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THEMATIC ISSUE

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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.

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EDITORIAL COMMENTS

FROM GLOBALIZATION TO GEOECONOMIC FRAGMENTATION: RESHAPING THE STATE'S REGULATORY ROLE[1]

In an era of rapid globalization, technological advancements, and evolving socio-political landscapes, the regulatory role of the state is undergoing a profound transformation. As societies grapple with complex challenges in governance and market regulation, it becomes increasingly crucial to understand the dynamics at play and explore innovative approaches to address them. This thematic issue of our journal delves into the recent regulatory and governance challenges faced in the European Union and other parts of the world. Through a collection of insightful articles, we explore diverse topics that intersect with the central question of the evolving role of the state in regulation.

After decades of increasing global economic integration, the world is facing the risk of geoeconomic fragmentation, as concluded by a recent IMF study (Ayiar et al. 2023). The idea that most leaders around the world agreed on after the Second World War – that more open markets foster innovation, competition and growth, and consumer welfare, and that led to the creation of such dominant international trade integrations as GATT (General Agreement on Trade and Tariff, now World Trade Organization, WTO) and the European Communities (now European Union) – was reversed after the 1990s. Yet the appetite for freer trade is not what it was (The Economist 2021a) in the 'Golden Age' of liberalization. Officially, it is derived from the worldwide crises in 2007-8 as a visible phenomenon of this shift (Csaba 2018), however, balancing between integrative and sovereign-based efforts started earlier in some respects (Horváth 2020). At the same time, the crises have undoubtedly accelerated and deepened this process.

For the past decade and a half, the world has been facing a series of crises that have significantly contributed to a reshaping of the previously established and considered model of the state role in a market economy. It all began with the above-mentioned 2007-2008 real estate and banking crisis, which originated in the United States and spread to the continent's banking and financial system. At the central bank level, activism aimed to contain the chain reactions in the financial markets. Following the example of the US Federal Reserve to a greater or lesser extent, European crisis management also sought to implement some forms of direct intervention, particularly during the 2011-12 eurozone crisis in relation to the looming Greek debt situation (Horváth et al. 2023). In Europe, the withdrawal of the United Kingdom from the Union in 2020 also contributed to the crisis of the single market (Horváth et al. 2023).

The Covid-19 pandemic, which began in Europe in March 2020, resulted in a much greater and global crisis which also supported the process being described as "The Return of the State" (Garrard 2022). The Russian invasion of Ukraine on February 24, 2022 and the subsequent energy crisis opened up another phase in this process. The

[1] By *Tamás M. Horváth*, Professor of Law and Political Sciences, University of Debrecen and *Ildikó Bartha*, Associate Professor of Law and Political Sciences, University of Debrecen. The present thematic issue was compiled and edited in the framework of the project K 134499, K_20 'OTKA' NKFI Found, National Research, Development and Innovation Office (Hungary).

combination of these effects intensifies competition and struggle, not only between national economies but also between integrations on a global scale. In the European Union, it also meant that member states received broader authorization to provide various forms of economic support or to use other means of market intervention.

Themes analyzed in most of the studies published in our thematic issue can also be linked in some way to the above-mentioned crises. For example, *Dóra Varga*'s study explores the profound impact of the "Coronavirus Decrees" on employment relations in Hungary, contemplating whether the measures taken during the pandemic represent a temporary response or a long-term transformation. The contribution of *Sebestyén Márk Pella* raises a similar question in relation to price control in the Eastern European region imposed on various products in response to the energy crisis. In times of crisis and lack of economic resources, it is also crucial to continue investing in innovative technologies, such as space programmes, as *Boudour Mefteh's* paper highlights.

Changes in the state's role towards increased public control and intervention also reflect a growing recognition of its responsibility to address societal challenges and market failures. In the area of cross-border employment relations and movement of persons, this has taken several forms. The challenges often arise from the lack of respect of fundamental rights experienced by migrant workers in host countries. Although there is a growing tendency of including, in certain form, provision(s) on the protection of labour rights, the virtuous commitments embedded in trade deals often lack teeth and there are serious doubts if these have much effect (The Economist 2021b). In our thematic issue, the article of *Aya AlDabbas* analyses the remuneration rights of irregular migrant workers in the European Union, shedding light on the challenges faced by this vulnerable group and calls for greater attention to their rights and protection. *Zhansulu Muratova's* contribution also focuses on the duties of states to protect human rights as required by global instruments, providing a case study example on the enforcement of the right to education in Kazakhstan.

As climate change has become a global challenge, there is a growing recognition of the links between trade and the environment (The Economist 2021c), and of the responsibility at all levels of governance to integrate climate considerations in trade policy and regulation. It means, among others, the inclusion of preferences[2] and incentives in trade agreements, international or national legislation or other forms of regulation that support environmental protection. However, it is not always possible to reconcile the two aspects, and therefore climate considerations can also be a legitimate reason for states to deviate from the main rules of market liberalization, laid down in international or EU rules, if trade-restrictive measures prove to be necessary to ensure adequate protection. Environmental issues (often together with other drivers such as consumer preferences) can also serve as a rationale for harmonization at the supranational level, as *Roxána Bereczki's* study on the future of standard mobile phone chargers shows. At the same time, environmental interests may also conflict with other public interests (such as road safety), as highlighted by *Petra Kanyuk's* paper through the example of an area not yet regulated at the EU level (the use of electric scooters).

[2] See for example the trade agreement (2021) between Indonesia and the European Free Trade Association (EFTA), that offers Indonesian palm-oil exporters lower tariffs if they meet certain environmental standards (The Economist 2021c).

Despite the tendencies against global economic integration indicated above, some moves towards further liberalization have continued (The Economist 2021a). For instance, in 2020 15 Asia-Pacific countries signed the Regional Comprehensive Economic Partnership, and the African Continental Free Trade Area, a deal ratified by 38 countries, began to operate in 2021 (The Economist 2021a). That is why there is still a need for legal mechanisms whose widespread adoption is linked to the heyday of international market opening. The earlier upward phase of global trade has led to an increased demand for alternative dispute resolution mechanisms, such as arbitration or mediation. Cross-border trade relations involve transactions between parties from different countries, each with its own legal systems, cultural norms, and business practices. Although litigation is still the primary method of dispute resolution in most Western legal systems, there has been a search for alternatives to it for several decades (Hoellering 1986) to meet the increasing complexity and volume of modern international trade. However, there are still a number of questions and challenges regarding the use of these alternative dispute resolution tools, which act as a disincentive for market players and even for states to develop an appropriate regulatory environment [as regards the latter, see a Jordan case study (Alfaouri 2022) in our previous journal issue]. In the present volume, *Mourad Yousfi* examines the reluctance of businesses in the European Union to utilize mediation as a means of dispute resolution and identifies common barriers to do so, by exploring the factors influencing this approach. *Layan Al Fatayri's* contribution delves into the role of arbitrators in investigating corruption by highlighting the complexities of such cases in the realm of international commercial arbitration.

We hope this collection serves as a catalyst for further research, inspires fruitful discussions, and encourages the authors, other researchers and practitioners to engage in thoughtful deliberations about the changing regulatory role of the state and its implications for governance and market regulation. The academic website (blog) of the DE Public Service Research Group publicgoods.eu offers an opportunity to continue the debate, even after the publication of the present thematic issue.

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WHY ARE BUSINESSES IN THE EU RELUCTANT TO USE MEDIATION?*

Mourad Yousfi[1]

Commercial life has always been in need of a unique approach that could respond positively to the requirements of rapidity and efficiency which characterize business transactions. The classic legal framework and its procedures were not in many cases adequate for this specific sector when it came to resolving the different types of disputes that may arise, especially transnational ones. Mediation as an Alternative Dispute Resolution (ADR) method was considered by many experts as a promising alternative to traditional justice for the mentioned conflicts, based on its flexibility and other features. However, numbers and recent reports in the EU have shown that disputants are in most cases unwilling to use this mechanism, which thus only represents less than 1% of the total number of civil and commercial dispute resolutions (De Palo et al. 2014). These statistics could stimulate scholars and experts to dive deep into potential explanations that might help understand this "paradoxical" situation of a rarely used tool even when seen by many as a future for justice. Therefore, this study will try to answer the question of whether this issue is rooted in the mediation itself and its nature or whether there are other external factors that go beyond mediation. Empirical and normative methods will be used to test and find the most adequate answers to our question based on previous studies and secondary source data.

Keywords
Mediation, EU, Businesses, Low rate, Factors

1. Introduction

The changeable nature of business transactions, even at a local level, has shown that classic and traditional legal structures are in many times unable to react positively and effectively to the requirements of commercial life. Accordingly, one could imagine the scenario in the era of globalization and cross-border commercial contracts, which obviously will be more complicated and harder to deal with. The potential risk of conflicts and misunderstandings is going to be higher than at a domestic level.

The EU, for instance, could be considered as an example, especially when it comes to the free movement principle that took commercial transactions to the next level by removing most of the tariff and non-tariff barriers and so increasing remarkably the number of contracts. Nevertheless, this growth probably will never be immune from the possibility of future tensions related to different misunderstandings and disputes.

Legal reactions and classic judicial solutions have been highly criticized because of their inadequacy to deal with the unique characteristics that might distinguish commercial life. Statistics, as we will analyze in detail later, proved that traditional lengthy procedures are threatening the key factors of any successful business such as

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time, money, and reputation by the lack of innovation and outdated approaches that do not fit the business context.

Mediation as an alternative dispute settlement tool was seen by many experts as the future of justice in the next decades, or the tool that will "bridge the gap between differences" (Sgubini 2006). However, when assessing numbers, it will be obvious that we are facing a "paradoxical" phenomenon of a rarely used mechanism representing only 1% of the total civil and commercial disputes in the EU (De Palo et al. 2014), even with the positive views presented by many scholars concerning its potential features.

This study will attempt to determine possible factors of this controversial situation by posing the question of whether this low rate is caused by issues rooted in the mediation itself and its nature, or whether it has other external explanations that go beyond mediation.

Empirical and analytical methods, like examination of statistics, surveys, interviews, from different secondary sources which were collected by other scholars and organizations, and previous literature, even from anthropology, will be used to determine the strongest and most reasonable factors of this reluctant position from businesses towards mediation. More than that, a normative approach based on the development of the legal framework related to mediation in recent years will be analyzed to see if it might be linked to this "paradoxical" reality.

Through this research, we will also adopt a comparative method of different experiences and characteristics related to different countries from various cultural and legal systems that will be analyzed to strengthen our quantitative method.

As mentioned in the title, we will try to find concrete explanations for the low percentage of businesses using mediation in the EU, by adopting the hypothesis that this situation finds its causes in other external factors of legal and non-legal nature and not in issues originated from the concept of mediation itself.

2. Methods

Our method, as previously mentioned, will be a multidisciplinary and empirical research approach based on the available secondary data and literature in different fields, even from anthropology. We will try to test the adequacy of our hypothesis with the statistics and available literature by analyzing different elements. Doctrinal normative methods are imposed by the fact of the increasing tendencies in regulating mediation at both international and national levels Simultaneously, a comparative approach of different countries' experiences will be used, especially when examining cultural diversity and the different regulatory instruments adopted, to see if it might strengthen our opinion.

3. The framework of the study

The tendency towards trying to find explanations for the low rate of mediation among businesses in the EU trying to settle their disputes is not a new idea in legal studies (Cairns 2005). This continues in recent studies: even those focusing more on the comparison of different experiences in mediation, especially between the US, the UK, Asia, and the EU, still mention at least in an indirect form the reasons behind these low numbers (McFadden 2015). We suppose that the main reason why this debate has not

ended is the developing legal and non-legal background. Many legal texts, studies, and reports containing statistics and new data are available now for scholars in the field to interpret and analyze (Alexander 2008; Alexander 2017; ADR Center 2010; De Palo et al. 2011; De Palo et al. 2014).

3.1. Theoretical context

Our research will essentially focus on the available data to confirm our opinion which consists of linking this low rate among businesses to other external factors – outside of mediation itself – of legal and non-legal nature like the cultural structures and traditions towards alternative methods of dispute settlement. Hence, we will test and categorize the different explanations in the previous two divisions in addition to examining potential other factors or theories that might support our hypothesis from an anthropological perspective (Hofstede & Usunier 2003).

While tackling this issue and considering that mediation is a mechanism for dispute settlement that is not governed by the same logic of courts and judicial procedures, and is oriented more towards problem-solving logic rather than applying the rules of law, this method is like a window for the law to interact with other disciplines like psychology, anthropology, and economy. However, it seems that many jurists, mainly in the EU, are still advocating that doctrine should focus only on legal texts or court decisions while ignoring other disciplines which are not purely legal (Samuel 2009). Such a position, we believe, might have an impact on the will to accept or to enter into mediation because of its heterogenic nature.

Thus, our contribution is simply a direct question: why is the practice of mediation among businesses in the EU characterized by its low rate? The answer will be based on both quantitative and qualitative methods when testing the different possible explanations. We will build on the previously mentioned studies to create more explanatory and updated research that is focusing specifically on the possible reasons in one categorized study.

3.2. Legal context

Since our study is oriented more towards the EU level, it seems vital to mention the general instrument – which is *Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters and the different implementations by member states* – when trying to test whether the different legal approaches of member states to harmonize their legislations could be linked to their rates of using mediation or not. The increasing institutionalization of mediation – unlike mediation itself – is an emergent phenomenon (Steffek 2012; Nolan-Haley 2012) that poses the question of adequacy with the will to expand the use of this tool among businesses in member states. On a secondary basis, we might consider looking at other examples of regulations outside the Union like the US, Singapore, and China to assess the differences and identify the factors that are rooted in law and might lead to high rates of mediation in the mentioned countries and low rates inside the EU. Also, the recent Singapore Convention on mediation could be relevant in this context, taking into account that it aims to promote mediation worldwide

by setting up a mechanism to enforce the mediated settlement agreements, and that even though the EU participated in the negotiation process of this treaty, its position is still characterized by a reluctance to sign it (Brink 2021), and thus, considering the commercial scope of this international legal text, this might be one of the legal reasons behind the low rate of businesses using mediation.

3.3. Social context

The social framework that could be relevant to our research when trying to find the explanation for this "paradoxical situation" of the low rate of mediation among businesses in the EU, might find its origins in some historical and cultural tendencies and divergences between different groups in the world and the way they settle their disputes. Some studies proved that, in the EU, several circumstances, even those of a non-legal nature, like the lack of awareness, language diversity, and historical orientations of litigious and non-litigious civilizations can be behind this low rate (ADR Center 2010; Peters 2011; Ecorys & ADR Center 2012; Gonzalez 2021). In other words, statistics and studies have shown that many times, EU companies have many misconceptions linked to the nature or the functioning of mediation (ADR Center 2010) and Western culture in general, with the exception of some countries, tends to be more oriented towards litigation than mediation. Hofstede's cultural dimensions might support these allegations (Uncertainty Avoidance Index/ Power Distance Index). To strengthen the multidisciplinary direction of our study while explaining the low rates of mediation in the EU, we might think about the fact that legal studies are becoming more and more isolated and professional market-oriented rather than interacting with and being positioned alongside other sciences, which was described by Douglas Vick: "Lawyers are bad communicators because they tend to be pushy know-it-alls" (Vick 2004 cited by Samuel 2009). Thus, mediation as a voluntary ADR tool and mediators who might belong to other non-legal disciplines like psychology or economy could be seen as a reflection, an outcome, or even a victim of an excluding approach that dominated the legal education and the professional environment that is focusing more on litigation which is the benchmark for justice while considering mediation as a fragile and unofficial alternative (Irvine 2020).

4. Data and information

In recent years, many researchers are getting more and more skeptical when it comes to the origins of knowledge used as a basis for a reasonable evaluation of mediation in business disputes, and they start to test the credibility of the well-known benefits and needs of commercial mediation by launching empirical studies (Strong 2016). Strong's recommendation, in the end, is that policymakers and scholars are in crucial need of verified data to make rational actions that can take mediation in international business to the next stage.

4.1. Comparison and statistics absolve mediation itself from being the reason behind low rates

Therefore, it seems necessary and justified to mention this title as a starting point for this study. Our approach will be based on the secondary data collected in previous works to test whether or not numbers support the adequacy of mediation for business disputes. First, we must clarify that the debate is not connected to what businesses need, however, it is strongly linked to whether or not mediation is suitable for disputes arising from related transactions. Regarding commercial needs, it seems vital to mention speed, saving costs, and confidentiality which are approximately the most common key concerns for a business at a local or international level. Furthermore, our method will examine and compare mediation with classic options for commercial disputes resolution, namely litigation and arbitration, based on statistics from the European Union (EU) as an example. In this regard, in 2010, a survey data report named "The Cost of Non-ADR – Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation", published by ADR Center Global, Europe's largest private mediation provider with the cooperation of the European Company Lawyers Association (ECLA) and the European Association of Craft, Small and Medium-Sized Enterprises (UEAPME), and funded by the EU, contained a large number of data gathered from different sources like practitioners, companies, and researchers in the field (ADR Center 2010).

Regarding time and cost, which are crucial prerequisites for any business, the data mentioned in this report shows a huge difference between the average of each element between member states when comparing mediation to litigation and arbitration. In fact, for a dispute valued at 200.000 Euros, on average, the cost was estimated to be around 25.337 Euros for litigation (13% of the total value of the dispute), 34.385 for arbitration (17,2%) compared to a relatively small amount of 9.488 Euros for mediation (only 4.7%). Other associations like the Irish Commercial Mediation Association (ICMA) confirm the previous estimations, by surveying 3.500 law and accountancy firms and other professionals and thus concluding that disputants could save 70% of costs by using mediation instead of arbitration or litigation (ICMA 2022).

Time concerns were not uncommon, either, as according to the same study, the average time to solve disputes in the EU member states was estimated at 697 days when using litigation and 503 days in arbitration compared to only 87 days when mediating disputes (ADR Center 2010). These numbers were confirmed by other reports oriented directly towards business-to-business conflicts such as the "Study on the use of Alternative Dispute Resolution for Business to Business disputes in the European Union" which was prepared jointly by ECORYS and ADR Center in 2012 for the European Commission. According to this study, for instance, B2B disputes in Poland might take up to 6 years if the parties chose litigation compared to several weeks or even days when mediating (Ecorys & ADR Center 2012).

The mentioned differences related to costs and especially time between mediation and other traditional methods used to solve disputes might be decisive for businesses that need active capital to invest in more activities and payments, requirements which are not fulfilled by most of the European Union courts; at least not in a reasonable time. What is interesting here is that many authors who criticized mediation mentioned the

lack of safeguards that are available in courts or the procedural and substantial structures of the judiciary; however, as a counterargument, we might mention the content of Article 6 of the European Convention on Human Rights (ECHR) which is related to the right to a fair trial and sets as a prerequisite for this right the "reasonable time" of the procedure: obviously, courts in most EU countries are not able to satisfy this condition which is vital and sometimes might even be behind a bankruptcy of some businesses that do not have the managerial and financial capacities to deal with delays and blocked capital while their cases are processed for more than the "reasonable time" (Ecorys & ADR Center 2012).

Experts believe that the situation might worsen in some countries which are facing economic crises, as was the case with Greece, where there was a reduction in the funds allocated to the Ministry of Justice from € 950 mln. in 2009 to € 550 mln. in 2012, as these pressures will increase the inadequacy of the judicial body which is already suffering from lengthy procedures and a lack of resources (Ecorys & ADR Center 2012).

It is obvious from a simple comparison between mediation and litigation in the EU, based on these two elements of time and money, that mediation could be performed with fewer costs and in a remarkably shorter period. The estimated success rate of this tool, when used, confirms the benefits of using it instead of litigation, with a 70% success rate in mandatory mediation and 80% in voluntary mediation (De Palo et al. 2011): as such, this mechanism should be viewed from a new perspective. Therefore, we suppose – particularly in the case of businesses – that the "paradoxical" low rates of using this mechanism may be explained by external factors, factors that do not originate from issues or problems with the concept of mediation itself or its efficiency.

The next chapter will attempt to identify some of the factors that we believe might explain this situation in the EU. We will categorize the reasons stated in previous literature and reports in addition to trying to explore other factors, including those from other fields like anthropology, to strengthen our position.

4.2. Possible external factors of non-legal nature

Contrary to judicial procedures, which most parties are familiar with, the idea that the majority of users and even professionals have about mediation seems to be very limited and erroneous.

4.2.1. Lack of awareness

Having enough correct information about any instrument or procedure is a key element that will shape the way how individuals and companies will act when it comes to using it or not. Mediation is a particularly pertinent example in this sense, as even though this instrument (in its modern form) is not a new concept and it was used since the early 20th century to resolve labor and social cases in the US (Vinther & Reynolds 2021), many businesses still have misconceptions related to its nature and how it functions. This situation was proved by previous studies, as a survey targeting EU companies and lawyers found that almost 67% of the companies surveyed have misconceptions regarding the average duration of a single dispute mediation session, which was 8 hours.

When it comes to lawyers, the problem was less serious as more than half of them responded with a correct answer (ADR Center 2010).

The same study tackled another element which is the success rate of mediation: at first, it estimated this rate to be around 80% which is more or less logical when compared to the same rate in other countries that left the EU recently like the UK, where this rate, according to a survey conducted by the Centre for Effective Dispute Resolution (CEDR) in 2020, increased to reach 93% (CEDR 2020). However, almost half of the corporations within the EU, when surveyed, estimated that mediation success rates are only 50% (ADR Center 2010). This mistaken belief might explain the reluctant position of businesses to start using mediation as they do not have a correct idea about the benefits and the efficiency of this ADR mechanism.

The problem is there even at a domestic level in those countries considered "Pioneers" and leaders of mediation in the EU, such as the case of Austria which had a developed legal framework of mediation even before the directive of 2008: experts there claim that almost 90% of the population have no idea about the existence of mediation or other ADR mechanisms (Ecorys & ADR Center 2012). On the contrary, other countries like Greece have a relatively considerable rate of mediation and amicable mechanisms in general compared to other EU countries, which might be explained by the efforts made by courts and organizations in promoting these ADRs (Ecorys & ADR Center 2012). The previous data can explain, partially at least, this "paradoxical" situation of mediation in the EU, however, other factors might also be significant.

4.2.2. Cultural tendencies: Hofstede's dimensions and the willingness to use mediation

Uncertainty Avoidance Index. The Uncertainty Avoidance Index is one of the cultural dimensions mentioned by the Dutch social psychologist and anthropologist Geert Hofstede in his famous study about the differences between cultures in 1980. This study was done through a large survey oriented to 117,000 employees of IBM, an international company present in different 50 countries, when Hofstede was working there (Hofstede 2011; Lee 2016; Sent & Kroese 2022). The mentioned index shows that cultures might be classified into two types; one with a low uncertainty avoidance index where people generally are risk-taking and tend to try new approaches, for instance, the United States, the United Kingdom, China, and Singapore (Hofstede 2011; Lee 2016; Hofstede Insights 2022).

On the contrary, the type with high uncertainty avoidance index is where people tend to avoid uncertain and ambiguous situations, according to this study: except for the Nordic countries, most of the EU countries are included in this category, like Germany, Greece, Hungary, France, and Italy (Hofstede Insights, 2022; Lee 2016). Countries scoring high on this index usually tend to use many regulations and mechanisms that can control and avoid exposure to risky scenarios (Lee 2016). As explained in Hofstede's study, what is different is considered dangerous and there is an "emotional need for rules even if not obeyed" (Hofstede 2011).

We believe that mediation, even in an indirect way, might be influenced by this dimension because unlike litigation or arbitration, which will produce an enforceable decision or an award, the outcome of mediation is only a contract that needs further

procedures to be enforceable. This situation is significant in our context where EU member states have different styles of homologation (Žukauskaitė 2019), and the EU is still reluctant to sign new legal frameworks that might solve this problem, even partially, like the Singapore Convention on Mediation of 2018 which is seen by many as less uncertain and more clear when it comes to the procedure of enforcement it contains (Eunice 2019).

Therefore, considering that disputant parties may withdraw from the mediation process at any stage, this may create a situation of uncertainty and ambiguity that will probably make EU businesses more or less hesitant to try this tool. This situation and the high uncertainty avoidance score of most EU countries can create a more litigious culture that is oriented to the traditional and classic ways of resolving disputes like litigation (Steffek 2012), as they see this approach as more surrounded by safeguards and regulations that can reduce exposure to risks. Experts from different EU countries like France and Romania confirm our thoughts as they believe that there is a more confrontational culture in their countries, where there is less place for dialogue, and usually, courts and formal procedures are seen as the first option (Ecorys & ADR Center 2012).

Power Distance Index. Under the same study provided by Hofstede, we might mention the Power Distance Index, which could be defined as the extent to which a culture is tolerant of the unequal distribution of power in society (Hofstede 2011). In other words, there is a division between low and high power distance cultures, where high power distance cultures are usually more obedient to the previous hierarchical structures and authority manifestations, while, on the contrary, low power distance cultures are less accepting of this unequal distribution, and thus it is common that they are comfortable with shared authority and participation in decision making (Lee 2016). Antonello Miranda mentioned in one of his articles the question of the negative ideas individuals in some countries might have about the state and the distance and foreign character of authority and how this could lead to a situation of non-confidence in courts (Miranda 2014), that might inspire us to think about the Power Distance dimension in Hofstede's study. The unknown and distant character of power and authority fits perfectly with the cultures scoring high on the dimension of power distance: as we explained, these cultures are more satisfied and comfortable with the hierarchical authority structures, and they are less active in decision-making. We believe that this passive role of individuals might have a connection with the will to start mediation instead of the given solutions (courts) by a distant and unknown authority. High power distance cultures, by their passive role and satisfaction, are more vulnerable to a lack of knowledge, fears, and thus a lack of confidence in courts as a kind of extension to their leaders (authority structures). The alternative or the remedy for this situation could be represented in mediation as a closer process to parties where they will solve their dispute outside courts. China is a perfect example not only because it scores very high in Hofstede's power distance dimension, but also due to the influence of Confucian thoughts on the Chinese culture and legal system (Miranda 2014). The high power distance in China is another extension of a culture that considers harmony in society as the ideal scenario and disputes as something immoral or unethical (Miranda 2014). Litigation, in addition to its distant character, might be considered a failure in respecting the rules guaranteeing

the harmony of relationships in society, as usually it will lead parties to an adversarial win-or-lose process where tensions might be generated. Mediation as an ADR mechanism that is more based on the parties' will and active role could respond positively to the need for harmony that is required by some cultures.

On the contrary, other cultures which score low in power distance index, have a skeptical position toward the unequal distribution of power in a society and thus they are likely to be more active and familiar with the decision-making process. We believe that those cultures' low power distance can play a significant role in increasing their confidence in conventional systems like courts. In other words, they participate in making decisions and rules that govern the litigation process through different mechanisms like elections and the representative democracy in parliaments, therefore the process in courts is no longer distant or foreign according to what they know. Germany, for instance, scores low on Hofstede's power distance dimension and simultaneously, the rate of using litigation is very high compared to using ADR in general and mediation in particular (Ecorys & ADR Center 2012). The high preference for litigation in Germany might be explained by a culture that is less distant from power in a way that the main process offered by the authority (courts) is seen as known and worthy of trust.

This cultural tendency in favor of the more formal options in dispute resolution tools might take us to the other possible explanations entrenched in the legal field and practice.

4.3. Possible external factors from the legal field

4.3.1. The dominance of the voluntary approaches on EU Member States' legislation

When analyzing the different EU Member States' approaches linked to the use of mediation, it seems obvious that the majority adopted a voluntary approach (Ecorys & ADR Center 2012). In a way, the parties have kept their right to choose between courts or mediation to solve their disputes. This tendency of voluntary approach might be justified by Article 6 of ECHR which was the basis for those who are against mandatory mediation as they think that it is a breach of the safeguards related to the right of access to justice included in the mentioned Article (Nolan-Haley 2012), or simply because it may sound contrary to the nature of mediation itself that is centralized on the concept of voluntariness (De Palo et al. 2011). Nevertheless, a few countries like France and Italy opted for a mandatory approach in some disputes in civil and commercial matters.

The debate surrounding the different approaches to mediation and how a mandatory model of mediation might be a violation of access to justice – which is one of the fundamental constitutional rights in all the Member States – should be updated in the light of the lengthy procedures and the problems of litigation as mentioned above. Hence, a more effective approach based on realism is a must, especially in the face of an increasing number of economic crises and the lack of resources needed to make the judicial system's responses to disputes more reasonable.

In 2014, a study requested by the European Parliament's Committee on Legal Affairs titled "Rebooting the Mediation Directive: Assessing the Limited Impact of its

Implementation and Proposing Measures to Increase the Number of Mediations in the EU" surveyed different experts in EU Member States about different issues related mediation and how to promote it inside the EU (De Palo et al. 2014). The best legislative approach to increase mediation was one of the questions, and what is interesting was that almost 242 out of 816 of the responses of experts shows a strong belief that mandatory mediation legislation or at least mandatory attendance of an information session before litigating are the best options that can increase the number of mediations.

In Italy, for instance, mandatory mediation was introduced in 2010, declared unconstitutional in 2012, and then reintroduced in 2013. This mandatory aspect of mediation has taken Italy to reach a rate of mediation that was 6 times higher than the rest of the EU countries (Matteucci 2017). Even if this country does not record a high success rate linked to mediation, possibly because of insufficient training hours (Matteucci 2017), the decrease in the number of mediations from 154.879 proceedings in 2012 to only 41,604 in 2013 when mandatory mediation was declared unconstitutional (Matteucci 2017), may be considered concrete proof of the impact of the legislative role on the rate of mediation. Italy, with its mandatory mediation legislation, is the only country in the EU that reached these numbers of mediation proceedings per year while most of the other countries still have less than 10.000 mediations annually (De Palo et al. 2014).

Therefore, we believe that at least in the European Union's context where the culture is generally dominated by the litigious tendencies and preferences of classic methods like litigation (see previous statistics), there is a serious need for adequate legal instruments that can lead parties to go for mediation or at least try it before litigation. Nadja Alexander, an expert in this field, explained the Regulatory Robustness Rating System (RRRS), where one of the criteria used to measure the favorable context for encouraging mediation in each jurisdiction is the existence of transparent and highly effective regulatory incentives for legal advisers and lawyers to mediate, that might even contain sanctions for non-compliance (Alexander 2017). This legal intervention should not be interpreted as exceeding the achievement of the targeted purposes or going beyond what is necessary to do so: limited and target-oriented regulations are the key tools that might increase the frequency of mediation and at the same time protect its features from being evanesced by a transformation to a new type of arbitration or litigation (Nolan-Haley 2012).

4.3.2. A possible influence of an exclusive doctrinal legal scholarship

In the US, even though legal education is still dominated by doctrinal methodology, there is a new tendency and transition that has started from elite institutions towards a multidisciplinary approach, a direct outcome of the continuous debate between multidisciplinarians and doctrinalists over the nature of legal studies and the adequate methodology (Van Gestel & Micklitz 2014). On the contrary, while European legal scholarship is also dominated by doctrinalism, the debate concerning this topic is not as developed as it is in the US; still, it is in emergence (Van Gestel & Micklitz 2014). This strong presence of doctrinalism in European legal studies, which focus more on the analysis of the rule of law and judicial decisions and how the application of these norms

is done (Douglas 2008), we believe may influence the development of other tools or mechanisms that might be considered less formal or partially social.

Doctrinalists have been accused many times of being inflexible, submissive to the formalism and authority of the rule of law, and disconnected from their external environment and social needs (VanGestel & Micklitz 2014). We believe that doctrinalism and how it focuses primarily on the rule of law and formalism can create an isolated and protectionist approach to legal studies that refuses to interact with other mechanisms that are less formal, less regulated, or require knowledge from other disciplines. Mediation as an ADR mechanism, because of its special nature as a mixture of social, psychological, and legal perspectives, might be seen as a reminder of the necessity of the socio-legal approach in legal studies and thus it can be a victim of the dominance of doctrinalist heritage in the EU.

Many explanations that are used by scholars might limit the interactions of law with other social disciplines and methods; like the lack of knowledge of social methodology (Nkansah & Chimbwanda 2016) or practical concerns like the time needed to apply this interdisciplinary approach, but the result is still the same, which is the exclusion of social dimensions. Hence, this exclusive legal scholarship which is centralized on the rule of law as it exists or the positivist understanding of the law, might neglect the goal or aim of legislation as a social problem-solving tool or what should be (Douglas 2008), and as such, we believe, even in an indirect form, can have an impact on how and why mediation is perceived as a fragile alternative for adjudicative mechanisms.

Some experts assert that doctrinalism is there because of those who have an interest in immunizing law from critics and thus keeping the legal industry as a symbol of power or a field of expertise dominated by doctrinalists (James 2004 cited by Douglas 2008). Mediation, even if it has received attention in recent decades by being surrounded by legal rules on a domestic, regional, and international level, still has a long way to reach the same level of regulatory safeguards as other mechanisms like the judicial system or arbitration. This situation will have an impact on the way how scholars see mediation through the lenses of litigation which is the benchmark for justice and thus, consider it as a "litigation lite" (Sabatino 1998 cited in Irvine 2020), or a deviation from doctrinalism to interdisciplinary approaches in legal scholarship (Douglas 2008) and probably will face resistance or at least underestimation. An underestimation that will be communicated to clients of the legal industry like businesses through the main players, such as lawyers and judges, who have shown – at least in the European context – a loyalty to doctrinalism.

4.3.3. Lawyers' resistance to bringing innovation

Being educated under the dominance of doctrinalist approaches and the belief that mediation is not more than a practice governed by unqualified "lay people" (Irvine 2020), it seems unreasonable or rare to imagine EU lawyers or judges who are not influenced by this methodology and misconceptions while they practice in their professions. As mentioned above, there is a tendency to create "barriers between law and non-law and between lawyers and non-lawyers" (James 2004 cited by Douglas 2008). In other words, lawyers are trying to keep the legal industry under their control without the interference of other players like mediators who might be seen as outsiders

to the purely legal sector. Many excuses are used to justify a lawyer's attitude toward mediation, such as the lack of capacities of non-lawyers to deliver justice, or the less formal and regulated process (Irvine 2020). Many scholars believe this protectionist approach to the legal industry might be erroneous, as even if justice might have some intersections with legality, there is no concrete evidence that it is identical to the latter (Gardner 2018 cited in Irvine 2020).

The influence of professionals on the willingness of businesses to use mediation finds its origins in the preliminary role played by lawyers as the main legal advisers for companies (Ecorys & ADR Center 2012). It seems that especially companies' external lawyers prefer litigation over mediation because of their familiarity with procedures and the amount they can get if they do not have to share with mediators (Ecorys & ADR Center 2012). In the US, for instance, mediation could be considered a threat to lawyers' income, as it reduces the number of hours a usual litigation procedure takes, thus reducing the fees lawyers might be entitled to; however, these economic fears are also there in EU civil law countries, even if lawyers do not use an hourly billing system (Peters 2011).

Furthermore, Professor Don Peters believes that lawyers are not willing to sacrifice the amount of control and dominance they have in adjudicating procedures in many countries to the account of disputant parties and maybe other players like mediators (Peters 2011). Most EU countries are a concrete example of this litigation system, which is centralized on the role of lawyers, especially in cases that require sophisticated legal knowledge. Finland and France may be considered examples when it comes to lawyers' and barristers' opposition to mediation and the conservative mindset they have over the control of procedures (Ecorys & ADR Center 2012).

For all the mentioned points, we think that this attitude from lawyers is capable of destroying innovation in the legal industry by resisting new approaches and mechanisms that might be more adequate for businesses and their specific needs for speed and flexibility.

5. Discussion

Through this work, we tried to find the most reasonable answers to explain the "paradoxical" situation of mediation in the EU from a variety of fields and disciplines. Combining both legal and extralegal approaches while tackling this issue comes from the unique nature of a sociolegal process such as mediation. Even if previous studies focused on the impact of culture on the process of mediation, we noticed that there is still space to analyze the influence of culture on deciding to use or not to use this process, and thus further studies might be launched in this concern. However, it is fair to mention that our position in making this relationship between Hofstede's study and the use of mediation needs more empirical research to test the level of accuracy and validity in a changing and diverse European context. One of the other limits of this paper is the number of literature used from scholars of common-law countries which might be less accurate and adequate in the EU context. Even if it could be controversial, the use of those works can be explained by the developed debate and ADR culture, especially in the US and Australia, and the many common points related to the influence of doctrinalism on legal studies in both the EU and common-law countries.

Also, most of the available data tends to be oriented toward both civil and commercial disputes in a way that reduces its accuracy in a business context. Business-oriented studies might give us more exact results in analyzing this low rate. This paper could incentivize using more multidisciplinary approaches when analyzing mediation due to its heterogenic elements that seem to go beyond the logic of a descriptive normative approach.

6. Conclusion

In conclusion, our question as to why there is a low rate of businesses using mediation in the EU seems to call for deeper answers than simply referring to companies' practices or choice of not using this mechanism. To be honest, the possible explanations for this low rate are not limited to the business sector but they involve mediation in most fields. An underrated mechanism that is facing significant constraints of legal and non-legal nature. Mediation itself, as a process that survived thousands of years in different cultures around the world, we believe is not suffering from internal issues or at least serious ones. Nevertheless, the external environment of mediation seems to be incompatible with the aims of developing this tool; misconceptions, EU cultural tendencies to minimize exposure to risk, the resistance of the legal field and legal practitioners, even the academia might be involved in this paradoxical situation, especially when considering the dominance of doctrinalism in the EU that probably and at least indirectly will create an opposition to less formal mechanisms such as mediation. Mediation, due to its flexible and social nature, might be a victim of these exclusory and protectionist approaches that are based on purely normative visions and structures such as classic adjudicative forms.

We believe that even if elements like cultural orientations seem to be difficult to change and are subject to spontaneous historical developments, other factors, especially those linked to the legal system, might be used to achieve the growth of mediation. However, this should not be interpreted as allowing lawmakers to go beyond what is necessary to achieve the balance between the growth of mediation and the quality of this tool. Therefore, any legal reaction should consider the specific nature of mediation as a compound method of social and legal elements, and thus protect its capacities and abilities to embrace innovation (Alexander 2008).

Last but not least, academia might be a key player as well by educating the new generation of professionals and scholars on mediation and how it could fulfill parties' and especially businesses' need for reasonable and effective justice. Mediation could benefit from the changes and debate that is urging the use of a sociolegal approach in legal studies, a methodology that is less hostile to less formal or heterogenic mechanisms such as mediation.

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THE ROLE OF AN ARBITRATOR IN INVESTIGATING CORRUPTION CASES IN INTERNATIONAL COMMERCIAL ARBITRATION*

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International Commercial Arbitration is a private dispute settlement used in a cross-border setting that is based and founded on an agreement to arbitrate. International Commercial Arbitration is known as a faster method of resolving disputes that gives the parties a great deal of discretion in the way the procedures are conducted. However, on the contrary, corruption undermines not only trade – deeply harming society as a whole – but also the arbitral process since it runs against the fundamental and universal norms known as public policy. Corruption also causes tribunals and arbitrators to face evidentiary issues and challenges when faced with corruption cases. This highlights the main problem related to the role of the arbitrator in investigating corruption cases and to what extent the arbitrator has the authority to investigate corruption and implement anti-corruption efforts even if parties did not trigger corruption allegations. This study will use a normative-empirical method to examine the role of the arbitrator in investigating corruption and how far the arbitrator is permitted to go into investigating corruption in the absence of party allegation. It is found that arbitrators are becoming the servants of truth, examining all aspects of the case including corruption.

Keywords
Arbitrator, Arbitral Tribunal, Corruption, Investigation, International Commercial Arbitration

Introduction

In a time when the use of international commercial arbitration to resolve disputes is on the rise, arbitral tribunals must play a significant part in achieving an international anti-corruption effort. Since tribunals and arbitrators face evidentiary issues and challenges when faced with corruption cases, the role of the arbitrator in investigating corruption cases and how far the arbitrator is permitted to go into investigating corruption in the absence of party allegation must be addressed and highlighted.

Due to the rise of corruption as a subject of international instruments and the concentration of criteria around its avoidance, detection, and remediation in commercial sectors, corruption is regarded as a significant and important problem in international commercial arbitration. This highlights a persistent issue about what defines the arbitrator's function when accusations of corruption are raised, or allegations of

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corruption develop, because it has been acknowledged as a subject of global and transnational public policy.

According to some legal scholars, this alarming question in International Commercial Arbitration had resulted in the appearance of different points of view and theories. The connection between the arbitrators and the parties is at the center of the concepts around the role of the arbitrator. The contractual principle states that arbitrators are considered to be "the servants of the parties" and originate their rights and duties from their contracts. As a result, this approach suggests that instead of looking at criminal law, arbitrators should focus on the parties' commercial responsibilities and rights. The status approach, on the other hand, gives arbitrators judicial authority. According to this theory, the arbitrator's rights and obligations are not resulting from the agreement that the arbitrating parties made. Instead, their function is defined by applicable jurisdictional law. Therefore, arbitrators must ensure that their actions do not conflict with the principles of the national laws (Born 2009, 1598).

Because of their limited power, some courts subscribe to the first theory and show a hesitancy to combat corruption, while other judges who follow the second view take hold of both stated and presumed corruption cases. We might infer that there is no generally accepted understanding of the arbitrator's position in the context of corruption, making it even more crucial to address the arbitrator's role in investigating corruption cases, particularly when there is no party allegation.

This study endeavors to address the above-mentioned issue and debate that leave arbitral tribunals and arbitrators in a difficult situation every time they are faced with corruption cases from a normative-empirical approach. The author will analyze the role of the arbitrator in investigating corruption and how far is the arbitrator permitted to go into investigating corruption in the absence of party allegation. The analysis will be supported by international cases, conventions, surveys, and other sources studying corruption, arbitration, and the arbitrator's role in investigating corruption cases.

1. Theoretical background

The urge to find a proper answer for the role of the arbitrator in investigating corruption cases and to what extent the arbitrator has the authority to investigate corruption and implement anti-corruption efforts even if parties did not trigger corruption allegations is not new in the arbitration field. However, the reason behind not having a generally accepted understanding of the arbitrator's position in the context of corruption has resulted in the appearance of several studies, theories, and scenarios. Several studies have followed the contractual theory, declaring that the arbitrator acquires his rights and obligations from the party's contractual agreement (Fan 2017, 5). In other words, the arbitrator is appointed by the parties and therefore the arbitrator performs his authority according to the party's agreement. This theory believes that the arbitrator's exclusive task is to serve the parties and address the conflicts raised by the parties without referring to a corruption investigation in the absence of the parties' allegations. This theory considers the arbitrator as "the servant of the parties". While on the other hand, other studies did not accept the contractual theory and have applied a completely different approach known as the status theory (Fan 2017, 4). Members that support this theory believe that the arbitrators' rights and duties are not derived from the party's

agreement but rather from the applicable jurisdictional/national law. In other words, they believe that the role of an arbitrator is not limited to party contracts. The arbitrator's role is broad, and the arbitrator's responsibility is to serve not only the parties but also the international rule of law. According to this theory, the arbitrator is considered the "servant of truth" and not a "servant to parties" as mentioned in the contractual theory (Uluc 2016, 245).

The author's main goal is to tackle and address the main question related to the role of the arbitrator in investigating corruption cases and to what extent the arbitrator has the authority to investigate corruption and implement anti-corruption efforts even if the parties did not trigger corruption allegations. The author will focus on and tackle the available data, analysis, and theories from a normative-empirical approach to provide a clear and updated explanation that the new movement in arbitration is to confront corruption issues even if they are not raised by parties. In other words, how arbitrators are becoming the servants of truth, examining all aspects of the case including corruption.

2. The legal context

The arbitrators are given reciprocal authority and responsibility under the parties' agreement. The arbitrating parties, the legislation controlling the arbitration contract, the norms provided by arbitral institutions, and the legislation where implementation and acknowledgment are sought all contribute to the creation of these powers and obligations.

Regarding the obligations owed to the parties, the arbitrators must settle the dispute, abide by the arbitration agreement, act fairly and accurately, adopt suitable procedures to prevent delays, render a strictly enforceable award, and make good faith attempts to look into any possible criminal law violations in the relevant jurisdictions. In other words, arbitrators must follow the protocol established by the parties for the arbitration process. However, to avoid unjust or improper proceedings or to ensure efficient case management, they could instead choose not to enforce the parties' choice.

Two of the fundamental obligations of arbitrators are to operate fairly and impartially and to stay at the peak of the pyramid. These obligations are fundamental components of the adjudicatory role that arbitrators play and are inherent to the arbitration process. National laws, international treaties, and institutional guidelines all specifically impose these obligations on arbitrators. For example, Article 18 of the UNCITRAL Model Law Act states that "the parties shall be treated with equality and each party shall be given a full opportunity of presenting his case." (UNCITRAL Model Law 2006, 14).

Some of the typical vested powers used by arbitrators include the following: Determining the language of the arbitration, the relevant legislation and venue, the number of expert witnesses, the number of fact witnesses who must be present in person, and the number of documents that must be submitted. However, one power and authority to which different points of view and approaches are applied to is the power and the role of the arbitrator to investigate. The ability of an arbitrator to independently research the facts is governed differently by national arbitration laws. There are, however, laws governing arbitration that provide arbitrators this authority by enabling

them to collect proof that hasn't been offered by the parties. In other words, there are regulations that allow arbitrators to investigate and collect proof for cases and situations that are not raised by parties such as corruption.

An example of these regulations and laws is Article 184 of the Swiss Federal Statute on Private International Law, which states that "the arbitral tribunal shall itself conduct the taking of evidence." (Swiss Federal Statute on Private International Law 1987, 62).

Arbitrators are also given investigative authority by norms. Arbitral tribunals have the authority to make essential inquiries, classify pertinent issues, evaluate pertinent facts, and direct any party to provide more evidence, as stated in Article 22 of the LCIA Arbitration Rules (LCIA Arbitration Rules 2020, Article 22). In addition to that, Articles 3 (10) & 4 (10) of the IBA Rules on Evidence enable tribunals to require documents or witnesses, including those whose testimony has not yet been given as evidence (International Bar Association 2020, 12-15).

Based on what is stated above, we will analyze and study the role of the arbitrator in investigating corruption and how far the arbitrator is permitted to go into investigating corruption in the absence of an allegation by a party according to several arbitral tribunal rules, laws, and case studies.

3. The social context

Corruption is a serious problem for modern societies since it affects and harms the economy, society, and even justice systems. Corruption is considered to be a dangerous disease that has deep roots in social structures. Numerous countries around the world suffer from corruption and the Member States of the EU are not unaffected by this reality (European Commission 2014, I).

According to the results of the face-to-face survey coordinated by the European Commission, Directorate-General for Communication in March-April 2022 titled Special Eurobarometer 523, the majority of Europeans find corruption to be unacceptable. Although this is the belief of more than six in ten Europeans, the percentage has decreased since December 2019. The belief that it is appropriate to give a present or do a favor in exchange for anything from a public administration or a public service has also grown in popularity during the same time, although less than three in ten people currently hold this opinion (Special Eurobarometer 523 2022, 30).

According to several legal scholars, this ongoing debate about corruption finds its social origin in how attitudes towards corruption vary considerably and specifically across countries including those within the European Union.

Based on the results of a recent survey published by the European Commission on 13 July 2022, federal authorities should encourage people to put their trust in authorities and inform them about corruption cases that they have knowledge of. As shown by the study, about 6% of Europeans say they experienced or even witnessed a case of corruption in the last 12 months, but only 15% of those witnessing corruption reported the issue. In general, almost half of the people believe that corruption cases are difficult to prove and for authorities to investigate (European Commission 2022, 3rd paragraph).

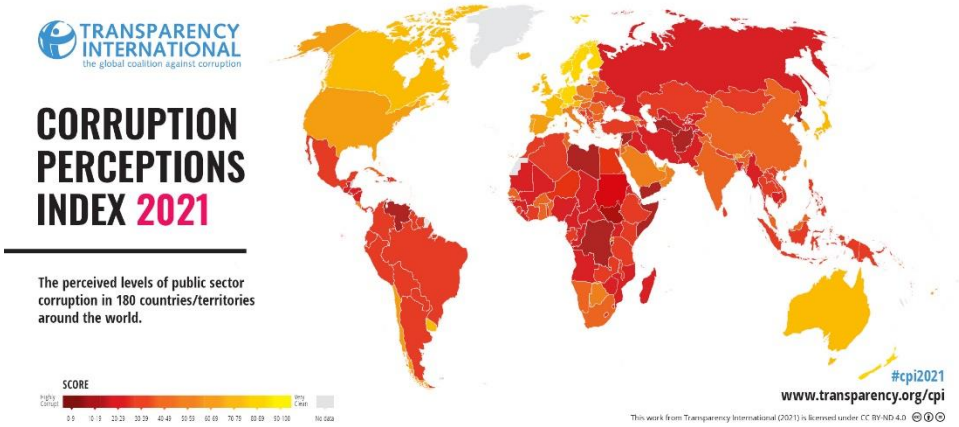
The main question related to the role of the arbitrator in investigating corruption cases and to what extent the arbitrator has the authority to investigate corruption and

implement anti-corruption efforts even if parties did not trigger corruption allegations will be further developed and examined in the coming sections.

4. Data and information

According to a recent statistical study made by Transparency International (Corruption Perception Index 2021), the frequency of corruption is increasing, affecting the operation of fundamental social justice and numerous institutions including arbitration institutions and the arbitral process, regardless of the country's level of development. According to this study and on a scale from 0 (meaning extremely corrupt) to 100 (meaning no perception of corruption) none of the countries have achieved a suitable rating and more than 68% percent of the countries recorded less than 50 out of 100. Moreover, this study also showed that 66% percent of Eastern Europe and the European Union scored less than 50 out of 100 (Transparency International 2022, 6).

Figure 1: Corruption Perception Index 2021



Source: Transparency International 2022

In a time when corruption cases are increasing, the impact of these cases on the role of the arbitrator in investigating corruption and to what extent the arbitrator has the authority to investigate corruption even if parties did not trigger corruption allegations must be addressed and highlighted. Especially since studies have shown that most citizens believe that corruption cases are difficult to prove and for authorities to investigate as shown in the below study (European Commission 2022).

Figure 2: Corruption is hard to prove and to investigate

Source: Transparency International 2022

It is found that arbitrators, when encountering corruption cases, face several challenges, especially when these cases are not raised by parties.[2] These challenges put arbitrators in a position where they can either apply an "eye wide shut" or "eye wide open" method. It is noted by several legal scholars that the methods applied by arbitrators will determine their rights and obligations when dealing with corruption cases whether these cases are raised by parties' allegations or are suspected cases.

In arbitration history, several tribunals applied different approaches when faced with corruption cases. In the well-known World Duty-Free v. Kenya case (Investor-State LawGuide 2006), arbitrators and tribunals have tackled corruption using the "eye wide open" method. In other words, the tribunal has tackled corruption and did not prefer to apply any passive method that disregards corruption. On the other hand, several other tribunals, when faced with corruption cases, preferred to apply the second method and to disregard any case of corruption, as can be deduced from the Azurix Corp. v. The Argentine Republic case (Uluc 2016, 245). Moreover, also in the SPP v. Egypt case, the tribunal did not accept the Respondent's claim that the information submitted by the Claimant responding to the procedural order had any evidence of corruption (Uluc 2016, 245).

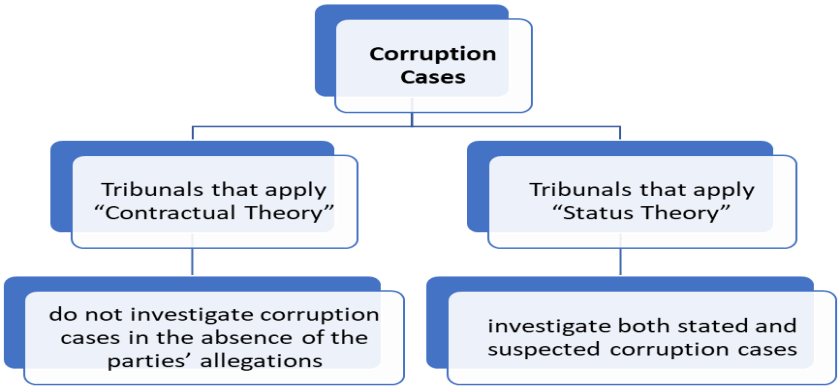
Studies that analyzed legal cases and tribunal decisions have come to the conclusion that most tribunals would ignore corruption cases if parties decided not to raise any grounds relating to corruption (de Navacelle & Musso 2022 paragraph 15). The

[2]Arbitrators may face several challenges when dealing with corruption cases. These challenges include procedural problems and obstacles that hinder the successful resolution of corruption in arbitral processes. Additionally, obstacles and challenges arise from the application of due diligence and the norm of good faith. Furthermore, arbitral tribunals encounter issues stemming from the extraterritoriality of domestic legislation and the level of proof required to carry out corruption proceedings.

explanation behind their position is based on the method they apply: either the contractual method or the status method.

According to tribunals that apply the first method, they believe that arbitrators are appointed by the parties' agreement, and they perform the rights and duties detailed in the parties' agreement. Therefore, according to this theory, arbitrators would disregard investigating corruption since their main task is to accomplish their duties under the parties' agreement. On the other hand, the tribunals that apply the second method believe that arbitrators have broad duties, and they should serve not only the parties but also the truth. Therefore, and based on the above information and data, we can establish the following diagram (Figure 3) that helps us understand how several tribunals deal and have dealt with corruption cases.

Figure 3: Corruption cases diagram



Source: author's compilation

Accordingly, the author will study and examine these theories along with several interpretations by legal scholars that mostly tackle this debate.

5. Systematic explanation

During the arbitral process, when a party claims corruption to ask for the nullity of the agreement, the arbitrator shall investigate this allegation in order to conclude whether corruption is present without being able to disregard this claim.

However, what if the arbitrator encounters evidence that helps him deduce that the parties are engaged in a corruption case or that the parties have used the arbitral process for criminal reasons without the presence of any allegation raised by the parties? From here the main issue raised for debate is the following: what is the role of the arbitrator in investigating corruption cases and how far is the arbitrator permitted to go into investigating corruption in the absence of allegations by a party?

It should be stated that arbitrators face several challenges when they run across corruption cases that are not raised by parties' allegations; especially when arbitrators

perform their authority according to the parties' agreement. However, the current movement that tends towards tackling and fighting corruption plays a significant role in encouraging arbitrators not to disregard evidence that highlights the presence of corruption. According to several legal scholars, the number of arbitral tribunals that believe they have the duty to investigate suspected corruption cases to protect global interest is increasing. There are several reasonings for this increase (de Navacelle & Musso 2022, I B).

Firstly, according to several arbitral institutions' laws like Article 42 of the ICC Arbitration Rules, arbitrators have the task to declare an enforceable award (ICC Arbitration Rules 2017). It should be stated that when rending an arbitral award that gives effect to a corruption case in this situation, this award is against all laws and public policies worldwide that fight the deep diseases of corruption. For example, in France, arbitral tribunals are urged to deal with corruption cases on their proposal. In other words, they should investigate corruption cases even if they are not raised by parties' allegations in order to prevent rendering an arbitral award that includes corruption.

Secondly, legal experts consider that arbitrators are not private-decision makers, as the legal influence of their decisions has considerable effects on the public (de Navacelle & Musso 2022, paragraph 19). Therefore, if arbitrators disregard corruption cases whether suspected or raised by parties' cases they are considered to be refusing their engagement in the global movement against corruption which will affect the public interest.

Moreover, it should be highlighted that arbitrators are well-equipped with powers and authorities to investigate corruption cases, even those that are not raised by parties' allegations according to numerous laws on arbitral institutions that give arbitrators general authority to investigate the facts of the cases they run into. For example, Article 25 (1) of the ICC Arbitration Rules states clearly that the arbitrator should establish the facts of the case by all applicable means (ICC Arbitration Rules 2017). Article 22.1 (iii) of the LCIA's Arbitration Rules also provides the arbitrator with the power to investigate the facts of the case to determine to what degree the arbitrator should take the initiative to classify the relevant issues, facts, and applicable law (LCIA Arbitration Rules 2020).

In addition to what is stated above, the more detailed powers given to arbitrators that help with investigating corruption cases could be the following. First, the arbitrator should request the testimony of a person that was not involved in the case as a witness to be provided with more details about the facts of the case. Second, the arbitrator can also request additional documents that are relevant to the case from the parties (de Navacelle & Musso 2022, II B). In case the parties refuse to provide the requested information and documents, the arbitrator can consider this refusal to constitute a lack of production of documents.

Therefore, we can deduce that arbitrators are given the power to investigate corruption cases; even those that are not raised by parties' allegations. Arbitrators shall participate in the global and public fight again corruption. Even if parties try to claim that the tribunal is not competent to deal with corruption cases, tribunals and arbitrators should preserve their jurisdiction.

6. Discussion

According to the statistical studies and data listed in Chapter 2, we can deduce that the prevalence of corruption is increasing, affecting the operation of fundamental social justice and numerous institutions including arbitration institutions and the arbitral process regardless of the country's level of development. The implications of these cases on the function of the arbitrator in investigating corruption and the extent to which the arbitrator has the ability to investigate corruption even if parties did not initiate the allegations must be addressed and highlighted in a time when corruption cases are on the rise. In particular, the research has shown that the majority of people think it's hard for authorities to prove incidences of corruption and look into them.

As mentioned earlier, arbitrators are appointed by parties to solve contractual disputes. In other words, different from a judge in national courts, arbitrators are appointed by parties having a contractual dispute. As a result, the role of an arbitrator in investigating corruption cases will be viewed and questioned differently than a judge in national courts. The growth of corruption in arbitration urges the arbitrator not only to perform their usual role outlined in the parties' agreement but to perform a role dedicated to serving international public policy. This performance converts the arbitrator to become a servant of truth examining all aspects of the dispute including corruption.

However, the tribunals that follow the contractual theory declare their unwillingness to investigate corruption cases that are not raised by the allegation of a party on the grounds of their limited authority and powers provided in the parties' agreements. In other words, they believe that the arbitrator's role is to address the particular needs and interests of the parties in the arbitral process and not to address any international policy issues. Therefore, advocates and legal experts that support this theory believe that it's not the arbitrator's duty to investigate corruption when it's not alleged by parties. For example, Alexis Mourre states that: "Arbitrators should act with great caution when introducing in the arbitral debate elements which were not included in the parties' submissions. Although there is no doubt that arbitrators should be sensitive to states' legitimate interests, they should not turn themselves into investigators, policemen, or prosecutors. As opposed to the state judges, the primary role of an arbitrator is to enforce the contract, and not to defend the public policy. It is submitted, as a consequence, that an arbitrator has no duty to investigate possible breaches of the criminal law of which there is no evidence at all, and which were not raised by the parties in their submissions." (Uluc 2016, 278). Moreover, according to the Westacre Investments case, the arbitral tribunal took a passive role in investigating corruption and dismissed the defendant's argument that the agreement was made through bribes on the grounds that the arbitrators have an adjudicator role and not a prosecutor role. In other words, if the defendant does not include evidence of corruption in his facts, then an arbitrator doesn't need to investigate (Martin 2003, 5).

However, this point of view can no longer be the case in corruption cases. The new movement and battle against corruption and the ratification of anti-corruption treaties encourage arbitrators to investigate corruption even if the issue is not raised by parties' allegations or in their representation of facts because if the investigation of corruption is only limited to parties' allegations, then parties will use the arbitral process for illegal purposes.

This causes the arbitrator to be placed in a difficult situation when dealing with a corruption case, especially if the arbitrator detects the evidence indicating that corruption is present in the parties' behavior and agreement. However, other tribunals have adopted the status theory allowing them to investigate corruption allegations and suspected corruption cases. Especially, according to this theory, arbitrators are considered the servants of truth and not only a servant to parties. These tribunals took into consideration the evidence and indicators that determine the presence of corruption in the cases raised before them and declared the parties' agreement as null and void, as seen in the ICC Case No. 8891 where the tribunal took an active approach taking into consideration all evidence and signs of corruption into consideration (Martin 2003, 5). Various legal scholars have supported the status theory applied by several tribunals. For example, several legal experts such as Catherine A. Rogers have stated that: "The modern international arbitrator is not simply an instrumentality of the parties' collective will be expressed through the arbitration agreement, but instead an integral part of a larger system that depends, in part, on them performing their role as responsible custodians of that system." (Rogers 2005, 963).

From this, given a clear view that corruption is considered to be illegal by international law, arbitration should highlight the indicators, evidence, and signs that invalidate the parties' agreement. Arbitrators shall participate in the global and public fight against corruption and take an active role in investigating corruption cases whether they are raised by parties' allegations or are suspected cases.

We can deduce that arbitrators are moving towards investigating corruption even if the issue is not raised by parties' allegations in order to be fair and protect international public policy, especially since they are given the power to investigate corruption cases even those that are not raised by parties' allegations. In other words, arbitrators are becoming the servants of truth investigating every aspect of the dispute including corruption.

Conclusion

When claims or suspected evidence of corruption appear, arbitral tribunals, arbitrators, and the institutions charged with managing them encounter challenging situations. The situations and cases examined in this study do not all follow the same technique, approach, or outcomes. We have seen that some legal scholars and tribunals believe that investigating corruption by arbitrators must only be triggered by parties' allegations. However, on the contrary, other tribunals believe that arbitrators should not disregard any suspicious evidence of corruption in order to be impartial and defend global public policy, particularly considering that they have been granted the authority to look into cases of corruption. These variations illustrate the tremendous difficulties that several tribunals and arbitrators encounter when trying to solve corruption issues.

However, the new standard and goal that has been established by the different international treaties against corruption and the national laws that implement them provides arbitrators with the chance to appropriately apply it to their rulings. As seen by the arbitral decisions previously mentioned in this article, the arbitrators' strategy greatly influences the outcomes. We are able to deduce that arbitrators are becoming the servants of truth in investigating corruption cases even if they are not raised by parties'

allegations or even if parties try to claim that the tribunal is not competent to deal with corruption cases in order to have a fair decision and protect international public policy. In other words, in order to protect the public interest that the arbitrator's decision/award significantly affects, the arbitrators' new approach is to investigate corruption cases taking into consideration that it is more likely that signs of corruption will be found, the more proactive the arbitrators and tribunals are.

Overall, the success of the fight against corruption will depend on how arbitrators tackle this issue. Arbitrators that are tackling and investigating corruption cases are demonstrating their adherence to international law and public policy rules while also demonstrating the power of international commercial arbitration in enforcing the global legal framework of fighting corruption and their ability to balance their commitment to upholding international law with their allegiance to the parties. This balancing of devotion and dedication, coupled with the proactive involvement of arbitrators in investigating corruption, will significantly contribute to international commercial arbitration's survival as an effective dispute resolution system.

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SPACE ECONOMY: A PRIVILEGE NOT ACCESSIBLE TO EVERYONE?*

Boudour Mefteh[1]

The daily discovery of the truth in space has many implications for mankind. Continued advances in spatial exploration led to rapid advances in science, technology and the field of communication that have transformed human relationships.

The space economy has been studied using a variety of approaches, ranging from science and technology to the effects of government spending on economic growth and the long-term effects on productivity and growth. When we discuss this, the main idea is the difference in effort and benefit for each nation. Since this sector is known as a privilege for "the well-to-do," it shows an injustice toward other categories of people, or perhaps this idea is just a dogma, and the space sector is for humanity to facilitate their lives in a different, modern way. This is made possible by channeling appropriate opportunities provided by space-capable countries to institutions in developing countries that would otherwise have little to no chance of conducting space-related scientific research.

Keywords
public international law, space law, space economy, international relations

> "*We regard the sending of the rocket into outer space, and the delivering of our pennant to the moon as our achievement, and by this word "our," we mean the countries of the entire world, i.e., we mean that this is also your achievement and the accomplishment of all the people living on Earth."* (Khrushchev 1959)

Introduction

The super-rich spacefarer's argument exposes a mentality that may have once served humanity well. Some would argue that it is a fundamental feature of capitalism. Innovation on top of innovation. A strong desire to expand and explore. A primal desire to break free from our origins and reach for the next horizon. Today's interest in the space sector and immersion in space travel is a natural extension of our obsession with economic growth. It is the crowning achievement of capitalism. Its frontier creed is "further and faster" reaching outer space.

Classically, only a few countries have played a significant role in space activity. The United States remains far ahead in terms of funding, with a civil space budget

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approximately twice that of the next nearest nation and accounting for more than 40% of the worldwide population. However, several countries are increasing their space activity, and approximately 70 have established national space agencies. Some, such as those in the Philippines (2019) (Silver 2019), Costa Rica (2021), and Rwanda (2021) (Zúñiga 2021; Iyanda 2021), are relatively new (Patel 2019). With the addition of the new Latin American and Caribbean Space Agency (ALCE) (Messier, 2021) to the European Space Agency (ESA) and the Asia-Pacific Space Cooperation Organization (APSCO), every region of the world is now involved. In the future, further countries are likely to establish space agencies. As result, international collaboration will become more important as more nations participate in space activities, and some efforts have already begun.

This fact, if it means something, means the effort by other nations to get a place in this marathon with the huge space powers. But also, the intentions that space services can really enhance the economy on Earth, in a century that has seen capitalism control the market and continually push society towards materialistic goals. In this case some nations should keep it in mind that before they spend trillions of dollars wasting their high-tech equipment throughout the solar system, they should pay more attention to what's going on right here on Earth. If we're talking about money investing in space, we can't forget Tesla founder and serial entrepreneur Elon Musk, who is one of these new actors investing in space, alongside Amazon founder Jeff Bezos and Richard Branson: we can call them "those who attack space". While this is understandably thrilling, it also leaves many people asking why they are choosing to spend so much of their wealth on this goal. With other major issues to deal with you may be wondering what has inspired this recent trend among the ultra-rich.

While people lost their jobs due to COVID-19, some countries dropped their economic system, and some families didn't have the money to get medical treatment for this virus, Bezos and Musk have spent the majority of their lockdown competing for the top two spots on Forbes' rich list. Which means that, maybe, this sector is already a privilege not for all humankind and its benefit is already divided between the rich to become richer.

Some people don't even believe in space activities: for them, the statement that humanity made it to the moon is a huge lie to control their little limited minds and ways of thinking. All that they care about is the chance to live a healthy and wealthy life here on our 'Mother Earth'. But we don't have to be narrow-minded because technology has proven in many situations its importance in our lives and since space has far-reaching applications; all countries should be supported in accessing the benefits of space-based technology that facilitates sustainable development. Actually, more countries invest financial and political capital in the space environment, and the world becomes increasingly dependent on space.

This article aims to show that the benefits of space activities are different in every nation based on two hypotheses: either to make the life on Earth better by providing services produced in space for use on Earth to benefit humanity, or as a way to escape Earthly problems, to create a better place outside the Earth's orbit for those who can afford it.

In an attempt to do so, the paper asks the following research questions: Are different nations around the world all involved in the space sector and its benefits equally? Also,

in particular, the idea that space is a privilege for some people and not others – billionaires for example continue to invest in space –, how can this impact the future economy, if investment on Earth is starting to get neglected in favor of, for example, creating a permanent human colony on Mars till the point that we talk about "billionaires' space race", while this can impact creating better lives here on Earth.

To understand this issue, the paper makes a legal and analytical contribution to the debate on space economic activities and analyses different countries' budgets for space activities using a comparative method. The largest yet most neglected challenge is the struggle of regulating international relations between companies and countries that are controlling this domain.

1. Theoretical contexts and scientific approaches

The space economy can be defined as "the full range of activities and the use of resources that create and provide value and benefits to human beings in the course of exploring, understanding, managing and utilising space" (OECD 2019).

In the light of this idea, we can mention *The Political Economy of the Space Age* by Andrea Sommariva following the evolutionary theory of economic change, this book brings all of these aspects together. It investigates the processes that shape the economy through interactions between various economic agents, governments, and the extra-systemic environment in which governments operate. Its historical component aids in better understanding the technical, political, and economic constraints that shaped the growth of the space economy. Global issues, including population changes, critical or limited natural resources, and environmental damage, as well as technological innovations, will drive the evolution of the space economy beyond Earth's orbit in the medium term. This book answers why humans should go into space, as well as the relative roles of governments and markets in the evolution of the space economy. To answer those questions, it takes an interdisciplinary approach. What is possible is defined by science and technology. Economic, institutional, and political factors all influence the realization of the possible (Sommariva 2018).

Giorgio Petroni and Barbara Bigliardi's *The Space Economy: From Science to Market* is also worth mentioning. The book offers a new and broader viewpoint of the space economy, putting the focus on the (measurable) returns on investments made in the space industry since the Space Race.

To approach this issue legally, we must first acknowledge that space law, like general international law, is comprised of a variety of international agreements, treaties, conventions, and United Nations General Assembly resolutions, along with rules and regulations of international organizations. The Outer Space Treaty, 1967, is the most well-known treaty; the OST was the initial agreement that established the fundamental framework for international order in outer space, introducing principles that have since been expanded upon in subsequent treaties. Furthermore, if we are going to talk about space economy and its impacts in different countries, we have to state that there is a relationship between space activities and international trade law: since the space sector is taken also for commercial aims, trade law will be a part of the general legal framework when we talk about space security and the different challenges that it can face.

The United Nations Office for Outer Space Affairs launched the Human Space Technology Initiative (HSTI) in 2010 to assist countries in gaining access to the benefits of space technologies and applications, with the goal of involving more nations in human spaceflight and other space exploration-related activities. HSTI serves as a forum for information exchange, fostering collaboration between spacefaring and non-spacefaring countries, and encouraging emerging and developing countries to participate in space research and benefit from space applications. The Initiative is part of the effort to provide access to space education, data, technology, and research, as well as to make space accessible to all. In collaboration with United Nations-wide activities such as the Secretary-General's Strategy on New Technologies, UNOOSA identifies the best use of technological advances to deliver on the Organization's overall mandates. Without forgetting the effort of The Space Forum of the Organisation for Economic Co-operation and Development (the OECD Space Forum) in the Directorate for Science, Technology, and Innovation, it provides a set of indicators and options for boosting economic measuring system in the space sector.

2. Data and information

Talking about the space sector in combination with law can be a new frontier for jurists since it is traditionally a field connected more to the scientific domains. Actually, space is also connected to the world of economy as a new way to make more investments and to receive more benefits.

2.1 What is space economy?

The space economy can be defined as “the full range of activities and the use of resources that create and provide value and benefits to human beings in the course of exploring, understanding, managing and utilizing space” (OECD 2012). It encompasses the increasingly pervasive impacts of space-derived products, services, and knowledge on economies and societies, in addition to the space manufacturing sector.

The space economy is expanding and progressing in tandem with the development and profound transition of the space sector, as well as the continued integration of space into society and the economy. Today's deployed space infrastructure allows for the development of new services, which in turn facilitates new applications in sectors such as meteorology, energy, telecommunications, insurance, transportation, maritime, aviation, and urban development, resulting in more economic and societal benefits. Not only is the space sector a growth sector in and of itself, but it is also a critical enabler of growth in other domains (ESA 2019).

2.2 Is space economy not equally divided?

Historically, rich people used to build hospitals and fund universities and libraries as a prestigious way of showing their wealth. Nowadays, billionaires such as Bezos, Musk, and Richard Branson appear to be motivated by a noble goal: securing humanity's future by going into space. Many have rejected this as the arrogance of billionaires that pay little attention to real, everyday issues like environmental collapse. Worse, some say it

is similar to cruel, historic land grabs. However, the concepts of "going to space" and "saving the human race" have long fascinated people on Earth (Moynihan 2021). These technophiles are finally admitting that the world is too small for us: the Earth cannot support infinite growth. That is why we must venture into space. If we want to get specific, the cost of sending one chair to space is approximately $24 million. For comparison, $6 billion, according to UN World Food Program Executive Director David Beasley, is how much money it would take to save the 41 million people who are expected to die of hunger this year around the world. Beasley sent a tweet recently urging Musk, Branson, and Bezos to team up to fight hunger, saying, “We can solve this quickly!”

Psychotherapists, in an interview for Salon magazine (Karlis 2021), declare that those billionaires appear to be obsessed with going to space, to the point where they are willing to spend billions of cash from their own finances to accomplish it. According to Michael Kraus, a social psychologist at Yale University who specializes in the study of inequality, while “variation exists in all strata in terms of personality,” including the wealthy, the social context of being very wealthy can cause a person to relate to the world in a more egoistic way. As a result, they aren't preoccupied with issues that affect the Earth right now.

At this point we can tell that since this new generation of economics lucrative (space economy) is highly lucrative, in the 14th meeting of the United Nations general assembly in its seventy-fourth session, some speakers affirmed that outer space activities must benefit all states, no matter their development levels highlighting the injustice and the ignorance toward some countries in this domain. This concept is based on the Outer Space Treaty, which specifies in Article I (1) that the "use of outer space... shall be carried out for the benefit and in the interests of all countries".

Based on this principle, the delegates said that benefits coming from space should no longer be restricted to those with space programmes, which are mainly the powerful countries having a monopoly on and an easy access to space. With many developing countries moving toward acquiring outer space technological capabilities, anachronistic maneuvers to check international cooperation and contain their development should no longer be tolerated, according to the representative of the Democratic People’s Republic of Korea. He went on to say that the failure of his country and others to attend meetings of the Committee on the Peaceful Uses of Outer Space as observers arose as a result of objections raised by other nations trying to pursue politicized selectivity as well as double standards. With several developing countries shifting toward obtaining outer space technological capabilities, anachronistic maneuvers to verify international collaboration and contain their development should no longer be tolerated, according to the representative of the Democratic People’s Republic of Korea. He added that the failure of his country and others to participate as observers in meetings of the Committee on the Peaceful Uses of Outer Space was due to objections raised by certain States pursuing politically motivated selectivity and double standards.

In the light of similar ideas, the representative of South Africa, Xolisa Mfundiso Mabhongo, mentioned that the benefits of space exploration should be available to all countries, regardless of their level of scientific, technological, or economic development, and should not be limited to countries with a space program. "In Africa, we see the use of outer space as a key driver in addressing the triple challenges that our

people face – poverty, inequality, and unemployment," he said. South Africa, as a result, welcomes the African Union's decision to establish an African space agency headquartered in Egypt, he said, adding that his delegation is looking forward to working with partners to ensure that it fulfills its full potential to advance African space policy and strategy as a vital driver of the African Union's Agenda 2063. Highlighting that Africa has one of the highest demands for space products and services as the country's economy becomes more reliant on space, he listed them as communications technology, e-banking, navigation, and the use of space-based technologies to manage disasters and climate change, as well as to advance agriculture, education, and health-related problems (OECD 2019).

We can however mention the "Argentine Doctrine," which states that benefits derived from picking space resources must be offered to all humanity without discrimination, and that steps should be taken to share these benefits in a way that promotes better standards of living and economic growth conditions in accordance with Article 55(a) of the United Nations Charter (Williams 1970, 157–158).

Thus, developing countries, in particular, prefer a broad obligation to share the substantial benefits of space exploration in order to promote economic growth, whereas industrialized nations prefer minimal sharing obligations in order to retain control over their space programs and keep them economically viable (OECD 2019).

2.3 An equal space benefits division following “The Common Heritage concept”

Talking about the ability of making an equal division of space resources, even for those who do not have the ability to start space policy, or a space-based economy is possible based on what international law calls the “common heritage of humanity”, but what is made more specific here in connection with space law.

The concept of common heritage emerged during discussions on the law of the sea at the United Nations. In 1967, Arvid Pardo, the Maltese ambassador to the United Nations, suggested to the General Assembly in a memorandum that the seafloor and ocean floor be declared a "common heritage of mankind," and a treaty drafted to incorporate the concept. The five essential elements of the common heritage principle were as follows: (1) the area under consideration cannot be appropriated; (2) all countries must share in its management; (3) the benefits derived from resource exploitation must be actively shared; (4) the area must be fully committed to exclusively peaceful purposes; and (5) the area must be preserved for future generations (OECD 2019).

Some commentators have attempted to ascribe a broad meaning to the common heritage of mankind concept in order to demonstrate that developing countries should have substantive property rights over the natural resources of the Moon by importing interpretations of the concept from the law of the sea (OECD 2019).

2.4 The place of space economy within the new international economic order (NIEO)

One of the guiding principles of the New International Economic Order is the concept of humanity's common heritage. [2] The NIEO presents developing country needs and development strategies. The NIEO concept was established in two United Nations General Assembly resolutions in 1974. The first, titled "Declaration on the Establishment of a New International Economic Order." (General Assembly resolution 1974, Resolution 3201.) emphasized the needs and aspirations of developing countries. It stated:

"[a] determination to work urgently for the establishment of a new international economic order based on equity... interdependence... and cooperation among all States... that will correct inequalities... allow the developed and developing countries to close the growing gap and ensure steadily accelerating economic and social development.... The benefits of technological progress are not distributed equitably across the international community. The developing countries, which account for 70% of the world's population, account for only 30% of global income.... In a system that was established when most developing countries did not even exist as independent States, the gap between developed and developing countries continues to widen...."

Since 1970, the world economy has gone through a series of severe crises that have had far-reaching consequences, particularly for developing countries, which are generally more vulnerable to external economic urges. Here, what we can affirm is that the prosperity of developed countries is inextricably linked to the growth and development of developing countries. (General Assembly resolution 1974, Resolution 3201.)

Proposals to distribute space resources to developing countries, for example, would advance the goals of "non-exploitation of permanent sovereignty over natural resources", resource distribution, and aid to the poorest countries. Ideas advocated by supporters of the developed countries' position, on the other hand, could also fit into the NIEO. For example, the transfer of space technology may benefit developing countries in at least two ways: it may enable them to enjoy the satisfactions that come from active participation in the applications of aspects of space science, and it may bolster such States' general scientific and technological bases with the wide-ranging incremental benefits that such bases bring (Christol 1976, 243–244). The NIEO seeks a comprehensive, never-before-attempted overhaul of this legal framework, as well as the establishment of a mechanism by which rich countries will no longer become richer at the expense of poorer countries (Christol 1976, 67). The NIEO is global in scope and method, and it strives for total human development (Christol 1976, 76). The NIEO's implementation necessitates new international legal norms as well as new implementing institutions (Christol 1976, 197). The NIEO does not seek to halt the development of

[2] The principles and norms of the international law relating to the New International Economic Order identified by UNITAR and endorsed by the U.N. General Assembly are: (a) preferential treatment for developing countries; (b) stabilization of export earnings of developing countries; (c) permanent sovereignty over natural resources; (d) right of every State to benefit from science and technology; (e) entitlement of developing countries to development assistance; (f) participatory equality of developing countries international economic relations; (g) common heritage of mankind.

developed countries, but rather to integrate developing countries' development with that of developed countries (Christol 1976, 74–75). While the NIEO may impose costs on developed countries, outer space and the sea may be viewed as new frontiers from which developed countries can extract compensation through exploitation (Christol 1976, 91).

2.5 Space economy is the solution and not the problem

To begin involving more countries in the space industry, The United Nations Office for Outer Space Affairs (UNOOSA) works on ensuring strong international cooperation in space, the sustainability of space exploration; and the inclusion of developing countries in benefiting from space lays a solid foundation for The International Telecommunication Union's (ITU) work in leveraging the potential of communication technologies.

The mission of UNOOSA is to promote peaceful uses of outer space and to ensure that everyone, everywhere has access to the benefits of space technology and applications. The ITU, on the other hand, is dedicated to connecting all of the world's people, no matter where they live or what their means, so that they can communicate effectively through radio and satellite technology. "KiboCUBE", one of the Initiative's flagship programs, has already enabled Kenya and Guatemala to launch their first satellites. Other program winners are expected to follow suit, with Mauritius likely to be the next, so this is very exciting (International Telecommunication Union 2021).

In contrast, as previously mentioned, billionaires are investing their fortunes in space. While some argue that resources spent on space exploration would be better spent here on Earth, competition has the potential to create transformative new industries and technologies that can add trillions of dollars to the world's economies over time. NASA, for example, currently has over 700 active international agreements for various scientific research and technology development activities, and the International Space Station, which has been in operation for over 20 years, is a significant representative of international partnerships, representing 15 nations and 5 space agencies. All of this activity generates jobs and revenue in countries and communities around the world. Furthermore, SpaceX, which was founded in 2002 by Elon Musk, is a successful commercial enterprise with over 100 rocket launches, astronauts sent to the International Space Station, and NASA and military contracts.

3. Systematic explanation

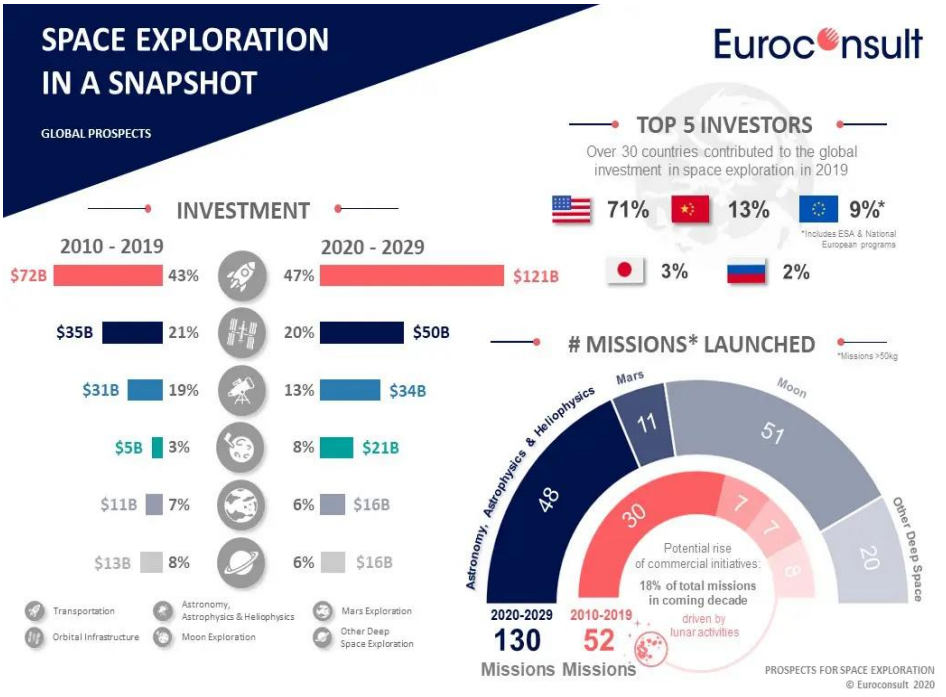
As mentioned above, the space economy is getting more attention from different governments, as, regardless of their financial situations, most countries are trying to invest in this sector because they start believing in its benefits. In this section we will prove this with recent numbers.

3.1 Global government space budget

The most recent edition of Euroconsult's "Government Space Programs" report examines the consequences of rapidly growing government space budgets in civilian

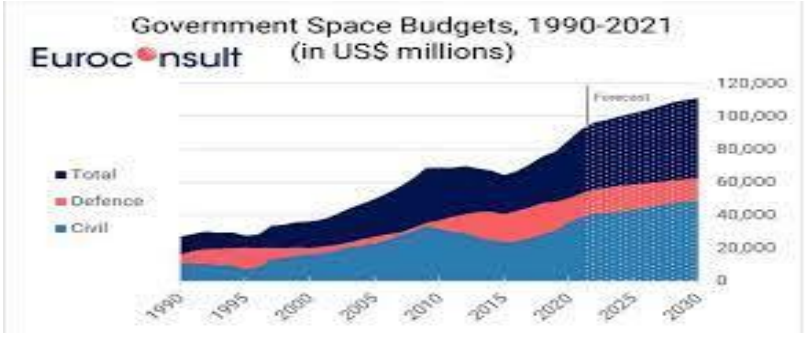
and defense applications over the next decade and extends its signature forecast to 2030. Figure 1 shows the main characters of space, their different activities and investment, while the two last ones show the global government space budget with a forecast until 2030.

Figure 1: Space exploration in a snapshot



Source: euroconsult-ec.com

Figure 3: Government space budget



Source euroconsult-ec.com

3.2 Some options for improved measurement

According to the OECD (ITU 2021) improving the measurement of the space economy and its broader impacts requires progress on the availability and quality of data on the state of the space sector, as well as strengthening the evaluation and impact assessment framework of space programs in general. G20 policymakers could take the following steps in this regard:

- Identify key data and indicator requirements for policy decisions, keeping in mind that they may differ depending on national development strategies.
- Create industry-specific surveys based on globally recognized statistical definitions. This facilitates comparisons with other sectors and with other countries, while contributing to leveraging the time-consuming and expensive data collection efforts Seeking early involvement from government entities in academic science, public research institutes, and the private sector will help to improve data and results uptake.
- Use extant and internationally recognized evaluation and assessment methodologies (for example, cost-benefit analysis of selected space projects) that allow for comparisons and repeat studies (e.g., ex-ante, ex-post). Repeat studies provide an indication of benefits over time and may also help to validate previous assessments.
- Disseminate findings and exchange experiences with stakeholders outside of the space sector, as well as international actors. This aids in fully utilizing the findings and pooling resources.

4. Discussion

4.1 Let’s not let today restrict the opportunities for tomorrow

In order to keep the future filled with opportunities and discovery, we should not be afraid of the unknown and introducing new strategies such as incorporating the space economy within all nations’ politics. Fear is common whenever humanity encounters a new innovation. Before modern science, if a woman enjoyed studying botany or holistic practices, society might blame her of witchcraft and sentence her to death by burning alive. Reading books was once frowned upon and considered foreign. When the internet was invented later, there was a lot of opposition. Elderly adults used to be so disconnected, but now you can walk through a nursing home and see dozens of them scrolling through the internet. People are resistant to change. Although it can be horrifying to try new things, this is why the world has produced so many fantastic innovations. Who would have thought that by studying genetics, scientists would eventually be capable of growing new hearts, livers, and other organs for sick patients? Who would have thought that instead of raising animals, we could grow our meat products in a lab? The concept of space exploration is similar to all of our other discoveries. The unknown can be frightening, but it can also be exciting (Eiler 2022).

Most people thought commercial space travel was a pipe dream twenty years ago. It would have remained that way if Musk, Branson, and Bezos had let today's constraints limit their ambitions for tomorrow. While each of these actors has different goals, their

combined efforts have disrupted the traditional government-run and-funded models for space exploration, paving the way for a new era of commercial space flight led by the private sector. Not to mention that the space sector is not only a growth sector in and of itself, but it is also a key enabler of growth and efficiency in other sectors and specifically economy sector like was mentioned in this paper.

Bezos has stated that he first became fascinated with space while he was still five years old, watching the Apollo moon landing on television merely fifty-two years before launching himself into space. Listening to Bezos and Musk speak to adoring crowds about their childhood obsession with spaceships, one can see another explanation why two of the world's richest men are continuing to spend billions of dollars in public funds to get to space: they think it's awesome (Utrata 2021).

Whether or not it’s equal opportunity, somewhere around 700 people have already registered for commercial passenger flights, which will begin in 2022 and cost between $200,000 and $250,000 per person. The company stopped taking reservations because of the numbers. After Sunday's flight, Branson believes demand will skyrocket. "I think we're going to be overwhelmed with people wanting to go to space when we open up after our trip," he predicted (Wamsley 2021).

4.2 Space exploration facilitates challenging the limits of human consciousness

Aside from money and ego, one of the final reasons many billionaires are interested in space travel is simply to push boundaries. Humans have been fascinated by the idea of space travel for hundreds of years, but after the space race ended, progress slowed significantly. It's understandable why people with a lot of money would want to keep exploring this last frontier. Human colonization of other planets has long been a science fiction plot, but it is now becoming a reality. According to the *Observer* magazine, Elon Musk's company SpaceX intends to visit Mars by 2022 and possibly cruise a human crew there in the years that follow.

One of the reasons for the increased discussion of colonization of other planets in recent years is that we are becoming more aware of the damage that humanity is doing to Earth. As you may be aware, a recent landmark study published by the BBC by the UN's Intergovernmental Panel on Climate Change warned of significant environmental interruption mostly in years ahead because of global warming (Jones 2021).

Conclusion

More countries are likely to establish space agencies, and the world will become increasingly dependent on space. This article aimed to show that space activities and benefits are different in every nation based on two hypotheses: to make the life on Earth better by providing services produced in space for the use on Earth or as a way to escape earthly problems. Outer space activities must benefit all states, no matter their development levels: opposition to these aims highlights the injustice and ignorance toward some countries in this domain. The NIEO seeks a comprehensive, never-before-attempted overhaul of this legal framework, as well as the establishment of a mechanism by which rich countries will no longer become richer at the expense of poorer countries. The mission of UNOOSA is to promote peaceful uses of outer space

and ensure that everyone, everywhere has access to the benefits of space technology and applications. Competition in space has the potential to create transformative new industries and technologies that can add trillions of dollars to the world's economies over time. Fear is common whenever humanity encounters a new innovation. In order to keep the future filled with opportunities and discovery we should not be afraid of the unknown. It's understandable why people with a lot of money would want to keep exploring this last frontier, because it's time to push boundaries.

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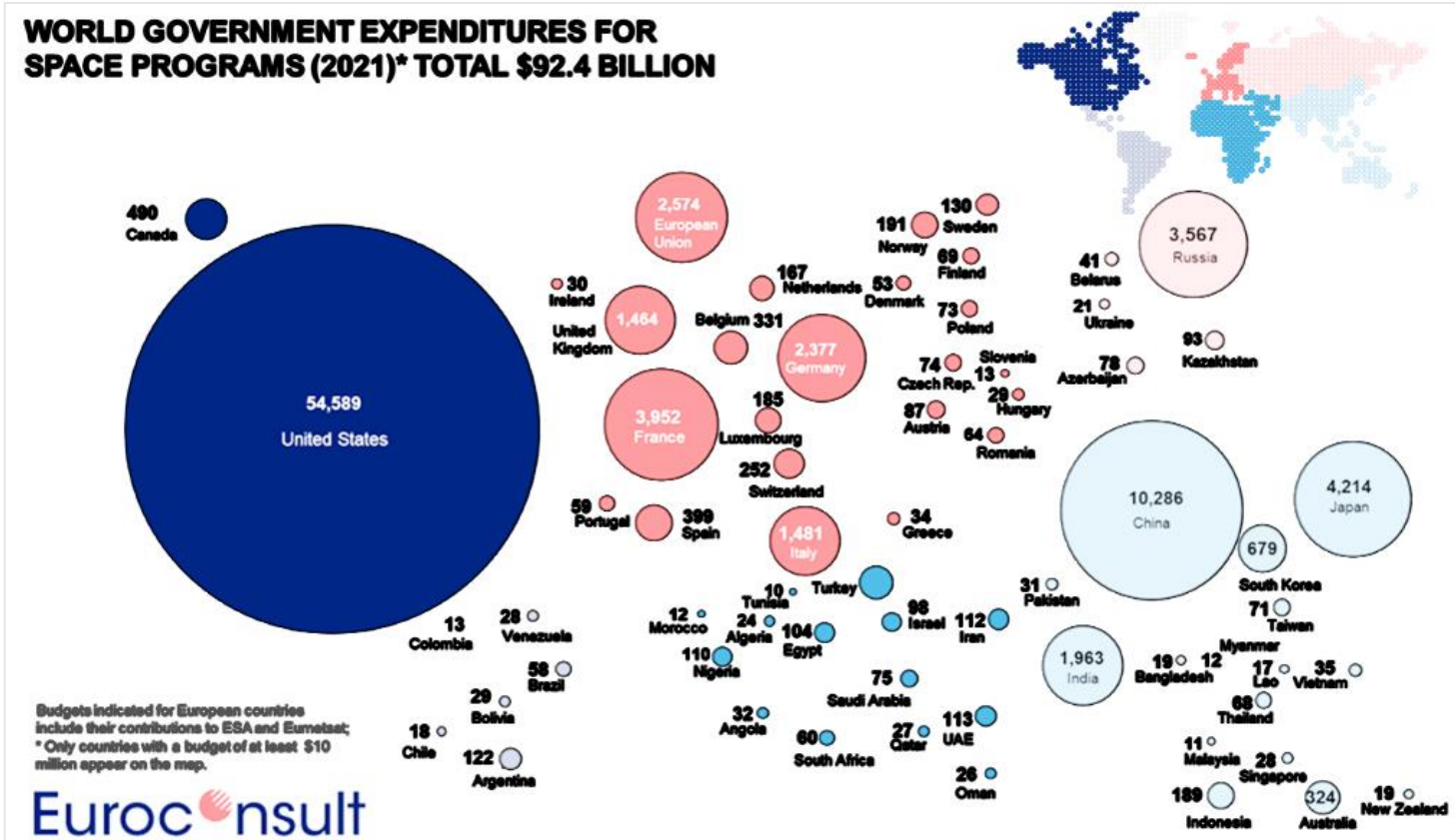
Annex 1: World government expenditures for space programs (2021)



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THE RIGHT TO EDUCATION IN THE REPUBLIC OF KAZAKHSTAN*

Zhansulu Muratova[1]

The significance of the realization of human rights is increasing worldwide due to the establishment of international agencies, non-governmental organizations, and the adoption of international documents on the protection of human rights. Such global tools require countries to fulfil their duties towards human rights. The obligations of states may differ, but the main ones are as follows: to respect, protect, and implement measures to promote and protect human rights. Indeed, the adoption of the Universal Declaration of Human Rights has invoked countries to preserve the catalogue of human rights contained therein, among which the right to education is found. As a result, countries implemented these articles on the protection of human rights in their legislation. Since education represents a colossal interest, states attempt to regulate this area by establishing and implementing laws solely. This article seeks to provide an overview of the current situation of the realization of the right to education in contemporary Kazakhstan. The research conducted in this paper was done primarily in an exploratory manner within the legal aspect. Thus, various national and international legal instruments on the protection of the right to education were taken into account.

Keywords
education, human rights, Kazakhstan, international conventions

Introduction

The right to education is an internationally recognized human right. It is one of the most crucial human rights and its protection is extremely important. The necessity of the fulfillment of the right to education is tremendous, since education brings a substantial contribution for the development of society and states. Therefore, the right to education has been established in international documents on the protection of human rights. The Universal Declaration of Human Rights, the International Covenant on Economic Social and Cultural Rights, and the Convention on the Rights of the Child are just a small part of the huge list that calls for the protection of the right to education worldwide.

The Republic of Kazakhstan, as a part of the global community, recognizes human rights and, consequently, implements the norms of the above-mentioned instruments. All the principal international documents that have been signed and ratified in the country will be considered in detail in the next subparagraphs.

1. Realization of the right to education in contemporary Kazakhstan

The right to education is one of the principal rights cored in the human rights systems. The right to education has been defined differently by many scholars worldwide. In its

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general understanding, it is the right of a person to acquire a certain amount of knowledge, cultural skills and professional orientation (Курицына Е. 2014, 3). The right to education is the right to get any type and level of education. For instance, it can be primary, secondary, or tertiary.

Due to the dissolution of the Soviet Union in 1991, fifteen newly independent states appeared; among them was the Republic of Kazakhstan. After gaining its independence after 70 years under Soviet rule, the Republic of Kazakhstan has encountered opportunities and challenges at once. One of the biggest and most crucial tasks was the formation of the Kazakh society from scratch. Ariel Cohen outlines that the first president of the Republic of Kazakhstan, Nursultan Nazarbayev, took Kazakhstan through a crash course in nation-building (Cohen 2018, 17). It has started with the transition to market economy and democracy that required the government to adopt some fundamental decisions concerning the economic and political foundations of the state.

The Republic of Kazakhstan, within the years of its sovereignty has adopted a block of legal documents that deal with the issues of protecting and promoting human rights. Primarily, the official document, the Constitution of the Republic of Kazakhstan, has been endorsed. The current Constitution of the Republic of Kazakhstan was adopted in 1995, in which the principal norms and provisions of the Universal Declaration of Human Rights are reflected. The first article of the Constitution states that the Republic of Kazakhstan is a democratic, secular, legal, and social state whose highest values are a person, his life, rights, and freedoms (The Constitution of the Republic of Kazakhstan). 29 out of the 98 Articles of the document are dedicated to the rights and freedoms of human beings and citizens. Article 12 of the Constitution of the Republic of Kazakhstan proclaims the following:

"Human rights and freedoms in the Republic of Kazakhstan shall be recognized and guaranteed according to Constitution".

"Human rights and liberties shall belong to everyone by virtue of birth, be recognized as absolute and inalienable, and define the contents and implementation of laws and other regulatory and legal acts".

Iskakova marks that the Constitution of the Republic of Kazakhstan is based not only on universally recognized norms of international law, but also has much in common with the latter in its approach to the issue of human rights: firstly, both international law and the Constitution of the Republic of Kazakhstan reject any discrimination on the grounds of gender, race, language, religion, national and social origin (Искакова 1999, 68). Secondly, there is a straightforward approach in international and federal law to determining a person's status based on age. Thirdly, basic civil rights and freedoms are protected; restrictions on human rights and liberties are permitted only in exceptional cases provided for by law. Finally, proclaimed human rights and freedoms in all areas of the state and public life are guaranteed. The Constitution of the Republic of Kazakhstan contains other universally recognized norms of international law and is the basis for the formation of national legislation.

The right to education in modern Kazakhstan is widely protected, since education plays an enormous role in the strategic task of building a knowledge-intensive and innovative economy. Therefore, the right to education is established in the Constitution

of the Republic of Kazakhstan under Article 30. Thus, following Article 30, the citizens of the Republic of Kazakhstan are entitled to the following:

"Citizens shall be guaranteed free secondary education in state educational establishments. Secondary education shall be obligatory".

"A citizen shall have the right to obtain a higher education on a competitive basis in a state higher educational institution".

In addition to the above provisions of the article, the Constitution provides the following:

"Fee-based education in private educational institutions shall be carried out on the grounds and in the manner prescribed by law".

"The state shall set uniform compulsory standards in education. The activity of any educational institution must comply with these standards".

The right to education in the Republic of Kazakhstan is granted to the people based on other laws and legal acts as well. Since education begins from an early age, one of the important documents is the Law on the Rights of Children. This legal document dates back to the year of 2002 and consists of 10 chapters and 53 articles. The provisions of the law regulate relations arising due to the implementation of fundamental rights and legal interests of a child guaranteed by the Republic of Kazakhstan proceeding from the principle of the priority of preparing children for their entire life in society, their development of a social important and creative activity, their development of high moral qualities, patriotism and civic consciousness and the formation of a national consciousness based on the universal human values of the global civilization. Article 15 of the document is related to the right of a child to education. It includes the following:

"Each child shall have the right to education, and he (she) shall be guaranteed by receipt of gratuitous basic, main secondary and general secondary education and on a competitive basis – gratuitous technical and professional, post-secondary and higher education according to the legislation of the Republic of Kazakhstan on education".

Therefore, the right to education is guaranteed at all levels of the education process.

The right to education is established in numerous other documents such as the “Law on Education”. The law is dedicated to ensuring the constitutional right to education of citizens of Kazakhstan, as well as foreigners and stateless persons permanently residing in Kazakhstan. What is more, the law regulates social relations in education and defines the basic principles of state policy in education. It is laid down in Article 3 of the Law on Education and includes the following:

- the equal right of all to obtain quality education;
- the priority of the development of the academic system;
- the accessibility of education of all levels to the population in recognition of the mental, physiological and individual peculiarities of each person;
- the secular, humanistic and developed nature of schooling, the priority of civil and national values, life and health of a person, free personality development;
- the respect of human rights and freedoms;
- the stimulation of personality and development of giftedness through education;
- the continuity of the process of education through its various levels;
- the unity of training, education and development;

- the democratic nature of the management of education, the transparency of the activity of the educational system;
- the variety of educational organisations in forms of ownership, forms of training and education and the direction of education (Bekker 2017, 1–3).

Yakavets equally notes that one of the key purposes of the Law on Education relies on the necessity of creating conditions for bringing up and developing individuals based on shared human values (Yakavets 2014, 10). Additionally, she provides a chronological record of the other strategic policy documents of the country from the period between 1991-2000 that ratify the democratic nature of the education system (Yakavets 2014, 10), such as the Law on Higher Education (1993), the Concept of Secondary Schools of the Republic of Kazakhstan (1996), the Program of preparation of textbooks and teaching materials for comprehensive schools (1996), the Law on Languages (1997), the Resolution of the Government 'On measures of further reform of the secondary education system in the Republic of Kazakhstan' (1998), the National Programme on Education (2000) and the Government Resolution on a Guaranteed State Minimum for Educational Organisations' Network (2000). These laws are a tiny piece of the vast list of legal documents the Republic of Kazakhstan approved on education and its provision to the citizens.

Education and its realization as a constitutional right is a priority in the two crucial long-term strategic documents of the country that are the Strategy "Kazakhstan 2030: Prosperity, Security and Improvement of the Well-being of all Kazakh Citizens" and the Strategy "Kazakhstan-2050: New Political Course of the Established State". It is widely known that qualified and talented individuals are the most valuable assets of a state. Therefore, an investment in human capital through education is crucial since it will produce beneficial returns. All things considered, knowledge and professional skills have been marked as key landmarks of the modern education, training and retraining system. Examining the framework of the document "Kazakhstan-2050: New Political Course of the Established State", we can note that many objectives have been put forward concerning the continuation of providing the right to education. For instance, one objective was to provide 100% participation of children in preschool education within the program Balapan. The implementation of the program has brought benefits in the form of an increased number of kindergartens and mini-centers. Thus, 3,956 new kindergartens and mini-centers have been opened since the start of the program.

The main focus was also devoted to supporting students at the higher education level. One specific aim was to help students (who can't pay for their studies) financially by taking the following steps:

- to create a network of public-private partnerships for the development of higher and mid-level education;
- to develop a multistage system for education grants;
- to create a specialised education system of R&D and applied education, including regional specialisations across the whole country;
- and to make the teaching of production practices during secondary education mandatory by law.

Accordingly, the Republic of Kazakhstan’s government is taking steps to realize the constitutional right to education by implementing different measures such as improving the legal framework, developing the education system, and creating the necessary

conditions for education. Besides, the right to education in Kazakhstan is realized under international law that will be detailed in the following subparagraph of the paper.

2. The right to education under the international documents on the protection of human rights

The Republic of Kazakhstan, as a member of the global community, recognizes human rights and, consequently, implements the norms of international law. Article 4 of the Constitution states the following:

"1. The provisions of the Constitution, the laws corresponding to it, other regulatory and legal acts, international agreements and other commitments of the Republic, as well as regulatory resolutions of the Constitutional Council and the Supreme Court of the Republic, shall be the functioning law in the Republic of Kazakhstan.

2. The Constitution shall have the highest juridical force and direct effect on the entire territory of the Republic.

3. International agreements ratified by the Republic have primacy over its laws. Republic legislation determines the procedure and conditions of operation of international agreements in the Republic of Kazakhstan, to which Kazakhstan is a party.

4. All laws and international agreements where the Republic is a party shall be published. Official publication of regulatory and legal acts, dealing with the rights, freedoms, and responsibilities of citizens shall be the necessary condition for their application". (The Constitution of the Republic of Kazakhstan, 1995).

Within the almost 30 years of its sovereignty, the country has been committed to the principles of international law. This is made evident by the high number of international documents on the protecting of human rights it signed and ratified. The fundamental basis for respecting and protecting human rights is the Universal Declaration of Human Rights which provides for the protection of its catalogue of human rights, which includes the right to education. Article 26 of the Universal Declaration of Human Rights promulgates that everyone shall have the right to education.

The right to education has been displayed in international documents such as the Convention on the Rights of the Child, the UNESCO Convention against Discrimination in Education, the International Covenant on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. One of the first treaties concerning human rights that have been adopted and ratified by the Republic of Kazakhstan was the Convention on the Rights of the Child. The country's first president signed the Convention in 1994 in New York and it was ratified with the president's decree on August 28th 1999. The document is focal because it is committed to protecting the rights of every human being below the age of eighteen. The basic principles of the international instrument are the equal rights of all children to life, development, protection and freedom from discrimination. To wit, Article 29 of the Convention states the following:

"(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, their own cultural identity, language and values, for the national importance of the country in which the child is living, the country from which they may originate, and for civilizations different from their own;

(d) The preparation of the Child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment." (The Convention on the Rights of the Child).

Adherence to the fulfillment of the convention's provisions has started many positive changes in the country, such as the development of inclusive education, for instance, and thereby the protection of the right to education of all students regardless of any challenges they may have. One of the severe difficulties that deprive people of education of any type is discrimination based on race, color, religion, gender, disability, and marital status. To prevent racial discrimination, the Republic of Kazakhstan has approved and ratified the International Convention on the Elimination of All Forms of Racial Discrimination. The International Covenant on the Elimination of All Forms of Racial Discrimination urges states not to racially discriminate when their citizens enjoy the right to education and training.

Besides, the Republic of Kazakhstan signed and upheld the Convention on the Elimination of All Forms of Discrimination against Women in order to eliminate all forms of discrimination against women since one of the reasons that do not allow exercising the right to education ultimately is gender discrimination. Discrimination based on gender represents a huge issue, and women are a vulnerable group. Also, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was signed and ratified in the country.

In addition to all of the above, Kazakhstan has signed the two universal Covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The two documents are the central instruments that have been accepted by the majority of states worldwide. The International Covenant on Economic, Social and Cultural Rights (1966), together with the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), constitute the International Bill of Human Rights. Under the Universal Declaration of Human Rights, the Covenants recognize that *"... the ideal of free human beings, free from fear and want, can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."* (The International Covenant on Economic, Social and Cultural Rights). The International Covenant on Civil and Political Rights, adopted by the UN General Assembly's resolution on December 16, 1966, has been ratified by the Republic of Kazakhstan. The ratification of this Covenant in 2005 signifies acceptance by the Republic of Kazakhstan of international legal obligations to respect human rights. Moreover, the Republic of Kazakhstan ratified an optional protocol to this

Covenant in 2009, which opened up the opportunity for citizens to apply for protection of violated rights to the UN treaty body – the UN Human Rights Committee.

3. Conclusion

The Republic of Kazakhstan has been actively working on the improvement of the situation of human rights. As it can be seen, the state has signed the most crucial documents on the protection of human rights. By adopting all these global treaties and documents on the protection of human rights, the state has chosen a responsible approach towards human rights.

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THE END OF AN ERA OR A PERMANENT LIFE (EMERGENCY) SITUATION? THE (AFTER)EFFECTS OF THE "CORONAVIRUS DECREES" IN EMPLOYMENT RELATIONS (PART 2)[*]

Dóra Varga[1]

In the first part of this series of articles (Varga 2022), we could see what sort of mostly justified changes our law on employment relations, i.e. Act I of 2012 on the Labor Code (hereinafter: LC), underwent as a result of the so-called "coronavirus decrees." In the second part of the series, we aim to look at an extremely controversial area, which, in addition to causing social division, also put the parties involved in the employment relationship in a difficult situation. This area covers the issue of the vaccinations against COVID-19 and the employers' acts instructing the employees to take these, as well as their possible consequences.

Keywords
labor law, state of emergency, COVID-19, vaccination

Introduction

The present study aims to look at an extremely controversial area, which, in addition to causing social division, also put the parties involved in the employment relationship in a difficult situation. This area covers the issue of the vaccinations against COVID-19 and the employers' acts instructing the employees to take these, as well as their possible consequences. As it is widely known in Hungary, Government Decree 598/2021. (X. 28.) on the protection of workplaces against the coronavirus [hereinafter: Government Decree 598/2021. (X. 28.)], which was in effect until March 7, 2022, granted employers the right to unilaterally choose to require their employees to be vaccinated against COVID-19.

1. Mandatory vaccination at the workplace: is there nothing new under the sun?

The inclusion of mandatory and recommended vaccinations related to the job as a legal norm has always been familiar to us in the field of labor law and occupational safety regulations. According to § 9 of *NM* [Hungarian abbreviation of Ministry of Public Welfare] Decree 18/1998. (VI. 3.) on the pandemic measures required to prevent contagious diseases and pandemics, employers are obliged to survey and assess workplace biological exposures that endanger the health and safety of employees in

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accordance with the provisions of the separate legislation. In order to reduce these effects – as a condition for employment – the employers must ensure the vaccination of individuals employed in vulnerable positions in accordance with Directive 61/1999. (XII. 1.) of the Ministry of Health. Section (3) of § 13 of the Ministry of Health directive stipulates that, depending on an estimate, the employer must define in writing the range of employees for whom special protective measures are necessary, including specifically those for whom the provision of vaccinations according to Annex No. 3 is justified. In addition to all of this, the letter of the *Nemzeti Népegészségügyi Központ* [National Public Health Center] on methodology provides more information on the vaccination related to each individual job.

Based on the above, employers have been able to order the necessary vaccinations in certain health-threatening jobs, but this was based on an all-encompassing, preliminary consideration as well as the resolutions and opinions of professional authorities. In contrast to all this, I agree with the position shared in the relevant literature according to which Government Decree 598/2021. (X. 28.), by providing employers with unprecedented authorization, may become the source of a number of constitutional problems, despite the fact that the legislator's intention deserves appreciation (Herdon & Rab 2021). However, in this present paper, I do not wish to get involved in constitutional analyses, so I will refrain from a more extensive assessment at this point.

2. Can vaccinations against COVID-19 be made mandatory in economic employment relationships following March 7, 2022?

Perhaps the answer to this question seems relatively simple based on the above. However, several factors may influence the decision before answering. By reviewing the relevant regulations of the LC, we can see that one of the essential obligations of the employer is to ensure safe employment conditions (Pál 2020). This is then supplemented with the need of maintaining the occupational safety standards set out for certain jobs, contained in the above regulations, mainly on occupational safety.

In connection with the above obligation, it is not enough to comply with the current epidemiological regulations and to make others comply with them. In addition, it is also necessary to ensure that individual employees should not endanger the health of each other or that of potential customers. Whether this may be ensured by mandatory imposition of vaccinations – with due care – after March 7, 2022, can be defined as a decision within the employers' own discretion. Therefore, I cannot provide a specific or exact answer to the above question. It is only an overview of all the aspects that can be taken into account to provide a certain reference point for making the right decision.

Based on all this, in my opinion, among the aspects to be considered, the issue of the job specification bears a particularly strong emphasis. For employees who are employed in a position in which, in the course of the performance of tasks arising from it, they personally provide public services and come into contact with people who are at increased risk of infection or serious illness, making vaccination compulsory may be justified, so an obligation to vaccinate can be imposed. Beyond this, however, since the legislator did not define additional criteria, it is the employers' task to consider these aspects and actually impose the obligation to vaccinate only for jobs where it is indeed justified (Herdon & Rab 2022).

3. Do employers have the opportunity to increase the "willingness to vaccinate"?

As it has already been mentioned, the employees concerned can only be required to administer the vaccination in accordance with the above conditions. However, the fact that certain "incentives" can be used to achieve the highest saturation of vaccination in the workplace is still not prohibited. These incentives could be, for example, extra days off ordered by the employer or possibly some additional monetary allowance (Joó 2022). In relation to such possibilities, however, it is important to mention the fact that whatever is an advantage on one side is a disadvantage on the other. Thus, unvaccinated employees could rightfully complain about the discrimination against them (Gárdos-Orosz & Pap 2021).

When applying the individual "incentives," the employers must pay attention to maintaining the requirement of equal treatment and opportunities. Thus, as long as they can prove that there is a reasonable and objective reason or the protection of the interests, lives and health of unvaccinated employees behind the application of different levels of entitlements, I do not think there would be any violation of the principle mentioned.

4. Inappropriate working environment: what can the employees do?

As already mentioned in this study, it is the employer's obligation to ensure a safe and healthy working environment for all their employees. As a result, the following question needs to be posed: what can the employees do if the working conditions are not suitable for them?

In this regard, § 54 of the LC may offer a solution, based on which the employees can refuse the employer's instruction if it endangers their own life, physical integrity or health. However, they have to take into account that, in this case, the end result could easily be an employment lawsuit, which would make it necessary to prove in court that the employer did not do everything to maintain a safe working environment.

On the basis of all of this, it can be concluded that, subject to the observance of the appropriate conditions, due care and balance, it is still possible to order compulsory vaccination in certain job positions (Kozma & Pál 2021). However, during its short existence, the government decree, which is no longer in force but grants employers right and at the same time obligation, may potentially result in court settlements of serious issues arising in the future. During these, an extremely sensitive and difficult substantiation would need to be presented in any potential legal proceedings that may be initiated to be carried out, drifting the parties involved in the employment relationship into a costly and protracted process.

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REMUNERATION RIGHTS OF IRREGULAR MIGRANT WORKERS IN THE EUROPEAN UNION*

Aya AlDabbas[1]

The European Union, being a hub for many internationals, has a substantial number of migrants in its member states. The matter of the fact is, many of those migrants engage in unauthorized employment and this sets them up for exploitation and the danger of not receiving remuneration or wages for their work. Although their employment can be considered illegal, it should not be a reason for having no legal rights to remuneration. The paper discusses who is considered an irregular worker and identifies two groups that fall under the definition of irregular workers, it examines the right to remuneration for all workers, and uses a doctrinal approach to analyze and describe which EU directives explicitly regulate the right to remuneration for irregular workers, and examines the rulings of the European Court of Justice to determine if any significant rulings have been made which establish the inclusion of irregular workers under other employment related directives.

Keywords
Irregular Workers, Migrant Workers, Workers Remuneration, European Union Law, Employers Sanctions Directive

Introduction

Every human being is entitled to work, this basic right is engraved in every human rights agreement and all constitutions. This comes from the idea that every person should be allowed to freely choose their job and work in order to make a livable wage and live in dignity. With the right to work, comes the right to receive remuneration for the services provided. This right is mainly governed by the national labor laws, which establish the obligations of the employer to pay wages, set minimum wages and provide remedies and access to justice in case of conflict. This matter is no different when it comes to migrant workers since it applies to every human being with no exclusion or discrimination and as such, they are usually extended the same protections provided for the nationals of the country. However, due to many reasons and different pull factors, some people may engage in employment without having the legal right to, which is the case of irregular migrant workers.

Irregular migrant workers are those who take up employment in a country they are not a national of and have no right to work in, which exposes them to exploitation from employers, especially in regard to their wages, whether it is the right to be paid the minimum wage, or even be paid at all.

This paper is concerned with the remuneration rights of irregular workers in the European Union, since many people choose to take up employment there due to the pull

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factors, such as the availability of opportunities, higher wages than in their home countries and the freedom of movement. While the number of irregular workers in the EU is hard to identify, it is no question that it is a huge number and multiple people consider it as a hub for migration. However, many of those irregular workers end up in a situation where they do not receive wages and are not in a legal status to consider claiming them.

The main purpose of this paper is to identify what rights irregular workers have in regard to their remuneration and wages, and what legal remedies are available for them to ensure their rights and access to justice, since it has been considered a controversial topic and a matter that lacks clarity and has gaps in its regulations. The importance of identifying those rights comes from two sides, the first side is that the matter of irregular migration and irregular employment is an issue that is yet to be solved in the EU and having a comprehensive regulation can help in tackling it; the other side is that employers prefer to employ irregular migrant workers since it saves them money and due to the weak position the workers are in, which ultimately affects the labor market and could cause fewer opportunities for authorized workers and nationals. Therefore, it becomes important to identify if this matter is regulated clearly or if it lacks legislation and has gaps.

This paper will use the doctrinal legal research methodology to describe and provide a detailed analysis of the regulations and laws in the European Union concerning the matter. It involves identifying who irregular workers are according to the EU perspective, the right to remuneration for workers generally, and then a more detailed study of the EU position and directives on irregular workers' right to remuneration, and lastly, an examination of the case law on the topic and what precedents have been passed.

1. Irregular migrant workers in the EU: who are they?

It is essential to understand who irregular migrant workers are in order to determine what laws and regulations apply to their remuneration rights, however, before jumping into defining the term 'irregular migrant', it is worth going over and understanding who migrant workers generally are.

Many international conventions, European Union directives and conventions and domestic laws gave a definition for migrant workers. For example, the "Migration for Employment" Convention (International Labor Organization 1949) in its Article 11 defined migrant workers as "*a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment" and* the European Convention on the Legal Status of Migrant Workers (Council of Europe 1977) in its article (1) defined them as *"a national of a Contracting Party who has been authorized by another Contracting Party to reside in its territory in order to take up paid employment".* Regardless of the difference in the definitions across the conventions and regulations, a general understanding can be formed that a migrant worker is an individual who migrates from one country in order to seek remunerated employment and residence legally in another country, which they are not a citizen of.

For the purposes of this paper, we are covering migrant workers specifically in the European Union, therefore, it must be noted that when identifying someone as a migrant worker, we are excluding citizens from Switzerland and of the European Economic Area (EEA) which includes all countries of the European Union in addition to Iceland, Norway and Liechtenstein. Workers from those countries enjoy the liberty of moving across the borders and seeking employment under the identity of "mobile workers" due to the free movement of workers principle according to the economic freedoms of the European Union.

After understanding the definitions of migrant workers, we can form a definition of irregular migrant workers, as the workers who are unauthorized to engage in remunerated employment in the member state. According to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN General Assembly 1990) Article 5, irregular migrant workers are workers who are not authorized to enter, or stay and engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party, and in accordance with the definition of migrant workers in the EU, previously mentioned, it is the person who is not authorized to reside and take up paid employment.

While many assume all irregular workers are also persons who are in an irregular situation in the member state, that is not the case, not all irregular workers are persons who came illegally and started working. Irregular workers can be categorized into two groups with respect to their legal situation in the member state, as per the following (Ruhs & Ruhs 2022, 12):

1. Migrant workers who do not have the legal right to reside;
2. Migrant workers who have the legal right to reside but are working in violation of the employment restrictions attached to their legal status.

The first group, workers who do not have the right to reside, refers to persons who illegally entered the member state – such as by illegally crossing the borders – usually referred to as illegal migrants. Or in other cases, those who have entered legally but overstayed their visa or residence status are the persons who initially had the right to enter the member state for a limited time and have illegally and without authorization stayed in the country after the expiry of their legal authorization. Those people, therefore, due to their status, do not have the right to work and will be recognized as irregular workers.

The second group includes migrant workers with a legal right to reside in the member state, however, that right does not extend to the right of work. This group can include persons visiting a member state with a visa, or those who are authorized to enter for tourism purposes; it also includes asylum seekers, to whom the right to work has not been extended, while waiting for the decision regarding their application; it can also include persons with residence status who have restrictions relating to their work rights, for example, international students in member states might have restrictions on the amount of hours they can work.

In conclusion, not all irregular workers are illegal residents of the member states they take up employment in, however, they are engaging in employment through no authorization or without the legal right to do so. This conclusion can also explain the uncertainty of the number of irregular workers in the EU.

2. The right to remuneration for workers

Every human being is entitled to seek employment, the freedom to choose their job, and to make a livable wage. The most fundamental convention concerning human rights known as the "Universal Declaration of Human Rights" (UN General Assembly 1948) guarantees that right. In Article 23, the right to work is emphasized, in addition to the right of equal pay for equal work with no discrimination, and the right to remuneration.

The employment relationship consists of three main components: the worker, the employer and the link between the two, where the worker performs services for the employer under certain conditions in return for remuneration. The existence of this relationship is guided by the facts that were agreed upon by the two parties, regardless of the name the contract has been given. This is known in law as the principle of the primacy of fact, which is explicitly enshrined in some national legal systems (ILO International Labor Conference 2004, 23).

Thus, generally speaking, every person is entitled to take employment with any employer to receive just remuneration, and that relationship will be considered an employment relationship, if the person is subordinated to their employer, and receives remuneration for the services they perform. This is a right guaranteed and protected by all human rights conventions. This is also seen in The European Charter of Fundamental Rights (European Union 2012) in Article 15(1): *"Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation".*

Countries are responsible for ensuring that right within their labor legislation, and accordingly, they provide their own definitions of the employment relationship, and rules to protect workers' rights such as remuneration, benefits and access to justice. With this in mind, countries also regulate who falls under the definition of a worker for the application of labor law. For example, many legislations usually exclude domestic workers from the application of labor laws and regulate their relationship in a different regulation. This does not mean that domestic workers have less rights, just that certain countries' labor laws might not be inclusive of all types of workers and may regulate the employment of specific workers under different acts. Therefore, an irregular worker's relationship with their employer might fall outside of the scope of the labor law of the state they work in.

In relation to the European Union (EU) and the regulations relating to labor law, most of the legislation takes the form of directives which, depending on their topic, provide for the minimum standards of protection that must be incorporated into the national law of the member states. The main finding here, recognized by many researchers and scholars, is that the EU lacks a uniform, single concept, or a definition of who is a worker and whom does it include. It mainly refers to the member states' national law definitions or practice when it comes to the application (Boudalaoui-Buresi & Szpejna 2020).

The Court of Justice of the European Union (CJEU) plays a huge part in interpreting the EU legislation in its judgments. According to one of its rulings (Lawrie-Blum v Württemberg) that *"the concept of a worker must be defined in accordance with objective criteria, accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The essential feature of an employment relationship, however, is that for a certain period of*

time a person performs services for and under the direction of another person in return for which he receives remuneration."

When it comes to the existence of migrant workers and their rights, by going back to the European Charter previously mentioned, Article 15(2) states that *"Nationals of third countries who are authorized to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union".* This concept is also seen in the European Convention on the Legal Status of Migrant Workers, in Article 16: *"In the matter of conditions of work, migrant workers authorised to take up employment shall enjoy treatment not less favourable than that which applies to national workers by virtue of legislative or administrative provisions, collective labour agreement or custom."* This concludes that all rights and protections that the EU has passed shall also include and apply to migrant workers. The main key word here is "authorized," from which it is understood that irregular workers, being unauthorized to work, are not included.

While the matter of exploiting migrant workers still stands and is an issue of its own, the exclusion of irregular migrant workers contributes to the harsh work conditions they endorse, specifically in the remuneration area. Employers will usually favor employing irregular workers specifically for low-skilled jobs, since it saves them money: in one aspect, their wages are less than the wages offered to regular workers, in another aspect, they will not need to pay any taxes or social contributions that come with hiring a regular worker. Another aspect is, due to their irregular situation, workers will usually prefer to endure these acts since they are afraid of the consequences of them coming forward, such as deportation or criminalization. This often leads to cases in violation of the forced labor conventions and human trafficking conventions; as such, irregular workers are always in danger of falling between the thin lines of being victims of forced labor in the cases when the employer deceives them and does not pay them, holding over their head that due to their irregular situation they will not have access to their rights and will face criminal charges if they are caught working without any authorization. Even though, according to international conventions, their irregular status should not interfere with their right to dignity and rights to equality, which should also apply to their remuneration.

This is not to say that the European Union has kept completely silent and endorsed the illegality of the situation. This statement, however, begs the question, do those workers have any rights to remuneration? And what has the EU said in this regard? The next chapter of this article discusses this aspect and studies the regulations and case law relating to the remuneration of irregular migrant workers.

3. The EU position on the remuneration of irregular migrant workers

As discussed previously, the EU directives offer protection for regular migrant workers the same way as for national citizens of the member states, however, that protection does not extend to the irregular workers and specifically to matters of remuneration. This chapter is concerned with shedding light on whether the EU has regulated the matter and what directives could apply to protect the remuneration of irregular workers.

The matter of irregular workers is sensitive and requires specific attention and directed regulations to ensure the application of their rights, keeping in mind that

irregular workers are actually in violation of a state's policies about their residence and/or employment restrictions. With those facts in mind, there are three approaches that can be taken to ensure the employment rights of irregular workers in the European Union: the full protection approach, the no protection approach and the protection with consequences approach (Dewhurst 2010).

The full protection approach is yet to be taken in the EU; this approach would appear as if to say, that irregular workers can have the same rights that are offered to regular workers. As exciting as this sounds, a consequence of this approach, from our perspective, could be undermining the member states' migration policies and the ability to control the flow of irregular migration to their country. The no protection approach entails the denial of all employment rights to undocumented workers, on the basis of the nullity of their employment contract. The protection with consequences approach would entitle irregular workers to employment rights, however, doing so, it exposes the worker to detection by the authorities and subsequent detention and deportation (Dewhurst 2020).

To examine the EU position on the remuneration rights of irregular workers, we can only turn to the Employers Sanctions Directive (Directive 2009/52/EC), which extends some employment remuneration rights to irregular workers, in addition to the CJEU case law on the matter, in case any judgments had extended the remuneration rights to irregular workers.

3.1 The Employers Sanctions Directive

Until 2009, the approach towards irregular workers' employment rights for remuneration have been ambiguous, that is, until the European Parliament and the Council has adopted the Employers Sanction Directive providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. This directive illustrates a "protection with consequences" approach and is considered a huge development in the area of protection of irregular migrant workers. While the main aim of this directive is essentially eliminating the pull factors that encourage irregular workers to take employment illegally and combating illegal migration (Czerniejewska & Others 2014), it still serves as a tool to collect the remuneration of those workers and protect it.

In the preamble of the directive, Recital (5) covers the scope of this directive, as it states, *"This Directive should not apply to third-country nationals staying legally in a Member State regardless of whether they are allowed to work in its territory."* Therefore, it only applies to irregular workers who have entered the state illegally, since as we previously mentioned, irregular workers can be categorized into two groups.

In regard to protecting remunerations, Article 6 (1) of the directive states what obligations the employer has in regard to remuneration for the irregular worker: *"(a) any outstanding remuneration to the illegally employed third-country national. The agreed level of remuneration shall be presumed to have been at least as high as the wage provided for by the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless either the employer or the employee can prove otherwise, while respecting, where appropriate, the mandatory national provisions on wages."*

Additionally, Recital (17) of the preamble states *"Member States should further provide for a presumption of an employment relationship of at least three months' duration so that the burden of proof is on the employer in respect of at least a certain period. Among others, the employee should also have the opportunity of proving the existence and duration of an employment relationship"*

According to those two Articles, the minimum protection for irregular workers is to receive an amount of at least 3 months' worth of remuneration for their work, and the wages are to be at least in accordance with the minimum wages in the member state they worked in. The exact amount of remuneration and the duration of months worked can be proven by either the employer or the worker. In case the duration cannot be proved, a presumption is made that it is at least 3 months.

The directive also ensures through its articles that this right is enforceable even when the worker is no longer in the country: in Article 6 paragraph 2(a), and paragraph 4 of the same article, the directive states that member states shall ensure that the necessary mechanisms are in place to ensure that illegally employed third-country nationals are able to receive any back payment of remuneration.

Since this directive takes the "protection with consequences" approach, the irregular workers will be subject to the member states' migration policies regarding deportation, however the directive encourages member states to grant a temporary residence permit to those workers, linked to the length of the relevant proceedings to receive the remuneration, according to Recital (27) of the Preamble.

While, as we said, this is a step forward, the reality of the application of this directive does not match the expected outcomes. The European Trade Union Confederation (ETUC) has published a paper on their position on the directive (ETUC 2021), in which they argued that the implementation of the directive needs effective firewalls between labour inspectorates and immigration authorities so that migrant workers do not run the risk of detention or deportation due to interactions with labour inspectors, during labour inspections or when pursing judicial remedy. They also argued that the grant of a residence permit for the purposes of claiming wages is hardly ever granted. They called on implementing more protective measures such as exemption from punishment, entitlement to regularization of the employment relationship and access to a regular residence permit. They also criticized the scope of this directive relating to whom it covers, where they stated that the exclusion of third country nationals that have the right to reside is not correct, since they also face the same problems in enforcing their rights, as they also are not authorized to take up employment.

3.2 Case-law of the Court of Justice of the European Union on the remuneration rights of undocumented workers

The CJEU interprets EU law to make sure it is applied in the same way in all EU countries and settles legal disputes between national governments and EU institutions. Therefore, it is important to examine the court's rulings regarding the remuneration of irregular workers to check if it has provided further interpretations that can exclude them in any specific directives, or if it had set a principle that concerns the matter.

For the matter of the remuneration of migrant workers, a significant ruling has been made by the CJEU in the Tümer case (Tümer v Raad). The case concerned Tümer, a Turkish national, who was living and working irregularly in the Netherlands. His employer had not paid him his wages, and later went insolvent, following which Tümer claimed that as an employee with wages unpaid from his insolvent employer, he was entitled to insolvency benefits related to this pay from the Employee Insurance Schemes Implementing Body (WW). His claim was in accordance with the EU Employers Insolvency Directive (Directive 2008/94/EC) which gives rights to the employees in the case of their employer's insolvency: according to article (3) of the directive, Member States shall take the necessary measures to ensure that guarantee institutions take over outstanding claims resulting from contracts of employment or employment relationships in cases of employer insolvency. The Directive defers to the definition of "employee" used by each Member State, therefore, the Dutch court had dismissed his claim, since Article 3(3) of the Law on Unemployment excludes "illegally staying third-country nationals" from the definition of "employee" and, accordingly, from any entitlement to the insolvency benefit. He is not considered an "employee" under the definition due to his irregular status and cannot sue for back pay. The highest Dutch court for administrative disputes had referred the case to the CJEU to clarify whether or not the Directive allows for the definition of an "employee" under national law to exclude undocumented migrant workers and therefore exclude them from the protections in the Directive, including in cases where there are alternative methods to recovery under civil law (Picum 2020).

With regard to this case, the CJEU had ruled that the terms of the Insolvency Directive cannot be read as a blanket exclusion of those without legal residence in Member States, nor can illegal residence serve automatically as a legitimate basis for exclusion (Ruhs & Ruhs 2022, 12). The court had also stated that the main idea behind this directive is to provide minimum protections for employees in case of their employer's insolvency: therefore, the irregular worker cannot be excluded.

This ruling is significant since it has encouraged an expansive and inclusive interpretation for the directive and outlined that the legal status of the worker should not interfere with their rights in accordance with the directive's objectives.

This broad interpretation has opened the door to asking the question if other EU directives can also be interpreted in the same manner, therefore, offering irregular workers protection under other related directives, especially with the court's interpretation of the term of worker in the Lawrie-Blum ruling, which stated that *"The term 'worker' covers any person performing for remuneration work the nature of which is not determined by himself for and under the control of another, regardless of the legal nature of the employment relationship"*. Unfortunately, this statement has not been confirmed by any other judgments yet.

Conclusion

The matter of remuneration for irregular migrant workers in the European Union lacks clarity. While regular workers have their remuneration rights stated clearly in directives and case law, irregular workers do not. The European Charter of Fundamental Rights, which states that "everyone" is entitled to work, creates ambiguity relating to the right

to receive wages, and the EU lawmaker, by not giving a definitive definition of who is a worker in any of its directives and referring the matter to national laws, which usually exclude irregular workers, also creates contradiction when compared to the CJEU definition given in the Lawrie-Blum ruling that did not exclude irregular workers and relied mainly on the elements of the relationship (subordination) rather than the legal status of the worker. As it also has been mentioned, the significant ruling in the Tümer case has left many unanswered questions as to how that ruling can affect the application of other directives on the cases of irregular workers. The employers' sanctions directive, while being considered a huge development, has left a group of irregular workers out of the protections it had extended and faces criticism for the lack of effectiveness and mechanisms to ensure its application. Suffice to say, the matter of irregular workers' employment rights needs to be considered and given more attention due to its importance and the gaps in regulation. Its importance comes from two sides: from one side, it has to do with irregular migration to European countries, a topic of importance to tackle for the EU, and from the other side, with human rights, since irregular workers are more likely to be exploited and be taken advantage of.

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2024: THE YEAR OF COMMON CHARGERS[*]

Roxána Bereczki[1]

Have you ever found yourself in a situation where you had three or four different mobile phone chargers at home and still couldn't charge your new smartphone with any of them? Only one year from now, you can finally say goodbye to such problems, as another segment of the European Union's internal market is being harmonized: by 2024, a common charger for mobile devices and other electronic devices will finally be introduced (European Parliament Information Office for Hungary 2022).

Keywords
European Union, harmonisation, mobile phone chargers, environmental protection

Introduction

The continuous developments in the electronic communication sector have greatly contributed to the expansion of the range of electronic devices. This wider range of devices and the new possibilities they offer can satisfy consumer needs to a much greater degree. However, technological innovation is accompanied by a variety of charging solutions, which on the one hand results in the fragmentation of the market for charging interfaces, and on the other hand, chargers not being compatible with previously purchased devices can lead to consumer frustration. In 2020, for example, more than 400 million mobile phones and other electronic devices were sold in the European Union. On average, there are three types of phone chargers in customers' homes, but even so, nearly 40% of consumers reported a case where they could not charge their device due to the lack of a compatible charger. Chargers that came with older types of devices are usually no longer usable for modern devices, but at the same time, newly purchased products are sold together with compatible chargers less and less frequently. Some large companies exclude the charger from the box for environmental protection reasons, but most customers do not have the appropriate charger when they buy the product, so they have to buy it separately. EU citizens spend roughly two and a half billion euros a year on such self-contained chargers, which also come in separate packaging (Magyar Nemzet 2020). In addition, the older chargers, which thus become unusable, will be thrown away: about 11,000 tons of electronic waste can accumulate annually this way. The increase in the number of charging solutions therefore not only results in the fragmentation of the single market and the discomfort of consumers, but also puts a financial burden on customers, and what is more, it also has a negative impact on the environment.

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1. The need for EU-level actions

The internal market is one of the principal areas in which shared *competence* between the *Union* and the *Member States* applies. However, the absence of harmonisation in this area can lead to significant differences between Member States' provisions on the interoperability of electronic devices and may also hinder the free movement of goods. In addition, the fact that actions at the national level are limited to the territory of the given member state also causes a problem, since the number of cross-border cases is constantly increasing. Therefore, there is a need for coordinated EU level measures, through which the objectives can be achieved more successfully and market surveillance will also become more effective.

2. The way leading to standardization

The European Commission has been striving for a long time to reduce the fragmentation of the market for chargers of electronic devices, yet the initiatives so far have only led to voluntary schemes between the Commission and the manufacturers that are not legally binding and thus do not ensure consistent and uniform application (European Commission 2018, 19), and as a result, the number of different types of chargers on the market was reduced from thirty to three. However, after the original agreement expired in 2014, the new proposal of the industry presented in 2018 was found not to be in line with the EU's harmonisation objectives.

The European Parliament has also encouraged the European Commission to take action on several occasions: the Radio Equipment Directive adopted in 2014 (2014/53/EU Directive), for example, ensures a single market for radio equipment by setting essential requirements, (European Commission n.d.) and among these requirements, the need for a common charger can be found (Directive 2014/53/EU, Recital (3a)). Subsequently, in its resolution adopted on January 30, 2020, the Parliament called on the Commission to deal with the issue as soon as possible and to ensure the introduction of common chargers, if necessary, through a legislative measure (European Commission 2021, 1–2). In addition, in their resolution on the new circular economy action plan adopted on February 10, 2021, the representatives urged the Commission again to implement the necessary measures for the introduction of common chargers in accordance with the provisions of Directive 2014/53/EU (European Parliament 2021b, point 52).

As a result of these, on September 23, 2021, the Commission finally submitted a legislative proposal in which it suggested new legislative measures in order to ensure the interoperability of chargers by amending the Radio Equipment Directive. On June 7, 2022, the Council and the European Parliament reached a provisional agreement on the proposal to amend the directive, which was approved by the Member States' representatives on June 29, 2022. Finally, on October 24, 2022, the Council approved the agreement, and thus the legislative act was adopted.

3. The Commission's most important proposals

First of all, the Commission proposed a common charging port for electronic equipment, notably the USB Type-C connector. This allows consumers to charge all their devices, regardless of their brand, with the same Type-C charger, eliminating the need to purchase different chargers when shopping from different sellers or when purchasing a new device from the same seller (European Parliament 2020, point C). In order to prevent some manufacturers from unreasonably limiting the charging speed of their products, the proposal also covers the harmonization of fast charging technology, in other words, the charging speed will be the same for all compatible chargers.

The proposal also aims to provide better information for end-users. Manufacturers are obliged to inform consumers about the charging performance characteristics and the power delivery of the charger device that can be used with that equipment (on the packaging or on a separate label), which makes it easier for customers to determine whether their current chargers are compatible with their new device, whether they have to buy a new charger, and if yes, which one. This way, the measure contributes to the reduction of purchases.

In addition, the proposal promotes the *separation* of *charger sales* and *equipment sales*. In practice, this means that if the economic operator sells a specific product together with a charging device, then the same product must be available without a charging device (European Commission 2021b, 10); consumers can therefore decide whether they buy their new devices with or without a charger. This separation can limit the increase in the number of chargers that are not in use anymore, as well as the number of newly manufactured and de-energized chargers, and all this can reduce the amount of electronic waste by nearly a thousand tons annually. It is important to note that the electronic products will still come with a cable in their boxes, because the purpose of the cable is different from that of the charger, as it can be used for data sharing and even direct charging (for example, on trains or in hotels). Such a decision can be useful for consumers, since cables break much more often than charging heads, and moreover, their production involves less resource consumption and they are responsible for significantly less greenhouse gas emissions and electronic waste than external power supplies.

At the same time, the legislation also thought about the future, so that the spread of innovative charging solutions does not cause further trouble. Due to the rapid development of technology, for example, great progress can be expected in the field of wireless charging, which, however, may fragment the internal market again and become a source of consumer annoyance. For the purpose of preventing this process, the Commission, although it does not define the specific technical requirements of wireless charging, undertakes to coordinate the technologies and to create harmonised wireless charging solutions.

These new requirements apply to products that are commonly used by the majority of consumers and that have similar charging characteristics. Thus, the scope of the directive covers mobile phones, tablets, digital cameras, headphones without and with a microphone, handheld game consoles, and portable speakers. Other products, such as earphones, smart watches and activity meters, were not taken into account, which is mainly justified by technical reasons related to their size and conditions of use.

The rules of the adopted legislative act will become applicable 24 months after they come into force, which means that from 2024 we will finally be able to charge all our electronic devices with one common charger. The 24-month transition period provides adaptation time for the industry, as well as for consumers. In the case of laptops, this period is increased to 40 months (European Commission 2022). However, the requirements contained in the directive will not apply to products placed on the market before the start date of the application.

4. Evaluation of the legislative act

Overall, the decision concerning the introduction of common chargers can be evaluated as a huge victory for the internal market, the consumers and the environment.

On the one hand, it ensures the harmonisation and smooth operation of the internal market, and on the other hand, uniform requirements also provide consumers with a high level of protection. Chargers power consumers' most important electronic devices for school, work and everyday life, but from now on, they can use the same charger for all devices. With this, they can save a lot of money and say goodbye to those inconvenient situations where they run out of power due to the lack of a suitable charger. What is more, the requirement of providing better information enables them to make more sustainable decisions when purchasing new devices. At the same time, they are no longer forced to rely on the products of a given manufacturer because of the technology they have already purchased (European Parliament Information Office for Hungary 2022).

The harmonisation also supports the protection of the environment and the green transition (European Commission 2021c), as electrical and electronic devices are currently the fastest-growing amount of electronic waste by an expected thousand tons per year. Moreover, reducing the purchase of new chargers can also diminish greenhouse gas emissions (European Commission 2021c).

A critical point of the legislation is that it does not apply to all kinds of electronic devices, so smartwatches and earphones are excluded from its scope. However, these devices are used no less frequently than, for example, game consoles or portable speakers, and their battery drains much sooner and needs charging more often. These are the devices that consumers usually carry together with their phones, as smartwatches and headphones are connected to the phone. So, if they still require different chargers, consumers may find themselves again in a situation where they have to carry multiple chargers or one is not compatible.

Summary

The positive consequences of the EU’s new legal act cannot be denied, as the interoperability between chargers makes the use of devices easier, and reduces both the amount of unnecessary waste and costs (Directive 2014/53/EU, Recital (12)). This European innovation can even set an example for other continents and maybe one day, the USB-C port will be the standard solution worldwide. Of course, this decision would be the biggest challenge for Apple, as the American company persistently insisted on its own developed Lightning connector, but if type-C connectors will be present in all

electronics products, it is not inconceivable that they will eventually switch to the new system (Greendex 2022).

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PRICE CONTROL IN THE EAST-EUROPEAN REGION*

Sebestyén Márk Pella[1]

Hungary is the first country in the region and the EU to have recently introduced official price regulation. But Hungary is not the only European country where the government intervenes in market prices. It has been applied in Croatia, Slovenia and Serbia, and Poland has taken a different approach to the problem of price volatility. Despite the fact that, according to economists, price regulation may be justified only for a short period, it has been used in our country for a long time. Furthermore, in October 2022, the Hungarian government decided to extend it to additional basic foodstuffs. However, with this decision, the government does not help to reduce inflation, it only covers it up.

Keywords
price control, market intervention, inflation rate, European Union

Introduction

Hungary is the first country in the region and the EU to have recently introduced official price regulation. In 2013, an official price was already set for bottled gas, and then the Hungarian government saw the need to regulate the price of several products due to the epidemic situation. Currently, for the first time in a year, an official price is applied to fuel and to several products: granulated sugar, flour, cooking oil, pork legs, milk, and the latest product to be subject to an official price is firewood, following the energy crisis. It was imposed for a period of three months, but will be extended again and again as the period expires.

1. Price control in the East-European Region

But Hungary is not the only European country where the government intervenes in market prices. It has been applied in Croatia, Slovenia and Serbia, and Poland has taken a different approach to the problem of price volatility.

In Serbia, official prices similar to the Hungarian regulation were introduced in 2021, and the rationale is the same, i.e. to curb inflation. The products are also the same, except for chicken breast. However, the important difference is that, on the one hand, the Serbian government introduced it for a shorter period of 2 months, but after that period it was maintained, and on the other hand, if the market was already overburdened by the maintenance of the legislation, the government removed the official price for the product (Government of the Republic of Serbia 2022).

In Croatia, only fuel is subject to an official price, for a period of one month. After one month, the official price was abolished, but if the legislator saw fit, it was

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reintroduced, again for a period of one month (Government of the Republic of Croatia 2022).

Slovenia used a similar method to Hungary, fixing fuel prices for a period of 3 months. However, it was phased out before the end of the period, on the grounds that it placed a disproportionate burden on the country's economy (Government of the Republic of Slovenia n.d.).

In Poland, however, the inflation problem has been approached from a different angle. Instead of using official prices, the Polish government saw the solution in tax cuts, with larger reductions in taxes on food, fuel, natural gas and electricity.

It can therefore be seen that it is mainly in the Central and Eastern European region that there is a preference for the institution of price regulation by public authorities. In my opinion, when applying it, particular attention should be paid to the effects of official prices on the market, so that they can be adjusted and corrected if necessary. This is the case with the Serbian and the Slovenian solutions, where the negative impact was stronger than the positive one, and the official price for the product was abolished and removed. For similar reasons, in Croatia it is only applied for short periods of one month. From this point of view, in the long term, the Hungarian economy is the most exposed to the negative effects of price regulation, as it is the least monitored, examined and corrected for its impact on the economy. Compared to the Hungarian solution, other countries are more attentive to the effects of price regulation on the economy and are willing to change it if it is perceived to be inappropriate.

In Hungary, official price controls are currently in place for 11 products, and according to radio statements by the Hungarian Prime Minister, the range of products is expected to be extended, with plans to set official prices for more products, including eggs, cheese and bread, according to press reports.

The exceptional situation, the energy crisis, has led to the introduction of a "price cap" on gas not only for Member States (although they have exclusive competence to introduce official prices) but also as a common measure for the whole EU, but negotiations are still ongoing. The EU attaches the importance of ensuring the availability of the gas it needs at an affordable price, which is why a common "official" price has been considered (European Council & Council of the European Union n.d.).

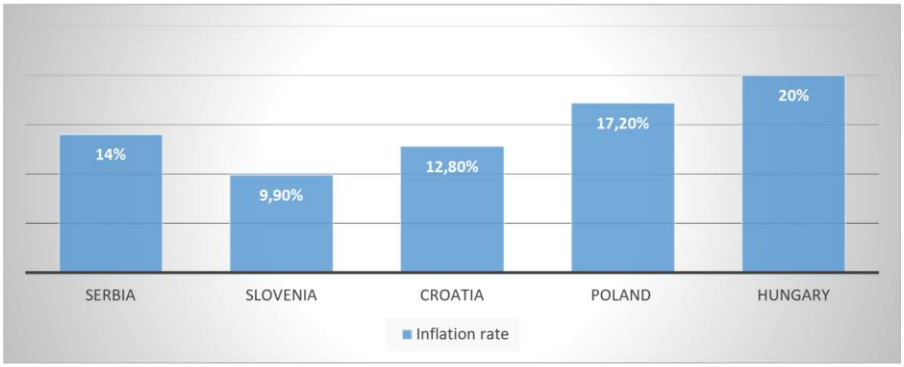
2. Inflation in the East-European Region

After looking at the different methods of official price controls in the CEE countries, let's look at the inflation rates in these countries.

In Hungary, the inflation rate is more than 20% based on September 2022 data, with an exact value of 20.1%, but the inflation curve has not yet started to decline, so inflation is expected to rise further. Meanwhile, the country's central bank has raised its base rate to 13%. Meanwhile, Hungary's southern neighbour, Serbia, has an inflation rate of 14%, also based on September data, with the country's central bank base rate raised from 3.5% to 4%. In Slovenia, inflation is 9.9%, but it is worth noting that, unlike the other countries, inflation has fallen from 10% to 9.9%, albeit minimally, compared to the previous reading, while the base rate has been raised to 2% from 1.25%. In Croatia, the inflation rate is 12.8%, also with a rising inflation curve, but the base rate is also significantly lower than in Hungary, at 2.5%, which has not been raised since the

previous survey. Poland is in second place after Hungary, with an inflation rate of 17.2% and a base rate of 6.75%, which is also the second highest base rate of all the countries surveyed, and interestingly only half of the rate in Hungary. Although no price controls have been applied in Poland, the inflation data shows that excessive tax cuts are not the right solution either (tradingeconomics.com).

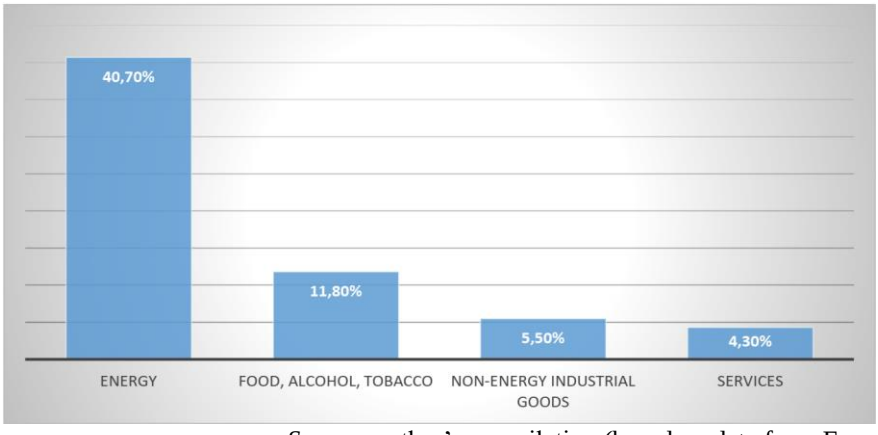
Figure 1: Inflation rate in selected European countries (September 2022)



Source: author's compilation (based on data from tradingeconomics.com)

For comparison, look at the Eurozone, where inflation was 9.9% in September 2022, up from 9.1%, and the base rate was 2% in October, up from 1.25%. Looking at the main components of euro area inflation, energy had the highest annual rate in September (40.7%, compared with 38.6% in August), followed by food, alcohol & tobacco (11.8%, compared with 10.6% in August), non-energy industrial goods (5.5%, compared with 5.1% in August), and services (4.3%, compared with 3.8% in August) (Eurostat 2022).

Figure 2: Inflation in the Eurozone (certain categories of goods and services) September 2022



Source: author's compilation (based on data from Eurostat and tradingeconomics.com)

These are also the areas where inflation is the highest in the states surveyed, but at different rates of course. In the European Union ranking, Hungary is ahead of only three countries: Estonia with 24.1%, Lithuania with 22.5% and Latvia with 22%. "The sharply higher-than-average inflation trend in Estonia can be ascribed to a slew of factors including a scarcity driven surge in electricity prices and an exceptionally strong rebound of the Estonian economy after the pandemic leading to labour shortages and higher wages. According to Estonia's central bank, the country's economic output stood about 7 percent above pre-pandemic levels at the end of last year. Germany, the region's economic powerhouse, by contrast had failed to return to pre-pandemic size at the time. [...]" (Dexbury & Treeck 2022). Estonia's membership of the eurozone means it can't change interest rates independently to suit its own economic needs, such as raising borrowing costs now to choke off economic activity and so prices.

Instead, the Germany-based European Central Bank (ECB) makes decisions for all euro countries after discussions among the governors of the 19 member countries. That means interest rates may not rise as much as Estonia might want, as more indebted eurozone members with lower inflation – such as Italy – are likely to resist (Dexbury & Treeck 2022). This is also true for the other two Baltic countries. Statistics show that France has the lowest inflation at 6.2%, followed by Malta (7.4%) and Finland (8.4%).

3. Summary of the price regulation decision

In summary, countries that are more careful about the changes that may be needed to their official prices do not experience the same level of inflation as countries that maintain the measures without changes and for significantly longer than Hungary. It is unfortunate that a significant increase in the central bank base rate is accompanied by a significant increase in official prices, as it can have the opposite effect, with the benefits being lost and the negatives being felt by the economy of the country concerned, which other countries with official price controls are trying to address.

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‘TICKING TIME BOMBS’ ON THE ROADS? ELECTRIC SCOOTER LAWS IN THE EUROPEAN UNION*

Petra Ágnes Kanyuk[1]

The rise of dockless electric scooter (e-scooter) fleets in the cities in the European Union happened almost overnight (Overstreet 2021). There were, for example, more than 15,000 scooters available for hire on the streets of Paris (BBC 2019), and in Cologne, authorities expected as many as 40,000 users by the end of 2019 (Schumacher 2019). It is estimated that currently there are over 360,000 e-scooters available for hire on European streets (O’Brian 2021).

Keywords
e-scooter, environmental impact, protection of road users, regulatory policies

1. Background

Proponents of e-scooters highlight their *potential* to replacing short distance passenger car journeys, serving as a first and last mile to public transportation networks, and help to solve the urban transport challenge of poor air quality stemming from increased congestion as well (Hirst 2021).

The operation of e-scooters results in both *direct and indirect environmental impacts*, which can be significant without corrective measures. Analysis undertaken by the International Transport Forum (OECD/ITF 2020) demonstrates factors that influence the direct environmental impact related to average daily distances, vehicle lifetime, operator collection practices, vehicle weight and material choice in manufacturing. It should also be highlighted that following the COVID-19 public health crisis, the *necessity and popularity* of reallocating space away from passenger cars has grown (Transport and Environment 2021).

However, emerging data on the risks of e-scooters highlights significant *safety risks*, with risks of accidents potentially seven times greater than the use of bicycles. Several risk factors contribute to the probability of users being involved in accidents and the severity of the incident, including experience, use of alcohol and drugs and awareness of rules and protective equipment (Eurocities 2020). A study of accidents in Copenhagen noted that riders primarily sustained facial bruising and lacerations and were sometimes under the influence of alcohol or drugs (36.6%) (Blomberg et al. 2019). Around one-third of accidents occurred between 23:00 and 07:00, which may indicate a safety benefit to regulating the operation of scooters during hours in which riders are more likely to be involved in an incident. In another study of patients involved in e-scooter or e-bike accidents, 8.4% of those involved were pedestrians; three-quarters of those pedestrians were vulnerable road users, either between the ages of 0-14 or older than 60 years of age (Siman-Tov et al. 2017).

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Options available to authorities can include *soft measures to improve user behaviour*, through safety pieces of training and awareness raising on rules, and stronger regulatory measures that target the cause of a crash or mitigate impact, such as limits on riders per e-scooter and the use of phones while riding. Insurance provided by operators can be an important element to consider for the safety of users when accidents happen. This should cover damages that arise from collision, liability for third parties and their property as well as medical costs. Many of the *measures associated with the protection of vulnerable road users* can also apply, such as passenger car speed restrictions, traffic calming measures, separated bicycle lanes or similar (Eurocities 2020).

In conclusion, e-scooters have brought *challenges* for cities. Like other vehicles using the road, e-scooters need to operate within an adequately personalised regulatory framework. Over the last couple of years, cities have reacted to the trend of shared micro-mobility in different ways, ranging from total prohibition to total openness, with many variations in between. Some have adapted policy over time by reacting to developments on the ground, including responding to reactions from the public. This has, in turn, resulted in widespread, yet dissimilar, amendments to national regulations. Latecomers have usually taken a more restrictive approach than early adopters (Twisse 2020).

2. Overview of Policy Relating to E-Scooters

Austria recognizes and legally states the distinction between electric scooters and other motor-driven vehicles like mopeds, electric bikes, motorized bicycles, etc. The country does not require any license or insurance for electric scooters. However, there are some age restrictions: 12-year-olds who want to ride an e-scooter must be supervised by people of at least 16 years of age. Furthermore, children that are younger than 12 years must wear helmets. Scooters with a maximum power output of 600W and 25 km/h max speed can be operated legally on public roads. Austria's parking rules for e-scooters are the same as those for bikes. All offences lead to administrative fines (Noor 2021).

France has categorized electric scooters as „*personal motorized travel devices."* In September 2019, a *new mobility bill* added e-scooters to France's traffic law with measures including a minimum age (children as young as 8) and guidelines on where they can be used. E-scooters are banned from pavements, their speed limit on roads is 20 km/hour and it is mandatory for helmets to be worn by children under 12 years of age. In October 2019, various fines for e-scooter violations and offences were decreed (Noor 2021). In *Lyon*, a shared e-scooter operator has introduced a speed limiter that is based on a global positioning system (GPS) where, within the city's pedestrian zone, vehicles are restricted to 8 km/hour. Paris aims to limit the number of providers operating in the city, with a tender to select up to three operators, which will be allowed to continue providing their service. The national mobility bill hands local authorities the power to limit the number of vehicles and operators, and impose additional requirements on maintenance, noise and pollution. In June 2021, Paris threatened to ban e-scooters if their operators don't enforce speed limits and other rules after a pedestrian was knocked down and killed by two riders who fled the scene. Critics say the aforementioned rules are hardly enforced, and abandoned scooters are often seen scattered on sidewalks and squares. Confirming the above, deputy mayor *David*

Belliard, in charge of transportation, said he had summoned executives from the three e-scooter operators, Lime, Dott and Tier, telling them he had received *„lots of negative feedback about scooters on sidewalks, the sense of insecurity, and scooters abandoned in the streets."* (France24 2021).

Finland classifies electric scooters as lightweight electric vehicles. This category constitutes vehicles with a motor of a maximum of 1000W and a top speed of 25 km/h. However, if your electric scooter is slower than 15 km/h, then it will be categorized as a „*pedestrian-assisted device."* As an e-scooter owner in Finland, you don't need insurance or a driving license. Although not punishable by law, helmets are strongly recommended. Furthermore, you must not drive on the pavement (Noor 2021).

Similar to Finland's legislation, *Germany* declares electric scooters as lightweight electric micro mobiles meant for personal use. These lightweight electric vehicles do not need to be registered; however, they do require insurance. After the insurance process is complete, a sticker is attached to the scooter to indicate that it has been insured. The minimum legal age for riding an e-scooter in Germany is 14 years. Helmets, like other countries, are recommended but not mandatory. Moreover, no driving license is needed to operate an electric scooter. Germany has the same parking laws for e-scooters as for bicycles. Finally, only one person can use a scooter at a time (Noor 2021).

Up till 2019, there was no formal legislative framework in *Italy* regarding the use of electric scooters. Only around the mid of 2019, a national-level set of policies was formed. The Italian Ministry of Transport decreed that electric scooters (which are popular in Milan, Turin and Rimini) can be legally operated on roads and pedestrian areas. However, this accessibility was limited by the speed of the scooters. The law sets a minimum age of 14 and wearing a helmet is mandatory for those under 18. E-scooters can be driven at a maximum speed of 25 km/hour on carriageways where bicycles are allowed and 6 km/hour in pedestrian areas (Twisse 2020).

The legal policies revolving around e-scooters are tricky in *Hungary.* This is because a distinct category for electric scooters does not exist as of now. There are two interpretations of the current law of Hungary for electric scooters. One side affirms that according to the legislative texts, electric scooters do not count as traffic, but rather as pedestrians. Therefore, they cannot be qualified as vehicles. On the other hand, some other experts have claimed that once the dispute is settled and electric scooters are considered electric vehicles, they should be allowed on cycle paths and roads, but not on pavements. Perhaps there is still some more time until we see this debate come to a logical resolution, but until then, the theory forbids the use of electric scooters (Noor 2021).

Belgium refers to electric scooters as „*moving devices."* When it comes to e-scooters, the law in Belgium is very lenient compared to other places in the world. There is no age limit at all, meaning children can ride electric scooters as well. Furthermore, no license, insurance, or registration is required. Helmets are recommended but not obligatory (Noor 2021). The rider's speed defines whether they can access the pavement or not. For instance, if they are slow enough to be categorized as a pedestrian, they can ride on the footway. But if they're faster (more than 5-6 km/h), they can only ride on cycle paths, where their speed is limited to 25 km/hour, which mirrors the requirement for e-bikes (Twisse 2020). According to recent news, the

Brussels parliament wants to get tougher on shared e-scooters and bicycles by introducing special parking areas, speed limits and fines if the vehicles are dumped in the street. *Arnaud Verstraete*, leader of the Greens in the Brussels-Capital Region's parliament, in the last days of October 2021, put forward a plan for stricter rules with the support of the ruling parties in the parliament. It is expected to be voted on in early 2022 (Westendarp 2021).

Sweden classifies electric scooters as electric bikes in some conditions. If an electric scooter has a continuous power output of 250W, a max speed of 20 km/h, and can only be used by one person at a time, it is legal (Noor 2021). E-scooters must have brakes, and an audible warning device, such as a bicycle bell, and riders younger than 15 years of age are required to wear a helmet (Twisse 2020).

Conclusion

The *European Commission* is also looking at e-scooters and micro-mobility in general, with guidelines for use under consideration at the moment. Technical standards are also being considered under possible plans for standardisation or type approval for certain categories of devices (Sokolowski 2020; Bosetti 2021).

In the future, the success of electric scooters won't come from public interest – it's already there. Adding another type of mobility into city planning may seem daunting, but if anything, it will force our cities to respond properly to new challenges.

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