

EAST-WEST STUDIES

Journal of Social Sciences of
Tallinn University School of Governance,
Law and Society

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PREFACE

The East West Studies Journal is pleased to release its 2020 annual edition. We are bringing to your attention articles from scholars connected to our School of Governance, Law and Society. The topics chosen reflect current issues which are significant for the society at large, thereby carrying interdisciplinary approach. Upon careful scrutiny, we notice return to fundamental societal and legal questions such as the meaning of sovereignty (Indrek Grauberg) and the impact of postmodern reality on EU politics (Igor Gräzin). Fundamental questions find their “concretization” in articles concentrating on issues which reflect upon emerging and ongoing European and domestic practices. Into this category belong articles of Lehte Roots about relocation and resettlement of refugees in the EU, public sector reforms in Estonia (Gerly Elbrecht and Leif Kalev) and media’s role in promoting innovation services at municipal level (Marju Medar). I invite you to enter into academic debates with our authors and disseminate their findings and suggestions in academic and among stakeholders.

Yours Truly,

Mart Susi, Editor-in-chief

Professor of Human Rights Law

MODERN VERSUS POSTMODERN STATE AND SOVEREIGNTY

INDREK GRAUBERG

In today's globalising and fragmenting world, where the great picture of sovereignty is being replaced by 'language games' around this notion, it is worth noting that there has not actually been much discussion of the term. In many articles the dispute is rather short and not deep enough in comparison with discussions of other terms in international law. The designation of 'sovereignty' needs to also take into account the cultural diversity of the world – different dominant beliefs, customs, ethnic traditions, and values. In relation to globalisation, the existence of different civilisations and values side by side creates a completely new situation. In order to understand paradigmatic breakthroughs in statehoods and sovereignties in today's globalising world, we will take a retrospective look at when modern states were just starting to develop.¹

SOVEREIGNTY AS IT RECENTLY STILL WAS

The modern nation state, which evolved in the 16th and 17th centuries, was originally a European phenomenon. Afterwards, there was an attempt to export this modern model of the state all over the world.² Hannum writes that this export, which started with colonisation, continues through globalisation.³ Today, the Western world considers it normal that a state is religiously neutral and secularised. Weber is of the opinion that secularisation, which was built on the underlying principle of the Peace of Westphalia – *cuius regio, eius religio* – was not accidental at all. It had been programmed earlier in Judaism and Christianity.⁴ The principle of "*cuius*" has been treated as a declaration of the freedom of religion. On the other hand, it was also a restriction, as the sovereign parties to the contract had to be Catholic or Protestant. Consequently, the official religion of states had to be one of these two. Those who practiced a different religion from the official one were entitled to emigrate.⁵ In order to surpass religious wars, states had to be founded upon an ideology other than religion. Religion was thus replaced by secular belief – belief in the nation and state – by the pan-European enlightenment. "The State is to be a fellowship of free and equal men, and everyone is to devote himself to the 'welfare of the whole,' to be dissolved in the State, to make the State his end and ideal. State! State! so ran the general cry, and thenceforth people sought for the 'right form of State,' the best constitution, and so the State in its best conception. The thought of the State passed into all hearts and awakened enthusiasm; to serve it, this mundane god became the new divine service and worship. The properly *political* epoch had dawned."⁶

Therefore, it should be emphasised that the nation state of the 18th century does not largely differ from Byzantium as, in Europe too, a sovereign was both the head of the state and church. (In Russia that had happened from the times of Peter the Great, although not for long.) A Westphalian nation state with one centre started to stand on its own two feet only in the 19th century. Habermas, addressing the evolution of the nation state, notes that the word '*natio*' refers like '*gens*' but unlike '*civitas*', to peoples (often 'savage', 'barbaric', or 'pagan' peoples) who were not yet organised in political associations. The classical use of the word 'nation' means tribal associations, integrated through geography, settlement and neighbourhood, and also through culture – common language, customs, and traditions.⁷ It was in this meaning that the concept of 'nation' was used

¹ I. Grauberg. Sovereignty in international Law and Politics: Theory and Practice.- King's College London- 2013. pp.89- 97.

² I. Grauberg. Sovereignty in Contemporart International Society.- Journal of Social Sciences of Tallinn University Law School. 2011, pp. 3- 12.

³ H. Hannum. Autonomy, Sovereignty, and Self-determination. The Accommodation of Conflicting Rights.– Philadelphia 1992, p. 25.

⁴ M. Weber. The Protestant Ethic and the Spirit of Capitalism. – London: Routledge 2001, pp. 13–39.

⁵ W.C. Durham. Perspectives on Religious Liberty. A Comparative Framework. J.D. van der Vyver. J. Witte (ed.). Religious Human Rights in Global Perspective. Legal Perspectives.– The Hague: Martinus Nijoff 1996, p. 3.

⁶ M. Stirner. Ego and its Own. – London: Rebel Press 1994, p. 93.

⁷ Most importantly in H.S.Maine's "Ancient Law", mainly in the first chapter analysing development of Roman and Greek law form then existing society. But also J. Habermas. The Inclusion of the Other. – Studies in Political Theory, Wellington Graphics 2002, p. 213.

throughout the Middle Ages. In the 15th century, 'nation' started to be associated with the language of a concrete nation. After the French revolution, 'nation' acquired the meaning of the source of a firmly fixed source of sovereignty. Expressed by Lafayette and Sieyès in the many drafts of revolutionary documents. Each nation now had a right to political self-determination. Ethnic relations are replaced by formations of democratic will. Habermas stresses that in the second half of the 19th century, the term 'nation' was used together with the concept of 'citizens'. The nation of citizens gained identity not on the basis of ethnic-cultural similarity, but through the activity of citizens who actively exercised their democratic rights of participation and communication.⁸ "In political usage, the concept 'nation' and 'people' have the same extension. But in addition to its legal definition the term 'nation' has now the connotation of a political community shaped by common descent or at least by a common language, culture, and history."⁹

Once Schmitt stated that the modern state has 'banished' religion to the private sphere. A liberal answers Pilate's question "Jesus or Barabas?" with the desire to defer answering. Schmitt believes that in this way the state attempted to ensure a peace that allowed for welfare, personal freedom, etc. Therefore, the state applied a premise that it had not created or maintained – the Christian spirit that carried Europe and the whole world.¹⁰ If it had earlier obeyed the will of God then now, in an autonomous secularised world, man would himself create laws. In actuality, state secularity started to mean religious neutrality in Europe, which is indicative of the state's tolerance towards different religions. In the public sector founded on the principle of secularity, religion is treated in the same way as liberalism or communism or any other faith or ideology. There is only one rule in and for the state itself – the law. The nations and all citizens are granted equal rights under the law irrespective of their religion, race, or origin. This was quite a philosophical novelty in medieval times from two angles. First, human beings and nations seemed to be all different and thus had different rights. Second, the foundation of the whole of society were based on the differentiation of social states and strata. In the first case, the breakthrough required abstraction that led to similarity, and in the second, to the recognition of humanity as a whole.

The concept of a nation is not equivalent to nationalism. Major historical catastrophies, wars, revolutions, and so on, contributed significantly to the evolution of nationalism. Not all of them were negative. The French revolution, although including dictatorship under Robespierre, contributed to the modern and free Europe. The Napoleonic wars made the first crucial step to the unification of Europe. Code Napoleone is the foundation of all modern European legislation.

Sovereign nation states must ensure order on the territory under their jurisdiction.¹¹ Intervention in the internal affairs of another state had been considered illicit but without it we would not have been able to build up the new Europe. Sovereignty as a form of full external and internal independence became the foundation of the political and legal order of international society.

Based on the above, one might ask what created the system of sovereign nation states after the Peace of Westphalia. Some authors believe that this would be a totally erroneous approach, since we cannot speak of any system of sovereign states dating back to that time.¹² Krasner, for example, says that in reality there had never been and never will be sovereignty. If one accepts this standpoint, then it should be asked what are these individual nation states that are entitled to make laws and resort to violence?¹³ Hence, for the time being, let us put the standpoints of Krasner and his possible sympathisers aside. Instead, let us ask: What characterises that Westphalian system? Its basic characteristics have been cited to be as follows:

First, a war may be conducted only by a sovereign; second, a sovereign may not conduct a war in another state to enforce

⁸ J. Habermas, *ibid.*, p. 214.

⁹ *Ibid.*, p. 107.

¹⁰ See C. Schmitt. Political Theology. Four Chapters on the Concept of Sovereignty. 1922. Available at <http://ideopolitik.files.wordpress.com/2010/10/schmitt-political-theology.pdf>.

¹¹ H. Schilling. War and Peace at the Emergence of Modernity: Europe between State Belligerence, Religious Wars, and the Desire for Peace. – Münster: Westfälisches Landesmuseum 1998, pp. 23–46.

¹² S.D. Krasner. Sovereignty: Organized Hypocrisy. – New York: Princeton University Press 1999, pp. 10–15.

¹³ E. Loone. Suveräänsus. Seadus. Immigratsioon (Sovereignty. Law. Immigration). Atlex, Tartu 2004, p. 8 (in Estonian).

a religion it desires; third, there is no legitimate power above the sovereign entitled to make decisions binding to the state; fourth, a sovereign cannot do everything; fifth, sovereignty is territorial. The main principle of Westphalian sovereignty, however, has already been mentioned – whose realm, his religion (*cuius regio, eius religio*).

The Thirty Years War was actually not only a war for power, to conquer a particular territory, but also a war to enforce the right of religion. The relationship of the state and religion, the relationship of the state and ideology then titillated the minds of people most. England did not directly participate in the Thirty Years War. However, in England a civil war was fought even before Hobbes' 'Leviathan' was published. That war was also fought for the right of religion. Therefore, several streams of Protestantism were considered to be genuine. It is important to stress that Hobbes himself precluded the justification of the state with any ideology, including religion. In the following decades, this opinion spread in Western Europe.¹⁴ As we know, the principles of Westphalia were used also when drawing up the Treaty of Muenster.

The Westphalian international system was designed mainly by Europeans. Until WWI, the balance of powers that had formed after the end of the Napoleonic Wars in 1815 determined international law and international relations in Europe. The political map of Europe was shaped by the countries of the so-called 'European concert' – England, France, Russia, Prussia, and Austria. The foundation regarding *de jure* recognition of states was quite similar to today's situation: the liberalisation process of a state had to be built upon the cooperation and consensus of major powers and international institutions.

World War I redesigned the political map of Europe. The collapse of three empires resulted in the appearance of numerous states that all claimed recognition. Numerous nation states emerged which all claimed *de jure* recognition. *De jure* and *de facto* recognition, which as late as in the 19th century had been mainly a subject of legal and theoretical discussion, became a practical model of conduct in international relations and international law. International law at the time of WWI did not yet prohibit wars of aggression. Therefore, there was no legal reason not to recognise occupation as a fact that had taken place. By the way, the right of the self-determination of nations, expressed post-WWI in Wilson's 14 points, has unfortunately still not been practically implemented in international law.

Nevertheless, it is important to emphasise that after WWI, several major changes occurred in international law. The principle supporting *de jure* recognition of nation states – *ex factis jus oritur* (the law arises from the fact) – was replaced by a new principle – *ex injuria jus non oritur* (law does not arise from injustice). The USA, on the basis of the 1928 Kellogg-Briand Pact, developed a doctrine which prohibited war as a means to carry out policies. The Kellogg-Briand Pact was further developed by the 1933 Montevideo Convention, which was originally signed by six Latin-American countries. The USA and eleven European countries also joined this convention on the rights and duties of American states. Today, the Montevideo Convention has been signed by 27 states. Article 1 of the Montevideo Convention sets out the definition of a state as a person of international law. A state has four qualifications: a permanent population, a defined territory, government, and capacity to enter into relations with other states.¹⁵ In addition, the reality of sovereignty may include that right to install and collect taxes and establish conscription to the standing army. The Montevideo Convention also developed further the Kellogg-Briand Pact, emphasising that occupation was null and void and that disputes must end in reconciliation.

Hence:

1) In the Westphalian system of nation states, the sovereign or nation and their representative continue to be the source of *de facto* law. That power has three key features. First, absoluteness because independent nation states cannot be limited. Second, unitarity because power must apply to all things and acts and cannot be divided or relinquished. Third, it is the supreme power because power must be final in all of its decisions.

2) Such a treatment of sovereignty is indicative of certain links with a territorial-nation state. This is the only context in which

¹⁴ *Ibid.*, p. 30.

¹⁵ Montevideo Convention on the Rights and Duties of States. Available at <http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897>.

sovereignty can be realised. Only in a nation state can governors acquire a monopoly of decision-making in the realms granted to them, which no longer needs a higher power or its limitation.

3) Nation states belonging to the international community are sovereign; however, they must follow generally recognised international norms, rules, and obligations. Order and stability must be ensured by the principles underlying the Peace of Westphalia: first, the balance of powers which aim to prevent the rise of larger and more powerful states in order to limit the possibility of aggression; second, all participants must follow the rules and principles engrained in international law; third, larger conflicts must be attempted to be solved by international consultations; fourth, diplomatic communication must be developed which would help states make contact in order to resolve conflicts.¹⁶

Westphalian sovereignty created a basis for the entire international political system and international law. It paved the way for attempts to create an international society in which independent nation states have plenipotentiary power over the territory under their jurisdiction, consider the interests of other states and do no harm to the interests of their people. The Westphalian Peace is the pillar of sovereignty by which the church was separated from the state.¹⁷ Or more precisely, state was separated from the church. The concepts of international society mentioned above include both the realist concept based on the interests of a modern state and the balance of powers, as well as extreme versions of value-regulatory concepts, according to which chaos and anarchy can be replaced by the hegemony of 'world government' or a system of collective security. Needless to say, the modern world also includes the UN as an international organisation. On the one hand, the UN emphasises the sovereignty of its member states; however, on the other hand, it attempts to stabilise the current modern order and would resort to using force for this purpose, if needed.

From the perspective of international law, when justifying the transformation of sovereignty in today's postmodern world, one is bound to consider the relationship between the principle of *ex injure jus non oritur* and that of *ex factis oritur jus*. Namely, what is the relationship of the principle of lawfulness and that of practicality, when solving concrete cases, so as not to ignore the legal arguments for state sovereignty against changes in society?

Unlike the modern world, which is built on the principle of balance, the postmodern world is built on openness, transparency, and trust. "The postmodern state defines itself by its security policy. It does so as a matter of political choice. There is no iron law of history that compels states to take the risk of trusting transparency rather than armed force as the best way of preserving its security... Lying behind the postmodern international order is the postmodern state – more pluralist, more complex, less centralised than the bureaucratic modern state, but not at all chaotic, unlike the premodern."¹⁸

SHIFT IN SOVEREIGNTY

Two interstate agreements were the driving factors behind the emergence of the postmodern world: The Treaty of Rome (1957), which launched European integration, and the Conventional Armed Forces in Europe (CFE) Treaty, which according to Cooper was born of the failures, wastes and absurdities of the Cold War. "The path toward this treaty was laid through one of the few real innovations in diplomacy – confidence-building measures."¹⁹ At the core of the CFE Treaty is intrusive verification, which Cooper believes is a key element in a postmodern order where state sovereignty is no longer an absolute. In a situation where sovereignty has been sacrificed to security and foreign policy, it proceeds from the principle that allows interference in internal aspects of external affairs. However, the aspirations of the Organization for Security and Co-operation

¹⁶ A. Watson. *European International Society and its Expansion*. The Expansion of International Society, ed. by H. Bull and A. Watson. – Oxford: Clarendon Press 1984, pp. 13–32.

¹⁷ H. Schilling. *War and Peace at the Emergence of Modernity: Europe between State Belligerence, Religious Wars, and the Desire for Peace*. – Münster: Westfälisches Landesmuseum 1998, pp. 23–46.

¹⁸ R. Cooper. *The Breaking of Nations, Order and Chaos in the Twenty-First Century*. – London: Atlantic Books, p. 50.

¹⁹ *Ibid.*, p. 35.

in Europe (OSCE) in providing internal standards of conduct (freedom of press, treatment of minorities, etc.) to sovereign states are much more far-reaching.

Today's world is much more complicated than to be divided into just North and South based upon economy, or East and West based upon culture and values. It is Samuel P. Huntington who stated that there is not one and only one cultural axis. Instead of the East and West it would be more appropriate to speak about the 'West and the rest', which would also be indicative of the existence of many of those who belong to the non-West.²⁰ If the Arab world is placed in the non-West, one should certainly ask, which are these basic cultural values and traditions that distinguish, for instance, an Islamic country from the Western model of a state.

One of the features of the postmodern world is the loss of distinction between states' internal and external affairs, which is bound to affect state sovereignty. "Mutual interference in some area of domestic affairs and mutual surveillance (of food safety, of state subsidies, of budget deficits) is normal for postmodern states. In most European countries the judgements of the European Court of Human Rights on all kinds of domestic matters (whether you can beat your children, for example) are accepted as final. Force is rejected as a way of settling disputes."²¹

As the postmodernism exists through a lack of borders, classifications, and so on, the borders of postmodern states are also less important. Even court and administrative decisions are enforced across state borders, right down to parking tickets. In this environment, security, which was once based on walls, is now based upon openness and transparency. It needs still to be remembered that transportation documents (bills of lading, way bills etc.) are not mutually transparent, yet the problem is currently under discussion. At the same time, some postmodern relations are restricted by agreements. With Russia, transparency is restricted, for instance, by the CFE Treaty. The old imperialism is dead in the postmodern world, as many states no longer aspire to new territories. The exception in Europe is Russia, which has occupied Crimea, Eastern Ukraine and parts of Georgia. Hence, the postmodernising world can be treated as a highly-structured and organised network that has no central power. In terms of security, for the majority of the world, anarchy continues to be the dominant reality. "When someone has decided to use force, the system returns to the law of the jungle, however many trade agreements there may be,"²² as occurred during WWI. One must agree with Cooper that if postmodern cooperation structures enhance the security of states better than the Westphalian system of the balance of powers, then the states' opportunities to exercise their sovereignty improve.

State and sovereignty are not constants anymore but change in time and space together with society. A postmodern state is less dominant, "state interest becomes less of a determining factor in foreign policy: the media, popular emoticon, the interests of particular groups or regions (including transnational groups) all come into play."²³ At the same time, that is not to say that "the state has outlived its usefulness. It does not even mean that sovereignty has become meaningless. However, as the state and sovereignty are historical categories, they change and sometimes they change considerably."²⁴ State sovereignty from the postmodern perspective is primarily shared, not an absolute supreme power. From the legal angle, the state no longer has a monopoly in law-making in a postmodern state. The monopoly of the state to employ force is also restricted by alliances and weapon control agreements (e.g. the CFE). This means, however, that a modern state, being a sovereign ruler of its territory that was once able to do there whatever it wanted without external interference, has today exhausted itself. There are many sociological reasons for that but one philosophical reason as well: postmodernism means, after all, the elimination of any type of limit, border or line, and thus they do not exist for the states either.

Postmodern sovereignty construes itself through various international associations, unions and agreements that presume cooperation and democracy built on consensus. Peace-building is just a part of the activities by sovereigns as is the conduct of war. Cooper is of the opinion that sovereignty for a postmodern state means a seat at the table. Or, some fixed position within the realm of members of the international community. As a postmodernising state is less centralised and more plu-

²⁰ *Ibid.*, p. 46.

²¹ *Ibid.*, p. 37.

²² *Ibid.*, pp. 47–48.

²³ R. Cooper. *The Breaking of Nations, Order and Chaos in the Twenty-First Century.*– London: Atlantic Books, p. 50.

²⁴ R. Müllerson. *Ordering Anarchy. International Law in International Society* – Martinus Nijhoff Publishers, p. 134.

ralist and resembles more of a network than a bureaucratic system, then the state will become less dominant in a postmodernist society. Just like a tribe, a town, a republic and an empire, the modern state will soon become a relic of the past. The postmodern viewpoint is a response to what Habermas calls the crisis of legitimation. Habermas believes that the state has become dysfunctional because it has “colonised the world of life”.²⁵ The postmodernist alternative presents the possibility of a society without the authority of the state, offering autonomy and independence from the state to law as a social regulation. Emphasis is on juridical pluralism.²⁶ This opposes Kelsenian legal fundamentalism. It is also emphasised that the state is no longer the only source of the rule of law. People live in families, work in offices and factories, buy goods at markets and in shops, fulfil various social roles, share different values, etc.²⁷

We will repeat that later, in a postmodern society, the state simply ceases to exist in the sense of the last 500 centuries. One example of that will suffice: Huawei is definitely more sovereign than even the communally centralised Chinese state. The power of Musk is more significant than that of Macron. Even the social policies of the “yellow vests” were stronger than that of Macron. For those who dislike Trump it is inevitable that we accept that the movements of Boston and Wall Street were more powerful than those of the US president.

As the role of the state in today’s world has become increasingly problematic, the lack of its involvement where substantial roles are played is also less noticeable. Hence, one may think that in such a society, external policy will be less dependent on the interests of the state. Could this mean the end of the state? Cooper believes that states will remain a fundamental unit of international relations for the foreseeable future, even though they may have ceased to behave in traditional ways. His justification is that, “identity and democratic institutions remain primarily national” despite economy, law-making and defence being increasingly embedded in international frameworks, and the borders of territories possibly becoming less important in postmodern society.²⁸

It is possible to agree with Cooper in relation to European nation states, where for centuries identity has been founded primarily on ethnicity. At the same time, it should be pointed out that identity, like sovereignty, is not a constant that is independent of time and space. This especially concerns the current European Union, where the evolution of a new postmodern state offers opportunities for a partial change of identity rooted in ethnicity. One should also agree with Cooper that in international relations the state will continue to be a fundamental unit for some time. It is quite another thing, however, whether the state as a fundamental unit of international relations will be a singular or multilateral subject in the future. This is a question that only time will answer.

But the key question with an evolving international society and world order is how states, as subjects of international law, communicate with each other in this shared reality. Keeping in mind that they have to communicate with new sovereigns as well. What will these relations and connections be like? Are these built on international society as a large network-based institution, where relations between states are regulated by laws made on consensus not conflict? Or to put it another way, would they be based on the method of conflict where major powers, especially the United States, set themselves against all of Eurasia, or will it be a method of consensus, where an attempt should be made to find common ground?

In the search for a new world order, not much consideration has been given to the fact that Western society accounts for just one third of the whole world. It means that besides Western civilisation, which covers mostly the European and American Christian world, there are many other civilisations in the world that do not share Western values of freedom and democracy. In the past, these civilisations were isolated from each other and as such did not pose a particular danger to each other. Unfortunately, this is not the case today, when a country without much law and order can still have an international airport.

²⁵ J. Habermas. *Legitimation Crisis*. Beacon Press, Boston, Massachusetts 1975, p. 54.

²⁶ N. MacCormik. *Questioning Sovereignty. Law, State, and Nation in the European Commonwealth*. – Oxford University Press 1999, pp. 97–122.

²⁷ See G. Lloyd. *Part of Nature: Self-knowledge in Spinoza’s Ethics*. – Ithaca: Cornell University Press 1994.

²⁸ R. Cooper. *The Post-modern State and the World Order*. – London: Demos, Foreign Policy Centre 2000, p. 39.

Such countries may evoke sympathy; television may bring their sufferings to our homes. Furthermore, where the state is too weak to be dangerous, non-state actors may become too strong.

Hence, premodern, modern and postmodern worlds are closely interconnected through globalisation. “A world divided into three needs a threefold security policy and a threefold mindset. Neither is easy to achieve.”²⁹ One can agree with Cooper that there is no new world order, just a new world that is not composed of states of different shapes, contents and legal traditions; instead of a new world order, there is a zone of safety, mainly connected with the postmodern world, and outside it a zone of danger and a zone of chaos.³⁰ In this context, one is bound to ask whether the postmodernising state may mean the end of classical sovereignty.

The discourse of the postmodern world attempts to unburden itself from all closed systems and order the world through relationships with other systems. From the instrumentalist perspective that has grown out of pragmatism, the concept of sovereignty does not necessarily correspond to any ‘real world’. Its different meanings are important as their use makes it possible to control and, to a certain degree, foresee events. Everything depends on the purpose of using the concept. What is the purpose for which the concept of sovereignty is used, how does sovereignty function in different language contexts? What is the context of its use? For instance, what is the concrete purpose of solving an international conflict? What is the relationship between political agreements and international law in solving one or another situation concerning state sovereignty and independence?

In order to govern and regulate the globalising world, such international institutions that have primacy over nation states, values and rules are needed that would create conditions to unite this diversity and to resolve conflicts endangering global peace through global civil society.³¹ For instance, consider the UN, NATO, the International Atomic Energy Agency, the World Bank, International Monetary fund, on the one hand, and universal values and rules, human and civil rights, fundamental freedoms, on the other. There has been almost as much speculation about global civil society as about global world governance. Despite the somewhat utopian nature of the idea, the issue of a global civil society is worthy of attention, particularly in view of its democratic decision mechanism,³² which directly pertains to the issues of the legitimacy of power or sovereignty. Finally, it must be kept in mind that the WTO is definitely a more important global structure than the UN and any of its other subdivisions. The question remains: what types of laws and legislation will replace the norms we traditionally call constitutions. This question is even more important if we keep in mind that many international corporations operate by rules that are definitely more humane than those embedded in traditional international law. And their outcome is more humane as well (e.g. Musk’s space programme, producing new materials etc).

DOES SOVEREIGNTY MATTER IF STATES DO NOT?

Sovereignty (if it still exists) does not need to satisfy, and indeed in many cases cannot, all the requirements of sovereignty established by the Westphalian Peace in a globalising world. For instance, a state may be recognised *de jure* internationally but be *de facto* subjected to external control. Krasner believes that in such a case sovereignty is violated, as the key qualifier of a sovereign state is its right to external non-interference,³³ be it in the form of military intervention by force or an invitation to intervene.

We can agree with Krasner insofar as such a situation is seriously contrary to the principle that the communication of states, as subjects of international law in international society, relies on equality and lawfulness. The equality of states has been

²⁹ *Ibid.*, p. 57.

³⁰ *Ibid.*, pp. 16–55.

³¹ M. Desai. *Global Governance. Ethics and Economics of the World Order.* – London: Cassell 1995, pp. 6–21.

³² J. Habermas. *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy.* – Cambridge: Polity Press 2007, pp. 359–388.

³³ S.D. Krasner. *Sovereignty: Organized Hypocrisy.* – New York: Princeton University Press 1999, pp. 126–127.

called the pillar of international society.³⁴ Bruno Simma has reiterated this principle in that all states of the world have *suprema potestas*, and as such are not in some kind of hierarchy. International law must observe the equal bases of the sovereignty of all states. This principle has usually been treated as sovereign equality.³⁵ International law has mainly emphasised the dual function of the principle of sovereign equality. First, it accepts a pluralist international society – nations treat each other above all as humans not as Christians or Muslims. Second, the principle of sovereign equality is indicative of the idea of an egalitarian international legal order, which means that all states are legally equal. Equality in sovereignty is the most important principle of sovereignty in international law. Hence, equality can be spoken of only in relationship with another equal person, be it a natural or legal person. Müllerson writes that “...states are not only legally equal, they are also legally supreme. What the latter means is not easy to define. States have to observe international law and their consent is not necessarily and always needed for the binding effect of international legal rules. Equally, decisions of international bodies may be legally binding for states even without their consent. However, it seems that the prevalent view among states themselves, as well as among legal writers, is that a state is sovereign only in so far as it is not constitutionally subordinated to another state.”³⁶

The *jus cogens* character of all fundamental principles of international law – sovereign equality, non-interference in internal affairs, non-use of force, peaceful settlement of disputes, self-determination of peoples, respect for human rights, international cooperation and good faith – makes them open to question.³⁷ Some of them, for instance, the principle of the self-determination of nations, are “controversial even as *jus dispositivum*; the suggestion that they constitute *jus cogens* is difficult to accept.”³⁸ But Müllerson argues that “not all fundamental principles, and all aspects of the content of these principles, have *jus cogens* character”. Despite this, one should be doubtful “about the applicability of the very concept of *jus cogens* in the law of treaties, especially as it is formulated in Article 53 of the Vienna Convention on the Law of Treaties.”³⁹ Here, he refers to the secret protocols of the 1939 Molotov-Ribbentrop Pact between the Soviet Union and Germany, which divided their spheres of interest (territories of Poland, Estonia, Latvia, Lithuania, and Bessarabia). “A treaty whereby the USSR and Germany would have agreed, say, to divide fishing rights in the territorial waters of Poland or Estonia would equally have been null and void since states simply do not have, in the absence of consent, the competence to deprive other states of their legal rights by way of treaty.”⁴⁰ This means that the rules of *jus cogens* may be spoken about in international law only to the extent that two states “agree by way of the conclusion of a treaty to do something that is prohibited by a *jus cogens* norm against each other and not against any third state (e.g. if two states were to agree that they will not settle their border disputes at the negotiating table but only on the battlefield)”⁴¹

The principle of the equal basis of the sovereignty of states has had an important role in the development of the international society. It has been even instrumental in the restoration and development of the independence of many small and not (I would delete ‘overly’) strong states like the Baltic states – Estonia, Latvia, and Lithuania. The principle of sovereign equality has become an important principle of international law, especially at times when international society has rapidly expanded. As a result of globalisation and the fragmentation of society, the number of states has increased at an unprecedented pace. However, as more and more states have evolved under the jurisdiction of international law, many are in fact unequal to developed sovereign states. Benedict Kingsbury points out that sovereignty somewhat contains or manages the existing inequality between states.⁴² At the same time, it should be emphasised that no legal principle, be it a principle of international or domestic law, can make someone more or less equal in a *de facto* meaning. Size, level of development, and so on, are not related to the right of existence of any state. Legal principles and their application are especially important in hard cases.⁴³

³⁴ L. Oppenheim. *International Law: A Treatise*. Vol. II. – London: Longman, Greens & Co. 1952, p. 365.

³⁵ G. Simpson. *Great Power and Outlaw States* by Gerry Simpson, – Cambridge University Press 2004, pp. 26–60.

³⁶ R. Müllerson. *Ordering Anarchy. International Law in International Society* – Martinus Nijhoff Publishers 2000, p. 120.

³⁷ *Ibid.*, p. 156.

³⁸ J. Crawford. *The Creation of States in International Law*. – Clarendon Press 1979, p. 81.

³⁹ R. Müllerson. *Ordering Anarchy. International Law in International Society* – Martinus Nijhoff Publishers 2000, p. 156.

⁴⁰ See, e.g., *From the Molotov-Ribbentrop Pact to the Treaties on Military Bases: Documents and Materials*. – Tallinn: Perioodika 1990.

⁴¹ *Ibid.*, p. 157.

⁴² B. Kingsbury. *Sovereignty and Inequality*. – *European Journal of International Law* 1998. Vol. 9, pp. 599–625.

⁴³ R. Dworkin. *Taking Rights Seriously*. – London: Duckworth 1977, p. 22.

The application of the formal principle of sovereign equality requires the actual consensual will among the states to resolve conflicts and vexed questions. Hence, in reality the application of the principle of the sovereign equality of the states depends also on political agreements and mutual understanding. If this is not achieved, both the principle of sovereign equality as well as other principles of international law will be nothing more than words in a legal document.

Speaking today of the end of Westphalian sovereignty, it is sobering to remember that the Peace Treaty of Westphalia, which created the legal basis for international society, did not immediately bring peace to Europe. Plant notes, “Of course, the Treaty (of Westphalia) and its principles of sovereignty did not just emerge from a void. There had been for some time before 1648 an assertion of principles which we would now call principles of sovereignty, such as the principle of *Rex in regno suo est imperator*, which was used to justify the French declaration of *de jure* independence from the Holy Roman Empire; and *Civitas superiorem non recognoscens est sibi princeps* was also invoked”.⁴⁴ In addition to establishing the principle of sovereignty, one of the foundations of the treaty, *cuius regio, eius religio* (whose realm, his religion), removed religion from the causes of war. “But what the Treaties of Münster and Osnabrück really did was legally to consecrate the international liberties of Europe, as they had been secured by the religious revolution. The idea of a united Christendom was abandoned. Internationally, religions were made equal. Pope and Emperor lost theoretically what they had long lost practically, their hegemony... The Canon Law ceased in fact to be international, which it most distinctly was in the Middle Ages; became (subject to concordats) merely a conceded machinery for regulating a department of particular states... In theory the dogma that all states are equal begins to supersede the medieval conception of a universal hierarchy of officials”.⁴⁵ Speaking about the system of sovereign states created in Europe by the Treaty of Westphalia; that is, of international society it needs to be remembered that this system was never put into practice in its totality. Rather, it may be treated as a certain manner of conduct from the social and political perspective.⁴⁶ Within states, the sovereignty of the nation or of a monarch as a sovereign is spoken of.

One more note: in the postmodern world we need to notice that the subjects of Westphalia are changed today. The corporations of Elon Musk, Gates and Huawei are definitely more influential, socially important and sovereign than many states. Even the conducting of warfare is actually carried out by private organizations – like the Wagner army operating out of Russia.

International law tells us “about where sovereignty resides within a state’s territory”, what Roth calls “the last word on public order”⁴⁷ (Meaning that it does not cover new sovereigns in international law, as we mentioned earlier). Where is Leviathan (Hobbes), who has the monopoly on legitimate violence (Weber), who gives orders (Austin) or who makes decisions in an emergency situation (Schmitt). “This aspect of sovereignty goes to the supremacy of the sovereign over international competitors.”⁴⁸ International law has long wanted to know who carries effective control, “but not what he is (from the perspective of legitimacy)”. There are examples from the practice of international society itself, when the simultaneous treatment of sovereignty from different – international and domestic – perspectives may create chaos instead of order. For example, the confusion arising around the sovereignty of Iraq after the Iraq intervention in 2003. “In Security Council Resolution 1500(2003), for example, the Council that would mark ‘an important step towards the formation by the people of Iraq of an internationally recognised, representative government that will exercise the sovereignty of Iraq’. Resolution 1511(2003) stated aid that the Governing Council ‘embodies the sovereignty of Iraq during the transitional period’. Resolution 1546 then spoke of Iraq’s reassertion of ‘full sovereignty’ in June 2004. But prior to these resolutions, Resolution 1483(2003), passed a few weeks after the invasion, had reaffirmed the sovereignty (and territorial integrity) of Iraq.”⁴⁹

Gerry Simpson asks how this overabundance of sovereignties should be explained. Allot notes that the relationship between international and domestic law “follows also that the three levels of the international legal system are a hierarchy, with

⁴⁴ R. Plant. *Rights, Rules and World Order in Global Governance*. – London: Cassell Imprint 1995, p. 191.

⁴⁵ N.J. Figgs. *Studies in Political Thought From Gerson to Grotius*. – Cambridge University Press 1956, p. 123.

⁴⁶ S.D. Krasner. *Compromising Westphalia*. – *International Security*. 20 (3), 1995 pp. 115–151.

⁴⁷ B.R. Roth. *State Sovereignty, International Legality, and Moral Disagreement* Available at <http://www.law.uga.edu/intl/roth.pdf>, p. 45.

⁴⁸ G. Simpson. *Guises of Sovereignty*. Conference publication. *End of Sovereignty*. 8.–10.04.2004, p. 9.

⁴⁹ *Ibid.*, 8.–10.04.2004.

international constitutional law dominating the exercise of legal powers within the national public realms, including the power to make, apply and enforce national law".⁵⁰ The author believes that the problem is that in the globalising and post-modernising world sovereignty, just like any other concept, cannot be treated as an absolute. The meaning of any concept, including that of sovereignty, depends on its angle of construct and purpose. It is just like a language game of Wittgenstein, where the meaning of words depends on the specific context and purposes for which one or another word is used, on what is the purpose of one or another word. Wittgenstein has succinctly compared language with a toolbox. The meaning of a word, just like the meaning of a tool, depends on the purpose of its use.⁵¹

CONCLUSION

We have reached the conclusion that many fundamental features of states and their sovereignty do no work anymore. The postmodern world and thinking have eliminated borders and differences not only between countries but in our thinking as well. From here we should ask if there are no 'normal' states anymore, then perhaps the time for the states themselves has disappeared. And perhaps there are other entities that replace the states and perform their functions – provide jobs and living, develop culture, guarantee social security?

And how will our democratic mechanisms deal with them? We do not know how the members of the board are selected but we know that these corporations rule our lives.

50 P. Allot. *The Concept of International Law*.– 10 *European Journal of International Law* 1999, p. 38.

51 L. Wittgenstein. *Philosophical Investigation*. Basil Blackwell– Oxford 1953, p. 116.

EU`S HOPELESS CRISES IN POSTMODERN REALITY

IGOR GRÄZIN

THE ENDEMIC WRONGS OF THE EU

Although we are going to put forward several statements regarding problems within the EU, they should not be interpreted as a way towards possible solutions. EU structural problems are endemic and thus do not have solutions. The list may include 10s of items but even some of them, crucial ones, lead to the EU's hopelessness. Let's name some of them. First, the lack of economic coherence; for instance, the EU does not attempt to balance the agricultural subsidies of East and West. The EU quite readily carries out the interests of its West against the crucial interests of its Centre and East: France had been ready to deliver the Mistral-Class battleship to Russia to give it capability of marine operations against the Baltic Coast. Germany used its corrupt contacts to construct the Nord Stream-2 gas pipeline to establish a German-Russian supply-line to bypass EU Member States Poland and the Baltic states, nothing to say about Ukraine that has not been significantly supported by the same EU against Russia's intervention in the Donbass area and occupation of Crimea. The most recent dissolution of European unity has occurred on the ideological level – starting from the dispute regarding Soros and ending with establishing current European values. Although Robert Schumann stressed in the very early stages of the EU that it should be based upon Christian values, it is Central Europe – Poland, Hungary et al. – that actually carries them out. The third element is the diversification of the EU's foreign policy. Like the opening of Germany's borders to migrants without the permission of the transit countries. The first reaction by Merkel to Hungarian efforts to defend itself and other countries in Central Europe had been extremely aggressive and negative. Only now (in 2020), many years later, have the German migrant policies become more reasonable, humane and caring, but even today Germany has not offered apologies, either to Hungary or Austria, who had also fallen victim to German imposed migrant policies.

Instead of analysing all these crises individually, let us state a general situation: it has demonstrated that the risk of the disintegration of the EU is much more than a rhetorical device – a toy monster used by scared politicians to enforce austerity on unhappy voters. It is not only European economies but European politics that are in turmoil.¹

To add to the problems mentioned above, we should state that analysts claim that the crisis will continue to deepen because tensions on financial markets have risen steeply. Although we know that the introduction of the euro has been primarily a political project (it does not correspond to the inevitable demands of Mundell's optimum area) – the Eurozone must impose political unity and centralization upon its members – it may work the other way around in the negative case: political failures might start to destroy the Eurozone. It is noteworthy that in the European parliament there have been several discussions on how to squeeze out of the Eurozone. Discussions not only by euro-countries (Finland, Estonia) but by countries with independent fiscal systems (Sweden, Norway, Poland, Denmark, primarily Northern Europe).

To look at some technical details: “The rate of return of Britain's ten-year debt securities has never been lower in their 300-year history, whereas the interest rates of Spain's debt securities have risen to new heights.”² The rate of return on Germany's debt securities is also extremely low. At the same time, the eyes of many European Union Member States, especially the new ones, are turned towards Germany. It is Germany from whom decisive actions are expected to solve the financial crisis. “Germany has to decide whether to become a good-natured hegemon or to leave the Eurozone. The first option would be considerably better. It would require two new objectives: first, establishing a more or less level playing field between debtor

¹ I. Krastev. The European dis-Union. Lessons from the Soviet collapse. 2012. Available at <http://www.eurozine.com/articles/2012-07.-26-krastev-en.html>.

² G. Soros Euroopa liidu tragöödia ja kuidas seda lahendada (Tragedy of the European Union and How to Solve it).– Tallinn: Vikerkaar 2012, No. 9, p. 63 (in Estonian).

and creditor states, so that they could refinance their government debt on more or less equal terms. Second, aspiring to a nominal growth of up to 5%, so that Europe could grow out of its debt burden.”³ This is what we have said: the current financial crisis is not only a crisis of the euro, but a crisis of the entire European Union (Keeping in mind that the English pound is technically not related to the euro but it is related to Brexit policies).

Therefore, solving this crisis, as well as the further integration of the European Union and the future of the European Union as a postmodernising state, first and foremost, depends on Germany taking the leading position. The first steps to solving this crisis have already been taken, mainly under the lead of Germany. By that we mean the European Stability Mechanism (hereinafter: ESM).

But before going further, we need to realise that although some steps by German banks, especially the ECB under German guidance, may really solve some problems, it is highly doubtful that all the members of the EU would be ready to accept this German intervention. No 1: as the Eurozone is not a Mundell area, it is evident and visible that increasing interest rates in one country may not be beneficial to another, whose economic cycle is just the opposite. This is fiscally evident (look at our recent example of Spain and Great Britain). No 2: Germany is not a very reliable and reasonable political partner within the EU. We mentioned here the Nord Stream case and irresponsible and inhumane migrant policies earlier. Therefore, there is a real risk of fiscal policies carried out without much attention to the interests of the other countries.

We need to make a statement here: German politicians like to make references to their Nazi past when it is convenient. Like when underfinancing their military budget or contributing otherwise to NATO activities. But they do not refer to the questionability of modern policies – like Nord Stream that had been started by the German Chancellor just one week after his resignation when he was hired by Putin’s Russia. It is most probably the highest case of corruption in the last 30 years but is never paid attention by modern Germany. And this has definitely nothing to do with the Nazis but with Merkel.

ESM as politics

The ESM is a means established by members of the eurozone, enabling them to help the other eurozone member states in cases of financial difficulties. If one eurozone member is not given a loan from the market to finance its activities, it can ask for help from the other Member States, under the guarantees of which the ESM can take a loan from the market and transfer it to the member state to ensure the sustainable development of the creditor state. Since the Member States are deeply interconnected with one another through export and import relations, they should join forces mainly to ensure the economic competitiveness of their region. At the European Council meeting that took place on 16–17 December 2010, the Member States of the European Union (EU) agreed on the need to establish a permanent stability mechanism to ensure the financial stability of the EU Member States that use the single currency euro (the eurozone). At the same meeting, the EU Member States also agreed on amending Article 136 of the Treaty on the Functioning of the European Union (TFEU) in a way that the Member States would have a clear permission to create a stability mechanism. On 11 July 2011, the Minister of Finance signed the European Stability Mechanism Treaty (ESMT). On 9 December 2011, the heads of governments of the eurozone Member States agreed on amending the ESMT at the European Council. The purpose of the ESM is established under Article 3 of the European Stability Mechanism Treaty that states, “The purpose of the ESM shall be to mobilise funding and provide stability support under strict conditionality, appropriate to the financial assistance instrument chosen, to the benefit of ESM Members which are experiencing, or are threatened by, severe financing problems, if indispensable to safeguard the financial stability of the euro area as a whole and of its Member States. For this purpose, the ESM shall be entitled to raise funds by is-

³ G. Soros, *ibid.*, p. 65.

suings financial instruments or by entering into financial or other agreements or arrangements with ESM Members, financial institutions or other third parties.”⁴

Issuing from the interests of economic and financial stability, the author finds the purposes of the ESM as an international financial institution necessary and justified. The ESM is, by nature, an international agreement that is regulated under international law. By that, an international financial institution is established, that is not an EU institution. The ESM has its members, voting procedure, its employees have certain privileges and immunities. The participating states of the ESM create new rights and obligations for themselves under this treaty. However, problems arise when the ESM as an international agreement is analysed from the point of view of the sovereignty of the Member States. Whether and to what extent are the Member States willing to transfer part of their sovereignty or right to make decisions in solving financial and economic issues to the international financing institutions and what are the functions left to the Member States in deciding over these matters? Let us try to analyse this issue from the point of view of one of the EU’s smallest Member States – the Republic of Estonia.

The ESM passed the constitutional review of the Chancellor of Justice in Estonia. According to the Constitutional Review Court Procedure Act (CRCPA), the Chancellor of Justice has the right to contest international agreements to ensure the performance of the provisions stated in §123 (1) of the Constitution; that is, to ensure Estonia would not enter into unconstitutional foreign agreements. Under EU law, there is a principle of acquired competence and the EU has three types of competence – exclusive competence, shared competence and competence to take measures to support, coordinate or supplement measures taken by the Member States. When the monetary policy of the eurozone is under the exclusive competence of the EU, according to Article 5 (1) of the TFEU, the EU only has a supporting role in coordinating the economic policies of the Member States. This means that in this field, the Member States can execute their competencies independently, including cooperate for that purpose and include the EU institutions into their cooperation. The Chancellor of Justice applied for the Supreme Court of the Republic of Estonia to “declare Article 4 (4) of the European Stability Mechanism Treaty signed on 2 February 2012 in Brussels to be in conflict with the principle of parliamentary democracy stipulated with §1 (1) and §10 of the Constitution of the Republic of Estonia, and §65 (10) and §115 of the Constitution”.

In brief, the arguments of the Chancellor of Justice in defence of the underlying principles of the Constitution of the Republic of Estonia are as follows: first, Article 4 (4) of the ESM infringes the principles of democracy and parliamentary reservation, as well as budgetary powers of the Riigikogu. “The principle of parliamentary democracy includes the chain of legitimacy and political responsibility, in which executive power is responsible to the parliament, and the parliament to the people as the highest power. ... A budget is also an instrument of the Riigikogu that is used to perform the obligation provided in §14 of the Constitution to ensure people’s fundamental rights and freedoms. ... Budgetary choices belong to the core competences of the Riigikogu, on which the legislature has an extensive margin of decision.”⁵ Second, the ESM creates a threat of significant increase in the debt obligations of the Republic of Estonia. “The nominal value of the Estonian subscribed share capital in the ESMT is approximately 8.5% of gross domestic product; that is, an exceptionally large proprietary obligation. ... It cannot be ruled out that the ESM debt obligations must be reflected as government debt in the meaning of TFEU Article 126 (2) b) and the TFEU Protocol No. 12 Article 2.”⁶ Third, the excessive generality of both the ESMT and the European Stability Mechanism Treaty on the regulation of the provision of financial aid may infringe the competencies of the Riigikogu of the Republic of Estonia in influencing the budgetary processes of the Republic of Estonia. “By ratifying the ESMT, the Riigikogu merely decides on adopting a financial obligation, but the terms on which the ESM may use the right to provide financial aid that is secured by Estonia has been stipulated very vaguely. ... §65 (10) of the Constitution together with the principle of parliamentary democracy and the Riigikogu’s budgetary powers provide that the Riigikogu must have a chance to influence the terms and conditions of the financial aid agreement via the Government of the Republic. An unavoidable precondition for the involvement of the Riigikogu is that the ESM Board of Governors shall decide on matters related to the provision of

⁴ The European Stability Mechanism (ESM). Article 3. Available at http://www.efsf.europa.eu/attachments/esm_treaty_en.pdf.

⁵ Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

⁶ The Treaty on the Functioning of the European Union. Article 126. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E126:EN:NOT>.

financial aid provided in ESMT Article 5 (6) f) and g) exclusively by mutual agreement. Article 4 (4) of the ESMT, however, allows for the authorisation of ESM financial aid by an 85% qualified majority, meaning that the Estonian vote is not decisive. Agreement of the six largest countries is sufficient for the required 85%.⁷⁷ The author must agree with the statements of the Chancellor of Justice in the matters concerning the protection of Estonian sovereignty.

MAY THE ESM BRING SOVEREIGNTY BACK?

However, sovereignty has ceased to be something absolute a long time ago in today's postmodern world (like very many other things – botanical classifications, divisions of political parties etc). Its meaning depends upon the situation for which sovereignty is needed. Therefore, the arguments of the opposite side must also be considered – in that case, it is the Government of Estonia, and the Ministry of Finance to be more precise. The arguments of the Government in support of the ESM are as follows: first, the request of the Chancellor of Justice of the Republic of Estonia to the Supreme Court of the Republic of Estonia is not permitted, since... “valid legislation does not enable the Chancellor of Justice to initiate standard control in the stage of *ex-ante* verification. The Chancellor of Justice has a constitutional function in *ex-ante* and *a posteriori* control of constitutional review. For an international agreement to be ratified, the contestable legislative act in the meaning of §142 of the Constitution is the ratification act, which does not exist in case of the ESMT. Although the first contribution to the ESM is envisaged in the state budget of 2012 by the Riigikogu, it does not mean ratification of the ESMT in the meaning of §121 of the Constitution and is not an independent basis for incurring expenses.”⁷⁸ Second, the ESM should not be handled completely separately from EU law, the economy and monetary union. The link between the ESMT and EU law is affirmed by European Council decision No. 2011/199. The Court of Justice, the European Commission, the ECB and the Council of the European Union are also involved in implementing the ESM. In response to that, first the author agrees with the statement that in developing EU integration processes, referring to international law is inevitable, and it cannot and should not be handled separately from EU law. Rather, the connections between international law and EU law in today's globalising world should be treated as connections between general and special norms, the universal and the specific. In legal literature, for example, the Schengen convention is also considered a source of EU law. The EU integration process is further developed in some situations by international law and these treaties are closely related with the regulatory object of the EU treaties. Inevitably, we must agree with the statement that the main purpose of the ESM is the continued stability of the single currency of the EU, the advancement of EU objectives and the protection of the interests of the EU Member States. Therefore, the ESM must be assessed based on Estonian membership in the EU, since its contents and nature is related to EU membership and strongly concerns EU law. The author finds that, third, one of the strongest arguments in favour of the ESM is the argument that by accession to the ESM, the general right of defence based on the concurrence of §10 and §13 (1) of the Constitution, aimed at the protection of all rights enacted in 1973, is ensured. “The state has an obligation under financial stability as the principle of the Constitution to establish and develop legal provisions and take measures to protect an important public interest. Financial stability cannot be felt in the conditions of the normal functioning of the economy, but a lack of financial stability may endanger the functioning of a state in addition to the subjective rights, as well as safeguarding of other constitutional principles and values.”⁷⁹ This argument also accords with our view that for a small country in today's world, it is extremely important to share its sovereignty through integration primarily with such a region that is closest to the small country culturally and historically, and would help it realise its shared sovereignty in the best possible manner. For Estonia as a small economy and political entity, this is undoubtedly the European Union. “This brings about changes in competencies of the state authorities of the Member States. Both the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union and the ESMT affirm the need for further development of the EU integration process by using international

⁷⁷ Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

⁷⁸ Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

⁷⁹ Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

law or closer cooperation provided under the EU treaties. At that, the boundary between international and EU law is vague. Although amendment of the TFEU Article 136 does not provide for an obligation to establish the ESM this article ties the ESM to the EU law.”¹⁰

For the EU integration processes and the economic and monetary union to function better, the eurozone countries have transferred their monetary policy to the exclusive competence of the EU. “The priority of Estonia in the EU in 2011–2015 is reinforcement of the eurozone. Although economic and monetary union is the EU’s objective and purpose, ensuring its functioning and preservation of its stability is an obligation of the Member States. If Estonia would stay out of the ESM, it would not be able to decide on the politics of the currency valid in Estonia. For that, coordinated, efficient and rapid joint activity of the Member States is necessary. There have been occasions in the history of the EU when the Member States have entered into treaties with the EU judicial area for horizontal achievement of the goals of the EU. Such treaties are also considered to be sources of the EU law.”¹¹

The Supreme Court of the Republic of Estonia may declare an enforced or unenforced international agreement or its provision unconstitutional (§15 (1) 3)). The Supreme Court *en banc* of the Republic of Estonia took a stand after long and careful analysis and consideration of the arguments of both parties, so that the Chancellor of Justice requested a constitutional review of Article 4 (4) of the ESMT, not the entire ESMT. This was the position the Chancellor of Justice expressed when stating the reasons for the request and in the propositions provided for the *en banc* session of the Supreme Court. The Chancellor of Justice also stated in the session that he had contested only Article 4 (4) of the ESMT.

The Supreme Court *en banc* of the Republic of Estonia gave its interpretation of the ESMT, from which we will consider mainly the most important statements concerning the Supreme Court’s views on the sovereignty of the Republic of Estonia. First, the Supreme Court of the Republic of Estonia emphasises the importance of the sovereignty of the nation and state of Estonia, stating that, “Pursuant to §1 (1) of the Constitution, Estonia is an independent and sovereign democratic republic wherein supreme political authority is vested in the people. With this provision the principle of sovereignty has been fixed constitutionally as the basis for the Estonian people and the State of Estonia. The sovereignty of the people gives rise to the sovereignty of the State and thereby all the state institutions get their legitimation from the people. The core essence of sovereignty is the right of discretion in all matters irrespective of external influences. One element of a state’s sovereignty is the state’s financial sovereignty, which includes taking decisions on budgetary matters and on assumption of financial obligations for the State.”¹² Treating sovereignty today as a resource and a competence that can be manipulated, it has acquired a new substance and is operationally compared to the classical concept of sovereignty.

Second, the Supreme Court of the Republic of Estonia has established that when treating the sovereignty of the Republic of Estonia, one should take into consideration the contemporary context. “The wording of the sovereignty clause of the Estonian Constitution is strict, providing that the independence and sovereignty of Estonia are timeless and inalienable. The sovereignty provision of the Estonian Constitution may not be interpreted so that Estonia may not enter into international agreements or assume obligations before other states. The norms of the Constitution are characterised by a wide discretion of interpretation. In the assessment of the Supreme Court *en banc*, despite the strict sovereignty clause the present-day context shall be considered in furnishing sovereignty.”¹³

Third, sovereignty is nothing absolute since states enter into international agreements. “Entry into international agreements

¹⁰ Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

¹¹ Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

¹² Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

¹³ Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

is allowed by Chapter IX of the Constitution. If we interpret sovereignty as absolute, entry into international agreements should not be allowed because entry into an international agreement always means restricting one's sovereignty to some extent. It follows that the Constitution does not require, despite the strict wording of the sovereignty clause, observation of absolute sovereignty. In her opinion submitted to the Supreme Court, Dr. A. Albi refers to the fact that membership in the EU and in international organisations has become a natural part of sovereignty in this day and age".¹⁴

Fourth, Article 4 (4) of the Treaty infringes the financial competence of the Riigikogu arising from §65 6) of the Constitution in conjunction with §115 (1) of the Constitution, and from §65 10) of the Constitution in conjunction with §121 4) of the Constitution. "The Riigikogu cannot fully review, through the representative of Estonia, whether and how financial assistance is granted in an emergency procedure under Article 4 (4) of the Treaty. At the same time, a decision on granting financial assistance taken under Article 4 (4) of the Treaty may affect the fulfilment of Estonia's obligations to the ESM in the future – by way of a capital call (1,153.2 million euros). In the opinion of the Department of Economics of the Estonian Business School it is pointed out that the state must be ready for additional financial payments to the extent of the amount referred to. Therefore, financial assistance granted in an emergency procedure under Article 4 (4) of the Treaty may affect the revenue and expenditure of the Estonian state budget, and thereby restrict the budgetary-political choices of the Riigikogu. Such an infringement of the financial competence of the Riigikogu also brings about an infringement of the principle of a democratic state subject to the rule of law and of the state's financial sovereignty since indirectly the people's right of discretion is restricted."¹⁵ Regardless of the fact that the ESM constitutes a partial infringement of the people's right of discretion, the Supreme Court found that Article 4 (4) of the ESMT is not contrary to the Constitution of the Republic of Estonia, and dismissed the request of the Chancellor of Justice.

Deepening economic and financial crisis that carries a paradigmatic nature has not slowed down, but rather accelerated the deconstruction of a modern state. This crisis is mainly related to the exhaustion of the modern, primarily consumption-oriented, *status quo* economic model. Where do we go next, when the so-called double-consumption resting on debt has exhausted itself? From this point of view, different protests against every possible measure of the EU (the ESM, etc.) that have so far been proposed for saving the euro, are understandable. When the ordinary citizens of the EU have gathered under the slogan 'This is not our debt!' in their manifestations, the EU Member States have tried to confront these measures in a legal manner, justifying opposition to the measures planned for solving the crisis with the infringement of the sovereignty of the eurozone countries. Examples of that are the Tea-Party movement in the USA and "green vests" in France – none of them organized by a single entity but both developed from strictly economic and fiscal causes.

We have reason to start to guess that, in relation to possible ways out of the fiscal and financial crises, we should distance ourselves from the different concepts of a modern state and sovereignty that do not correspond to the new political realities of modern Europe. More than that, we have to instantly take the second step as well, to jump over the postmodern state as well. But, yes, the first criticism of the planned EU financial crisis measures should be treated through the conflict of a modern *versus* postmodern state. First and foremost, it is a multipolar world in which development is handled not only through greater regional autonomy and the new transnational economic model, but also through a more pluralist society. Proceeding from this context, more attention should also be focused on the question of what does the economic model of a postmodernising society look like.

When the classical state and legal structure are about to collapse, what will happen to the modern economic system? It can be assumed that this collapse does not mean a premodern state type of chaos, but a new order.

¹⁴ Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

¹⁵ Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

POSTMODERN STRUCTURE BEFORE AN AFTER-POSTMODERN STATE

Many positive definitions of postmodernism and phenomena around it are actually not “positively” defined. They are all related to modernism and not each other. Therefore, while continuing our study here we have to indicate this terminological problem. Postmodernism has been defined by Lyotard through several features – the disappearance of big narratives and classifications, among others. Modernism existed before postmodernism and lacked the Lyotardian features plus some drastic features related to postmodernism (same big stories, strictly defined Newtonian physics). When we can trace the movement from modernism to postmodernism (in art the borderline is most visible in the shift from impressionism to expressionism, as totalitarian art is still modernist). The next step back is pre-modernism, which is actually not related to the subsequent steps towards the modernisms. Premodernism (renaissance) is actually a thing in itself and not a step towards any type of modernism. Leonardo da Vinci is not a step towards Picasso and Michelangelo did not prepare the Eiffel Tower. Michelangelo’s helicopter design features many elements of the modern counterpart but was just an engineering exercise and not something prepared for production. The theoretical issue, therefore, is whether the after-postmodernism is similarly disconnected with modernism or presents the movement towards something completely different. It is evident that we do not have an answer to that, as we are living through this change at the beginning of the 21st century.

Perhaps it is not even important to find this answer but it seems to us important not to overstress the continuity of the EU crises and the future of the European philosophical, political and legal being.

Consequently, the EU will be a network-based structure and order without a strong central power. A typical example may be the activity of the European Commission. It is characterised by abandoning differentiation between foreign and domestic policies, mutual interference in each other’s domestic issues, rendering state borders insignificant, mutual openness, transparent safety, and so on. It is characteristic of postmodern states that the *raison d’etat* and immorality of the Machiavellian state theories have been replaced by a moral scientific character that includes both international relations and internal policy.¹⁶

But it is noteworthy that in late September 2010, Hungary refused to have any political and professional contact with the Vice-President of the European Commission due to his disrespectful behaviour towards that country. On a minor level, one of the authors of this article (Igor Gräzin) initiated a brief demarche against one of the fraction-leaders (Guy Verhofstadt), who had insulted the Estonian government by labelling one of its parties fascist. These two examples prove that overall liberalism in the EU may be replaced by dictatorial policy-making if that is preferred by strongmen’s political interest in suppressing the countries and political groups they happen to dislike.

However, the new security system in a postmodernising world is addressing the problems that have changed the balance of powers in the today’s world. The most outstanding postmodern agreements may be considered the Treaty establishing the European Community and the Treaty on Conventional Armed Forces in Europe (CFE). The list can be continued with institutions that involve the apparatus of Europe’s postmodern states – the Organization for Security and Co-operation in Europe (OSCE), the Chemical Weapons Convention (CWC), the International Atomic Energy Agency (IAEA), among others.

In the search for a constitutional identity of the EU, how to differentiate between the strong ethnic values related to national identity and the ‘thin’ European norms should be considered, and instead of searching for ways to unite them, the virtues of their lasting opposition should be seen. “Such differentiation between ‘values’ and ‘norms’, ‘moral’ and ‘legal obligations’ or ‘loyalty’ and ‘obligation’ is one of the most important elements of liberal constitutionalism. It does not mean that values belong to the premodern world and should be abandoned gradually, or that the people would be happy to accept abstract, rational norms. It simply means that in a pluralist world, conflicts of loyalty are better resolved by agreed norms, rather than ‘shared values.’”¹⁷ In such a way, the biggest strength of the EU may be the utmost abstractness of the European construct on one hand, and on the other, its ‘value-free nature.’ This means that people with different values may reach a consensus

¹⁶ R. Cooper. *The Breaking of Nations, Order and Chaos in the Twenty-First Century.* – London: Atlantic Books, p. 50.

¹⁷ J. Lacroix. *For a European constitutional patriotism.* – *Political Studies* 2002, 50(5), pp. 944–958.

through the common norms that they accept. They may but they needn't, as we had stated earlier, because the strength and number of obstacles is too large and none of us is able to see how they can be overcome.

And ultimately, the constitutional independence of a state can be considered absolute only until it comes into contact with certain conditions of formal and substantive legitimacy. Several international agreements and organisations have reduced the autonomy of states. The peculiarity of today is that such sovereignty has started to be divided between states. Several final decision making rights concerning different policies, like economic, planning, and even social policy, have largely converged on international organisations like the WTO, the UN and the European Court of Human Rights. Regional autonomy has increased, challenging the traditional modern federal systems and making them increasingly consider confederacy in the new postmodern context, or consolidation in which shared sovereignty based on consensus could become the norm for today's statehood. The abovementioned also concerns the EU. Next to national sovereignty, human sovereignty is about to become more important in today's postmodernising world. This is attested by the fact that today's postmodernising law is characterised by highly intensive activity in the field of human rights.

The deconstruction of a modern state and the development of the EU as a modern postmodernising democratic state based on the rule of law, largely related to the globalising world, the increasing importance of the media, public opinion, the interests of certain groups and regions, and the reinforcing civil societies, could still evolve in some direction and without much of a probability. The postmodern state defines itself in today's globalising world still through defence policy. Although even NATO has problems here. The confrontation of parties in Cyprus is still out there. Turkish involvement in the Karabakh conflict is not within the framework of NATO as such but Turkish involvement as a NATO country is definitely outside NATO's best plans and interests. The idea of several NATO countries led by Germany to create European armed forces (i.e. to eliminate American involvement on the continent) will definitely result in the creation of a weak army outside the interests of the European majority (the Visegrad and Baltic states). But still, NATO's involvement – "It does so as a matter of political choice. There is no iron law of history that compels states to take the risk of trusting transparency rather than armed force as the best way of preserving its security."¹⁸ A postmodern state is more pluralist, more multicultural, more citizen- than nation-centred and less centralised than a bureaucratic modern state. Although the EU has been on its way towards such a new type of state for a while, the deconstruction of the modern state has not been completed yet. Consequently, one Cooper notes, "This development of state structures is matched by a society that is more sceptical of state power, less nationalistic, in which multiple identities thrive and personal development and personal consumption have become the central goals of most people's lives... the struggles of the twentieth century have been the struggles of liberalism – the doctrine of the individual – against different forms of collectivism: class, nation, race, community or state. On this basis, the United States would also qualify as a postmodern state"¹⁹ In the author's opinion, the entire globalising and post-industrial world is in its essence potentially postmodern in the sense of the deconstruction of statehood in its modern meaning.

It is inevitable structurally that the EU still corresponds to several features of the postmodern state (If it didn't correspond, it could not exist). First, the postmodern EU should be multi-subject, meaning establishment of a mainly network-based institution with a modest hierarchy, and the corresponding governing, in which the principle of subsidiarity would become more important than the principle of supranationality. Based on that context, it could be asked whether governing or state authority is a form of sovereignty. If yes, sovereignty ultimately depends on state authority. Herewith, the scale of alternatives as to governing is wide. Post-sovereignty or governing a supranational state, late sovereignty, open statehood, uniform belonging of sovereignty to the Member States via an intergovernmental conference, etc. However, the most vital of these theories is yet to develop.²⁰ When viewing sovereignty outside state authority, as is often done, there is a threat that sovereignty may lose its meaning altogether due to its general nature.

Second, as a network-based flat institution, the EU would also become more pluralist and minimalist than a modern state,

¹⁸ R. Cooper. *The Breaking of Nations, Order and Chaos in the Twenty-First Century.* – London: Atlantic Books, p. 50.

¹⁹ *Ibid.*, p. 51.

²⁰ N. MacCormik. *Questioning Sovereignty. Law, State, and Nation in the European Commonwealth.* – Oxford University Press 1999, pp. 123–137.

maintaining mainly the functions related to defence of a state and partially also those of foreign policy. In light of the pluralism principle, not only sovereignty issues, but also matters of national identity arise. In solving the issues of identity, the relationship between social and ethnic identity is extremely important. When in theory, ethnicity is a part of ethnic identity, and ethnic identity, in turn, a part of social or citizen identity, then in Estonia, these relations were left officially unregulated, meaning that a declared identity corresponding to these relations was left unestablished. However, in relation to the new European identity, an analysis of the current situation becomes important, since it would ascertain the nature and share of ethnic awareness, ethnic self-denotation, negative ethnic identity and a changed or pseudo-identity in the Estonian conditions.

Third, the EU should be more transparent and open, meaning a constant dialogue between the state and civil society, as well as possibilities for making decisions based on consensus. This means that a state should transfer part of its traditional tasks (e.g. education, health care, social services, etc.) to civil society. Channels should be sought from the sphere between people's and citizens' associations and the state that would create new possibilities for members of society to participate in the democratic process. The strength of people's and citizens' associations lies in the independent setting of goals and the potential resulting wish to take responsibility for the development of society. Many of the current problems in society that the state hopes to solve with the help of civil society, depend on the deliberate policy of the state. Civil society is vitally interested in having the actions of the state in certain frameworks and under the control of the law, "but at the same time, efficient in the implementation of the laws that protect the pluralism of civil society and the freedoms it needs."²¹

THE BALTIC CODA

In discussing the Central European and Baltic problems in the development of a civil society, it is noted that "the diapason of civic initiative opens faster if the parliaments and governments are able to legitimise it and have the corresponding knowledge."²² It is thought that the most serious problems of the newly independent Central and Eastern Europe have been a lack of trust between civil societies and the states, preventing natural cooperation and dialogue between state and civil society with the aim of achieving an intelligent consensus in deciding on mutual matters and enabling to create the conditions for the emergence of social law. Probably one of the ways out of this is the establishment of a democratic state based on the rule of law in which life goes by certain rules and these rules, that is, the law, are laid down by the people themselves. "The limits of one's freedom of behaviour are set and monitored mainly by the people themselves, not by someone from the outside, like the state or its institutions (police, court, etc.)."²³ The fact that the conditions for the existence and development of a civil society largely depend on their relations with the state based on the rule of law have even justified treating them as similar concepts.

And ultimately, the constitutional independence of a state can be considered absolute only until it comes into contact with certain conditions of formal and substantive legitimacy. The abovementioned also pertains to the European Union. Next to national sovereignty, human sovereignty is about to become more important in today's postmodernising world. In addition, as this results from analyses of the EU's existential problems and its ethical degradation, it has to be the New Europe (Visegrad and the Baltics) that will lead us into the newly democratic future.

²¹ H. Schneider. Riik ja ühiskond teoreetilise-metodoloogilisest aspektist. Mõtteid omariikluse tähtpäevade puhul (State and Society from a Theoretical and Methodological Aspect. Thoughts on Anniversaries of Sovereignty). – *Juridica*, 1998. Vol. 10, pp. 509–517 (in Estonian).

²² A. Aarelaid. *Kodanikualgatus ja seltsid Eesti muutuval kultuurimaastikul*, koostanud Aili Aarelaid (*Citizen's Initiatives and Societies on Estonia's Rapidly Changing Cultural Landscape, compiled by Aili Aarelaid*), 1996, p. 74 (in Estonian).

²³ R. Maruste. *Põhiseadus ja justiitsorganite süsteem (Constitution and System of Judicial Bodies)*. – *Juridica* 1998, Vol. 7, pp. 326–327 (in Estonian).

RELOCATION AND RESETTLEMENT OF REFUGEES IN THE EUROPEAN UNION - WHAT HAS HAPPENED TO SOLIDARITY

LEHTE ROOTS

INTRODUCTION

The idea of a united Europe was created by people from different disciplines – scholars, philosophers, political leaders, artists, and religious leaders. It is also similar to the decision to start a war. It usually is a decision of leaders who think that this is the only way to resolve problems. Attempts to unify Europe were made after the emergence of cruel conflicts. The Romans tried to unite the European continent by conquering states during a period known as the post-Republican period of ancient Rome. This state was composed of large territorial holdings around the Mediterranean Sea in Europe, North Africa, and West Asia ruled by emperors. Rome remained the nominal capital of both parts until 476 AD. The fall of the Western Roman Empire to Germanic kings, along with the Hellenization of the Eastern Roman Empire into the Byzantine Empire, denoted the end of Ancient Rome and the beginning of the Middle Ages. But the wars and conflicts on the European continent continued.

A vision of a peaceful and united Europe came from the survivors of war. It was like a defence against the historical cycle of violence. The dream of unity for the founding fathers of the European Union was to rebuild Europe and give hope to the people after the end of the Second World War. In 1953, at the European Roundtable on Europe's Spiritual and Cultural Unity, it was Schuman who highlighted the cultural and spiritual ethos of Europe and the need to address problems of Europe. Founders of the European Community believed in the mission to make Europe great again and to serve for the world, not just itself. The creation of supranational institutions for a united Europe was seen as an outcome and was inspired by a 'consciousness of European unity, common destiny, obstacles and tasks to be fulfilled'¹ It is probably time to reflect on whether we have achieved what they dreamed about.

The current Europe is based on solidarity. Solidarity is something that can be seen as noble, but at the same time it is abstract. It is a state of mind which is devoted to the feeling of unity, similarity, communion, and team spirit. The concept of solidarity is the core element of the project of the European Union and its integration process. It developed as a direct response to the nationalist oppositions that led to World War II. Solidarity is not simply about supranational institutions and policies to create a single common market. It is also a wish to go above the ideological, cultural, and religious traditions that have historically been used to divide or conquer Europe. This is acknowledged as the Union's spiritual and moral heritage in the preamble of its Charter of Fundamental Rights. The EU is therefore not just a collection of states: it is a state of mind.²

Consequently, European policies and actions should serve the principles of solidarity and fairness. The EU has common external borders and has abolished internal borders, which gives refugees and asylum seekers a possibility to asylum shop and has led to some internal undesired movements that are not under the control of the states. Therefore, in the 1990s the Dublin Convention was agreed upon to regulate the access of asylum seekers and the responses of the states in the case they find asylum seekers on their territory. With time and more European integration, the Dublin Convention and cooperation were changed to the form of a regulation, which inversely gives EU Member States less sovereignty to do things than the regulation describes because regulations in the legislative mechanism of the European Union are directly binding instruments.

Forced migration and its impact on legislative practices and the European project has been hefty. In recent years, the rise

¹ <https://theconversation.com/solidarity-was-a-founding-principle-of-european-unity-it-must-remain-so-74580>; 08.09.2020

² 1 Solidarity was a founding principle of European unity – it must remain so, March 24, 2017 <https://theconversation.com/solidarity-was-a-founding-principle-of-european-unity-it-must-remain-so-74580>

of the right and Euroscepticism is seen in virtually every EU Member State. Solidarity, the core principle of the European Union Framework, is at stake and largely misused. This article examines the development of the European approach to asylum, refugees, and reallocation, setting the stage for in-depth examinations into individual case studies. It offers an insight into the development of, current obstacles to, and struggles in the notion of solidarity and sovereignty claims within the frameworks of resettlement and relocation within the European Union.

HARMONIZATION AND ASYLUM

Traditionally, accepting an asylum claim has been the discretion of the individual state. International law, typically the 1951 UN Refugee Convention with its protocols, have been applied and individual states have designed their asylum laws in reference to international law. Some states like Germany or Italy have written the right to ask for asylum into their constitutions, so it has become a constitutional right within these states. Even recently, EU Member States were seeing asylum and migration policy as their own private, sovereign matter. The number of people, procedures, and rights given to asylum seekers was regulated by the laws of the states, not by EU law. Significant change happened after the Tampere Council meeting in 1999, where it was decided that, as the European Union has abolished its internal borders, decisions related to asylum seekers and refugees should also be taken at the regional level and not at the local level any longer. This old approach of sovereignty in asylum matters started to change with the 1993 Treaty of Maastricht. The previous intergovernmental cooperation on asylum was brought into the EU's institutional framework and in fact gave power to the EU to start to make proposals for closer cooperation. The Council as the main actor was to establish the Commission's work and inform Parliament about its asylum initiatives. At that time, the Court of Justice of the European Union (CJEU) still had no jurisdiction on asylum matters. Several years later in 1999, the Treaty of Amsterdam established the EU institutions' new powers to draw up legislation in the area of asylum, using a specific institutional mechanism: a five-year transitional period with a shared right of initiative between the Commission and the Member States. The decisions had to be made unanimously in the Council, and the Parliament had to be consulted. Some jurisdiction was given to the Court (CJEU). After the five-year period, the Council had the power to decide to apply the normal co-decision process with the qualified majority clause. European integration was progressing well and the European Union was becoming larger. In 2004 ten new states became a part of the European Union. It was a completely reasonable and rational choice for the Council to take a decision to make the co-decision procedure (now known as the ordinary legislative procedure) applied to migration and asylum matters, as it would have been very difficult to find unanimity between 25 EU Member States to make decisions in the field of migration and asylum. Ordinary legislative procedure has been applied since 2005.

The current legal basis and competence of the EU to make decisions and legislate in the field of asylum can be found in Articles 67(2), 78, and 80 of the Treaty on the Functioning of the European Union (TFEU) as well as in Article 18 of the EU Charter of Fundamental Rights that became a binding document after the changes brought by the Lisbon Treaty.

The contemporary approach to asylum in Europe is denoted by the Dublin I and II regulations. These have been strongly criticized for being unfair to EU border states. The fairness mechanism set out in the Dublin III Regulation proposal put in place further guidelines for the number of persons in need of international protection effectively resettled by Member States. For the purpose of calculating the corrective allocation mechanism, the number of resettled persons is added to the number of applications for international protection. This acknowledges the importance given to efforts to implement legal and safe pathways to Europe.³ It is up to the Commission and the Council to specify the regions or third countries from which resettlement shall take place. Refugee resettlement is 'generally a procedure whereby asylum seekers and refugees are

³ Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council COM/2016/0468 final - 2016/0225 (COD), pg 4

transferred from the country of first asylum to a country where their safety and security could be provided on a permanent basis.⁴

Resettlement means the admission to the territory of the Member States of third- country nationals in need of international protection who have been displaced from or within their country of nationality, for the purpose of granting them international protection. The same applies to stateless persons in need of international protection displaced from or within their country of former habitual residence.⁵

Jakulevičienė and Bileišis explain that ‘the process whereby refugees are transferred from one EU Member State (MS) to another is referred to as intra-EU relocation. Relocation is a solidarity mechanism used to respond to emergencies. Relocation is a particular form of resettlement, which previously was used only in exceptional circumstances.’⁶ The Justice and Home Affairs Council Conclusions of 10 October 2014 acknowledged that ‘while taking into account the efforts carried out by the Member States affected by migratory flows, all Member States should give their contribution to [resettlement] in a fair and balanced manner.’⁷

In its Communication on a European Agenda on Migration⁸ of 13 May 2015, the Commission set out the need for a common approach to granting protection to displaced persons in need of protection through resettlement. On 8 June 2015 the Commission addressed a Recommendation on a European Resettlement Scheme⁹ to the Member States, based on an equitable distribution key. It was followed by the Conclusions of the Representatives of the Governments of the Member States meeting within the Council of 20 July 2015 to resettle, through multilateral and national schemes, 22,504 persons in clear need of international protection.¹⁰ The locations of resettlement were disseminated between Member States and Dublin Associated States according to the commitments set out in the Annex to the Conclusions.

On 15 December 2015, the Commission addressed a Recommendation for a Voluntary Humanitarian Admission Scheme with Turkey to the Member States and the Associated States recommending that participating states admit persons displaced by the conflict in Syria who require international protection. According to the EU-Turkey Statement of 18 March 2016, a Voluntary Humanitarian Admission Scheme will be put into action once irregular crossings between Turkey and the EU end or at least have been substantially and sustainably reduced. Member States can voluntarily contribute to this scheme and the EU has managed to agree upon on some schemes for further cooperation.

The EU-Turkey Statement of 18 March 2016 regulates that all new irregular migrants crossing from Turkey to the Greek islands, starting from 20 March 2016, will be sent back to Turkey. The system imposes that for every Syrian who has been sent to Turkey from the Greek islands, one Syrian will be resettled from Turkey to the Union, taking into account the United Nations Vulnerability Criteria. In May 2016, the Member States, the Dublin Associated States, and Turkey reached a common understanding on Standard Operating Procedures guiding the implementation of this resettlement scheme. On

⁴ However, as Nakashiba claims, there is no clear definition of resettlement and it has only loose support from the legal instruments (Haruno Nakashiba, “Clarifying UNHCR Resettlement. A few considerations from a legal perspective,” Research paper No. 264 (November 2013): 1).

⁵ Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council COM/2016/0468 final - 2016/0225 (COD) p 10

⁶ Jakulevičienė, L Bileišis, M. EU REFUGEE RESETTLEMENT: KEY CHALLENGES OF EXPANDING THE PRACTICE INTO NEW MEMBER STATES, BALTIC JOURNAL OF LAW & POLITICS, A Journal of Vytautas Magnus University, VOLUME 9, NUMBER 1 (2016), p 94-123, 94

⁷ Council Conclusions on “Taking action to better manage migratory flows”, Justice and Home Affairs Council meeting, 10 October 2014.

⁸ COM(2015) 240 final.

⁹ COM(2015) 3560 final.

¹⁰ Outcome of the Council Meeting, 3405th Council meeting Justice and Home Affairs Brussels, 20 July 2015, Provisional version 11097/15

6 April 2016, the Commission adopted a Communication Towards a Reform of the Common European Asylum System and enhancing Legal Avenues to Europe¹¹ in which it announced it would set out a proposal for a structured resettlement system framing the Union's policy on resettlement and providing a common approach to safe and legal arrival in the Union for persons in need of international protection.

On 12 April 2016, the European Parliament adopted a resolution on the Situation in the Mediterranean and the need for a holistic EU approach to Migration,¹² emphasising the necessity for a permanent resettlement programme for the whole Union, providing resettlement for a meaningful number of refugees, having regard to the overall number of refugees seeking protection in the Union. In the informal meeting of the Ministers of Internal Affairs in 2015, it was stated:

We all recognized that there are no easy solutions and that we can only manage this challenge by working together, in a spirit of solidarity and responsibility. In the meantime, we have all to uphold, apply and implement our existing rules, including the Dublin regulation and the Schengen acquis.¹³

It shows clearly that there is a common understanding of a need for cooperation and that the principles of solidarity should be taken into account. Nevertheless, from the second sentence the wish to resolve the current situation, which seems to be comfortable to a majority of states of the European Union, can be seen.

SOLIDARITY

So what has happened to the principle of solidarity and its application within the EU? Does the EU have a force and mandate to decide how many forced migrants Member States should accept? It seems that there is still no common understanding how to guarantee international protection and respect human rights for people who approach the EU and use illegal methods to cross borders, without endangering the wellbeing of the state itself or the people living there.¹⁴

Reflecting upon the fact that the EU has not been able to definitively deal with the 2015 refugee crisis has led the Union into a solidarity crisis in general. The numbers of asylum seekers within the EU doubled in 2015, and the EU received close to 1.3 million asylum applications.¹⁵ The top three nationalities of all the asylum applicants in 2015 were Syrians (29%), Afghans (21%), and Iraqis (10%)¹⁶

Even though almost 30% of 1.3 million seems a very high number at first, overall, the situation of Syrians is much worse. It is estimated that approximately 9 million Syrians had to leave their country of origin since the civil war started in March 2011. According to the United Nations High Commissioner for Refugees, over 3 million have taken refuge in neighbouring countries like Turkey, Lebanon, Jordan and Iraq; however, most of them are still displaced within Syria itself.¹⁷ The main entry points for irregular migrants to Europe are Greece and Italy. In 2015 Greece received 853,650 arrivals by sea and only

¹¹ COM(2016) 197 final

¹² 2015/2095(INI)

¹³ Informal meeting, 2015

¹⁴ Roots, L. Burden Sharing and Dublin Rules – Challenges of Relocation of Asylum Seekers, Athens Journal of Law - Volume 3, Issue 1, p 7

¹⁵ Asylum Statistics. Eurostat. http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Asylum_applicants. (10.11.2016).

¹⁶ Asylum Statistics. Eurostat. http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Asylum_applicants. (10.11.2016).

¹⁷ Syrian Refugees. Migration Policy Centre of the European University Institute. http://syrianrefugees.eu/?page_id=10 (20.04.2016)

3,713 by land. Italy received 153,842 arrivals by sea and 0 by land. However, the highest number of arrivals by land was received by Bulgaria, almost 32,000 people. Spain, Cyprus and Malta were also frequently used as entry points.¹⁸

Bagdonas states that the common asylum system has not functioned because of internal inconsistencies in the system itself, the incomplete nature of the Union's integration, and because of the different interests of Member States.¹⁹ Nevertheless, common agreements have been made at the Council meetings. On 20 July 2015, Representatives of the Governments of the Member States meeting within the Council adopted Conclusions²⁰ to resettle 22,504 persons in clear need of protection through multilateral and national schemes, together with the Associated States, based on the Commission's Recommendation on a European Resettlement Scheme²¹ to resettle 20,000 people. The Commission reports regularly about the implementation of these Conclusions, notably through its Relocation and Resettlement Reports.²²

According to the TEU, the European Union is based on solidarity. In the Preamble of the Treaty, we find the aims of the EU: DESIRING to deepen the solidarity between their peoples while respecting their history, their culture and their traditions, /.../ RESOLVED to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice, in accordance with the provisions of this Treaty and of the Treaty on the Functioning of the European Union, RESOLVED to continue the process of creating an ever closer Union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity, IN VIEW of further steps to be taken in order to advance European integration, HAVE DECIDED to establish a European Union and to this end have designated as their Plenipotentiaries: WHO, having exchanged their full powers, found in good and due form, have agreed as follows.²³

What is solidarity and how does it affect the principle of sovereignty when asylum seekers and refugees are involved? Article 2 of the Treaty states 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.' Furthermore, in Article 3 §3 the treaty states that the EU shall promote economic, social and territorial cohesion and solidarity among the Member States. Additionally, in Article 3 §5 it states that 'It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.' So solidarity as a principle should not be applied only within the EU; the EU as a world player should contribute to world development, keeping the idea of solidarity in mind.

In the field of external relations which is regulated by Article 21, we can also find a connection to solidarity in the words, 'The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.'²⁴ We can find the word solidarity in many other articles of the Treaties as it is one of the founding principles of the European Union. The same solidarity

¹⁸ Syrian Refugees. Migration Policy Centre of the European University Institute. http://syrianrefugees.eu/?page_id=10 (20.04.2016)

¹⁹ Bagdonas (2015) p 7.

²⁰ 11097/15.

²¹ Com(2015) 3560 final.

²² Communication from the Commission to the European Parliament, The European Council and the Council, Fifth report on relocation and resettlement, Brussels, 13.7.2016 COM(2016) 480 final

²³ Preamble of the TEU

²⁴ Art 21 of the TEU

principle should apply to all internal and external European Union activities and actions. Respecting the solidarity principle can only make Europe stronger and help the countries in need in real time. Specifically, Title VII related to solidarity in the Treaty can be found and analysed in the context of migration management. Article 222 §1 states

The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or manmade disaster. The Union shall mobilize all the instruments at its disposal, including the military resources made available by the Member States, to: (a) – prevent the terrorist threat in the territory of the Member States;– protect democratic institutions and the civilian population from any terrorist attack;– assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack; (b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

CRITIQUING SOLIDARITY

Additionally, referring to Sangiovanni's basic definition of solidarity,²⁵ Member States do not share the same goal or even the same assessment of the adversities that are necessary to overcome. Depending on their specific situation as recipients of asylum-seekers and their stance on the refugee controversy, EU Member States can be grouped on a continuum in terms of their asylum policies and their degree of restrictiveness, according to Bendel.²⁶ These groups do or do not show solidarity among themselves or between each other. The first group covers the Mediterranean states at the EU's external borders, such as Italy, Greece, Cyprus, Spain, and Malta, which are mainly interested in border security, extraterritorial asylum procedures, and relocation of refugees. The second group supports the internal integration of refugees along with the limited entry of refugees. To avoid intra-EU disputes on how to deal with refugees, this group aims at a two-speed Europe²⁷ in which countries that are willing to do so will receive refugees while others do not. France, Germany, Portugal, Luxembourg, Finland, and Sweden belong to this group. These countries are interested in a coordinated EU foreign policy regarding immigration and asylum.²⁸ As these two groups called for an EU-wide distribution key for Member States to receive refugees, it seems that they support mechanisms of supranational solidarity. However, right-wing political forces want the focus to be on active repatriation and integration rather than EU-wide dissemination. The third group demands a more restrictive asylum and integration policy at the EU level and includes countries such as Austria, Belgium, the Netherlands, and Denmark. In these countries, governments and government coalitions include right-wing, conservative, and/or populist parties. They focus on border security and reduce integration measures to avoid pull-effects that might trigger further refugee migration. The fourth group is the most restrictive regarding asylum policies as it rejects immigration and integration of refugees; it includes countries such as the Czech Republic, Poland, Hungary, and Slovakia. They refuse to receive refugees, foster border controls, and deny integration measures to avoid pull-effects to attract additional immigration. These countries used to have low immigration rates and have little experience with refugee reception. Additionally, populist voices play a substantial role in these countries. United under the designation of the Visegrad countries, they built an alliance against refugee reception and relocation.²⁹ We interpret this alliance as a mechanism of intergovernmental solidarity between Member States for border security.

Each group of Member States is united by a different cause, which enables them to show Member State solidarity internally. However, looking at the EU as a whole, this creates diverging or even conflicting opinions and claims for solidarity, leading to the widely adopted notion of a 'solidarity crisis' in EU asylum politics. This kind of 'flexible solidarity' can be seen as an

²⁵ Andrea Sangiovanni, Solidarity as Joint Action, Special Issue: Socio-Economic Justice: Beyond The Welfare State? Guest Editors: Christian Schemmel and Stefan Gosepath, Journal of Applied Philosophy, Volume32, Issue4, November 2015, Pages 340-359,

²⁶ Bendel, P. (2018). Wanderungsbewegungen nach Europa:Fester Bestandteil von Politik—überall? [Migration to Europe: An established policy field—Everywhere?]. Zeitschrift für Ausländerrecht und Ausländerpolitik, 5, 181–228.

²⁷ See more here <https://www.rferl.org/a/eu-explainer-two-speed-multispeed-europe/28396591.html>

²⁸ Bendel 2018

²⁹ Bendel, P. (2018). Wanderungsbewegungen nach Europa:Fester Bestandteil von Politik—überall? [Migration to Europe: An established policy field—Everywhere?]. Zeitschrift für Ausländerrecht und Ausländerpolitik, 5, pp 181–228.

attempt to prevent the complete collapse of the Common European Asylum System, but everybody has a different understanding of solidarity. For example, it was the Bulgarian Council Presidency³⁰ of the EU that tried to broaden the term to achieve a buy-in of more Member States. This was called ‘flexible solidarity’: anything goes, however you interpret the term. That’s the beauty of constructive ambiguities. On the one hand, you achieve a multilateral buy-in and therefore it is better to use a less determined term, a broader one. On the other hand, it leads to the point that the concept of solidarity becomes empty and meaningless.³¹

The EU Treaty amendments introduced by the Lisbon Treaty have brought more focus to solidarity and burden-sharing. When we talk about solidarity, there must be some type of burden-sharing as part of solidarity with the other EU Member States in need of assistance. Article 67 section 2 1) of the Treaty on the Functioning of the European Union (TFEU) states that the Union shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration, and external border control. This should be based on solidarity between the Member States and should be fair to third-country nationals. In the TEU, a special solidarity clause cannot be found. Article 80 of the TFEU resumes calls for solidarity by sharing responsibility, including financial implications on Member States, when measures are taken in the field of border checks, asylum, and immigration. The word ‘burden-sharing’ is nevertheless missing from the treaty provisions.³²

The principle and the idea of burden-sharing are not new at the European level.³³ The desire for an EU burden-sharing-form of immigration management were already made explicit in the Amsterdam Treaty after its amendment, in Article 63, which states that the Council shall adopt measures ‘promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons.’³⁴

Ferrera has published a survey³⁵ in which the main question that was asked was ‘what do citizens consider as ‘proper to do and reasonable to expect’ in terms of EU solidarity?’³⁶

The survey³⁷ also asked some questions about possible EU policies inspired by pan-European solidarity norms to a restricted sample of six countries: Spain, France, Italy, Germany, Poland, and Sweden. According to the survey results, almost all respondents (89.1%) agreed that the EU should provide financial help during a crisis to anyone without basic means of subsistence. In this EU-6 sample, this proportion was higher than 84%. In addition, more than three respondents out of four were in favour of a specific EU-funded scheme to fight poverty. In turn, Table 3 shows that more than 77% of respondents were in favour of an increase in the EU budget to support jobless people during a crisis. The fact that more than two-thirds of Germans are ready to support a partial mutualisation of the risk of unemployment is remarkable, considering the reluctance of the German government when it comes to mutualisation policies.³⁸

³⁰ <https://www.eu.kn.eu/eu-presidencies/bulgarian-eu-presidency/>, Accessed 19.12.2019

³¹ Challenging the Nation-State from within: The Emergence of Transmunicipal Solidarity in the Course of the EU Refugee Controversy, Christiane Heimann, Sandra Müller, Hannes Schammann and Janina Stürner, p211- 212 Social Inclusion (ISSN: 2183–2803) 2019, Volume 7, Issue 2, Pages 208–218 DOI: 10.17645/si.v7i2.1994

³² 32 Roots, L., Sharing Refugees after Lisbon – Solution for the Small States? Romanian Journal of International Relations and European Studies (ROJIRES), 2012, Pg 5

³³ More discussion in Schuck, P. (1997) vol 22. “Refugee Burden - Sharing: A Modest Proposal”. Yale Journal of International Law, and D. Torun and E. Thielemann (2006) vol 29(2). “The Myth of Free-Riding: Refugee Protection and Implicit Burden-Sharing”. West European Politics, pg. 351.

³⁴ Treaty of Amsterdam

³⁵ Ferrera, M. and Pellegata, A. (2017) ‘Can Economic and Social Europe Be Reconciled? Citizen Views on Integration and Solidarity’, REScEU Working Paper. Available online at: <https://www.resceu.eu/events-news/news/can-economic-and-social-europe-be-reconciled-citizens%E2%80%99-view-on-integration-and-solidarity.html>. (accessed: 10 July 2018).

³⁶ *ibid*

³⁷ Ferrera, M. and Pellegata, A. (2017) ‘Can Economic and Social Europe Be Reconciled? Citizen Views on Integration and Solidarity’, REScEU Working Paper. Available online at: <https://www.resceu.eu/events-news/news/can-economic-and-social-europe-be-reconciled-citizens%E2%80%99-view-on-integration-and-solidarity.html>. (accessed: 10 July 2018).

³⁸ Maurizio Ferrera and Carlo Burelli, Cross-National Solidarity and Political Sustainability in the EU after the Crisis, JCMS 2019 Volume 57. Number 1. pp. 94–110, pg 104

Finally, other documents call for solidarity and fairness in this area.³⁹ The physical transfer of protection seekers from one host territory to another is the most evident method of addressing disparities in the refugee burden on states. It is, however, important to mention that in the early 1990s, several EU Member states faced a mass influx of asylum seekers because of the collapse of the Communist regime in the Eastern Bloc, but it did not create the need for more burden-sharing in the area of border management or at least the EU states were not then ready to make any decision. In 2002, the Commission introduced the idea of burden-sharing in the Communication on Integrated Border Management (IBM).⁴⁰ It raised a question about how ‘financial and operational burden-sharing can be organized’ and whether ‘the geographical situation of certain Member States warrants burden-sharing for the sound operation of fixed and mobile infrastructures for checks and surveillance from which all the Member States would benefit.’⁴¹ The Common policy should also include burden-sharing between Member States in the run-up to a European Corps of Border Guards.

CREATING A SHARED EUROPEAN MIGRATION FRAMEWORK

Before the signing of the Maastricht Treaty, the European Community (as it was called at that time) did not have much to say on how the Member States should design their asylum or refugee policies. As the treaties were changed and the European Union created, additional information and a deeper understanding regarding migration, integration, and protection was put in place. The Commission was given more power for legislative initiatives. The incremental process and development of a CEAS began with the Treaty of Amsterdam and the Tampere conclusions of 1999.⁴² To finance the program, in 2002, the EU put forth a European Union Solidarity Fund as an instrument financing operation in the field of civil protection first created in 2002. After 2002, many legislative initiatives, directives, and decisions were taken to enhance the cooperation and mutual understanding of the Common European Asylum system.

A big step forward was in 2014, when the EU adopted a decision laying down the rules and procedures for the operation of the solidarity clause. It ensures that all the parties concerned at the national and EU levels work together to respond quickly, effectively, and consistently in the event of terrorist attacks or natural or man-made disasters. Under revised rules adopted in 2014, working procedures have been simplified and eligibility criteria clarified and extended to cover drought.

THE REFUGEE CRISIS

The European Agenda on Migration was published by the European Commission on 13 May 2015.⁴³ It is a comprehensive version of the actions that are agreed upon by the EU Member States. According to the Agenda, there are four main components specified for the creation of an effective EU migration policy that support the goals set out by the Council. The main

³⁹ Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals, COM (2006) 402 final, Communication from the Commission to the Council and the European Parliament establishing a framework programme on solidarity and management of migration flows for the period 2007-2013 COM (2005) 123 final, Commission Decision 2008/22/EC of 19 December 2007 laying down rules for the implementation of Decision No 573/2007/EC of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme “Solidarity and Management of Migration Flows” as regards Member States’ management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed

⁴⁰ COM (2002) 233 final, Commission Communication ‘Towards Integrated Management of the External Borders of the Member States of the European Union’, pg. 24, The Hague Programme, Annex to the European Council Conclusions, Brussels, 4-5 November 2004, point 1.7.1. by the Fund, OJ L 17 of 10 January 2008.

⁴¹ COM (2002) 233 final

⁴² Tampere European Council, Presidency Conclusions, 15-16 October 1999.

⁴³ European Agenda on Migration. (2015). European Commission. (Official action plan).

proposals were on how to achieve a strong common asylum system. The fourth and final pillar of the agenda sets the goal to reinforce internal solidarity and responsibility by initiating an emergency response system. The redistribution criteria imposed on the individual EU member state consists of GDP, population count, unemployment rate, and past number of asylum seekers and resettled refugees. In addition, the Commission emphasised it is the EU's duty not only to take responsibility for the people already on [European] soil but to help others in need as well.⁴⁴

The relocation and resettlement schemes were created to resettle 40,000 refugees throughout Europe. Relocation means moving a refugee from one Member State to another, but resettlement means moving a refugee from a third country to a Member State, thus fulfilling the international expectation to help with the global migration crisis. The total number of relocated people was estimated to be 20,000, as was the number of resettled people.⁴⁵ During the years 2016-2019 according to UNHCR statistics, 69,197 refugees were resettled to European Union countries.⁴⁶

The distribution key itself is interesting because it does take the previous experience of the country into account. As a result, the distribution key does not eliminate the essential inequality amongst the Member States, because the ones that have more experience (i.e. have been willing to accept more refugees in the past) are still those who carry the most weight in dealing with this problem. In 2014 Germany was the recipient of the largest number of asylum applications, followed by France, Sweden, Italy, and the United Kingdom.⁴⁷ In 2016 the number of new asylum seekers from Syria in Germany was 266,250.⁴⁸ The highest recipients of asylum applications per population were Hungary then Sweden.

In comparison to the Agenda, the EU proposed its first measure package, which is another step toward concrete actions. There were a few major specifications in the new document: the relocation scheme would focus on Syrian and Eritrean nationals having arrived in either Italy or Greece after 15 April 2015 or that arrived after the mechanism was launched and the number of recipients doubled and rose to 40,000 people. To help with the financial burden of accepting people, it was also proposed that the Member States receive 6,000 EUR for each person relocated on their territory.⁴⁹

The first official agreement between states was made in the Justice and Home Affairs Council meeting on 20 July, where the ministers agreed on the contribution by each Member State to the relocation and resettlement program. The agreement was made on the relocation scheme for 32,256 persons to continue the discussions of the remaining people. An agreement on the resettlement scheme was also made and the number of people rose to 22,504 people.⁵⁰ Almost four months after the Commission's first package of proposals, a second package, issued on 9 September 2015 was delivered to the Member States. The second package included an emergency relocation proposal for 120,000 people from frontline countries; a permanent relocation mechanism for all Member States; a common European list of safe countries of origin; a more effective return policy; measures to address the external dimension of the refugee crisis; and a trust fund for Africa.⁵¹ In comparison to the first package, the main differences were the additional 120,000 people that needed to be relocated and the fact that Hungary was added to the list of frontline countries. The relocation scheme was created to relocate 15,600 people from Italy, 50,400 from Greece, and 5,400 from Hungary. The distribution key remained the same. But due to the increase in people, the Member States were promised an additional 780 million EUR for participating in the program. In addition, the nationalities that would be relocated were not only Syrian and Eritrean; Iraqis were also added to the list. The concept of a permanent relocation mechanism for all Member States was also specified in the second package of proposals: the Commission proposed

⁴⁴ Ibid p 4

⁴⁵ Ibid p 19

⁴⁶ <http://popstats.unhcr.org/en/resettlement> accessed 11 January 2020

⁴⁷ UNHCR sub regional operations profile 2015 Northern, Western, Central and Southern Europe.

⁴⁸ http://popstats.unhcr.org/en/asylum_seekers accessed 11 January 2020

⁴⁹ European Commission makes progress on Agenda on Migration.

⁵⁰ Justice and Home Affairs Council 20/07/2015.

⁵¹ Refugee Crisis: European Commission takes decisive action.

a structured solidarity mechanism which could be triggered any time to help any EU Member State experiencing a crisis situation and extreme pressure on its asylum system. The same objective and verifiable distribution criteria would apply as in the emergency relocation proposals.⁵² Two weeks after the Commission's second proposal package, another Justice and Home Affairs Council gathered on 22 September 2015. They reached an agreement on 66,000 people from Italy and Greece, but left Hungary out because Hungary voted against the relocation scheme in general.⁵³ Surprisingly no alterations were made compared to the Commission's second action plan proposals.

Each country developed its own strategy for the resettlement of refugees. For example, in order to facilitate resettlement, France provided close to 1,400 asylum visas for Syrians, which enabled them to travel to France to apply for asylum.⁵⁴ Ireland initiated extended family reunification for people affected by the Syrian conflict to join close relatives who were lawfully residing in Ireland.⁵⁵ This led to 111 persons entering Ireland. The small scale of these operations meant that the majority of protection seekers were left with no choice but to risk their lives to access protection. A new approach was also introduced in the second package of proposals, the temporary solidarity clause. If – for justified and objective reasons such as a natural disaster – a Member State cannot temporarily participate totally or in part in a relocation decision, it will have to make a financial contribution to the EU budget in an amount of 0.002% of its GDP.⁵⁶

The third package of proposals was launched in December 2015. It aimed at securing the external borders of the EU and managing the flows of migration more efficiently. The Commission proposed the establishment of a European Border and Coast Guard to ensure a strong and shared management of external borders.⁵⁷ This was the first time that the EU opted to take specific actions against the problems of the Union's external borders; previously, the Union had chosen to focus more on the people that had already arrived and to the prevention of indicating a focus shift. After the third package, in February 2016 the Council adopted a recommendation on addressing serious deficiencies identified during an evaluation of Greece's application of the Schengen acquis in the area of external border management.⁵⁸ This action is again worth being noted because it is the first time, since the crisis started, that the Union publicly acknowledged the responsibility of certain border states' involvement of the escalation of this crisis, meaning that they had not been able to secure their borders and had thereby not entirely fulfilled their international obligations.

By March of 2016, the Council's Permanent Representatives Committee agreed on an emergency support mechanism in response to the difficult humanitarian situation caused by the refugee crisis, notably in Greece. This enabled the EU to help Greece and other affected Member States to address the humanitarian needs of the large numbers of arrivals. The EU's humanitarian assistance was aimed at meeting the basic needs of refugees by providing food, shelter, water, medicine, and other necessities. The Commission estimated that a total of €700 million would be needed in 2016-2018 to address the needs of refugees, of which €300 million would be required for the year 2016.⁵⁹ This measure was created to help tackle the economic inequalities that the current Dublin system deteriorates and thereby offer compensation (help) to the border states for the unequal burden-sharing of refugee flows.

Furthermore, on 23 September 2019, in the presence of Finnish Council Presidency, Germany, France, Italy, and Malta issued a joint declaration of an intention to introduce a controlled emergency procedure. Using Article 17 (2) of the Dublin Regulation in an ad hoc way is not very sustainable. There should be a common understanding of and common approach

⁵² Refugee Crisis: European Commission takes decisive action

⁵³ Justice and Home Affairs Council 22/09/2015.

⁵⁴ UNHCR, Resettlement and other forms of admission for Syrian refugees.

⁵⁵ FRA, Legal entry channels to the EU for persons in need of international protection: a toolbox, 2015, at 9.

⁵⁶ Refugee Crisis: European Commission takes decisive action.

⁵⁷ A European Border and Coast Guard to protect Europe's External Borders.

⁵⁸ Schengen evaluation of Greece: Council adopts recommendation to address deficiencies in external borders.

⁵⁹ Refugee crisis: Council shows solidarity with Greece by approving emergency support.

to resolving the problems of border states. In this joint declaration, it was also highlighted that reallocation should not take more than four weeks.

On a final note, as the numbers of asylum seekers in the EU increased, putting into action the EU Temporary Protection Directive (Directive 2001/55/EC) should have been seriously considered at the EU level. This instrument, adopted in the aftermath of the Kosovo crisis, has never been applied to the most recent crisis. However, it incorporates provisions on solidarity and the balancing of efforts. The preamble of the directive states that in cases of a mass influx of displaced persons who cannot return to their country of origin, it may be necessary to set up exceptional schemes to offer them immediate temporary protection. According to the directive, temporary protection means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system is unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection.⁶⁰

DUBLIN RULES AND RESPECT FOR HUMAN RIGHTS

The Dublin regulation – one of the fundamentals of the asylum system – is an illustration of the Union’s unfinished and shallow approach to the issue of refugees. The intent of the system that the country where the asylum applicant entered is obliged to handle the asylum claim is creating disparity among the Member States. It imposes more load and responsibility on the border states than on anyone else.⁶¹ In the beginning, the system was created to prevent asylum shopping and to safeguard economically superior EU states from asylum seekers. Contrariwise, this preventive measure came at the expense of the border states. For instance, the Greek island of Lesbos, which has a population of 86,000 persons and has a reception capacity of 2,800 people, received over 350,000 migrants in 2015. This is clearly disproportionate. Under those circumstances, it is very challenging to ensure basic living conditions for migrants and to guarantee procedural correctness.⁶² The conditions of reallocation protected in the Dublin system make it impossible for the country to be able to ensure that basic human rights are met for individuals during a mass influx of migrants. Furthermore, the state is in charge of the refugees who lodge their asylum claims to them as well as for all applicants who are physically returned from other Member States where they have applied for asylum if they entered the EU from another country. The persons are tracked by the EU’s fingerprint database, which gives an alert in the case an asylum applicant has previously been entered into the system. In other words, it recognizes if an immigrant has entered the EU at another official border.⁶³ This is only the case when the asylum applicant has been properly registered; without it, it is almost impossible to confidently identify where the applicant did enter the EU. The responsibility to handle the claim is upon the state where the applicant is present. The Dublin regulation also makes the obligation to register the arrived asylum seekers an unattractive activity as those registered in the first country of entrance generally become a problem for that state where they were first registered. Now as the Dublin system has become a burden to Member States, even more solidarity is needed to assist border states in handling immigration pressure. We should not forget that the European Union has common external borders, but the responsibility of border checks still lays on the shoulders of the Member States.⁶⁴

To summarize the point above and provide a clear context for how asylum seekers became a burden to the state, a court case

⁶⁰ Art 2 of the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof OJ L 212, 07/08/2001

⁶¹ European Commission, The Dublin System

⁶² Bagdonas (2015)

⁶³ Langford (2013) at 225 Case C-643/15

⁶⁴ Slovakia v Council and Case C-647/15, Hungary v Council,

can be used as an example. The European Court of Human Rights in the case of *MSS v Belgium and Greece*⁶⁵ has discussed an important principle of respect for the human rights of asylum seekers and the ability of the state to respect them.

In this event, an Afghan national who had entered the EU in 2008 through Greece was registered and fingerprinted. After that, he was issued an order to leave the country. Nevertheless, he travelled further through France to Belgium, where he launched his asylum application. He was at first accommodated in a reception centre in Belgium. At the same time, the Belgian authorities demanded Greece take the applicant back to Greece. The applicant was relocated back to Greece, as the Dublin rules were applied. He tried to leave Greece again with a false ID card and was again confined. After another attempt to leave Greece, the Greek authorities tried to expel the applicant to Turkey.⁶⁶ The applicant sued Greece in the European Court of Human Rights (ECHR). The claim was grounded on Article 3 of the Convention (prohibition of torture) due to the conditions of his detention, and on Article 13 (the right to an effective remedy) because of the insufficiencies in the asylum procedure conducted in Greece. He appealed against Belgium based on the same articles since Belgium had exposed him to the risks posed to his rights under Article 3 and 13 of the Convention by transferring him back to Greece. The Court ruled that Greece breached Article 3 for having knowingly let the applicant live on the streets of Athens. The Court also found a breach of Article 13. As to the activities of the Belgian authorities, the Court found that in light of all the information available to Belgium on the appalling detention conditions asylum seekers are subjected to in Greece, and on the negligible rate of successful asylum claims in Greece (around 0.1% at first instance compared to 36% in Germany, for example), the Belgian authorities did in effect breach Article 3 of the Convention by exposing the applicant to such conditions when they had a legal possibility under the Dublin Regulation to refrain from transferring him. A breach of Article 13 was also found on the part of the Belgian authorities, as the applicant was unsuccessful in staying the decision to transfer him to Greece because of minor procedural technicalities.⁶⁷ The UNHCR similarly found that the detention conditions in Greece were dreadful.⁶⁸

An illustration of the ambiguity in the scheme is the element that it is a significant financial load for states to handle asylum request cases and provide the minimum standards that are set out in the European directives for asylum applicants. There are great differences in the financial capacities of Member States, meaning that there are significant dissimilarities in financial instruments that a state can use for reception and integration. Ironically, the border states, who have the biggest burden to carry, are those who do not have their financial situations under control, i.e. Greece and Italy. Furthermore, it must be mentioned that the European protection model does not take the situation of the receiving country into consideration. But the protection of human rights should be prioritised above all else, and states should be able to finance this protection. The dissimilar situations of Member States, in turn, leads to another problem that creates a problem inside the EU itself. Because of the variances in the economic situations of Member States and the disparity of the national asylum regimes, one Member State can be held liable for the human rights violations of another.⁶⁹ This would, however, be unacceptable for the EU as a whole, because each Member State should be able to carry and respect all of the main principles of the EU and if not, then it is a problem of the Union's core values as a whole. But in doing so, the EU would reduce its legitimacy and undermine its international reputation.⁷⁰ However, the ECtHR has made a decision that explains this kind of responsibility. The hopes for the EU are not high only inside the Union, but on the international scene as well. As a result, it is not an option for the European Union to avoid taking action. Since the beginning of this crisis, the EU encountered a great challenge due to the inability to maintain some of the existing rules.

With Dublin III, more specific provisions on detention were introduced. Although the Dublin Regulation did not previous-

⁶⁵ ECtHR - *M.S.S. v Belgium and Greece* [GC], Application No. 30696/09, paras 9-53

⁶⁶ ECtHR - *M.S.S. v Belgium and Greece* [GC], Application No. 30696/09, paras 9-53

⁶⁷ ECtHR - *M.S.S. v Belgium and Greece* [GC], Application No. 30696/09

⁶⁸ Mallia (2011) at 117-118

⁶⁹ Langford (2013) at 218

⁷⁰ Boswell (2000) at 550

ly have specific provisions on detention, some Member States have used detention in order to implement the Dublin rules. In Regulation 604/2013 (Dublin III), the sovereignty clause and the humanitarian clause are found in an article dedicated to 'discretionary clauses'. The Dublin system is continuously reliant on the clarifications of these clauses by the European Court of Human Rights and the Court of Justice of European Union. The judgments by these two courts lead to the conclusion that the protection of the principle of non-refoulement must be interpreted in the light of the prohibition of torture and inhumane or degrading treatment and the protection of the family unit. These phrases become the mechanisms ensuring that these rights are respected in the European system for assigning responsibility and for examining an asylum application. Both courts, the European Court of Human Rights and the Court of Justice of European Union, have been actively taking decisions related to the application of EU migration law and human rights law. Even though the ECtHR is not an EU institution, Member States of the European Union are also members of the Council of Europe and have adopted the European Convention of Human Rights, which imposes on them a duty to secure the application of human rights for all persons that are under the jurisdiction of their state. The Visegrad Group countries contested the mandatory quotas in the Court of Justice of European Union.⁷¹ This shows that the Court has an important role to play in adjusting the burden and maintaining solidarity between the Member States. To recall, in the case of *MSS v Belgium and Greece* discussed above,⁷² the European Court of Human Rights issued its sentence pointing out the responsibility that can be transferred from one EU member state to another.

On 21 March 2016, the Commission tabled a proposal for a Council Decision amending Council Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.⁷³ This proposal qualifies the Member States to use 54,000 places initially established for relocation and to accept Syrians from Turkey through resettlement, humanitarian admission or other legal pathways. Member States would, therefore, be able to subtract the number of applicants to be relocated from the number of Syrians resettled to their territory from Turkey. These numbers were in addition to the commitments carried out under the Resettlement Conclusions of 20 July 2015.

The Regulation, presented on 4 May 2016, is a crucial part of the Common European Asylum System and is fully consistent with the first package of legislative proposals for improvement.⁷⁴ The recast EURODAC Regulation⁷⁵ and a proposal for establishing a European Union Agency for Asylum⁷⁶ as well as the second package of legislative proposals, which includes the reform of the Asylum Procedures,⁷⁷ Reception Conditions,⁷⁸ and Qualification Directives⁷⁹ are important documents for improving the system. The fairness mechanism set out in the proposal for the reform of the Dublin III Regulation influences the number of persons in need of international protection successfully resettled by Member States. To calculate the corrective allocation mechanism, the number of resettled persons will be supplemented with the number of applications for international protection. This acknowledges the importance given to efforts to implement legal and safe passageways to Europe.

To ensure compatibility with the asylum *acquis*, persons selected for resettlement should be granted international protection. Accordingly, the provisions on the content of international protection contained in the asylum *acquis* should apply once resettled persons are on the territory of the Member States. Moreover, it would be appropriate to amend the recast EURODAC Regulation to ensure that Member States may store the data of resettled persons in the EURODAC system, where

⁷¹ Case C-643/15 *Slovakia v Council* and Case C-647/15 *Hungary v Council*

⁷² ECtHR - *MSS v Belgium and Greece* [GC], Application No.

⁷³ COM(2016) 171 final.

⁷⁴ COM(2016) 270 final

⁷⁵ COM(2016) 272 final

⁷⁶ COM(2016) 271 final

⁷⁷ COM(2016) xxx final.

⁷⁸ COM(2016) xxx final.

⁷⁹ COM(2016) xxx final.

they are treated as applicants for international protection even though they have not applied for international protection in Member States. This would allow Member States to track possible secondary movements of resettled persons from the Member State of resettlement to the other Member States. The Commission justifies the form of regulation to be applied for resettlement conditions in the EU in the following manner:

A Regulation is chosen so as to achieve a degree of convergence for the resettlement procedure that corresponds to the degree of convergence for the asylum procedure, for which a Regulation is also proposed. While building on the existing resettlement practices of the Member States, in particular the Standard Operating Procedures guiding the implementation of the resettlement scheme with Turkey set out in the Statement of 18 March 2016, a Regulation allows for achieving a higher degree of convergence of those resettlement practices than a Directive, which is not directly applicable and leaves the choice of form and method to Member States. This higher degree of convergence will allow more synergies in the implementation of the Union Resettlement Framework and contribute to discouraging persons eligible for resettlement from refusing resettlement to a particular Member State as well as discouraging secondary movements of persons resettled. In addition, the annual Union resettlement plans and the targeted Union resettlement schemes that are essential for the operationalization of the Union Resettlement Framework are foreseen to be adopted by the institutions of the Union, for which a Regulation is the appropriate instrument.⁸⁰

This proposal for resettlement highlights the importance of the principles to have the right to asylum and the protection from non-refoulement in accordance with Articles 18 and 19 of the Charter of Fundamental Rights of the European Union (the 'Charter'). The need to promote and respect the rights of the child, the right to family life, and the right to protection of personal data as guaranteed, respectively, by Articles 24, 7 and 8 of the Charter has been duly taken into consideration in the design of the Union Resettlement Framework.⁸¹

NON-REFOULMENT, RELOCATION AND RESETTLEMENT IN PRACTICE

Regarding resettlement, more tangible policy actions were introduced in 2009 when the European Commission launched a Communication on the establishment of a joint EU resettlement program.⁸² The main guiding principles envisaged were the voluntary participation of Member States; adaptability through the adoption of annual priorities; enlargement of the scope of resettlement activity in the EU and of the number of Member States involved in the process; and the participation of all relevant actors, such as the UNHCR and civil society.⁸³ There are two resettlement models in the EU. The first is ad hoc resettlement and the second program-based resettlement. The difference between the two is that the latter is based on a quota system, while the former is applied to respond to specific challenges and quotas do not apply. A mixed model that would include both mechanisms also exists.

On this basis, after difficult negotiations, Member States amended the European Funds in 2012 to make the program active, and the Asylum, Migration and Integration Fund was created. Its role is to improve refugee resettlement by providing specific assistance in the form of financial incentives (lump sums) for each resettled person and additional financial assistance when individuals under the common Union resettlement priorities are resettled.⁸⁴ Even though more Member States have

⁸⁰ Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council COM/2016/0468 final - 2016/0225 (COD), Pg 7

⁸¹ Ibid Pg 8

⁸² European Commission, Communication on the establishment of a Joint EU Resettlement Program, COM(2009) 447 final, 2 September 2009.

⁸³ European Commission, Communication on the establishment of a Joint EU Resettlement Program, COM(2009) 447 final, 2 September 2009. P 5

⁸⁴ See AMIF Regulation, Recitals 41-43 and Articles 3(2) and 7

been inspired since the launch of the program, the overall numbers of resettled refugees remain modest. The Syrian crisis encouraged the emergence of some national initiatives. It must be noted that the majority of those was for a limited number of persons. The most prominent legal channel of entry is humanitarian admission.⁸⁵ Most notably, since 2013 Germany has assured more than 20,000 places for Syrian refugees.⁸⁶ Germany has also implemented a program to admit privately sponsored Syrians to live with their relatives. This initiative is based on the presence of family members in Germany who can commit to covering the transport and living costs of their relatives for the duration of their stay; it involves an additional 10,000 persons.⁸⁷

The stream of persons moving to the EU in 2015 via the Mediterranean Sea provoked political action. The need for burden-sharing among Member States again became an issue for discussion. The other Member States of the European Union were expected to help Italy and Greece manage the influx of people. Consequently, the pressure on the states which were not participating in resettlement schemes or those perceived as not contributing their fair share became amplified. Furthermore, there are several Member States of the EU that do not carry out resettlement activities or their experience is limited to very small numbers of refugees.⁸⁸

Due to the need to resettle and find new legal avenues for refugees, the European Commission Recommendations for a Voluntary Humanitarian Admission Scheme and a European resettlement scheme in 2015 were introduced. Another significant improvement was the EU agreement with Turkey in March 2016. The Directorate-General for Migration and Home Affairs (DG HOME) launched a study on the feasibility and added value of sponsorship schemes as a possible pathway to safe channels for admission of persons in need of protection to the EU, including resettlement, in late 2017. The evaluation was carried out by ICF and MPI Europe over the period from December 2017 to August 2018.⁸⁹

This feasibility study inspected how sponsorship schemes operate across the EU, how current sponsorship aligns with EU asylum and migration legal frameworks, and the potential added value and feasibility of action at the EU level in the area of private sponsorship.⁹⁰ We can learn from the study that there is a highly diverse range of approaches to private sponsorship among Member States (and internationally), both in terms of how programmes are designed and implemented as well as the goals they are intended to serve. Some programmes were created primarily to admit additional persons (e.g. the Italian, French, and Belgian Humanitarian Corridors programmes) or different groups of persons than those entering via resettlement schemes (e.g. extended family members in the German and Irish humanitarian admission programmes). The UK program was aimed at improving the integration of beneficiaries or at fostering public engagement in humanitarian protection.

Most programmes had multiple goals, but they varied in the way the goals were prioritised. Programme design and implementation was highly informed by the primary goals of the scheme but were also influenced by the legal context, infrastructure of the available services, and the civil society engagement culture. The study states that sponsorship was also defined with priorities and interests. It was often described by the stakeholders as an additional legal pathway to protection. The sponsorship programmes may or may not actually admit additional number of protection beneficiaries. While admissions through the Humanitarian Corridors programmes in Italy, France, and Belgium are additional to resettlement, the UK

⁸⁵ According to AMIF ‘other humanitarian admission programmes’ means an ad hoc process whereby a Member State admits a number of third-country nationals to stay on its territory for a temporary period of time in order to protect them from urgent humanitarian crises due to events such as political developments or conflicts; see AMIF Regulation, Article 2(b).

⁸⁶ See UNHCR, Resettlement and Other Forms of Admission for Syrian Refugees, 14 April 2015.

⁸⁷ See the website of the Germany Ministry of the Interior for more details: http://www.bmi.bund.de/DE/Themen/Migration-Integration/Asyl-Fluechtlingsschutz/Humanitaere-aufnahmeprogramme/humanitaere-aufnahmeprogramme_node.html

⁸⁸ <http://www.know-reset.eu/> accessed 11.01 2020

⁸⁹ European Commission, Study on the feasibility and added value of sponsorship schemes as a possible pathway to safe channels for admission to the EU, including resettlement Final Report, 2018 EUR DR-04-18- 846-EN-N pg. 3

⁹⁰ The study drew on consultations with stakeholders across 12 Member States, Switzerland, Australia and Canada to examine experiences with sponsorship programmes that have operated to date, and stakeholders’ views on EU-level action.

Community Sponsorship Programme and the planned Irish sponsorship programme are not, though they are intended to harness additional resources that communities can offer, in support of government-led resettlement efforts.⁹¹

So we must differentiate between the definition of sponsorship and the sponsorship programmes and humanitarian corridors programs because they tackle different problems. Sponsorship delegates some level of responsibility from governments to private actors for support, reception, integration, or identification of the beneficiaries. Programs that countries use also differ in the responsibilities that were delegated or outsourced and the extent of the obligations that the sponsor was given. Nevertheless, the state maintains under national, EU, and international law that the rights and benefits of refugees or other beneficiaries will be respected as well as that the beneficiaries are able to access mainstream reception and integration services if their sponsorship relationship fails. In addition to inspecting current approaches to sponsorship, the study measured the extent to which sponsorship activities stimulate EU migration and asylum policy goals and are in line with EU legislation as well as the probability of action at the EU level. The study found that sponsorship activities have the potential to facilitate the admission of protection beneficiaries who might not otherwise have access to resettlement or humanitarian admission, either by allowing for the admission of greater numbers of beneficiaries or of groups who might not otherwise be considered for resettlement (e.g. extended family members).⁹²

Stakeholders of the study indicated that utilising the additional resources that sponsorship offers, which the government alone would not be able to access, adds value to their resettlement, humanitarian admission, and protection systems. It also creates opportunities for individuals to be personally involved and increases public engagement in the interaction with beneficiaries.

Another positive message that the study found is ‘that this diversity neither presented significant challenges vis-à-vis the EU asylum acquis, nor obstructed the policy goals that the EU level has vis-à-vis private sponsorship and, more broadly, opening up legal channels to protection.’⁹³ In France and the United Kingdom, the government continues to provide some level of social assistance and housing benefits. The difference of these approaches might be based on the general views of the application of human rights as a right to a decent life and housing that might, for example, be followed in the French social security system but is not a core element of social security in Estonia. Very often, EU Member States face a variety of barriers to establishing resettlement programmes or other legal pathways or running well-functioning asylum systems, and the assistance of sponsors can help them to overcome these obstacles.

In Ireland, for example, the study found that the government has had significant difficulties in finding housing for refugees admitted through the country’s resettlement programme, and authorities count on sponsors in supporting them to more readily connect refugees with housing, thereby gradually improving the functioning of their resettlement programme. France and Italy have similarly reported that sponsorship has helped them to overcome significant barriers in their housing markets to admitting more protection beneficiaries through legal pathways.⁹⁴ The stakeholders who were consulted pointed out that there is no pressing need for new EU legislation in the area of sponsorship. The study findings indicated that sponsorship is possible under the current EU migration and asylum legal frameworks and the diversity of approaches to sponsorship across Member States appears to be a strength rather than a weakness.⁹⁵ The study advises that in the case new legislation is to be considered, it would complement the Union Resettlement Framework and would aim to harmonize some of the private-sponsorship specific features of such schemes in the Member States that would decide to establish one (e.g. the role of the sponsor and the relationship between the sponsor and the state). Such an EU legislative instrument might be based on Article 78(2)(d) TFEU. The option for EU legislative action, however, was not perceived favourably by most stake-

⁹¹ European Commission, Study on the feasibility and added value of sponsorship schemes as a possible pathway to safe channels for admission to the EU, including resettlement Final Report, 2018 EUR DR-04-18- 846-EN-N pg. 119

⁹² Pg 119

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Ibid

holders consulted, either civil society or national authorities' representatives, and appeared to be the least feasible option for EU action. This approach is also understandable as EU Member States want to preserve some of their sovereignty in the field of integration and migration management.

In the conclusions of the study, we can find suggestions that private sponsorships can be the key elements for further safe channels to accessing protection in Europe for refugees. If refugees have close relatives or friends in their country of settlement or NGOs assisting them with settling into their new home, a significant burden is lifted from the state and better integration of newcomers in society is achieved. The study also highlights that 'any action at the EU-level to encourage or support (a greater uptake of) sponsorship, however, will need to be taken with an eye to preserving the flexibility of sponsorship as a tool and the ability of Member States to design such programmes in a way that fits their capabilities and needs.' So we should be very careful at the EU level to push policies and actions forward that are not helpful either for the refugee or to society and EU Member States.

It seems that there is a need to identify any legal obstacles to sponsorship at the Member State-level as the schemes will need to be designed in a way that is sensitive to and fits within these systems. Sponsorship programs are mechanisms based on solidarity and at the same time respect the sovereignty of the states, and there is no need to regulate them at the European Union level. However, the European Union can financially support states that initiate these programs by creating a special fund to support the activities of NGOs, states, and other stakeholders.

THE 'TURKISH DEAL'

On 15 December 2015, the Commission adopted a Recommendation for a Voluntary Humanitarian Admission Scheme with Turkey⁹⁶ to create solidarity and responsibility-sharing with Turkey for the protection of persons displaced by the conflict in Syria to Turkey, many elements of which formed part of the implementation of the EU-Turkey Statement of 18 March 2016. It was agreed in the EU-Turkey Statement that, for every Syrian being returned to Turkey from the Greek islands, another Syrian will be resettled from Turkey in the EU, taking into account the UN Vulnerability Criteria.

This Action Plan of 2015 mirrors the understanding between the European Union (EU) and the Republic of Turkey to step up their cooperation in support of Syrians under temporary protection and their migration management in a coordinated effort to address the crisis created by the situation in Syria. It follows from the EU-Turkey working dinner on 17 May and the informal meeting of the EU Heads of State or Government on 23 September 2015 where EU leaders called for a reinforced dialogue with Turkey at all levels. The Action Plan identified a series of collaborative actions to be implemented as a matter of urgency by the European Union (EU) and the Republic of Turkey to supplement Turkey's efforts in managing the situation of the massive influx of persons in need of temporary protection. The Plan tries to address the current crisis in three ways: '(a) by addressing the root causes leading to the massive influx of Syrians, (b) by supporting Syrians under temporary protection and their host communities in Turkey (Part I) and (c) by strengthening cooperation to prevent irregular migration flows to the EU (Part II)'.⁹⁷ The Plan has been formed and is dependent on commitments undertaken by Turkey and the EU in the Visa Liberalisation Dialogue. It identifies the activities that are to be implemented simultaneously by Turkey and the EU.⁹⁸ The main idea was to allocate funds to Turkey and to improve the collaboration between the EU and Turkey to preclude irregular movement into the European Union.

⁹⁶ 93 C(2015) 9490. https://www.europarl.europa.eu/RegData/etudes/STUD/2016/556953/IPOL_STU%282016%29556953_EN.pdf

⁹⁷ See more in 'The situation in the Mediterranean and the need for a holistic EU approach to migration' European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI)) (2018/C 058/02)

⁹⁸ EU Commission, EU-Turkey joint action plan, Brussels, 15 October 2015, Fact Sheet

Nevertheless, the plan has had its critics. Idil Atak⁹⁹ claims that the EU-Turkey Action Plan doesn't add incentive to the European Union to better tackle the migration crisis. According to Atak, Turkey used refugees coming from Syria to place political pressure on the EU in the visa liberalization discussion. The EU only wishes Turkey to stop refugees and impede them from arriving to Europe. Atak points out five deficiencies of the plan. The first is that this type of shelter is temporary and it is doubtful that it can address the needs and vulnerability of refugees. Turkey itself has restricted its reception and integration capacity, and it bears little political will to maintain effective protection for refugees. Moreover, Syrian refugees do not want to live in Turkey. The EU presumes that Turkey can complete the asylum procedures that have been introduced so that the status of refugee is granted without delay. Atak's critique is that these refugees can't be offered durable solutions in Turkey because it ratified the 1951 Geneva Convention with a geographical limitation. Furthermore, it is unclear how the EU Member States will ensure the fair distribution of effort in assisting refugees. There is one point in the Action Plan which ambiguously refers to 'the EU's commitment to supporting existing Member State and EU resettlement schemes and programmes'. Atak notes that only a few countries in Europe take the majority of refugees. Since the EU unveiled its quota plan to resettle 160,000 refugees last September, the first few refugees have recently been relocated from Italy. But the process is very slow.¹⁰⁰ And finally, the Action Plan disregards the problem of refugees fleeing war, conflict, or ethnic and religious tensions in many other countries such as Afghanistan, Iraq, and Eritrea.¹⁰¹

All these critiques are relevant, but we should keep in mind that it is better that refugees who flee have some kind of security in the country they go to and that Europe helps to support this security. Outsourcing the European problem of refugees to Turkey might be unethical, but at that same time if the reality is that refugees find themselves first in Turkey and only then plan to go further to European Union, it is humane to give countries of first asylum some assistance. This is also part of the solidarity principle that Europe should follow, as it is stated in its founding treaties.

CONCLUSION

This assessment of the European migration crisis reveals that the main reasons for the mismanagement of immigration to the EU are the inconsistencies inside the Common Asylum System itself. The unfinished integration of the European Union, the willingness to maintain sovereignty in the field of migration quotas as stated in article 79, point 5 of the TFEU,¹⁰² and the different interests and capacities of Member States are some examples that have led to failure. Although Article 67 §2 of TFEU regulates that the absence of internal border controls for persons should be ensured and a common policy on asylum, immigration, and external border control, **based on solidarity between the Member States**, which is fair towards third-country nationals, should be developed. Some Member States have started to forget their obligations that they took on by signing the treaty and becoming full members of the European Union. It might also be seen as ignorance of European-wide agreements while taking into account the realities of Member State capacity.

As we can read from Article 80 of the TFEU, the policies of the Union set out in Chapter V and their implementation shall be governed by the **principle of solidarity and fair sharing** of responsibility, including their financial implications, between the Member States. It is a new agreement that was introduced by the Lisbon Treaty to the TFEU. It can be claimed that Member States are not yet used to referring to the latest version of the treaties as it was agreed upon in 2009. Maybe it was too ambitious then, as in 2009 when migration numbers were still somehow under control. However, the southern border states

⁹⁹ Idil Atak, A look at the EU-Turkey Action Plan, <https://francoiscrepeau.com/a-look-at-the-eu-turkey-action-plan/>, Accessed 21.12.2019

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² TFEU art 79 point 5, This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

like Malta, Greece, and Italy were already struggling with irregular immigration that was above their capacity to handle. The necessity for solidarity measures normally arises from the inability of a particular Member State to fulfil obligations envisaged by CEAS instruments. Through an impartial assessment of the protection capacity of each Member State, ‘inability to comply’ with one’s obligations would clearly be distinguished from ‘unwillingness to comply’. This would, thus, address the current tensions between Member States in terms of distributing responsibilities.¹⁰³

The role of the courts is vital in providing new guidelines for supplementary improvements in the protection of persons seeking asylum. But it is also vital in providing guidelines on how the EU should shape its policies taking into consideration human rights and its obligations that are agreed upon in the Treaties and by its members. Burden-sharing imposed by the EU on the Member States has generated conflict and raised concern about the ability of the EU to resolve the problems. Furthermore, several questions arise. How many immigrants can a European state integrate? What should be done in the case of emergency? How can solidarity be improved and how can the EU’s external borders be collectively protected? Do the countries want to abolish free movement and go back to sovereign migration management schemes? An answer can be found in the sponsorship programs designed by the states themselves. Sponsorship as discussed above also has the potential to facilitate the integration of beneficiaries by appointing additional resources at the individual and community levels, particularly sponsors’ time, attention, and social networks.

The results of the sponsorship study discussed above showed numerous potential benefits for allowing this diversity of sponsorship practices. First, Member States can tailor their programmes to their unique contexts. Sponsorship schemes rely heavily on having an actively engaged civil society sector or deep interest in assisting protection beneficiaries at the community level. Without willingness, sponsorship cannot succeed. Sponsorship schemes should be designed in a way that taps into the unique motivations and capabilities of potential sponsors in each Member State, requiring programme design to be highly tailored.

EU activities could further support Member States in introducing and expanding their sponsorship schemes, and ensure that these are effective and are operated in line with their policy goals and correspond with national and EU laws. The balance between state sovereignty and solidarity is not always easy to find, but it should be the aim of the European Union to facilitate the relocation and resettlement initiatives of its Member States by providing financial, moral, educational, and networking possibilities to the stakeholders dealing with the issues.

¹⁰³ Tsourdi, Evangelia (Lilian); DE Bruycker, Philippe, EU asylum policy: in search of solidarity and access to protection, 2015, <https://cadmus.eui.eu/handle/1814/35742>

References

- Achiron, M. (2001). „The Geneva Convention has been the cornerstone of protection for 50 years, but there is a lively debate about its relevance today” in Refugees. Vol 123 pp 4-8.
- Bagdonas, A. (2015). „The EU Migration Crisis and the Baltic Security” in Journal on Baltic Security. Vol 1(2) pp 7-28.
- Bendel, P. (2018). Wanderungsbewegungen nach Europa:Fester Bestandteil von Politik— überall? [Migration to Europe: An established policy field—Everywhere?]. Zeitschrift für Ausländerrecht und Ausländerpolitik, 5, pp 181–228.
- Boswell, C. (2000). „European values and the asylum crisis” in International Affairs. Vol. 76(3) pp 537-557.
- Ferrera, M. and Pellegata, A. (2017) ‘Can Economic and Social Europe Be Reconciled? Citizen Views on Integration and Solidarity’, RESceU Working Paper. Available online at: <https://www.resceu.eu/events-news/news/can-economic-and-social-europe-be-reconciled-citizens%E2%80%99-view-on-integration-and-solidarity.html>. (accessed: 10 July 2018).
- Ferrera M. and Burelli, C. (2019) Cross-National Solidarity and Political Sustainability in the EU after the Crisis, JCMS Volume 57. Number 1. pp. 94–110
- Nakashiba,H. “Clarifying UNHCR Resettlement. A few considerations from a legal perspective,” Research paper No. 264 (November 2013): 1).
- Heimann C., Müller S., Schammann H., and Janina Stürner J., (2019), Challenging the Nation- State from within: The Emergence of Transmunicipal Solidarity in the Course of the EU Refugee Controversy, Social Inclusion Volume 7, Issue 2
- Atak I, A look at the EU-Turkey Action Plan, <https://francoiscrepeau.com/a-look-at-the-eu-turkey-action-plan/>, accessed 21.12.2019
- Langford, L M (2013). „The Other Euro Crisis: Rights Violations Under the Common European Asylum System and the Unraveling of EU Solidarity” in Harvard Human Rights Journal. Vol. 26(1) pp 17-264.
- Jakulevičienė L, Bileišis M (2016) EU REFUGEE RESETTLEMENT: KEY CHALLENGES OF EXPANDING THE PRACTICE INTO NEW MEMBER STATES, BALTIC JOURNAL OF LAW & POLITICS,
A Journal of Vytautas Magnus University, VOL 9, 1 p 94-123, 94
- Mallia, P. (2011). „Case of M.S.S. v. Belgium and Greece: A Catalyst in the Re-Thinking of the Dublin II Regulation”, in Refugee Survey Quarterly.Vol. 30(3): 107-128.
- Roots, L. (2017) Burden Sharing and Dublin Rules - Challenges of Relocation of Asylum Seekers, Athens Journal of Law, Volume 3, Issue 1
- Roots, L. Sharing Refugees after Lisbon – Solution for the Small States?, Romanian Journal of International Relations and European Studies, (ROJIRES), Vol.1, nr. 2/2012, Roads of Migration. Roads to Migration

Sangiovanni A., (2015) Solidarity as Joint Action, Special Issue: Socio-Economic Justice: Beyond The Welfare State? Guest Editors: Christian Schemmel and Stefan Gosepath, Journal of Applied Philosophy, Volume 32, Issue 4, November 2015, pp 340-359

Schuck, P. (1997) "Refugee Burden - Sharing: A Modest Proposal". Yale Journal of International Law vol 22.

Schmid Alex P. Links between Terrorism and Migration: An Exploration, ICCT Research Paper, May 2016

Torun D. and Thielemann E. (2006) "The Myth of Free-Riding: Refugee Protection and Implicit Burden-Sharing". West European Politics vol 29(2).

Tsourdi, E.L. and DE Bruycker, P., (2015) EU asylum policy: in search of solidarity and access to protection, <https://cadmus.eui.eu/handle/1814/35742>, accessed 10.01.2020

Other:

A European Border and Coast Guard to protect Europe's External Borders. (2015). European Commission. (Press release of 15. December, 2015

https://ec.europa.eu/commission/presscorner/detail/en/IP_15_6327 accessed 10.01. 2020

European Agenda on Migration. (2015). European Commission. (Official action plan). http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf accessed 10.01. 2020

Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions A European Agenda on Migration, COM/2015/0240 final

Council Conclusions on "Taking action to better manage migratory flows", Justice and Home Affairs Council meeting, 10 October 2014.

Commission Recommendation (EU) 2015/914, of 8 June 2015, on a European resettlement scheme [2015] OJ L 148/32

Commission Communication 'Towards Integrated Management of the External Borders of the Member States of the European Union', pg. 24, The Hague Programme, Annex to the European Council Conclusions, Brussels, 4-5 November 2004, point 1.7.1. COM (2002) 233 final

Communication from the Commission to the European Parliament and the Council towards a reform of the Common European Asylum System and Enhancing legal avenues to Europe COM(2016) 197 final

Communication from the Commission to the Council and the European Parliament establishing a framework programme on solidarity and management of migration flows for the period 2007-2013 COM (2005) 123 final

Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals, COM (2006) 402 final

Commission Decision 2008/22/EC of 19 December 2007 laying down rules for the implementation of Decision No 573/2007/EC of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme “Solidarity and Management of Migration Flows” as regards Member States’ management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund, OJ L 17 of 10 January 2008.

Commission Communication ‘Towards Integrated Management of the External Borders of the Member States of the European Union’, pg. 24, The Hague COM (2002) 233 final

Commission Recommendation for a voluntary humanitarian admission scheme with Turkey C(2015) 9490

Communication from the Commission to the European Parliament, The European Council and the Council, Fifth report on relocation and resettlement, Brussels, 13.7.2016 COM(2016) 480 final

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof OJ L 212, 07/08/2001

Decision (EU) 2015/2248 of the European Parliament and of the Council of 28 October 2015 on the mobilisation of the Flexibility Instrument for immediate budgetary measures under the European Agenda on Migration, [2015], OJ L 318/36

European Commission, Study on the feasibility and added value of sponsorship schemes as a possible pathway to safe channels for admission to the EU, including resettlement Final Report, 2018 EUR DR-04-18-846-EN-N

European Commission, Communication on the establishment of a Joint EU Resettlement Program, COM(2009) 447 final, 2 September 2009

EU Commission, EU-Turkey joint action plan, Brussels, 15 October 2015, Fact Sheet

Informal meeting of EU heads of state or government on migration, 23rd of September 2015 statement. <http://www.consilium.europa.eu/en/press/press-releases/2015/09/23-statement-informal-meeting>

Justice and Home Affairs Council 20/07/2015. Justice and Home Affairs Council 22/09/2015

Outcome of the Council Meeting, 3405th Council meeting Justice and Home Affairs Brussels, 20 July 2015, Provisional version 11097/15

Programme, Annex to the European Council Conclusions, Brussels, 4-5 November 2004

Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council COM/2016/0468 final - 2016/0225 (COD)

Proposal for a Council Decision amending Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece COM(2016) 171 final

Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 COM(2016) 271 final

Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) COM(2016) 270 final

Proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] , for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast) COM/2016/0272 final - 2016/0132 (COD)

REGULATION (EU) No 516/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16

April 2014, establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC, [2015] OJ L 150/168

Report on the situation in the Mediterranean and the need for a holistic EU approach to migration from 23.3.2016, 2015/2095(INI).

Webpages:

Asylum Statistics. Eurostat. http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Asylum_applicants, accessed 10 January 2020

<https://theconversation.com/solidarity-was-a-founding-principle-of-european-unity-it-must-remain-so-74580>

Asylum Statistics. Eurostat. http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Asylum_applicants 10 November 2016

European Commission, Refugee crisis: Council shows solidarity with Greece by approving emergency support. The Dublin System <https://www.consilium.europa.eu/en/press/press-releases/2016/03/09/refugee-crisis/> accessed 10 January 2020

FRA, Legal entry channels to the EU for persons in need of international protection: a toolbox, 2015 [https://fra.europa.eu/en/publication/2015/legal-entry-channels-eu-persons-](https://fra.europa.eu/en/publication/2015/legal-entry-channels-eu-persons-need-international-protection-toolbox)

[need-international-protection-toolbox](https://www.rferl.org/a/eu-explainer-two-speed-multi-speed-europe/28396591.html) accessed 10 January 2020 <https://www.rferl.org/a/eu-explainer-two-speed-multi-speed-europe/28396591.html> <https://www.eukn.eu/eu-presidencies/bulgarian-eu-presidency> accessed 19 December 2019

Refugee Crisis: European Commission takes decisive action https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5596 accessed 10 January 2020

Schengen evaluation of Greece: Council adopts recommendation to address deficiencies in external borders, available <https://www.consilium.europa.eu/en/press/press-releases/2016/02/12/schengen-evaluation-of-greece/> accessed 10 January 2020

Syrian Refugees. Migration Policy Centre of the European University Institute. http://syrianrefugees.eu/?page_id=10 accessed 20 April 2016

Tampere European Council, Presidency Conclusions, 15-16 October 1999. https://ec.europa.eu/anti-trafficking/eu-policy/tampere-council-conclusions-1999_en accessed 10 January 2020

UNHCR sub regional operations profile 2015 Northern, Western, Central and Southern Europe. <https://greekleftreview.wordpress.com/2016/03/23/2015-unhcr-subregional-operations-profile-northern-western-central-and-southern-europe/> accessed 10 January 2020

UNHCR, Resettlement and Other Forms of Admission for Syrian Refugees, 14 April 2015. UNHCR, Resettlement statistics <http://popstats.unhcr.org/en/resettlement> www.visegradgorup.eu, accessed 10 January 2020

Cases

Case C-643/15 Slovakia v Council and Case C-647/15, Hungary v Council, Case C-643/15 Slovakia v Council and Case C-647/15 Hungary v Council ECtHR – M S S v Belgium and Greece [GC], Application No. 30696/09

THE LEGITIMATION OF PUBLIC SECTOR REFORMS - THE CASE OF ESTONIA

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ABSTRACT

There is a growing debate on the political legitimacy of government and its deficiency or even crisis but very little attention has been drawn to legitimation as the process of creating legitimacy. The article turns its focus to legitimation and analyses how the theoretical frameworks of F.W. Scharpf¹ (*input vs output legitimacy*) and I. Blühdorn² (*subject-centred, abstract and performative legitimacy*) help shed light upon two lengthy reform processes and the creation of legitimacy in Estonia. The basic decision-making rationales reflecting either NPM or network-based governance are also analysed throughout the legitimation process. The article shows how legitimation in Estonia mostly falls into the categories of output-oriented and abstract or performative legitimation with reflections of the prevalence of NPM. Many stakeholders are often seen as institutionally too weak to give their input to policies and in fear of unconstructive engagement, public servants prefer to legitimise ready-made policies. The article explains how legitimation could be seen as a governing tool to overcome these tendencies.

INTRODUCTION

Legitimacy is a key component of democracy, expressing that the citizens accept those in power. Jessop³ has stated that legitimate power is the only effective and sustainable democratic power. It is usual to think of legitimacy in terms of the governing party or political decisions, but the institutional structure of the state also has to be in accordance with the changes in society and expected public policy. Therefore, a regular reforming process of the state's institutions is also an important premise for legitimate governing. Not only does the outcome of the reform process have to be legitimate but the whole process of reforming and communicating the reform is of high importance if the state wants to avoid undermining its legitimacy.

The OECD governance report⁴ – the latest conducted about Estonia specifically – stated that one of the major problems of Estonian government is the fragmentation between the political institutions and different policy areas. Communicative problems are prevalent among government institutions as well as other political networks. Considering important political decisions there is a lack of explanations and reasoning, the aim of the reforms and the process of reforming is often not transparent. Furthermore, the division of policy areas and short-term electoral cycle contribute to the project-like governing and the longer, wider view of policies falls out of the debate.

Legitimation as a governance tool has been included in most policy-making models and process descriptions, being one of the elements that does not take a fixed place or position. Rather it is an ongoing parallel activity to the whole cycle of policy making. Since in Estonia, and in most of today's democratic parliamentary countries, policies are usually initiated and developed within the ministries, the legitimating role of civil servants and their own attitudes and perceptions about legitimating practices are crucial. Politicians and the wider media definitely also influence legitimation but the majority of the knowledge

¹ Scharpf, F., W. Problem Solving Effectiveness and Democratic Accountability in the EU. Munich: Max Plank Institute for the Study of Societies, 2003.

² Blühdorn, I. In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity. Berlin: Barbara Budrich Publishers, 2009

³ Jessop, B. The State: Past, Present, Future. Cambridge: Polity Press, 2016.

⁴ See OECD. Estonia: Towards a Single Government Approach. - OECD Public Governance Reviews. Paris: OECD Publishing, 2011.

and responsibility is in the hands of civil servants who mainly draft the reform acts and communicate the process. There has not been sufficient debate on how they could use legitimation more as a proper governance tool.

The aim of this article is to analyse legitimation practices so as to understand how legitimation could be used better as a useful governance tool. The analysis is based on the example of the Estonian public sector and its reforms. The theoretical framework that is the basis for the qualitative content analysis of the documents and interviews is mainly based on the work of Fritz W. Scharpf and Ingolfur Blühdorn. No earlier studies have been carried out in Estonia specifically focusing on the policy legitimation process. The article discusses the results of research within the theoretical framework and proposing some ideas for better legitimation practices that could be implemented in Estonia and other countries with similar legitimacy problems.

LEGITIMATION AS A GOVERNANCE TOOL

Legitimation as such combines different ways of communicating, discussing and acting that are used to create legitimacy. Slightly different definitions can be found for political legitimacy since cultural and societal changes have also brought about new governing paradigms but in the context of democratic governance, political legitimacy is generally understood as people willingly giving their consent for political decisions to be made by the institutions and actors representing them.⁵ Legitimacy has always been important as a means of political acceptance, approval or consent when pursuing sustainable governance, but the basis for acquiring and sustaining power have changed over time and so have the methods of legitimation. During the absolutist era, divine right, ancestry and military capability were sufficient reasons to accept the governor. Since then, the development of the constitutional state during the 19th and 20th centuries and contemporary citizen-engagement significantly changed the perception of the state's functions and legitimate governance.

Although there is a tendency for societal fragmentation and citizens as the holders of supreme power have become more demanding, sceptical and volatile in their lifestyles,⁶ they still expect a stable environment and service provision from a state that respects their individual and collective needs.⁷ Therefore, the question of state apparatus design is very much at stake. The state in the narrow sense of a state apparatus describes a politically organized administrative and symbolic structure that acts as a sovereign subject among its citizens and other states.⁸ Peter Taylor⁹ names five important functions of state – providing security, managing the economy, forming political-cultural identity, providing public services and creating a legitimate administrative system. Since the legitimacy of the government is based on the values and expectations towards the institutional design as well as functionalities of the state, then the legitimating activities have an increasingly important role to play in contemporary governance.

Successful policy outcomes alone are not a sufficient basis for legitimacy, often the dissatisfaction of the people derives rather from poor state-citizen relations or from a lack of transparency and accountability. According to Pollitt and Bouckaert,¹⁰ there are different dimensions of political legitimation: (1) legitimising specific policies and achieving acceptance by the success of the policy from ideas to outcome, (2) legitimising the policy process which focuses on the design of process management, transparency, stakeholder engagement, accountability etc, (3) legitimising political/administrative capability

⁵ Blühdorn, I. In *Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009 p.9.

⁶ See Hay, C. *Why We Hate Politics*. Cambridge: Polity Press, 2007.

Norris, P. *Democratic Deficit. Critical Citizens Revisited*. Cambridge: Cambridge University Press, 2011.

⁷ Blühdorn, I. In *Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009 p.40.

⁸ Jessop, B. *The State: Past, Present, Future*. Cambridge: Polity Press, 2016 p.27.

⁹ Taylor, P. *The State as Container: Territoriality in the Modern World System*. - *Progress in Human Geography*. Vol.18 No. 2, p. 151-62.

¹⁰ Pollitt, C., Bouckaert, G. *Public Management Reforms. Comparative Analysis: New Public Management, Governance and the Neo-Weberian State*. Oxford: Oxford University Press, 2011.

as enhancing loyalty through the capacity of political actors, and (4) legitimising the governing system itself, which has most to do with the exposure of values in political practice.

Institutional and structural reforms may seem specific internal state matters that need no wider discussion, but considering that the structure of the state is crucial to its administrative and political capability, policy process design, public service provision, among others, we can say that the state apparatus has to change with societal changes. Pollitt and Bouckaert describe public sector reforms as a conscious act of change in structure and management to ensure better functionality.¹¹ They also describe how changes in institutional structure might arise from either political will in some policy area and its needs or managerial considerations. The main contemporary public administration arguments for institutional and functional reforms are connected with modernising innovative structure design in response to transformed expectations. However, it is important for the state to find the right balance between legitimation methods, while also considering cultural background, public opinion and societal needs. Legitimation is never a separate tool that can simply be implemented in any case; the context is vital for successful legitimation and the prevailing governance paradigms constitute the framework where the whole thing – specific policies, the policy process, political capability and the state as a system – can be legitimized.

WAYS OF LEGITIMATION

Democratic values and the very content of legitimacy have remained quite resilient over the time of democratic governance, but legitimation methods and their implementation have changed a lot. Max Weber described legitimate governance as domination based on rational, traditional or charismatic dominance. Those attributes were considered to be the main legitimators of the governor. In modern and postmodern democracies, power has become more impersonal; governing is not only somebody's power over somebody else, but it is seen more as a shared power, a wider power chain with many power holders on many different levels. So the main focus of legitimation is not on one person or party in power, but the whole system of governing the state, the power chain with all its impersonal counterparts. As Blühdorn says, the main legitimation methods in a postmodern democracy are those that show how the power mandate from the citizens is transformed into a transparent policy process.¹² Foucault¹³ has also emphasized the fact that people or collective stakeholders have to be given a meaningful role in the power chain that helps them to embrace power and elaborate on possible choices. Motivation should be what guides them, not sanctions.

Fritz William Scharpf divides legitimacy into *input* and *output legitimacy*. Input-legitimacy describes trust in institutional arrangements, which ensure that governing processes are generally responsive to the preferences of the governed. Output-legitimacy describes trust in institutional arrangements, which ensure that the policies adopted will generally represent effective solutions to common problems of the governed (Scharpf, 1999:6). Although Scharpf focuses mainly on the political mandate and how it turns into policies when speaking of input-oriented legitimation, scientific rationality or expert knowledge can also be considered an important input. It is crucial for input-legitimacy that policy makers communicate how a combination of inputs is the real basis for policy making. Output-oriented legitimation should be about communicating policy outcomes as not just separate projects but the indicators of a functional system and government capability.

There are some differences between input-oriented and output-oriented legitimation that help to distinguish the two methods. Input-oriented legitimation is generally initiated in the early stage of policy making, political communication is open to different counterparts and different arguments, based on which government institutions and citizens both get information to create their opinion and participate in respective debates. Output-oriented legitimation focuses on the outcome and most of the communication evolves around ready-made solutions and their advantages as a reason to support them. There are au-

¹¹ Ibid, p.8.

¹² Blühdorn, I. In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity. Berlin: Barbara Budrich Publishers, 2009 p.9.

¹³ Foucault, M. Power. Knowledge: Selected Interviews and Other Writings. New York: Pantheon Books, 1980.

thors¹⁴ who argue that legitimacy mostly depends on the state's capacity to engage citizens in the input-dimension. But there are also others¹⁵ who argue that effective and decent policy outcomes justify legitimating the 'ready-made product' and engaging fewer stakeholders in the process. The latter debate says that democratic governing is moving towards expert knowledge since the scientific approach and more precise analysis enable us to estimate potential outcomes. The demand-side of a multifaceted society is so elusive anyway that it has to be curtailed somehow. There is a general understanding that input-oriented legitimation contributes more to creating state-citizen trust relations and political loyalty, output-oriented legitimation, however, makes the policy-making process faster and more efficient. Therefore, the dilemma between input and output legitimation is quite a current issue.

Ingolfur Blühdorn¹⁵ adds three dimensions that describe legitimation focus: (1) subject-centred, (2) abstract and (3) performative legitimation. In modern democracies, the general approach was subject-centred legitimation, which means that policies are directed to certain individuals or collective groups and their needs or expectations. In representative democracies, the subject-centred approach generally meant convincing citizens as voters to favour some party and give them the mandate to make decisions on their behalf. This is still the main legitimation goal but due to the rapid spread of information, the citizen forms opinions constantly and political communication has to be strategic to catch the attention of certain political subjects. Subject-centred legitimation is mostly implemented in different forms of engagement in the policy process but the policy outcome and citizen satisfaction with it is also important.

Abstract legitimation is very common in the postmodern context. Political identity is often fragmented and volatile in postmodern societies and political subjects are not so easily determined any more. Citizens feel much less connected with the state and its policies, the functionality of the state becomes more vague, but expectations about the state's performance are still high.¹⁷ Abstract legitimation is not directed to any certain subject but to the wider public. The state creates some general channels and forums for getting information and participating in the policy process and whoever finds the channels and wants to voice an opinion is free to do so (considering some systematic rules, of course). Thereby, the state manages the transparency and coordination of the political common ground. Abstract legitimation, mostly output-oriented, claims for efficiency, a successful outcome and rational justification. The role of citizens is rather to react and only those who are able to find access to specific information and opportunities for getting involved can offer an input into the policy making process.

There are three main ways for abstract legitimation: (1) referring to justifiability in accordance with inevitability in the wider system (e.g. socio-economic tendencies, EU directives etc); (2) referring to general transparency and accountability in the system (e.g. availability of information, websites for draft acts etc); (3) referring to procedural correctness (e.g. amendments to some legal acts related to some former amendments to some other legal acts, decisions based on research papers and expertise etc).

Performative legitimation is somewhat an amalgam of the previous two, complementing the former and at the same time trying to approach the actual tendencies of contemporary democratic governance. Performative legitimation does not focus on the politicized citizen but rather on the citizen as a satisfied client. The policy-making process and its outcome is directed to certain project-based subjects in the respective policy area.¹⁶ Performative legitimation sees individual and collective stakeholder engagement as its tool, but the target group to engage is only the group of people who is directly or indirectly affected by the policy outcome and wants to express its political identity in the respective policy process. Blühdorn suggests the performative approach is a solution in contemporary complexity, where subjectivity has become weaker, but the demand

¹⁴ See Gutmann, A., Thompson, D. *Why Deliberative Democracy?* Princeton: Princeton University Press, 2004. ¹⁵ See Crouch, C. *Post-democracy*. Cambridge: Polity Press, 2004; Buchstein, H., Jörke, D. *Redescribing Democracy*. - *Redescriptions*, No. 11, p. 178-197.

¹⁵ Blühdorn, I. *In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009 p.9. ¹⁷ *Ibid*, p. 39.

¹⁶ Blühdorn, I. *In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009 p.44.

for legitimacy has grown stronger. Colin Crouch¹⁷ describes performative legitimation as a balancing approach that prevents big crowds from diving into politics and making the policy process overwhelming but still favours those that are politically better informed, active and interested in contributing to policy making.

Although the performative approach is considered to be potentially the best performing option in postmodern network-based governance, it also sets a high bar for communication strategies. Both the input and output dimensions are combined. Stakeholder engagement in many forms, such as opinion polls, consultations, discussion forums, community meetings, and so on, should be present to avoid superficiality but participation ought to be curtailed as well, to eliminate unnecessary and functionally useless engagement.²⁰ Policy outcomes are targeted to increase the welfare of the citizens and meet their expectations but the focus stays on the specific policy to avoid overwhelming discussion about all the other related policy issues. It is hoped that the citizen as a client will be content with the specific policy process and outcome and the more satisfying one project is for him/her, the more likely it is that he or she will remember it as a political success story. Therefore performative legitimation is also considered to be reputational approach that helps to create positive perceptions of the state, and therefore ensure loyalty.

Table 1. Framework of legitimation

	Subject-centred	Abstract	Performative
Input-oriented	Civic engagement, pre-decision consultations, equal treatment, stable political identity	Scientific rationality, expert knowledge, citizens as wider general public subject	Civic participation in depth but on a minimal functional level
Output-oriented	Meeting individual and collective needs and expectations	Systemic influence, efficiency of outcomes, success proven by scientific research or other's experience	Citizen as a client, policy making as a reputational project

Source: Authors based on the approaches of F.W. Scharpf¹⁸ and I. Blühdorn¹⁹

Therefore, the legitimation process is more complex and strategic than it appears to be in the beginning. Often the communication process tends to remain too shallow and concentrated only on some aspects of some specific policy, which makes it easier to communicate the process. The potential that lies in legitimation, its wholesome, strategic and well-designed nature is often left unnoticed. Legitimation carries more in itself than just marketing, it has the potential to be the process that unveils the secrecy of governing and brings the state closer to its citizens.

LEGITIMATION IN THE CONTEXT OF GOVERNANCE PARADIGMS

Since legitimacy is an abstract quality and hard to measure, then legitimation definitely needs a context in which to be analysed and implemented. We suggest that there are broadly two main governing paradigms that have shaped democratic governance since the last decades of the 20th century: *New Public Management* (NPM) and *New Public Governance* (NPG) – sometimes referred to as just *governance*. These two approaches have been the most dominant in the development process of modern and postmodern democracies and also enable us to create an analytical framework for a systematic and contextual

¹⁷ Crouch, C. *Post-democracy*. Cambridge: Polity Press, 2004 ²⁰ Ibid, p. 112.

¹⁸ Scharpf, F. W. *Problem solving effectiveness and democratic accountability in the EU*. Munich: Max Plank Institute for the Study of Societies, 2003.

¹⁹ Blühdorn, I. *In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009.

case study of the legitimization methods.

NPM was quite contrary to Max Weber's former bureaucratic theory and the later concept of the welfare state, when it started to spread in the 1990s. As Ferlie²⁰ describes the process, market-driven technocratic efficiency was aimed to transform governing into a more efficient, transparent and sustainable system.

Performance indicators, the logic of competition and quality management were the keywords ingrained in government practice to provide the citizen-client with wider choice and better options. Many public sector institutions were divided into departments and the vertical power hierarchy was redesigned into horizontal managerial units to enable the departments to focus on their specific areas. Precise auditing methods were also introduced to ensure the effective use of resources. Legitimation of such changes was not too difficult considering the harm of the oil supply crises and the exhaustive effect that the welfare state had had on public expenditure. The message of the effective and sustainable state along with the practical governing methods that NPM offered was welcomed among different groups of society.

Regardless of high expectations, legitimacy problems were quick to arise. A system that relies on economic growth and aims to eliminate inefficiency often fails in finding flexible solutions to meet the actual needs of citizens. By the end of the 1990s, Hood²¹ criticized the NPM approach as a pursuit for one general model and stated that in the context of societal pluralism and increasing knowledge, implementing one homogenous model is not a sustainable action-plan anymore. The strong focus on efficiency had attributed the citizen a role as a client but alongside this came the growth of political passivity. Osborne²² also analysed how the concentration on policy outcomes brought structural fragmentation among government institutions. Legitimation arguments were also mostly based on effectiveness and successful outcomes. The debate about a legitimization crisis became more evident with its core argument the government's incapability to embrace the real inner problems of the society and be flexible in respective actions.²³ The legitimacy deficit brought the need to not only legitimise specific policies but the whole governing system needed a legitimating reboot.

From the 21st century on, public governance theorists have focused more on the inter-institutional coordination of wider policy networks that could embrace the contemporary multifaceted and complex governing problems. *The governance* approach sets different actors on a more equal horizontal level. Government institutions do have a stronger coordinator and resource distributor role but non-government institutions and other stakeholders are provided with detailed relevant information, grass-roots knowledge, expertise, additional resources and political support.²⁴ The legitimization methods of NPG are mostly input-oriented, and since policy making is a cooperative process engaging all important stakeholders, the policy outcome should also meet the expectations of all the people represented by various counterparts. The subsidiarity principle is also important – if political issues are dealt with at the most immediate level possible then the process and outcomes are also more easily perceivable and acceptable.

Table 2. Legitimation in contemporary governance paradigms

	New Public Management	New Public Governance
Citizen's position	Consumers/clients	Cooperating partners
State's position	Service provider, system manager	Coordinator

²⁰ Ferlie, E., Ashburner, L., Fitzgerald, L., Pettigre, A. *The New Public Management in Action*. Oxford: Oxford University Press, 1996.

²¹ Hood, C. *The Art of State: Culture, Rhetoric and Public Management*. Oxford: Oxford University Press, 1998 p.19.

²² Osborne, S., P. *The New Public Governance*. - *Public Management Review* Vol. 8 No. 3. p. 377-387.

²³ See Habermas, J. *Legitimation Crisis*. Boston, Beacon Press, 1975.; Beetham, D. *The Legitimation of Power*. Houndmills: Macmillan, 1991.

²⁴ Sorensen, E., Torfing, J. *Theories of Democratic Network Governance*. New York: Palgrave Macmillan, 2007 p.155.

Institutional structure	Market-based approach, activities divided by policy area	Cooperation networks, subsidiarity
Policy goals	Efficiency, performance indicators	Customer satisfaction
Legitimation methods	Mainly output-oriented and abstract	Mainly input-oriented, subject-centred or performative
Legitimizing arguments	Efficiency, performance, expertise, efficient usage of resources	Engagement, cooperation for policy inputs, openness, consensual decisions

Source: Authors based on Hood 1998; Osborne 2006, Scharpf 2003 and Blühdorn 2009²⁸.

Since legitimacy and legitimation are promising governance tools that very much depend on the context and a vast array of details, they require careful consideration and analytical support for best usage. Legitimation is not easily operationalisable but the theoretical approaches provided in the article can be used as frames for such analysis.

METHODOLOGY OF EMPIRICAL ANALYSIS

Legitimation is a communicative process, and therefore depends on the patterns of relations between different actors. Legitimation is not operationalisable in numbers or a measurable objective value only, which makes the role of the theoretical frames more important in defining and interpreting the results. A deductive approach is chosen for applying the framework on two case studies. Although the categories of input vs output legitimation are well known and much written about²⁹ and also the subject-centred – abstract – performative division has been created a while ago, which Ingolfur Blühdorn already incorporated with the input/output distinction,³⁰ the empirical analysis of actual policy cases following such a framework is missing. Since legitimation as such is quite an abstract phenomenon and policy tool, then empirical research would help to show the validity and practical perspectives of such a framework and also add to the explanatory capacity of theoretical frames. The article does not aim to falsify the theoretical frames but rather shows their applicability from the more pragmatic viewpoint of policy making and contribute to the understanding of legitimation as a strategic policy making tool.

²⁸ Hood, C. *The Art of State: Culture, Rhetoric and Public Management*. Oxford: Oxford University Press, 1998.

Osborne, S., P. *The New Public Governance*. - *Public Management Review* Vol. 8 No. 3. p. 377-387. Scharpf, F., W. *Problem solving effectiveness and democratic accountability in the EU*. Munich: Max Plank Institute for the Study of Societies, 2003.

Blühdorn, I. *In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009.

Lindgren, K-O., Persson, T. *Input and Output Legitimacy: a Synergy or Trade-Off? Empirical Evidence From an EU Survey*. - *Journal of European Public Policy*, Vol. 17 No.4 p. 449-467.

²⁹ Scharpf, F., W. *Problem solving effectiveness and democratic accountability in the EU*. Munich: Max Plank Institute for the Study of Societies, 2003. Lindgren, K-O., Persson, T. *Input and Output Legitimacy: a Synergy or Trade-Off? Empirical Evidence From an EU Survey*. - *Journal of European Public Policy*, Vol. 17 No.4 p. 449-467

Schmidt, V. A. *Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput'*. - *Political Studies*, No. 61 p.2-22.

Strebel, M., A., Kübler, D., Marcinkowski, F. *The importance of input and output legitimacy in democratic governance: Evidence from a population-based survey experiment in four West European countries*. - *European Journal of Political Research* .Vol. 58 No.2 p.488-513.

³⁰ Blühdorn, I. *In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009 p.45.

Qualitative guided content analysis was chosen since the method reckons with the communicative context of the texts and helps to draw connections between codes and categories that describe the core issues of the topic.³¹ The theory-guided framework already provides some codes and categories for the empirical analysis, which are supported with additional codes found from the data.

In terms of the cases, similar but also discernible empirical cases were analysed in the created frames to generalise legitimation practices in Estonia. There are not many structural nor institutional reforms of broad scope to choose from during recent decades in the Republic of Estonia. Two that were comparable in terms of being long-lasting reform processes, and cross-sectoral in scope and target groups are the civil service reform and the administrative reform. The legitimation of these structural reform processes gives a significant insight into how the government decides upon and communicates its institutional structure design and changes occurring in it.

Both reform processes lasted longer than 15 years and acts have now been adopted and come into force. Structural reforms were chosen to curtail the scope of the research and to focus on the state apparatus (institutional design being one of the core issues), but the paper aims to generalise the results to make them useful in analysing other policy processes as well.

The data consists of documents and interviews. Document-wise, the draft acts and explanatory memoranda for both the civil service reform and administrative reform were analysed as were coordination documents. Altogether, six lengthy documents were chosen that are essential to any law-making process. After that, 9 interviews were carried out between March 2016 and May 2016.

The main source for the analysis is from primary data – interviews with 9 civil servants. Guided sampling and partly also snowball sampling are used. Based on the reform draft, the author contacted the public servants who mainly dealt with writing and communicating the specific reform act. Several times, the public servants guided the author to the next public servants to interview to get a better and comprehensive understanding. Since both reform processes lasted a long time, some of the former public servants were also interviewed to enable analytical comparison between different periods of reform. The interviews were semi-structured and carried out based on a case-specific questionnaire along with some descriptive open questions. The civil servants are referred to as CS1; 2; 3 and so on, in the text extracts used in the analysis.

Both deductive theoretical coding and inductive open coding techniques were used for the data analysis process. The deductive codes and categories were derived from the frameworks created in the theory part. The main keywords were found from the literature describing the most common features of different legitimation methods and governing paradigms. These codes became the main axial codes, which other additional codes were matched with and added to.²⁵ By using open coding, additional categories were found from the secondary and primary data. The codes were derived from the keywords that were repeatedly used or discernible by their reference to some specific features of the legitimation methods and governing paradigms described in addition to the theory-based initial axial codes. The codes were developed into categories, which laid out the structure for the analysis part.

BACKGROUND AND CONTEXT OF THE TWO CASES

Civil service reform

The first civil service act in the Republic of Estonian came into force in 1996, but already in 1997, the government created an administrative reform committee to develop an intact public service conception. Civil service reform was initiated because of the malfunctions in the previous system. The choice between a career system and position system is one of the important foundations in public service institutional design. A career system is based on a Weberian legal-rational bureaucratic

³¹ Mayring, P. Qualitative content Analysis. – Forum: Qualitative Social Research, Vol.1 No.2 (on-line journal).

²⁵ Charmaz, K. Constructing Grounded Theory. London: Sage Publications. 2006.

approach and is hierarchical in essence: a civil servant enters the system at a low level with lower qualification requirements and starts to build his/her career from there according to his/her professional performance. The system offers many opportunities and the motivation to develop professional competencies. Due to the prerequisites in the system, the personnel outflow remains marginal.²⁶ A career system is rather stringent and regimented but on the other hand, effective, comprehensible and motivating. A position system relies more on NPM principles: the state does not focus on special training for the civil servants, instead, those with adequate skills and somewhat related educational degree can apply for the respective post in the public service.²⁷ The core of the position system is the position itself with its unique specific tasks and requirements.

By institutional structure, the first public service act adopted in the Republic of Estonia favoured the career system. Civil servants were distinguished by senior and junior categories in which annual evaluation was carried out (Public Service Act 1996). The new goal was to create an open, efficient and more flexible system that would support cooperation among government institutions and also with external counterparts. Making amendments to the Public Service Act or the idea of drafting a new act was intermittently on the political agenda in 1997, 2001 and 2008. A new act was not adopted until 2012 (came into force in 2013). Although the regulations of the final adopted act were very similar to previous drafts, the previous versions did not make it to enactment. This very fact gives us substance to research legitimation throughout the public service reform process.

Administrative reform

The need to make administrative changes was also discussed in the very first years and first stages of state-building after regaining independence in 1991. The main goals, from the very beginning, were to cut down the costs of administrating the state's territory but at the same time create a system that would make local governments capable of providing citizens with high quality public services. Reform plans were thoroughly dealt with in 1997, when the government initiated the administrative reform committee. The process did not go as smoothly as planned. Between 2000–2009 five administrative reform plans were laid out, 51 municipalities out of 254 merged, but the result was not considered successful enough. Mostly the vagueness of the reform plans and at the same time high ambitions were found problematic and many times a new government was elected before the responsible minister was able to succeed with the reform plan. Even quite generous subsidies offered for voluntary mergers did not help achieve the set goals. From 2008 on, the Ministry of Finance procured studies to support merging. Studies, researching optimal solutions and merging effects were carried out in 2008, 2010, 2011 (3 studies), 2012, 2013, 2014, 2015 (3 studies), 2016. The studies provided the Ministry of Finance with new arguments and mitigated the strong oppositions.

In 2015, a new government entered office and a comprehensive State Reform was chosen as a wider vision, administrative reform being one part of it. Implementation of the administrative reform was written into the coalition agreement in greater detail than ever before. Conduct of the reform was the regional minister's duty but responsibility for the successful enactment of the reform was submitted directly to the Prime Minister's office on the basis of the agreement. Principles were also established for creating criteria to use for evaluating local government performance. Those municipalities that did not fulfil the requirements and were evaluated as functionally not optimal, had to choose between voluntary merging with some other local government or a compulsory merger led by the central government. Elaboration of the new financial model, specification of the local government's duties, strengthening of the local government's role and autonomy, doubling the subsidies and adding some regional investment categories was all agreed on in the coalition agreement as well.²⁸ For the first time in 19 years, the administrative reform obtained the needed approval from the ministers and the law was adopted in the Parliament. Like the civil service reform, it is traceable that the ideas finally adopted were actually present several times throughout the lengthy process but the support needed was not acquired. Therefore, it is reasonable to analyse what those who drafted the law consider the key issues of its success and how the legitimation process evolved through the process.

²⁶ Bossaert, D., Demmke, C. *Civil Services in the Accession States: New Trends and the Impact of the Integration Process*. Maastricht: European Institute of Public Administration, 2003.

²⁷ Roots, H. *Eesti bürokraatia järjepidevus ja uuenemine (Sustainability and Renewal of Estonian Bureaucracy)*. Tallinn: Sisekaitseakadeemia, 2000.

²⁸ Government Office. *Good Practice of Engagement*, 2014. On webpage: <https://riigikantselei.ee/et/kaasamise-hea-tava>

ANALYSIS: LEGITIMATION OF THE REFORMS

Legitimation of the civil service reform

According to the civil servants interviewed, there was no definite strategy for how to communicate the civil service reform in the Estonian case. Still, on analysing the documents from the process and interviews with those drafting the act, some clear indicators of output-oriented and abstract legitimation choices were found. The argumentation in output-oriented legitimation mostly lies in systemic and scientific rationalities. The draft document and explanatory memorandum of the Estonian Civil Service Act from the very beginning explicitly brought out the need for systemic change, since the old system had lost its functionality and the trend in Western contemporary bureaucracy had been moving towards the principles of NPM for more than a decade. An additional systemic incentive that was referred to by the officials was the labour market with its recent changes in the Employment Contracts Act. The Minister for Justice and the civil servants drafting the new law tended to focus on the outcome, a new and better system for Estonia. Throughout the whole process, the most common messages were about the need to follow up popular tendencies in civil service, to reduce the number of civil servants, and therefore curtail the costs of governing, to make rotation possible and open the civil service up for everyone interested and competent.

What was missing in the beginning was expertise and analysis about the kinds of changes the Estonian system actually needed and to what extent it is reasonable to copy practice from other countries. Since the reform was politically hastened, the civil servants drafting it themselves carried out a small comparative jurisdictional analysis. It is also quite common to rely on some external 'authority' when legitimating an inconvenient policy change. The 'external entity' is vague, far away and hard to criticise, and is therefore often perceived as a *force majeure* that can impose all kinds of ideas on those subordinate to it. Accordingly, suggestions from the EU and OECD were followed. In the following years, some Estonian-specific analyses were also carried out.³⁶ The interviewed civil servants agreed that at first there was not much to rely on or to use for argumentation. The subsequent analyses were useful but there was still a great lack of expertise in some of the core issues and according to the civil servants, there were no good stakeholders to engage in the process and to consult with.

CS 2: When the task of renewing the civil service system came to us, we took a blank sheet, EU and OECD suggestions, and started from the beginning. To be honest, the reform was carried out among small numbers of officials, there was only a marginal amount of external communication and engaging of stakeholders in the process. I cannot recall any examples of how we changed something in the draft act based on some opinion from outside of the ministry. Communications with others was rather about informing and explaining.

In addition, there were other implications visible of mostly abstract legitimation. One of the methods of abstract legitimation is opening available public channels providing information for a wider circle of people. That way it can be said that transparency is ensured and hypothetically interested stakeholders are engaged. The problem is that often times it is just a one-way channel. In the civil service reform case, information was shared on the webpage of the Ministry of Justice and two public channels were opened – a participation web, where people could voice their opinion, and another policy forum where everyone was allowed to post questions.

The officials drafting the act were also writing blog posts during the process. All these three options were present but used only marginally. The civil servants admitted that mostly only journalists wrote and asked specific questions.

³⁶ Haav, K. European integration and public administration reform in Estonia. In J. Jabes (ed.), Ten years of transition. Prospects and challenges for the future of public administration. NISPAcee. Budapest: University of Ottawa, 2000.

OECD. Estonia: Towards a Single Government Approach. OECD Public Governance Reviews. Paris: OECD Publishing, 2011.

SIGMA Papers. Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years After EU Accession. 2009.

Ministry of Justice. Avaliku teenistuse moderniseerimine (Modernisation of Public Sector). 2007. On webpage: <http://www.just.ee/orb.aw/class=file/action=preview/id=35433/Avaliku+teenistuse+anal%FC%FCs,+2007.03.pdf>.

Generally, every Estonian citizen has the right to access the Estonian e-Law System, read the public documents and even write an opinion (that then has to be digitally signed). Public knowledge about such an opportunity seems to be low and there are usually few if any suggestions from those that are not invited to co-ordinate the draft. The same applies to the civil service reform case.

There were also examples of performative legitimation in the civil service reform. Major stakeholders – local government representative associations and constitutional institutions – were engaged in the process, albeit quite late in the process. Therefore, according to the performative legitimation principles, substantial cooperation with some stakeholders was ensured and unnecessary participation prevented. Why I would not define the process as performative is the fact that there were only 28,000 public officials in Estonia at that time and local officials, that make up a significant part of these, were heavily under-represented in the process. The excessive coordination process, later confusions, lawsuits and problematic differences in the implementation practices at the local level highlighted that the former phases of the reform were poorly executed. Some public officials drafting the act said that the local government representative associations were not partners of considerable capacity and knowledge. The idea of performative legitimation expects the policy coordinator to engage at least these stakeholders that are directly affected by the policy and find ways to consider their opinion as an input. And if needed, to inform and consult them better to enable their participation.

Considering the governing paradigms the reform relied on, there were many implications of an NPM-driven process. The officials interviewed on the civil service reform said straight away that one of their goals was to approach from the NPM perspective, to assimilate the public sector career system with the Employment Contracts Act, thereby making rotations and competence evaluation easier. A manager-style of coordination was palpable: a small number of civil servants started to draft the act, carried out a comparative jurisdictional analysis, went abroad to study the practices of other countries and worked out their draft plan. Some expertise came from external institutions from the European Union and OECD. The communication task was handed over to the Ministry of Finances. During the later stages of the policy process the Minister of Justice, as the process manager, organized meetings with important stakeholders to facilitate the concluding stage. Another all-encompassing aspect was the political rush and the constant pursuit to keep the reform process efficiently going.

CS 3: In drafting an act, the biggest fear of the civil servant is nonconstructive engagement, it is just a waste of time and energy. We ourselves saw that career-system elements in the old act did not function at all. The act was over-regulated and no one followed it. The new act aimed to go along with actual life, implement NPM ideas, and create flexibility, transparency and openness.

A civil service reform might seem somewhat too specific to use as a case study. Although it is an important part of the State's institutional design, it directly affected only 28,000 former public officials. Therefore, the administrative reform is a good supplementary case, since it falls similarly in the structural formation category of the state apparatus but is wider in its scope. According to the Good Practice of Engagement document (Government Office, 2014), administrative reform should be considered one of the policies directly or indirectly affecting every individual living in Estonia, and therefore wider options for substantial participation have to be ensured by the state at every stage of policy making

Legitimation of the administrative reform

The legitimation of the administrative reform can be categorised as output-oriented and performative. The main argumentation relies on different studies, criteria created by the commission of experts on the principle of sufficient economic scale (economic optimising for local service provision). All the studies carried out reached the conclusion that local municipalities in their former (pre-reform) structure were not capable of fulfilling the tasks that the Local Government Organisation Act and Constitution of the Estonian Republic require of them. Furthermore, like the civil service reform process, studies were carried out at quite a late stage of the reform. Many of the reform drafts did not find sufficient political support because of the lack of expertise and their superficial approach. In the end, the main legitimating messages used were the ones that relied on studies and expertise carried out between 2013 and 2015.

Legitimizing arguments in the administrative reform were quite impelling and all levels were covered: local government, local businesses, local collectives, local individuals etc. Even the involuntary merging idea that awoke much resistance was strongly communicated under the “better future in a more capable and richer municipality” narrative. In every county a merger consultant was appointed, who organized local discussions, engaging the major stakeholders on the local level, and the regional minister also visited every county with his advisers to talk about the merging process. Still, the main incentives and even technicalities (the exact number of inhabitants etc.) were decided within a small circle of civil servants and experts and the meetings with the locals concentrated more on the implementation details. In the case of a policy with such a wide scope, the Estonian Good Practice of Engagement stipulates much wider engagement in much earlier policy-making stages.

In engaging the stakeholders, elements of the performative approach are prevalent. The reform primarily focused on a State-wide representative association level. All the local governments and major local entrepreneurs were asked to send their representatives to county seminars. The seminars were technically open to everybody, but information was only sent out to the specifically chosen institutions. The Ministry of Finance, coordinating the administrative reform, engaged the wider public with four opinion polls that were carried out in May 2013, September 2013, March 2014 and November 2015. It is important to pay attention to the fact that public support for the reform decreased within that time. The local governments were legally bound by the obligation to carry out opinion polls in local communities as well, but the questions and the form was up to the municipality to decide. Some local municipalities decided to draw up a detailed questionnaire while some remained at the ‘yes-no’ level. It was also up to the local municipality whether to take the results into consideration or not. The administrative reform confirmed the problem that arose in the civil service reform study about local governments being institutionally too weak to be considerable input-giving policy partners for the central government.

CS 6: We are not there yet that the local governments or their representative associations would be capable enough to initiate, plan and develop such kinds of policies. And there is lots of fighting for their own interests, of course. They sent every kind of suggestion that we just cannot take into consideration. And the State cannot be so engaging that after seminars we just go and rewrite our coalition agreement. We do not have that many resources to analyse and compare every idea. We just need to move from general to individual.

Analysing the process from the angle of governing paradigms, the NPM-like managerial style is also visible in the administrative reform process. The civil servants interviewed emphasized that creating the post for regional minister and his systematic activities (creating the expert committee, public seminars and 48 presentations that the minister gave) enabled the whole process to constantly move forward. A small number of public officials dealt with economic analysis, a few officials with content questions and mainly one with jurisdiction. On the local level, merger consultants discussed and mediated the process. So policy making was divided between different officials and the system was optimised that way. The short deadline agreed on in the coalition agreement left no time for inefficiency. Also, the central State (via the Ministry of Finance) expressed itself mainly through its service-provider and system manager identity: the reform outcomes should be legitimate project results because when (even forcefully) enhancing local government capacity, the quality of service provision increases.

There are also some implications of the *governance* approach. Many stakeholders were engaged, especially in the administrative reform. Every stakeholder seriously interested in the topic actually had the option to dive into the process and voice his/her opinion. But some crucial aspects of the *governance* approach were still not present in the cases analysed. Stakeholders were engaged, but too late and in the form of an explanatory one-way communication. No considerable input was received from them and the central State did not do anything to empower them, enabling quality partnership. One civil servant aptly commented:

CS 8: We have to consider ourselves guilty. We have not taught the citizens how the law-making process works. And we ourselves have to stick to the actual process requirements and engage at every stage where it is originally intended. Right now the people are very aware of the fact that when draft documents are ready, everything is set to go already.

One important precondition for network-based *governance* is the attitude of the civil servants that values the input that other stakeholders can give to the process. Their willingness to cooperate with potential partners and invest time in such a

process is also needed for actual partnership. Some of the interviewees expressed such an attitude but it is not a generally held opinion, which shows there are still big steps to take by the ministries in the direction of network governance.

DISCUSSION AND CONCLUSION

Legitimation is a necessary tool for contemporary governing. Given the complexity of the growing expectations and increasing information load, state-citizen communication has to be planned carefully and strategically to create legitimacy. Institutional changes are necessary to stay in accordance with societal developments. There are legitimation frameworks to apply and suggested directions in order to deepen and strengthen democratic governance. Combining F.W.Scharpf's *input vs output-oriented* types with I. Blühdorn's *Subject-centred, abstract and performative* focal approaches, we have a two-dimensional framework for carrying out case studies.

In this article we analysed two Estonian structural reforms, for which the idea was partly initiated by previous studies of Estonian governance problems,²⁹ which highlighted the fragmentation between policy-making institutions, communication problems between these institutions, lack of reasoning and transparency of decisions. The case studies of two large-scale public sector reforms showed that in both cases – the civil service reform and the administrative reform – elements of the NPM paradigm were prevalent. Political haste and the pursuit of efficiency, managerial conduct, division of tasks but low communication, low engagement of stakeholders and argumentation strongly biased towards pleasing the citizen-customer were discernible patterns. *Governance* principles were found in documents as requirements for policy making but were almost absent in actual practice. According to the Good Practice of Engagement document, the civil servants planning a policy change are obliged to objectively inform the potential stakeholders about the goals of the policy and potential solutions to enable them to participate in the process and give their input. In practice, civil servants were more afraid of nonconstructive and exhaustive engagement than of undermining legitimacy.

In the Estonian cases output-oriented legitimation with an abstract or performative focus was prevalent. Policy subjects were given information and participation options on a general, abstract level or some most necessary participants were selected to be engaged more intensively. Stakeholders were engaged in a late phase of the policy process that was more about explaining the political decisions than two-way constructive discussion. Postmodern governing has shifted away from input-oriented legitimacy and we can already see how literature on citizen passivity, depoliticisation and democratic deficits has increased. The citizens and stakeholders as subjects have to be brought back to policy making to ensure the sustainability of legitimacy. The performative approach is one option, but this type of legitimation requires more strategic planning and might also have side-effects if the overall cohesion of policies is not ensured. It is important to remember that in addition to specific policies, the state has to legitimise the policy process, political/administrative capacity and comprehensive governance as a cohesive system as well.

The narrow pursuit of efficiency and low level of reflection causes the reoccurrence of similar patterns of failure. According to Hood,³⁰ in relying heavily on some certain habitual strategy (or non-strategic way of policy making), the system becomes more vulnerable and adverse effects start to appear. Under-rating stakeholder and civic engagement in the policy process is a threat that the Estonian cases well represent. The sporadic use of legitimating messages does not refer to the strategic use of legitimation as a governance tool. Procedural improvement towards greater stakeholder and civic engagement have already been made in the documents but the first practical step would be to follow the regulations. Another practical step would be to ensure that legitimation activities and the respective communication would not suffer from political haste. The most difficult part of it all is changing the patterns of the governance culture. Civil servants need to embrace the potential functions of legitimation and their role in the process as well as contributing to enhancing stakeholder participation and two-way communication for legitimation to work more functionally.

²⁹ OECD. Estonia: Towards a Single Government Approach. OECD Public Governance Reviews. Paris: OECD Publishing, 2011.

³⁰ Hood, C. The Art of State: Culture, Rhetoric and Public Management. Oxford: Oxford University Press, 1998.

THE MEDIA AS A PROMOTER OF THE CO-CREATION AND INNOVATION OF SERVICES IN VÕRU COUNTY IN ESTONIA

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ABSTRACT

This study analyzed the co-creation of new initiatives in the communities of Võru County in Estonia from the perspectives of media reflection and communication. A social hackathon was used as a method for co-creation, bringing stakeholders together to develop innovative service solutions. Data were collected during three social hackathons in 2018 and 2019 and included media coverage (n = 120) and opinion notes (n = 300). Findings indicate that media publications reflected the problems of vulnerable groups; the media's role was to support the co-creation processes by creating a stage for active citizens to share ideas and discuss solutions.

INTRODUCTION

According to Kalvet (2007)¹, Estonia is known for its rapidly developing service economy sector and the introduction of innovative applications in government, especially in the field of digital technologies where a technology-based information society is being promoted. E-Governance is a strategic choice for Estonia to increase the well-being of its population by enabling the availability of e-services to citizens (Government of the Republic of Estonia, 2018)². Although the prognosis for the economy and the expectations of development prospects are optimistic, expert assessments indicate that Estonia's most serious economic problems remain a shortage of skilled labor, low innovation, and lack of international competitiveness (Estonian Institute of Economic Research, 2019)³.

The Estonian Regional Development Strategy 2014-2020 (Estonian Ministry of the Interior, 2014, p. 19)⁴ indicated that regional differences are quite large in Estonia; moreover, meeting regional policy goals aimed at providing employment, quality services, and a living environment that enables people to engage in diverse activities to improve well-being has remained challenging. Local governments are fragmented and public services based on the needs of the citizens are not yet well-developed (Tõnisson, 2016)⁵. In 2017, administrative reform took place in Estonia to ensure the quality of the provision of public services—79 municipalities were formed from 213 to strengthen the capacity to provide high-quality public services, increase competitiveness, and establish more uniform regional development (Administrative Reform Act, 2016)⁶. Furthermore, in 2016 the work ability reform was implemented with the aim of focusing on a person's ability to work, i.e., what the person is capable of doing, instead of focusing on the person's disability, as was the case prior to this reform (The Estonian Unemployment Insurance Fund, 2016)⁷.

Administrative reform has been considered to yield positive results. For example, local governments may have more money to provide better services and greater decision-making power, therefore enabling larger and more capable local governments—both in terms of human and financial resources. Communities must be listened to, and thus villages' and peripheral

¹ Kalvet, T. (2007). The Estonian Information Society Developments Since the 1990s. *PRAXIS Working Paper No. 29*. Tallinn: Praxis Centre for Policy Studies. <https://pdfs.semanticscholar.org/87db/19146355206e5c97881074c9b8b9db13c32d.pdf>

² Government of the Republic of Estonia. (2018). *Digital Agenda 2020 for Estonia*. https://www.mkm.ee/sites/default/files/digitalagenda2020_final.pdf

³ Estonian Institute of Economic Research. (2019). *Konjunktuur 1 (208)*. Tallinn. <https://docplayer.ee/151506127-Konjunktuur-nr-1-208-2019-m%C3%A4rts.html>

⁴ Estonian Ministry of the Interior. (2014). *Estonian Regional Development Strategy 2014-2020*. Tallinn. https://www.siseministeerium.ee/sites/default/files/dokumentid/eesti_regionaalarengu_strateegia_2014-2020.pdf

⁵ Tõnisson, H. (2016). *Explanatory Memorandum to the draft Administrative Reform Act*. Estonian Ministry of Finance.

⁶ Administrative Reform Act (2016). RT I, 21.06.2016, 1. <https://www.riigiteataja.ee/en/eli/514072016004/consolide>

⁷ The Estonian Unemployment Insurance Fund. (2016). *Work ability reform*. <https://www.tootukassa.ee/eng/content/work-ability-reforms>

rights should be established more strongly in the law (Aas et al., 2018, p. 691)⁸. Communities should also be more visible and able to voice opinions on how to enhance the lives of people living within them. One of the tools for doing so is the media. The media has a key role in bringing the voice of people into the co-creation process of services to strengthen their communities.

The study presented in the current paper was conducted as part of the European Union (EU) Horizon 2020 project, Co-creation of Social Service Innovation in Europe (CoSIE), carried out in one region of the country—Võrumaa (Võru County in Estonia). The CoSIE project, as an international consortium, aims to introduce innovative ways of social service development. The Estonian role in the project is to develop an effective development method for the start-up scene, combining it with the strong social values of the welfare sector (CoSIE, 2019)⁹.

The topic of service development in this project is primarily related to two dimensions. The first dimension relates to improving the living environment in Võrumaa so that it better responds to the needs of residents. The second is to develop and design new ideas and services, look for new forms of cooperation, and provide modern, smart, and operational solutions to services that are needed by the population. The target groups of citizens who have been at the center of the CoSIE project in the development of services are the elderly, individuals with special needs, the unemployed, patient groups, and people with difficulties coping in everyday life. An important aspect of this development has been the involvement of local government officials, institutions, politicians, entrepreneurs, village elders, active community leaders, volunteers, and experts who are renowned in their fields, including IT developers, marketing specialists, and family doctors.

In this paper, we aim to bring together ideas from politicians, practitioners, active citizens, and researchers to illuminate how different citizen groups in the community, including politicians, specialists of public and voluntary institutions, village leaders, and voluntary activists engage in community development, planning, implementation, and evaluation activities that promote the public interest through the media. The goal of this paper is to analyze the co-creation of new services and initiatives in communities in Võrumaa in the context of media reflection and communication. We analyze media coverage through two topics: (1) media coverage as a supporter of co-creation and service innovation and (2) co-creation and engagement in Võrumaa. Specifically, the study presented in this paper seeks to answer the following research questions: Did news about local collaborative events also reach nationwide media channels (RQ 1)? Which stakeholders and how many different people were given the floor in the media coverage (RQ 2)? How did the media share the content of important topics and activities related to the project (RQ 3)? What cooperation practices and experiences were shared in the media (RQ 4)?

COMMUNITY-BASED SERVICE DEVELOPMENT

Phillips and Pittman (2009, p. 6)¹⁰ describe community development as a process which enhances the ability of the community to act collectively to build services or common activities that promote its people's welfare, including physical, environmental, cultural, social, and economic aspects. Shaw (2008)¹¹ indicated that community development is the outcome of the joint action of citizens, social workers, politicians, and other relevant parties. Dreier et al. (2014)¹² discussed community development practices as being influenced by how policymakers define the problems these initiatives aim to address. In this

⁸ Aas, A., Korb, M., & Aab, J. (2018). What Was Achieved with the Administrative Reform and what Remains to be Done? In A. S. Valner (Ed), *Administrative Reform 2017 in Estonia: Collection of Articles* (pp. 687-699). Ministry of Finance. https://haldusreform.fin.ee/statistic/sites/3/2019/01/lg_reform_eng_finale_screen.pdf

⁹ CoSIE. (2019). 'Co-Creation of Service Innovation in Europe', Available online at: <https://cosie.turkuamk.fi/> (accessed 14 June 2019).

¹⁰ Phillips, R. & Pittman, R. H. (2009). *An Introduction to Community Development*. London, UK: Routledge.

¹¹ Shaw, M. (2008). Community development and the politics of community. *Community Development Journal*, 43(1), 24–36. <https://doi.org/10.1093/cdj/bsl035>

¹² Dreier, P., Mollenkopf, J., & Swanstrom, T. (2014). *Place Matters: Metropolitcs for the Twenty- First Century*, 3rd edition. Lawrence, KS: University of Kansas Press.

context, it is important to note that the perceptions from stakeholders contribute to the conceptualization of community development (Nickels & Rivera, 2018)¹³.

Policymaking and service development is seen as the result of multi-stakeholder actions, where stakeholders collaborate and produce together for the benefit of their communities (Bovaird, 2007)¹⁴. Service users have important roles in public service delivery and implementation of community development initiatives (Kasymova & Gaynor, 2014¹⁵; Osborne et al., 2013¹⁶; Osborne & Strokosch, 2013¹⁷). Osborne and Strokosch (2013)¹⁸ emphasized that participative co-production is more efficient compared to top-down processes. Tossavainen (2016, p. 279)¹⁹ pointed out the paradigm shift from the production of value for the client to the co-creation of value *with* the client. Nickels and Rivera (2018, p. 10)²⁰ revealed that simply including citizens in community development planning is not sufficient for solving challenges in the community; rather, co-production is key for innovations to public services. As Osborne and Strokosch (2013)²¹ stated, co-production involves combining user experiences with the reality of services from the start. Various authors outlined that citizens not only provide their input on how to potentially improve the provision of services in the community, they also alter them to be better aligned with public needs and values based on their experiences. As such, enhanced co-production in the realm of community development relates to the co-creation of services and initiatives in the community (Mulgan, 2006²²; von Hippel, 2005²³). This co-creation is by nature an innovation, as the co-creation of a community creates new services that meet the needs of the population and new, valuable solutions that can be initiated and further developed in the community.

Discussing communities, “place” is a key component of community identity in general and of individual identity in particular (Twigger-Ross & Uzzell, 1996²⁴; Speller & Twigger-Ross, 2009²⁵). Place also plays a part in defining a community and shaping community identity. Gustafson (2001, p. 9)²⁶ notes that “places often become meaningful because of the respondents’ relations with people living there—friends, relatives—and the sense of community that such social relations create.” Friedland and McLeod (1999)²⁷ described community as the point where the integration of individuals’ social interactions occurs.

¹³ Nickels, A. E., & Rivera, J. D. (2018). *Community development and Public Administration Theory: Promoting Democratic Principles to Improve Communities*. Routledge. ISBN: 978-1-138-30473-4.

¹⁴ Bovaird, T. (2007). Beyond Engagement and Participation: User and Community Coproduction of Public Services. *Public Administration Review* 67(5): 846–860.

¹⁵ Kasymova, J., & Gaynor, T. S. (2014). Effective Citizen Participation in Environmental Issues: What Can Local Governments Learn? *State & Local Government Review*, 46(2), 138–145.

¹⁶ Osborne, S. P., Radnor, Z., & Nasi, G. (2013). A New Theory for Public Service Management? Toward a (Public) Service-Dominant Approach. *The American Review of Public Administration*, 43(2), 135–158.

¹⁷ Osborne, S. P. & Strokosch, K. (2013). It Take Two to Tango? Understanding the Co- production of Public Services by Integrating the Devices Management and Public Administration Perspectives. *British Journal of Management*, 24(S1), S31–S47.

¹⁸ Osborne, S. P. & Strokosch, K. (2013). It Take Two to Tango? Understanding the Co- production of Public Services by Integrating the Devices Management and Public Administration Perspectives. *British Journal of Management*, 24(S1), S31–S47.

¹⁹ Tossavainen, P. J. (2016). Co-create with Stakeholders: Action Research Approach in Service Development. *Action Research* 15(3): 276–293. <https://doi.org/10.1177/1476750316641995>

²⁰ Nickels, A. E., & Rivera, J. D. (2018). *Community development and Public Administration Theory: Promoting Democratic Principles to Improve Communities*. Routledge. ISBN: 978-1-138-30473-4.

²¹ Osborne, S. P. & Strokosch, K. (2013). It Take Two to Tango? Understanding the Co- production of Public Services by Integrating the Devices Management and Public Administration Perspectives. *British Journal of Management*, 24(S1), S31–S47.

²² Mulgan, G. P. (2006). The Process of Social Innovation. *Innovations*, 1(2), 145–162. <https://doi.org/10.1162/itgg.2006.1.2.145>

²³ von Hippel, E. (2005). *Democratizing Innovation*. Cambridge, MA: MIT Press.

²⁴ Twigger-Ross, C.L. & Uzzell, D.L. (1996). Place and Identity Processes. *Journal of Environmental Psychology*, 16(3), 205–220. <https://doi.org/10.1006/jevp.1996.0017>

²⁵ Speller, G.M. & Twigger-Ross, C.L. (2009). Cultural and social disconnection in the context of a changed physical environment. *Human Geography*, 91(4), 355–369. <https://doi.org/10.1111/j.1468-0467.2009.00327.x>

²⁶ Gustafson, P. (2001). Meanings of place: Everyday experience and theoretical conceptualizations. *Journal of Environmental Psychology*, 21(1), 5–16. <https://doi.org/10.1006/jevp.2000.0185>

²⁷ Friedland, L. & McLeod, J. (1999). *Community Integration and Mass Media: A Reconsideration*. In Demers, D. & Viswanath, K. (Eds.) *Mass Media, Social Control and Social Change: A Macrosocial Perspective*. Ames, IA: Iowa State University Press.

Stamm (1985)²⁸ noted decades ago that in the component of “process,” social interaction was especially important in understanding how a community operated (Cohen, 1985, p. 12)²⁹, as communication plays an important role in the community development process (Rosenberry, 2018)³⁰.

CO-CREATION AND THE ROLE OF THE MEDIA IN SOCIAL INNOVATION

Co-creation is defined as any act of collective creativity, i.e., creativity that is shared by two or more people (Sanders & Stappers, 2008³¹; Romero et al., 2014³²). The word is used interchangeably with user innovation or co-innovation, which comparably states that customers are involved in new product development when they act as a source of innovation to increase the value of the new product or service (Bogers et al., 2010)³³. Romero et al. (2014, p. 385)³⁴ argued that at the beginning of the era of co-creation, companies started to implement a user-centered approach where users served as subjects while performing specific tasks and providing feedback. This was followed by a participatory approach where users were seen as partners who contributed to the development process by providing their expertise in early design phases (Sanders & Stappers, 2008)³⁵. Steen and Tournas (2018, p. 81)³⁶ indicated that co-creating and creating together are themes that join all co-creators of services, including service providers, users, decision-makers, organizers, and those in need—it is the involvement of civil society and the voluntary involvement of all parties in the process of developing services and creating innovative solutions.

Service users—once regarded as passive consumers, and then later rational customers—have evolved to being seen as an inevitable part of the service process and interact with professional staff as active co-producers (Fledderus, 2016, p. 12)³⁷. Steen and Tuurnas (2018)³⁸ explained that the evolving relations between professional staff depend on all the co-producing parties. Therefore, citizen involvement not only concerns questions regarding citizens but also regards how public professionals view themselves and their responsibilities in relation to citizens (Thomas, 1999, p. 83)³⁹.

Voluntariness is a crucial keyword here, as co-creation takes place on a voluntary basis (Romero et al., 2014)⁴⁰. Citizens’ role in the process of creating new services or initiatives is extremely relevant (Hoyer et al., 2010)⁴¹ as they are more conscious about

²⁸ Stamm, K. R. (1985). *Newspaper Use and Community Ties*. Norwood, NJ: Ablex Publishing.

²⁹ Cohen, A. (1985). *The Symbolic Construction of Community*. Chichester, UK: Ellis Horwood Ltd.

³⁰ Rosenberry, J. (2018). Community Media and Identity in Ireland. Routledge, ISBN: 978- 1- 138- 30434- 5 (hbk), pp. 4 -15.

³¹ Sanders E. B.-N, & Stappers, P.J. (2008). *Co-creation and the new landscapes of design*, CoDesign, 4(1), 5–18.

³² Romero, C.L., Constantinides, E., & Brünink, L. (2014). Creation: Consumer Integration in Social Media Based Product and Service Development. *Social and Behavioral Sciences*, 148, 383-396.

³³ Bogers, M., Afuah, A., & Bastian, B. (2010). Users as Innovators: A Review, Critique, and Future Research Directions. *Journal of Management*, 36(4), 857–875. <https://doi.org/10.1177/0149206309353944>

³⁴ Romero, C.L., Constantinides, E., & Brünink, L. (2014). Creation: Consumer Integration in Social Media Based Product and Service Development. *Social and Behavioral Sciences*, 148, 383-396.

³⁵ Sanders E. B.-N, & Stappers, P.J. (2008). *Co-creation and the new landscapes of design*, CoDesign, 4(1), 5–18.

³⁶ Steen, T. & Tournas, S. (2018). The Roles of the professional in Co-Production and Co-creation processes. In T. Brandsen, T. Steen, B. Verschuere (Eds). *Co-Production and Co-Creation Engaging Citizens in Public Services*. Taylor and Francis Group.

³⁷ Fledderus, J. (2016). *User Co-Production of Public Service Delivery: Effects on Trust*. Dissertation. Nijmegen: Radboud Universiteit Nijmegen

³⁸ Steen, T. & Tournas, S. (2018). The Roles of the professional in Co-Production and Co-creation processes. In T. Brandsen, T. Steen, B. Verschuere (Eds). *Co-Production and Co-Creation Engaging Citizens in Public Services*. Taylor and Francis Group.

³⁹ Thomas, J. C. (1999). Bringing the Public into Public Administration: The Struggle Continues. *Public Administration Review*, (59, 1), 83–88. <https://www.jstor.org/stable/977482>

⁴⁰ Romero, C.L., Constantinides, E., & Brünink, L. (2014). Creation: Consumer Integration in Social Media Based Product and Service Development. *Social and Behavioral Sciences*, 148, 383-396.

⁴¹ Hoyer, W. D., Chandu, R., Dorotic, M., Krafft, M., & Singh, S. S. (2010). Consumer Cocreation in New Product Development. *Journal of Service Research*, 13(3), 283–296. <https://doi.org/10.1177/1094670510375604>

their needs and have a clear conception of products or services for which they are searching (Helms et al., 2012⁴²; Lee et al., 2012⁴³; O'Hern & Rindfleisch, 2001⁴⁴).

Local communities exist alongside larger social structures, and the attachment that people develop to their local communities is reflected largely in their interaction with local media, especially newspapers (Rosenberry, 2018)⁴⁵. Community newspapers create a sense of place for readers (Buchanan, 2009)⁴⁶ and foster social cohesion (Emke, 2001⁴⁷; Yamamoto, 2011)⁴⁸.

Listening to key stakeholders is important for developing the services that a community truly needs. The media has a major role to play as an empowering voice in the community. For example, Ewijk (2017, p. 15)⁴⁹ pointed out that magazines aim to publish articles, while journals aim to empower a profession or professional group through the organization of meetings, the pooling of experts from different perspectives, the organization of conferences, or the publication of books compiled from articles. In this paper, our methodology utilizes reflections from regional and national newspapers (including print and online versions), magazines, and telemedia.

The UNESCO Community Media Sustainability Policy Series (UNESCO, 2008)⁵⁰ emphasizes that community media satisfies the communication needs of their communities' members and enables them to exercise their rights of access to information and freedom of expression. Stamm (1985, p. 191)⁵¹ stated that "more than anything else, the shape of communities to come will be influenced by how effectively people can share their perceptions of what communities could become."

The media has an interesting duality in its contemporary structure. It is represented by daily newspapers, which circulate regionally or nationally, and television or radio broadcasts, which are nationwide. Additionally, there are journals, which are focused on certain groups of citizens. In the context of this paper and the CoSIE project, community is considered as the social interactions within a localized geographic space, such as Võrumaa in the context of Estonia. Community media, therefore, is represented by local outlets (mostly regional and national newspapers, television, radio stations, and journals) that reflect life in Võrumaa, the social interactions that take place, and the associated processes in their work.

MATERIALS AND METHODS

Background for the Study

This study was conducted as part of the European Union (EU) project, Co-creation of Social Service Innovation in Europe

⁴² Helms, R. W., Booij, E., & Spruit, M. R. (2012). *Reaching Out: Involving User in Innovation Tasks Through Social Media*. ECIS 2012, Barcelona, Spain.

⁴³ Lee, S. M., Olson, D. L., & Trimi, S. (2012). Co-innovation: Convergenomics, Collaboration, and Co-creation for Organizational Values. *Management Decision*, 50(5), 817–831.

⁴⁴ O'Hern, M. S., & Rindfleisch, A. (2001). Customer Co-creation: A Typology and Research agenda. *Review of Marketing Research* (pp. 84–106).

⁴⁵ Rosenberry, J. (2012). *Key Works: Some Connections Between Journalism and Community*. In Reader, B. & Hatcher, J. (Eds.) *The Foundations of Community Journalism: A Primer for Research*, 25–43. Thousand Oaks, CA: Sage.

⁴⁶ Buchanan, C. (2009). Sense of Place in the Daily Newspaper. *Aether: The Journal of Media Geography*, Spring 2009, 62–82.

⁴⁷ Emke, I. (2001). *Community Newspapers and Community Identity*. Paper presented at Canadian Sociology and Anthropology Association annual meeting, Québec City, QC, May 2001. Retrieved from: http://nre.concordia.ca/ftprootFull/reports/Emke_Editors_%20paper.pdf.

⁴⁸ Yamamoto, M. (2011). Community Newspaper Use Promotes Social Cohesion. *Newspaper Research Journal*, 32(1), 19–33. <https://doi.org/10.1177/073953291103200103>

⁴⁹ Ewijk, H. (2017). *The Essence of the Magazine Social Work*. Special issue of the 20th anniversary of social work. ISSN 1406- 8826, pp. 15-17.

⁵⁰ UNESCO. (2008). Defining Community Broadcasting. *UNESCO Community Media Sustainability Policy Series*. <https://en.unesco.org/community-media-sustainability/policy-series/defining>

⁵¹ Stamm, K. R. (1985). *Newspaper Use and Community Ties*. Norwood, NJ: Ablex Publishing.

(CoSIE), carried out in one region of the country—Võrumaa. The CoSIE project, as an international consortium, aims to introduce innovative ways of social service development. The Estonian pilot project utilized the development method of the start-up scene (a social hackathon), combining it with the strong social values of the welfare sector (CoSIE, 2019)⁵². The process of holding a social hackathon for creating innovative services with and for the citizens can be read about in a previous paper (Toros et al., 2020)⁵³.

Võrumaa is a rural area situated in southern Estonia with a total area of 2773 km², accounting for 6.1% of the area of the Republic of Estonia. Võrumaa had 35,415 inhabitants as of January 1, 2020, which comprises 2.7% of the total population of Estonia (Statistics Estonia, 2020)⁵⁴. The proportion of elderly people in Võrumaa (over 65 years of age) consists of 21.6% of the population (compared to 19.3% of the Estonian population). The proportion of disabled people is on average higher in Võrumaa than in Estonia, totaling 21.9% in 2017 (Statistics of Estonian Social Insurance Board, 2018)⁵⁵, while the proportion of disabled people in Estonia was 11.4% of the population in the same year (Kreitzberg, 2017)⁵⁶. This implies an increase in the need for services directed at vulnerable groups, such as elderly and disabled people.

According to the development strategy of Võrumaa 2019-2035+ (The Development Strategy of Võru County 2019-2035+, 2019)⁵⁷, problems in that county include the shrinking groups of kindergarten-age and school-age children, leading to a decreasing demand for places in educational institutions. The number of students continues to decline; hence, the challenge is to create opportunities for each student to acquire an appropriate and high-quality education. This may also necessitate reassessing the school network. Challenges are also related to the development of social and health services, including primary health services, which are more or less available in the county today. However, the challenge is to further develop these services and improve their quality, including the establishment of primary health centers to increase the availability and diversity of services. In order to ensure the well-being of people, Võrumaa aims to involve community resources in the creation and delivery of public services and to give greater freedom to communities.

During the CoSIE project, several development activities took place in Võrumaa, including hackathons, training sessions, information days, and roundtables, aimed at supporting innovation in community-based services by involving different social population target groups, including users and providers of services, leaders of village movements, volunteers, politicians, specialists from public authorities, local governments, entrepreneurs, and journalists. The main activities of the project were carried out over the years 2018–2020; during this period, the media coverage (as distribution and content) related to co-creation activities was followed and a database was established.

Data collection and sample

Media coverage was registered in the social media analysis database “Station.ee,” which is a media monitoring program created by the Baltic Media Monitoring Group (BMMG) that was specially designed to analyze the media coverage of Estonia, Latvia, and Lithuania. Station.ee’s comprehensive search system finds coverage based on keywords, phrases, authors, channels, groups of channels, or media type. Station.ee monitors over 400 media channels in real-time, including TV and radio, the entire Estonian media archive, social media, and state publications (notifications about public-sector information channels, including local government reports, official announcements, as well as public procurement and verbatim reports from the Riigikogu (Baltic Media..., 2019)⁵⁸.

⁵² CoSIE. (2019). ‘Co-Creation of Service Innovation in Europe’, Available online at: <https://cosie.turkuamk.fi/> (accessed 14 June 2019).

⁵³ Toros, K., Kangro, K., Reimann, K.L., Bugarszki, Z., Sindi, I., Saia, K. & Medar, M. (2020). Co-creation of social services on the example of social hackathon: The case of Estonia. *International Social Work*, pp. 1–14. <https://doi.org/10.1177/0020872820904130>

⁵⁴ Statistics Estonia. (2020). *Population*, Available online at: [Rahvastik/01Rahvastikunaitajad_ja_koosseis/04Rahvaarv_ja_rahvastiku_koosseis/04Rahvaarv_ja_rahvastiku_koosseis.asp](https://www.stat.ee/raha/01Rahvastikunaitajad_ja_koosseis/04Rahvaarv_ja_rahvastiku_koosseis/04Rahvaarv_ja_rahvastiku_koosseis.asp) (accessed 23 June 2020).

⁵⁵ Statistics of Estonian Social Insurance Board. (2018). *Data on Disabled Persons*. Tallinn: Estonian Social Insurance Board.

⁵⁶ Kreitzberg, M. (2017). *The Number of Disabled Persons, Developments and Proportion in the Population, 2010–2017*. Ministry of Social Affairs. Available online at: http://www.tai.ee/images/uudiskirja_Puuetega_inimeste_arv.pdf (accessed 3 February 2019).

⁵⁷ The Development Strategy of Võru County 2019-2035+. (2019). RT IV, 05.01.2019, 89. <https://www.riigiteataja.ee/akt/405012019089>

⁵⁸ *Baltic Media Monitoring Group (BMMG) database Station.ee (2019-2020)*. (2019). <https://bmmg.ee/>

As the main activities of the CoSIE project were carried out over two years, we used this period as the sample frame and included all online, TV, and radio channel categories in the media content search in the Sation.ee program for the study presented here. The database was established in three steps. Step 1 involved forming the preliminary sample, which was comprised of all media texts (articles, TV, and radio) containing the word “Võrumaa” and theme search terms that were chosen according to project focus/scope/aims including, for example, co-creation and engagement, which are shown in Table 1. In step 2, the duplicates (the same content published via different channels) were removed. Following Creswell (2014)⁵⁹, we then selected “information-rich cases that manifest the phenomenon intensely but not extremely” (p. 158) from the remaining material, which constituted the final sample used to answer research question 1. In step 3, using the above-mentioned principle of “information-rich cases,” we extracted a single text unit (paragraphs or sections) from primary sample media texts (articles, TV, and radio), which constituted the study’s primary sample used to answer research questions 2 and 3.

Table 1. Sample Profile and Size (number of news and extracted text units from them) by Search Words

Search algorithm: “Võrumaa” AND “...”	Preliminary sample of news/articles	Final sample of media texts (news/articles)	Primary sample (extracted text units from media texts)
“co-creation”	12	9	20
“engagement”	106	9	18
“hackathon”	6	4	10
“administrative reform”	55	3	7
“unemployment”	186	7	26
“reinforcement difficulties”	16	8	20
“problems”	1457	8	28
“development of services”	207	31	67
“service innovation”	9	3	3
“elderly and disabled people”	783	25	76
“dementia problems”	12	9	21
“workability reform”	4	4	4
In total	2853	120	300

Data analysis

We used a multi-stage media content analysis to answer the research questions. According to Frey (2018)⁶⁰, content analysis is an analytic method used in either quantitative or qualitative research for the systematic reduction and interpretation of text or video data. Thematic analysis is a descriptive strategy for data reduction (coding) and an analysis strategy by which qualitative data are segmented, categorized, summarized, and reconstructed in a way that captures important concepts within the data set (Ayres 2008)⁶¹. Kurian (2011)⁶² demonstrated that this method involves reducing the data set to more manageable, categorical, or quantitative data for use in comparative analysis, commonly used in the study of politics, media, business, law, psychology, and public administration.

After forming the preliminary database with the support of the Station.ee search engine, the content of media texts was

⁵⁹ Creswell, J. (2014). *Qualitative Inquiry & Research Design: Choosing Among Five Approaches*. 3rd. Ed. SAGE.

⁶⁰ Frey, B. B. (2018). *The SAGE Encyclopedia of Educational Research, Measurement, and Evaluation*. SAGE

⁶¹ Ayres, L. (2008). Thematic coding and analysis. In L. M. Given (Ed.), *The SAGE encyclopedia of qualitative research methods* (pp. 868-868). Thousand Oaks, CA: SAGE Publications, Inc. doi: 10.4135/9781412963909.n451

⁶² Kurian, G. T. (2011). Content analysis. In *The Encyclopedia of Political Science* (pp. 328-329). Washington, DC: CQ Press doi: 10.4135/9781608712434.n321

encoded by the investigator (human-coding). We used a mixed-method approach that entailed the following: to answer research questions 1 and 2, we used thematic coding and counting (a quantitative approach); to answer research question 3, we used open coding (a qualitative approach). Open coding refers to the initial interpretive process wherein raw research data are first systematically analyzed and categorized (Price, 2010)⁶³. The purpose of the open coding was to describe the context and meanings attributed to the co-creation and engagements. First, the group of researchers formulated keywords based on the queries made from the Station.ee database in the period January 1, 2018–December 31, 2019. The keywords are presented in Table 1. Off-topic media reflections were then removed from the query responses, and the selected media reflections were entered into the sample database. The reflections were then repeatedly read, and comments related to the research topic and questions were selected, coded, and counted by region (Table 2) and stakeholder group (Table 3).

FINDINGS

Based on the data analysis of the Station.ee database, 12 main themes (Table 1) emerged regarding the engagement of different target groups in the co-creation process and innovation of service development in Võrumaa. Each theme and sub-theme is described in the following sections.

Media Coverage as a Supporter of Co-Creation and Service Innovation

This theme focuses on the first and second research questions: Did the news about local collaborative events also reach nationwide media channels (RQ 1)? Which stakeholders and how many different people were given the floor in the media coverage (RQ 2)?

Regarding media coverage, our results indicated that cooperation with the press is active in Võrumaa. This is supported by the fact that the correspondent of Estonian Public Broadcasting (ERR) includes Võrumaa in its broadcasts on a daily basis, which brings to light important events in Võrumaa and issues that need attention. The topic of everyday life in Võrumaa, including the Loometalgud (Ideas Fair) event, is covered by the regional newspapers *Võrumaa Teataja* and *Võru Linna Leht* and by online publications, such as *lounaeeestipostimees.ee* and *lounaestlane.ee* (Table 2).

Table 2. Number of final sample's media texts coverage by regions and channels' types (n= 120)

Channels split by region	Nationwide news (n=6)	Nationwide special (n=11)	Local Võrumaa news (n=5)	Other places local news (n=4)	Total (n=26)
Number of media texts	20	29	33	38	120
Share from all media text	16%	24%	28%	32%	100%
Number of articles per channels	3,3	2,6	6,6	9,5	4,6

We identified 11 programs in the national media and electronic media (TV, radio) of other regions. There was no local TV/radio channel in Võrumaa. All local/regional media outlets were covered in the database, but it also included four investigative media channels in other regions and 17 nationwide media outlets. Comparing local and national channels, we found that news about local activities was well received by the national media (41% of articles). In the local media channels of other Estonian regions, 38 main sample articles (32%) reflected the experience of Võrumaa. Thus, the media has empowered topics and issues surrounding co-creation activities.

⁶³ Price, J. (2010). Coding: open coding. In A. J. MillsG. Durepos & E. Wiebe (Eds.), *Encyclopedia of case study research* (pp. 156-157). Thousand Oaks, CA: SAGE Publications, Inc. doi: 10.4135/9781412957397.n55

The database contains 14 media outlets that posted coverage on the initiative of the project team members, of which three cases were articles in magazines, one case was a speech made via telemedia, six cases consisted of coverage in the national media, and four cases were coverage in the regional media.

Table 3 presents the type of stakeholders and the volume of people covered in the media. From this table, we can see that journalists, specialists in public institutions, and entrepreneurs had taken the floor. The analyzed media reports indicated that specialists and community activists were involved in co-creating, both in terms of speaking about problem areas and offering solutions.

Table 3. Media coverage by target groups

Stakeholders group's representative	Stakeholder group code used in quotes	Number of cases in the primary sample	Persons' in the final sample
Social specialist at county level	SS-C	22	5
Social specialist at local government level	SS-M	29	10
Education specialist at local government level	ES-M	8	4
Healthcare specialist	HCS	7	7
Specialist in a public institution	S-PI	50	25
Politician	PO	29	11
Community activist	CA	37	13
Journalist	JO	51	21
Service user	SU	9	9
Service provider	SP	10	2
Voluntary worker	V	3	3
Manager of national programme/organisation	M-NP	12	3
An entrepreneur	E	23	16
Statistics	S	2	2
Researcher	R	2	1
President of Estonia	EP	6	1
Total comments in media coverage		300	133

One of the specialists at the county level described the hackathon in the following way:

Thursday evening's creative event called "vunki mano!" was a hackathon weekend where everyone could come up with a life-changing idea that was turned into a viable project with mentors over three days. More than a hundred volunteers from all over Võrumaa closed themselves for a sunny weekend in Varstu schoolhouse in order to figure out working solutions for how to make life in Võrumaa better and smoother. (SS-C-18)

As discussed earlier, co-creating is a process through which representatives from various fields of cooperation are involved,

including the social, health, police, and education sectors, as well as entrepreneurs. Such cooperation has also been visible in the course of Võrumaa's Loometalgud, where local people, local authorities, government officials, community leaders, volunteers, service providers, users of services, entrepreneurs, and politicians meet. These have been events in which politicians from Võrumaa, members of the Estonian Parliament, and former and current members of the European Parliament have participated. These individuals all had the opportunity to contribute to the development of Võrumaa, to meet people to discuss their problems and their difficulties in coping with them, and to help find solutions. One outlet wrote:

Community-based services are viable if they are planned in cooperation with service consumers, the community and local authorities. This is the only way to create working solutions and improve the lives of all Võrumaa people regardless of age, income or health. (SS-C-10)

In connection with co-creation and inclusion in Võrumaa, during the two-year period of the CoSIE project, there was significant reflection about vulnerable target groups, including the elderly, people with special needs, the unemployed, families with difficulty coping, and other related problems. All of these topics have been actively covered by the citizens, specialists, and entrepreneurs, which have been aided by local, well-known politicians and journalists as the following quote reflects:

Estonian society is ageing and our population is characterized by a relatively low number of healthy life years. However, expectations for public services are not diminished. These circumstances have led to a clear need for the systematic development of voluntary activities in the social field. This is all the more so since volunteers can contribute primarily to activities for which social workers do not have time and which do not necessarily require appropriate education: good will and courageous initiative will suffice. (CA-24)

The Statistical Office, whose task is to provide Võrumaa with modern data, which is a necessary basis for all planning and preparation of action plans, and university researchers, who can contribute to evidence-based development and monitoring of new innovative service solutions by participating in cooperation, play a role in co-operation. For example, an analysis of the statistics about the number of people with disabilities in Võrumaa created a wide-ranging discussion about the work of family doctors and the fact that people are infrequently diagnosed with a disability. The study argued that family doctors are used to ensure the social guarantee of people rather than to provide targeted support for people with disabilities:

If you believe the statistics, the sickest people in Estonia live in Põlva, Jõgeva and Võru counties, because it is these counties that have the largest number of people with disabilities. Our statistics say that about half of the working-age population in South-East Estonia is reduced or lacking capacity for work, and a quarter of them are disabled. In South-East Estonia and Ida-Viru County, where people live in very narrow conditions and are dealing with entering false data into the system, this is seen as social assistance or support. Since the benefits are still intended for people with disabilities, this is a misuse of money that the Social Insurance Board can certainly not allow. (S-PI-27)

Co-creation and Engagement in Võrumaa

This theme focuses on the third and fourth research questions: How did the media share the content of the important topics and activities of the project (RQ 3)? What cooperation practices and experiences were shared in the media (RQ 4)?

When analyzing the content of media coverage, the keywords with content were differentiated from the texts which Võrumaa's development activities in recent years have been focused on and which were presented in the article, broken down by themes presented in Table 1.

Võrumaa promotes co-creation and community involvement in the development of services for innovative residents in an event called the Loometalgud (Idea Fair). The main goal of this event is to develop services that meet people's needs by co-creating different target groups in the community. The culture of fairs in Estonia has been established historically, and under this keyword, people have repeatedly gathered to create and develop something new. Fair culture is part of the story of Estonians and deserves to be preserved and revered more strongly, as the following quote by community activists argues:

For my part, I picked up the recordings of the work that took place in Võrumaa on Facebook and collected them for a joint “Teeme ära” (let’s do it) on the Võrumaa page. I looked at this footage, and on the faces of the makers seemed to be joy, contentment, and patriotism in the best sense. (CA-12).

Analysis of media reports reveals that the media is used as a tool to promote change in the society of Võrumaa and to further develop ideas that support people’s well-being and coping abilities; the media, therefore, assists in carrying out necessary reforms and developing essential services for the population. Recently, Estonia has carried out two major all-Estonian reforms, the administrative reform (2017) and the work capacity reform (2016), both of which affected cooperation and dealt with ensuring the availability of services for the local population of Võrumaa. Several media outlets have highlighted these topics, generating both positive and negative coverage.

Media coverage highlighted a positive connection between the work capacity reform and the increase in society’s awareness of the needs of people with disabilities and the greater interest of employers in creating jobs for people with disabilities. However, negative coverage pointed to the confusion associated with the transition of the reform. Nonetheless, people overall are satisfied with the change in the position of people with disabilities in society, as suggested by the following quotes:

The awareness of people with special needs and their needs is improving throughout society. In the past, the focus was on the person’s incapacity for work, but now the focus is on the person’s ability to work, that is, what the individual is capable of doing. (SS-C-49)

There are certainly many pitfalls and bottlenecks as work capacity reform begins, but every day work is done to solve problems and find work for everyone who wants to work. (SS-C-49)

In the course of the administrative reform, the former smaller 13 local governments in Võrumaa were merged into five major local governments, as mentioned in the introduction. The administrative reform was considered as a positive opportunity to specialize in a larger local government and thus provide more professional services and a greater possibility of combining different service packages based on the needs of the population groups:

The advantages of the administrative reform are undoubtedly the specialized social workers, which the merger of local governments created an opportunity for. Children’s care and child protection will probably benefit most from this, but the working area of the elderly and disabled will also gain strength. The “package of social benefits” has become somewhat more compact; earlier differences in emphasis on whether predominantly universal benefits or the combination of universal and need-based benefits have disappeared. (SS-M-4)

As negative problems were related to the administrative reform, immediate changes in the boundaries of local governments and the related need to address community identity issues were highlighted in media reports. Those municipalities whose border negotiations did not reach an agreement and were forcibly merged did not agree with the results of the administrative reform:

Forced amalgamation that ignores socio-demographic realities, i.e. the boundaries of the centres of attraction, and parish names containing northern, western, etc. alliances, do not in any way support the formation of a common community identity. This result is certainly the most visible at this point in time for administrative-territorial reform and forces social workers to make efforts to give the concept the content of community work. (SS-M-5)

In the last two years, Võrumaa faced two major crises. The first was a large-scale electrical outage caused by storm damage in the town of Võru and neighboring municipalities. The second concerned the closure of a small school, which caused critical opposition and sharp discussion among the local population. During these experiences, Võrumaa successfully practiced co-creation in solving problems that arose due to the crises. The weekend storm wiped out electricity and affected the whole town of Võru and several companies. Roofs flew off, power lines were on fire, and trees were uprooted. The crisis resulted in the death of one person. During the first few days of the week, the brigades were still working with reinforcements, but they

found it difficult to move to the fault points. The roads were filled with broken trees; and in rural areas, the soil was soft from rain for several days, leading to an increased risk of vehicles stalling. As one of the participants indicated, “The storm was a real crisis exercise” (JO-39).

The second crisis in Võrumaa involved the closure of a small rural school—leading to the reduction of the availability of educational services based on the financial capacity of the local government, which the public questioned. One respondent wrote, “Educational diversity is important and it should not depend on the minds of local authorities, but on what every family considers to be the best for their children” (JO-17). In both of these crises, the media reflections show that people of Võrumaa managed their crises well, and today they are treated as lessons.

Hackathons have played an important role in Võrumaa, which has been demonstrated in media coverage. Hackathon participants have included citizens and organizations who volunteer for charity and carry out various service development work. For example, they have included “Saagu Parem” (Let’s Be Better; a charity organization), “Kodukant” (NGOs of the Estonian Village Movement), Southern Estonia Special Care Centre (welfare services for people with special mental needs), and opinion leaders and citizens who are service users.

In order for all of us to live in Estonia, it is important to notice and help each other. Community support is invaluable, not only on a project basis, but on a daily basis: help the neighbor’s mother-in-law bring home a grocery bag, help the social worker and the needy reach each other, or just talk. Cooperation between different parties – the state, local government and community – is of key importance. (PO-5)

The growth of activity for co-creation is a good basis for the implementation of several national programs and activities in Võrumaa. For example, more than ten people with special needs participated in the third hackathon. They jointly developed the idea of the “gold key fund” so that a personal assistant service could be developed and all people with special needs who need the service could use the fund’s support.

There are a number of people with special needs who, by using personal helper services, could be useful to society, not wait for extinction in a nursing home. What is the price of a person, including a person with special needs? (SU-9)

The Idea Fair also gained momentum in its activities with the non-profit organization Living with Dementia, which brings together and supports caregivers of people with dementia through a support group, thereby improving the quality of life of people with dementia and their family members. This support group has advised caregivers and has carried out several training sessions:

The task of the Competence Centre is to provide counselling services to people with dementia and their relatives, incl. providing information about dementia, diagnosis, existing health and care services and other opportunities for receiving assistance (support groups, experience counselling, psychological assistance) and providing telephone and web-based counselling (including guidance on how to reach assistance), as well as improving the competence of specialists working with the target group, including developing or developing training programs, materials, information and guidance materials, teaching materials necessary for the work of specialists. (S-PI-47)

Hackathons proved their effectiveness, as for each hackathon, there were two to three teams whose activities continued after the hackathon. Such activities were also covered in the media. For example, on the subject of volunteering, Võrumaa was repeatedly mentioned, and there are several references to voluntary activities every month.

Two teams, “A Model of Volunteers” and “Saagu Parem,” took part in hackathons I and II, and their activities were reported in the media. For example, volunteers help care for the elderly and people with special needs. They also contribute voluntarily to community activities by participating in the cleanup campaign and helping those in need during Christmas, as the following quotes outline:

The theme was the development of a model for involving volunteers suitable for the conditions of Võrumaa. This time, the brainstorming exercise established a real plan for who is doing what and in what order. The aim is to introduce the principles and possibilities of volunteering to the people of Võrumaa. (CA-10)

The long-term goal of the centre's mind-winning campaign was to keep the living alive and, together with other organizations, dream of a million hours of volunteer work in Võrumaa. (CA-17)

Estonia is a small country and therefore, in some respects, a privileged state. Within the framework of the CoSIE project, a meeting with the president took place in Võrumaa during which the development perspectives of Võrumaa were discussed and the future was considered. This has given Võrumaa a strong impetus to utilize co-creation and has encouraged ordinary citizens, specialists, and politicians to contribute more effectively to cooperation and the development of innovative service solutions.

Social innovation is seen as one of the solutions to deepening complex and multi-party problems. The Civil Society Development Plan for 2015-2020 states that "social innovation" means creative solutions that create new value, which has long-term effects that increase people's well-being and have a clear economic output. Social innovation is new ideas, products, services and models that meet societal needs and do so more effectively than previous solutions and create new social relations and cooperation and business opportunities. (EP-3)

The analysis shows that entrepreneurs are particularly engaged when it is necessary to solve problem situations in cooperation with specialists, community leaders, and ordinary citizens. Entrepreneurs and community organizations also contribute to various campaigns that support Võrumaa in terms of the living environment and sustainability:

In April, the Estonian Chamber of People with Disabilities and the Foundation of the Law Services Bureau completed their first year of operation, where free legal aid has been distributed to people with special needs across Estonia. Thanks to the funding of the Ministry of Justice, we can provide a service designed for the purpose of solving the legal problems of people with medium, severe and deep disabilities. (E-17)

At the community level, media reports show that the development of services involves co-operation between local governments, entrepreneurs, and local services of state agencies, including the Rescue Board and the police, to ensure the stable functioning of Võrumaa, for example, several clean-up exercises, a multi-day powerhouse due to storm winds, and the safety of older people and those with special needs through the carrying out of a fire prevention campaign. The same can be said of specialists of state institutions who work as state representatives in the region and contribute to forming the task of ensuring the availability of services for the population. In such cases, local government specialists, regional organizations, community activists, and service users are involved alongside regional journalism:

We have long understood that teamwork is the only way forward and therefore we can listen to and value the good advice of our colleagues. (SS-M-1)

In September, the Health Insurance Fund, the Health Board, the Unemployment Insurance Fund, the Association of Physicians, the Police and Border Guard Board and the Public Prosecutor's Office sat down in September to work out a cooperation plan. (S-PI-41)

The media coverage indicates that many journalists in Võrumaa care about the development of Võrumaa and contribute to covering different topics for this purpose. The regional publications *Võrumaa Teataja* and *Võru Linna Leht* have most widely reflected the development of services. However, the people of Võrumaa have also been active nationally in representing their region. Media coverage has been created with the involvement and participation of different community target groups involved in co-creating processes, which has helped to create the identity of Võrumaa as a community.

DISCUSSION

Our findings indicate that through media coverage, people in Võrumaa describe community development as a process, such as in Frank & Smith (1999)⁶⁴, Shaw (2008)⁶⁵, and Phillips and Pittman (2009)⁶⁶, where co-creation and the involvement of the population are central and the community contributes both to reflecting societal changes and population problems and to service development. History shows that the community's well-being is created collectively in Võrumaa and increased through economic, social, environmental, and cultural dimensions. Community development as a concept brings together different fields and groups of communities, including politicians, state and local government specialists, community leaders, and entrepreneurs from different backgrounds. Together, they are able to implement national reforms, collectively cope with crises, and solve problems affecting Võrumaa, for example, supporting those in need with volunteer work or solving environmental issues under the leadership of village movements.

The analysis of media coverage suggested several national and regional media publications focus on Võrumaa's population. These media outlets have reflected the problems of vulnerable situation groups and the development of services aimed at those groups over the past two years. The focus of the media when addressing these topics has varied in connection with different events, for example, crises that have occurred in Võrumaa (e.g., several days of power cuts caused by a storm); the administrative reform (joining of municipalities and redistribution of county-level tasks); and the work capacity reform (assessment of the capacity of people with special needs for work and labor-market services for people with reduced working capacity). The media has also focused on problems in the narrower social spheres, for example, the lack of family doctors and the need to reform the family doctor system to ensure the availability of primary health care services for the population and the absence of a rural municipality's educational system in which a small rural school was closed. All of the above topics have been covered by various media, including television media, national and regional newspapers, magazines, and online media channels.

Several authors, including Dreier, Mollenkopf and Swanstrom (2014)⁶⁷, Bradshaw (2007)⁶⁸, Ledwith (2011)⁶⁹, and Nickels and Rivera (2018)⁷⁰, argued that community development policy and practice are partly influenced by how policymakers define problems that community development initiatives seek to solve. Võrumaa media coverage defines Võrumaa's main problems as issues in coping with certain target groups of the population, including those with special needs and unemployed and elderly people whose coping is disturbed due to special needs, unemployment risks, or age, respectively. At the same time, the above problems inspired the communities in Võrumaa to act together. The opinions of the people in the media have directed the Võrumaa regional policy to seek innovative service solutions and to develop community development initiatives. The media coverage has targeted specific strategies to ensure the well-being of the population, including job creation, housing creation, and improvement of the living environment.

⁶⁴ Frank, F. & Smith, A. (1999). *The Community Development Handbook: A Tool to Build Community Capacity*. Ottawa, ON: Human

⁶⁵ Shaw, M. (2008). Community development and the politics of community. *Community Development Journal*, 43(1), 24–36. <https://doi.org/10.1080/00103420701488888>

⁶⁶ Phillips, R. & Pittman, R. H. (2009). *An Introduction to Community Development*. London, UK: Routledge.

⁶⁷ Dreier, P., Mollenkopf, J., & Swanstrom, T. (2014). *Place Matters: Metropolitcs for the Twenty- First Century*, 3rd edition. Lawrence, KS:

⁶⁸ Bradshaw, T. K. (2007). Theories of poverty and antipoverty programs in community development. *Journal of Community Development*

⁶⁹ Ledwith, M. (2011). *Community Development: A Critical Approach*. Bristol, UK: The Policy Press.

⁷⁰ Nickels, A. E., & Rivera, J. D. (2018). *Community development and Public Administration Theory: Promoting Democratic Principles to*

Osborne et al. (2013)⁷¹, Osborn and Strokosch (2013)⁷², and Kasymova and Gaynor (2014)⁷³ saw citizens and users as an integral part of the provisioning of public services, which aligns with the findings of this study. In Võrumaa, active citizens are an integral part of the development of public value and lead community development initiatives. Reflecting all reforms, crises, and problem areas, the public is active and accounted for in both community development and decision-making processes. Media reflections show the involvement of citizens in co-creating processes in community development, which seeks to make community work more effective.

Nickels and Rivera (2018)⁷⁴, Osborne and Stokosch (2013)⁷⁵, Mulgan (2006)⁷⁶, and von Hippel (2005)⁷⁷ pointed out that simply involving citizens in community development planning is insufficient. Only effective co-operation can achieve transformative and necessary innovations in public services. The hackathons carried out in the CoSIE project created an opportunity for public innovation and specifically defined citizens' role as a driving force for change—combining their experiences with the realities of service needs and the possibilities for delivering them both in planning and designing existing designs. Media coverage about the activities of the hackathon teams not only highlighted the contribution to the provision of services or the potential improvement of community organization but also shaped community values and supported co-creation in the community through the media. Various innovative ideas were generated during the hackathons, but further developing these ideas requires more work, including training, networking, implementing action plans, and cooperating with the media.

Twigger-Ross and Uzzell (1996)⁷⁸ and Speller and Twigger-Ross (2009)⁷⁹ highlighted “the place” in their work as an important part of identity, which in turn plays a role in shaping the community's identity. Gustafson (2001)⁸⁰, Friedland and McLeod (1999)⁸¹, and Stamm (1985)⁸² specified that places have meaning through the relationships and the interactions of the people living there and the sense of community generated by such social relationships. Media coverage of the co-creation also highlights the special value of the community. The emergence of keywords—Ideas Fair, hackathon, and Vunki mano (push back) in this process—are important examples of this. The results of the analysis indicate that the media of Võrumaa has the biggest role in promoting the co-creation in communities, as Rosenberry (2018)⁸³ emphasized, because symbolic media-based communication supports community creation in co-creation processes and should thus not be overlooked.

⁷¹ Osborne, S. P. & Strokosch, K. (2013). It Take Two to Tango? Understanding the Co- production of Public Services by Integrating the Devices Management and Public Administration Perspectives. *British Journal of Management*, 24(S1), S31–S47.

⁷² Osborne, S. P., Radnor, Z., & Nasi, G. (2013). A New Theory for Public Service Management? Toward a (Public) Service- Dominant Approach. *The American Review of Public Administration*, 43(2), 135–158.

⁷³ Kasymova, J., & Gaynor, T. S. (2014). Effective Citizen Participation in Environmental Issues: What Can Local Governments Learn? *State & Local Government Review*, 46(2), 138–145.

Estonian Institute of Economic Research. (2019). Konjunktuur 1 (208). Tallinn. <https://docplayer.ee/151506127-Konjunktuur-nr-1-208-2019-m%C3%A4rts.html>

⁷⁴ Nickels, A. E., & Rivera, J. D. (2018). *Community development and Public Administration Theory: Promoting Democratic Principles to Improve Communities*. Routledge. ISBN: 978-1-138-30473-4.

⁷⁵ Osborne, S. P. & Strokosch, K. (2013). It Take Two to Tango? Understanding the Co- production of Public Services by Integrating the Devices Management and Public Administration Perspectives. *British Journal of Management*, 24(S1), S31–S47.

⁷⁶ Mulgan, G. P. (2006). The Process of Social Innovation. *Innovations*, 1(2), 145–162. <https://doi.org/10.1162/itgg.2006.1.2.145>

⁷⁷ von Hippel, E. (2005). *Democratizing Innovation*. Cambridge, MA: MIT Press.

⁷⁸ Twigger-Ross, C.L. & Uzzell, D.L. (1996). Place and Identity Processes. *Journal of Environmental Psychology*, 16(3), 205–220. <https://doi.org/10.1006/jevp.1996.0017>

⁷⁹ Speller, G.M. & Twigger-Ross, C.L. (2009). Cultural and social disconnection in the context of a changed physical environment.

⁸⁰ Gustafson, P. (2001). Meanings of place: Everyday experience and theoretical conceptualizations. *Journal of Environmental Psychology*, 21(1), 5–16. <https://doi.org/10.1006/jevp.2000.0185>

⁸¹ Friedland, L. & McLeod, J. (1999). *Community Integration and Mass Media: A Reconsideration*. In Demers, D. & Viswanath, K. (Eds.) *Mass Media, Social Control and Social Change: A Macrosocial Perspective*. Ames, IA: Iowa State University Press.

⁸² Stamm, K. R. (1985). *Newspaper Use and Community Ties*. Norwood, NJ: Ablex Publishing.

⁸³ Rosenberry, J. (2018). *Community Media and Identity in Ireland*. Routledge, ISBN: 978- 1- 138- 30434- 5 (hbk), pp. 4 -15.

Fledderus (2016)⁸⁴, Steen and Tuurnas (2018)⁸⁵, Boyle and Harris (2009)⁸⁶ underlined the role of specialists in co-creating processes, as co-creation is based on relationships between professional employees and service users. In this process, public service professionals are regarded as coordinators. Media reflections on co-creation and inclusion processes in Võrumaa show the participation of specialists and county-level developers. For example, media reports have raised issues related to the development of services and topics where people are given information about (1) new service solutions that they can use (e.g., free bus trips on county lines, needs and opportunities for organizing social transport, restarting train traffic in Võrumaa) and (2) opportunities for volunteers to be involved in the provision of welfare services and work with children and young people. The media analysis showed an orientation toward events where topics are raised, and they remain topical until the situation is resolved. The focus then shifts to following topics that concern the people of Võrumaa.

Romero et al. (2014)⁸⁷, Helms et al. (2012)⁸⁸, and Lee et al. (2012)⁸⁹ underlined that the customer plays a central role in the process of creating new value. They indicated that co-creation takes place voluntarily and is based on offerings and ideas and time spent by customers. Media coverage showed that the ideas raised during the hackathon sessions allowed citizens to find solutions to their problems through the media and to involve the team in planning the necessary service solutions. The feedback from the teams on placing the customer as a central service provider at the center of service development was positive and enabled the creation of necessary service developments.

Rosenberry (2018)⁹⁰, Hess and Waller (2013)⁹¹, and Stamm (1985)⁹² discussed that community media has a central role in shaping geographical symbolism in the areas served, in addition to influencing community identity. For example, the meanings “Võrumaa” (place, where to live) and “Võrumaalane” (citizen of Võrumaa) can be symbolically constructed in the sense that symbolic representation helps to understand what living in Võru means to a person, how community relations are developed there, and how co-creation contributes to community development.

Rosenberry (2012)⁹³, Buchanan (2009)⁹⁴, and Yamamoto (2011)⁹⁵ asserted that news organizations are an integral part of the community structure because they reflect decisions related to community stakeholders, promote social cohesion, and seek to maintain local consensus. They argued that the media coverage of local communities develops community awareness and provides news of people’s activities and achievements. The tonality of Võrumaa media coverage of co-creation has been rather positive. Positive media reflections distinguished (1) the efforts to cope with the crisis caused by the storm; (2) the Rescue Board’s campaign to make life safer for older people and people with special needs by providing fire safety advice and installing sensors; (3) the availability of free transport on the routes within the county; and (4) the ideas fair that was esteemed

⁸⁴ Fledderus, J. (2016). *User Co-Production of Public Service Delivery: Effects on Trust*. Dissertation. Nijmegen: Radboud Universiteit Nijmegen.

⁸⁵ Steen, T. & Tournas, S. (2018). The Roles of the professional in Co-Production and Co-creation processes. In T. Brandsen, T. Steen, B. Verschuere (Eds). *Co-Production and Co-Creation Engaging Citizens in Public Services*. Taylor and Francis Group.

⁸⁶ Boyle, D. and Harris, M. (2009). *The Challenge of Co-Production: How Equal Partnerships Between Professionals and the Public are Crucial to Improving Public Services*. Discussion paper. London: NESTA.

⁸⁷ Romero, C. L., Constantinides, E., Brünink, L. A. (2014). Co-Creation: Customer Integration in Social Media Based Product and Service Development. *Procedia - Social and Behavioral Sciences*. 148 (2014) 383 – 396. <https://doi.org/10.1016/j.sbspro.2014.07.057>

⁸⁸ Helms, R. W., Booi, E., & Spruit, M. R. (2012). *Reaching Out: Involving User in Innovation Tasks Through Social Media*. ECIS 2012, Barcelona, Spain.

⁸⁹ Lee, S. M., Olson, D. L., & Trimi, S. (2012). Co-innovation: Convergenomics, Collaboration, and Co-creation for Organizational Values. *Management Decision*, 50(5), 817–831.

⁹⁰ Rosenberry, J. (2018). *Community Media and Identity in Ireland*. Routledge, ISBN: 978- 1- 138- 30434- 5 (hbk), pp. 4 -15.

⁹¹ Hess, K. & Waller, L. (2013). Geo-social journalism: Reorienting the study of small commercial newspapers in a digital environment. *Journalism Practice*, 8(2), 121–136.

⁹² Stamm, K. R. (1985). *Newspaper Use and Community Ties*. Norwood, NJ: Ablex Publishing.

⁹³ Rosenberry, J. (2012). *Key Works: Some Connections Between Journalism and Community*. In Reader, B. & Hatcher, J. (Eds.) *The Foundations of Community Journalism: A Primer for Research*, 25–43. Thousand Oaks, CA: Sage.

⁹⁴ Buchanan, C. (2009). Sense of Place in the Daily Newspaper. *Aether: The Journal of Media Geography*, Spring 2009, 62–82.

⁹⁵ Yamamoto, M. (2011). Community Newspaper Use Promotes Social Cohesion. *Newspaper Research Journal*, 32(1), 19–33. <https://doi.org/10.1177/073953291103200103>

by participants. Negative media reflections covered the closure of the school and problems created by the work capacity and administrative reforms, which generated confusion, a need for clarification, and a search for solutions.

Many journalists in Võrumaa contribute to the development of the region by posting various media reports and developing discussions of both positive and negative aspects of particular topics.

Finally, research into media coverage can help create a framework for co-creating and involving two important dimensions: (a) the meaning and application of the concepts of co-creation and inclusion will change over time as the underlying circumstances change (e.g., following changes in people's opinions after participation in hackathons and training) and (b) all thoughts, activities, and media coverage have a special articulation of Võrumaa, which is important for the development of the identity of Võrumaa as a regional community. The study of these dimensions is a longer-term process that did not fit within the scope of this project. However, these issues should be addressed in the future.

LIMITATIONS AND IMPLICATIONS

The main limitation of this study was the narrow focus of keywords, focusing primarily on community co-creation and involvement in the development of services in Võrumaa. The analysis was also limited by the use of only public media coverage and the exclusion of news from social media channels and rural municipality government websites. Despite these limitations, this study generated important takeaways.

The concept of participatory society is an emerging idea in a number of European countries as an alternative to traditional welfare states (Delsen, 2016)⁹⁶. In Estonia, the concept is also connected to political efforts striving to discard the post-Soviet mentality of learned dependency and encourage active citizenship in the development of society. In the future social care system, this active citizenship can play an important role, especially in small, rural communities where the state does not have enough resources and capacity to provide people with proper infrastructure and services. In these cases, local communities, enterprises, and municipalities must find their own solutions.

The current approach of the Estonian government not only aims to involve different stakeholders in service provision, but also seeks innovative solutions and new types of service design to meet service needs and revitalize local communities. Considering the given values and mainstream liberal economic ideologies in Estonia, there is little chance the country will multiply its social expenditures, thus introducing a Northern European-style welfare model. Instead, the country is trying to find innovative solutions, mobilizing community resources and utilizing modern technology to renew the landscape of the social care system. Within this transformative process, private partners and the civil society are invited to participate.

The positive media coverage we explored in our analysis can be considered encouraging feedback regarding the first reaction of the media in strengthening communities and welfare development in Estonia. This study demonstrates that shifting development resources to more innovative co-creative solutions is welcomed in Estonia.

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⁹⁶ Delsen, L. (2016) *The Realization of the Participation Society*. Welfare state reform in the Netherlands: 2010-2015. Radboud University. Institute for Management Research. Nijmegen 2016.

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