Public Goods & Governance

RECENT CHANGES IN GOVERNING PUBLIC GOODS & SERVICES

Volume 3 * Issue 2 *** December 2018**

Journal of the MTA-DE Public Service Research Group

TABLE OF CONTENT

Articles

IMPRINT

PUBLISHER:

MTA-DE Public Service Research Group
Head of the research group and Editor-in-chief:
Tamás M. Horváth, DSc., full professor
26th Kassai str., Debrecen, H-4028 Hungary
http://publicgoods.eu

ISSN 2498-6453

JOURNAL DOI 10.21868/PGnG
ISSUE DOI 10.21868/PGnG.2018.2.

Aims and Scope

Public Goods & Governance is a semi-annual academic journal, aims to publish original material within the field of public policy, public management, governance and administration. This includes articles, shorter notes and comments based on theoretically and empirically grounded research on public goods, public service delivery and other public functions in a wide range of sectors, especially focused on recent challenges of governmental roles and new governance models in the market economies.

The journal welcomes submissions (articles, notes and comments) from anywhere in the world from both academics and practitioners. The maximum word limit for articles is 2500 words. Notes (not full academic papers presenting new phenomena, ideas or methods in a brief form) and comments providing additional thoughts and critical remarks to previously published articles should not exceed 1000 words.

Copyright

Disclaimer

TABLE OF CONTENT

ARTICLES

ONLY A FRACTION OF REALITY…- COMBATING VIOLENCE AGAINST WOMEN IN HUNGARY*

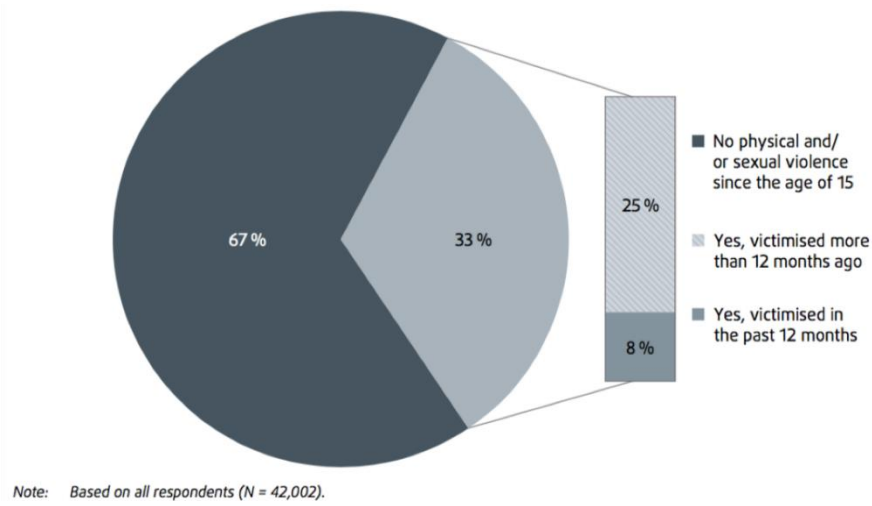
Petra Ágnes Kanyuk[1]

Violence against women is rooted in women's unequal status in society and that status reflects the unbalanced distribution of social, political and economic power among women and men in society. It is one of the most pervasive human rights violations of our time and a form of discrimination that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering to women (Council of Europe 2011).

Violence against women undermines women's dignity and integrity and imposes serious harm on families, communities and societies. In the European Union (EU), estimates suggest that one in three women (or 61 million out of 185 million) have experienced physical or sexual violence, or both, since the age of 15 (European Union Agency for Fundamental Rights 2014a).

Figure 1

Women experiencing physical and/or sexual violence since the age of 15 and in the 12 months before the interview, EU-28 (%)



Source: FRA gender-based violence against women survey data set, 2012

This European Union Agency for Fundamental Rights (FRA) survey is the first of its kind on violence against women across the 28 Member States of the EU. It is based on interviews with 42,000 women across the EU, who were asked about their experiences of physical, sexual and psychological violence, including incidents of intimate partner violence ('domestic violence'). The survey also included questions on stalking, sexual

* DOI 10.21868/PGnG.2018.2.1.

[1]*Petra Ágnes Kanyuk*, PhD student, Géza Marton Doctoral School of Legal Studies, University of Debrecen, Faculty of Law

harassment, and the role played by new technologies in women's experiences of abuse. In addition, it asked about their experiences of violence in childhood.

1. Only a fraction of the reality

The full extent of violence against women is difficult to estimate, as it continues to be under-reported and stigmatised, meaning that what actually gets reported is only a fraction of the reality. In Hungary, less than 65 % of the population tend to trust the police. (European Commission 2016) In the European Institute for Gender Equality (EIGE)'s Gender Equality Index 2015 it was found that where people tend to have more trust in justice institutions, levels of disclosed violence are higher. (European Institute for Gender Equality 2015) It is estimated that in Hungary, 28% of women have experienced violence, which is 5% lower than in the EU overall. (European Institute for Gender Equality 2015)

Table 1

Women who have experienced physical and/or sexual violence by current and/or previous partner, or by any other person since the age of 15, by EU Member State (%)

Source: FRA gender-based violence against women survey data set, 2012

2. About the facts

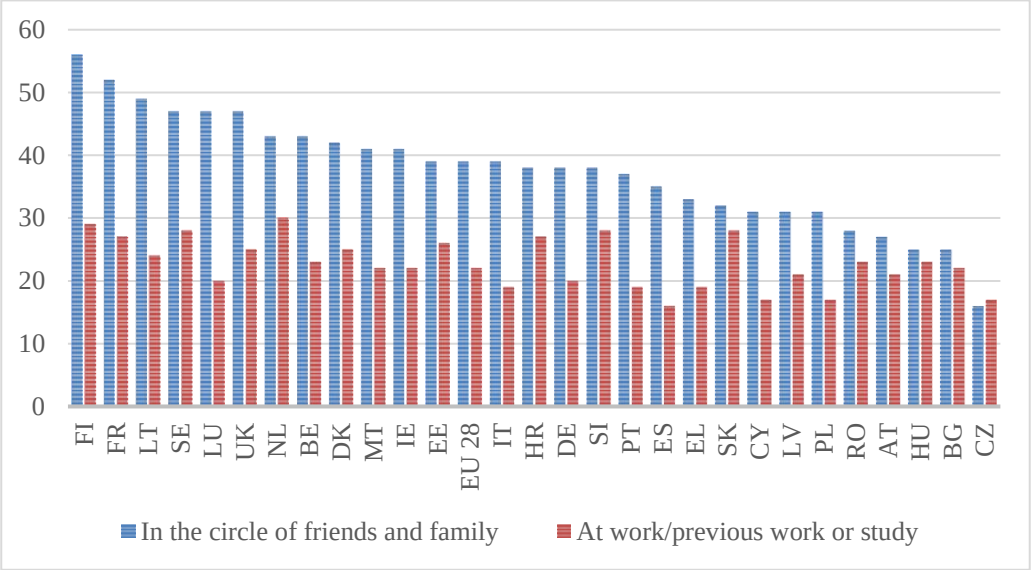
The 2014 European Union Fundamental Rights Agency survey data results showed that:

– since the age of 15, 28% of women in Hungary have experienced physical and/or sexual violence, and 12% of women have been stalked;

– 25% of people said they knew someone who has been a victim of domestic violence. (European Union Agency for Fundamental Rights 2014b)

Figure 2

Knowledge of cases of domestic violence in the circle of friends or family, or in the work environment, by EU Member State (%)



Source: FRA gender-based violence against women survey data set, 2012

The EIGE has estimated that the cost of intimate partner violence against women in Hungary could amount to € 2 billion per year. This number was calculated according to the methodology used in EIGE's 2014 study and means the costs to society, looking at costs of lost economic output, health, legal services, social welfare, specialised services, and the physical and emotional impact on victims – clearly show that the impact of gender-based violence on economies and society is significant. (European Institute for Gender Equality 2014)

3. Is violence against women a crime in Hungary?

Hungary has no consolidated law on violence against women but does criminalise numerous forms of violence. *Stalking* (2008), *rape* and *sexual violence* (2012), and *sexual harassment* (2003) are all crimes in Hungary; recent changes to Hungary's criminal code now enable prosecution for *rape committed via coercive means*. In 2013, the specific offence of domestic violence, *intimate partner violence* (*kapcsolati erőszak*) was introduced (Act C of 2012 on the Criminal Code).

NGOs' coordinated human rights campaign to criminalise domestic violence from the twenty-first century marked a sea of change in Hungarian social movements. Earlier waves of contemporary women's activism in Hungary were very rarely and only barely connected to international networks of feminist and human rights causes. (Fábián 2014) With the fall of the communist system, the international human rights framework and its

associated policy recommendations – most notably the Austrian model that criminalises domestic violence (based on the 'Duluth model' from Minnesota, USA) – have profoundly affected Central and Eastern European conceptualisations and policies against domestic violence. (Krizsan – Popa 2010)

Due to a slowly emerging but persistent combination of pressures from within both the national and the international contexts, domestic violence not only gained public recognition, but Hungary also eventually established more concrete legal sanctions against it in July 2013.

4. What is being done to eliminate violence against women in Hungary?

The Hungarian government adopted the national strategy for the promotion of gender equality — guidelines and objectives 2010–2021 in 2010. The strategy sets out six priorities, including '*Taking measures to efficiently combat and prevent violence, eliminating all forms of violence against women, and taking urgent steps against the violation of women's, men's, girls' and boys' rights to physical and mental integrity*.' (European Institute for Gender Equality, Hungary – Laws and Policies)

Hungary signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) on 14 March 2014 but has not yet ratified it. (Council of Europe 2011.) (Kovács 2018) The Istanbul Convention is the most far-reaching international treaty to tackle this serious violation of human rights. (Rudolf – Eriksson 2007)

On 30 June 2015 the National Assembly adopted the 30/2015 (VII. 7.) Parliamentary Resolution on the national strategic goals concerning the effective combating of domestic violence. The Resolution includes commitments to funding services, public awareness campaigns, prevention, professional training, evaluation, interagency coordination and monitoring. (Magyar Közlöny 2015a)

4.1 Good practices show the way

Victim rights legislation in Hungary offers a good model. Victims have the right to attend proceedings and examine any procedural documents; make applications and submit observations at any stage in the proceedings; and exercise appeal rights. Victims have the right to use their mother tongue and have the right to interpretation. (Centre for European Policy Studies 2011)

4.2 How are women and girls protected?

Women victims of domestic violence in Hungary have legal access to restraining orders for a maximum of 60 days, and orders can be reissued if circumstances warrant (Centre for European Policy Studies 2011); women also have access to emergency barring orders prohibiting perpetrators from approaching the victim's home (Woman Against Violence Europe 2016); Victims can access legal aid during both investigation and court procedures. (Magyar Közlöny 2015b)

4.3 What help is available in Hungary?

Hungary has 16 shelters (15 shelters and the so-called Secret Shelter House) with 140 beds for women and children fleeing violence (Woman Against Violence Europe 2016) and helplines for those experiencing domestic violence, or sexual violence. The Ministry plans to open two so-called Halfway Houses connected to the Transitory Shelters, to help the victims' reintegration and prevent secondary victimisation.

Women experiencing domestic violence in Hungary can call a Crisis Management and Information helpline (06 80/20 55 20) (National Crisis Telephone Information Service). This number is available 24/7 and can be called for free (European Commission, National Hotlines).

List of References:

- Act C of 2012 on the Criminal Code. https://www.unodc.org/res/cld/document/hun/1978/hungarian_criminal_code_html/Hungary_Criminal_Code_2012_Excerpts.pdf [accessed October 2, 2018]
- Centre for European Policy Studies (2011). *Local and regional good practices on victims' rights.* European Union. https://cor.europa.eu/en/engage/studies/Documents/local-regional-good-practices-victims.pdf#search=local%20regional%20victims [accessed October 5, 2018]
- Council of Europe (2011). *Council of Europe Convention on preventing and combating violence against women and domestic violence, and its explanatory report*. Council of Europe Treaty Series No. 10. https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e [accessed October 2, 2018]
- European Commission (2016). *Eurobarometer*. http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/Chart/getChart/themeKy/18/groupKy/88 [accessed October 2, 2018]
- European Commission, National Hotlines. https://ec.europa.eu/anti-trafficking/citizens-corner-national-hotlines/national-hotlines_en [accessed October 5, 2018]
- European Institute for Gender Equality (2014). *Estimating the costs of gender-based violence in the European Union.* Publication Office of the European Union, Luxembourg. https://eige.europa.eu/rdc/eige-publications/estimating-costs-gender-based-violence-european-union-report [accessed October 3, 2018]
- European Institute for Gender Equality (2015). *Gender Equality Index 2015 – Measuring gender equality in the European Union 2005-2012: Report.* https://eige.europa.eu/rdc/eige-publications/gender-equality-index-2015-measuring-gender-equality-european-union-2005-2012-report [accessed October 3, 2018]
- European Institute for Gender Equality. *Hungary – Laws and Policies*. https://eige.europa.eu/gender-mainstreaming/countries/hungary/laws-and-policies [accessed October 2, 2018]

- European Union Agency for Fundamental Rights (2014a). *Violence Against Women: An EU Wide Survey, Factsheet.* Publications Office of the European Union, Luxembourg. http://fra.europa.eu/en/publication/2014/violence-against-women-euwide-survey [accessed October 2, 2018]
- European Union Agency for Fundamental Rights (2014b). *Violence Against Women: An EU Wide Survey, Main Results*. Publications Office of the European Union, Luxembourg. http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report [accessed October 2, 2018]
- Fábián, K. (2014). Naming Rights: Nation, Family, and Women's Rights in the Debates on Domestic Violence in Contemporary Hungary. *Hungarian Studies Review,* Vol. 41, Issue 1-2: 153-182.
- Kovács, Zs. (2018). EP delegation urges Hungary to ratify istanbul convention. *Daily News Hungary*, February 15, 2018, https://dailynewshungary.com/ep-delegation-urges-hungary-ratify-istanbul-convention/ [accessed October 4, 2018]
- Krizsan, A., Popa, R. (2010). Europeanization in Making Policies against Domestic Violence in Central and Eastern Europe. *Social Politics: International Studies in Gender, State & Society*, Volume 17, Issue 3: 379–406.
- Magyar Közlöny (2015a). No. 99. https://magyarkozlony.hu/dokumentumok/6ba1f5d065b0b79b0c7cc6ddaa197c6084bf839f/megtekintes [accessed October 5, 2018]
- Magyar Közlöny (2015b). No. 150. https://magyarkozlony.hu/dokumentumok/d92cf106432bb5e80d0f582bc31349d79b71de86/megtekintes [accessed October 5, 2018]
- Megszavazták: szigorúbban büntetik a családon belüli erőszakot. *HVG,* June 3, 2013, https://hvg.hu/itthon/20130603_Megszavaztak_szigorubban_buntetik_a_csala [accessed October 2, 2018]
- National Crisis Telephone Information Service. http://www.bantalmazas.hu [accessed October 5, 2018]
- Rudolf, B., Eriksson, A. (2007). Women's rights under international human rights treaties: Issues of rape, domestic slavery, abortion, and domestic violence. *International Journal of Constitutional Law*, Volume 5, Issue 3: 507–525.
- Woman Against Violence Europe (2016). *WAVE Report on the Role of Specialist Women's Support Services in Europe.* Wave, Vienna, 87. http://fileserver.wave-network.org/researchreports/WAVE_Report_2015.pdf [accessed October 5, 2018]

WHAT IS CYBERCRIME? A CRIMINOLOGY PERSPECTIVE*

Dawei Song[1]

It is a commonplace idea that cybercrime has been a growing problem in the whole world. Cybercrime is perplexing and seriously harmful. It seems that every country in the world has formulated some regulations and rules dealing with cybercrimes. At the international level, there are many treaties or conventions on cybercrimes. When referring to the term cybercrime, because of the different legislation, cultural backgrounds, and social choices, the connotation and denotation of cybercrime are dramatically different in different countries. For the discussion of cybercrime from a macroscopic and global angle, it is important to unify the universe of discourse of cybercrime and figure out the concept and nature thereof. This article will conclude with a concept of cybercrime developed using criminological methods, based on the analysis of two kinds of existing definitions.

1. The Reasons for Criminology Perspective

The definition of cybercrime should be divided into two parts to be defined separately. One is "cyber," and the other is "crime." The meaning of cyber should be more apparent than that of crime. So, we should talk about the meaning of crime first. In law, crime is the contravention of a norm or set of norms which is backed up by the deterrence of the criminal sanctions (Case – Manlow – Johnson 2017). A crime must be an act or omission. Then arises the question: what kind of action could be criminalized? What if a person expresses intense criticism of the government in his blog, should this act be criminalized?

There is a classification which distinguishes behaviors into normal behaviors and deviance (Durkheim 1966). Deviance is any violation of social norms, values, and expectations. It does not have a fixed meaning; it morphs in different environments and contexts. For example, homosexuality was considered deviance or even a crime before the 1960s in England and Wales. However, it is not seen as deviance or crime anymore, and gay couples can get married in England legally (Case – Manlow – Johnson 2017, 57). The extension of deviance has shown a difference. On this basis, the extension of the crime is also different, or arguably more complicated. We can ascertain that all crimes are deviance, but not all forms of deviance are crimes in the eyes of the law. It is a necessary but not sufficient requirement. Some behaviors are seen as deviance in some countries, but not in other countries. In the same vein, some forms of deviance are considered crimes in some countries, but not in other countries.

Returning to the concept of cybercrime, if we want to determine the meaning of the element of "crime", we should consider two dimensions: the first is what kind of cyber-behavior is deviance and the second is what kind of cyber-deviance is a crime?

* DOI 10.21868/PGnG.2018.2.2.

[1]*Dawei Song*, PhD student, Géza Marton Doctoral School of Legal Studies, University of Debrecen, Faculty of Law

To answer the first question, we should bear in mind that it is often a localized concept. It depends on the different culture, historical customs and fundamental moral rules of a specific area. Different societies have different values and practices, and for the members of a certain society, keeping these norms is a way of identifying themselves as belonging to that society, so it is challenging to change their mindset. For instance, a man who is over 20 years old watching porn online may be normal in Europe as long as he does not watch child pornography or does so at a public place (or both), but it is deviant in China because all obscene material is seen as illegal and immoral.

To answer the second question, we should apply the "Harm Principle," i.e. that crime is deviance that jeopardizes others' interests, such as physical integrity, privacy, autonomy, and freedom from humiliation or degrading treatment (Von Hirsch – Jareborg 1991). Despite the detailed content of the harm principle, the requirement that crime must be a harmful act is the same around the world. However, in different countries, the definition of a harmful act is not identical, so some acts may simply be considered deviance in some countries but a crime in others. For instance, three persons have sex in a hotel. Although the place they had sex in is closed, all three persons have consented to the act, and none of them engage in prostitution, it is considered a crime in China, and their acts are treated as harmful.

According to the two answers given above, we can conclude that, if we want to have a comprehensive understanding of the element of "crime" in the word cybercrime, it is a difficult task to assemble and summarize all the related charges in different conventions or treaties or countries' legislations due to the non-identical societal backgrounds. So, if we wish to keep researching the concept of cybercrime, we should abandon the detailed regulations and pave a road by using the harm principle commonly utilized in criminology. By utilizing the harm principle, we could find the greatest common divisor, which is the common characteristic, among all the different treaties or legislations of cybercrime in the world from a macroscopic and global angle.

2. Two Kinds of Definitions: Computer Crime and Cybercrime

Looking up the word "cyber" in the dictionary, we can find it defined as something "of, relating to, or involving computers or computer networks" (Macmillan Dictionary 2010). Cybercrime, when it first came into attention of legislators, was not known by this name. It took a long time for cybercrime to get its current name, and before this – or even nowadays – some scholars call it computer crime (Licalzi, C. 2017) or Internet crime (Curran 2007). Indeed, the word "cyber" first saw use in 1992 (Macmillan Dictionary 2010). This article will only discuss two definitions: computer crime and cybercrime.

It is essential to keep in mind that the classifications of "computer crime," "Internet crime" or "cybercrime" are based on the classifying approach of criminology. The terms "computer crime," "Internet crime" or "cybercrime" are not actual charges but sets of many related ones.

The first official national definition of cybercrime might be the one appearing in Senate Bill S.240, the Federal Computer System Protection Act of 1979, of the United States. In this act, cybercrimes are called "computer crimes." Though this act did not pass in the end, it tried to give a somewhat accurate concept of computer crimes. In this bill the computer crimes are considered to be:

a) any use of a computer for a fraudulent purpose,

b) intentional, unauthorized use, access or alterations of computer programs or data.

Some scholars fiercely opposed this bill and argued it had no meaning to be promulgated because the existing law could address all the problems referred to in the articles (Taber 1979). However, in 1984 the United States passed the Computer Fraud and Abuse Act (CFAA)[2], and the content of CFAA showed similarities with the previous bill.

Then, by the technological development brought on by computer science and the improvement of the Internet, the term computer crime could no longer cover all the circumstances of new crimes. For example, consider the emergence of the mobile phone. In China, more and more people use the smartphone especially to access the Internet instead of the PC (CNNIC 2018). So, we arrive to the "cybercrime" era.

However, the word cybercrime is too broad to describe the different behaviors accurately. It seems that all incidents happening in the cyberspace or having a minor connection with computers or the Internet can get classified under the umbrella of cybercrime. There are two methods to define what is understood by the term cybercrime:

One is the method of particularization. Take the Budapest Convention on Cybercrime as an example. The Budapest Convention on Cybercrime was opened for signature in 2001 and entered into force in 2004. In Chapter 1 of the Convention, titled "Terms of Use", Article 1, titled "Definitions", did not give any clear statement or description of cybercrime but listed nine kinds of specific behaviors which should be treated as crimes in the subsequent nine articles.[3]

The other approach is the method of generalization. The majority of scholars tend to use this method to summarize the contents of the term cybercrime. A representative view of cybercrime is that the cybercrime is (1) the crime which has the computer and computer network as the target, for example, hacking; (2) the conventional crime which occurs in the virtual reality world, for instance, cyber-fraud; (3) the crime where the computer or Internet plays an incidental role in committing them (Clough 2011).

The advantage of particularization is that it can be easy to understand the specific behaviors which are more harmful to be a crime. While it is definitely more comfortable to use in judicial practice, the disadvantage is that it cannot contain the entire, rapidly growing list of criminal acts, e.g. cyber-terrorism was not included in the Convention on Cybercrime and necessitated amendments to fix the issue. Because of the time cost of legislation or concluding a treaty, even if the newest crimes are regulated in the new law or treaty, even newer forms of crimes appear before its conclusion. The preventive function of criminal law would not be produced effectively.

Reflecting on the generalization method, sometimes, the too broad definition of the cybercrime might hinder people in understanding the concept of cybercrime very well, especially some non-professionals; and, the risk of abuse of discretion should be a flaw when applying this definition. So, with regards to this issue, the generalization method requires some revising.

[2] See: Computer fraud and abuse act, 18 U.S.C. 1029 (1984).

[3] Convention on cybercrime: Budapest, 23. XI. 2001, (2002). The 9 behaviors which should be treated as crimes are: Illegal access; Illegal interception; Data interference; System interference; Misuse of devices; Computer-related forgery; Computer-related fraud; Offences related to child pornography; Offences related to infringements of copyright and related rights.

However, by contrast, the generalization is better than the particularization. It appears to have a significant advantage in academic research. Scholars, politicians, policy-makers, and practitioners can use their discretion to make sense of the term cybercrime. It gives more discretion to the institutions of society, such as the legislative and the judicial system. It is also able to reply to new crimes rapidly by providing interpretations.

3. Concluding remarks

In criminology, to define a crime is necessary for explaining it, and the explanation should form the basis of the response to the crime. An appropriate definition of crime would be convenient to easily explain to the public what is understood by crime. The pinpointed explanation underlies the rationale of responses to crimes and vice versa. The definition of, explanation of, and responses to crime are reciprocal, mutually-dependent and mutually-reinforcing (Case – Manlow – Johnson 2017, 32).

According to the discussion of both advantages and disadvantages of the two methods for summarizing the concept of cybercrime, I prefer the generalization method. Meanwhile, for the sake of narrowing down the broad boundary of the general concept of cybercrime and to make it more suitable for building the rationale of effective and efficient responses to crime, I would like to redefine cybercrime on the basis of the general classification with the consideration of the relationship between crime and deviance, and the characteristics of computer technologies and the Internet.

So, in my opinion, cybercrime is a harmful deviant behavior that is taken for procuring improper interests which are forbidden by law or common social values, by use of the features of data and the online transportation thereof, which abuses the advanced technologies and the information asymmetries that stem from positional advantages.

List of References:

- Case, S., Manlow, D., & Johnson, P. (2017). Criminology. New York, NY: Oxford University Press
- Clough, J. (2011). Cybercrime. *Commonwealth Law Bulletin*, 37(4): 671-680.
- CNNIC (2018). The 42nd china statistical report on internet development. China Internet Network Information Center. http://www.cnnic.com.cn/hlwfzyj/hlwxzbg/hlwtjbg/201808/P020180820630889299840.pdf [accessed October 3, 2018]
- Computer fraud and abuse act, 18U.S.C. 1029 (1984).
- Convention on cybercrime: Budapest, 23. XI. 2001, (2002).
- Curran, J. F. (2007). Internet crime victimization: Sentencing. *Mississippi Law Journal* 76(3): 909-922.
- Durkheim, É. (1966). *The rules of sociological method.* New York: Free Press.
- Licalzi, C. (2017). Computer crime. *American Criminal Law Review* 54(4): 1025-1072.
- Macmillan Dictionary (2010). Retrieved from https://www.merriam-webster.com/ [accessed October 3, 2018]

- Taber, J. K. (1979). On computer crime. *Computer Law Journal* 1: 517-544.
- Von Hirsch, A. & Jareborg, N. (1991). Gauging criminal harm: A living-standard analysis. *Oxford Journal of Legal Studies*, 11(1): 1.

DOES INTELLECTUAL PROPERTY SUPPORT CLEAN ENERGY?*

Fahed Wahdani[1]

To combat climate change, we need to use clean energy that is built on special technology, and this technology is protected by intellectual property rules, but the question is whether intellectual property rules can develop clean energy technology and do these rules participate in the diffusion of this technology all over the world? This paper assumes that we can answer this question in the affirmative. In this study, we will discuss in particular the following questions: (1) why do we need clean energy? (2) does intellectual property support clean energy? and (3) what is the relationship between clean energy, IP and climate change? This paper will use an inductive and analytical model in seeking to answer these questions. It is important to understand the relationship between intellectual property and clean energy taking into consideration the aim of using clean energy.

1. Theoretical context

There is a strong relationship between clean energy technology and intellectual property rules, but this relationship might be different according to stakeholders and financial investors. On the other hand, intellectual property can have a huge effect on global warming by giving full protection to clean energy technologies, however, the integration between increasing investment in clean energy technology and supporting its use and spread on a large scale at the level of states to fight global warming, still requires the further formulation of effective instruments in this area.

2. Hypothesis and methodology

The hypothesis of this research is that intellectual property rules support clean energy technology at the level of investment and production of clean energy. On the other hand, intellectual property rules might hinder the use of clean energy on a larger scale, especially in poor and less developed countries, but they are also the main guarantee to an increase in the level of research and innovation in this technology. An analytical approach will be used to analyze the relationship between intellectual property rules and stakeholders, beside analyzing the statistical result and connecting it with the frame of the main question of the research.

3. Conceptual framework

The international community nowadays is turning its attention increasingly to climate change, and this leads to the important question of whether intellectual property is a real obstacle for some countries in seeking technologies of clean energy to reduce carbon emissions or mitigate climate change. To answer this question, we need to develop a

* DOI 10.21868/PGnG.2018.2.3.

[1] *Fahed Wahdani*, PhD student, Géza Marton Doctoral School of Legal Studies, University of Debrecen, Faculty of Law.

conceptual framework consistent with the relationship that brings these elements together: intellectual property, climate change and clean energy. Intellectual property rights permit the creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation (WIPO 2017, 3). These rights have been mentioned clearly in the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from inter alia authorship of scientific, literary or artistic productions and energies based on inventions[2]. The term clean energy is used to describe sustainable energy generation technologies such as photovoltaic, wind turbines, bioreactors, etc.[3] The United Nations Framework Convention on Climate Change defined the meaning of climate change as: ”a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods”. [4] Every year human activity dumps roughly 8 billion metric tons of carbon into the atmosphere, 6.5 billion tons from fossil fuels and 1.5 billion from deforestation (Alrikabi 2014, 61).

4. The relation between IP, clean energy and climate change

We can figure out the possibility of mitigating global emissions by working on and implementing renewable energy technology that can mitigate its share of global emissions (Downey 2012, 89). The way ahead is marked by acquiring and adapting renewable energy technology from other countries (Downey 2012, 90). It is a forgone matter that the effects of climate change have been increasing ever since the industrial revolution (Maslin 2014, 6), but if climate change is going to be addressed successfully, clean technology must be adopted globally (Reichman 2008, 4). However, the annual Tracking Clean Energy Progress report 2017 shows that the transformation towards a clean energy system doesn't align with current international policy goals (*OECD–IEA, 2017: 2)*. Many technology areas suffer from a lack of policy support, and this impedes their scaled-up deployment. Energy efficiency, bioenergy and carbon capture and storage (CCS) are notable examples of where significant potential for technological progress remains, but strong policy signals will be required to trigger the appropriate investments. The United Nations Framework Convention on Climate Change lists the transfer of clean energy technology among measures that can “control, reduce, or prevent” greenhouse gas emissions, and many of the Parties to the Convention who are leading the way in clean energy investment have come to recognize renewable energy as an important part of clean energy.

[2] Article 27 of the Universal Declaration of Human Rights

3 https://en.wikipedia.org/wiki/Environmental_technology#Renewable_energy

[4] The key international agreements on climate change are the original United Nations Framework Convention on Climate Change (UNFCCC) (signed in 1992 and entered into force in 1994) and the Kyoto Protocol (signed in 1997 and entered into force in 2005), so far the most important implementation of the UNFCCC, see Barton, 2007: 2.

5. Importance of clean energy to climate change

Climate change is highly linked with other environmental issues from which we cannot separate it (Alhayali et al. 2017, 98). The effects of climate change were once considered unthinkable and now are sought to be avoided. Climate change, also called "global warming" is the most serious and most complex environmental issue ever to be confronted by the international community. The intensive use of traditional energy, which relies on fossil fuels, petroleum and its derivatives, coal and natural gas, causes serious damage to the environment and life, causing global warming, acid rain and many environmental disasters and climate change. This was one of the reasons that led to the search for clean energy sources which can generate energy without adversely affecting human health and the environment. This is achieved by relying on renewable sources of energy that are generated naturally and sustainably without causing any kind of harmful waste. International efforts to reduce reliance on fossil fuels and cut carbon emissions by focusing on renewables have continued to grow. China, for example, set emissions limits in 2017 for power companies' use of fossil fuels, as part of efforts to slow down their consumption of coal, gas and oil (Ross 2018). The United Nations Framework Convention on Climate Change[5] lists the transfer of clean energy technology among measures that can "control, reduce, or prevent" greenhouse gas emissions, and many of the Parties to the Convention who are leading the way in clean energy investment have come to recognize the importance of clean energy. In recent years, some of the largest investors in clean energy have made forms of renewable energy the vast majority of their investment portfolios. The main advantage of using renewable resources is that they are available throughout the year. Through a one-time investment we can draw energy for many decades without affecting the environment (Alrikabi 2014, 61). In the case of Massachusetts et al. (petitioners) vs. Environmental Protection Agency the Supreme Court of the United States considered motor-vehicle emissions targets as a piecemeal approach to climate change that would conflict with the comprehensive approach involving additional support for technological innovation.[6]

6. Intellectual property vs. clean energy

This question is correlated with the assumption that intellectual property affects the trend of clean energy industries as well as affecting the diffusion & implementation of clean energy, especially in developing countries. Hence, we need to clarify what the protectionism of clean energy technology means and then the effect of intellectual property on the transfer of clean energy technology.

[5] The UN Framework Convention on Climate Change (UNFCCC) is an intergovernmental treaty developed to address the problem of climate change. The Convention, which sets out an agreed framework for dealing with the issue, was negotiated from February 1991 to May 1992 and opened for signature at the June 1992 UN Conference on Environment and Development (UNCED) — also known as the Rio Earth Summit. The UNFCCC entered into force on 21 March 1994, ninety days after the 50th country's ratification had been received. By December 2007, it had been ratified by 192 countries.

[6] Massachusetts v. Environmental Protection Agency, 127 S.Ct. 1438 (2007) 549 U.S. 497 No. 05-1120. decided on April 2, 2007. https://www.courtlistener.com/opinion/145749/massachusetts-v-epa/

6.1 Protectionism of clean energy's technology

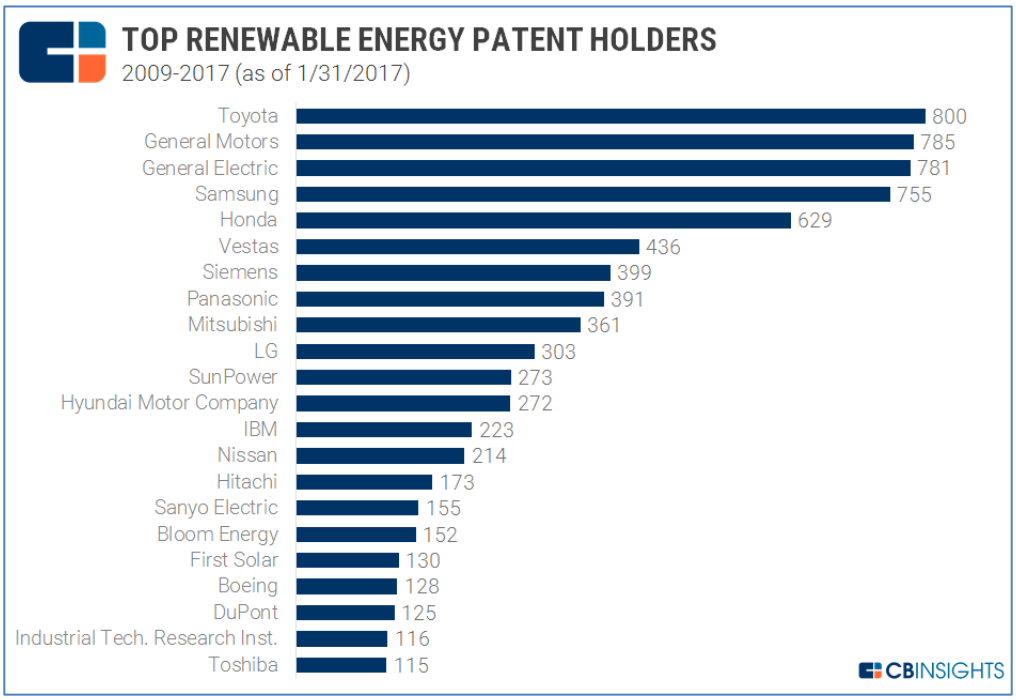
Could the protectionism of clean energy technology lead to a more monopolistic industry? Some argue the oligopolistic environment associated with clean energy technology that is protected by intellectual property rules may limit the spread or use of this technology, whether on a local, sectoral or company level and this limitation might even extend to third world countries, even though it is a fact that IP plays a crucial rule in the lucrative clean energy sector. However, it is not doubtable that without the protection given by intellectual property this sector will collapse. Furthermore, this protectionism became of more importance due to the competitive situation of clean energy companies. As such, patent infringements will cost the competitors a lot of money: for instance, in the case GE vs Mitsubishi Heavy Industries in 2010, the court awarded GE approximately $170 million in damages for infringement of the patent no. 705 related to wind turbines in the U.S by Mitsubishi Heavy Industries, the fifth largest wind turbine manufacturer (Villalta 2017).

6.2 Patenting of clean energy technologies

A patent is a partial indicator of invention and is used to measure countries' ability of innovation and to identify emerging technologies that can be marketed. Generally, patents mean inventiveness and more patents suggest more innovation is happening, which means better market opportunity (Cornwall 2017). Some argue that the investment and innovation together would reveal new supplies of renewable energy (Saha et al. 2017, 3). Over time, growth in patents issued in clean tech fields outpaced patents overall and outpaced high-tech fields including pharmaceuticals or biotechnology (Ciccatelli 2018). According to a specific survey conducted by the Brookings Institution, the number of patents issued related to clean energy increased from 15,970 in 2009 to about 35,000 in 2014 and 2015 and to 32,000 in 2016 (Cornwall 2017). The results of the study reveal that more than 14,800 renewable energy patents were filed worldwide in 2017 – a 43 per cent rise on the 10,500 in the previous year and also found that patents related to clean energy have almost doubled over the last five years, up from 7700 in 2013. And more than half (56 per cent) of the total green energy patents filed last year were for solar power (Ross 2018). On the other hand, companies in China filed 76 per cent (11,300) of the renewable energy patents in 2017, the most of any country, while the US, in second place, filed 10 per cent (1500). China is currently the biggest manufacturer of solar panel technology and invested more than $44bn in clean energy projects in 2017 according to the Institute for Energy Economics and Financial Analysis. In third place was Australia, followed by India, Canada, Russia, the UK, South Korea, Malaysia and the Philippines (Ross 2018). The rising profitability of green energy has prompted many companies to invest in developing and filing patents as innovation races ahead. As a result, more companies globally are now increasingly incentivized to invest in research and development. Clean energy products are increasingly being patented–and–some businesses may be racing to patent products, to avoid potential difficulties if obtaining patents in EU countries becomes more difficult than is currently the case (Ross 2018).

Figure 1

Top renewable energy patent holders 2009 –2017[7]



Source: CB insights on https://www.cbinsights.com/research/renewable-energy-patents-trends-corporates/

6.3 Clean energy technology transferring

Intellectual property protection generally plays a quite different role in the renewable energy industry than it does in another sector involved with intellectual property, such as the pharmaceutical sector.[8] The role of intellectual property rights is highly complicated in relation to this issue. The international diffusion of clean energy technologies has been a cornerstone since the adoption of the United Framework Convention on Climate Change (UNFCCC). However, the impact that intellectual property rights may have on clean energy technology transfer is highly unclear[9]. We need to take into consideration that technology transfer is central to addressing climate

[7] Figure 1 shows that most patents are owned by companies within developed or emerging economies. This Figure does not show patents owned by developing countries. The following can be concluded: clean energy technology needs an appropriate infrastructure where it can flourish while third world countries lack the ability to provide this.

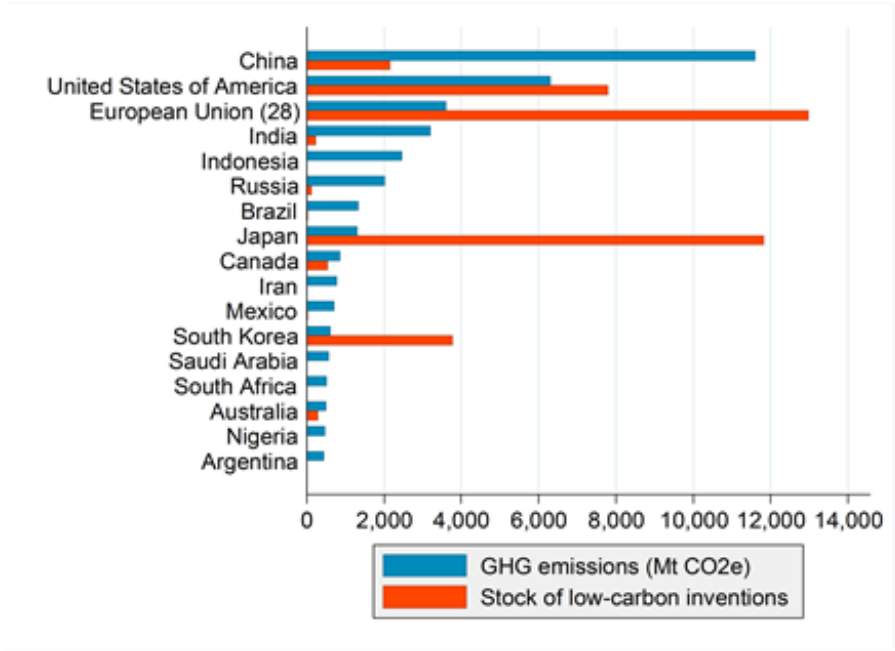
[8]In general, in the pharmaceutical sector, an individual patent may have a very substantial impact, for a specific drug may not have any substitutes. In such circumstances, the patent holder is in a very strong market position and may be able to charge a price well above production cost. In contrast, in the renewable sectors, the basic approaches to solving the specific technological problems have long been off-patent.

[9] The disagreement over the effect of IPRs on low-carbon technology transfer is at least partly explained by the absence of empirical evidence on the subject: besides, the Paris Agreement did not make any mention of intellectual property rights (IPRs).

change (Correa 2011, 39); the development and transfer of technologies required for adaptation and mitigation constitute one of the major challenges faced by the international community while the commitments made in the Paris Agreement require all countries to adopt clean energy technologies in all their sectors.

Figure 2

GHG emissions and low-carbon inventions



Source: the European Patent Office's Global Patent Statistical Database.

Strengthening intellectual property rights protection has a statistically significant positive effect on the transfer of most low-carbon technologies (Dussaux et al. 2017, 6). On the one hand, developed countries see a strong IPRs regime as a necessary condition for technology transfer. On the other hand, some developing countries consider that strong IPRs protection may hinder technology transfer. As a reflection on this lack of consensus, what is the empirical evidence? Clean energy transfer mostly takes place in two ways: one of them is presented by international trade in capital goods that are used to reduce emissions (e.g. wind turbines, energy efficient furnaces, electric vehicles)(Dussaux et al. 2017, 6), and foreign direct investment (FDI)[10] by multinational enterprises that own low-carbon technologies. The vast majority of clean energy technologies are still invented in developed countries. In this regard, developed

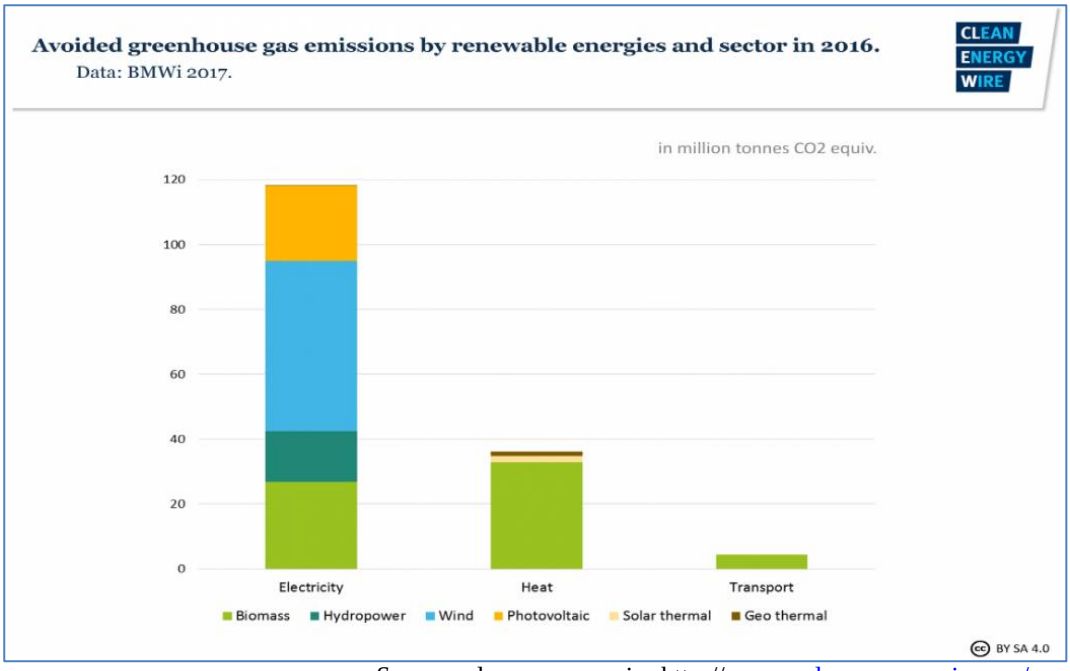
[10] Foreign direct investment (FDI) is an investment made by a firm or individual in one country into business interests located in another country. Generally, FDI takes place when an investor establishes foreign business operations or acquires foreign business assets, including establishing ownership or controlling interest in a foreign company. Read more: Foreign Direct Investment (FDI) https://www.investopedia.com/terms/f/fdi.asp#ixzz5UmscGhA3

countries were far ahead and they still take the lead in the field of clean energy (UNIDO, et al, 2014: 156). For example, Japan, USA, Germany, South Korea, and France together account for 75% of the low-carbon inventions patented globally from 2005 to 2015.[11]

Figure 2 illustrates the important need for transfer from developed countries to developing countries by comparing the greenhouse gas (GHG) emissions in 2012 with the number of low-carbon inventions developed in each country until the end of 2014. It is clear from Figure 1 that there are huge discrepancies between countries' GHG emissions and their capacities to innovate in mitigation technologies. While Europe, Japan, the USA and South Korea have large innovative capacities compared to their GHG emissions, the opposite is true for emerging economies such as China, India, Indonesia, Russia, and Brazil.

Figure 3

Avoided greenhouse gas emission by renewable energies and sector in 2016



Source: clean energy wire.http://: www.cleanenergywire.org/

This Figure demonstrates the positive relationship between low gas rates and the steady use of clean energy technology and this supports the importance of clean energy technology in providing a safe and pollution-free environment.

[11] Wide access to clean technologies is crucial to meet the Paris Agreement goal of limiting the increase in global temperatures to well below 2 degrees Celsius. This requires considerable technology transfers from North to South as 90 per cent of the increase in global carbon emissions until 2050 is expected to occur in the developing world.

Conclusions

IPRs constitute an incentive to promote innovation and facilitate the international transfer of technology by offering protection against a loss of control of information. The changes in IPR protection have large effects on the transfer of technology to developing countries; besides, IPRs increase and encourage investment in clean energy technology and there is a trend that argues that a strong IPR is never a barrier to the transfer of clean energy technologies. It was also noticed that there is a close relationship between IP rules and climate, this relationship is demonstrated by technologies that rely on clean or renewable energy and are protected by intellectual property rules. There is a strong relationship between clean energy technology and infrastructure creation in developing countries. In the end, we make the following suggestions:

1) States, whether in the World Trade Organization or the United Nations Framework Convention on Climate Change (UNFCCC), should be willing to participate in constructive discussions on intellectual property rights and the transfer of low-carbon energy technologies.
2) States have to recognize in their domestic legislation that a clean environment is a fundamental human right.

List of references:

- Alhayali, Zaid Ahmed Muhsen et al (2017). Implementation of renewable energy concept in the automotive industry in Malaysia: an exploratory study. *Journal of Technology Management and Business* 4(1).
- Alrikabi, Nada Kh. M. A. (2014). Renewable Energy Types. *Journal of Clean Energy Technologies* 2(1).
- Barton, John H. (2007). Intellectual property and access to clean energy technologies in developing countries an analysis of solar photovoltaic, biofuel and wind technologies. International Centre for Trade and Sustainable Development (ICTSD), Geneva, Switzerland, Issue paper 2, https://www.iprsonline.org/New%202009/CC%20Barton.pdf [accessed October 10, 2018]
- Correa, Carlos M. (2011). Mechanisms for International Cooperation in Research and Development in the Area of Climate Change, Technological Cooperation and Climate Change issues and perspectives Working papers presented at the Ministry of Environment and Forests, Government of India - *UNDP Consultation on Technology Cooperation for Addressing Climate Change 23-24 September*, 2011, New Delhi.
- Ciccatelli, Amanda (2018). *Clean Energy Patents Decreasing, Inventors Digest.* 10 May 2018. https:// www. inventorsdigest.com/articles/clean-energy-patents-decreasing/ [accessed October 10, 2018]
- Cornwall, Warren (2017). *Clean energy patent slump in U.S. stirs concern*. Since Magazine, Apr. 26, 2017,

https://www.sciencemag.org/news/2017/04/clean-energy-patent-slump-us-stirs-concern [accessed October 10, 2018]

- Downey, Kiel (2012). Intellectual Property Rights and Renewable Energy Technology Transfer in China. *South Carolina Journal of International Law and Business* 9(1).
- Dussaux, Damien–Dechezleprêtre, Antoine–Glachant, Matthieu (2017). Intellectual property rights protection and the international transfer of low-carbon technologies, *GRI Working Papers 323*, Grantham Research Institute on Climate Change and the Environment
- Maslin, Mark (2014). Climate Change: A Very Short Introduction. Oxford: Oxford University Press
- OECD–IEA (2017). Energy Technology Perspectives 2017, Catalyzing Energy Technology Transformations, Executive Summary, https://webstore.iea.org/energy-technology-perspectives-2017
- Reichman, Jerome–Rai, Arti K.–Newell, Richard G–Wiener, Jonathan B. (2008). Intellectual Property and Alternatives: Strategies for Green Innovation, Energy. *Environment and Development Programme Paper* 8(3).
- Ross, Kelvin (2018). Global green energy patents up 43 per cent in a year. Power Engineering International, 10/02/2018, https://www.powerengineeringint.com/articles/2018/10/global-green-energy-patents-almost-double-in-a-year.html [accessed October 10, 2018]
- Saha, Devashree–Muro, Mark (2017). Patenting invention Clean energy innovation trends and priorities for the Trump administration and Congress, Brookings, 26 April 2017, https://www.brookings.edu/research/patenting-invention-clean-energy-innovation-trends-and-priorities-for-the-trump-administration-and-congress/ [accessed October 10, 2018]
- UNIDO International Solar Energy Ce–Jiangsu Modern Low-carbon Technolog (eds.)(2014). *The Research Report on Application of Low-carbon Technology in Expo 2010 Shanghai UNIDO International Solar Energy CeJiangsu Modern Low-carbon Technology*. Springer.
- Universal Declaration of Human Rights of the United Nations, 1948.
- Villalta, Josué A. (2017). The Truth About GE's Latest Wind Tech Patent Lawsuit. *Renewable Energy World.* October 9, 2017, https://www.renewableenergyworld.com/articles/2017/10/the-truth-about-ge-s-latest-wind-tech-patent-lawsuit.html
- WIPO (2017). What is Intellectual Property? World Intellectual Property Organization, *WIPO Publication* No. 450(E), https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf [accessed October 10, 2018]

NON-COMPLIANCE OF EU DIRECTIVES: PAST EXPERIENCE OR ONGOING CHALLENGE*

Giorgi Gogokhia[1]

After the establishment of the European Union there were a colossal number of challenges for the newly launched organization. However, the EU developed step-by-step and nowadays totally different challenges exist than those that existed years ago, but some past difficulties still go on, such as the implementation of directives. As it is widely known, Member States are responsible for correctly applying the entire body of the EU legislation into their national law on time and accurately. This requirement derives from EU's fundamental Treaties. The annual report of 2016 announced that "…it is essential that Member States live up to their responsibility to respect and enforce the rules they themselves have jointly put in place" (Ballesteros 2017). *As Hankins says in his book "How Nations behave", "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time*" (Versluis 2005). *Therefore, Member States are aware of their duties to record guaranteed rights and obligations into the national law, but some factors lead them to avoid such obligations.*

1. Why do nations behave the way they do?

The issue of how the member states behave may have multiple aspects: institutional, political, lack of necessary resources, governmental inefficiency or corruption. Member States may fail to comply, because they are unwilling [political opposition], unable [legal & administrative obstacles], or unaware of their obligations (Nicolaides – Oberg 2006). However, the first "step towards disintegration" could be greater flexibility and differentiation of member states (Martin 2016) which do not comply with the EU law, because it is not in their interests or they simply prefer not to comply (Mitchell 1996, 3-28).

In most cases, the coexistence of multiple reasons leads a member state to non-implementation. However, there are circumstances when even one difficulty is enough for non-compliance, namely, interpretation problems or political issues that are considered the most common reasons why nations act the way they do. In the following paragraphs, attention will be paid to these reasons.

a) It is presumed that the directives are unclear and the formulation is complicated, the terminology is confusing, regulations incomplete and at the same time on the other side there are different legislative cultures with their own traditions. (Beek 2007, 13) Therefore they cause misunderstanding, delays or non-compliance. Furthermore, having an opportunity to interpret the directives differently can be a factor leading to incorrect or delayed transposition into national law (Falkner - Hartlapp - Leiber - Treib 2004, 452-473).

* DOI 10.21868/PGnG.2018.2.4.

[1] *Giorgi Gogokhia*, LL.M European and international business law student at University of Debrecen, Faculty of Law

There is a satisfactory example of incorrect implementation. Ireland used to "improve on" the EU version of directives by adding different words and phrases or by changing logical order. It is undeniable, that even the implementation of directives in such a way would be recognized as a violation of EU law, but the Ireland scenario developed much more terribly than just a violation of community law. A €1 billion project was grounded because of a failure to transpose a single sentence in the EIA Directive properly! Those who suffer from bad transposition have a right to sue the State for their consequential losses (Scannell 2013).

b) Another factor of non-compliance is considered political, especially by the political actors, who play one of the vital parts in the transposition processes of directives. According to Francesco Duina, "Directives in line with the interests of leading political actors are well implemented, while Directives that challenge these interests are altered and transposed with delays. They are only partially and belatedly applied" (Duina 1997, 155-180). "Opposition through the backdoor" is also an interesting finding by Gerda Falkner, which could be connected to the political interests and the will of players. During the EU policy process some parties may be in the minority and outvoted. Their interests would not be considered in the produced EU law. Therefore, they are against that directive, trying to "*defend their existing rules"* and as a consequence, they do not implement it correctly. The political influence of this process is significantly high, because EU directives contain regulations that don't align with the views of the political actors and new methods are in opposition to already existing rules in the state that are sufficient for the protection of individuals, democracy and community law. Moreover, government officials sometimes claim that the reason for a delay or non-compliance was caused by administrative inefficiency, lack of resources etc. as a politically convenient excuse for inaction, while their ostensible goal is to hide political interests. For example, the French government has started the implementation procedure of the Young Workers Directive years after the transposition period had expired. Their official argument for the delay was the lack of adequate legal support/administrative inefficiency. It is obvious that the given reason of postponement is understandable and relevant in many cases, but on the one hand, having a lack of legal expertise is not common for France and on the other hand, more than five years of delay for the above mentioned reason cannot be considered as an appropriate excuse of non-compliance. Finally, national experts reported that the real reason for the delay was that the government consciously decided not to transpose the Directive, because existing rules in France could provide at least as much protection for young workers as the standards in the EU Directive (Falkner - Hartlapp - Leiber - Treib 2004, 452-473). See more examples in reference: How member states defend their existing rules.[2]

[2] *The Swedish government openly refused to correctly implement the Pregnant Workers Directive (92/85/EEC). Most parts of the Directive were transposed in Sweden. Beside One aspect - the introduction of two weeks compulsory maternity leave. The Swedish government was convinced that their previous system was actually better than the regulation of the Directive. Their official position was that the pre-existing twelve (later fourteen) weeks of optional maternity leave de facto guaranteed exactly the same level of protection. They argued that women in Sweden generally made use of the maternity leave for much longer than two weeks so that there was no need to change the legal rules in order to prescribe the leave. Only after the interference of the European Commission did they finally give in and introduced the compulsory leave which in their eyes was completely superfluous."* (Falkner - Hartlapp - Leiber - Treib 2004, 452-473).

2. What the numbers say

This part will concentrate on the early 1990s up to 1995, before Austria, Finland, and Sweden became members of the Community and then examine the EU enlargement period step-by-step. In the first half of 1990s, the most successful implementer was Denmark with 35 unimplemented directives per year, while Italy (then comes Greece, Portugal, Belgium) had the worst result at an average 156 unimplemented directives each year, see table 1 below (Lampine – Uusikylä 1998). This number shows that states were neglecting the demands of the EU extremely often. A 12.5% (Italy) refusal of directives was indeed totally destroying the efficiency of the internal market and the credibility of the Union. Due to this reason the European Commission sued Italy very often before the European Court of Justice. It is obvious that non-compliance of directives can cause damages for European citizens, because they would get all benefits that derive from a directive if it had been implemented by government. Because of the need for the protection of individuals and keeping the balance of parties, the ECJ stated that, "…Member State which has failed to fulfill its obligations to transpose a directive cannot defeat the rights which the directive creates for the benefit of individuals..." [3] If bureaucracy and the length of an infringement procedure are taken into account, it could be said that member states are in a favorable condition, because they have an opportunity to avoid their EU obligations for several years at the cost of a meager fine. For instance, France, one of the worst compliers of all the time, suffered the largest penalty ever in July 2005: €20 million and a daily fine of €320,000, because the French government failed to apply a directive that needed to be implemented in 1991. Surprisingly, the annual cost of its infringement was less than € 1.5 million over that 14-year period. obligations (Nicolaides – Oberg 2006). Indeed, in such cases, the above mentioned numbers could be justified in their eyes (of the worst compliers).

Table 1

Number of unimplemented directives during 1990-1995

	1990	1991	1992	1993	1994	1995	Average
Belgium	114	113	103	104	127	133	115.7
Denmark	52	20	34	53	29	26	35.7
Germany	60	58	108	128	108	92	92.3
Greece	140	85	126	135	161	129	129.3
Spain	81	65	106	111	106	85	92.3
France	92	41	76	115	94	92	85.0
Ireland	114	91	97	129	98	91	103.3
Italy	229	182	118	123	141	143	156.0
Luxembourg	117	105	126	105	76	73	100.3
Netherlands	101	80	75	93	42	38	71.5
Portugal	161	117	117	123	128	126	128.7
UK	71	52	73	88	106	63	75.5

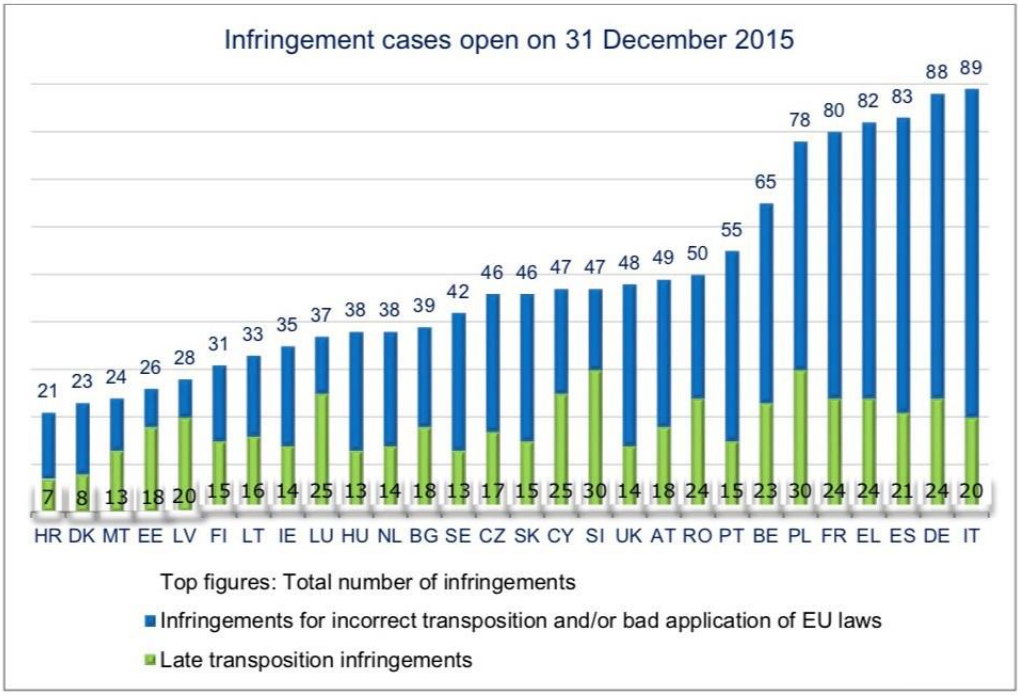
Source: Scandinavian Political Studies, Bind 21 (New Series) (1998) 3.

[3] C-6/90 and C-9/90, Francovich and Bonifaci v Italy

The scenario dramatically changed during 1996-2005, because in 1996, almost 93% of directives have been implemented into domestic law by member states and consequently, 94% in 1997, but the performance of the individual Member States was variable (Annual Report 1996, 1997). Reasons for this include the enlargement of the Union, due to which new states (Austria, Finland, Sweden) actively started transposition of legislature and during the first year of membership, the implementation rate in Sweden was higher than the average among "old" members (Lampine – Uusikylä 1998). Additionally, at the beginning of 2005 the average deficit of the implementation of Internal Market Directives for the 15 member states was up to 2.9% from 2.2% at the time of enlargement, but at the middle of the year it has declined to 2.1% by including in the calculations the new states of the Union (25 members) (Nowak 2005). More recently, Croatia, the last new member state of the community, shows its best performance of compliance. For example, the number of open infringement cases against Croatia at the end of 2015 was 21 for incorrect and 7 for late transposition, respectively, see Table 2 below (Annual Report 2015). Croatia's index is less than that of Denmark, the overall best performer at transposing directives. As a result, new Member States perform better than "old" ones.

Figure 1

The number of open infringement cases by Member State at the end of 2015



Source: Annual Report on Monitoring the Application of EU law (2015)

After Austria, Finland and Sweden became member states, their overall rate of implementation, compared to the 12 older members, was much higher. The same progress was noticeable after the biggest enlargement of Community and with regard to

Croatia's performance at the present time. It means that new members stick to the rules, but others don't. Therefore, such actions could cause damage for the Union, its institutions and the values and principles of the Community. Having an expectation to avoid derived obligations from the Treaties will be harmful for the Union and its members too. Furthermore, this prediction also gives an opportunity for possible future Member States to obey Community law in the first years of membership and later on, they would be able to act as Italy, France, Luxemburg and the other worst compliers to get benefits from delaying or non-compliance (see the above example of France, where they suffered a meager fine after 14 years). However, surprisingly, while the overall number of implementations significantly decreased from the past till now, non-compliance still exists, because the states that had a terrible implementation indicator in the past are falling behind again in recent years (Figure 1): for example, Italy's performance is truly unpredictable. Therefore, an effective EU weapon is still necessary to minimize violation of Community law.

3. EU weapon against non-implementation

The international enforcement of implementation rules is necessary, because without it all parties will violate (Versluis 2005). Therefore, in order to avoid violations of law, the EU always tries to establish new methods to overcome unfamiliar and ongoing obstacles. One of the key aspects is the exchange of the best practices of the best compliers. By this method, implementation guidelines, transposition plans, the attitude of citizens and expectations can be seen by the worst implementers and they will be able to transpose tried and tested methods in their legislation in order to raise the number of implemented directives and reach the minimum target of the Union. Also, the involvement of interest groups is crucial, because states where interest groups are actively involved in policy formulation and the process of transposition, comply better.

In contrast, in Greece and Italy, the weak involvement of interest groups in transposition mirrors their weakness in the formulation stage as well (Dimitrakopoulos 2001). At the opposite end from soft measures, stronger and starker actions are also subject of dialogue. For example, unambiguous and clear official responsibility forces Member States to fulfill their obligations. Raising the amount of infringement penalties is needed, because slight fines and the long infringement procedure are not effective mechanisms against non-implementation. Moreover, the EC has noted that once infringement procedures are opened, national measures are usually communicated swiftly. The fear of fines improves compliance. This trend is still valid in 2016 when out of the 868 transposition cases open in 2016, 498 could be closed due to the action by Member States.

Conclusions

To conclude, the answer to the main question is the following: the worst players in the past are again the worst implementers in the present. Therefore, non-compliance still exists and effective measures are still vitally important. Reasons of non-compliance vary state to state, but the results are common in all cases: damaging the EU. In order to strengthen the Community and overcome compliance difficulties, high-level bilateral

meetings, swift communications, and stricter rules are vital concepts that need to be followed by member states. Moreover, as practice shows, an infringement penalty utilizing large fines is a powerful instrument. In addition, older members' actions should be exemplary, because their activities are directly proportionate to new or possible future member states' reactions. However, the real scenario is that older member states are still much more divergent than they should be.

List of references:

- Annual Report (1996). *Fourteenth Annual Report on monitoring the application of Community law.* COM/97/0299 final, Official Journal C 332, 03/11/1997
- Annual Report (1997). *Fifteenth annual report on monitoring the application of Community law.* COM/98/0317 final, Official Journal C 250, 10/08/1998
- Annual Report (2015). *Report from The Commission Monitoring the application of European Union law*. COM/2016/0463 final
- Ballesteros, M. (2017). Monitoring the implementation of EU law: tools and challenges, http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596799/IPOL_STU(2017)596799_EN.pdf , [last access October 8, 2018]
- Beek, E. (2007). The slow implementation of EC directives. https://essay.utwente.nl/767/1/scriptie_ter_Beek.pdf [last access October 10, 2018]
- Dimitrakopoulos, G. D. (2001) The Transposition of EU Law: 'Post-Decisional Politics' and Institutional Autonomy. *European Law Journal* 7(4): 442 -458
- Duina, F. (1997). Explaining Legal Implementation in the European Union. *International Journal of the Sociology of Law* 25(2): 155-180
- Falkner, G., Hartlapp M., Leiber, S., & Treib, O. (2004). Non-Compliance with EU Directives in the Member States: Opposition through the Backdoor? *West European Politics* 27(3): 452-473
- Lampine, R. & Uusikylä, P. (1998). Implementation Deficit - Why Member States do not comply with EU directives? *Scandinavian Political Studies* 21(3): 231-249
- Martin Roig, M. (2016). Is there really a significant policy implementation problem in the EU? https://www.e-ir.info/2016/02/03/is-there-really-a-significant-policy-implementation-problem-in-the-eu/ [last access October 10, 2018]
- Mitchell, R. B. (1996). Compliance theory: an overview, In Cameron, J., Werksman, J., & and Roderick, P. (Eds.), *Improving Compliance with International Environmental Law*. London: Earthscan, pp. 3-28
- Nicolaides, P. and Oberg, H. (2006). The compliance problem in the European Union, http://aei.pitt.edu/6371/1/Scop06_1_2.pdf [last access October 10, 2018]
- Nowak, B. (2005) Implementation of Directives into Domestic Legal System. The Case of Poland. *Yearbook of Polish European Studies*, 9/2005: 67-91

- Scannell, Y. (2013). Implementing EU Directives: How to Avoid Costly Failures. http://www.publicpolicy.ie/implementing-eu-directives-how-to-avoid-costly-failures/ [last access October 9, 2018]
- Versluis, E. (2005). Compliance Problems in the EU - What potential role for agencies in securing compliance? http://regulation.upf.edu/ecpr-05-papers/eversluis.pdf [last access October 8, 2018]

MIGRANT WORKERS IN MYANMAR*

Thazinkhaing Moe[1]

Myanmar is facing two main challenges which are the infringement of international migrant workers' rights and the infringement of internal migrant workers' rights. Most of those workers have their rights and privileges infringed upon by their employers. Our country is the largest country in mainland Southeast Asia, Myanmar has one of the lowest population densities in the region. Internal migrants in Myanmar constitute a significant population.

The great majority of poor people in Myanmar live in rural areas. In rural areas most of the people live off the cultivation of the farmland, so they are farmers. The income of farmers is the lowest in Myanmar due to the bad weather and the economy of the country. Previously, their sons and daughters could not be sent to school to receive an education, but nowadays children have access to education. After young people finish their studies or get a degree, they need to earn a living. Even if they can find a job, they don't get enough money, therefore they cannot support their families. So most of the young people try to work and earn more money abroad. Some try to work as internal migrant workers. Whether they migrate to work internally or internationally, they are faced with their rights being infringed upon by their employers. Some have to face the worst situations or conditions.

In our country there are labor regulations protecting the migrant workers. There is no specific law about migrant workers, but there are several other legislative acts relating to migrant workers in Myanmar such as Workmen Compensation Act 1923 (as amended 2005), Leave and Holidays Act 1951 (as amended 2014), Law relating to Overseas Employment 1999, Minimum Wage Law 2013, Settlement of Labour Dispute Law 2012 (as amended 2014), Labour Organization Law 2011 etc. (see Table 1 below).

Even though these labor regulations provide protection for the workers, they still face the infringement of their rights in the relationship between employers and employees. NGOs are trying to save and support the victims. The most important fact is that the Government has to enact a specific law and implement the laws they have promulgated, so they should protect and prevent the abuse of migrants before these problems even occur. However, the rule of law is weak in Myanmar: if the rule of law was strong, the laws could easily protect and prevent those problems.

I have established two categories of migrants in this paper having stated the weak points of the laws of our country, Myanmar and I have used well-known cases in Myanmar as examples.

* DOI 10.21868/PGnG.2018.2.5.

[1] *Thazinkhaing Moe*, PhD student, Géza Marton Doctoral School of Legal Studies, University of Debrecen, Faculty of Law

1. Migrant Workers in Myanmar

There are two kinds of migrant workers in Myanmar, internal migrant workers and international migrant workers. The population of internal migrant workers is larger than international migrant workers. The people in rural areas are migrating to the big cities; Yangon, Mandalay and Naypyitaw. In rural areas there are few chances to work, so the people in rural areas are migrating to the big cities or abroad to work.

1.1 Internal Migrant Workers

51 percent of all internal migration in the country is across states/regions, 49 percent of all internal migration is within a state/region. Migration within a state/region is mainly rural-rural or urban-urban (ILO 2015).[2] The 2014 Myanmar Population and Housing Census (Census Atlas, 2015) listed internal migrants at over 9 million in 2014.[3] The biggest cities are Yangon, Mandalay and Nay Pyi Taw. Most of the internal migrants are from Magway, Ayawady and Bago.

Internal migrant workers are mainly facing the issues of forced labour, human trafficking in person and child labour. They often work in unhealthy and unsafe conditions and they often exposed to extremely cold or hot air temperatures, dust, fumes, loud noises, or vibrations and sometimes toxic chemicals. 60 percent of migrant workers work the whole week. They don't get the holidays they should (UNESCO et al 2018). Even though every employee should be entitled to get the holidays as announced by the Government in Myanmar.[4] 40 percent of migrant workers are working overtime, but they are not paid extra for their overtime work. Working hours are regulated in various labor laws. Under these laws, working hours are limited to 8 hours per day. If the employees need to work overtime, it should be a maximum of 12 hours per week. Migrant workers are reluctant to report abuse by employers to labour authorities or police because they believe that doing so might have negative consequences for them, such as losing their jobs (UNESCO et al 2018).

Most of the migrant workers were coerced into forced labour by the military and civilian officials, for decades. The practice of exacting forced labour from civilians was underpinned by British colonial laws, the Town Act of 1907 and Villages Act of 1908. In 2012, the Government signed an agreement with ILO for assistance in the elimination of forced labour. In 2012, the ILO and the Government signed a memorandum of understanding to adopt an overall framework and principles to end forced labour.

In 2014, the Government reported prosecuting 124 human trafficking cases involving 367 suspects and 309 trafficked persons. They majority of the cases were for forced marriage but also included labour exploitation, sexual exploitation and one child trafficking case. Of the 124 cases, 77 of them related to the trafficking of persons in China, 26 internally within Myanmar and 18 in Thailand (ILO 2015).

[2] The ILO study (ILO 2015) was based on a sample size of 7295 internal migrant workers. It used a non-probability sampling method, and statistical findings related to this research cannot be said to represent the entire population.

[3] The 2014 Myanmar Population and Housing Census defines migration as inter-township movement of more than six months (Census Atlas, 2015).

[4] Section 3, Leave and Holiday Act (1951), Myanmar

Internal migrants across the country raised the issue of insecure housing in their destination area. During the focus group discussions, workers explained that internal migrants are often unable to afford rental housing and instead have to construct their own housing out of basic materials, such as wood or bamboo, typically beside the work site, in urban areas or in the forest.

There are a lot of child laborers who are internal migrant workers. They usually work in a tea shop (there are a lot of tea shops in Myanmar) as waiters. They always work over the time set by the laws. They work from 5 am to 10 pm until the shop closes. But their salary is the lowest among the internal migrants. They can't rest until the shop closes. Most of the children are younger than the minimum age set by the law. Some children are forced to enter the military. This is the biggest problem to solve, but the law cannot protect them from this situation. Some girls who are under 18 years old are working as maids, moving from their city to Yangon City. In Myanmar there are well-known cases about the infringement of the rights of the internal migrants. Among them, I want to present a well-known case in the following.

Victims San Kay Khine and Orphan Thazin were just 12 and 11 years old when they were sent to Yangon in 2011, San Kay Khine's mother Nyo Nyo Win said during an interview in a remote village in Kawhmu Township, three hours drive south of Yangon. Their salary is about 15000 kyats (12$) as live-in maids. Since the girls worked at Ava Tailor Shop on 40th Street in Yangon owned by a man named Tin Thuzar, they were tortured and treated like slaves. Their families often tried to meet them by going to Yangon every month. The shop owner didn't allow them to meet their families. The girls were hidden and kept to work in the tailor shop or in the employer's eight-floor apartment. The employers were subject to horrible daily abuse, such as beating with steel rope, cutting with scissors and burns inflicted on the skin with cigarette butts and lighters. San Kay Khine suffered most as all of her fingers were broken. Her right arm was broken once too. They suffered for five years. A man who had business dealings with the shop alerted Myanmar Now of the brutal abuses to Kyauktada Police, but as there was no police follow-up, Myanmar Now alerted the Myanmar's National Human Rights Commission. The Commission solved the problem with the compensation (5,000,000 kyats). The Commission asked to accept the compensation lump sum from the tailor shop owner. The employer swiftly offered to pay 4 million kyats for San Kay Khine and 1 million for Thazin. But later the case was tried in court. Finally the court sentenced four family members to 13 years and up.[5]

Internal migrant workers in Myanmar are deprived of their rights, be it by coercion, abduction, sale of workers, deception about the nature of the work (industry, occupation, employer, location, hours, wages, housing or living conditions), physical or sexual violence or threats, required overtime or other work (outside of employment agreement), restriction on freedom of movement, financial penalties or dismissal (ILO 2015).

1.2 International Migrant Workers

Under the military regime, the economy of the country declined. It was difficult to earn a living within the country for the people of the country. So many people decided to

[5] BBC Burmese News, 3rd October 2016, https://www.bbc.com/burmese

work at the borders (Muse, Myawady, Tachileik, Mae Sai) or abroad. Why they intend to work at the borders or abroad is to support their families and help their friends. Although there are a lot of chances of employment within the country, chances are that they'd receive a poor salary that's not enough to support their families.

70 percent of international migrant workers from Myanmar are in Thailand and Malaysia. Some people are working in China, Singapore and South Korea etc. (Census Atlas, 2016). Nowadays young people are migrating to Singapore and South Korea more than before. Girls who migrate to Singapore are working as nurses, maids or engineers etc. When they leave to work abroad, some are going by legal routes but some move illegally. Previously, a lot of migrant workers were illegal migrants. Later the Government has signed a MOU with the government of Thailand about working visas. But there are still illegal migrant workers in Thailand and Malaysia (Census Atlas, 2016).

About migration to Thailand: in the past, the people living along the Thailand-Myanmar borders used to cross the border to work abroad. From 1992 to 2012, the influx of migrant workers from Myanmar has continued to grow in Thailand. Nowadays there are 2 million migrant workers from Myanmar in Thailand. The largest population of migrants from Myanmar are in Thailand. They can work in many sectors in Thailand: in the sectors of agriculture, construction, fishery, domestic, services and sales, transport and trade etc. (Chantavanich, 2013).

About migration to Malaysia: There are 139,200 Burmese refugees (Chins, Rohingyas, Panthays and Rakhines) in Malaysia. The second largest population of migrants from Myanmar is in Malaysia. Many of the new migrant workers are in the hands of human traffickers or have been killed by other criminals.

70% of migrant workers from Myanmar are in Thailand, 15% in Malaysia, 4.6% in China, 3.9% in Singapore and 1.9% in USA.[6] In Singapore most of the girls from Myanmar are working as maids. Some are nurses and engineers. Some maids are deprived of their some rights, such as not having enough to eat and a good place to sleep.

2. Relevant Laws in Myanmar

As we mentioned above, there is no specific law about migrant workers, but there are other relevant legislative acts concerning (directly or indirectly) the rights of migrant workers in Myanmar. Table 1 summarizes these acts as follows.

[6] https://www.iom.int/countries/myanmar

Table 1

Relevant Laws in Myanmar

Title	Year of adoption
Workmen's Compensation Act	1923 (originally), amended in 2005
Leave and Holiday Act	1951 (originally), amended in 2014
Employment Restriction Act	1959
Income Tax Law	1974 (originally), amended by Union Tax Law in 2017
Law Relating to Overseas Employment	1999
Labour Organization Law	2011
Social Security Law	2012
Settlement of Labour Dispute Law	2012 (originally), amended in 2014
Employment and Skills Development Law	2013
Minimum Wage Law	2013
Payment of Wages Law	2016
Factories Act	1951 (originally), amended in 2016
Shops and Establishment Law	2016
Oilfields (Labour and Welfare) Act	1951

Source: author

Conclusions

A lot of cases of internal and international labour migration are still happening although the percentage of migrants at the present is lower than in the past. 40 percent of migrant workers have access to legal protection. But 50 percent are still suffering from the infringement of their rights. In the future, how will this percentage improve? I think we can reduce the rights violations at least 20 percent more, as the government has been trying to reduce this number by cooperating with the NGOs. The most important development would be the implementation of specific laws for the protection of migrant workers' rights. In Myanmar there are two centres for the settlement of migrant workers' disputes, but there is no labour court and specific law for the migrant workers. If the government can establish a specific labour court and promulgate specific law for the migrants, it can further reduce the percentage.

List of references:

- Department of Population, Ministry of Labour, Immigration and Population of the Republic of the Union of Myanmar (2015). Census Atlas Myanmar. The 2014 Myanmar Population and Housing Census. http://themimu.info/sites/themimu.info/files/documents/Census_Atlas_Myanmar_the_2014_Myanmar_Population_and_Housing_Census.pdf [accessed October 5, 2018]
- International Labour Organization (ILO)(2015). Internal Labour Migration in Myanmar: Building an Evidence-Base on Patterns in Migration, Human Trafficking and Forced Labour. Yangon: International Labour Organization,

ILO Liaison Officer for Myanmar. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_440076.pdf [accessed October 5, 2018]

- UNESCO, UNDP, IOM, and UN-Habitat (2018). Policy Briefs on Internal Migration in Southeast Asia – Overview of Internal Migration in Myanmar
- https://bangkok.unesco.org/sites/default/files/assets/article/Social%20and%20Human%20Sciences/publications/myanmar.pdf [accessed October 5, 2018]
- BBC Burmese News, 3rd October 2016, https://www.bbc.com/burmese [accessed October 5, 2018]
- Department of Population, Ministry of Labour, Immigration and Population of the Republic of the Union of Myanmar (2016). Census Atlas Myanmar. The 2014 Myanmar Population and Housing Census. Thematic Report in Migration and Urbanization. https://reliefweb.int/sites/reliefweb.int/files/resources/Migration_insidepages_FINAL_lowrespreview.pdf [accessed October 5, 2018]
- Chantavanich, Supang (2013). Myanmar Migrants to Thailand and Implications to Myanmar Development. *Business*, January 2013, http://www.ide.go.jp/library/English/Publish/Download/Brc/PolicyReview/pdf/07_Burmese.pdf [accessed October 5, 2018]
- Homepage of the International Organization for Migration, https://www.iom.int/countries/myanmar [accessed October 5, 2018]

PUBLIC SERVICES AND CHANGES IN FINANCING SYSTEM OF LOCAL GOVERNMENTS IN HUNGARY*

Péter Bordás[1]

The financial legal status of local governments varies widely in time and space, as this system of governance is continuously changing and developing. The realization of financial independence needs a number of public financing instruments which can be present in various forms depending on the nature of the system. It is obvious that we cannot separate the municipal financial issues from the central government's budget given that these are closely linked to each other through the financial connections between the layers of governance. Thanks to the changes in this dynamic, this topic is always current in financial legal circles and among economists, public finance specialists and experts dealing with this problematic issue. This is even more the case during periods of time when cross-border effects produce important reform processes.

This paper focuses on several fundamental issues. What is the reason for providing certain types of public services at the local level? What are the financial sources that the local management of public services should consist of? Who should finance them? To what extent should the central government intervene in these issues? What are the effects of the new system introduced in Hungary in the early 2010s?

The detailed description of fiscal federalism and its first-generation theories enables us to see that the units of local government have an important role in providing public services. Thus, the financial decentralization is constantly a current issue.[2] I tried to classify the relevant theories to be able to demonstrate the pros and cons of financial decentralization.

Local interests, the concept of a more direct democracy, the problems related to information and data, Tiebout's hypothesis, Oates' decentralization theorem, the cost-effectiveness and the Leviathan hypothesis favor decentralisation[3]. But there are a lot of arguments against decentralisation: for example, the spill over effects, economies of scale, the fiscal illusion, the so-called club goods, the flypaper effect, as well as critiques of Tiebout's hypothesis.[4] After having studied these aspects[5], it has become obvious that the conclusions drawn on financial federalism are not limited to federal states: instead,

* DOI 10.21868/PGnG.2018.3.6.

[1] *Péter Bordás,* Research Fellow, MTA-DE Public Service Research Group, Assistant Professor, University of Debrecen, Faculty of Law.

[2] Henning, C. Randhall – Kessler, Martin: *Fiscal federalism: US history architects of Europe's fiscal union.* Bruegel essay and lecture series, Bruegel, 2012, 28-31.

[3] Fred Thompson, Mark T. Green (eds.): *Handbook of Public Finance*. Marcel Dekker, New York, 1998, 389.

[4] Bailey, J. Stephen: *Local Government Economics: Principles and Practice*. MACMILLAN Press, Houndmills, 1999.

[5] Begg, Iain: *Fiscal Federalism, Subsidiarity and the EU Budget Reviem.* Swedish Institute for European Policy Studies, Stockholm, 2009, 19-28, 32.; Musso, Juliet Ann.: *Fiscal federalism as a Framework of Governance Reform.* In: Fred Thompson, Mark T. Green (eds.): *Handbook of Public Finance*. Marcel Dekker, New York, 1998, 350.

they can prove useful and applicable on the different layers of governance in unitary states too.

It is worth examining how different systems of local governance have changed throughout the last decade, especially in reaction to the financial crisis.

Table 1

Subnational Government Structure and Finance in Europe (2015)

Measure		Expenditure as a percentage of GDP	Revenue as a percentage of GDP	Debt as a percentage of GDP	Local tax revenue as a percentage of GDP
Country					
Federations and quasi-federations	Austria	17,9	18	12,7	1,7
	Belgium	26,6	25,3	20,9	5,7
	Germany	20,8	21,1	28	11,8
	Spain	21,9	20,6	32,2	8,1
Unitary countries	Czech Republic	11,4	12	4,1	5
	Denmark	34,9	35,2	11,1	12,3
	Estonia	9,5	9,7	4,4	0,3
	Finland	23	23	12,7	10,4
	France	11,4	11,5	11,1	5,7
	Greece	3,4	3,7	1,2	0,9
	Hungary	7,9	8,1	0,6	2,3
	Iceland	13	12,4	13,2	9,4
	Ireland	2,2	2,5	2,1	0,5
	Italy	14,5	14,8	11,4	6,4
	Latvia	9,3	9,6	7,6	5,6
	Luxembourg	4,6	5	2,6	1,3
	Netherlands	14,5	14,1	11,5	1,4
	Norway	16,1	15,7	17,1	5,9
	Poland	12,8	12,8	5,5	4,2
	Portugal	5,9	6,4	7,8	2,5
	Slovak Republic	7,5	7,6	3	0,5
	Slovenia	9	9,3	3,2	3,5
	Sweden	25	24,8	16,1	13,3
	United Kingdom	10,9	10,6	10,3	1,6
OECD Total		16,4	16	24,4	7
EU28 Total		15,7	15,6	15,6	6,2

Source: Author compiled, based on the data of the OECD

Analysing the development of these systems (of local governance), it may be established that the Anglo-Saxon and continental methods of governance serving as models can, in their pure form, only exist in theory. They cannot exist in practice because they have been subject to important changes affecting primarily their financial autonomy and the provision of local services. Regarding the data collected by the OECD in 2015, I can conclude that the ratio of local expenses to GDP stagnated or increased in the majority of the examined countries (see Table 1). There are two exceptions: Hungary and Ireland, where we can witness a considerable fall as the expenses of local governments decreased by 75%.

It must be mentioned – as emphasized by a 2010 report of the European Commission – that local governments were faced with the necessity of layoffs, structural reorganization and borrowing in the wake of the financial difficulties (and especially the decrease in income) caused by the crisis.[6]

In my opinion, the sub-national levels of government, the public services provided at these levels and the trends in the organization and financing of public services (e.g.: decentralization and centralization) all show a cyclical process, even in the context of diverse and differing international practices.

In Hungary, the system of local and regional authorities established during the democratic transition has been working, changing and developing for more than 20 years until it has undergone a process of significant transformation in the early 2010s. This change affected the scope of local public services as well as the main character of local governments. A certain number of services that were formerly provided locally have been centralized. Regulations on local management have been changed. Numerous checks and limits have been installed in the system. The revenue structure has been transformed and the system of intergovernmental grants and transfers has been reshaped.

We can clearly see that the solution was not entirely effective given that several other factors contributed to the aforementioned errors. For example, the tasks conferred to local levels were not accompanied by changes in the financing system. The system could not cope with the difficulty resulting from the fact that the resources of individual local governments varied widely but they all had the same legal status. The revised system of revenue assignment is a good example of the new approach called "task-based" financing (an expenditure-oriented system replacing the previous resource-based financing) – including its negative aspects.

The evaluation and assessment of these changes is controversial. We are faced with a large number of arguments and counterarguments concerning the considerations of experts in the fields of administrative law, financial law and public finances. This is precisely the reason why we cannot disregard the exemplary practices and achievements of the previous revenue assignment system, even if there are a lot of negative aspects.

I could conclude that the original objective of the preparation of this revised concept was not to introduce the current system but to provide a much-needed correction to the system of financing of public services based on the calculations on expenditure needs

[6] Council of European Municipalities and Regions: *The economic and financial crisis. Impact on local and regional authorities*. Brussels, 2010. http://www.ccre.org/docs/Economic_and_Financial_Crisis_(CEMR_2009).pdf

detailed above. In the end, it is clear that while the terminology remains unchanged, the contents of the system have been transformed completely after the adoption of the new Local Government Act in 2011 and its amendment. The reason for the divergence from the original objective could be that some key issues with the proposed solution were obvious from the beginning. For example, it is very time consuming, difficult and expensive to determine the expenditure requirements of local municipalities. From these observations, it can be concluded that this approach to the financing of public services is not the same solution as similarly named approaches in international literature.[7]

The role and the financing of local governments across Europe has changed due to the economic crisis, meaning that the relationship between local and central governance needed to be rethought. This is not exclusively a Hungarian trend. In the background of the reorganization of the provision of public services among the different layers of governance, there is a sort of centralisation as a desired objective to achieve. This is present also in the financing of public services.

The impact of the new approaches is detectable in the financial system. Local expenditures have decreased by 7.9% relative to GDP because of the centralisation of providing public services (see Table 1).[8] This is due to the fact that primary education, personal social benefits and health care have been handed over to the central government. The central management of local services has also resulted in the reduction of local autonomy. Together with the change in financing, the scope of powers delegated to the different levels of government, as laid down by law, has also changed in Hungary. Interestingly, in practice, this division of powers shows a very different picture. Therefore, there are several services that are traditionally considered "local government-related" which can also be provided in a centralized way without them losing their local character.

***

During the transition period, the objective was the decentralization of centralized power in order to put local administrative units in a more powerful position.

In the 2010s a sort of reversal process has begun unfolding which enhances the centralization of local public services according to a concept of the state as a "good owner". Due to the changes in the financing of local authorities and the regulation of local governments there are a number of new limits, checks and instruments for stabilization curtailing the extent of locally administered functions. This process leads us to question whether the local government is actually independent.[9]

Numerous local taxes have become earmarked after 2010. As local taxation is of the most important elements of local financial autonomy, this intervention in their free use can cause harm to local interests. By the same logic, in the case of support by the central government, the use of non-earmarked subsidies can reinforce local financial autonomy. As formulated by József Hegedűs and Gábor Péteri, this transformation process was

[7] Dahlby, Bev (1998): Fiscal Externalities and the Design of Intergovernmental Grants. *International Tax and Public Finance,* 3(3), 1998, 398.
[8] In 2005, this number was 12,59 %.
[9] Act CLXXXIX of 2011 on Local Governments in Hungary (2011. évi CLXXXIX. törvény)

entirely contrary to the logic of the functioning of local financing and local public services, eliminating the positive results achieved during the past few decades.[10]

On one hand, overregulated financial solutions make the system more inflexible and on the other hand, they decrease the need of savings on a local level. In my viewpoint, local governance is a democratic value. It represents more than the local dimension of public services. It is the representation of local interests and it is one of the cornerstones of the development of communities.

List of references:

- Bailey, J. Stephen: *Local Government Economics: Principles and Practice*. MACMILLAN Press, Houndmills, 1999.
- Begg, Iain: *Fiscal Federalism, Subsidiarity and the EU Budget Reviem.* Swedish Institute for European Policy Studies, Stockholm, 2009, 19-28, 32.
- Council of European Municipalities and Regions: *The economic and financial crisis. Impact on local and regional authorities*. Brussels, 2010. http://www.ccre.org/docs/Economic_and_Financial_Crisis_(CEMR_2009).pdf [accessed October 5, 2018]
- Dahlby, Bev (1998): Fiscal Externalities and the Design of Intergovernmental Grants. *International Tax and Public Finance*, 3(3), 1998, 398.
- Fred Thompson, Mark T. Green (eds.): *Handbook of Public Finance*. Marcel Dekker, New York, 1998, 389.
- Hegedüs József - Péteri Gábor: *Közszolgáltatási reformok és a helyi önkormányzatiság*. Szociológiai Szemle, 2015/2, 90.
- Henning, C. Randhall – Kessler, Martin: *Fiscal federalism: US history architects of Europe's fiscal union.* Bruegel essay and lecture series, Bruegel, 2012, 28-31.
- Musso, Juliet Ann.: *Fiscal federalism as a Framework of Governance Reform.* In: Fred Thompson, Mark T. Green (eds.): *Handbook of Public Finance*. Marcel Dekker, New York, 1998, 350.
- Act CLXXXIX of 2011 on Local Governments in Hungary

[10] Hegedüs József - Péteri Gábor: *Közszolgáltatási reformok és a helyi önkormányzatiság*. Szociológiai Szemle, 2015/2, 90.

Authors are invited to submit their manuscripts for publication in the Public Goods & Governance Journal to the following e-mail address: bartha.ildiko@law.unideb.hu or bartha.ildiko@gmail.com

Articles for the Public Goods & Governance must be written in English. Manuscripts' length for contributions could indicatively be 10.000 to 15.000 characters (exceptionally max. 20.000 characters) with spaces, footnotes and reference list.

Acceptance of articles will be communicated after a review of the submitted manuscripts.

Referencing Guide

The *Public Goods & Governance* journal adheres to the *Harvard referencing style* which is made up of two main components, [1] *in-text citation* throughout the text and [2] a *reference list* at the end. Besides, in form of *endnotes* you can also add explanatory comments to the main text of the manuscript.

1. Citation system: Citations (i. e. referencing sources used for your paper) in the text should follow the so called *in-text citation system* (also known as author-date system), that is minimal source information (author's last name, date of publication and page(s) indicating the relevant part of the cited text if necessary) inserted directly into the text itself, surrounded by parentheses (the rest of the source information should be detailed in a list of references at the end of the paper, see below).

- *Example*: (Marcou 2016, 18)

- *Example inserted in the main text*:
  "Although the degree of liberalization and the level of national autonomy obviously differs sector by sector (Marcou 2016, 18), similar tendencies or at least a step towards the above direction can be seen in other fields, as well."

***Endnotes*:** Please use *endnotes instead of footnotes* if you want to add explanatory comments to the main text of the manuscript. Explanatory comments *are not source citations* but other additional remarks (definitions, supplementary information, opinion of other scholars etc.) to the main text. Please minimize the number and length of these notes!

2. Reference list: References at the end of the article should be arranged first alphabetically and then further sorted chronologically if necessary. More than one reference from the same author(s) in the same year must be identified by the letters 'a', 'b', 'c', etc., placed after the year of publication. Please ensure that every reference cited in the text is also present in the reference list (and vice versa).

Examples:

- *Reference to a journal publication:*

Boswell, C. (2008). The Political Functions of Expert Knowledge: Knowledge and Legitimation in European Union Immigration Policy. *Journal of European Public Policy* 15(4): 471–488.

- *Reference to a book:*

Sullivan, H. & Skelcher, C. (2002). *Working across Boundaries: Collaboration in Public Services*. London: Palgrave Macmillan

Solinis, G., & Baya-Laffite, N. (Eds.). (2011). *Mapping Out the Research-Policy Matrix*. Paris: UNESCO

- *Reference to a chapter in an edited book:*

Marcou, G. (2016). The Impact of EU Law on Local Public Service Provision: Competition and Public Service. In Wollmann, H., Koprić, I., & Marcou, G. (Eds.), *Public and Social Services in Europe: From Public and Municipal to Private Sector Provision*. Basingstoke: Palgrave Macmillan, pp. 13–26

Horváth, T. M. (2016). From Municipalisation to Centralism: Changes to Local Public Service Delivery in Hungary. In Wollmann, H., Koprić, I., & Marcou, G. (Eds.), *Public and Social Services in Europe: From Public and Municipal to Private Sector Provision*. Basingstoke: Palgrave Macmillan, pp. 185–199

- *Reference to a newspaper article or blog article:*

Stevis, M. & Thomas, A. (2015). Greek, German Tensions Turn to Open Resentment as Referendum Looms. *The Wall Street Journal*, July 4, 2015, http://www.wsj.com/articles/greek-german-tensions-turn-to-open-resentment-1436004768 [accessed February 10, 2016]

Terauda, V. (2016). A Crisis In Confidence. Why the EU can be a force for positive change in the Western Balkans and reverse the crisis. *Recent Changes in Governing Public Goods & Services. Website of the MTA-DE Public Service Research Group*. June 16, 2016, http://www.kozjavak.hu/en/crisis-confidence [accessed December 20, 2015]

- *Reference to online sources:*

[As a minimum, the full URL should be given and the date when the reference was last accessed. The URL may also be given as a clickable hyperlink (we prefer this form in case of long URLs, see the first example below). Any further information, if known (title of the document/article, author or publishing organization names, dates, DOI, etc.), should also be given.]

OECD (2009). Improving the Quality of Regulations: Policy Brief. [accessed October 7, 2015]

Hall, D. (2012). Re-municipalising Municipal Services in Europe. A report commissioned by EPSU to Public Services International Research Unit

(PSIRU).http://www.epsu.org/IMG/pdf/Redraft_DH_remunicipalization.pdf [accessed July 17, 2015]

Banks, G. (2009). Evidence-Based Policy-Making: What Is It? How Do We Get It? Speech delivered at the Australian and New Zealand School of Government/ Australian National University Lecture Series, February 4. http://www.pc.gov.au/ news-media/speeches/cs20090204 [accessed September 16, 2014]

.