is an official ideology in Canada and Australia in the first place, while it forms part of the official ideology in Great Britain and Germany through the concepts of multi-racial nation and Einwanderungsland (country of immigration). For its ideological features see WETERLY, Paul: *Multiculturalism*. In: *Political Ideologies*. WETERLY, Paul (ed.) Oxford, Oxford University Press, 2017, pp. 325-360.

²⁰ For the multiculturalism policy index see TOLLEY, Erin: *Multiculturalism Policy Index*. Immigrant Minority Policies. Kingston [Kanada, Ontario], Queen's University School of Policy Studies Publication Unit, 2011. (<http://www.queensu.ca.../mcp/sites/webpublish/...pdf>).

²¹ See BANTING, Keith – KYMLICKA, Will: *Is there Really a Retreat from Multiculturalism Policy? New Evidence from the Multiculturalism Policy Index*. In: *Comparative European Politics*. Vol. 11. Issue 2013/5, pp. 577-598.

²² Multiculturalism as a consumer experience can raise equally complex problems as multiculturalism that is considered part of the political order; see Fish, Stanley: *Butik-multikulturalizmus, avagy miért képtelenek a liberálisok a gyűlölet beszédéről gondolkodni [Boutique multiculturalism, or why liberals are incapable of thinking about hate speech]*. Magyar Lettre International. Issue 31: Issue 1998/4. (originally published in: *Critical Inquiry*. Issue 23. Vol. 1997/2, pp. 378-395.), pp. 378-395.

²³ Cf. KYMLICKA, Will: *Multiculturalism. Success, Failure, and the Future*. Migration Policy Institute Europe, 2012, p. 7.

- Australia (8),
- Canada and Belgium (7.5),
- Sweden (7),
- Finland, New Zealand (6),
- the United Kingdom (5.5),
- Ireland (4),
- Norway, Spain, Portugal (3.5),
- the United States of America (3),
- Germany, Greece (2.5),
- France, the Netherlands (2),
- Austria, Italy (1.5), and
- Switzerland (1).²⁴

As with all measurements, this one is also disputable on the grounds of the measures and reliability of the measuring instrument. Although there might be objections to the policy scores of the respective countries, the index, in general, indicates the receptive and appreciative nature of Western societies. It is, however, very telling that Germany is not on the top of the list; with its policy score of 2.5, the country is considered multicultural but only to a moderate degree.

In political terms, multiculturalism can be regarded as the successor but not the continuation of pluralism. The former is also considered a principle constructing political structure, while the latter is in essence *identity politics* whose aim is to allow members of certain communities to claim respect of their cultural and religious identity, solely on the basis of group membership. For this reason, it is also called „diversity politics”. Nevertheless, it retains its characteristic of being originally evolved in relation to immigration to Western societies;²⁵ thus, its primary subjects are *immigrant ethnic groups*, although in certain countries – to a varying degree and extent – it includes *other groups* that are neglected, oppressed or insulted by the dominant culture. It has been most visibly extended to women and sexual minorities (e.g. homosexuals), as well as to the descendants of the indigenous and aboriginal population of certain countries. In the European societies, the basis for the acceptance of immigrants is freedom of religion which is not much emphasized in the United States because of the local nature of the state-church relation. In Europe, however, the problems raised by multiculturalism – as the majority of immigrants is Muslim – emerge as part of a Muslim-Christian conflict.

²⁴ Source: TOLLEY, op. cit. (2011). (The policy scores of particular countries are shown in brackets.)

²⁵ The argument that multiculturalism arises in Europe in relation to immigration (cf. ARIËNS, Elke – RICHTER, Emanuel – SICKING, Manfred (eds.): *Multikulturalität in Europa: Teilhabe in der Einwanderungsgesellschaft*. Transcript Verlag, Bielefeld, 2013) is not a unique but the typical one. However, it is not insignificant, what kind of an immigration is in question: in the United States, immigration after the end of the “melting pot policy”, while in Australia the first wave of European culture export – that is, Asian immigration following the creation of “white Australia” – opened the door for multiculturalism.

As for the nature of states, multiculturalism is the *last stage of the repel of homogenizing nation states*, whereby states essentially lose their nationally dominant characteristic and – since their dominant characteristic has primarily been the nation for two decades – in a certain sense, their national character, as well. It is well demonstrated by a brochure published in 1982 by an Australian public body, which informs both newly arrived immigrants and citizens about the nature of the Australian society.²⁶

One of the differences between the Australian and German attitudes to multiculturalism lies in the fact that it was the representatives of mostly East-Asian religious groups (Confucianism, Shintoism, Taoism) and believers of the so-called Indian religions (Buddhism, Hinduism) that immigrated to Australia, while it was Muslims immigrating to Europe – and thus to Germany. Islam's vision of the relationship between state and church and the way it views the private sector of society largely differ not only from what Christianity has, for centuries, developed in this respect but also from the approach of Asian religions to this issue.

One of the most significant issues faced by states orienting toward multiculturalism is the way of *integrating* immigrants. For countries without a strong and firm dominant culture (such as Canada) or countries that are uncertain about their culture (like Australians with their notion of “English, white Australia”) multiculturalism might seem more promising than assimilation. It is not a coincidence that the call for *assimilation* was the loudest in the United States where an “American nation” was formed in the course of the 150-year-long “melting pot policy”. Both warning and counter-reaction were the loudest there; see, for instance, the

observations of Samuel P. Huntington,²⁷ with a regional diagnosis.²⁸ The political analysis was completed by self-criticism and correction: “In the 1990s, however, the leaders of the

²⁶ It argues that “multiculturalism is (...) much more than the provision of special services to minority ethnic groups. It is a way of looking at Australian society, and involves living together with an awareness of cultural diversity. We accept our differences and appreciate a variety of lifestyles rather than expect everyone to fit into a standardised pattern. Most of all, multiculturalism requires us to recognise that we each can be »a real Australian«, without necessarily being »a typical Australian«.” Cf. [N. N.], 1982, quoted by STRATTON – ANG, 2013, p. 145. The problems that would arise in the multicultural atmosphere of European metropolises in 2-3 decades' time on the basis of the same policy do not even underpin the brochure's optimistic vision. On the grounds of these problems – for instance, the emergence of “parallel societies” or “ethnic inclusions”, Sharia courts operating in the suburbs of Brussels and London, etc. – a close relationship is still and often assumed between the “real” and “typical” English, German, or French, arguing for the existence of “echte” Germans, “real” Brits, and „vrai” French, etc.

²⁷ “Western culture is challenged by groups within Western societies. One such challenge comes from immigrants from other civilizations who reject assimilation and continue to adhere to and to propagate the values, customs, and cultures of their home societies. This phenomenon is most notable among Muslims in Europe, who are, however, a small minority. It is also manifest, in lesser degree, among Hispanics in the United States, who are a large minority. If assimilation fails in this case, the United States will become a cleft country, with all the potentials for internal strife and disunion that entails. In Europe, Western civilization could also be undermined by the weakening of its central component, Christianity.” Cf. HUNTINGTON,

United States have not only permitted that but assiduously promoted the diversity rather than the unity of the people they govern. [...] The American multiculturalists [...] Instead of attempting to identify the United States with another civilization, however, they wish to create a country of many civilizations, which is to say a country not belonging to any civilization and lacking a cultural core. History shows that no country so constituted can long endure as a coherent society.”²⁹

However, the ideas above cannot be formulated solely from a conservative point of view. Indeed, in a sense, the assessment of Jürgen Habermas overlaps with it, as well – on the basis of facts and not their evaluation. According to him, states are pressured by globalism from the outside and by multiculturalism from the inside. As a result, they are unable to fulfill their traditional functions (e.g. mitigating the consequences of natural disasters or international population movements), the boundaries of their sovereignty are becoming blurred, the cohesive force of national communities weakens, and the democratic legitimacy of nation states – as the basis of the welfare states is being shaken – becomes powerless. Consequently, the age of territorially sovereign nation states is over and – as Habermas put it – it has given way to a *postnational constellation*.³⁰ And in a postnational constellation there are no nation states. For the time being it is hard to answer what kind of states it includes; therefore, just like in other areas, states following the age of nation states are usually – and without much creativity – referred to as “postnational states”. In the political practice – where words transform into votes, influence and, finally, power – this is only rarely articulated.³¹

Samuel P.: *A civilizációk összecsapása és a világrend átalakítása [The clash of civilisations and the remaking of world order]*. Budapest, Európa Könyvkiadó, 2015, p. 529.

²⁸ “Immigration, however, was a potential source of new vigor and human capital provided two conditions were met: first, if priority were given to able, qualified, energetic people with the talents and expertise needed by the host country; second, if the new migrants and their children were assimilated into the cultures of the country and the West. The United States was likely to have problems meeting the first condition and European countries problems meeting the second.” HUNTINGTON: op. cit. (2015), pp. 524-527.

²⁹ Ibid.

³⁰ HABERMAS, Jürgen: *A poszt nemzetközi állapot és a demokrácia jövője*. In: *A poszt nemzetközi állapot. Politikai esszék*. Budapest, L'Harmattan Kiadó – ZSFK, Varietas Europae, 2006. pp. 56-102. For the interpretation of “postnational” – in relation to postnationalism – see further KYMLICKA, Will: *Nacionalizmus, transznacionalizmus és poszt nacionalizmus [Nationalism, transnationalism and postnationalism]*. Replika. 2007. Issue 59, pp. 63-92.

³¹ Not surprisingly, it is articulated in countries where multiculturalism is at an advanced stage. Prime Minister of Canada, Justin Trudeau stressed, for instance, that Canada is becoming a new kind of state, which “is not defined by its European history but by the multiplicity of its identities from all over the world.” “Countries with a strong national identity – linguistic, religious or cultural – are finding it a challenge to effectively integrate people from different backgrounds”, he said in an interview. “In France, there is still a typical and an atypical citizen. Canada does not have that dynamic... There is no core identity, no mainstream in Canada. There are shared values – openness, respect, compassion, willingness to work hard, to be there for each other, to search for equality and justice. Those qualities are what makes us the first postnational state.” Lawson, Guy: *Trudeau's Canada, Again.* = *The New York Times Magazine*. 8 December 2015. Demonstrating his wisdom and understanding of human nature, the journalist making the interview added

Conclusions

To conclude, it can be argued that homogeneous, or more precisely, homogenizing nation states in the West have become states pursuing poli- or multiethnic policies in the last seventy years. In the last three or four decades, some of these states have switched to a multicultural social policy. Multiculturalism is able to eliminate the traditional, state-based cultural core of the society, and – in a historical sense – it evolves in this direction according to its dynamic. Therefore, it can be argued that multi- or poliethnic states pursuing a multicultural policy have a real chance to cease to be states of a particular nation. Those who are against it must stop history. The effect of critical analyses on the problems of “new Germans” points in this direction.³²

that Trudeau said all these “with peculiar Canadian understatement mixed with dynastic confidence” seeming “like a man at the beginning of a very big, and very uncertain, journey”.

³² This article was written in the framework of the Hungarian priority project „Public Service Development Establishing Good Governance” (identification number: KÖFOP 2.1.2-VEKOP-15-2016-00001) at the request of the National University of Public Service.

PUBLIC ADMINISTRATIVE REFORMS WITH REGARDS TO THE CHANGES OF THE ROLE OF STATE

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The research was conducted on public administrative reforms with regards to the role of state. Analyzing public administration reforms with a perspective on the changes of the role of the state throws light on the enormous adaptation efforts carried out by the nation states in order to match the various (and varying) requirements and challenges they face.

The economic crisis erupting in 2008 reinitiated scientific discussions in a deeper dimension on the role of state and accordingly on the relation between the state and the market such as scientific discussions on the cooperation between the state and the society. Considerable part of these scientific discussions definitely focused on public administrative issues such as profound scientific questions as the role of public administration – what the desirable role of state within the broad sense of public administration is –, what the further directions of public administration reforms should be, whether the situation is mature to – temporarily or permanently – relocate competencies to the state from other players. If so, would the state be able to fulfill the new tasks efficiently at acceptable standards? Numerous reform measures initiated by the economic crisis have the concept behind them that in critical periods the state can provide stability while in the periods of prosperity dynamic wealth creation should have priority. The basis of the research is the idea that there is a task-transfer mechanism among the state, the market and the civil society that receives more attention in the times of crisis whereas its attributes might be also modified.

The public administration's receptiveness to changes is a key factor from the perspective of the task-transfer. The challenges affecting human societies differ according to age, the interpretations of the challenges and the responses depend upon culture.¹ In connection with the variety of solutions, vast selection of public administration reform vehicles were developed in the last two decades. The potential reform methods might be rivals to each other while common responses elaborated within and by public administration occasionally contribute to the complexity of the given challenges instead of simplifying them.² In the research, those reform components are highlighted that contain task-transfer between the central state and other players. The object of the thesis is to analyze the public

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¹ WALDO, Dwight: Public Administration in a Time of Revolutions. *Public Administration Review*. July-August 1968. pp. 362-368.

² CAMILLUS, John C.: Strategy as a Wicked Problem. *Harvard Business Review* 2008. pp. 98-106., Volume 86, Issue 5. Harvard Business School Publishing Corporation (USA)



administration reform movements with respect to their opinion on the state as a dominant actor.

In certain reform movements the state-friendly theorists had larger influence, other reforms were more market-friendly (some reform theorists were civil self-organizing oriented). Public administration science explains public administration practice but also has a certain forming impact on practice thus theoretical changes in the role of state are in connection with theoretical changes in public administration as well. Public administration science has a role of intellectually formulating theoretically valid interpretations that synthesize the conclusions of scientific debates on the role of state while incorporate practical experience.

The thesis identifies challenges of state as drivers of public administration reforms. The issues of social and economic challenges have been well elaborated.³ Ulrich BECK uses the expression of “risk society”⁴ to the new societal settings of state challenges that raise the question of the adaptation of the state.⁵ Emile DURKHEIM states that the market requires external roles and frameworks that sustain it and provide the necessary political stability.⁶ The cornerstone of the social market economy is how the market economy principles can be harmonized with the interests of the wide society.⁷ Keynesian economy – that believes in the state as a rescuer of the market – requires such a state that is able to fulfill the tasks of a central coordinator but with using the minimal control and leadership. Public administration is one of the main vehicles of the state in harmonizing economic interests with social considerations therefore public administration’s capacity to practically fulfill this task has to be maintained throughout its reform. Public administration reforms can be utilized in two ways regarding the improvement of the sustaining and problem solving capacities of the state: the development of existing organizational capacities or transferring state duties to other players.

The research analyzes and synthesizes the domestic and international experience - focusing on the role of the state – and completes the existing scientific results with the analysis of new or only partially analyzed developments. In the dissertation, we analyze the results of the domestic and international theory of public administration reform with regards to the role of the state. In our analysis, first we briefly sum up the most important stages of the western development path of public administration science than we analyze the connection between public administration reforms and the role of state. We use modeling

³ PETERS, B. Guy – ROSE, Richard: *Can Government Go Bankrupt?* Basic Books, New York, 1978. pp. 7-9.

⁴ BECK, Ulrich: *Kockázattársadalom*. Századvég Kiadó Budapest, 2003. pp. 8-16.

⁵ FARAZAMAND, Ali: Globalization and Public Administration. *Public Administration Review*. Vol. 59. No. 6 (Nov-Dec 1999) p. 509-522.

⁶ DURKHEIM, Emile: *The division of labor in society*. Free Press. New York, 1966. pp. 203-204.

⁷ VENTRISS, Curtis: The Challenge for Public Administration (and Public Policy) in an Era of Economic Crises... or the Relevance of Cognitive Politics in a Time of Political Involution. *Administrative Theory & Praxis*. September 2010, Vol. 32. No. 3, p. 416.

method throughout the research. The model provides a perspective on the interrelation of the state, the market and the international integrations with focusing on how this complex relationship was modified throughout public administration reforms.

Modeling as a scientific tool provides the simplified image of complex realities thus it contributes to better understanding existing processes and to forecast future phenomena. In our model, we do not follow the evolutive approach of the path dependence theory and we do not argue that purely strengthening or weakening central government would imply any particular value category. We argue in support of such a role of state that adapts to the given historic, economic and societal reality. "The issue is not whether the state is big or small but whether it is able to successfully cope with the tasks entrusted to it."⁸

The chosen model is a system model in which the state that is a complex, multiple system interacts with similarly complex other systems. Throughout such interactions, certain reactions emerge among the players involved. In our research, we define public administrative reforms as appropriate tools that provide a significant portion of the necessary adaptation potential for the state. In this sense, adaptation means the internal flexibility on the first instance but adaptation can be identified in the external (state - civil sector or state - market) relationships of the state. Adaptation capacity is a potential for self-correction based on experience and learning.

One of the basic findings of path dependence theory is that the development path can be hardly changed, only at the constellation of certain decisive factors.⁹ This can be explained with the tendency of adaptive complex systems¹⁰ to maintain dynamic balance between their internal and external environment while being in permanent interactions with both of them.

From a political science perspective, dynamic balance expresses that if a player loses influence, other player or players gain(s) it: there is no (permanent) power vacuum in the political realm. In the sense of political administration science, dynamic balance means that public tasks cannot be permanently left unfulfilled. If the state exits from a public service, than other players will cover it with their own services, in the last resort it is the society itself that covers the public needs.¹¹

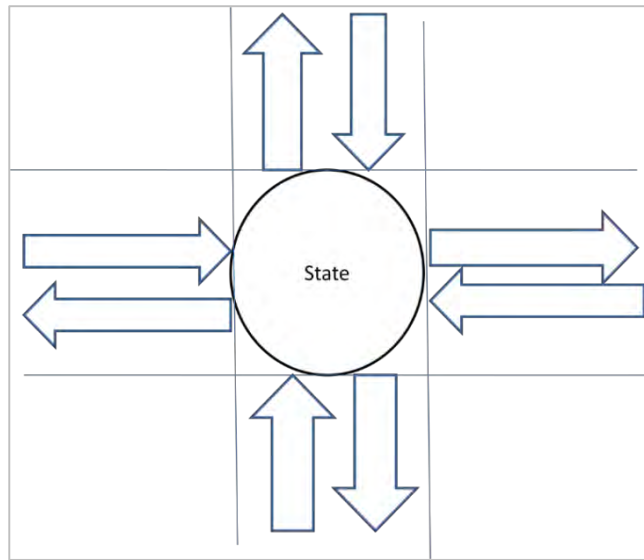
The basic scheme of the model is included in the chart below.

⁸ JÓZSA, Zoltán: Az államigazgatás feladatai a nemzetközi kihívások tükrében. *Magyar Közigazgatás* LVI. évfolyam 9. szám, 2006. p. 518.

⁹ PRADO, Mariana – TREBILCOCK, Michael: Path dependence, development, and the dynamics of institutional reform. 59, *University of Toronto Law Journal*. 2009. pp. 341-379

¹⁰ For instance in health policy: STURMBERG, Joachim P.: Primary Health Care Organizations – through a Conceptual and Political Lens. *Journal of Evaluation in Clinical Practice*. 2011. (17) pp. 525-529.

¹¹ FOLKE, Carl – HAHN, Thomas – OLSON, Per – NORBERG, Jon: Adaptive Governance of Social-Ecological Systems. *Annual Review of Environment & Resources*. November, 2005. (30) pp. 441-473.



1. Chart: Model of categorizing public administrative reforms with respect to the role of the state.

The arrows in the chart typify real or theoretically possible public administrative reforms, reform streams. The vertical or horizontal positions of the arrows project the vertical or horizontal relation of the given reforms to the central state. The arrows pointing at the governing center typify pro-state public administrative reforms, the arrows pointing away from the governing centre typify reforms that relocate competencies, duties, resources from the state to other players. The role of state has been an important orientation point in public administration theory so far but the vertical considerations and the theoretical reversibility of the processes were not included in the models. The vertical connections show that the nation states increasingly fulfill their tasks via shifting their competences to international organizations and integrations. Theoretically the reverse process is imaginable since such shifted competencies might be re-allocated to the national level again. The lower segments of the vertical arrows show the possibility of the relocation of competencies from the central government to regional, local or agency levels, whereas the addressee of the tasks is independent from the central government.

In the dissertation we revise the reform tendencies of the last two decades and place them into our model. Throughout our analysis, we compare theoretical approaches and we analyze practical examples. The dissertation analyzes the notion of public administration and public administration reform. From the definitive elements of public administration, we enhance the management-oriented approach in order to support the argumentation of the rest of the analysis. After the analysis of the definitive elements of the key notions, we further examine the driver forces of public administration reforms. According to our logical framework, public administration reforms are influenced by social, economic, environmental, technological and complexity challenges.

Public administration reforms contribute to the changes in the role of the state that intends to be able to sustain its purpose within the changeable environment. We separately analyze the relationship between the public administration reforms and the reforms suggested by the EU. We include the relationship of the national public administrations and the international integrations in the model of analytical framework.

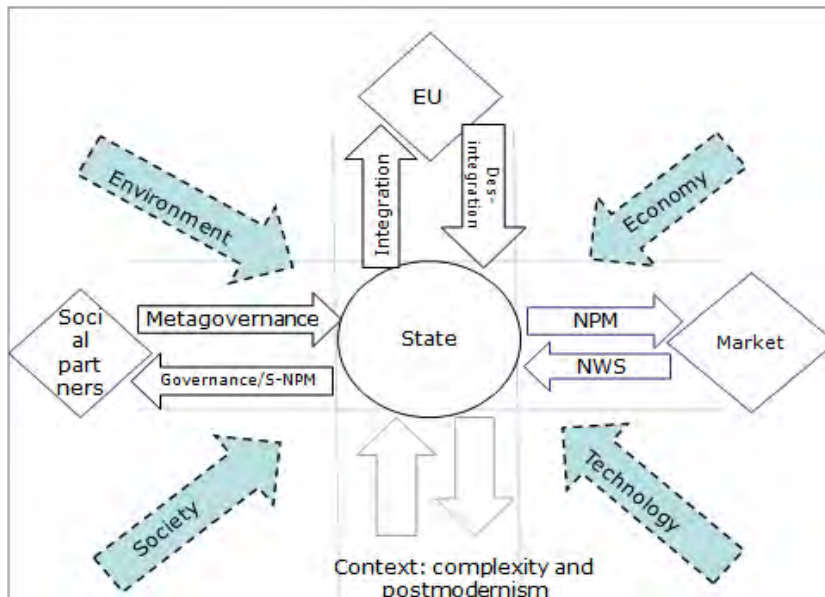
We also examine the major arguments of the path dependence theory regarding public administration reforms and we add to their findings regarding the role of the state. The path dependence theory focuses on the factors that keep the public administration reforms on a relatively narrow path. If the development path is left or modified, the change has to be explained with the findings of the path dependence theory. Path dependence theory is known in economics as the theory of self-reinforcing mechanisms, it is known in public policy as the theory of punctuated equilibrium and it is known in the law-oriented public administration as well.¹² It offers an explanation on why certain circumstances increase the difficulties and overall transaction costs of change. On the social ground, the reforms must break through the wall of formal and informal connections and interests.¹³

In the dissertation we further examine those arguments of the path dependence theory that identify public administration development model with respect to the role of state.¹⁴ The model of analysis used does not focus on the process of changes in time as the path dependence theory does. Instead of highlighting the internal inertia of public administrative reforms, it puts more weight on the reversibility of the processes arguing that reforms can be used in two ways. According to the model established, the research revises the main approaches of the public administrative reforms that took place in the last two decades with respect to the thinking of the tasks of the state. We analyze different market-oriented and society-friendly streams of New Public Management (NPM) as well as the New Weberian theory as the spearhead of reinventing the rule of law and classical public administration values. We examine the Governance theory as an important representative of the society-friendly idea of public administration reforms. The dissertation includes the reform ideas of the relevant international organizations and of the EU. Based on the findings of this part of the research, the research model is changed, according to the followings:

¹² PRADO, Mariana – TREBILCOCK, Michael: Path Dependence, development, and the dynamics of institutional reform. 59, *University of Toronto Law Journal*. 2009. p. 350.

¹³ PRADO, Mariana – TREBILCOCK, Michael: Path Dependence, development, and the dynamics of institutional reform. 59, *University of Toronto Law Journal*. 2009. p. 354.

¹⁴ JENEI György: Válaszút? Neoweberiánus szintézis vagy neopatrimoniális elfajulás. *Nemzeti Érték*. II. évfolyam, 2008. 4. szám., and BOUCKAERT, Geert – POLLITT, Christopher: *Public management reform. A comparative analysis*. Oxford University Press, Oxford 2001, 2004, 2011.



2. Chart. Public administration reforms in the light of the changes of the role of state.
Horizontal and vertical public administration reforms.

The model incorporates the external challenges and the vertical and horizontal task-transfer mechanisms into a single logical framework.

After describing the last two decades of the domestic public administrative reforms, we compare the Hungarian development path with the regional reform processes. We seek answer to the question of what the appropriate characteristics of the reforms are under the circumstances of the economic crisis. The Hungarian public administrative reforms – throughout the years after 1989 – suddenly halted after an ambitious period of system change and institution building. The newly established public administrative system had to be corrected on an efficiency-increasing basis. This period was followed by the stabilization of the institutional system. After the era of stabilization and slow development, a new reform period unfolded in which finally the New Public Management reforms became dominant in the first decade of the new millennium. We analyze reforms after 2010 in a separate chapter as a potential public administration reform response to the new conditions of the general economic (and social) crisis. An emblematic strategic document of this period is the Magyar Program, launched by the new government in 2011.

The dissertation describes the reform history of the last two decades including the first experiences of the years of the crisis. The issue of the role of state within the reform theory is a valid starting point for examining public administrative reforms. The public administrative path dependence theory acknowledged the task-transfer phenomenon between state - civil society and state - market although this was not embedded into a single logical framework that allows reversibility. The vertical task-transfer to international organizations and integrations were not included among the potential reform agendas. The two-way

connections between the players indicate that there is not only a potential for undifferentiated task-transfer among the subjects of the model, but there is also a systemic potential for appropriate co operations if the level of trust between the interacting subjects allows it. The use of the scientific model – elaborated in the dissertation – can be used for the evaluation of future public administration reforms. It also provides a wider interpretation background for the “pendulum path”¹⁵ regarding the relation between the state and the public administrative reforms recognized by the scientific literature.

The dissertation details the opinions of the relevant international organizations regarding the public administrative reforms that – in different extent – influence the reforms of the recipient countries including Hungary. From the role of state point of view, these organizations used to be interested in re-allocation of resources and competencies from the central state to the market, to the social partners or to the municipal local governments. The European Union is to be highlighted among the other international knowledge-transfer and donor organizations.

Opportunities for utilizing research outcomes

If we position the role of state in public administration reforms into the centre of our research, it throws new light on the question of what kind of state is the most appropriate for the reality the beginning of the 21st century. This question is raised by the social, economic, technological and environmental challenges in variable, new ways.

The scientific model used – according to which public administration can be modeled as an adaptive complex system – has an element of novelty. The framework model can be used intact or in a modified form in future researches on describing and categorizing public administration reforms. The research offers a theoretical framework to incorporate empirical data regarding the civil service and the legal material into the research on public administration.

The research applies an original research method on estimating the internal complexity of legal material. The method is a research-engine method that can be used in all digitalized databases such as in law databases as well. The indicators of the internal complexity within the legal material are the cross-textual reference.

¹⁵ For instance: PETERS, B. Guy: *The Role of the State in Governing: Governance and Metagovernance*. NISPA CEE working paper, 2008.

THE ROMANIAN NATIONAL MINORITY'S RELIGIOUS RIGHT ISSUES IN TRANSYLVANIA AT THE END OF THE 17TH CENTURY (1697-1704)

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Introduction

In order to increase its power in Transylvania the Habsburg court policy supported the expansion of the Catholic Church. One official way for achieving this was the union with the Romanian Orthodox Church. The Viennese diplomacy soon realized that with the disruption of the close cooperation between the three nations and four religions could open the door to seamless integration of Habsburg rule. After the change of the power the Saxons in Transylvania were getting to turn their attention to the Habsburg court. The Catholic Habsburgs decided to expand the Catholic Church in Transylvania. The political intention of the Habsburg court was hindered by two factors. The Saxons and the Catholics weren't so strong regarding their number and political influence like the protestant ones. The other important factor was the disposition laid down in Diploma Leopoldinum,¹ According to which the relation among the three nations and four religions had to remain unchanged, as it was at the time of the principality. It wasn't impossible to change the proportion of the three nations and four religions without offending the Leopoldinum Diploma. The only legitimate and viable way was to alter the nonstandard, but tolerated Romanian people from Greek Orthodox religion to the Catholic religion.

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¹ „Diploma Leopoldinum, (English: “Leopold’s Diploma”) decree issued in October 1690 by Leopold I, Holy Roman emperor and king of Hungary (1658–1705), after the Ottoman Turks had been driven from central Hungary in 1686. The decree established the political status and the freedoms of Transylvania, notably the freedom of observance for its four religions: Catholicism, Lutheranism, Calvinism, and Unitarianism. Until the defeat of the Turks, Transylvania had been virtually an independent state, under largely nominal Turkish suzerainty and ruled by elected Hungarian princes. The Diploma, which enshrined the agreement between the Habsburg emperor and the Transylvanian nobles, ensured the continuation of the autonomy of the province. It provided for a governor (to rule until the prince of Transylvania reached maturity) chosen by the estates from the so-called three nations (Hungarians, Szeklers, and Saxons) and endorsed by the emperor. The Diploma also adjusted the level of taxation and guaranteed free trade. The army was to be under the command of a general nominated by the emperor but who did not have a voice in public affairs. Introduced after years of anarchy and war, the Diploma offered the promise of internal order and cultural and vocational opportunities for all three nations of Transylvania in their own languages. It soon became apparent, however, that the Diploma had not secured autonomy for Transylvania, as the leadership of the principality came under the direct influence of the Vienna chancellery. Transylvania was therefore severed from Hungary for the next two centuries.” <http://www.britannica.com/EBchecked/topic/1459175/Diploma-Leopoldinum>. (date of download: 11.19. 2022)

The establishment of romanian religious union

The initiator of the religious union of the Romanians in Transylvania and also the pathfinder was Paul Laszlo Baranyi S. J, pastor in Alba Iulia. He knew narrowly the religious and social circumstances of the Romanians in Transylvanian. He had a deliberation with Theophilus, the Greek Orthodox bishop of Transylvania during which he raised as an issue the possibility of the Union and its potential social and political benefits for the Romanians in Transylvania. This possibility of union had been also suggested by King Leopold I in his manuscript published in 1692 in which he addressed an open call to the Ruthenian Greek Orthodox priests from Highlands in connection with the union. He promised more allowances in that area. Those priests who accept the union were recognized as equivalent with those of the Latin ritual priests. The effect of this appeal met with a warm response among the Romanians in Transylvanian. Theophilus, the Greek Orthodox bishop of Transylvania convened a synod in Alba Julia (Gyulafehérvár) in 1697.² He explained that the Romanians in Transylvanian had to suffer much because of the constant harassment and pressure of the Protestants. The Reformed Church interfered into their church life and oppressed them and also afflicted them with taxes and serf services. Furthermore he revealed what opportunities and benefits could the union offer. The synod accepted that in the church services and governmental structure could not happen any changing, the Julian calendar is preserved and the Greek Orthodox religion can be no longer a tolerated religion in Transylvania.³

At the end of the synod all conditions of the union were accepted. Among the conditions can be mentioned: I. Dogmatic themes. 1st. The Pope is the head of the universal Church. 2nd. The Holy Communion under color of bread during is sufficient. 3rd. There is a cleaning place. 4th. The Holy Spirit is from the Father and the Son. II. The priests and religious men should have the same privileges as the Roman Catholics. III. Officers should be appointed among the Romanians too. Their sons should enjoy foundations and scholarships. IV. The bishop should have sufficient income and he should appoint the priests.⁴

The decisions formulated by the synod had a great echo among the estates in Transylvania, the Saxons and the Greek Orthodox Church in Wallachia. A series of protests against the union began in Transylvania and Wallachia. The sudden death of the Bishop Theophilus, supporter of the union made the Protestant to act immediately. They became aware of that the agreement between Paul Laszlo Baranyi and bishop Theophilus concerning the union would radically change the religious, social and political conditions in Transylvania.

² GYÁRFÁS, Elemér: *Bethlen Miklós kancellár*. Dicsőszentmárton, 1926. pp. 121-127

³ Ungarische Akten Specialia. Fasc. 364. Transylvanica separata. Konv. A. Privilegien und Angelegenheiten der griechisch-katolischen Kirche der Rumanen in Siebenbürgen (1659) 1689-1754. 21-22. fol.

⁴ GYÁRFÁS, Elemér: *Bethlen Miklós kancellár*. op.cit. pp. 121-127.

They were looking for a reliable Romanian bishop who is willing to make a loyalty oath to the Protestant bishop. Over against with Tirca John priest, as the majority of the Romanian priests from Hunedoara county openly expressed their reliance to the Calvinists. Anghel Popa was the son of a Romanian priest from Bobalna (Bábolna). According to Miklós Bethlen's testimony that "*it is our young boy from the school in Fejérvár the winner, who is also receiving a Calvinist upbringing. The gold from his father, the biggest part of which went to the governor, made him bishop.*"⁵ The vacant bishop chair in Romanian was occupied by Athanasius Angheleit. After his consecration as Bishop in Bucharest he returned to Alba Julia (Gyulafehérvár), where he had been waited by the order in council which was edited in 14th of April 1698 regarding the union of the Romanians in for him in the union of Transylvania. He threatened those who acted against the union.

The political pressure and the promising discounts had their results. At the Synod congregated by Bishop Athanasius on 7th of October 1698 in Alba Iulia the religious union with the Roman Catholic Church was adopted. Ensured the Romanian character to their Church, the rights of electing their own bishop, their independence from every other Christian church and it was also assured their church organization and religious ceremonies. The document was signed by Bishop Athanasius and 38 deans and then sent as a petition to Vienna. The Romanian delegates who took at that time part of the union appeared at the diet on 23rd of november 1698 in Alba Iulia. There it was presented the resolution adopted and were also submitted at the Synod.⁶

The Protestant majority Transylvanian orders after a long deliberation decided to investigate the matters and the Romanian clergy and the people were asked about the matters concerning the union. The diet expressed its concern about the Union. At the diet held on 20th of January 1699 in Schassburg (Sighisoara, Segesvár) the issue of union was discussed narrowly, because had not arrived any answer from Vienna. The Protestant majority parliament was still of the opinion to postpone the case until the arrival of the King-Emperor's reply. After the parliament was closed on 16th of February 1699, arrived Leopold I's diploma about the union.⁷ According to Vienna's firm view the issue of the union had been already decided. On 14th of July 1699 the Transylvanian Gubernium set up other 14 arguments pointing to the church and social disadvantages caused by the union.⁸ The Romanians possible used the union as a possibility to release from tributes and slavery. The constitutional spirit of Transylvania was based on the three nations and four recognized religions. This spirit was maintained by the conservatism of the Protestants and on the other

⁵ BETHLEN, Miklós: *Önéletírása*. Budapest, 1980. (Szerk. V. Windisch Éva) II. p. 202.

⁶ Ungarische Akten Specialia. Fasc. 364. Transylvanica separata. Konv. A. Privilegien und Angelegenheiten der griechisch-katolischen Kirche der Rumanen in Siebenbürgen (1659) 1689-1754. 21-22. fol.

⁷ Ungarische Akten Specialia. Fasc. 364. Transylvanica separata. Konv. A. Privilegien und Angelegenheiten der griechisch-katolischen Kirche der Rumanen in Siebenbürgen (1659) 1689-1754. I. Román Vallási Diploma Leopoldinum 1699. 02. 16. Wien. HHSTA.

⁸ BARITIU, George: *Parti alese din Istoria Transilvaniei pre doue sute de ani din urma*. Sibiu. W. Krafft. 1889. p. 155. – DRAGOMIR, Silviu: *Istoria Desrobirei Religioase*. Sibiu. 1920. Vol. I. p. 25.

hand by the fear of the Catholic orders from the changing of national relations. On 26th of August 1699 Vienna firmly rejected the Gubernium's petition. It consolidated the allowances included in the Diploma from 14th of February 1699 and also warned the Gubernium in Transylvania to respect it and follow it.⁹

After this warning the Gubernium made a very important decision. The Romanians had the freedom to join any recognized religion. It was ordered an investigation to find out which religion do they want to fuse with. The problems relating union rose an enormous among the Romanian Greek Orthodox churches. The first who opposed the union were the Greek Orthodox churches from Brasov. They were followed by the priests in Hatszeg who were supported by the Calvinist bishop and Reformed orders. The most famous anti-union protestant was nobleman Gábor Nagyszegi. He had converted to the Catholic Church came in the focus of the Romanian's attention. He drew attention to the dangers of union. Rabutin, the commander of the Habsburg army in Transylvania, was well aware of the relationship between Nagyszegi and the Protestant members of the gubernium, especially Chancellor Gábor Bethlen, who in secret supported his efforts.¹⁰ In order to reduce the favoritism with the Catholics, György Bánffy and Miklós Bethlen made the Ministerial in rebus Transilvanicis to accept the idea that the Orthodox priests should fuse with any of the recognized churches. After the fusion, they should get the status of the respective church ministry.¹¹

That's why gubernator György Bánffy and Chancellor Miklós Bethlen travelled to Wien in April 1698. The priests of the tolerated orthodox religion after the fusion win the status of the respective church ministry. In May 1699 the Gubernium took under his protection the Romanian reformed priests from Hatszeg, who were against the union. On 28th of november 1700 the Reformed Consistorium chaired by György Bánffy expended a protection.¹² The Protestant majority Transylvanian Gubernium and the parliament in Transilvania in September 1699 tried to adjust the issue of the union by enacting it. This intention didn't bring any important change. Neither the second religious diploma edited on 19th of March 1701 achieved further results regarding its efforts against union. According to the stringent regulations the Orthodox could only fuse with the Catholic Church, the Protestant churches could only provide protection for them.¹³

⁹ BOD, Péter: *A románok uniáltatásáról való rövid história*, Bibilioteca Centrala Universitatii din Cluj Napoca, (Bábes-Bolyai Tudományegyetem Központi Egyetemi Könyvtár Kolozsvár) Ms. F. a. pp. 23-33. GUDOR, Botond Kund: *Istoricul Bod Péter (1712-1769)*, Cluj–Napoca, 2008. p. 297.

¹⁰ Ana DUMITRAN – GUDOR, Botond – Pr. Nicolae DANILA: *Román-magyar felekezeti közti kapcsolatok Erdélyben (A XVI. Század közepe- a XVIII. Század első évtizedei között)*. Gyulafehérvár, 2000. pp. 279-281.

¹¹ Főkonzisztórium Levéltár az Erdélyi Református Egyházkerület Gyűjtőlevéltárában, Kolozsvárott. 3/1700.

¹² Főkonzisztórium Levéltár az Erdélyi Református Gyűjtőlevéltárában, Kolozsvárott. 4/1700, 7/1700. – SIPOS, Gábor: *Román református eklézsiák oltalomlevele 1700-ból*. Europa. Balcanica-DanubianaCarpathiaca. Annales 2/B Bp. 1995. pp.356-359.

¹³ SIPOS, Gábor: *Az Erdélyi Református Főkonzisztórium kialakulása. 1668-1713-(1736)*. (Erdélyi Tudományos Füzetek 230.) Kolozsvár, 2000. p. 37.

A good example was John Czirka an Orthodox priest, who was imprisoned because of his anti-union actions. In the autumn of 1700 he was taken by the Transylvanian Reformed Council (Consistorium) of the to the Romanian Church in Hateg (Hátszeg).¹⁴ In 1699, the Parliament legislated in order to prevent the progress of religious union, in which proclaimed that in each location only a limited number of Greek Catholic priests could be free of tributes. It was also mentioned that the bishop is obligated to establish schools in Hateg (Hátszeg) and Fagaras (Fogaras) to improve morality.¹⁵ The consolidation of the religious union of the Romanians depended on the Bishop Athanasius. The most important task was to determine the Bishop's person and its church status: his legal recognition by the pope and his confirmation/ ratification by King Leopold I. (1640-1705).

For the second time was ordered by the Transylvanian Diet to examine the bishop's and the Romanian clergy's standpoint about the union. At the synod held on 5th September 1700 the Transylvanian Romanians had to decide that they accept or not the union with the Catholic Church or rather they fuse with the reformed church, or they remain in the Greek Orthodox Church. At the synod it was finally declared the union with the Catholic Church.¹⁶

The document was signed by 54 deans and 1563 priests. Athanasius was consecrated as catholic bishop on 5th of February 1701 at St. Anne's Catholic Church in Vienna, after he made the loyalty oath and creed.¹⁷ In spite of this Leopold I edited the second diploma on 19th March 1701, in which Athanasius was confirmed as bishop and the approval of Rome.¹⁸ The first chapter of the Diploma contained that the Greeks are equal with those of the Latin rite. In the second Chapter their priest are released from personal services. The third section declares that they are considered no longer a tolerated nation, but placed under the protection of the laws as equal citizens. The fourth Chapter disposed the removal of the Reformed catechism (Heidelberg Catechism) and of the customs influenced by Calvinism. The fifth Chapter was the most important. It subordinates the bishop of the Greek United Church to the archbishop of Esztergom. The 12th chapter restrained the rights of electing the bishop (which was declared by the parliament in 1579) in the sense that the clergy could only appoint three suitable individuals to this dignity, but the final nomination was made by the emperor.¹⁹ A few months later on 25th of October 1701 was inaugurated in Alba Iulia as

¹⁴ BETHLEN, Miklós: *Önéletírása*, op.cit. p. 882.

¹⁵ CSEREI, Mihály: *Históriája*. Pest 1807. p. 286.

¹⁶ Ioan Micu MOLDOVEANU: *Acte sinodali ale baserecei romane de Alb'a Iulia si Fagarasiu*. Vol. 11. Blasiu, 1872. p. 86.

¹⁷ Hevenesi Gyűjtemény kézírata, A 6825/III. jelzet. Magyar Tudományos Akadémia Könyvtára. Egyetemi Könyvtár, Budapest.

¹⁸ Ungarische Akten Specialia. Fasc. 364. Transylvanica separata. Konv. A. Privilegien und Angelegenheiten der griechisch-katholischen Kirche der Rumanen in Siebenbürgen (1659) 1689-1754. I. Lipót rendelete a román unió ügyében az Erdélyi Guberniumhoz. (latin másolat). Kiadva: Joseph FIEDLER: Die Union der Walachen in Siebenbürgen unter Kaiser Leopold I. In: Sitzungserichte er philosph.hist. Classe der k. Akademie der Wissenschaften XXVII (1858) p. 381. HHSTA.

¹⁹ GYÁRFÁS, Elemér: *Bethlen Miklós kancellár*. op.cit. 1924. p. 133.

Bishop. The religious union based on the two diplomas edited by Leopold I ensured for the Romanian priests in Transylvanian equal rights with the Catholic clergy. The bishop was pontificated and the church was taken out of being tolerated. The students who wished to study got the possibility for further education at the Catholic universities. As regarding the denominational distribution of leading posts (Gubernium, municipalities) in the mentioned period could be perceived a slow rise of the Catholics.

In Transylvanian nobleman István Apor had a very substantial political career. From 1693 he was a councilor of the Gubernium, three years later treasurer, and in 1703 he became suprem commander in Transylvania. The rise of the Catholics in the political life grew stronger and stronger. This process could be detected in the changing of the chairman of the orders and royal estate. Laszlo Szekely had got his charge at the time of Prince Mihály Apafi. the 2nd After his death (1692), the Protestant Elek Bethlen took over this post. The protestant Samuel Keresztesi was nominated by the diet to fill the vacant post. The prince did not confirm him in this post, so after long debates the Catholic Stephen Hallernwas elected in 1699. In 1691 among the four public dignities in Transylvanian reformed and only the treasurer was Catholic, but in 1703 the Chancellor and the gubernátor were reformed, the general and president of the orders were Catholics. This was compensated by Miklós Bethlen and György Bánffy's public authorities. Their political and religious influence in Transylvania was significantly greater than Istvan Apor and Istvan Haller's. Thanks to Miklós Bethlen's tireless work the Gubernium and the Diet remained in majority reformed.

Conclusions

In the first period of the Habsburg domination in Transylvanian (1685-1703) the eminent representatives of the protestant churches were able to maintain the important political and administrative positions in spite of that the Catholics became stronger and stronger. In these positions they could effectively work and be on the lookout on maintaining the protestant traditions in Transylvania in the 17th century. The synod held on the 5th of September 1700 represented a turning point concerning the religious and political future of the Romanians in Transylvania. Their crucial decision was: do they accept the union with the Catholic Church or rather they fuse with the Reformed Church, or they remain in the Greek Orthodox Church. At the synod finally it was declared their union with the Catholic Church. The Romanian priests were granted equal rights with the Catholic priests. Their bishop was pontificated and got the rank and rights of nobility and their church was taken out among tolerated religions. The students who wished to study had the opportunities for further education at different Western European and Hungarian Catholic universities. The Romanian nation in Transylvania due to the religious union from a tolerated political - and legal status joined the nations which formed the state in the 18th century.

CHANGES OF THE HUNGARIAN LOCAL GOVERNMENT SYSTEM

DEMOCRACY, LOCAL PUBLIC AFFAIRS AND LOCAL GOVERNMENT

CSÖRGITS, Lajos

Introduction

The aims of this dissertation were to analyze the exercise of- and the recent changes in local democracy. The exercise of power was studied only on the level of settlement, the dissertation does not contain analysis on the regional (county and capital city¹) level. The limits of exercising local democracy are determined by the rules of local representatives' and a mayor's election, as well as by the autonomy of local governments.

Therefore the legal institutions of these fields are analysed in the dissertation. The dissertation does not contain previous laws or rules, and does not intend to review the historical antecedents, it only focuses on existing and newly accepted provisions. The goal of the dissertation is to introduce the local elections' rules analytically, including international and domestic requirements in the light of the Hungarian Fundamental Law. Also changes in the local government's duties require evaluation in terms of autonomy of local governments. Numerous problems came up in practice, which were caused by incomplete, ambiguous or slow provisions. Thus, this work aims to solve these problems with suggestions, moreover to make easier the work of law enforcements.

Methodology of the research and structure of the dissertation

The dissertation was made with the help of methods which are usually used in jurisprudential researches. The collection of materials, the organization of the material, the assessment and the consequent conclusions were based on the analysis and the evaluation of research literature, laws, other legal documents and judicial decisions. In addition to these methods, the work also contains my own practical experiences. Historical and comparative legal method was used in some cases, which means comparison of existing and newly adopted but not yet effective provisions with the rules

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¹ Capital city is a type of the local government on the level of settlement and region, as well.



of the previous state. The institutions of local democracy were approached in practical ways.

The dissertation places special emphasis on significant changes that have occurred in 2012-2013 and which are important in local democratic exercise of power. The work is divided into five main parts. The first part describes the research field and the methodology of the research. The second part contains the theoretical foundation of the research topic. This section determines the conceptual framework of local democracy and specifies its location in the system of power of the state and in the system of division of powers. This second section also contains the processing of the relevant domestic and foreign literature. However, the starting point was always the provisions of Fundamental Law. Presenting² the practice of Constitutional Court is unavoidable in connection with the constitutional declaration. The third section describes the local democratic institutions of direct and indirect exercise of power, particularly with regard to the changing rules. In this regard, I fundamentally relied on laws.

As well as the born election laws are evaluated in the light of rules of the rights of local governments, the Fundamental Law and the European Charter of Local Government's regulations. In this connection, the European Court of Human Rights case law is also analysed. In connection with the direct local exercise of power, statistical data and conclusions drawn from the data can be found in the dissertation. In this section, I proceed to discuss the organization of local government, including the provisions of local government associations as well, because the rules of the local government associations also changed significantly and their tasks were imposed on local governments participating in associations.

The third part ends with presenting the relationship between the local exercise of power and the political spoils system. Another major conceptual unit of the thesis contains the changes of local government functions, which can be found in part four. Academic literary sources on the above mentioned changes were not available, so instead of relying on the literature, law and issues which came to surface in relation with the restructuring of local government tasks are processed in this dissertation. In this context, the results of discussions with representatives of administrative authorities are drawn into the dissertation. Studying the local government jobs, the presentation of their financing and overview of the basic rules of local government management cannot be disregarded. This process based on use of literature. While the Hungarian aspects of this method are supplemented by interpretation of laws and analysis of discussions with experts about the arising problems.

² In my opinion, the Constitutional Court's decisions require analysis even if the Fourth Amendment of the Fundamental Law was repealed. [Fourth Amendment of the Hungarian Fundamental Law Art. 19 Par. (2); Decision 55/1994. (XI. 10.) AB, ABH 1994, 296, 302.]

In the work - within the fourth part - a separate chapter is devoted to present rules on the administrative supervisory competence over local governments in an evaluative focus, which is mostly based on analysing domestic literature, law interpretation and a synthesis of practical experience.

The fifth part of the dissertation contains a summary of the research results and separately deals with the changes occurred in the provisions of electoral law and in local government functions.

Summary and applicability of the dissertation's results

Summary of the dissertation's results

Statements related to the local exercise of power When studying the current regulation of the Hungarian Fundamental Law in connection with local democracy, I found that the right of local governing is not declared in Fundamental Law. The right of local governing was a rule of scope in the Constitution and the Constitutional Court did not use the test of necessity-and-proportionality during the evaluation of the above mentioned rule. The Fundamental Law does not dispose of the right of local governing but it also does not determine its content or levels of local governments. Instead of these, it places the definition of local public affairs into the centre. The Fundamental Law declares that local governments dispose of public power, which is, with the state power together, part of the single public power, so the executive power is vertically divided.

The definition of arranging public affairs means making decisions in normative or individual cases. The exercise of local power does not give additional tasks compared to arranging public affairs, rather it classifies the duties from another point of view. According to the Act on Hungarian Local Governments CLXXXIXth Law of 2011 (hereinafter: Act on Hungarian Local Governments), the right of local governing expresses the will of people so it is the right of making decisions. Local governing also puts into effect the will of people, namely it is the right of the execution of the decision.

So the subjects of local governing are members of local community and not local governments or its agencies. Members of local community can exercise the right of local governing directly, by referendum or through chosen representatives (indirectly). [Act on Hungarian Local Governments § 2] The local governing is supported by a new kind of approach. This approach requires not only right, but also obligation to local voters when it states the enforcement of "civic responsibility" and when it provides an obligation that "it expresses and implements the local public will in public affairs in a democratic way, creating widespread publicity." [Act on Hungarian Local Governments § 2]

The new Hungarian legislation harmonizes with the expectations, as the European Charter of Local Self-Government³ does not state that the right of local governing should be fixed on constitutional level. Local governments are considered to be part of the executive power in the sense of the classical division of powers system, but they must be separated from central government bodies, namely from the Government (which is the top of the executive power) and from the ministries. The essence of self-government, described by Article 3rd of the Charter, is dissolved if direct or indirect influences of central government agencies reach beyond a certain limit. The Paragraph 1 of Article 8th of the Charter states that supervision over local self-governments are exercised by state authorized administration under circumstances and procedures which are defined by the Constitution and laws.

In light of these facts, it is worth examining the new rules of Fundamental Law and the Act on Hungarian Local Governments whether certain elements of the newly introduced supervisory authority individually, or especially combined together provide a particular level of influence for the Government, which excessively limits the autonomy of self-governing. The head of the county government office (hereinafter: government office) has legislative competence and obligation as well. This is such an external intervention into the operation of an autonomous body, which calls into question its autonomy. It results in a weaker local government, and orients towards a more centralized state operation. However, this does not go beyond the limits provided by the Charter. The preamble of the Charter has an important criterion stating that only "local authorities with real responsibilities can provide an administration which is both effective and close to the citizen" and "the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power". Within the framework of the Charter the contracting states agreed in 1985 that the existing government system will be strengthened and real responsibilities for governments will be given but the current processes do not follow this direction. The local government sector is not included in the restructuring priorities of public administration, its development (or rather conversion) follows the definition of other participants of the organization of public administration. Thus, the local government system may not correspond with the criterion, but overall it cannot be said that the Hungarian regulation does not meet the requirements of the Charter.

The exercise of local power can implement directly or indirectly in which case the exercise of power through referendum which supersedes the power of representatives. The exercise of local power in practice happens almost exclusively indirectly. Therefore the rules that determine the conditions for the development of local representative

³ The Charter uses the „local self-government” term, which is same as the „local government” term preferred by me

democracy are important because voters are only able to express their will every four or five years. From this perspective, the most important rule is the definition of right to vote. In the case of local elections, the right to vote can only be exercised in city of inhabitancy or residence. Restriction of the right to vote can be achieved through placement under guardianship, implemented imprisonment or disqualification from public affairs, exclusions that could reasonably be expected in regard to someone who is an electorate or can be elected. However, exercising the right to vote of people who are under house arrest or in custody is not solved, but in a given situation people who are subject to the more strict measure (pretrial detention) have more opportunities to exercise their right.

It should be considered in connection with the Hungarian regulations that the very permissive regulations of the right to vote should be changed in the future, since they do not set further bounds. Maintaining contact with minority⁴ local governments and facilitating their legal operation often cause problems, not only for local governments who are responsible for their operating, but also for the responsible government offices that provide legal supervisory oversight. The problem stems from the fact that members of the minority local governments often do not speak Hungarian. They do not understand the legal requirements, therefore they cannot submit their application for normative support, they do not know which resolution should be passed and how to put them on record, they cannot compose their budget, draft their contracts etc., which leads to settlement problems later. The lack of requirements also apply for local representatives which could affect the exercise of local power; if a representative is unable to keep in contact directly with the voters, it may damage the success of local democracy.

The Hungarian legislation is very liberal since it does not prescribe qualifications requirements, moreover it does not require candidates to declare their qualification. Considering that in exercising local power, representatives and mayors have to make decisions about the of appropriation of public funds, often in the values of billions, it wouldbe desirable for candidates qualifications to be public records, since voters could only decide responsibly when knowing all necessary information. In my opinion, the new provisions which enter into force in this year (2013) will help a broad representation of public will with the introduction of the electoral sheet and the institution of multiple proposal coupons. Compensation votes are counted differently than in the case of parliamentary elections, which helps to represent the pluralistic electoral will of the electorate in the local representative body.

The introduction of the electoral threshold affects this process to the contrary, nevertheless this does not constitute to be a constitutional issue. In connection with the

⁴ The „minority” term was used by Hungarian laws before 2012. The present term is the „nationality” in Hungary, but I use the „minority” term in this text because of that is the English terminology

minority elections, it is worth noting that it would have been a more ideal solution, if the size of the bodies were to correspond to the numbers of the voters. As the case today is, hundreds or thousands of people have the same number of representatives as 30 people, it causes problems in providing a quorum especially where there are vacant mandates. In the case of exercising local power it has to be noted that the Act on Hungarian Local Governments fixed almost every rules about the legal status of local representatives however, there are important questions which are not defined precisely.

A representative, as a direct practitioner of local power has the right to initiate a decision and representatives also have the right to participate in decision-making. This is one of the most important rights in exercising local power. However, this right is not unrestricted. Representatives do not have this right in every case as there are cases when the Act on Hungarian Local Governments or other laws restrict this right of the representatives. For example only a mayor may propose (a) deputy mayor(s). There are also other examples that representatives abuse this right in urgent cases by initiating the decision-making in the session and at the same time evading laws which contain procedural rules in connection with the given decision.

There are many ways to group or take apart the rights of representatives (e.g. questions, interpellation, oral, written, formal and non-formal) but it has to be emphasized that representatives have right to know all materials of the local government, including the closed, confidential documents as well. It is also important to mention that this right does not apply to state administrative matters. I have to highlight that dismissal of the representative democracy may not be reached by indirect democracy (referendum) because the Hungarian Fundamental Law prohibits holding a referendum in order to dissolve of representative bodies.

The group of representatives, a representative body has the right to make decision during managing the public affairs, which is comprised of individual votes of the representatives. The representative body may adapt a decree or take a resolution. A decree bases on legislative authorization or it is adapted in original legislative power. In many cases it the question arises, whether the legislative authorization also creates an obligation. In my opinion it does not, because if the local public affairs do not justify the regulation of the given subject, then the representative body does not have to adapt a decree.

The situation is different in cases when laws provide the obligation to adapt a decree, but in such cases the obligation has to be unequivocal. It is an interesting question whether a government decree can give authorization for local governments to adapt a decree and whether it can provide such an obligation. After all, in some cases this is what happens, which greatly limits the territorial decentralization of local governments.

The representative body in majority of the cases passes a resolution. Resolutions may be normative or individual. In connection with numbering the resolutions, there is a peculiar situation, as the minister has only been authorized to adapt decrees in case of numbering the normative resolutions, but the Minister of Public Administration and

Justice extended this decree to individual resolutions which was only adapted for normative resolutions. From the 2014 elections mayors may not be members of parliament. Their ability to influence the central power will therefore be reduced. Mayors, as representatives who are on the top of local executive power, it can be naturally expected to be incorruptible and at the same time it is also an expectation that they do their jobs to promote the interest of their city. I think that the rules for determining their compensation just meet the above mentioned expectations. From this year, mayors exercise the employer's rights over clerks, so the mayors are able to control them and the office through them more directly, than at the time when mayors had only other employer's rights. This however raises the question, how could a clerk be the agency of the representative body, and functionary of the local governments, when the representative body does not possess any authority over them.

In addition it is only the absurdity occurring in the Act on Hungarian Local Governments that clerks are the guard of legality, obliged to signal violations of law by his/her superior but the clerk also is obliged to control himself. Although, the tasks of clerks have been reduced by approximately 50%, clerks are still unable to comply with all laws. Moreover even the requirements of the Act on Hungarian Local Governments cannot be fully enforced, as can be exemplified by obligatory participation in meetings of the representative body and in committee meetings. In Hungary the direct exercise of local power negligible, as there are 3200 local governments and only 10 referendums are held per year in average. In most cases, the questions asked belong to the scope of obligatory referendums (e.g. area-organizational processes). It can be seen from statistics that these referendums are invalid or inconclusive, which indicates that citizens do not use with the opportunity of exercising direct local power.

The system of the political spoils is also present locally. We should not forget that who fill the status and where he/she comes from may have a great significance. It can be generally stated that public servants do their tasks in a yet politically neutral way, although the strengthening of political spoils system aims to act against this neutrality. The parties have not yet established groups of experts on the local level, which would be essential for changing the local administration at the end of a political era. Change cannot be expected, as there are no alternative jobs where experts can work until they regain their political status. At the distribution of different positions (e.g. committee members, supervisory board members, institutional management) political aspects started appearing in the selection process, loyalty towards the leader and the party gaining preference over professionalism. Reasons for this change include the fact that many votes can be reached through these institutions, whilst promoting the values of current political power and the implementing programs can also be achieved.

The aim (during the Fall of Communism in 1989) was to present the local governments as a counterpole of the central power, which failed to succeed as the election time in spring and autumn were too close to each other. This resulted in party politics to tend toward the system of political spoils so as the same pole government

may develop at the same governing cycle. Due to the five-year election cycle from 2013, this development will be further shifted, however the function of local governments as counterpoles will still not materialize due to several rules applying to local governments (such as financing).

Findings in relation to local government functions

Since the Fall of Communism, the tasks of local governments became multifaceted, changing from the centralized management to a much more fragmented operation. For 12 instance settlements were supplied by 40 water public utilities providers at the time of the Fall of Communism, while nowadays this number is nearly 400.

Local governments may decide to carry out their duties, or establish institutions to implement their tasks, they can also set up business associations and in addition local governments can also associate with other local governments. The regulation about associations has been changed, which prescribes that the association agreement had to be examined until 30 June 2013 and the agreement had to comply with the Act on Hungarian Local governments. It has to be noted, that the Act on Hungarian Local Governments does not regulate cases where the representative body does not accept the amendment thus resulting Associations are particularly important in the case of local government functions, as they were the typical answer to increase in duties which was also previously encouraged by the state normative funding.

Carrying out the educational tasks has also changed. Leaving only the pre-school education as the responsibility of local governments, whereas schools are operated by the state (over population of 3000 schools are operated by local governments). However, catering services in schools remain the responsibility of local governments. The changes in the cultural sector mainly affected the municipalities in county seats. The county museums were closed down, and were substituted by county-scope museums, which are maintained by the local government of county seats. A similar case occurred with county libraries. Unlike in the other cases, in case of county archives and public cultural institutions, the state maintains these institutions and is responsible for their operation and for professional management. In connection with the reorganization of social tasks, the guiding principle was that primary care service would remain the responsibility of local governments whereas the state would be responsible for specialist care service. However this has not been implemented in all cases, as for instance the residential care for people with disabilities remains a responsibility for several local governments. Only minimal changes occurred in providing other public services. The other privileges, obligations, tasks remained the responsibility of the local governments.

The most challenging tasks for local government and state institutions were the transfer of the actual administration and corresponding assets. The laws which were released in December 2012 and the complementing government decrees and ministerial

decrees about restructuring the institutions provided such deadlines which were impossible to carry out. Legally, for example ratification of articles of incorporation of associations by the representative bodies. Apart from procedural rules, substantive issues during decision-making about takeover may also have been left undecided. Ten thousands items of property and thousands of personnel cannot be thoroughly prepared for handover in a couple of weeks. This is demonstrated that a large number of contracts between the Hungarian state and local governments, which should have been signed during the course of the year or at the end of the year, are to this day not concluded. However, it is good to note that despite these shortcomings the system has not collapsed, but is operating with occasional hindrances.

Local governments may also fulfil self-imposed tasks, besides the compulsory ones. Categorizing these tasks is hard, as there is a lot of overlap between them. These overlaps are important because the financing of local governments by the state has transformed. The central budget provides sources only for compulsory tasks, however, self-imposed tasks have to be provided primarily from sources of local governments. The previous state normative funding was replaced by financing of specific tasks, but this change has not been implemented in all sectors (e.g. social sector) yet. The compulsory prescribed revenue and the way of its calculation reduces the autonomy of budget-planning and management in local governments and strengthens the enforcement of central interest.

The Parliament can decide freely how they arrange financial backing for the tasks which are determined by the law. However, the Constitutional Court also stated that guaranteeing legal certainty is important in connection with the management of local governments. In this context, it is worth thinking about that the issue of regulated local government loan, for the purpose of national debt reduction, which can be seen as an intervention into the autonomy of local governments. This could lead one to think that with a little exaggeration a part of local government asset can be, with a help of a law, transformed into state asset, as it is already a national property.

The obligations which are laid down in the laws of the European Union have to be observed in connection with financing public services, which means that financing a public service cannot restrict the economic competition. Local governments have to conclude public service contracts with institutions providing public services and with business organizations as well. The contracts has to fix what can be accounted from public funds. It is important to emphasize that overcompensation is strictly prohibited. There are exceptions to the prohibited state subsidies, Hungary is exempt in cases of the cultural sector, meaning that cultural 14 activities can be financed freely, as it does not fall under the restriction of economic competition. There are additional exceptions and other opportunities to provide regular support, it is enough to refer to the rules of *de minimis*. It can be said that the Hungarian Government is not responsible for the debts of local governments. This statement, however, is not true in reality, when systemwide problems occur or a bigger local government finds itself close to insolvency. In such

cases the state is responsible for providing continuous public services and the integrity of the country. A good example of such case could be the one from 2013, when Hungarian Government took over debts of 1956 settlements (around 600 billion Forint) from local governments.

Applicability of the dissertation's results

The applicability of the research results is fundamentally two-directional. The dissertation topic has not yet been discussed in Hungary as a scholarly monograph. Therefore, instead of the theoretical approach of the institutions of local democracy I conducted a practical research. In this regard, the dissertation could potentially appeal to the interest of theoretical experts and practical experts as well. Furthermore, the election law and law about functions of local governments have been accepted recently, rendering the current period ideal for collecting experiences about the changes and the transitions. Following their assessments the possible errors and inadequacies will have to be corrected. The issues which are mentioned in the dissertation and their answers will help to step forward by offering proposals on how to modify the issues in the legislations at hand. By introducing the different viewpoints that have come to light during the interpretation of laws, the dissertation can be a useful guide for law enforcements, with special regard that reasons of the misunderstandings are clarified in the work

