SZÉCHENYI EGYETEM
UNIVERSITY OF GYŐR

ISSN 2064-5902
Volume **12** Number **1** **2025**

Studia Juridica et Politica Jaurinensia

Studies, Conference Proceedings, and Working Papers of
the Faculty of Law and Political Sciences of Széchenyi István University

Studia Juridica et Politica Jaurinensia

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Imprint

Published by Deák Ferenc Faculty of Law, Széchenyi István University
Responsible for publishing and editing: Prof. Dr. Péter Smuk, Dean of the Faculty of Law

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Volume 12 Number 1 2025

STUDIA JURIDICA ET POLITICA JAURINENSIA
VOL. 12, NO. 1, 2025, 1–14.
DOI: 10.71100/STUDIA.2025.1.1

CORONATION AND CONSTITUTION IN THE UNITED KINGDOM

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ABSTRACT

The paper establishes a link between the unwritten constitution of the United Kingdom and the significance of the most recent lavish coronation ceremony of King Charles III. For this purpose, it briefly introduces the unwritten constitution of the United Kingdom, as well as its historical development and its role in maintaining the constitutional relevance of the royal coronation ceremony in the UK. It provides a detailed description of the most recent British coronation on May 6, 2023, with King Charles III and Queen Camilla, to highlight the religious and constitutional elements that are intertwined in this power-legitimizing event. In the concluding remarks, the author refers to comparable European monarchies and their lack of coronation ceremonies in order to further support the argument that the coronation ceremony is of constitutional importance in a country that has no written constitution.

KEYWORDS Coronation ceremony, unwritten constitution, United Kingdom, King Charles III

1. Introduction

The United Kingdom[2] is the primary example of a developed Western European country with a rich and long-standing history, but one that has not codified its constitution to this day. The coronation ceremonies of the British monarchs – similarly to other monarchs up until the 19th century – have been the constitutionally relevant ceremonial power-transferring procedures of the UK's kings and queens for centuries. These both religious and ceremonial acts of legitimization provided the opportunity for the crowned head of state and their subjects to agree on the foundation of the reign that was to follow. The

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[2] Though we acknowledge that the legally correct term to describe the geographical focus of our inquiry, namely the United Kingdom of Great Britain and Northern Ireland, is "the United Kingdom", or in short "the UK", while the purely geographical description of Great Britain, or simply Britain, technically excludes Northern Ireland, we nevertheless use the terms the United Kingdom, the UK and Britain interchangeably and thereby refer to the whole legal entity of the United Kingdom of Great Britain and Northern Ireland. The use of the adjective "British" similarly refers to everyone or everything relating to the whole of the United Kingdom.

transformation of state forms from monarchies to republics, as well as the transition of monarchies from feudal or absolute (though some enlightened) to constitutional through the 18th to the 20th centuries, brought about the appearance of written constitutions and with that the decreasing significance of the coronation ceremonies throughout the developed countries of the Western world. At the same time, those countries that did not create a written constitution maintained the constitutional relevance of the coronation as a power-legitimizing constitutional act; this was most prominently true for the United Kingdom and Hungary, with the former still holding on to this governmental system and its legal institutions. In the following, we briefly introduce the development and nature of the UK's unwritten constitution (Part 2), followed by the description of the coronation ceremony of the British monarch, King Charles III, who most recently ascended to the throne, to observe and analyse the elements of this constitutionally relevant historic relic (Part 3). We claim and argue in our closing (Part 4) that this coronation ceremony remains constitutionally relevant in the United Kingdom primarily because the UK's constitution is unwritten and hence it lacks black-letter laws to determine the foundation of any British monarch's reign.

2. The Brits and the Constitution

The UK constitution is a unique phenomenon. The British themselves claim to this day that their constitution is unwritten, even though its elements, including especially significant laws, landmark decisions, and even certain parts of customary law have already been separately put into writing. The difference accordingly between the UK constitution and those written constitutions that have not been systematically codified in a single charter document is that in the latter examples – e.g. Sweden or Israel – it is clear which laws constitute collectively the constitution, while the UK's unwritten constitution has no catalogue, and lacking an exhaustive list of its elements, its boundaries are blurred, or so they may seem, especially to continentally trained lawyers.[3] The UK constitution may be defined as a complex system, which outlines the setup of the British state and the modern-day basic rights through a variety of legal sources. Nevertheless, the UK constitution has provided both positive and negative examples for other countries' constitutions.

The history of the UK constitution is not solely a chain of legal documents and institutional changes, but also a result of theoretical political thinking. Jean Bodin's, Thomas Hobbes' (absolute sovereign), as well as John Locke's (new

[3] New Zealand's constitution is very much in the middle of the written–unwritten scale, since its constitution may be derived from the collective reading of a few concrete laws that are supported and expanded by landmark court decisions as well as constitutional practice. New Zealanders still claim their constitution to be unwritten, and accordingly, the differentiation from the previous colonizers, the UK, is less easy to define.

theory of the separation of powers) theoretical works (Petrétei, 2018) became directly or indirectly embedded in the British public legal system. At the same time, the French Enlightenment and its continental thinkers – primarily Charles de Secondat, Baron de Montesquieu, and Jean-Jacques Rousseau – have also had a significant effect on the interpretation and reform of the British constitution, especially from the 18th century onwards.

2.1. The Magna Carta and the Constitutional Development in the Middle Ages

One of the landmarks of the UK constitution, as well as the starting point of its development, is the Magna Carta Libertatum issued in 1215 by King John of England, who was forced to make concessions to the British nobility. From a constitutional perspective, it is of utmost importance that this document declared limits on the monarch's power and provided rights for the subjects vis-à-vis the king for the first time. The Magna Carta received not only legal but also symbolic relevance over the years (Radin, 1947). Its provisions were reinforced in multiple royal charters throughout the 13th–15th centuries (Goerlich, 2016).

Perhaps the most disputed issue in the British constitutional development ever since the Magna Carta is that of the royal prerogatives. Towards the end of the 16th century, they were divided into two groups: regular and absolute. The regular royal prerogatives were regulated by law and were enforceable even through the courts, while the absolute royal prerogatives were those exclusively of the Crown and were not transferable (Baker, 2017).

2.2. The Constitutional Crises and the Civil War of the 17th Century

The 17th century was a decisive period for the British constitution (Foxley, 2018). The civil war and the interregnum that followed raised new constitutional questions: It became disputed whether the monarch's power derived from God, and the theory of parliamentary sovereignty gained weight.

During the reign of King Charles I (1625–1649), the relationship between the monarch and Parliament deteriorated, and the tension was rising. The king mostly ruled with authoritarian methods, i.e. taxing the subjects without the consent of Parliament. Parliament objected to these measures and accordingly issued the Petition of Right in 1628. This public legal milestone declared among others that citizens could not be arrested arbitrarily or taxed without the consent of Parliament (Foster, 1974; Popofsky, 1979). Charles I subsequently dissolved Parliament in 1629 and governed alone for eleven years (Richards, 1986), which resulted in the significant infringement of Parliament's rights. This was the period of personal rule during which the king introduced new reforms, especially of religious nature, leading to further dissatisfaction within Parliament

(Smith, 1991). Finally, the king reconvened Parliament in the fall of 1640, which immediately issued the so-called Triennial Act (1641), obligating the king to call a session of Parliament at the latest every three years (Yelby, 2008). This regulation could not sufficiently diminish the tension, hence armed clashes erupted in 1642, and the civil war began (Orr, 2002; Cressy, 2003). King Charles I was charged, convicted, and beheaded in 1649 (Aitken & Aitken, 2007), and a republic was declared with Oliver Cromwell as Lord Protector at its head. The next eleven years, this time as a military dictatorship, limited the functioning of the state organs in different ways (Woolrych, 1990). In 1660, with King Charles II's ascent to the throne, the Restoration began (Malcolm, 1992), despite the monarch's difficulty in finding the adequate cooperation with his subjects and with Parliament (Greenspan, 2011). Charles II's reign remained limited, and Parliament gained an advantage in the political power balance (Hinton, 1960; Weston & Greenberg, 1981). An exemplary product of that time is the 1679 Habeas Corpus Act, which further strengthened individual liberty, guaranteed the constitutional protection of personal freedom, and specifically prohibited illegal incarceration. Charles II's 25-year reign (1660–1685) can be considered relatively fruitful (Behrens, 1941; Miller, 1982). His successor, his younger brother King James II (Rigó, 2016), as a Catholic monarch, did not get along well with Parliament, hence the latter invited William of Orange to the throne. On February 12, 1689, James II's abdication was announced, after he had been hiding since December of the previous year, and the throne was officially offered to William of Orange on February 13, who accepted it (Rigó, 2018, 2020).

The United Kingdom transformed itself from a feudal monarchy into the currently existing parliamentary monarchy over nearly one and a half centuries following the Glorious Revolution (1688–1689) – though this transformation can only be traced sporadically in the sources (Ruszoly, 2005; Szente, 2011). The Glorious Revolution altered the line of succession since it gave control rights to Parliament and limited the royal prerogatives through the Bill of Rights (Bogdanor, 1998). This 1689 Bill of Rights was one of the guarantees of the British system; a basic document, which initiated the new governmental structure's stabilization. It redefined the relationship between the monarch and Parliament, and through the latter, the subjects. The Bill of Rights made it possible that the royal prerogatives were transformed into government prerogatives (Hazell & Foot, 2022). Though it barely touched upon the issue of succession, in as much as it banned James II from returning to the throne (Horváth, 2023), it declared the principle of parliamentary sovereignty as well as the limits of the monarch's power. Based on the Bill of Rights, legislation was the exclusive right of Parliament, and it prohibited the maintenance of a standing army without Parliament's approval. Though the issue of royal prerogatives still left – and continues to leave, for that matter to this day – gray areas, it seemed accepted

that the laws also applied to the monarch: *„[…] his Majesty is under, and not above, the laws; that he is bound by them equally with his subjects."* (Chitty, 1820, p. 5) Regarding the composition of Parliament after the Glorious Revolution, the landlord aristocrats could maintain their power there vis-à-vis the merchants and other urban population up until 1832, which was a rather conservative realignment. The courts subsequently relied more and more on the unwritten constitution in their judgments, which contributed to the formation of the common-law-based constitutional order.

2.3. The Unwritten Constitution

The theoretical foundations of the thus-formed unwritten constitution can be found in the works of numerous British thinkers and political philosophers. Just to briefly mention a few of them here, such was Jean Bodin, who systematically explained the term sovereignty (Karácsony & Monostori, 2021) for the first time in his 1576 work entitled *Les Six Livres de la République*. According to Bodin, sovereignty is indivisible and constant, but he also emphasized the importance of keeping in line with the acts of Parliament (Bodin, 1577; Nagy, 2023). Thomas Hobbes' Leviathan (1651) argued in favour of absolute sovereignty, but solely based on natural law (Hobbes, 1914; Nagy, 2023); during the conclusion of the social contract the people transferred all power to one monarch in favour of order and security, a theory which differed from the later adopted theory of parliamentary sovereignty. Undoubtedly, John Locke had the biggest effect on the British constitutional development, laying the foundation of the modern principle of the separation of powers, combining sovereignty with popular sovereignty based on natural law (Rigó, 2017; Laslett, 1988; Kennedy, 2022). Though the British constitutional development had a strong impact on Montesquieu's 1748 work *De l'esprit des lois*, the book also worked backwards on the British governmental setting. Rousseau's 1762 seminal work The Social Contract, which emphasized popular sovereignty, had a similar effect.

Numerous court decisions also form part of the UK's unwritten constitution, i.e. the Case of Proclamations (1611), which declared that the king could not create a new act through a decree. Based on Dr. Bonham's Case (1610), the common law may make acts of Parliament void if they are repugnant to the principles of justice. This principle, which was penned by Judge Edward Coke, became the foundation of the subsequent US-American judicial review procedure, which provided the basis for the constitutional relevance of the US judiciary (Smith, 1966; Helmholz, 2009). The unwritten constitution keeps changing, hence in the 20th century the so-called Factortame case (1990) also became a part of it, reinforcing the primacy of EU law over English law, giving the British

constitutional system a whole new dimension. Since Brexit, this constitutional regulation has been modified again through the practice of the courts.

Throughout the 18th and 19th centuries, as the United States of America and France created their written constitutions, the UK remained true to its unwritten framework, even if the impact upon the British political thinkers was palpable. Since the British constitution remains unwritten to this day and consists of a variety of historical charters, acts, judicial precedents, customary law, and constitutional practices, the coronation ceremony of its head of state, the British monarch, maintains its constitutional significance. This is why the most recent coronation of King Charles III on May 6, 2023, was both an example of living history and a constitutional affirmation.

3. The Coronation of Charles III

The coronation of Charles III was an extraordinary event because for the first time in 70 years a new king was crowned in the United Kingdom. At the same time and compared to other contemporary monarchies – there are about 40 monarchies in the world now[4] (Buchholz, 2023; Hallemann, 2017) – the British coronation is unique because of its both religious and constitutional significance. In the UK, the primary church is the Church of England, also known as the Anglican Church, which was founded by Henry VIII in 1534 and declared the head of state (the king or queen) as the head of the church as well. This makes the British coronation extraordinary and absolutely necessary. Additionally, the British coronation also has constitutional relevance, which did not diminish over time, as arguably did those of other countries, where in the 19th and 20th centuries, written constitutions appeared (van Gelder, 2021). The British coronation ceremonies have therefore changed little over time, not even through the legal development of the 17th century, though both the 1689 Bill of Rights as – and more importantly – the 1701 Act of Settlement played a role in the order of succession determining the next ruler on the British throne. Thus, the 2023 coronation in its schedule and ceremonial elements differed only slightly from previous similar events.

3.1. The Events of the Day: May 6, 2023

The King and Queen Consort went in the early morning from their home in Clarence House to Buckingham Palace, where they were vested in their robes for the ceremony. Subsequently, they were seated in their carriage, this time the Diamond Jubilee Carriage, which had been made for Queen Elizabeth II's 60th throne jubilee and was now reused to limit further costs to an already extremely

[4] Some claim the number of monarchies, while others refer to the number of monarchs reigning over a larger number of countries.

expensive ceremony. The carriage was drawn by six horses, and they went with it from Buckingham Palace to Westminster Abbey, which journey is known as the King's Procession. N.B. the way back from Westminster Abbey to Buckingham Palace after the coronation ceremony, which has a different composition of the people in the procession, is known as the Coronation Procession.[5] In between is the Coronation Service,[6] a special religious service conducted by the Archbishop of Canterbury, the operative head of the Church of England, right after the monarch, who is the actual head of the church, in Westminster Abbey. The host of the ceremony is the Dean of Westminster, also participating in the ceremony, though not leading it. Following the Coronation Procession, there is a private lunch in Buckingham Palace for the extended royal family, hence no invited guests, followed by the Fly-Past and the Greeting on the Balcony. The Fly-Past had to be scaled back somewhat due to severe rain, but there was the traditional gun salute and further ceremonial elements greeting the newly crowned head of state.

3.2. The Coronation Service[7]

As for Westminster Abbey, there is an order of the procession of arriving guests. Once all guests are in the church, all elected officials, selected for that day, arrive. Accordingly, for example, the Lord High Steward is an office which had existed before but no longer exists because it can no longer exercise its duties, yet for the day of the coronation, this office is brought back into existence again and one person takes on the role from 7 a.m. for that one day to fill the office and exercise its duties. The Lord High Steward is the person carrying the crown. All other regalia were also carried by dignitaries elected or selected for that day and for the task.[8] They all proceed slowly into and through the church, all the way up to the high altar, upon which they place the regalia. This includes i.e. multiple swords, the orb, the crown (N.B. there were two crowns, St. Edward's Crown, with which King Charles was crowned, and Mary's Crown with which Camilla was crowned).[9] The holy oil was already on the altar when all entered the church. The procession into the church started with the elected officials carrying the regalia, followed by Camilla and then Charles. He was followed by the Prince of Wales, as the heir to the throne, and his family. They were all seated – Charles and Camilla

[5] The route went from Buckingham Palace along The Mall to Admiralty Arch, then turned right to Whitehall, and went on until Westminster Abbey (Changing-Guard, n.d.).

[6] Allegedly, the basis for this religious service is the Liber Regalis, a book probably compiled in 1382 and kept in Westminster Abbey. The first British coronation dates to 1066, when William the Conqueror was crowned on Christmas Day. The ceremony took place on the very same spot where Westminster Abbey stands today. The rule book Liber Regalis, unclear as to the exact occasion for which it was compiled, remains the basis of the Christian coronation ceremony to this day (Westminster Abbey, n.d.b).

[7] See: The complete Coronation Order of Service (The Royal Household, 2023d).

[8] See: Roles to be Performed at the Coronation Service at Westminster Abbey (The Royal Household, 2023a).

[9] See: The Coronation Regalia (The Royal Household, 2023b).

on the so-called chairs of the estates, which are only two of multiple chairs, including the coronation chair from 1301 that is used to crown and anoint the king, while another chair is the throne and serves the enthronement of the monarch.

The recognition is when the Archbishop of Canterbury presents the king to the congregation, having him recognized as the true monarch, introducing him as "this is your king, King Charles", and the congregation responding with "God save the King!", followed by fanfare and repeated in all four cardinal directions. This is very similar to the earlier popular elections, the *acclamatio*, when the subjects claimed their king, which is rather irrelevant in hereditary monarchies, or at least in those cases where the person of the king is clear and undisputed. For example, in Charles' case it had been clear for 70 years that he would become the king the moment his mother passed away, which happened on September 8, 2022. Hence, Charles had been king since September 8, 2022, and yet he still needed to be crowned by the Archbishop of Canterbury in Westminster Abbey with St. Edward's Crown in the coronation chair.

The very first part of the service, however, even before the recognition, was a minor element, but one that differed at Charles' coronation from that of his mother's 70 years earlier. A young boy, Samuel Strachan, Child of His Majesty's Chapel Royal, welcomed the king to Westminster Abbey.[10] As a response to the welcome, Charles said – based on Jesus' example – that he comes not to be served but to serve. This was important to Charles to start with this statement from the outset, while it also served as a gesture to the congregation and set the tone for the whole religious service. Their aim was to express that the coronation is a ceremony in which the rights and obligations of the king are officially vested in this individual, and that this individual, a monarch in the 21st century, is someone who serves. The notion is anything but new, as already in the 18th century the head of state's role transformed from the absolute ruler to that of a primary public servant, even if in the UK the God-given power remains, while the service he or she provides continues to be adjudged by the subjects. Yet, this was a deviation from Queen Elizabeth's coronation, as she did not start with such a declaration – despite her truly having served her people, her country, and the whole Commonwealth all throughout her life. For Charles, this active declaration was important. The rest of the coronation service followed the one Queen Elizabeth had, with some cuts, as her coronation was over three hours and Charles' took merely an hour, but the basic elements were the same.

Following the recognition, the king took a religious oath declaring that he was a faithful Protestant, who was bound to protect the church that he was the head

[10] See: Coronation Order of Service, supra 44 (The Royal Household, 2023d).

of, and a secular oath to serve his people and to thereby finalize the contract between the sovereign and the subjects.[11]

The most sacred part of the coronation service is the anointing. The British king – unlike the other European monarchs – is still one with God-given powers. This alliance, this investiture of God-given powers onto the individual, is the very reason why a British monarch cannot abdicate the throne. If their powers derive from God, then it is theirs as long as they live, and only God can take these powers away. Accordingly, the British monarch cannot abdicate, cannot resign his or her duties, and he or she must carry them out as long as they live (Watanabe-O'Kelly, 2021). The anointing takes place behind a screen, since the King must open his robe for the sacred oil to touch his chest. The oil came from Jerusalem for this ceremony.[12] It was kept on the high altar in a golden container with a dove on it. Next to the container was a golden spoon, into which the oil was poured so that the Archbishop could take it and use it for the anointing of the King. While the King is seated in the coronation chair, the Archbishop touches the King's head, hand, and chest with the sacred oil, a very private moment behind the screen so that the King can focus on his faith and his relationship with God.

Once the anointing is complete, the screens are taken down and the King remains seated in the coronation chair.[13] There, he receives the regalia, especially the sceptres, and subsequently the orb – all blessed by the Archbishop of Canterbury before they are handed over to the King. The last element of the investiture is the crowning of the King with St. Edward's Crown. Once the King is fully dressed in all the royal regalia, he is escorted to the throne and seated upon it, which is the enthronement of the King. At Charles' coronation the next point on the agenda was the homage to the King, which had been extensively debated while drafting the schedule, most deeming it unnecessary and outdated. This used to be a vital element of any coronation earlier on, as it is the reassurance the subjects give to the King. What remained is that the members of the congregation were called to swear allegiance to the King, if they so wished.[14] Accordingly, everyone who was present could decide whether to utter the words or not. Once the King was anointed, invested, and enthroned, the Queen was crowned. For that, she remained in her original chair, the chair of the estates, and the Archbishop of Canterbury crowned Camilla with Queen Mary's

[11] For the exact text of the oaths see the Coronation Order of Service, supra 44 (The Royal Household, 2023d). There are multiple oaths the monarch takes throughout the accession period, starting from the moment his or her predecessor dies. The text of the secular coronation oath was enshrined in the Coronation Oath Act 1688. Among the oaths Charles III took is the one promising to uphold the union with Scotland, based on the 1707 Act of Union.

[12] See: The consecration of the Coronation Oil (The Royal Household, 2023c).

[13] See: The Coronation Chair (Westminster Abbey, n.d.a).

[14] See: Coronation Order of Service, supra 44 (The Royal Household, 2023d).

Crown. Following her crowning and with the crown on her head, Camilla was escorted to the throne chair next to the King and seated upon it. To wrap up the ceremony, the Archbishop delivered Holy Communion and the newly crowned King and Queen left Westminster Abbey.

4. Constitutional Relevance of the British Coronation: Concluding Remarks

Today, in the 21st century, all other functioning European constitutional monarchies refrain from (religious) coronation ceremonies. The oldest still working European constitutional monarchy is the Belgian one, where the 1831 Constitution provides the foundation of the state and even the king is to abide by the constitution. Accordingly, Leopold I was elected by the National Congress and was introduced to the throne in 1831 by taking an oath in front of the National Congress. There was no crown, no coronation ceremony, though there were some festivities, there was no religious service. This practice has been maintained to this day, whenever there is a new monarch, he takes the oath in front of the joint Houses of Parliament and with that – in addition to his right to the throne as the rightful heir of the previous king – he takes upon himself the rights and obligations of the Belgian monarch. Since there is no religious ceremony, but rather an agreement between the monarch and the people, the Belgian monarch may abdicate, as did the last one, Albert II, in favour of his son, the current king, Philippe, on July 21, 2013 (The Belgian Monarchy, n.d.).

All other modern European monarchies followed the Belgian example in the 19th and 20th centuries and established a constitutional monarchy, where the monarch no longer has his or her God-given power but rather is also subject to the constitution. Because of that, the relevance of a coronation ceremony, with or without a crown and royal regalia, has diminished, as the constitutionally relevant elements are also regulated by the constitution and no longer rely on a tradition-based ceremony. Due to the same reason, an abdication is possible, as was the case with two of the seven Belgian kings thus far, or with Beatrix, the Queen of the Netherlands in 2013, so that her son, Willem-Alexander could take the throne (The Royal House of the Netherlands, n.d.).

The British monarch is anointed with sacred oil as part of a coronation ceremony, hence he or she cannot abdicate the throne. The king is, though, the primary public servant of his country and is subject to the constitution, but in the UK, he is also a monarch whose power derives from God and who retains the absolute royal prerogatives to this day. Not having the single-charter constitution, the British parliamentary monarchy functions on its long-standing principles and constitutional practice. A significant element of this system is the crowned head of state, who is in and of himself or herself an element of the constitution, while

the coronation ceremony, the ceremonial transfer of rights and obligations, and the religiously reinforced relevance of the proper use of power in the service of the subjects, is a necessary element of the royal reign. If any subsequent British monarch were to refuse to be crowned, that would either be the end of his or her reign, or of the complete current system of the UK. This is due to the actual relevance of the monarch and his or her induction into office. The coronation ceremony relies heavily on tradition. When planning a coronation, the drawing board the committee goes back to is the historic collection of coronations past. Tiny little details make this an extraordinary event, such as the Dean of Westminster wearing a cape that had been worn for the coronation of King Charles II in 1661, since this cape, if at all, can only be worn for coronations. It is imperative that the heir to the throne be crowned in a coronation ceremony to rightfully receive all rights and obligations that come with the office of head of state. It is logical to ask why such a lavish ceremony is necessary when the King's powers are God-given. The British monarchy is a parliamentary monarchy with the head of state also being the head of the church. He or she, accordingly, needs the approval of his people, to seal an agreement with his subjects, as well as to take his or her rightful place in the church's structure. It is undoubtedly a very costly affair, there were no official numbers published, but the estimated costs of Charles III's coronation lie between 50 and 100 million pounds (Elston, 2023). Yet it is an affair that unites a country, that demonstrates strength and gives the people the overall feeling that they are taken care of – something most people crave and something that in the more modern form of states, especially constitutional monarchies or representative republics, is becoming rarer. By crowning the king, the United Kingdom elevates the heir to the throne into a privileged position with a significant workload. The British coronation is, no question, a historic relic, but one that continues to thrive and survive, transporting tradition to the present day and possibly the future years to come.

We conclude as we started, that the United Kingdom maintains that its constitution is unwritten and its monarch is crowned and anointed. It is quite likely that there will not be any changes in either of these two phenomena in the foreseeable future, even if, with high probability, the next British coronation will happen in less than 70 years.

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STUDIA JURIDICA ET POLITICA JAURINENSIA
VOL. 12, NO. 1, 2025, 15–33.
DOI: 10.71100/STUDIA.2025.1.2

NATION BRANDING IN THE DECADE OF CRISES – ITALY[1]

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ABSTRACT

Italy, as most countries in the world, has been facing a long period of crises which has brought unprecedented challenges. Italian politicians and scientists interpret this period as the so-called "decade of crises" (2015–2024), starting with the migration crisis of 2015, followed by the COVID-19 pandemic and the escalation of the Ukrainian-Russian conflict. These challenges have been generating health, financial and social crises and have profoundly affected our lives and our habits. The new challenges also influenced political leadership, and national governments and international organisations had to react to situations without precedent.

The new situation caused by the different crises forced nations to rethink the strategies, priorities and instruments they use for nation branding and public diplomacy. In this new and increasingly competitive and interconnected world, nation branding has become a crucial way to promote a country in a period when nation states have more need than ever to be assessed positively.

The research analyses how Italy has adjusted its policies, strategies and institutional system responsible for nation branding accordingly in this new and sometimes very conflictual and controversial context. The research examines primary sources, the relevant legislation, strategies, programmes and the institutional structure responsible for their implementation, and uses interviews with senior officials to assess the efficiency of the government's response to crises, the results of the introduced integrated approach and "shared" governance. The analysis of the efficiency will be completed by analysing the evolution of Italy's position in international rankings, assessing whether the measures introduced during the crisis period have had a measurable positive impact.

KEYWORDS Crisis, Italy, nation branding, public diplomacy, soft power

[1] Supported by the EKÖP-24-4-II-148 University Research Scholarship Program of the Ministry for Culture and Innovation from the Source of The National Research, Development and Innovation Fund.

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1. Introduction

Globalisation requires countries to create and maintain a convincing and compelling image, called a brand, to improve their competitiveness, increase direct and indirect tourism revenues, enhance international investment inflows, develop exports, and strengthen the country's credibility and international position in bilateral and multilateral relations.

In recent decades, an increasing number of communities, cities, provinces, regions and nations have developed marketing and branding techniques to attract investors, visitors, workers, events and so on (Gertner, 2011). Today, the concept of branding is not only associated with products and services but is also used for territories to increase the ability to identify, distinguish and enhance the territory itself (Fetscherin, 2010). Over the years, the concept of "nation branding" has therefore become established.

Gaining and maintaining a good reputation has become a cost of entry. Over the past decades, nation branding has become a practical tool for positioning nations in global competition (Nye, 2004), as all responsible governments need to monitor how the world perceives them and develop strategies to address it.

In the last ten years, most of the countries in the world have been facing a long period of crises which has brought unprecedented challenges. Politicians and scientists interpret this period as the so-called "decade of crises" (2015–2024). During this decade, both the frequency and depth/intensity of crises have increased, hence establishing the concept of multiple crises, which form the context of a permanent crisis (permacrisis) (Papadakis et al., 2025; Schwab & Malleret, 2021).

In the case of Italy, the challenges also started well before, with the economic crisis of 2008/2009, and were followed by the dramatic crisis of 2011, then the migration crisis of 2015, the COVID-19 pandemic, and the escalation of the Ukrainian-Russian conflict. These challenges have been generating financial, health and social crises and have profoundly affected our lives and habits. The new challenges also influenced political leadership, and national governments and international organisations.

The new situation caused by the different crises forced nations to rethink the strategies, priorities and instruments they use for nation branding and public diplomacy. In this new and increasingly competitive world, nation branding has become a crucial way to promote a country at a period when nation states have more need than ever to be assessed positively. As a matter of fact, the basis of a good country brand and a good country image is nothing more than the good country itself – similar to a classic brand, where the starting point is a good

product. In an increasingly competitive world, nation branding has become an effective tool for public diplomacy, particularly during periods of crisis.

The research analyses how Italy has adjusted its policies, strategies and institutional system responsible for nation branding accordingly in this new and sometimes very conflictual and controversial context. The research examines primary sources, the relevant legislation, strategies, programmes and the institutional structure responsible for their implementation, and uses interviews with senior officials to assess the efficiency of the government's response to crises, the results of the introduced integrated approach and "shared" governance. The analysis of the efficiency will be completed by analysing the evolution of Italy's position in international rankings, assessing whether the measures introduced during the crisis period have had a measurable positive impact.

2. A soft power tool to shape global perception: nation branding

The theoretical framework of the study is based on the dichotomy of hard power and soft power. Joseph Nye defines hard power as the ability of a nation to influence others through coercion, usually by military force or economic means. Hard power is based on tangible resources such as armed forces, economic power, and the ability to impose punishments or incentives to influence the behaviour of other countries, the traditional way of executing power. In contrast, soft power aims at influencing, attracting and persuading others through the culture, political values and foreign policy of a nation (Nye, 1990, 2004).

Soft power has three pillars: the nation's culture, political values and public policies, and its foreign policy. Most of the effects of culture are not under the control of government, but there is one element, one means by which government can influence some of its effects, and that is public diplomacy.

The above-mentioned three core sources are intertwined and have to be applied together to be effective. Culture can support a nation's political values, while good foreign policy can improve cultural appeal. Nye argues that, although hard power is essential for national security and global peace, it must be balanced with soft power to achieve long-term, effective influence in international politics. He proposes a blend of hard and soft power, called "smart power". This strategy recognises the importance of military and economic strength, while also leveraging diplomatic, cultural and ideological influence to achieve a more comprehensive and long-lasting impact (Nye, 2005).

Public diplomacy appeared in the early 1960s as a complex and multifaceted field. Traditionally understood as a means of representing national interests, it

was primarily concerned with the communication of government policies, rather than their implementation or conceptualisation. However, in the late 1960s, the goal of American public diplomacy changed to promoting the country's foreign policy objectives and achieving those objectives by influencing public opinion in other nations (Nye, 2008).

The success factor of public diplomacy is determined by whether its relationship with policymaking is unidirectional or bidirectional, and by its long-term national strategy. If there is a two-way mechanism that allows the public diplomacy function to feedback recommendations to policymaking, and if these recommendations are taken seriously and appropriately by government as critical "market feedback", then it has the potential to improve the country's reputation. The main components of public diplomacy nowadays include cultural exchanges, international broadcasting, and engagement through social media, by which governments communicate and engage with foreign publics (Melissen, 2005).

The next concept that is essential to fully understand nation branding is national identity. According to Keith Dinnie, one of the leading researchers on the subject, history plays a central role in shaping national identity, as a nation's identity is rooted in its historical experience, its culture and national symbols. The latter create a sense of unity and pride within the community, becoming the core of a credible nation brand that captures the nation's image and identity, enabling it to be recognised by both domestic and global audiences. Political systems and social institutions form another foundation of national identity. These structures represent a nation's government, order and values, and can influence its global reputation and diplomatic relations (Dinnie, 2008).

The concept of nation branding is very recent and has been gaining ground only over the last 30 years. In 1993, Kotler, Haider and Rein published the first work on national marketing, a volume entitled "Marketing Places: Attracting Investment, Industry and Tourism to Cities, States and Nations." Then in 1996, Simon Anholt specifically analysed how international brands were often defined by people with little direct influence on communication or without adequate knowledge of the culture and language in which the brand was present or had to circulate. According to Anholt, the development of internationalisation had to be done intelligently, through the correct use of marketing tools and the creation of empathy, which is essential to make brands strong and durable (Anholt, 1996).

In 2002, a special issue dedicated to the topic of nation branding entitled "Nation Branding: A Continuing Theme" was published. The relevance of Anholt's topics led to the publication in 2004 of the first issue of the Journal of Place Branding and Public Diplomacy.

In 2006, Anholt argued that nation branding has six drivers and established the Hexagon model: tourism, exports, governance, investment and immigration, cultural heritage, and human capital (Anholt, 2006). Anholt emphasised that nation branding is thus not limited to the activities that institutions, national or local, put in place to build, protect, develop, enhance, promote and affirm the identity of the entity they govern and administer. It is, or should be, the result of the interaction between the institutions themselves and the various components of a country or local system: companies, public and private organisations, and individual members of the community (Anholt, 2007).

In the wake of this path, in 2010 Ying Fan, one of the world's leading experts on the subject of nation branding, stated that nation branding is *"a process by which a nation's images can be created or altered, monitored, evaluated and proactively managed in order to enhance the country's reputation among a target international audience"* (Fan, 2010, pp. 98–99). For Fan, it was of paramount importance to emphasise that it was not a matter of creating a brand for a country, but rather of managing the same image through a process that aims at strengthening a country's reputation among a specific target audience (especially investors, tourists, students and professionals). For Fan, nation branding and the development of soft power, since both can influence the level of reputation of an actor (city, region or state whatever it may be), had to be developed jointly and synergistically. In this respect, nation branding partly overlaps with, or rather contributes to, the contents of public diplomacy, understood as the communication of a government and state (or local) institutions addressed to an international public with the aim of capturing their favour and attracting their consent towards certain policies or influencing their opinions (Fan, 2006).

When developing a nation branding strategy, it should be borne in mind that national identity plays a key role in nation branding, as at the heart of every nation brand is not only the country's companies and brands, but also its culture (music, language, literature, etc.). Therefore, a truly authentic nation branding strategy must encompass a wide range of elements that make up the culture of a nation (Dinnie, 2008).

In the Hungarian academic literature, Árpád Pap-Váry was the first to deal with the issue of nation branding. He argued that nation branding can be defined as a means to measure, build and manage the reputation of countries, including the application of corporate marketing concepts and techniques to countries, in the interests of enhancing their reputation in international relations (Papp-Váry, 2009).[3]

[3] Five activities are included: promoting tourism, attracting investment and developing exports, improving the sale of the country's products in foreign markets, raising the country's profile in international organisations and foreign policy, and improving the well-being and comfort of citizens, increasing national pride, creating unity and encouraging patriotism.

Specifically, the acceptance and success of a country or a nation brand basically depends on the value or values we associate with it, and the thoughts and emotions that emerge in us when we hear the name of the country. The strength of a country or a nation depends on what people have seen, read, heard, learned, thought and felt about it over time (Pap-Váry, 2021).

In conclusion of this quick excursus on nation branding, we argue that it is an activity that aims at linking and managing the image of a country and the resulting economic and political spin-offs in an international context. It is a process of strategic self-representation, which leads a country, through the creation and management of its image at international level, to increase its reputation, relevance and status. The main objective is to contain, and possibly diminish, the gap between what a country's authorities wish to convey and the objective or perceived reality that characterises it.

All this takes place within a path of initiatives and activities that follow a strategic vision and a coherent and specific implementation plan. The image resulting from a nation branding activity is therefore the fruit of a series of elements that are created or elaborated with the aim of highlighting strengths and minimising weaknesses, in the more classic scheme of SWOT analysis.

3. Nation branding in Italy

Italy, despite its economic-commercial weight at international level[4] and its historical-cultural weight it has always prided itself on, was often far from the leading positions compared to other industrialised countries or even compared to various emerging countries in international rankings.[5] At the same time, the excessive dependence on the classic "3 Fs", namely Food, Fashion and Furniture, has led to the prevalence, both domestically and internationally, of an image of a country that is uncompetitive and incapable of innovation.

To deal with this situation, over the past few years, the governments have become aware that the negative narrative of Italy had to be combatted, using precisely those excellences that had remained in the background and were never adequately brought to the fore.

This led not only to the establishment, at the turn of the Berlusconi[6] and Monti governments, of the Italian Trade Agency, under the Ministry of Economic

[4] Italy is the tenth largest economy in the world, the fourth largest in Europe, and one of the main export countries worldwide, as more than 30% of GDP comes from exports (Statista, n.d.).

[5] Italy obtained only the 42nd position among 67 countries at the IMD World Competitiveness Index 2024, surpassed by quite a few European and EU-member states and not only Western countries, but also northern and eastern countries such as Poland, the Czech Republic, Lithuania, and Estonia (IMD, 2024).

[6] When the second Berlusconi government was formed in 2001, Berlusconi took the initiative to transfer the foreign trade portfolio to the Ministry of Foreign Affairs, but this was not supported by the coalition partners. Source: interview with Andrea Canapa, advisor, Task

Development (hereinafter: MISE) and the Ministry of Foreign Affairs and International Cooperation (hereinafter: MAECI), but also to the definition of an image of Italy capable of asserting itself in the global arena,[7] followed by the introduction of the concept of "shared" governance and the establishment of the Steering Committee for Internationalisation (*Cabina di Regia per l'Internazionalizzazione*, hereinafter: CdR) in 2011.[8]

In 2014, the Renzi government adopted the three-year Extraordinary Plan for Made in Italy 2015–2017[9] to promote Made in Italy and encourage investments. Building on the success of the first three-year Extraordinary Plan, the governments have continued to launch further three-year Extraordinary Plans, as it became a strategic instrument that has been working well, with real results.

The revalorisation of Italy's brand has become a government priority through the 2015–2017 Extraordinary Plan, marking the beginning of a new era of nation branding in Italy. Numerous surveys confirm that the Made in Italy brand is recognised and identified as a guarantee of excellence around the world.[10] According to Google, if Made in Italy were a real brand, it would be the third most recognised brand in the world, after Coca-Cola and Visa (Noci, 2014). Thus, further promotion of the Made in Italy brand is an excellent tool for increasing export indicators and for the dynamic development and expansion of economic growth.[11]

3.1. Nation branding in Italy before the reform of 2019 and the concept of country system

The integrated promotion of the country system operates in a "shared" governance system, which allows the country to develop more efficiently. Decisions are based on consensus among the actors involved, and responsibility for the actions implemented is shared. This system, which is different from both the top-down and bottom-up models, is a response to the problems and challenges arising from the complexity of the times of insecurity, inequalities

Force for Communication and Coordination of Lead Generation Campaign, Directorate General for the Promotion of the Country System, MAECI.

[7] Law No. 214 of 22 December 2011.

[8] Decree-Law No. 98 of 6 July 2011.

[9] For example, the "brand Italy" is ranked 9th in 2024 in terms of economic value and strength of the brand-country in terms of economic-numerical profile according to the Brand Finance study (Brandirectory, n.d.).

[10] Law No. 164 of 11 November 2014. The introduction of the Extraordinary Plan was significant for two reasons: on the one hand, it represented a shift towards multiannual strategic planning, and on the other, it increased the budget remarkably: the annual budget for promotional programmes was previously less than 40 million euros, whereas the Extraordinary Plan set the annual budget at around 180 million euros (Lucentini, 2020).

[11] For more about the campaign see Tanács-Mandák (2018).

and ungovernability. The central institution of this shared governance is the CdR established in 2011 (Andreta, 2020).

Before 2019, the institutional system responsible for nation branding was based on three main pillars: the CdR, the MAECI and the MISE, and the agencies belonging to these two ministries, the Italian Trade Agency (hereinafter: ITA) and the National Agency for Investment Promotion and Enterprise Development (hereinafter: Invitalia).

The CdR, as a governing and coordinating body, was created to promote exports and the Made in Italy brand worldwide. It coordinates the activities of the government, businesses and regions to this end. The CdR has the task of adopting and implementing the strategic guidelines for the promotion of Italian products.

The CdR embodies the government, territorial institutions, public export support bodies and the business world to coordinate the country's internationalisation policies and strategies more efficiently. This involves standardising promotional initiatives, analytical tools, market penetration, and focusing financial resources on specific, shared goals.

The CdR issues the annual Guidelines, which are the basis of the Made in Italy promotional support programme, including the promotional activities of the ITA. It meets once a year to define the objectives, the primary and secondary markets, and the strategy for promotion and internationalisation abroad. From 2015 onwards, the annual plans agreed at the CdR meetings are part of the three-year extraordinary plans.

Alongside the two ministries, the institutions representing the sub-central levels of government (*Conferenza delle Regioni*) are also represented, while economic operators are represented by *Unioncamere*, *Confindustria*, *RETE Imprese Italia*, *Associazione Bancaria Italiana*, *Alleanza delle Cooperative Italiane*, and ENIT.

Within the MAECI, the Directorate General for the Promotion of the Country System (hereinafter: DGPCS), established in 2010, is responsible for promoting the Italian nation brand in a systemic and integrated approach, promoting the economic, cultural and scientific components, including initiatives by regional and other territorial autonomies (Imparato, 2020). The DGPCS is in constant contact with over 450 offices – Embassies, Consulates, ITA and ENIT units, Italian Cultural Institutes, and Offices of Scientific and Technological Attachés.[12]

Two agencies within MISE, ITA and Invitalia, play an important role in supporting foreign trade. ITA's mission is to develop and expand the country's international economic and trade relations, with particular attention to the needs and

[12] Source: Interview with Luca Di Persio, Central Director Marketing, Innovation and Business Services, ITA.

interests of SMEs, consortia and clusters of SMEs, and to internationalise Italian companies and promote Italian products and services on international markets in close connection with the other stakeholders in charge of the internationalisation of the Country System. The ITA operates through its headquarters in Rome, its office in Milan and a network of operating units abroad (Luongo, 2020; Mafodda, 2020).

Invitalia focuses on sectors of strategic importance for economic development and employment and also revitalises sectors in crisis and develops the Mezzogiorno, the southern part of Italy. It manages all national resources for the creation of new businesses and innovative start-ups.

The effectiveness of an integrated approach to promotion can be maximised if, in parallel with the strategy development, the monitoring of implementation, the target actors and target markets is continuous. In doing so, it is necessary not only to monitor export data, but also to monitor the various forms of feedback. Recognising this necessity, in 2017 the CdR set up an "International Indexes Working Group", which includes MAECI, MISE, MEF, Bank of Italy, *ICE-Agenzia* and *Istat*. The Group's objective is to identify the most relevant international rankings, to improve, through targeted actions and activities, Italy's positioning in the various international rankings.

3.2. Institutional changes after 2019

Law No. 132 of 2019 significantly overhauled the state institutional system responsible for nation branding and the governance of nation branding. Under the reform, all tasks related to trade internationalisation (including promotion tasks) were transferred from MISE to MAECI as of 1 January 2020, including the supervision of ITA. This reorganisation also resulted in the physical relocation of ITA offices to Embassies where the space and infrastructure allowed, thus creating a 'one-stop shop' system compared to the previous structure. The Embassies and Consulates became Italy's single and unified point of presence abroad.[13] At the same time, Invitalia remained under the control of MIMIT, and the division of competencies between the two agencies was reorganised as follows: the ITA is responsible for activities and campaigns to promote and attract foreign investment abroad, while the work of foreign companies investing in Italy is now supported and promoted by Invitalia within Italy.

Following a major institutional and governance reorganisation, the COVID-19 epidemic invaded Italy less than a month later and almost overwhelmed everything. The first CdR meeting under the new leadership therefore only took place in December 2020.

[13] Source: Interview with Luca Di Persio.

It is co-chaired by the Minister of MAECI and the Minister of MIMIT and includes several ministers and stakeholders.[14]

In terms of resources for internationalisation support actions, the CdR annually issues the Guidelines on which – *inter alia* – the Made in Italy promotional support programme is based, including the promotional activities of the ITA.

ITA operates according to the guidelines and strategic directions defined by the CdR. In recent years, ITA has seen its central role in the public system of support for internationalisation consolidated due to the considerable increase in promotional activities, thanks to ever-increasing public allocations to new types of programmes and intervention tools. ITA organises more than 900 promotional initiatives each year, mainly of a sectoral nature and aimed at specific markets, but ITA has also been responsible for the *beIT* comprehensive campaign and now the new *OpportunItalia* campaign, which began in May 2023 (Luongo, 2020).

In addition, ITA offers companies a wide range of information, assistance and consultancy services, both free of charge and for a fee.[15] Since April 2020, ITA's service offering for companies interested in foreign markets has been greatly simplified, and many basic market knowledge services have been made available free of charge.

The governance of internationalisation in the new structure has two pillars: the CdR and the Inter-ministerial Committee for Attracting Foreign Investment (hereinafter: CAIE). The CAIE comprises MIMIT, MAECI, the Minister of Economy and Finance, the Minister for Public Administration, the Conference of Regions and Autonomous Provinces, ITA and Invitalia. It is responsible for promoting national investment opportunities and assisting investors with setting up and obtaining funding for their investments. The CAIE therefore has two functions: to formulate proposals, including laws and regulations, to improve the country's attractiveness and investment climate; and to oversee specific foreign investment projects with a high impact, favouring dialogue with the central and local administrations involved in the relevant procedures (Ratzenberger, 2020). In 2021, the CdR resolved to strengthen governance in the area of foreign investment attraction through the establishment of a CAIE Technical Secretariat to follow and support the most relevant investments. In 2023, a mission unit

[14] Such as the Ministry of Tourism (which co-chairs it for matters falling within its competence), the Ministry of Economy and Finance, the Ministry of Agriculture, Food Sovereignty and Forestry, the Conference of Regions, Unioncamere, ABI, Confindustria, the Alliance of Italian Cooperatives, the Italian Confederation of Small and Medium-Sized Private Companies (*Confederazione Italiana della Piccola e Media Industria Privata* – CONFAPI), plus a representative from the craft/SME sectors identified – on an annual rotation basis – among the Presidents of *Casartigiani*, *Confederazione Nazionale dell'Artigianato* (CNA) and *Confartigianato Imprese*, as well as a representative from the trade sector identified – again on an annual rotation basis – among the Presidents of *Confcommercio* and *Confesercenti* (Ministry of Foreign Affairs and International Cooperation, n.d.).

[15] For more details, see Italian Trade Agency (n.d.).

"attraction and unblocking of investments" was established to facilitate, direct and streamline the procedures to attract investments in Italy.[16] Within the Technical Secretariat there is a One Stop Shop, which provides support for the management of investing companies, from the negotiation phase to execution.

Considering the extraordinary necessity and urgency to strengthen governmental action in the field of the valorisation, protection and promotion of Made in Italy, the Meloni government approved several further institutional reforms. First, the MISE was restructured, and under the new government configuration it is no longer MISE but the Ministry of Enterprise and Made in Italy (hereinafter: MIMIT). One of the main tasks of the new ministry is to build and develop awareness and recognition of the Made in Italy brand/trademark within the country. The new ministry is headed by Adolfo Urso, who was Deputy Minister for Foreign Trade in the Ministry of Production from 2000 and Deputy Minister for Economic Development in the fourth Berlusconi government.

A further important institutional reform was the establishment of the Inter-Ministerial Committee for Made in Italy in the World (CIMIM)[17] with the task of directing and coordinating the strategies for the promotion and internationalisation of Italian enterprises, to valorise Made in Italy globally. The CIMIM is composed of the Minister of MAECI and the Minister of MIMIT, who co-chair it, and the Ministers of Economy and Finance, Agriculture, Food Sovereignty and Forestry, and Tourism.[18]

The CIMIM is convened at least every four months. Among other tasks, it coordinates strategies and projects for the valorisation, protection and promotion of Made in Italy worldwide, examines suitable implementation methods to strengthen the presence of national enterprises in foreign markets, monitors the implementation of the measures, and adopts appropriate initiatives to overcome any obstacles and delays in achieving the objectives and priorities indicated also at the European level.

As for the most recent institutional reform intentions, it should be mentioned that in March 2025, the MAECI announced that from January 2026, the DGSP will become the largest Directorate General, under the new name of Directorate General for Growth. In 2024, Italian exports reached €623 billion (more than 40% of Italian GDP), with Minister Tajani's declared objective of reaching €700 billion by the end of the cycle in 2027.

[16] Decree-Law No. 44 of 22 April 2023, Art. 14.

[17] Decree-Law No. 173 of 11 November 2022, Art. 9.

[18] Other ministers with competence in the matters on the agenda may attend meetings of the Committee, and when matters concerning the Regions and the Autonomous Provinces of Trento and Bolzano are discussed, the President of the Conference of the Regions and Autonomous Provinces, or a President of a Region or Autonomous Province delegated by him, may also participate.

3.3. Comprehensive programmes and thematic initiatives after 2019

In addition to institutional changes, it is important to examine the programmes that Italian governments have implemented in response to the difficulties and challenges posed by the various crises. These can be grouped into two main categories: comprehensive programmes and thematic initiatives.

An important measure under COVID-19 was the Pact for Export, which supported the pandemic-stricken economy with three important actions: exceptional support for companies for promotional activities aimed at internationalisation; preferential financing for research and development; and the launch of Italy's first comprehensive nation-branding campaign ("Italy is simply extraordinary: beIT", hereinafter: the beIT campaign). For the latter measure, a total amount of €50 million was earmarked (Italian Ministry of Foreign Affairs and International Cooperation, 2020).

The beIT campaign was launched in 2021 in order to further support Italian exports and the internationalisation processes of the national economic system. The MAECI designated ITA as the institutional body responsible for the campaign, as it had already carried out several successful product and sectoral promotional campaigns.[19]

Made in Italy was one of the best-known and best-selling brands in the world and had practically sold itself before; therefore, there had been no justification for launching such a comprehensive campaign. However, the negative economic consequences of COVID-19 made it necessary. The aim was to take advantage of a period when everything was at a standstill, and everyone was at home (Pigoli & Mancini, 2023).

The campaign started based on an online bottom-up consultation involving businesses, associations and MAECI. It aimed to relaunch Italy's image with a real nation-branding initiative, support Italian exports by revitalising the economic sectors hardest hit by the COVID-19 emergency, and develop the tourism sector. A further purpose of the campaign was to expand and diversify the foreign reference markets for Italian SMEs and encourage the attraction of foreign investment in Italy.

The campaign was originally intended to target 26 countries, but due to Russia's war in Ukraine, it ultimately focused on 25 target countries. The business-to-consumer campaign, launched in November 2021, consisted of three phases.

In the first phase, beginning in November 2021, the aim was to explain what Italy is about – what the identifying values of the country are – namely that Italy is

[19] The public procurement procedure was won by the group led by the company Pomilio Blumm, which conducted the entire campaign.

simply extraordinary, and what this uniqueness and excellence are based on. This was done by defining the six core values associated with Italy. In this phase, all digital content focused on these six values (passion, creativity, heritage, style, innovation and diversity), presenting them and deepening their meaning in order to build and consolidate a strong and positive image.

In the second phase, starting in March 2022, the focus shifted to production, presenting nine sectors of strategic importance for Made in Italy.[20] For all macro-sectors, presentation videos with infographics were published, along with video interviews with Italian ambassadors in the target countries and interviews with ambassadors of Made in Italy, such as Renzo Rosso, Giorgio Armani, Andrea Illy, Nerio Alessandri and Marcell Jacobs.

In addition to traditional channels (TV, print, radio), which were used only in the European target countries, the campaign was active on a total of 20 social media channels, including Facebook, Twitter, Instagram, YouTube, TikTok, LinkedIn, Spotify, Snapchat, WeChat and Douyin. There were also some in-person events, but these were secondary tools in the campaign due to the circumstances. A central communication hub for the campaign was also created.

The beIT campaign achieved significant results, with 13 billion total views of content (impressions), 336 million interactions and reactions, over 170 million visits to the web pages with a high average dwell time (2 minutes), and 679 million followers across Facebook, Instagram and Meta platforms.[21]

Following the end of the beIT campaign, almost two years passed before a decision was taken to launch another comprehensive campaign. For 2025–2026, the Meloni government approved the new campaign, Lead Generation – Opportunitalia (Italian Trade Agency, n.d.), which aims at generating more than 150,000 qualified leads and creating a wealth of strategic business contacts, including manufacturers, distributors, buyers, entrepreneurs, executives, consultants, opinion leaders, influencers and investors in 20 target markets,[22] through online, offline and physical events. The communication approach will be differentiated for each target country, calibrated according to strategic sectors, the local economic and cultural context, and the most effective communication methods for each market.

[20] Machinery, automation and components; fashion, luxury and lifestyle; healthcare and wellness; food and beverage; design; automotive and nautical industry; advanced technologies for aerospace and security; sustainable infrastructures and energy; culture and entertainment.

[21] Source: Interview with Andrea Canapa.

[22] Covering 20 target markets for the 10 main sectors of Italian exports: the United States, the United Kingdom, Canada, France, Germany, Switzerland, Spain, Japan, China, Hong Kong, Australia, Brazil, South Korea, Saudi Arabia, Mexico, Vietnam, Turkey, Poland, Singapore and the United Arab Emirates, as well as India.

There will be local and vertical campaigns with a focus on two strategic sectors: one already consolidated in terms of export performance and one with significant growth potential (Ministry of Foreign Affairs and International Cooperation, 2025).

The aim is to consolidate Italy's presence in mature markets through measures intended to safeguard the market shares of Italian companies, while strengthening action in high-potential emerging markets. In addition to comprehensive multi-annual campaigns, it is also important to mention thematic annual initiatives, which are growing in number every year, such as the Italian Cuisine Week (2016–), the Italian Design Day (2017–), the Italian Research Day (2018–), the Italian Sport Day (2021–), the National Space Day (2021–), and the Day of Italian Sport in the World (2024–).

In 2024, Minister Urso introduced his first decree designating 14 April (Leonardo Da Vinci's birthday) as the official Made in Italy Day in Italy. The aim is to boost national pride and contribute to so-called internal nation branding.[23] Currently, the craft industry is lacking around 440,000 workers. MAECI has taken up this initiative and announced Made in Italy Day/Week abroad, involving Embassies, Consulates and Italian Cultural Institutes.

4. Italy in international rankings

Several international rankings have been established in recent years to measure the effectiveness and success of nation branding. The methodologies of these rankings vary considerably, but two broad groups can be distinguished. The first group uses subjective data, essentially based on interviews, while the second group uses objective, statistical data.

[23] The main motivation was the fact that the craft industry is lacking about 440,000 workers.

Table 1: Author's own elaboration based on the different indexes[24]

Ranking	2020	2021	2022	2023	2024	2025
Brand Finance Global Soft Power Index (193)	11	19	10	9	9	9
Anholt Nation Brand Index (50)	6	4	4	5	-	-
Bloom Consulting Country Ranking Trade (200)	17		14		12	
Bloom Consulting Country Ranking Tourism (200)	7		2		1	
Global Attractiveness Index (146)	20	20	19	18	17	-
Anholt Good Country Index (174)	15	19	24	24	30	-

The scope of this study does not allow for a detailed discussion of the strengths and weaknesses of each ranking. Therefore, the research briefly presents a table showing the evolution of Italy's position in the most widely used and respected indexes. These rankings include both those based on subjective assessments and those based on objective data. Overall, it can be observed that Italy has improved or maintained its position over the last 5–6 years. Only one index shows a significant decline, namely the Anholt Good Country Index.

Among the international rankings, one index is analysed in more detail in this research, for two reasons. The Global Attractiveness Index (GAI) is based on objective data series, and its scientific audit is carried out by the Joint Research Centre of the European Commission. Moreover, the GAI is the main input for the Italian government's strategic decisions on national branding.[25]

Since 2016, the GAI Index has examined 146 economies representing 95% of the global population and 99% of global GDP. The index analyses four macro-areas of attractiveness (openness, innovation, endowments and efficiency) through five sub-indexes (positioning, dynamism, sustainability, growth expectations and exposure to conflict). The positioning index measures attractiveness relative to other economies, the dynamism index describes future medium-term trends, the sustainability index evaluates the robustness of a country's ranking, and the growth expectations index predicts the evolution of future attractiveness. The conflict exposure index measures the level of economic dependence of countries on areas directly affected by the current conflict in Eastern Europe (Ambrosetti, n.d.).

[24] Sources: Brandirectory (n.d.), Anholt & Co (n.d.), Bloom Consulting (n.d.), The European House – Ambrosetti (n.d.), Good Country (n.d.)

[25] Source: Interview with Andrea Pompermaier, Head of Department, Department of Foreign Investments, Directorate General for the Promotion of the Country System, MAECI.

The most important difference between the GAI and other rankings is that the GAI is continuously updated based on statistical revisions of national datasets by countries or specialised institutions. Its rankings therefore reflect a dynamic past, not a static one.

The 2024 GAI Report confirms an improving trend in Italy's overall index, placing the country 17th in the international ranking. Compared to 2020, Italy has moved up three positions. Furthermore, the gap between Italy and the highest-ranking countries within the top 15 remains small, indicating the potential for further progress in the short term. This trend is consistent with Italy's recent performance in the international macroeconomic context and appears resilient despite the current period of cyclical slowdown in industrialised economies and ongoing geopolitical shocks and tensions.

At the same time, the 2024 GAI Report calls on Italy to increase its attractiveness in order to overcome clear limitations in its ability to generate adequate economic growth capable of addressing its many economic (e.g. sustainability of public finances) and social (poverty, inequality, low investment in human capital, etc.) challenges – particularly against a backdrop of demographic decline, an ageing population and stagnant productivity in some sectors, especially in services (Ambrosetti, n.d.).

5. Conclusion

Gaining and maintaining a good reputation has emerged as a cost of entry in global competition. Over the past decades, nation branding has become a practical tool for positioning countries internationally (Nye, 2004), but in the last decade – when both the frequency and depth of crises have increased – nation branding has matured into one of the primary instruments of soft power.

Italian products are widely recognised and popular, as consumers associate Italian goods and services with quality, beauty and creativity. This strong soft power and inherently positive country image provide an excellent basis for the implementation of Italy's foreign trade strategy. Given that Italy is a highly export-oriented country, there is considerable potential to further strengthen foreign trade. At the same time, the crises of the past decade have caused significant economic and social damage. Acknowledging both the country's strengths and its vulnerabilities, successive governments over the last ten years have attempted – albeit with varying levels of commitment – to develop nation branding in an organised and systematic manner within medium-term strategic frameworks.

They have introduced a new form of governance, the model of shared governance, and built an efficient institutional structure. When these

institutional reforms were accompanied by adequate financial resources, measurable positive results were achieved, not only in various international rankings but also in foreign trade performance indicators. A clear determination can be observed to ensure continuous cooperation between institutions, trade associations and businesses, so that internationalisation policies reflect the real needs of the economic system, supported by permanent monitoring and institutional feedback mechanisms.

It can therefore be assumed that the institutional and strategic governmental responses implemented from 2014/2015 onwards have been appropriate and effective in addressing the challenges posed by multiple crises. The shared governance system, involving different levels of government, has demonstrated the ability to respond to rapidly changing circumstances. Comprehensive promotional campaigns and thematic initiatives have proven successful in strengthening and maintaining a positive nation brand image and increasing exports.

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STUDIA JURIDICA ET POLITICA JAURINENSIA
VOL. 12, NO. 1, 2025, 35–51.
DOI: 10.71100/STUDIA.2025.1.3

IMPACT OF THE SUSTAINABLE DEVELOPMENT PARADIGM ON THE SELF-RELIANCE OF LOCAL GOVERNMENT IN POLAND

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ABSTRACT

The article aims to determine the impact of sustainable development on the self-reliance of local self-government in Poland. A thorough analysis of the historiographic evolution and philosophical foundations of sustainability, together with a review of its legal sources, indicates that sustainable development – implemented through the concept of governance – conflicts with the foundational values of Latin civilization and exerts a negative influence on local self-government in Poland. The article argues that the development of the decentralisation of public authority, which is highly desirable from the perspective of democratisation, is being inhibited, and that the financial autonomy of local government is not being expanded.

KEYWORDS Sustainable development, philosophy, critical theory, democratization, autonomy, decentralization

1. Introduction

Critical views of the idea of sustainable development are formulated and published much less frequently than articles extolling its virtues, but this does not mean that the concept under discussion is flawless or that its deficiencies are not worth addressing. On the contrary, a critical assessment – unbiased by the demand for being positive about the sustainable development paradigm – is rather appropriate (Kosiek, 2015). Moreover, there is a definitive trend of scholarship portraying sustainable development as intellectually void and as being neither sustainable nor capable of delivering development (Luke, 2005). A deeper analysis of the literature on sustainable development reveals a multiplicity of potential interpretations, ranging from a lofty idea to an elitist ideology, or even a kind of myth impossible to implement (Kosiek, 2016). I argue that these should be supplemented with yet another interpretation, according

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to which sustainable development may be understood as a concept with a hidden agenda.

Sustainable development is often used as a byword for humankind's continuous evolution on planet Earth. However, it is generally accepted that sustainability comprises not only environmental components but also economic and societal ones (Krause et al., 2016). Believed to elaborate on ideas such as equity (Cheng & Ali, 2023), sustainability is deemed to be intrinsically associated with ethics. Nevertheless, sustainable development, whether understood as a principle or more broadly as an idea, raises several questions about its legal nature (Kielin-Maziarz, 2020) and has global as well as national, regional and local significance (Dubis, 2019). Thus, sustainable development occupies an important position both within national and supranational law, including EU law. In Poland, sustainable development is governed by EU legislation – namely treaties, secondary law, and soft law – and by its implementation into national law (Zientkarski, 2019).

2. The idea of sustainability: a brief historiography of conceptual development

The concept of sustainable development is widely used across numerous academic fields – particularly in the social sciences – as well as in the legal regulations that govern public authorities, administration, and various aspects of public life. It is also common in journalism. The term has gained almost universal status, even though there is still no clear, universally accepted doctrinal or legal definition of it. The concept itself, first coined in 1713 by the Saxonian alderman Hans Carl von Carlowitz (Ura, 2019), originated in forestry, where the term "sustainable" described forest management in which the number of trees logged equalled the number capable of regenerating (Dubis, 2019). Today, however, sustainability refers not only to principles and objectives relating to environmental protection and socio-economic development, but also to any public policy. One might argue that sustainability, as an "ideology", attempts to regulate all areas of human life, being yet another manifestation of globalism and an instrument for remodelling the world order (Stelmach, 2023a; Blutstein, 2016).

It still has a strong environmental overtone, but it is also associated with seemingly positive concepts such as decarbonization, digitalization, the Fourth Industrial Revolution, or the new social contract. In fact, it is presented as an instrument of an "ecological civilization", firmly detached from tradition and faith, placing nature as the reference point even for moral norms (Poskrobko, 2013; Nota, 2023).

By the 21st century, the idea of sustainable development has been elevated to the position of a truism that requires no verification whatsoever (Poskrobko, 2013). It is no longer a specific scientific concept, but has rather become "a kind of reflection through which a wide range of research problems relating primarily to the environment, as well as economics, sociology and law, are perceived, analysed and solutions sought" (Drywa, 2024). As such, Pena (2010) noted that the paradigm of sustainability is believed to contribute to the development of 21st-century socialism, at least in the environmental, political, economic and cultural domains. This explains why sustainable development, especially in the form of sustainable finance, is increasingly proposed as a solution to the global financial crisis, the migration crisis, the pandemic, and the war in Ukraine (Jurkowska-Zeidler & Janovec, 2024), as well as being a remedy for environmental disasters.

From a philosophical perspective, many factors have shaped the formation of this ideology. However, Malthusianism and Darwinism, as well as eugenic thought, left a significant mark. The developments of the Progressive Era in the United States – state interventionism and the rise of philanthropy together with the associated ethic of corporate social responsibility – were equally important. The Chicago School and especially the Frankfurt School also played a major role (Jacob, 2016). Similarly, papal documents describing the modernist movement, born in the 19th century, which sought to modernize the world at any cost, including religion, should also be taken into account (Stelmach, 2023a).

After this brief introduction and problem statement, this article aims to determine the impact of sustainable development on the self-reliance of local self-government in Poland. The research question addresses whether the implementation of sustainable development increases or decreases the autonomy of local self-government units in Poland. Based on the conducted analysis, I conclude that the paradigm of sustainable development, implemented through the concept of governance, conflicts with the foundations of Latin (Western) civilization, and thus has a negative impact on local self-government in Poland.

3. Foreign models of sustainable development

Since the democratic transition of 1989, local self-governments have been considered essential institutions for the effective democratization of the Polish state (Radomski, 2016). However, their role has been significantly depreciated through the implementation of other instruments aimed at introducing sustainable development. They have become executors of administrative decisions rather than decision-makers themselves. The reason for this shift is primarily the phenomenon known as network governance (or simply

governance), which is a powerful tool for implementing sustainable development. Although network governance is principally a term associated with public management science, it is essentially identical to the notion of participatory democracy in political science. Both concepts imply that important decisions are made by entities other than democratically elected self-governing bodies, whether executive or legislative.

Adopting the concept of governance therefore implies the assumption that making effective public policies requires that "many actors outside of the central government, both private and public, work together" in a system of multi-level governance (Piattoni, 2014). In other words, the term 'governance' denotes the interaction of three centres of power – government, the business sector and NGOs – as equal partners (Guz, 2009). Thus, the traditional democratic model of decision-making is being replaced by a governance model in which decisions are made, inter alia, by international organizations (United Nations, European Union, World Health Organization, World Bank), non-governmental organizations (NGOs), or – as in the case of participatory budgeting or citizens' panels (Zawadzka-Pąk, 2019) – by informal groups of citizens. In the context of sustainable development, the United Nations plays a particularly crucial role.

As a result, the model of local governance takes the place of traditional local government and its established institutional frameworks and processes. The system becomes increasingly fragmented, involving a growing number of ad hoc bodies created for specific purposes, a greater reliance on appointed rather than elected authorities, and stronger central or state oversight of local government functions and finances (Andrew & Goldsmith, 1998).

Within the governance framework, cooperation between the United Nations and non-governmental organizations has expanded significantly, to the point where it has become standard practice under what is known as the partnership principle. This approach assumes equality between governmental and non-governmental participants. Its underlying logic is to continually transfer more political influence on these partners, potentially at the expense of formally elected authorities. This raises the question of whether the partnership principle may contribute to dismantling the democratic system, as representative democracy becomes increasingly replaced by co-governance arrangements, participatory mechanisms, multi-stakeholder agreements, and transnational governance networks. Such developments carry the risk of shifting legitimate moral authority away from elected bodies and into the hands of unelected groups focused on narrow interests, which may lack democratic legitimacy and sometimes promote radical agendas (Peeters, 2009).

It is worth noting that this is not the first time in modern history that specific measures have been imposed on Poland from above. For example, when Poland

was going through an economic transition after 1989, Deputy Prime Minister and Minister of Finance Leszek Balcerowicz was not independent or free from external influence either. The economic system was based on the so-called Washington Consensus, i.e. the guidelines of the U.S. government and the International Monetary Fund for countries undergoing economic transformation. This top-down model was criticized by Nobel laureate Joseph Stiglitz, who explicitly referred to the "shock doctrine" applied in Poland and pointed out that such radical reforms not only failed to achieve optimal economic growth but also drove many people into poverty and structural unemployment without benefiting the economy. A negative assessment of this approach is also presented in the government document *Strategy for Responsible Development to 2020 with an Outlook to 2030* (Radę Ministrów, 2017), signed by the then Minister for Development and Finance, later Prime Minister, Mateusz Morawiecki. The introduction states that deregulation, privatization, trade liberalization and free movement of capital – although widely upheld – did not consider the weaknesses of Polish institutions, the unreformed judicial system, low levels of savings and unbalanced ownership structure in key sectors. As a result, "a kind of Darwinism prevailed" and entire communities were marginalized while reforms were mistakenly accepted as necessary and inevitable (Radę Ministrów, 2017).

The concept of sustainable development was, however, foreign to the Polish framework, and the Strategy for Responsible Development had to incorporate it primarily to comply with EU law.

4. Critical theory as philosophical ground for sustainable development

One of the ways to truly appreciate the objectives of a particular legal institution is to understand its philosophical foundations. As indicated above, the philosophical basis for sustainable development has left-side provenance, in particular the critical theory developed by the so-called Frankfurt School (Bookchin, 1980; Jacob, 2016), which is grounded in such general ideas as universal happiness, liberation of humankind, human self-determination, and the abolition of profit and exploitative economy (Kołakowski, 2009). Critical theory is not a theoretical philosophical approach; rather, it is a form of "practical philosophy". Essentially, it is a theory of permanent negation of existing culture and fundamental values, according to which construction is not progressive, but instead a form of critical deconstruction (Rozwadowski, 2018; Zawadzka-Pąk, 2021). Critical theory is thus a manifestation of revised classical Marxism, which pursues the same goal of gaining power and building a communist system, but with new methods (Rozwadowski, 2018).

Jürgen Habermas, a German Marxist thinker and a leading figure of the second generation of the Frankfurt School (Karoń, 2019), explains that critical theory emerged within Horkheimer's intellectual circle in an effort to reconsider the reasons behind the political disappointment that followed the failure of revolution in the West, the rise of Stalinism in the Soviet Union, and the triumph of fascism in Germany. Its purpose was to reassess mistaken Marxist predictions while still preserving the original Marxist intentions (Habermas, 2000).

According to L. Kołakowski, a philosopher and scholar of Marxism, critical theory represents an inconsistent effort to preserve Marxism while distancing it from its traditional association with the proletariat and rejecting class- or party-based standards of truth. At the same time, it does not attempt to resolve the difficulties created by removing these foundations. Kołakowski views it as a partial form of Marxism in which the missing half is not replaced by anything new. He argues that the Frankfurt School derived its strength from pure negation, while its ambiguity stemmed from an unwillingness to openly acknowledge this, and at times even implying the opposite. In his interpretation, the Frankfurt School was less a continuation of Marxist thought and more a sign of its decline and stagnation (Kołakowski, 2009).

Critical theory therefore came to serve as a philosophical foundation for the revolutionary movements of 1968 (Rozwadowski, 2018). According to Karoń (2019), the institutional transformation inspired by the New Left's interpretation of critical theory has been underway since the 1970s, influencing the mindset of successive generations while distancing them from the awareness that critical theory is rooted in Marxism and was originally formulated as an ideology aimed at human emancipation. This long march has affected all institutions – state, political, administrative, educational and legal, both national and international (Guz, 2009) – including universities, art, cinema, theatre and schools.

Since critical theory is a direct, although skilfully camouflaged, German branch of Marxism (Karoń, 2019), it is no wonder that its goal is the systematic, planned, and methodical destruction of Latin civilization, which has been shaped by Greek philosophy, Roman law, and Christian ethics (Zawadzka-Pąk, 2021). However, in recent years these traditional values have been increasingly challenged in the countries of Western Europe, whereas the majority of Central and Eastern European countries, Poland being included, continue to endorse them. This shift in values results in distancing politics from its anthropocentric paradigm, making room for a biocentric model in which emphasis is placed on an "Earth-centred paradigm" with legal, policy and educational implications (Harmony with Nature, 2019). It follows that specifically human interests cannot always prevail over non-anthropocentric concerns (Stelmach, 2023b).

Although the similarities between the basic principles of Marxism and sustainable development are rather clear, their direct connection has not been established as a scientific fact. Nevertheless, several studies address this topic, and one Polish work in particular presents a very forceful line of argumentation. From this point of view, sustainable development is understood as a framework rooted in Marxist ideas, aiming to construct a new form of civilization in which what is described as "religious energy" is ultimately redirected toward the creation of an egalitarian, open society – though, at least in its early stages, guided and controlled by a small oligarchic elite. (Stelmach, 2023a). According to Stelmach (2018), sustainable development differs from Marxist economics only in its method of implementation; in essence, it represents the same approach. He argues that for the philanthrocapitalists who orchestrated the removal of gold from the financial system in 1971 – thereby initiating the era of economic financialization – sustainable development has been a long-planned process of transformation designed to secure their control over global resources and populations through networks of partnerships and systems of supranational governance.

Stelmach is not alone in this line of argumentation. Foster (2015) similarly argues that, although Marxism and the ecological transition might initially appear to represent two distinct movements – with the former focused primarily on class relations and the latter on the relationship between humans and the environment – there has in fact been a historical interplay between them. Socialism has shaped ecological thinking and practice, while ecological perspectives have also influenced the development of socialist theory and action. Marx's texts demonstrate a deep concern for issues of ecological limits and sustainability (Foster, 2000), and he continuously pointed to the inherent problem of production in agriculture within capitalism, a problem ultimately linked to the unsustainable way in which production was organized (Foster, 2000; Ramakrishnan, 2001). The "deep ecological roots of Marx's thought" stem from his environmental perspective on the overarching question of social transformation (Foster, 2015).

The aim of sustainable development is thus to modify the situation in which human activity has become the dominant force influencing global environmental change (Rose & Cachelin, 2018). Nevertheless, what we are dealing with is, in fact, a revolution carried out by peaceful means – through legislation, media propaganda, and the influence of institutions controlled and transformed by left-wing revolutionaries. This plan required patience and time because it was based on the so-called long march through institutions. To conduct a worldwide revolution, it was necessary to bring about the destruction

of existing society. Old values, principles and norms of behaviour had to be annihilated, and new ones created in their place (Rozwadowski, 2018).

I believe it is clear, even from the above brief overview, that the direct, albeit implicit, aim of critical theory is the annihilation of the values of Latin Civilization. In practice, this means an onslaught on five interrelated value-principles, namely: personalism, the limited role of the state, the concern for the justice of law, the special role of the Catholic Church, and the monogamous family as the foundation of society (Marzęta, 2020). Out of the above catalogue, the first two principles – personalism and the limited role of the state – are of particular importance for the self-reliance of local self-government.

Personalism means that "the human being is not dominated by a family or a state, but has full autonomy. He constitutes a value in his own right. He is a subject and not an object in social and political relations. This involves a whole range of values and principles respected and realized in the circle of Latin civilization: the dignity of the human person, human freedom, the primacy of Catholic ethics, or the principle related to freedom (and responsibility): *volenti non fit iniuria*" (Marzęta, 2020). From the above, in the context of local self-government, it follows that even the public authorities representing the local community – i.e. the decision-making bodies (councils) and the executive bodies (mayors of municipalities and presidents of collegiate executive bodies) – should enjoy such autonomy.

This claim is justified in particular in the context of the second value, namely the limited role of the state. Marzęta (2020) explains that limiting the role of the state results in a vibrant, bottom-up social sphere in which local communities and self-governments play a major role. The core of social life becomes self-organization rather than the implementation of solutions imposed from above by state institutions. In this view, the state is built upon society, rather than society being subordinated to the state. Although, in the formative period of Latin culture, international organizations such as the United Nations and the European Union did not exist, it nevertheless seems logical to assume that the very foundations of Latin civilization should possess a certain degree of immunity from their influence today as well. Historically, other institutions, such as the Catholic Church or even the Roman Empire, may have exerted comparable effects.

Notwithstanding, the paradigm of sustainable development, implemented through the governance concept, should be treated with caution.

5. Sustainable development as part of a new global ethic

The implementation of sustainable development, if it is to be effective, must essentially be based on a change in people's values, beliefs, and behaviour (Stelmach, 2023a), resulting from a rejection of the traditional values of Latin civilization. As a consequence, we observe such phenomena as deteologization, depersonalization, despiritualization, deformalization, and pansecularization (Guz, 2010). Hence, the idea of sustainable development is one of the key concepts of the so-called 'new global ethic' that has prevailed since the end of the Cold War. Peeters (2009) argues that what is presented as a benign compromise in fact masks an anti-Christian agenda, rooted in Western apostasy and advanced by influential minority groups that have shaped global governance since 1989. He maintains that this emerging global ethic has replaced the universal values that underpinned the international order established in 1945, which are now dismissed as outdated. Unlike traditional universalism, this new ethic is marked by radical tendencies and, according to Peeters, cannot be fully understood without considering the new theological framework that preceded the cultural revolution – one that pushed the transcendence of God beyond human concern, reducing humanity to a purely immanent dimension.

At the same time, it is important to note that it was the United Nations that became the catalyst for cultural change in the world in the first half of the 1990s. What Peeters refers to as "green communism" implies that many concepts introduced after 1990 – such as sustainable development, women's empowerment, good governance, peace education, and dialogue between civilizations – initially appeared to address genuine public expectations. However, he argues that these aspirations were gradually redirected in a concealed manner. In his view, ideas such as global ethics, solidarity, altruism, and humanitarianism are increasingly being employed as rhetorical covers for an agenda oriented toward the dismantling of human and social structures. (Peeters, 2009).

Thus, decentralization and localization are becoming increasingly significant in putting the new global ethic into practice, since the consensus formed by expert groups at the global level was originally designed with the intention of being implemented directly at the local level (Peeters, 2010).

6. Supranational and Polish national legal sources of sustainable development

Sustainable development has both supranational and national legal sources. The principle of sustainable development originally took shape under the auspices of the United Nations, and the report of the World Commission on

Environment and Development entitled Our Common Future, signed on March 20, 1987 – also known as the *Brundtland Report* – was particularly relevant in this regard. It should be emphasized that although the Brundtland Report appears in many scientific publications on sustainable development, it does not constitute binding international law. Instead, it is a document important insofar as the concept of sustainable development was forged therein. The report asserts that humanity is capable of shaping development in a sustainable way so that the needs of the present can be met without undermining the ability of future generations to meet their own needs. It emphasizes that sustainable development involves recognizing certain limits – not fixed or absolute boundaries, but constraints determined by current technology, social organization, the availability of environmental resources, and the capacity of the biosphere to absorb the impacts of human activity (World Commission on Environment and Development, 1987).

According to a widely referenced definition, sustainability refers to shaping society – at the institutional, social, economic, political, environmental, technological and cultural levels – in a way that enables future generations to survive and to meet essential human needs for everyone. (Fuchs, 2017). This is because sustainability is such a broad concept that it may be applied to virtually anything (Saha & Paterson, 2008; Liao et al., 2008). Subsequent United Nations documents began referring to sustainable development as a principle, and the phrase "principle of sustainable development" first appeared at the United Nations Conference on the Human Environment, held in Stockholm in 1972. This milestone was crucial for formulating and promoting the concept of sustainable development (Zientkarski, 2019). On its 20th anniversary, the United Nations Conference on Environment and Development (UNCED) was convened in Rio de Janeiro – also known as the "Earth Summit". This global conference drafted the so-called Agenda 21, urging the achievement of sustainable development in the 21st century. Twenty years later, in 2002, the *Johannesburg Declaration on Sustainable Development* was adopted at the World Summit on Sustainable Development (WSSD). Finally, the most significant current UN document on sustainable development was adopted by all UN Member States in 2015: the *2030 Agenda for Sustainable Development*, which sets out 17 Sustainable Development Goals with 169 associated targets (United Nations Department of Economic and Social Affairs, n.d.).

Critics have pointed out that such meetings serve to construct utopian visions of a sustainable world in which equitable distribution and consumption of resources will be realized and green energy will operate, but which remain only on paper (Kosiek, 2015). Meanwhile, real commitments that could improve living conditions for the poorest – such as the proposal to establish a food fund

consisting of 0.7% of GDP of UN Member States – were overlooked. The same fate befell demands to place dangerous genetic engineering and nuclear research under international monitoring (Kosiek, 2015; Morżoł, 2015).

With respect to EU primary law, sustainable development is enshrined only with reference to environmental protection. Article 11 of the Treaty on the Functioning of the European Union states that *"environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development."* However, it should not be forgotten that the European Union also issues policy documents developing the concept of sustainable development in the form of consecutive strategies (Olejarczyk, 2016; Domański, 2019).

In terms of the Polish Constitution, the idea of sustainable development is invoked by Article 5: *"The Republic of Poland shall safeguard the independence and inviolability of its territory, ensure the freedoms and rights of man and citizen and the security of citizens, protect the national heritage and ensure the protection of the environment, guided by the principle of sustainable development."*

Unfortunately, the wording of the provision is not entirely clear. There is no consensus in Polish legal scholarship as to whether the obligation to be guided by the principle of sustainable development should relate only to environmental protection, or to all state functions listed in this provision. However, the prevailing view holds that all actions carried out by the state, including those of local governments, must comply with this principle. Consequently, the state is also responsible for ensuring that local self-government upholds and implements it (Zientkarski, 2019). According to Tuleja (2023), the principle of sustainable development expressed in the constitution primarily indicates that environmental interference should be kept to a minimum and justified only when the resulting social benefits exceed the harm caused. This principle extends beyond environmental concerns and includes areas such as infrastructure development, the strengthening of social bonds, and the creation of coherent spatial planning. Furthermore, the principle of sustainable development is considered a programmatic guideline. Although it does not specify methods or instruments for its implementation, it nonetheless places an obligation on all public authorities to work toward its realization.

In Polish law, the principle of sustainable development is defined by Article 3(50) of the Environmental Protection Law, according to which it is understood as a social and economic development in which a process of integrating political, economic, and social activities takes place, maintaining natural balance and sustainability of basic natural processes in order to guarantee the possibility of satisfying the basic needs of particular communities or citizens of both the present and future generations. Comparing this definition to the report *Our*

Common Future, one must conclude that non-binding standards developed in the international arena permeate national law (Bentkowski, 2019). Regarding the Environmental Protection Act, it should additionally be noted that Article 9 requires that policies, strategies, plans, and programs relating in particular to industry, energy, transport, telecommunications, water management, waste management, land use, forestry, agriculture, fisheries, tourism, and spatial management take into account the principles of environmental protection and sustainable development.

7. Decentralization and financial autonomy (self-reliance)

In Poland, since the political transformation which began in 1989, local self-government has been perceived as an important institution enabling the effective democratization of the state (Radomski, 2016). The legislation was intended to abandon the idea of a centralized state and promote local self-government, and thus the decentralization of public authority (Article 15(1) of the Constitution of the Republic of Poland) (Lotko & Zawadzka-Pąk, in review).

However, decentralization can be interpreted in both dynamic and static senses. From a dynamic perspective, it refers to the legal process of transferring certain responsibilities of public authority and the competences of governmental bodies to self-government units and their respective institutions, ideally at the lowest feasible level. In this way, the principle of subsidiarity is carried out, requiring among other things that decisions concerning public affairs be made at the most localized level of public administration possible (Miemiec, 2023; Kornberger-Sokołowska, 2010). In contrast, when understood in a static sense, decentralization refers to a legally structured form of public administration defined by systemic administrative law. In this arrangement, administrative entities are assigned clearly specified tasks under the law, and their governing bodies hold the authority to perform these tasks independently, in their own name and under their own responsibility. This framework is complemented by limiting the supervisory role of higher authorities – whether organizational or functional – to oversight based solely on the criterion of legality (Miemiec, 2023).

The foundations of decentralization are described at the constitutional level. According to Article 15(1), *"The territorial system of the Republic of Poland ensures the decentralization of public authority."* Moreover, *"the territorial self-government participates in the exercise of public authority. The substantial part of public tasks vested in it under the laws shall be performed by the self-government in its own name and on its own responsibility"* (Article 16(2) of the Constitution). In addition, the entire Chapter 7 of the Constitution of the Republic of Poland regulates the systemic issues of local self-government.

Within the framework of decentralization, a special role is played by financial decentralization, which is characterized by the legally defined financial self-reliance of the decentralized entity. The financial independence of a local authority – understood as part of the broader framework of its autonomy – functions as a separate institution as well as a principle within the public finance system. In the context of discussions on sustainable development, Miemiec (2023) notes that the everyday understanding of independence is helpful here, referring to a state in which an entity is not subject to external influence or authority and is able to operate without external assistance.

The financial autonomy of local authorities is of research interest to both economic and legal sciences, with economists more often using the term "autonomy" and lawyers the term "self-reliance". In economics, this autonomy is mainly associated with management and equated with economic autonomy. The starting point for determining its extent is the value of the assets – municipal property – which, together with its own revenues and revenues received from the state budget, should ensure that public expenditures can be financed. From the legal point of view, self-reliance is a separate principle of the finances of local self-government units, determining their activity in their own name and on their own responsibility in collecting revenues (including legally defined tax authority), adopting and implementing the budget, and making expenditures within the framework of the budget economy (Miemiec, 2023). Of relevance to financial independence within the framework of sustainable development is the degree of freedom local governments possess in allocating funds and organizing their budgets, including both budget planning and execution (Kornberger-Sokołowska, 2010).

8. Conclusion

After having investigated the historical development and philosophical foundations of sustainability together with its legal bases, I concluded that sustainable development, implemented through the concept of governance, conflicts with the foundations of Latin civilization and has a negative impact on local self-government in Poland. As such, the following conclusions can readily be established:

a. The municipal government is considered a key factor in the local implementation of sustainable development (Budziarek, 2024).

b. The objectives of sustainable development go well beyond environmental protection to eventually encompass every area of public policy.

c. The immediate goal of critical theory, which is the philosophical basis of sustainable development, is the negation of the values of Latin civilization,

which postulates the existence of a strong local government with a high degree of financial self-reliance.

d. The ethics of Latin civilization, having God and a strong concern for human life at the centre, is progressively being replaced by environmental ethics, where natural phenomena and sustainable development play a key role—alongside reducing resource utilization, fighting global warming, environmental justice, secularization, or even reduction in natal growth (depopulation) – aiming at the creation of *homo ecologicus* (Stelmach, 2023a; Guz, 2010). This axiological shift attempts to restrict the freedom of human beings in such practical areas as meat consumption, airplane travel, or traditional energy sources.

e. The transition from Latin civilization values toward ecological civilization is not revolutionary but rather evolutionary (via the long march through institutions). Hence, certain values remain common to both axiological orders, such as environmental protection or the eradication of poverty.

f. The norms of the new global ethic, including sustainable development, are formulated at the global level, while only their implementation is decentralized toward the central (state) level and especially toward local government units. This aligns with the well-known idea associated with sustainable development, which encourages a global perspective while emphasizing action at the local level. (Jacob, 2016).

g. The constraining effect of sustainable development on the autonomy of local governments in Poland arises from the obligation of local governmental units to adhere not only to national legislation but also to the 2030 Agenda for Sustainable Development – even though this agenda was formulated by an organization that interprets international law through the lens of consensus, which in turn contributes to obscuring the distinction between binding international law and mere agreement. (Peeters, 2010).

h. Sustainable development is implemented through network governance, which implies that decision-making actors, in addition to legitimately elected bodies with democratic legitimacy, are given the status of informal legislators, resulting in a remodelling of the exercise of power.

i. The way sustainable development is implemented does not serve to deepen the process of decentralization of power in Poland, because local governments are obliged to implement within their financial policy ideas conceived by partners (called experts) who have no democratic legitimation.

j. Limitations on financial self-reliance through sustainable development mainly concern the spending aspect, as sustainable development guidelines govern especially the allocation of public funds, not sources of revenues. Sustainable development funding guidelines are implemented both through central statutory regulations (e.g., waste segregation) and non-binding "good practices" (e.g., collection of plastic bottle caps).

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STUDIA JURIDICA ET POLITICA JAURINENSIA
VOL. 12, NO. 1, 2025, 53–69.
DOI: 10.71100/STUDIA.2025.1.4

THE LEGACY OF MODERN EUROPEAN CONSTITUTIONALISM: THE CONCEPT OF RULE OF LAW AND CONSTITUTIONAL CRISIS

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ABSTRACT

Modern constitutionalism emerged at the end of the 18th century in the context of the American and French revolutions. It later took root in other countries and, by the end of the 20th century, had gained universal recognition. Constitutionalism has recently evolved within democratic political systems; therefore, the concept of constitutionalism appears closely linked to democracy and the rule of law. To understand constitutional crises, it is first necessary to clarify the meaning of constitutionalism.

KEYWORDS Constitution, legality, legitimacy, democracy, rule of law, constitutionalism, crisis, constitutional degradation, liberal principles

1. Introduction

The idea of constitutionalism derives from the French and American revolutionary traditions, also known as founding constitutionalism. The two revolutions were different from earlier revolutions, because they established a new type of political system. This required distinguishing the constitution from ordinary law. To achieve this, however, it was necessary to build on a new source of legitimacy: the constitutional power reserved for the people. The legitimacy of the modern constitution lies in popular sovereignty.

These revolutions sought to create a government limited in both substance and form. On the one hand, they aimed to give primacy to individual freedom – fundamental rights enshrined in legal documents; on the other hand, they asserted that the best guarantee of freedom is the separation of powers. Although in the early 19th century the term constitutionalism was a relatively well-defined intellectual trend, there is no precise definition that has a single universally accepted meaning.

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2. CONSTITUTIONALISM AND THE CONCEPT OF CONSTITUTION

Constitutionalism is often associated with legality, linking the exercise of public power to the law, but this does not cover the full spectrum of constitutionalism. Constitutionality can also be understood as a special case of legality, but Dieter Grimm argues that constitutionalism is not the same as the legal regulation of public power, because it is more than that. It is an instrument of legitimation and a means of limiting the exercise of public power, which is justified by universal principles, so constitutions can be drawn up with very different contents from country to country.

Grimm proposes a functional approach to the definitions of constitutionalism, grouped into five points, rather than a single definition of content. However, it is important that political power can be defined in many ways in a constitution – for example, monarchical, republican, unitary, federal, parliamentary, or presidential – but this diversity does not mean that any content can be compatible with a modern constitution (Grimm, 2010, 2012):

A constitution is a set of legal norms, the result of a political decision, and does not derive its authority from elsewhere.

a. The purpose of a constitution is not merely to restrict pre-existing public power.

b. The regulation is comprehensive in the sense that public power may be exercised only based on the Constitution.

c. The Constitution is the supreme norm and takes precedence over all other legal rules. Legislation contrary to the Constitution cannot be valid.

d. The people are the ultimate source of the Constitution and therefore of power. (A distinction must be made between the constituent power – *pouvoir constituent* – and the power derived from it.) Constitutions that meet these requirements are those which, according to Grimm, can exclude arbitrariness.

It seems that one of the main requirements of constitutionalism is limited power. Constitutionalism means primarily the belief in power limited by constitutions. Constitutionalism has classically been used to subject state bodies to law, so that they could not interfere with the sphere of freedom. Constitutionalism thus legitimates and regulates public power. Constitutionalism is not only about the protection of individual liberty, but also inherently democratic, since it makes the people, all of whom are equal, the holders of constitutional authority. By establishing its constitution, the people establish rules for themselves.

The focus of modern constitutionalism is the constitution, which after the revolutions of the 18th century was – apart from the British legal development (see below) – a written public document, that had two basic features in common: the establishment of rule and the normative nature of the constitution. Since in both countries a completely new political system had been established, fundamentally different from the unjust system that had preceded it, the exercise of all public power required justification by the constitution.

The break with the old order was much more pronounced in France, where the Constituent Assembly abolished the landlord system and the tithe in a matter of hours, fundamentally changing public law (Hahner, 2012). Historically, the French constitutions are the product of the conflict between the liberal bourgeoisie and the absolute monarchy. *"The bourgeoisie was seeking to emancipate the production and commercial sphere from hierarchical direction and to guarantee the predictability of state power."* (Grimm, 2012, p. 128) This may be since, while in the United States oppression came from outside, in France it came from within. In the United States, the post-revolutionary order was different, but not to the same extent (de Tocqueville, 1983). The constitution thus put an end to the previous political system by defining the form and content of the exercise of sovereign power and replaced it with a democratised system.

The foundational nature of sovereignty means that this constitutional tradition applies equally to all, because a radical break with the authoritarian status quo can only be made based on equality and individual rights. Furthermore, since the system cannot rely on the old structure of domination, it must be based on individual freedom, making it the point of reference. The other main characteristic of the constitutional concept in the Franco-American tradition is that it claims written and legal primacy. A normative constitution is necessary to break away from previous political practices, to establish new rule and to abolish old exceptions. In the United States, this developed into the concept of the constitution as the supreme norm (Sartori, 1962). In France, however, it was only later that such a pronounced supremacy of the constitution emerged. The writing of the constitution has a formalising effect, creating the possibility of subsequent acts.

The Franco-American tradition has made the concept of constitution a legal concept (Sartori, 1962). A normative, i.e. in this sense legal, constitution, in contrast to the conception of the constitution as a constitution of power, is not only a description of existing power relations, but also the source of valid norms and the limit to the exercise of public power. However, to approach the constitution from a descriptive rather than a normative point of view would be to deny its legal significance. The content of the constitution could thus only be

debated at the level of empirical claims, and not from a jurisprudential perspective.

Sartori's grouping of constitutions, based on Karl Loewenstein's typology, illustrates why it is only right to accept a constitution that meets the requirements of constitutionality as a genuine constitution. Sartori distinguishes three types of constitutions:

a. guaranteeing: these are constitutions proper, congruent with the 19th-century consensus, which limit arbitrary government power and ensure limited government, so liberal values and fundamental rights are related to the concept of constitution.

b. nominal: describes the existing political situation, thus favouring the current holders of power. In essence, it is a constitution only because it is called a constitution. Such a constitution is a set of rules, it gives form to the exercise of political power, but does not set limits to it, and therefore the nominal constitution does not conform to constitutionalism.

c. deceptive (*façade*): a deceptive constitution differs from a nominal constitution in that it looks like a real constitution. It cannot be a genuine constitution because, although it contains all the requirements of constitutionality, its rules are not enforced, or at least the parts that guarantee rights are ignored. Examples include the Soviet and the Hungarian constitution before the regime change.

> *"According to the communist constitutional conception, a constitution should be programmatic. It should describe in nice abstract terms what the society of the future will be like. […] We have seen […] that a constitution which speculates about the future is totally incapable of fulfilling its real institutional function, incapable of protecting society and citizens from state power. In the name of the appealing idea of building the future, society is at the service of the state and the party that rules the state apparatus."* (Zsugyó, 2017, p. 106)

One of the main reasons for this is the lack of judicial review. The rights enshrined in the constitution cannot be enforced in the courts.

3. THE CONCEPT OF RULE OF LAW AND ITS HISTORICAL MODELS

The concept of the rule of law has become – alongside democracy – the central term of political philosophical discourse; it is now widely used, but clarifying its meaning is a complex question. The rule of law has historically meant two basic things. Initially, at the end of the 18th century and in the 19th century, it was

understood as formal rule of law. As the requirements of the Enlightenment became clearer, it became a de facto requirement for the emerging nation states and the developing capitalist economy to eliminate the injustices of absolutism in the country concerned and to ensure that people could conform their actions to the law, i.e. to the requirements of the law. The main requirement for this was to have a predictable legal order, with rules that strive for consistency, that everyone could know, follow and be sure of their enforcement. This purely formal set of criteria included requirements such as the accessibility of the law, i.e. its public promulgation (which was not universal even in the 18th century), the avoidance of changes that were too rapid, the clarity and coherence of the law, and so on. The central element of the rule of law was therefore legal certainty, the requirement of predictability of law, which, thanks to the trend of legal positivism that emerged after the French Revolution, permeated European legal thought, mainly through the process of legislation, and at the same time ended the exclusivity of natural law that had prevailed for centuries.

From this point of view, the concepts of constitutionalism and rule of law can be seen as synonymous, and the two concepts are linked by the constitution as a public document. However, it is not correct. In fact, constitutionalism is partly a narrower and partly a broader concept than the rule of law, and it is not advisable to use the two terms interchangeably or synonymously.

In the Hungarian public law scholarship, three major classifications have emerged regarding the criteria of substantive constitutionality:

a. according to one approach, the "principles of constitutionality" are the principle of democracy, the principle of pluralism, the principle of the rule of law and the principle of separation of powers;
b. according to another, the "requirements of constitutionalism" are the principle of popular sovereignty and representation, the principle of separation and balance of powers, the rule of law and the rule of law, the principle of equality and the declaration of human rights;
c. the third is that "the principles of the constitution" are the principles of state sovereignty, democracy, the rule of law (including the separation of powers and legal certainty) and the market economy (Tóth, 2019).

In the case of the rule of law, in addition to the theoretical classification, it is worth looking at its historical forms: the development of British, French and German legal orders, and then the development of the European Union as a principle and a defence mechanism.

Let us examine the main three types of the modern European "rule of law". Three alternatives, different in their instruments but nearly identical in their results, have been created and legitimise the exercise of public power. The French,

German and English solutions were all fundamentally influenced by the Enlightenment and the different traditions of public law.

3.1. French constitutional model

During the French absolutist *Ancien Régime*, the French courts, unlike the English common law courts, could not limit the exercise of power by the monarchy, but were instead integrated into the institutional system of absolute monarchy. The political thought of the French Revolution was fruitfully influenced by the theory of Jean-Jacques Rousseau, who, building on the concept of the *volonté générale* (general public will), absolutized popular sovereignty and rejected the separation of powers (Rousseau, 1947). Compared to Rousseau's theory, Montesquieu, in The Spirit of the Laws, referred to the separation of powers. The two French philosophers of the Enlightenment can be seen as opposites, since while Rousseau argued for the direct exercise of power and the republic, Montesquieu considered the British constitutional monarchy as his model and, starting from the idea of the social contract, regarded the separation of the legislative, executive and judicial branches of power as the basis for the legitimate functioning of the state (Egresi-Paksy, 2007). But the French Revolution marked a sharp break in the world of particularist, territorial legislations.

The judicial branch was more complex. The ordinary courts were prohibited from exercising judicial control over the administration. Napoleon Bonaparte's Consular Constitution of 1799 created the *Conseil d'État*, which is still in existence today. The role of the Conseil, which is independent but institutionally part of the executive branch, is to exercise exclusive judicial control over the acts and agents of the public administration and to provide the government with a preliminary, non-binding opinion on the constitutionality of legislation (Szigeti & Takács, 1996). In the French system the Constitutional Council (*Conseil constitutionnel*), which performs the functions of a constitutional court – mainly ex-ante review of legislation – was not established until 1958, with the Fifth Republic. President de Gaulle had originally intended to limit the powers of the National Assembly. The Council adopted a decision in 1971 to incorporate the Declaration of the Rights of Man and the Citizen of 1789, clarified by the Constitution of 1946, into the Constitution, and it has since then exercised a wide range of fundamental rights jurisdiction. Article XVI of the Declaration makes the separation of executive and legislative powers a fundamental requirement of constitutionalism. This rigorous separation is manifested in the strict division between the general administration of justice, entrusted to the ordinary courts, and the administrative administration of justice, which is entrusted to the Council of State as a separate court (Szigeti & Takács, 1996).

3.2. German constitutionalism and Rechtsstaat model

The German *Rechtsstaat* emerged later than the English and French models, in the 19th century. The most important philosopher G. W. F. Hegel criticises the individualism of liberalism, because the individual interests that characterise modern civic society lead to social conflicts. The State, as a metaphysical and moral supreme entity of society, is able to resolve these conflicts (Hegel, 1971), so the German doctrine does not think in terms of institutional solutions such as the separation of powers or a specific form of government. The concept of the rule of law emerged as a branch of natural law in the political philosophy of Immanuel Kant and Wilhelm von Humboldt. At the heart of what they said was the intention to transform feudal absolutism through legal reform. This meant a demand for a civilisation that would formulate its material, substantive claims on the state based on German underdevelopment and legality. Thus, it was formulated as a substantive aim of the state to guarantee the freedom of the individual and of the human person in the context of civil association, by maintaining and guaranteeing the rule of law.

The Enlightenment critique of reason had a strong influence on 19th-century public law scholarship. This influence can be seen, among other things, in the approach of Robert von Mohl, who links the formal principle of the legal nature of state action (formal legality) and subordinates it to a higher ideal – the liberation of man and the free expression of his individuality – and places legality at the service of these higher ends (substantive legality). Robert von Mohl saw the essence of the rule of law as the guarantee of individual rights. According to the German legal scholar, the State under the rule of law is a state that recognises and guarantees at least: equality before the law; the right to pursue happiness (the right to "strive for the unprohibited ends of life"); equal participation in public affairs; personal freedom (such as the prohibition of slavery); freedom of thought and speech; freedom of religion; freedom of movement and freedom of association (von Mohl, 1995) – what was recently called the first generation of human rights.

At the end of the century, mainly because of the work of F. J. Stahl, the idea of the formal rule of law gained ground, according to which the state defines the directions and limits of its activities but is no longer subject to the higher standards of reason and liberal content. The rule of law is confined to the field of public administration and is identified with a well-defined administrative law. The formalising position of the positivist rule of law

> *"[…] is an order of relations between the law, the administration and the individual in which the administration may not interfere in the private sphere of the individual either against the law (contra legem) or without a proper legal basis (praeter or ultra legem)."* (Szigeti & Takács, 1996, 236)

Law is what the legislator declares to be law, and its validity cannot be questioned by reference to a natural-law standard. The German bourgeoisie, which had come to power because of national unification from above, had embraced the rule of law. So much so that, until the outbreak of the First World War, *"[…] the rule of law was taken for granted in Europe. As a requirement, it was hardly contested even where it was not, or not fully, recognised or implemented."* (Szigeti & Takács, 1996, 236)

3.3. English constitutionalism and the rule of law model

This type is rooted in the common law legal system and developed in the special socio-economic context of 17th-century England. In the English common law system, where there is no written and codified law, the reasonableness of a previous judicial decision can be invoked in the enforcement of subjective rights and in the adjudication of a case not on a codified norm but on the rationality of the law (*ratio decidendi*) (Szigeti, 1996; Szigeti-Takács, 1996). According to the early modern English Chief Justice, Sir Edward Coke, it is the legal reason that gives common law judges the edge over the exercise of political power.

Although common law can at times come into tension with the concept of parliamentary sovereignty, in A. V. Dicey's theory parliamentary sovereignty ultimately supports the primacy of national law (Dicey, 1902). To resolve the conflict between the two principles, for Dicey, parliamentary law-making is only possible with the joint involvement of the three branches of Parliament: the two Houses of the English Parliament and the monarch. The House of Lords until 2009 also served as the supreme judicial forum (Szaniszló, 2017). The monarch participates in legislation by sanctioning the laws – the so-called royal assent. The second element of the rule of law principle means that everyone is equal before the courts, so until recently there was no separate administrative court. There is likewise no separate constitutional forum for the judiciary even in the absence of a written constitution. Because of the foundational nature of law, the law-enforcing effect of court judgments, in the interests of enforcing the rights of subjects, is still prevalent primarily in private law and, to a lesser extent, in public law. The broad law-making and adjudicative powers of independent courts ensure the primacy of law over any governmental arbitrary power. The British constitution is composed of relevant declarations, laws and judgments, so it is not a gift of the legislature and cannot be amended by Parliament with a simple majority.

Albert Venn Dicey gives the rule of law a triple meaning. On the one hand, the government must not have arbitrary power; the executive must have power only within the limits conferred by law. The existence of an administrative judiciary is independent of the existence of separate administrative courts; it is

also achieved when this rule-of-law function is performed by ordinary (e.g. civil) courts. The substantive requirement of equality before the law goes beyond the purely formal requirement that laws apply to all normatively defined recipients, because the latter still allows laws to treat persons who are identical in their relevant characteristics differently, i.e. to discriminate (i.e. it only requires that the law does not discriminate between recipients, but does not expect that the law should apply to all recipients who are similar in their relevant characteristics). Whereas the equality of rights already prohibits laws from being selective in their range of recipients, unless there is a reasonable, morally defensible reason for the selection. On the other hand, everyone must be subject to the common law as applied by the ordinary courts, i.e. everyone's acts must be judged by the same courts according to the same rules, regardless of their rank. Thirdly, general principles or rules of constitutional law (such as personal liberty) must not be the source, but the consequence of individual rights defined and recognised by the courts – the point being that they cannot be changed by a formal act, since they are part of the constitutional tradition and not purely positive legal products.

In the United States of America, the English model was adopted, which was far from problem-free and resulted in several distinct features. A federal state with no feudal antecedents has a written constitution at both federal and state level. In contrast to the English case-law system, citizens' rights are constituted not only in procedural but also in substantive terms. Here, the subject of judicial litigation may be the annulment of legislative acts contrary to the written Constitution. This has set up an internal limitation on the legislature, which has contributed to the inclusion of the due process clause in the Constitution, so that the courts have the right to review the decisions of the legislature. Therefore, any citizen may, in any case and before any court, invoke the unconstitutionality of a decision or measure, even against the law. Therefore, there is no need for a separate constitutional court, since the Constitution can be enforced in all kinds of judicial proceedings, both against laws and against decisions of public authorities and administrations.

All in all, the concept of the rule of law, although it varies in its historical versions, is composed of a common set of so-called formal and material elements/requirements, which are indeed related to the concept of constitutionalism.

Let's examine the criteria of the rule of law:

Table 1: Criteria of the rule of law (Szaniszló, 2017)

Formal criteria of the rule of law	Material criteria of the rule of law
Denial of an overt **inequality of rights** and of a **sovereign legislator above the law**, and the recognition of a state bound by law	All the requirements of the formal rule of law as a **prerequisite**
Legality: a) the law is promulgated in duly formalised legal sources, b) it applies to each of the normatively defined recipient	**Adjudication of the merits of any violation of any right, by judges** who are independent in their judgement and status, impartial, and subject only to the law, including the judicial review of unlawful acts of administrative bodies
Protection of vested rights: **legal relationships** that have come to an end or have been definitively terminated must be left intact	**Protection of human rights**
Legal certainty: laws a) are publicly announced and available to anyone in advance and in good time, b) are clear and unambiguous for the addressees ("norm clarity"), c) should not change rapidly (changes must be trackable), d) prohibition of retroactive legislation with certain exceptions, e) need for sufficient preparation time	**Pluralism:** a) in a narrower sense – the existence of a multi-party system (parties operating in competition on equal terms under public law); b) in a broader sense – free elections held at regular intervals, based on universal and equal suffrage and predetermined rules producing results representative of the will of the electorate
	Democracy (democratic legitimacy): fundamental decisions are taken by a majority of the people, elected by the people as a whole or by a legislative body with the participation of the electorate; all decisions of public authority are directly or indirectly reducible to the will of the majority
	Separation of powers

If we apply this to the concept of constitutionalism, we find that, from the point of view of the functioning of state power, it is primarily linked to the separation of powers and the legal nature of state activity. State organs must function based on law and be limited by law. From the point of view of the citizen, it is linked to the protection of fundamental rights, the legal regularity of the consequences of his or her conduct, and the legal possibility of participation in the functioning of the political system. The formal and substantive criteria of the rule of law, for both the state and the citizen, are provided by the constitution as the basic document of the legal system. Looking back at Sartori's typology, this is guaranteed only by the guaranteeing constitutions, which can harmonise the democratic majority principle and liberal freedom.

4. THE CONCEPT OF CONSTITUTIONAL CRISES

From an examination of the conceptual components of constitutionalism and the rule of law, let us look at what we can understand by constitutional crises or constitutional degradations in the theoretical sense, based on the method of *definitio a contrario*.

Modern constitutional democracies organized based on constitutionalism are thus simultaneously committed to two normative principles: a) democratic principles of the democratic process of community decision-making; b) liberal principles of the content of decisions (Győrfi, 2012). According to a), law is legitimised by the fact that everyone can participate in its making and that decisions taken by the majority reflect the will of the community. According to b), limits must/should be defined to the content of majority decisions, and fundamental rights must be guaranteed to all (Sajó, 1994).

Constitutionalism includes the most important principle of democracy, the self-government of the people. But democracy not only requires that a community decision be taken by a majority, but also that it must be made in a fair procedure, and it also requires that the community decision does not violate the fundamental rights of individuals and minorities. Here, I would argue with Rousseau's point of view: democracy is not a unanimous decision of the public will, nor is it merely a majority decision, as Alexis de Tocqueville pointed out, since this can lead to the tyranny of the majority, which results in the suppression of minority interests and rights. One of the possible causes of constitutional crises is therefore the one-sided assertion of the democratic principle over the liberal principle. It also concerns the protection of individual rights, one of the substantive criteria of the rule of law. In this type of political system, the institutions that guarantee individual rights and the processes of self-organisation of the civil sphere between the citizen and the State do not function. It must be recognised that constitutional crises are fuelled not only by poor institutional and legal solutions, but also by political culture. It does not matter what forms the basis of a political community, whether it is a set of shared value standards or a set of mutually exclusive political values that always reflect the majority position of social interests in power. In the latter case, society does not consider the activities of civil organisations and associations that control political power to be important.

There is also a problem when constitutionalism can be understood as a special case of legality – since every legal system has legality, because if it does not have legality, it is not a legal system – but of course not every legal system can be considered constitutional (Bragyova, 1994.). It is therefore not enough to refer to the formal criteria of the rule of law, it is not enough to ensure legal certainty

and predictability of law and legality exclusively, but also to ensure a set of substantive criteria, all of which must be harmonised with the democratic ideals of popular sovereignty and self-government. We can speak of a constitutional crisis or degradation when the democratic so-called majority principle clashes with the liberal principle, which at the same time means a violation of one of the material criteria of the rule of law.

Recently, this was reflected in the content of the rule of law, defined as a fundamental principle of the EU: the requirements that the acceding states must meet, and the complex system of mechanisms and procedures that protect the rule of law. In the countries where there is a breach of constitutionalism, the European Union's Rule of Law mechanism points out the causes and calls on Member States to remedy them. The European Union is based on the rule of law: every action taken by it is founded on treaties approved voluntarily and democratically by all EU member countries.

The rule of law is enshrined in Article 2 of the Treaty on European Union as one of the founding values of the Union (European Union, 2012).

Under the rule of law, all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. The rule of law includes, among others, principles such as legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review, including respect for fundamental rights; separation of powers; and equality before the law (European Commission, 2014).

These principles have been recognised by the European Court of Justice and the European Court of Human Rights. All new countries that want to join the EU must also respect the rights and obligations, including the rule of law, which are set out in the so-called Copenhagen criteria:

a. political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;

b. economic criteria: a functioning market economy and the capacity to cope with competition and market forces;

c. administrative and institutional capacity to effectively implement the acquis and the ability to take on the obligations of membership.

The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration. The EU reserves the right to decide when a candidate country has met these criteria and

when the EU is ready to accept the new member. Applicant countries have to make sure that:

a. their judiciary is independent and impartial. This includes, for example, guaranteed access to justice, fair trial procedures, adequate funding for courts and training for magistrates and legal practitioners;

b. their government and its officials and agents are accountable under the law and that political leaders and decision-makers take a clear stance against corruption;

c. the process by which laws are prepared, approved and enforced is transparent, efficient, and fair. Laws must be clear, publicised, stable, fair, and protect fundamental rights.

The EU has been building up several instruments to help enforce the rule of law. Article 7 of the Treaty on European Union – the most prominent, exceptional and emblematic mechanism for protecting all common values – has been in place since 2014 (European Commission, 2014). It is a tool for the EU to act in case of serious rule of law failings in a Member State. The procedure to invoke a clear risk of a serious breach under Article 7(1) TEU has been triggered in two cases so far: in December 2017 by the Commission in respect of Poland, and in September 2018 by the European Parliament in respect of Hungary. Whereas the full consequences of the procedure under Article 7 TEU are very significant, and while the dialogue with the Member State concerned within the Article 7 TEU framework has an intrinsic value, progress by the Council in these two cases could have been more meaningful. The Council has had to establish new procedures to apply the Article in practice, which still need to prove fully effective.

Let's examine this mechanism based on the flowcharts. The first chart indicates how the European Rule of Law mechanism works between Member States and EU institutions. The annual rule of law report is initiated by state and non-state actors: NGOs, professional associations and other stakeholders. It is important that the EU promotes dialogue with the Member State that violated the rule of law component. The sanction mechanism is the ultimate tool for the EU. The second chart focuses on the participation of the European Commission in the rule of law framework. The third chart demonstrates how Article 7 of the EU Treaty works at the level of preventive measures and the sanctions mechanism.

Figure 1: European rule of law mechanism (European Commission, n.d.).

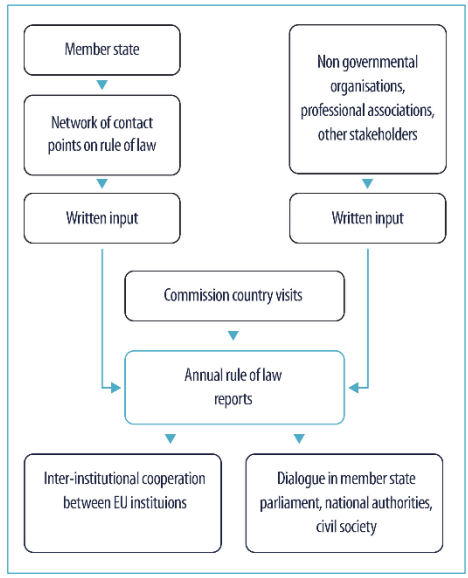


Figure 2: Rule of law framework (European Commission, n.d.).

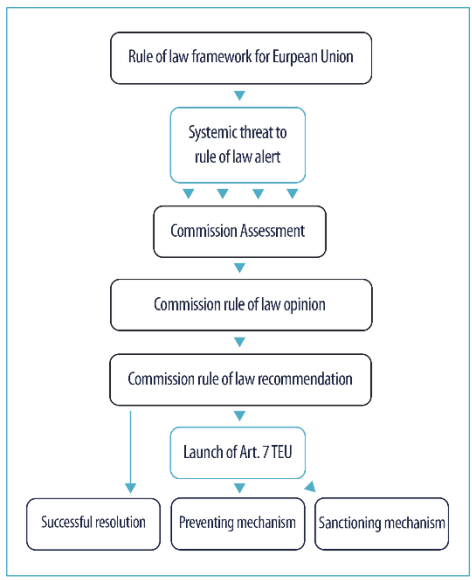
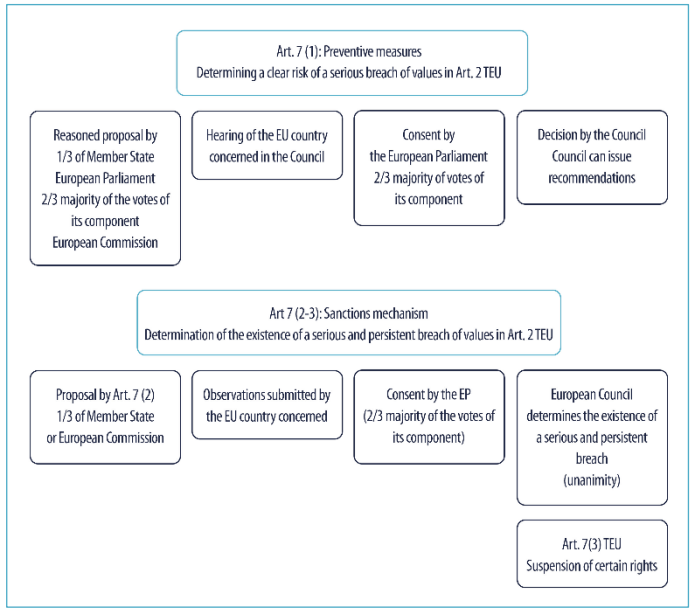


Figure 3: Art. 7 of the EU treaty works (European Commission, n.d.).



The rule of law mechanism provides a process for an annual dialogue between the Commission, the Council, the European Parliament, member states, as well as national parliaments, civil society and other actors. A core objective of this is to develop interinstitutional cooperation and to encourage all actors to contribute to the validation of the fundamental values/principles of the European Union.

The rule of law framework establishes a three-stage process. These are: Commission assessment, Commission recommendations, and the monitoring of the EU country's follow-up to the Commission recommendations (see Figure 2). If no solution is found within the rule of law framework, Article 7 TEU is the last "card" to resolve a crisis.

In cases when a member state does not respect the EU principles, the fundamental values referred to in Article 2 TEU require applying the sanctioning mechanism. Based on the Commission's opinion and/or Commission recommendations, the member state has the possibility to avoid the application of Article 7 of the TEU. Before the sanctioning mechanism, the preventive measures are initiated by one third of the member states, the European Commission, or a two-thirds majority of the votes of the European Parliament. It is also important that the Council determines the existence of a serious and persistent breach by a unanimous decision.

Based on Article 7(3), certain rights can be suspended, i.e. the voting rights of a member state that violated the rule of law, but the vote requires a qualified majority: 72% of the member states (excluding the member state concerned) and comprising 65% of the EU's population of the member states participating in the vote.

Naturally, many different forums and processes can be found in the European Union to promote the rule of law in member states. Other ideas are now under discussion, including the Commission's proposal to help protect the EU's financial interests if there are generalised deficiencies linked to the rule of law (European Commission, 2018) and the establishment of the European Public Prosecutor's Office, which should also help promote a coordinated judicial response to such risks across the Member States.

The case law of the European Court of Justice and the European Court of Human Rights provides the key EU requirements and standards to be respected by the EU and its Member States to safeguard the rule of law. Also, the Council of Europe has developed standards and issues opinions and recommendations which provide well-established guidance to promote and uphold the rule of law. All these instruments rest on a common understanding of what is meant by the rule of law, what its key features are, and where deficiencies may arise.

5. Conclusion

The concept of *constitutional crises* (or *constitutional degradation*) indicates for us that the democratic and liberal principles of modern constitutionalism are not harmonised in the political system. Behind the constitutional text, the organs of public power violate fundamental rights through the unilateral enforcement of the majority principle against the rights of individuals and minority social groups. The institutionalisation of popular representation does not provide for limited government, does not realise the principle of separation of powers, and the independence of the judiciary and/or the police is not subject to the law and judicial control. Even though the concepts of constitutionalism and the rule of law do not fully overlap, any harm to either of them is an obstacle to the other. Their historical roots go back to the turn of the 18th and 19th centuries, and their present-day meaning has become an unquestionable and enforceable principle of the democratic functioning of the EU.

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STUDIA JURIDICA ET POLITICA JAURINENSIA
VOL. 12, NO. 1, 2025, 71–79.
DOI: 10.71100/STUDIA.2025.1.5

PUBLIC FUNDS AND THE LEGAL FRAMEWORK OF FISCAL OVERSIGHT IN HUNGARY

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ABSTRACT

The study explores the legal and institutional mechanisms governing the control of public funds in Hungary. It outlines the constitutional foundations and statutory definitions of public tasks and budgetary institutions, emphasizing their role in ensuring lawful and transparent financial management. The analysis focuses on the multi-level system of fiscal oversight, including the external (State Audit Office), governmental (Government Control Office, Hungarian State Treasury), and internal control mechanisms operating within budgetary bodies. Through a doctrinal and normative approach, the paper highlights how these mechanisms collectively guarantee the effective and accountable use of national resources. The findings demonstrate that Hungary's fiscal control system provides a coherent legal framework that reinforces transparency, effectiveness, and public trust in the management of state finances.

KEYWORDS Public funds, fiscal oversight, State Audit Office, internal control, legal framework, accountability

1. Introduction

The management of public funds plays a fundamental role in ensuring the stability and transparency of state operations. Through the proper use of these resources, the state fulfils its constitutional responsibilities and maintains public trust in governance.

Public funds include the revenues, expenditures, and claims of the state (Alaptörvény, art. 38). The chapter titled "Public Funds" in the Fundamental Law comprises nine sections, reflecting the significant importance of public finances. The heightened attention to this field is further demonstrated by the fact that several related areas must be regulated by cardinal acts. These include the organizational and operational regulation of the State Audit Office, the central

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bank, and the Fiscal Council, as well as the requirements for the responsible management of national assets.

The Fundamental Law links the concept of public funds to the budget, to subsidies or payments provided from the budget, and stipulates that the use of such subsidies must be transparent. Public funds are required for the performance of public tasks, which are regulated, implemented, and supervised within the framework of public finances.

In addition to national constitutional and statutory regulations, fiscal oversight in Hungary is also influenced by the European Union's framework for financial governance. The Stability and Growth Pact, the European Semester, and the EU Financial Regulation all emphasize fiscal discipline, transparency, and accountability in the management of public funds. These European principles have shaped domestic public finance reforms, promoting harmonization with EU standards. Therefore, Hungary's fiscal control mechanisms operate within a dual system of national and European legal expectations.

"The system of public finances operates according to uniform organizational, planning, management, control, financing, data provision, and reporting rules" (Áht., § 7).

If the management of an institution involves public funds, it is required to account for their use. In this study, I present the control function among the multiple responsibilities of public finances, after clarifying the concepts of public tasks and budgetary institutions related to the topic.

2. The Concept of Public Tasks and the Main Characteristics of Budgetary Institutions

The definition of a public task is provided by Act CXCV of 2011 on Public Finances (Áht.):

> *"Section 3/A (1) A public task is a state or municipal duty defined by law.*
>
> *(2) Public tasks are performed through the establishment and operation of budgetary institutions, or by providing, in whole or in part, the financial resources necessary for their performance by the means defined in this Act. Organizations outside the system of public finances may also participate in the performance of public tasks, under conditions defined by law."* (Act CXCV of 2011 on Public Finances, Section 3/A)

According to Section 7 (1) of Áht.:

> *"A budgetary institution is a legal entity established by law or by its founding document for the performance of a public task defined therein.*

(2) The activities of a budgetary institution may be

(a) core activities, defined as professional duties in the act or founding document establishing the institution, as well as other non-profit activities supporting the performance of these duties;

(b) business activities, which are profit-oriented productive, service, or sales activities carried out from external resources and not performed as mandatory functions" (Áht., § 7, para.1).

From the statutory definition, it follows that the system of public finances serves as the framework through which the state and local governments perform and finance their public tasks. It is essential that public tasks can be established only by law. The Áht. also specifies that budgetary institutions have the primary role in performing public tasks, while organizations outside the system of public finances may participate only under specific legal conditions.

Considering this, it is important to identify the main characteristics of budgetary institutions. According to the Áht., the principal features of a budgetary institution are as follows:

- they are established by law or by a founding document;
- their establishment (including) registration, termination, or transformation is governed by specific legal provisions;
- they perform public tasks defined by law;
- their management and supervision are legally regulated;
- they operate with funds originating from the public budget in accordance with public finance regulations;
- they possess legal personality (Pfeffer, 2016).

The financial management of budgetary institutions is based on their budgets, which determine the material conditions necessary for their operation. During budget implementation, compliance with the general rules must be ensured, while also respecting requirements on financial transparency, public procurement obligations, and the rules established for financial control. The supervision of budgetary institutions is therefore a fundamental issue of public finance law, covered by the multi-level system of control established by the Act on Public Finances (Pfeffer, 2016).

Clearly defining public tasks and budgetary institutions is essential for ensuring fiscal accountability and transparency. By clarifying the legal status, responsibilities, and control mechanisms of these entities, the legislator establishes the foundation for lawful and efficient management of public funds.

This conceptual clarity also serves as a safeguard against misuse of resources and strengthens the overall credibility of fiscal governance.

3. Fiscal Oversight within Public Finances

Without control mechanisms, state systems cannot operate effectively. Social institutions should not be regarded merely as factors that restrict individual freedom of decision or hinder economic development. On the contrary, when properly applied, they serve as instruments for promoting social welfare. This is particularly true in the case of fiscal oversight, which ensures that public funds are utilized lawfully, efficiently, effectively, transparently, and in accordance with the objectives set by the community (Bihari, 2007).

Fiscal oversight, however, is not limited to the verification of legal compliance. It also embodies a democratic function by ensuring that the exercise of public power remains accountable to citizens. Transparent auditing and evaluation processes strengthen public confidence and help prevent misuse of public funds. Thus, fiscal control serves both as a legal safeguard and as a key element of democratic governance.

The control of public finances is based on a multi-level system that includes external (parliamentary) oversight – vested in the State Audit Office – governmental-level control, internal audit, and the operation of the internal control system. The purpose of fiscal oversight is to ensure the lawful, efficient, effective, and transparent use of public funds and public assets, thereby contributing to the successful performance of state and municipal functions (Pfeffer, 2016).

The purpose of fiscal oversight is defined as follows: *"The aim of public finance controls is to ensure the lawful, economical, efficient, and effective management of public funds and national assets, as well as the proper fulfilment of reporting and data provision obligations."* (Áht., § 61, para. 1)

Cooperation and information flow between the different levels of fiscal oversight are essential for maintaining financial discipline. The integration of audit findings and policy feedback supports a more transparent and accountable system of governance, reducing the risks of misuse of public funds and corruption. Practical experience supports this conclusion: Csák & Czebe (2025a) demonstrate that large-scale criminal proceedings related to budget fraud face significant delays due to structural complexity and procedural overload, highlighting the need for continuous development of preventive and supervisory tools. In another study, Csák & Czebe (2025b) examine the relationship between integrity testing and the right to a fair trial, emphasising

that control mechanisms strengthen public trust only if applied within proper legal safeguards and with respect for fundamental rights.

Thus, the multi-level control framework not only ensures compliance, but also reinforces public trust and supports responsible and transparent management of public resources.

3.1. External (Legislative) Oversight

The external (legislative) control of public finances is primarily carried out by the State Audit Office. However, it is important to note that since 2015, the Áht. has also granted the Hungarian State Treasury the right to perform external audits within a defined scope, without hindering the supervisory activities of the State Audit Office. Therefore, the Hungarian State Treasury can also be mentioned as an institution performing external oversight (Pfeffer, 2016).

The external control of public finances is implemented when the auditing body or person is independent of the entity being audited, that is, when it performs its activity as an external actor. The State Audit Office represents one of the most significant institutions of such independence, as it is entirely separate from the government responsible for executing the central budget. It performs its duties exclusively under the authority of the National Assembly and is accountable solely to it.

Pursuant to the Fundamental Law and Act LXVI of 2011 on the State Audit Office of Hungary (ÁSZtv.), the National Assembly ensures the independence of the State Audit Office in the following areas:

- Organizational independence: It operates independently of all other institutions.
- Legal independence: Its findings cannot be challenged before any other authority.
- Personal independence: Conflict-of-interest rules guarantee impartiality.
- Financial independence: The institution's financial autonomy is ensured.

The President of the State Audit Office reports annually to the National Assembly. The annual report provides detailed information on the previous year's audit activities, operations, and financial management of the State Audit Office, as well as on the measures taken based on the audit findings (Lentner, 2024).

The structure of the State Audit Office consists of a president, vice president, senior officials, auditors (with higher education), civil servants with at least secondary education, administrative staff, and employees under the Labour Code. The president is elected by the National Assembly for a term of twelve

years with the support of two-thirds of the Members of Parliament, and may be re-elected (Rózsás, 2015).

3.2. Governmental-Level Oversight

"Governmental oversight is an objective, fact-finding, evaluative, and advisory activity that primarily examines the use of public funds, the management and preservation of national assets, and the effective, economical, and efficient performance of public tasks." (Government Decree No. 355/2011, § 5)

The scope of this oversight includes the audit activities carried out by the Hungarian State Treasury, the governmental control body, and the authority responsible for auditing European Union funds (Nyikos & Szabó, 2018).

3.2.1. The Government Control Office

The Government Control Office (KEHI) is the supervisory body of the Government, whose audit authority extends to the following areas:

- monitoring the implementation of governmental decisions;
- conducting governmental audits of the central budget, the separate state funds, the financial funds of social insurance, and the central budgetary institutions;
- auditing the use of budgetary subsidies, other supports from the central subsystem of public finances, and state assets provided free of charge to business organizations, public foundations, public bodies, foundations, regional development councils, and associations;
- examining other organizations and financial processes defined by the Act on Public Finances.

The audit powers of KEHI do not extend to institutions classified under budgetary chapters outside the control of the Government, nor to the activities of the Hungarian National Bank. The governmental audit of law enforcement agencies, the National Tax and Customs Administration, and the Military National Security Service must be carried out in consideration of their specific operational characteristics and the relevant legislation (Kormányzati Ellenőrzési Hivatal, 2008).

3.2.2. The Authority Auditing European Funds – Directorate General for Auditing European Funds

The Directorate General for Auditing European Funds (EUTAF) has audit powers covering the following areas:

- audits related to budgetary subsidies defined in Government Decree No. 210/2010, primarily those financed from European Union sources, carried out at beneficiaries and other organizations involved in the implementation of the grants;
- examination of procurements implemented through the use of budgetary subsidies, including the verification of the performance of contracts concluded for such procurements and the auditing of the contracting parties responsible for, or participating in, their execution (Vértessy, 2022).

3.2.3. The Hungarian State Treasury

The audit activity of the Hungarian State Treasury covers the examination of the use and accounting of funds planned in, and disbursed from, the state budget. As a result of its audits, the Treasury may issue binding decisions and order the repayment of public funds used for purposes other than those intended.

Its specific audit authority extends, in relation to local governments, nationality self-governments, associations, regional development councils, and the budgetary institutions under their direction, to the following areas:

- verification of compliance with accounting and bookkeeping obligations as prescribed by law;
- examination of the fulfilment of data provision requirements laid down in the Act on Public Finances;
- assessment of the reliability and the true and fair presentation of the annual budget reports (Lentner, 2024).

4. Internal Audit and Internal Control System

Internal audit forms an integral part of managerial control. Within this framework, the budgetary institution itself establishes a system to ensure that its activities are carried out lawfully, efficiently, economically, and effectively.

Government Decree No. 370/2011 provides detailed regulation on internal audit and internal control systems, based on international and national standards, statutory provisions, as well as governmental and ministerial decrees. The head of each budgetary institution is responsible for establishing and operating the internal control system, ensuring the existence and functioning of the following elements:

- Control environment: a clear organizational structure, well-defined responsibilities and powers, and clearly assigned duties;
- Integrated risk management system;

- Control activities: built-in preventive and follow-up controls, approval mechanisms related to financial and operational procedures;
- Information and communication system;
- Monitoring system: continuous observation of the achievement of objectives and activities.

These internal control principles are closely aligned with the international standards set by the International Organization of Supreme Audit Institutions (INTOSAI) and the OECD Guidelines on Internal Control Systems. By following these globally recognised frameworks, Hungarian public institutions ensure that their audit processes meet modern expectations of efficiency, integrity, and risk management. The harmonisation with international best practices also contributes to the credibility of the domestic fiscal oversight system.

Internal audit is an independent, objective assurance and advisory activity whose primary aim is to improve the operation and efficiency of the audited organization. In local governments, the notary is responsible for operating the internal control system and must ensure that municipal resources are used lawfully, economically, efficiently, and effectively. In municipalities with more than two thousand inhabitants, the financial committee is considered an important part of the local internal control system. The committee has supervisory powers, including the monitoring of budget revenues, changes in assets, and the assessment of the justification of financial commitments (Lentner, 2024).

5. Conclusion

The Áht. provides detailed regulation of the control mechanisms of public finances, facilitating the supervision of the transparent and efficient use of public funds. Its primary objective is to ensure the lawful, economical, effective, and efficient application of public resources and assets. The system of public finance control extends to all subsystems of public finance.

The control framework of public finances rests on three fundamental pillars: external audit, governmental-level control, and internal control and internal audit within the public sector. These pillars complement one another, forming an integrated and indispensable system of fiscal oversight that guarantees strong safeguards and transparency in the management of public funds.

Through its multi-level structure, the system of fiscal control not only ensures compliance and accountability but also reinforces public confidence in the proper functioning of the state. In the context of European integration and digital governance, the continuous improvement of audit mechanisms remains

essential to strengthen transparency, efficiency, and responsible fiscal management. Effective fiscal control thus serves as a cornerstone of good governance, ensuring that public resources are managed in a way that promotes sustainable development and public trust.

Furthermore, continuous capacity building of public sector auditors and the integration of innovative audit technologies can further enhance the quality and reliability of fiscal oversight in Hungary.

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STUDIA JURIDICA ET POLITICA JAURINENSIA
VOL. 12, NO. 1, 2025, 81–100.
DOI: 10.71100/STUDIA.2025.1.6

PARLIAMENTARY LEGISLATIVE PROCEDURE IN HUNGARY

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ABSTRACT

In Hungary, the substantive rules on the content and formal rules of legislation are set out in detail. The legislators, the types of legislation, the most basic rules of law-making and the main rules governing the legislative process are set out in the Fundamental Law. This paper gives a general overview of law-making in Hungary. It introduces the parliamentary legislative procedure, including the modification of the legislative duties of the National Assembly in response to Hungary's accession to the European Union, and provides a short quantitative description of Hungarian legislation from 1990.

KEYWORDS Law-making, Hungary, Fundamental Law, Parliament, legislation, legislative procedure

1. Introduction

This paper gives a general overview of law-making[4] in Hungary. It introduces the parliamentary legislative procedure – including the modification of the legislative duties of the National Assembly in response to Hungary's accession to the European Union – and provides a short quantitative description of Hungarian legislation from 1990.

2. Legal regulation of law-making in Hungary

The Fundamental Law and the Act on Law-making[5] set forth the parliamentary law-making process, along with related rights and obligations, but the most

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[4] In the following, we use the expression "law-making" to refer to the issuing of all legal acts (including Acts of Parliament, government decrees, ministerial decrees, etc.); and we use the term "legislation" and "legislative procedure" only for the issuing of an Act of Parliament (in other words, a statute).

[5] The Constitutional Court, in Decision 121/2009. (XII. 17.) AB, annulled the previous Act on Legislation, Act XI of 1987. According to the decision of the Constitutional Court, the scope of laws and their hierarchy, as well as the topics which may be regulated exclusively in an

detailed provisions are enshrined in the Act on the National Assembly. According to the current regulation, the Act on Law-making belongs to the group of laws that can be amended by a simple majority, so the Fundamental Law does not mention it explicitly.

Another important source of law is the Resolution on Certain Provisions of the Rules of Procedure (hereinafter: "Resolution on Rules of Procedure"), which contains detailed rules of the legislative process (Parl. Res. 10/2014).

3. Legislative procedure in Hungary

3.1. The pre-legislative process (preparatory procedure of draft legislation before submission to Parliament)

If the Government plans to propose legislation in Parliament, it must follow a strict procedure. Firstly, the competent units of one or more ministries have to draft a legislative proposal, accompanied by a preliminary legal and economic impact assessment, carried out by the ministries responsible for legislation and the economy.[6] The Government is also obliged to prepare a preliminary impact assessment with the aim of checking whether the proposal significantly contradicts existing civil law, public law or EU law. Furthermore, the effect of the proposal on the national budget is assessed. The proposal is then circulated within all ministries and published on the website of the Government.

According to Act CXXXI of 2010 on social participation in the preparation of legislation audits (only applicable to the Government's process), all draft bills, governmental decrees and ministerial decrees drafted by ministries are to be published on the Government's webpage prior to their submission to Parliament. The minister responsible for drafting a given bill is also responsible for publishing the draft and for holding a social consultation.

Public consultations are to be carried out within the framework of general or direct consultations. While general consultations are mandatory, direct consultations are optional. General consultation is carried out so that anyone, using the e-mail address published on the webpage, may express an opinion on the draft or the concept subjected to social consultation.

Act of Parliament, shall not be regulated in a statute, but shall be contained only in the Constitution. Therefore, the previous Act was practically a constitutional-level regulation, which was not in conformity with the legal order (hierarchy of legal sources) of the Republic, which declares the primacy of the Constitution. The drafters of the Fundamental Law and the new Act on Legislation – Act CXXX of 2010 – proceeded in line with this guideline (Rixer, 2012).

[6] In Hungary, the impact assessment procedure of legislation is regulated by Act CXXX of 2010 on law-making. It can be split into preliminary and ex-post impact assessments. Preliminary impact assessments are required to analyse the expected outcomes of a proposed law and the consequences if the law were not implemented. An ex-post impact assessment reviews the results and outcomes, both expected and observed, of an existing law. Impact assessments are the responsibility of the ministry or ministries responsible for specific laws.

This means that, within the framework of a general consultation procedure, anybody may make comments on the draft and the concept, published for public consultation via the e-mail address available on the website of the legislator.[7]

The minister responsible for drafting is to consider the opinions received and prepare a general summary of them. In the case of rejected opinions, a standardized explanation of the reasons for rejection is to be published on the webpage, along with the list of those offering their opinions.

Under a new amendment to the law, if the Minister fails to comply with his or her obligation of social consultation, he or she may be fined (Social Participation Act, § 6/A).

Furthermore, the minister responsible for drafting the legislation may decide to form a 'strategic partnership' by holding working groups or by agreeing on other forms of consultation with the partners. The minister may also involve others, apart from the strategic partners, in a direct consultation held on a given draft law. A summary is also to be drawn up with respect to such consultations and published on the website of the Government. Such a summary must contain the reasoned opinions represented by strategic partners or other participants. Strategic partnerships may be formed between the Government and any organisation with a broad social reputation, for example with non-governmental organisations, recognised churches, professional and scientific organisations, national self-governments of national minorities, organisations of interest representation, public bodies and representatives of institutions of higher education (GRECO, 2015).

The responsible ministry has the task of evaluating the consultations, finalizing the draft and preparing it for adoption by the Government. The process for drafting and consultations usually takes 3–6 months (with a possibility that the preparation may take more than a year). This partly depends on the length of the proposal, but more often on the sensitivity of the area to be regulated. These rules do not apply to proposals made by MPs, except for the obligatory submission of the proposal together with a general and a detailed reasoning. MPs usually do not have professional drafters to formulate correctly worded proposals, and there is only limited parliamentary staff to help MPs. Also, there is no general web-surface for MPs to consult the public during the drafting. However, proposals made by MPs usually address questions that have high relevance in daily politics and, as such, the opinion of the public is usually well

[7] The Jat., the Social Participation Act, and the Freedom of Information Act partly replaced Act XC of 2005 on the Freedom of Electronic Information, which introduced, for the first time, the online publication of drafts (and even anonymized court decisions) and contained regulations with the same content as the Social Participation Act now contains, but the former regulation was less detailed; the rules relating to the direct consultation procedure are considered a novelty (Drinóczi & Kocsis, 2013).

known. Also, proposals made by MPs are usually short amendments or simple bills that address a single issue. Table 1 below shows proposals submitted by MPs and passed by Parliament between 2006 and 2022.

Table 1: Proposals submitted by MPs, passed by the Parliament 2006–2022

	2006–2010	2010–2014	2014–2018	2018–2022
Total number of adopted laws	589	859	730	597
Number of adopted laws, submitted by MPs	91	269	148	56
Number of adopted laws, submitted by government parties MPs	47	266	142	52

3.2. Legislation in Parliament

3.2.1. Who can propose legislation in Parliament?

The Fundamental Law reserves the right to propose legislation to the President of the Republic, the Government, parliamentary committees,[8] and Members of Parliament. Proposing legislation means that authorised parties submit to Parliament written draft proposals along with an explanation.

Whereas previously motions were submitted on paper, nowadays, because of digitalisation, bills and proposals for resolution are submitted almost without exception digitally, through a dedicated IT system (ParLex), which can be used from any location and at any time. ParLex not only makes it easier to submit but also allows the proposal itself to be drafted and edited (in a well-structured form). Its functions have been designed to automatically apply the rules of legislative drafting, thus helping to improve the quality of legislation.

In addition to the right to propose legislation, the procedural rules of the National Assembly lay down several rights that strengthen the dominant role of the Government in legislation. The semi-annual legislative programme of the Government fundamentally defines legislative themes and scheduling, and its governing majority allows the Government to place proposed legislation on the agenda, expedite the debate, hold detailed debates, and adopt proposed legislation.

[8] Committees within the National Assembly are primarily regulated by Chapter III of Act XXXVI of 2012, which provides that the Assembly shall establish committees which are obligatory, such as the Committee on Legislation, the Committee on Immunity, Incompatibility, Discipline and Mandate Control, and the Standing Committees on Constitutional Affairs, Budget, Foreign Affairs, EU Affairs, National Defence, National Security and Hungarian Communities Abroad. The National Assembly may also establish ad hoc committees and committees of inquiry whenever deemed necessary (National Assembly Act, § 14).

The supreme role of the Government in law-making is seen as a typical parliamentary model in Europe, and rightly so, since governments can implement the objectives formulated in their programmes mainly by legislative means, and legal regulation creates the framework for programme implementation.

The major difference between MP proposals and proposals of other proponents is that bills of MPs are subject to a decision by a designated committee on whether the Parliament should discuss them or not (a decision on admissibility). Since there are no legal criteria for the committee to check, this is purely a political decision, with a high level of committee discretion. While government, presidential and committee proposals are automatically on the 'list of legislative items' – a list of legislative proposals forming the basis of weekly agenda planning – MP proposals can only be considered if a committee decides accordingly. Since standing committees have a proportional composition of the plenary, opposition proposals are unlikely to be discussed in plenary sessions. To a limited extent, proponents of such rejected bills can ask that the plenary also decides on admissibility. In practice, the plenary mostly follows the previous committee decision.

Committees exercise decisive influence on the fate of legislative proposals from individual MPs. While the Parliament has an obligation to deal with motions introduced by the Government, the President, or a parliamentary committee, the fate of a motion tabled by an MP (or several MPs) depends on the decision made by the designated committee on whether the legislative initiative may proceed further. If the chosen committee does not support the motion being put on the legislative agenda, a parliamentary faction of the MP(s) proponent can still call for a vote on the acceptance of the motion for discussion in the plenary session. In the following legislative process, committee and plenary stages follow one another in a set order.

3.2.2. The stages of the parliamentary legislative procedure

Plenary debate and committee-level debate alternate in a specific sequence during the legislative process.

Table 2 below summarizes the stages of the parliamentary legislative procedure.

Table 2: The stages of the parliamentary legislative procedure

Stages of discussion	Venue
General debate	Plenary sitting
Detailed debate	Meetings of standing committees
Proceedings of the Committee on Legislation	Meeting of the Committee on Legislation (which votes on amendments proposed by Members and drafts a summary report and summary of proposed amendments)
Debate on committee reports, the supplementary summary report and the summary of proposed amendments	Plenary sitting
Vote on the summary of proposed amendments and a closing vote	Plenary sitting

The process of debating proposed legislation comprises an alternating succession of debates in committees and plenary sittings. The Resolution on the Rules of Procedure lays out the exact order of proceedings.

As a first step, a general debate is to be held on the proposal in the plenary, where the rationale, the objectives and the principles of the proposal are examined. In the general debate, the initiator has the right to speak first and present the argument for the legislative proposal. If it is not a proposal by the Government, a cabinet representative can outline the governmental position on the proposed act. Then, the keynote speakers of parliamentary factions can take the floor and finally the independent MPs are given the opportunity to join in the debate. A prior compromise on timeframes for speaking in the general debate is possible, where the parliamentary factions have times allocated proportionally.[9]

By the time the general debate starts, the Speaker designates one standing committee for the detailed debate – as detailed debates are to take place in the standing committees. However, other committees may also request – upon a majority decision of the committee members – that a similar debate be organised, in order to deliberate on the details of the entire legislative proposal, or on parts of it. There is one designated committee, and other committees

[9] In the earlier system, the general debate was followed by a committee stage, and the detailed debate took place in the plenary, where only the textual details or the proposed amendments could be debated. In practice, detailed debates were mostly of a technical nature or consisted of the repetition of the arguments from the general debate, with a rather low attendance rate among the MPs. These were the main reasons why detailed debates were removed from the plenary and are now held in committees.

decide on the debate themselves.[10] The deadline for MPs and committees for filing amendments to the legislative proposal is the third day after the plenary has adopted its agenda with respect to the item at hand. Amendments must be filed in writing and must be reasoned (no oral amendments may be made). The proponent of the bill is not allowed to submit amendments to its own proposal, since the logic of the system is that after the submission, the Parliament is the owner of the bill. The proponent can only express their view on the proposed amendments, whether they agree with them or not. A new feature of the procedure is that the MPs are to declare in the amendment proposal which committee they would like to discuss the amendment. Earlier committees themselves selected which amendment they wished to discuss, and the initially designated committee was the only one to discuss all amendments. If the MP does not appoint any committee, the designated committee will discuss and decide on the amendment proposal. Amendment proposals contain the original wording of the legislative proposal with track changes, reflecting the desired change – the reasoning for such changes is also a necessary element here. Amendments are only eligible if they are related to laws whose modification was already foreseen in the initial legislative proposal. If an MP seeks to include amendments to new laws, which the proponent did not intend to treat in the original legislative proposal, and the committees also support this motion, the procedure has to go back one step: the general debate is reopened, but only as far as the new law is concerned. After the deadline for amendments expires, amendment proposals are discussed by committees during a detailed debate. In the previous system (before 2014), the detailed debate was held in the plenary, now it is done by committees. After the discussion, the committee votes on the amendments within the competence of the respective committee one by one, in the order of the articles of the legislative proposal. To support this decision-making, parliamentary services prepare an internal working document comprising all amendments submitted to a bill. The committee can decide either to reject or to support an amendment proposal, a third possibility being to support it with changes. When all the amendments are examined within the committees, the representative of the proponent is expected to present their position on them. However, this opinion is not binding to the plenary. The responsible committee then prepares a committee amendment by collating all supported amendments into a committee amendment proposal. The committee in charge of the assessment may also submit its own supplementary amendments. These coherent committee amendment packages will then be submitted to the Committee for Legislation. Committees must discuss and also declare, in a final report, whether the legislative proposal is in line with the

[10] According to the previous rules, multiple committees, including a leading committee, could be designated.

constitution, the legal system, international obligations and EU law. This system clearly shows the strengthening of the committees. They are responsible for the intra-parliamentary check against constitutionality, legality, conformity with international law and EU law, and they will report to the plenary about their findings. At the conclusion of the detailed debate, committees prepare a report to the Committee for Legislation and submit those amendment proposals which they support as their own committee amendment proposal.

The Committee for Legislation has the ultimate responsibility for preparing the legislative proposal for the plenary decision, harmonising the amendments from the various committees and preventing the simultaneous adoption of contradictory amendments. With the help of the legal service of the Parliament, it delivers its position on the committee amendments to ensure coherence and precision. The Committee for Legislation, based on the amendment proposals of the committees, elaborates a final amendment package (summarizing the amendment proposal), which is subject to a single vote in the plenary session. Afterwards, plenary debates are again to be held, this time based on the committee report and findings of the committees involved; to be followed by the plenary vote on the proposed amendments and a closing vote by the plenary.

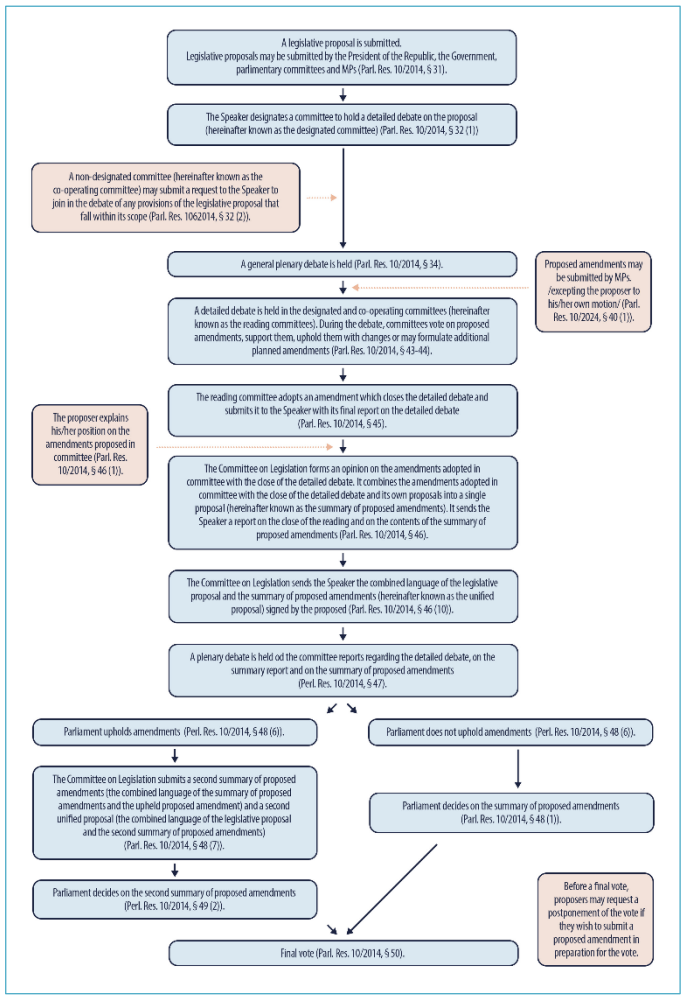
The chairman or another member of the designated or voluntary committees presents the summary assessment and the recommendation of the responsible committees. In case of a dissenting position within a committee, the minority opinion can also be delivered. Following this, the keynote speakers of parliamentary factions take the floor, and independent MPs are also given the chance to join in. Before the closure of the debate, the proponent is given the floor again to reply to the questions raised. Following this debate, votes are cast only on the summarized amendment proposal in the plenary, and not on each single amendment proposal. However, in certain cases MPs may ask that the plenary vote on their amendment proposals which were previously rejected by one of the committees. After the vote on the summarized amendment package, the proponent has the duty to prepare the amended version of the proposal for submission to the Parliament (a single amended proposal). This is why the vote on amendments cannot be immediately continued with the final vote on the entire proposal, as there must be one week between the two votes. The single proposal will then be the subject of final voting. The Committee for Legislation is responsible for the proper incorporation of the amendment package into the text of the legislative proposal.[11] If amendments are still needed in the last stage,

[11] In the earlier system – in cases of internal contradictions or conflict with other pieces of legislation caused by the Parliament's approval of conflicting amendments – amendment proposals coming from the proponent were allowed (so-called 'closing amendments'), even though, in theory, the provision for substantial changes in this phase was not possible (only textual errors could be corrected). However, this aforementioned provision was often overruled by the need for rapid change in politics.

the final vote has to be postponed, and a new plenary debate is organised on the closing amendments.[12] The entire legislative proposal is adopted when a final vote is held on the proposal in its amended form, as a whole. In the final vote, the Parliament adopts a legislative proposal with a majority vote required, either by the Fundamental Law or by another law: a simple majority of MPs present, or the 'qualified majority' (two-thirds) of MPs present.

The following Figure 1 shows an overview of the legislative process in the Hungarian Parliament.

Figure 1: The legislative process (Hungarian National Assembly, 2014).



[12] In the previous system, amendment proposals and plenary decisions on them were possible even without postponing the final vote.

If the proposal is approved, it is submitted for signature to the Speaker and then to the President of the Republic. However, the President has the right to send the bill back to Parliament for reconsideration (political veto) or to send it to the Constitutional Court (constitutional veto). In the former situation, Parliament must hold a new debate on the proposal and take a new final vote, however, once the proposal is adopted again, the President must sign it anyway. In the case of a constitutional veto, the bill will only be signed if the Constitutional Court decides that it is in line with the Fundamental Law. If not, it is sent back to Parliament to correct the errors. If the President has no such objections, he signs the Act and orders the promulgation in the Official Gazette of Hungary.

Acts of Parliament – as well as decrees, legal instruments of state administration and uniformity decisions of the Curia – can be examined by the Constitutional Court before or after their promulgation. The Constitutional Court can examine promulgated acts upon the initiation of the Government, one-fourth of the Members of the National Assembly, the President of the Curia, the Prosecutor General, or the Commissioner for Fundamental Rights. Judges in charge of an individual court case can also ask for the examination of a law that is applicable to a particular case. Moreover, any natural person or organisation may ask for the examination of a law by which they are affected. Should a promulgated law conflict with the Fundamental Law, the Constitutional Court can annul it.

Apart from this ordinary legislative procedure, urgent or accelerated procedures for legislation can also be initiated. In this case, the shortest possible time to adopt legislation is seven days, due to the requirement that at least six days must pass between the submission of the legislative proposal and the general debate, in order for the MPs to have sufficient time for reading and analysing the proposal.

The proponent can initiate an 'urgent' or an 'extraordinary' procedure on its own legislative proposal. In the case of an 'urgent procedure' – which can be used only six times in a calendar semester and ordered by a two-thirds majority of the MPs present – the proponent can ask for a derogation from some deadlines specified in the Resolution on Rules of Procedure. In the case of an 'extraordinary procedure' – which can be used only four times in a calendar semester and decided by a simple majority of all MPs – Parliament can set out (schedule) the date of certain procedural steps in advance. Extraordinary proceedings are not allowed for motions related to the Fundamental Law (amendments, new constitution), or for budgetary processes. In an 'urgent procedure', the time interval between the decision on the urgency and the final vote may not be less than six days, whereas in an 'extraordinary procedure' there is no such minimum timeframe.

Another possibility is to decide in advance that in case no amendment proposals are submitted, Parliament shall approve the legislative proposal in its original submission form. In this case, the final vote can take place immediately after the closure of the general debate.

Parliament can decide to disregard any provisions of the Resolution on Rules of Procedure with a majority of four-fifths of MPs present.

Table 3: Number of adopted laws discussed by exceptional procedure (Hungarian National Assembly, n.d.a)

Cycle	Number
1990–1994	58
1994–1998	48
1998–2002	10
2002–2006	3
2006–2010	0
2010–2014	27
2014–2018	41
2018–2022	30

Table 3 above shows that the number of laws dealt with in the exceptional procedure was highest in the 1990–94 cycle, followed by the 1994–98 cycle, and then, after a significant decrease, the number of exceptional procedures increased from the 2010–14 cycle onwards, but did not reach the numbers seen in the first and second cycles. The fluctuation in the use of the exceptional procedure is because in most cases a two-thirds or four-fifths special majority was required. Although the governing parties did not have the two-thirds majority (Parl. Res. 25/1991, § 6) in the first term and the four-fifths majority in the 1994–98 term (Parl. Res. 46/1994, § 125, par. 1), as required by the new House rules since 1994, the opposition parties did not prevent the use of special procedures. Thereafter, until 2010, the opposition rarely contributed or did not contribute to the use of the exceptional procedure. Since 2012, the governing parties with a two-thirds majority have been able to secure the two-thirds majority needed for exceptional procedures themselves, but they introduced a self-limiting rule by amending the Rules of Procedure to limit the number of exceptional procedures to six (Parl. Res. 98/2011, § 2), and then to four per six-month period from 2014 (Parl. Res. 10/2014, § 61, par. 5). Also, since 2014, a majority of more than half of the votes of MPs has been sufficient to order an exceptional procedure (Parl. Res. 10/2014, § 62, par. 1).

3.3. Legislation as a member of the European Union

The legislative duties of the National Assembly were partially altered in response to Hungary's accession to the European Union, similarly to those of the parliaments of other Member States. Firstly, the nature and proportions of law-making changed, and, secondly, the scope of responsibilities of Parliament expanded to cover new elements.

First and foremost, changes were introduced to exercising (legislative) powers based on national sovereignty. The Fundamental Law, however, provides that the National Assembly, as the guardian of popular sovereignty, retains its function as the supreme legislative body; only some of its legislative powers have been transferred to the institutions of the European Union (the European Parliament, the European Commission and the European Council). This transfer of authority is not, however, tantamount to the waiving of those powers; it means that transferred competences are exercised jointly with other Member States via the institutions of the European Union (Fundamental Law, art. E), par. 3).

A significant portion of the laws applicable in Hungary has been adopted by EU institutions. The *acquis communautaire* has formed part of the Hungarian legal system since 1 May 2004, and Community law has priority over Hungarian law. The primary legal corpus of Community law is made up of treaties, while laws created through the legislative efforts of EU institutions are seen as secondary sources of law. There is no call for national regulation in areas regulated exhaustively by Community law and wherever the EU has exclusive competence. There are no exceptions, unless permitted by Community law. National parliaments retain their power to make laws – in full or in part – in areas subject to joint or national competence.

There are also new tasks associated with EU membership. Parliament is indirectly involved in EU-level decision-making within the framework of specific procedures, and the Government cooperates with the National Assembly to develop Hungary's position in respect of draft Community legislation pertaining to specific areas (this is known as the scrutiny procedure). The Act on the National Assembly regulates cooperation between Parliament and the Government in matters relating to the European Union. More detailed rules are provided in the Resolution on Rules of Procedure. These provisions divide the tasks of the Parliament in relation to the European Union between the National Assembly (in the plenary) and the Committee on European Affairs. When the scrutiny procedure applies, the Committee has the final decision-making power. Government duties, however, are normally addressed to the plenary.

The transposition of directives into the national legal system has emerged as a new task. Directives oblige Member States to achieve their purpose, but it is the task of each Member State to select the method of implementation and integration into its own law. This obviously involves legislative duties. Since Hungary's accession, most items of proposed legislation have sought to achieve legal harmonisation. The second source of law comprises regulations. As these laws are directly applicable, they do not impose an additional legislative burden on national parliaments. However, binding Community decisions do impose a legislative duty on national parliaments.

3.4. Parliamentary resolutions

As a legislative body, the National Assembly passes normative resolutions in addition to enacting laws. As a parliamentary resolution is not a law, it may not grant rights to, or prescribe obligations for, citizens. Parliament is typically a legislative body, but it also passes resolutions to exercise certain of its powers and to perform some of its duties. In fact, many parliamentary resolutions are not normative and are specific in nature to the election of various officers and members of committees and to approving reports. Most of the normative parliamentary resolutions concern the adoption of various, normally longer-term plans, programmes and strategies. Parliamentary resolutions cover, for instance, the National Programme for Environmental Protection, the National Health Promotion Programme, the National Regional Development Plan, the National Strategy for Preventing Community Crime, and the long-term directions for developing Hungary's National Defence. Parliamentary resolutions most frequently invite the Government to develop and submit proposed legislation or plans. In addition, Parliament occasionally issues tasks to the Government or defines desirable government measures. A parliamentary resolution is a regulatory instrument of public law within the meaning of the Act on Legislation and as such, cannot conflict with any law. The law stipulates that the National Assembly may regulate its organisation, operation, activities and action plans by means of a normative decision. Although the exact interpretation of the latter may be difficult to apply in relation to the National Assembly, it is beyond dispute that the provisions of a normative decision are not rules of general application and cannot extend beyond the internal relations of the National Assembly (Tóth, 2022).

Among the parliamentary resolutions, the Resolution on Rules of Procedure, which is one of the cornerstones of the functioning of Parliament, is particularly worthy of mention. In addition to the Act on Legislation, the right of self-regulation of Parliament is enshrined in the Fundamental Law, which stipulates that *"unless otherwise provided in the Fundamental Law, the National Assembly*

shall make its decisions with the votes of more than half of the Members of the National Assembly present." (Erdős & Smuk, 2022, p. 36)

This provision of the Fundamental Law was established by the Fourth Amendment to the Fundamental Law; previously, both the Fundamental Law and the Constitution provided for the adoption of the Standing Orders (our previous parliamentary resolution), so the Standing Orders were a single document, adopted in the form of a normative resolution – not a statute or a law (Erdős & Smuk, 2022). The form of the resolution was a sign of respect for tradition and enabled a clearer exercise of the Parliament's right to self-regulation: unlike laws, the normative resolution did not have to be signed by the President, so the National Assembly could control the whole process of its adoption (Kukorelli, 2014).

However, the 'disadvantage' of the normative decision compared to the law, which is a statute, is that, because it is a regulatory instrument of public law, it can only impose a requirement on a legal subject who is a member of the National Assembly (because, as mentioned above, regulatory instruments of public law do not have general binding force). At the same time, these decisions can also affect our everyday lives – for example, through the decisions by the National Assembly to call a national referendum. Thus, for example, the obligation to appear before a committee of inquiry was a provision of the Standing Orders that was not binding on non-MPs. This has also been remedied by the division of the provisions of the procedural rules between statutory and normative sources of decision, thus serving the requirements of respect for tradition, the separation of powers, and the rule of law (Erdős & Smuk, 2022).

Among the parliamentary resolutions, it is worth mentioning that national referendums are also ordered in this form, and this is reviewed by the Constitutional Court, for instance, within thirty days upon the motion of any person, regarding its conformity and legality with the Fundamental Law, which is a unique aspect of this type of norm.

4. Quantitative description of the Hungarian legislation from 1990[13]

The rise of the independence of the National Assembly and the revival of parliamentary politics can be traced back to the legislative performance of the National Assembly. In the 1985–1990 cycle, the total legislative performance of the last parliament before the change of regime can at most be compared to the performance of a weaker year (rather than a cycle) of the post-1990 parliaments,

[13] The analysis is based on the data available on the webpages of the Hungarian National Assembly and the Office of the Hungarian National Assembly (Corruption Research Center Budapest, 2015).

with its 105 laws, but it is worth noting that between 1949 and 1985, only 192 laws were passed by the National Assembly, so the trend before the change of regime had already foreshadowed a major change in the dynamics of law-making (Szente, 2009).

After 1990, the National Assembly enacted 148 laws on average each year, but the most active cycle has been much more productive (with an annual average of 215 laws in the 2010–2014 cycle). The legislative performance of the first parliament of the regime change dazzled some and worried others: during its mandate, the National Assembly passed a total of 432 new acts and 354 resolutions. This was far more than the total number of laws enacted between 1949 and 1990, which showed the emancipation of the institution of parliament and its re-establishment in the Hungarian constitutional system. The workload of the 1990–1994 National Assembly – and perhaps the inexperience of the parliament – is illustrated by the fact that at the end of the term there were 102 legislative proposals (31 from the government and 71 from individual MPs) that were put on the agenda but not discussed (Szente, 2009). In the 1994–98 cycle, the governing coalition's large majority removed the most important legislative obstacles to the implementation of the government's programme and allowed the adoption of two-thirds majority laws, whose qualified majority requirement in previous and subsequent terms gave the opposition veto power. During the term, the National Assembly passed a total of 499 laws, of which 264 were new acts and 235 were modifications (Hungarian National Assembly, n.d.b).

The National Assembly elected in 1998 adopted a total of 460 laws (273 new acts and 187 modifications), not much less than in the previous term, but this time almost 40% of the laws were the proclamation of international treaties, which is the most formal way of legislating (since the parliament does not alter them). Thus, the number of laws enacted in the 1998–2002 parliamentary term fell significantly, not only in comparison with the legislative work of the previous two cycles, but also with the figures for later years. In terms of the legislative techniques used, the right-wing majority continued some of the previously established methods. For example, the adoption of so-called "omnibus" or "salad acts," amending many other laws by one act, continued to be used; the 1999 budget law, for example, amended approximately 50 laws.

The legislative role of the National Assembly elected in 2002 became more active than in the previous term, with 262 new acts and 311 modifications adopted in the whole term. One of the important events of the cycle was the fact that the practice of adopting the salad acts, which had previously been used as a popular practice, also raised constitutional problems, which were this time blocked by the Constitutional Court.

The coalition that was re-elected in 2006 started with great vigour on the legal reforms that had been left undone in the previous term(s), and despite the many significant political events that took place during this term (Őszöd speech, protests, resignation, etc.), the National Assembly adopted more legislation than ever before: 587 acts and 421 resolutions between the 2006 inaugural session and the end of 2010.

The 2010–14 cycle was outstanding in all respects in terms of the number of acts and resolutions proposed. The second Orbán government and the more than two-thirds majority of the National Assembly wanted to renew and completely transform Hungary with the new Fundamental Law, the cardinal acts, and the transformation of the legal system, compared to the previous term (Soltész, 2025).

The years between 2011 and 2013 were very turbulent. The average number of published laws in these years was 231. In contrast, between 1990 and 2022 this average is only 148. The number (166) and share (65.4%) of published laws modified within one year became extraordinarily high in 2013. Although this number decreased annually after 2013, it remains high in historical terms. Up until 2010, the legislation process became faster. The time elapsed between the introduction and the publication of a bill significantly shortened after 2010.

However, it was also noticeable that the workload of the National Assembly was already under extreme pressure, and with the number of MPs already reduced to 199 for the next term, it was also feared that quantity would be compromised at the expense of quality. As a result, the rules governing the functioning of the National Assembly were changed and the legislative process was restructured.

Between 2014 and 2018, the Parliament adopted 730 laws; 565 of these laws were proposed by the government, 148 by MPs, and 17 by committees (Hungarian National Assembly, n.d.c).

Generally, the Government submits most of the proposed legislation (around 50–60%), followed in terms of frequency by Members of Parliament and committees. Presidents of the Republic have rather infrequently exercised their right to initiate legislation; this only occurred three times during the 1990–1994 cycle. The President has not used this power since 1994. The Government, being the most significant law-drafter, introduces more than 80% of all enacted laws.

Some 55–60% of all draft legislation submitted emanates from the Government, and the remaining part from individual MPs and parliamentary committees. The following table shows the legislative activity of the Hungarian National Assembly in each parliamentary cycle from 1990 to 2018.

The latest cycle shows signs of consolidation in terms of parliamentary numbers, with virtually all indicators below the previous two cycles and close to the pre-2010 cycles. The number of laws passed has decreased by 20% compared to the 2014–18 cycle and by 30% compared to the 2010–14 cycle. The number of resolutions, while slightly higher than the previous cycle, is still less than half of the 2010–14 cycle. The number of laws introduced by MP proposals has also fallen to the pre-2010 level. Of course, we must not forget that this was a period of pandemic, which also affected the work of the Parliament. The Parliament continued to operate, but with fewer sitting days, because during the pandemic the state of danger[14] was introduced, which is a special legal regime that allows the government to take over the role of the Parliament with the approval of the Parliament.

Table 4 below summarizes the legislation activity of the Parliament.

Table 4: Legislation activity of the Parliament (Hungarian National Assembly, n.d.c)

Cycle	Number of laws			Number of resolutions (including decisions concerning the person)	Number of political declarations, guidelines, principled positions	Decisions total
	New	Modification	Total			
1990–1994	219	213	432	354	10	796
1990–1998	264	235	499	455	3	957
1998–2002	273	187	460	394	2	856
2002-2006	262	311	573	488	4	1065
2006-2010	263	326	589	421	5	1015
2010-2014	321	538	859	419	4	1282
2014-2018	222	508	730	173	0	903
2018-2022	237	360	597	176	7	780

[14] It was based on Article 53 of the Fundamental Law, but after an amendment it is now regulated in Article 51.

5. Conclusion

In Hungary, the substantive rules on the content and the formal rules of legislation are set out in detail. The legislators, the types of legislation, the most basic rules of law-making, and the main rules governing the legislative process are set out in the Fundamental Law. The detailed rules of legislation are laid down in the Legislative Drafting Decree. The detailed rules of the legislative process are laid down in Parl. Res. 10/2014. There is also a separate law on scrutiny of proposals. It can therefore be concluded that the legislative rules in Hungary are highly detailed and normatively defined. It is also worth noting that Hungary is one of the countries where the basic rules are regulated at a relatively high level by law. Both substantive and procedural rules are mandatory and are ultimately subject to the supervision of the Curia and the Constitutional Court, and any breach of these rules may even lead to the annulment of the legislation in whole or in part. The most detailed procedural rules relate to the legislative activity of the National Assembly. This is no mere coincidence, since the laws enacted by the National Assembly are the most important in the Hungarian legal system after the Fundamental Law, both in terms of the importance and scope of the subjects they regulate.

The legacy of the change of regime, the law-oriented nature of legislation, is still apparent. The National Assembly has sought to regulate as many subjects as possible and in as much detail as possible, even though in many cases the subject matter of the legislation would have required a more flexible amendment, at a lower level of legislation that would have ensured quicker, less politically influenced change. Another result of the change of regime is the introduction of cardinal acts, which require wider consensus of the Members of the Parliament on the most important legislative issues in order to ensure their broader legitimacy. The decisive role of the National Assembly in the Hungarian public law system has not only been strengthened by the change in its constitutional and legal status, but its legislative activity has also increased.

In the years following the change of regime, evaluative commentaries spoke of a legislative boom, which was predicted to gradually decline as the democratic establishment consolidated. The figures, on the other hand, show something quite different more than 30 years later. Legislative activity has steadily increased and even gained new momentum from 2010 onwards: between 2010 and 2018, many laws were reformed. The most extensive legislative activity in the last 30 years was carried out in the 2010–2014 cycle. Since then, it has become almost routine to pass more than 200 laws a year. There are signs of a certain moderation only from 2018 onwards, which may be explained by the continuity of government policy and the stable majority in government since 2010. However, the peak of legislation has not been accompanied by a decline

in the formal quality of legislation (the assessment of its content is, of course, outside the scope of this study). On the contrary, the mandatory rules of law-making have become more and more sophisticated in terms of practical experience, compliance with them has become evident, and the use of digital tools has given a new boost to this process.

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STUDIA JURIDICA ET POLITICA JAURINENSIA
VOL. 12, NO. 1, 2025, 101–114.
DOI: 10.71100/STUDIA.2025.1.7

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CIS INTERPARLIAMENTARY ASSEMBLY: ROLE IN POST-SOVIET INTEGRATION

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ABSTRACT

The Interparliamentary Assembly (IPA) was established at almost the same time as the Commonwealth of Independent States (CIS). According to the official position, to date the IPA CIS has adopted about 650 model laws and other documents and has become the main cooperation platform for parliamentarians in a new political and economic environment. More than 70% of all IPA acts are implemented into the legislation of the CIS countries, and about 10% contain provisions that overlap with those in national laws.

However, there are also problems. Throughout the history of the Assembly, its chairmen have always been representatives of Russia. Considering the specifics of the political development of the post-Soviet area, one can note the relative weakness of parliaments, which tend to act only in conjunction with the Presidents. And the CIS itself has for a long time been more of a reserve platform for Russia than an influential integration organization.

KEYWORDS Commonwealth of Independent States, Interparliamentary Assembly, model legislation, integration, former Soviet countries

1. Introduction

In the space of the former USSR, there are now three large regional international organizations: one of broad competence – the Commonwealth of Independent States (CIS), one of economic profile – the Eurasian Economic Union (EAEU), and one of military-political profile – the Collective Security Treaty Organization (CSTO). In addition, there is a Union State of Russia and Belarus.

Accordingly, the Commonwealth of Independent States has in its system of bodies the *Interparliamentary Assembly of the CIS Member States* (hereinafter – the IPA CIS), the Collective Security Treaty Organization has the CSTO

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Parliamentary Assembly (Parliamentary Assembly of the Collective Security Treaty Organization, n.d.), and the Union State – the Parliamentary Assembly of the Union of Belarus and Russia (Parliamentary Assembly of the Union State of Belarus and Russia, n.d.).

As for the Eurasian Economic Union, it does not have its own interparliamentary body; its system of bodies includes only four main bodies: two Councils, a Commission and a Court (Treaty on the Eurasian Economic Union, 2014). The predecessor of the EAEU, the Eurasian Economic Community, had an Interparliamentary Assembly, but the Community was replaced by the Union on January 1, 2015, and that Assembly ceased to exist.

Due to such a *truncated* structure of the EAEU governing bodies, the CIS Interparliamentary Assembly also plays an important role for the Eurasian Economic Union, primarily in the field of trade and economic cooperation. Through it, national members of parliaments of the former Soviet Union countries can influence the formation of legal regulation of the movement of goods and services in the region.

The Interparliamentary Assembly of the CIS was created by the *Agreement* of March 27, 1992 (Agreement on the Interparliamentary Assembly of Member States of the CIS, 1992), four months after the creation of the Commonwealth itself by the former Soviet republics (Agreement establishing the CIS, 1991). On September 15, 1992, the Rules of Procedure of the IPA CIS were adopted (Interparliamentary Assembly of Member States of the CIS, 1992).

In 1995, *the Convention on the CIS Interparliamentary Assembly* was signed by representatives of Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, the Kyrgyz Republic, Russia and Tajikistan, and later was signed by Moldova (1997) (Interparliamentary Assembly of Member States of the CIS, 1995).

Under the Convention, the IPA CIS meets at regular and extraordinary plenary sessions. Regular plenary sessions are held at least twice a year. The IPA CIS has the right to adopt *model laws* and recommendations and to send them to the parliaments of the member states.

To date, more than 650 model laws have been adopted. What does this number mean, and what real role does this Assembly play in the development of integration in the post-Soviet space?

2. Model legislation

According to the 1995 Convention, the CIS Interparliamentary Assembly:

- discusses issues of cooperation between member states in various fields and sends its recommendations on these issues to the governing bodies of the Commonwealth;
- adopts recommendations for rapprochement of the legislation of the member states;
- adopts *standard (model) legislative acts* and, with appropriate recommendations, submits them to the Parliaments of the member states;
- adopts recommendations on the synchronization of procedures for ratification (approval) by the Parliaments of the CIS member states of treaties (agreements) concluded within the framework of the Commonwealth, and of other international treaties in which the participation of the Commonwealth member states is highly desirable to achieve their common goals enshrined in the CIS Charter;
- adopts recommendations for bringing the legislation of the member states into compliance with the provisions of international treaties concluded by these states within the CIS;
- facilitates the exchange of legal information between member states;
- discusses other issues of interparliamentary cooperation (Article 4).

Detailed rules regarding model and other acts of the Assembly were established a decade later by the IPA CIS Resolution *On Model Lawmaking in the Commonwealth of Independent States* (April 14, 2005). As Annex No. 2, it included the Regulations *On the Development of Model Legislative Acts and Recommendations of the CIS Interparliamentary Assembly*.

These acts define what a CIS model legislative act is (paragraph 1.2 of the Regulations):

A CIS *model legislative act* is a legislative act of a recommendatory nature, adopted by the Interparliamentary Assembly in the prescribed manner, in order to form and implement coordinated legislative activities of the member states of the Interparliamentary Assembly on issues of common interest, to bring the legislation of the member states of the Commonwealth into compliance with international treaties concluded within the framework of the Commonwealth, and other international treaties, the participation of the Commonwealth member states in which is highly desirable in order to achieve common goals.

Model legislative acts of the Commonwealth include:

- a *CIS model code* – a systematized legislative act of a recommendatory nature, adopted by the Interparliamentary Assembly with the aim of harmonizing the legal regulation of homogeneous spheres of public relations in the Commonwealth member states;
- a *CIS model law* – a legislative act of a recommendatory nature, adopted by the Interparliamentary Assembly with the aim of harmonizing the legal regulation of specific types (groups) of public relations in the Commonwealth member states.

As we can see, these types of acts differ in the degree of systematization and the scale of regulation. Under the Regulations, model legislative acts can take the form of *standard provisions, charters, and agreements*.

The development of CIS model legislative acts can be initiated mainly by the parliaments of the member states, as well as the Commonwealth bodies. In practice, the vast majority of acts were developed by committees of the Federal Assembly (Parliament) of the Russian Federation (Krasukhina, 2006).

The legislative activity of the CIS Assembly is organized in accordance with the plans it adopts. *The Perspective Plan for Model Lawmaking in the Commonwealth of Independent States for 2023–2025* is currently in effect (Interparliamentary Assembly of Member States of the CIS, n.d.). In addition, a number of model laws and recommendations are planned (or have been planned and carried forward from previous years) within the cooperation programs and action plans in various areas outside of this Perspective Plan.

Analysis of the 2023–2025 Perspective Plan indicators show a high degree of intensity of the CIS Assembly legislative activity for these three years. The acts are divided into eight main areas:

- economics and finance;
- social policy;
- humanitarian sphere;
- agricultural policy, ecology and environmental management;
- military cooperation and security;
- legal sphere;
- science and education;
- state building and local self-government.

Moreover, the types of acts planned for adoption are very diverse and are not limited to *model codes, model laws or recommendations* (there are no model provisions or charters among them):

- new editions of model codes – 2;
- chapters of model codes – 6;
- amendments to model codes – 2;
- model laws or their new editions – 75;
- model concepts – 1;
- concepts – 1;
- recommendations – 26;
- glossaries of terms – 3;
- draft agreements – 1;
- analysis of directions of model lawmaking – 1;
- model instructions for service – 1.

In terms of content, these model acts (based on their titles) reflect the latest trends in the development of social relations not only for post-Soviet countries, but also for any other countries.

In first place in terms of the number of model laws and recommendations are those aimed at regulating processes of *digitalization, electronic circulation and artificial intelligence*. They are characterized by such titles as: "On Digital Financial Assets," "On Digital Rights," "On the Digital Space, Its Infrastructure and Regulation," "On the Digital Transformation of Industries," "On Digital Health," "On Artificial Intelligence Technologies," etc.

The second group of drafts is related to ensuring *various aspects of security*, in particular: economic security of states, environmental monitoring and safety, radiation safety in medicine, radioactive waste management, protection of electoral sovereignty, combating cybercrime, protection of children from harmful information, prevention of ICT-related offenses, and responsibility for financing terrorism, mobilization preparation and territorial defence, etc.

The third group of planned model acts can be identified as those aimed at *support for younger generations and maintaining continuity of generations*: measures to support talented youth, digital development in culture and sports, state policy towards the older generation, ensuring historical memory, etc.

And the general background of all this activity is the development of the economy and labour in the CIS countries.

What impact will these model acts have on the regulation of social relations, and what is their nature and legal status?

3. Nature of model legislation

Model legislation is assessed differently in terms of its nature and place in the national legal system of the CIS member states.

So, Yu. Bezborodov defines *international model norms* as norms that authorize or oblige states or other entities to develop and adopt legal acts or legal norms, international or domestic, of a certain content. An international model norm includes two elements: 1) the right or obligation to adopt a legal act or norms and 2) the model(s) of these acts or norms. Depending on the level at which the model norm will be implemented in the *future – international or national – model norms* can be divided into future international and future national norms. This author's reasoning regarding the functions of model norms (*regulatory, translational, evaluative*, as well as *orientation, unification and scientific forecasting* functions) is interesting (Bezborodov, 2004).

In his dissertation thesis, Bezborodov advocates the recognition of model norms as *soft law* and finds this term successful, since it

> *"classifies certain types of acts as legal (i.e. within the legal sphere), but at the same time separates them from purely normative legal ones, since such acts do not contain mandatory rules of conduct (i.e., they do not contain rules of law), secured by measures inherent in the norms of international law"* (Bezborodov, 2003, p. 9).

The advantages of recommendatory model norms include the possibility of wider involvement of states, that is, ensuring the universality of the model norms through their use by states at their free discretion or choice.

The question of the direct effect of the norms of CIS model laws is controversial. According to Yu. Bezborodov, model laws were created not for the law enforcer, but for the law creator. The law enforcer may qualify the failure to adopt the relevant law as a violation of the model norm. At the same time, when qualifying a crime, he/she cannot use the provisions of model norms (for example, the CIS Model Criminal Code).

According to Bakhin, for national courts it is not the model law that is applied, but the normative acts of the relevant state:

> *"It seems a distortion of the legal nature of model acts to consider them not as a sample or a model, but as a set of norms adopted in the national legislation of many countries and, in connection with this, acquired binding force on the territory of the relevant states. It must be emphasized that it is national acts adopted on the basis of the model law that have acquired binding force on the territory of the relevant states."* (Bakhin, 2003a, p. 175)

As practice shows, a gap in regulation, that is, the absence of a domestic law on a particular issue, may force the parties to turn to the norms of model laws when resolving disputes. Most often, this is due to the desire of not only the participants in the trial, but also the court itself, to find additional arguments to substantiate their position, supporting it with the authority of the international organization that adopted the model law (Antonova, 2017). Moreover, references to the CIS model laws can be found in Russian judicial practice not only when considering civil law disputes, but also when litigating regional and municipal regulatory legal acts.

This was the case with the CIS Model Law "On the Treatment of Animals" of October 31, 2007, until the adoption of the Federal Law "On the Responsible Treatment of Animals in the Russian Federation" on December 27, 2018. The courts referred to the articles of this Model Law. This was also facilitated by Art. 40 of this Model Law, which read: *"Until the state legislation is brought into compliance with this Law, acts of state legislation are applied to the extent that they do not contradict this Law, unless otherwise established by the constitution of the state."* (Federal Law of the Russian Federation, 2018, art. 40)

The Constitution of the Russian Federation states that:

> *"Universally recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied."* (Constitution of the Russian Federation, 1993, art. 15, para. 4)

However, not every international treaty has priority over federal laws. According to the Federal Law "On International Treaties of the Russian Federation" of July 15, 1995, the provisions of officially published international treaties of the Russian Federation, which do not require the publication of internal acts for application, are directly effective in the Russian Federation. To implement other provisions of international treaties of the Russian Federation, relevant legal acts are adopted (Federal Law of the Russian Federation, 1995).

Resolution of the Supreme Court Plenum of the Russian Federation of October 10, 2003, No. 5 "On the Application by Courts of General Jurisdiction of Generally Recognized Principles and Norms of International Law and International Treaties of the Russian Federation" explains that

> *"rules of the current international treaty of the Russian Federation, consent to be bound by which was adopted in the form of a federal law, have priority in application in relation to the laws of the Russian Federation. The rules of the current international treaty of the Russian Federation, the consent to be bound by which was not adopted in the form of a federal law, have priority in application in relation to by-laws issued by a government body or an authorized organization that has concluded this treaty."* (Supreme Court of the Russian Federation, 2003, para. 8)

For example, if an agreement between the Russian Government and the Kazakhstan Government was approved by a government act, then the norms of this Agreement are lower in legal force than federal laws in this area.

As for the model laws of the CIS Interparliamentary Assembly, they are advisory (recommendatory) in nature, as indicated in paragraph 1.3 of the Regulations "On the Development of Model Legislative Acts and Recommendations of the CIS Interparliamentary Assembly." In addition, the Regulations establishes that the use of model legislative acts in general or of their provisions by the member states' parliaments can be carried out either in the form of drafting and adopting domestic normative legal acts on their basis, or introducing amendments and additions to domestic normative legal acts (Interparliamentary Assembly of Member States of the CIS, 2005, para. 8.3).

Thus, there is no reason to equate a model law with an international treaty or to include it in the system of international legal documents, the provisions of which, in accordance with the Constitution of the Russian Federation, have priority over domestic laws (Antonova, 2017).

4. Impact of model laws

In Russian science, when analysing the practice of creating the CIS model laws, attempts are made to identify periods in the development of the CIS model legislation. Of course, in the first years of the functioning of the Commonwealth of Independent States, most of the organization's acts remained *on paper* and were of a declarative nature. Later, a legal basis for economic and other integration between post-Soviet countries was formed. Since the early 2000s, certain types of social relations have been particularly regulated (Shestakova, 2006). Later, general integration processes slowed down, and the search for new

solutions began to be carried out within the framework of highly specialized regional organizations such as the EAEU, CSTO and others.

According to experts, in the period from 1992–2020, more than 600 such documents were prepared. The quantitative analysis of the above-mentioned legislative acts made it possible to highlight four main directions of the Assembly's activity: harmonization and unification of national legislations of the CIS member states (more than 400 documents); trade-economic and energy aspects of cooperation (more than 300 model acts); political interaction and cooperation in the sphere of regional security provision (about 270 documents); and finally, cultural and humanitarian cooperation (100–130 documents). Except for these four areas, there are several other, less significant aspects of the organization's activities (Shabaga et al., 2020).

The website of the Federation Council of Russia provides data that the Russian Federation Parliament took into account various provisions of the IPA CIS model legislation when developing Part Two of the Russian Federation Tax Code, the Federal Law "On the State of Emergency," the Federal Law "On Weapons," the Federal Law "On State Protection of Judges and Officials of Law Enforcement and Regulatory Agencies," etc. (Federation Council of the Federal Assembly of the Russian Federation, n.d.).

Currently, the CIS Interparliamentary Assembly model legislative acts cover almost all spheres of public life and are actively used by all national parliaments of the CIS countries when working on their own laws. Among the most important model legislative acts, special mention should be made of the model codes – *Civil, Criminal, Criminal Procedure, Criminal Executive, Tax, Library, the Model Code on Subsoil and Subsoil Use, and the Forestry and Land codes*. Thus, three parts of the *Model Civil Code*, developed by the CIS IPA, have found, to one degree or another, practical implementation in the civil legislation of all CIS states. Based on the Model Civil Code, civil codes have been developed in Armenia, Belarus, Moldova, Kazakhstan, Kyrgyzstan, and Uzbekistan. The model legislation of the Interparliamentary Assembly has been most fully applied in the areas of defence and security; education, culture, tourism and sports; economics and finance; and ecology (Krasukhina, 2006).

According to Sergeev, the Model Civil and Criminal Codes for the CIS member states have most dramatically affected the national legislative system in most Commonwealth countries. The norms of several model laws, with minimal modifications, are incorporated into the CIS countries' laws on the fight against terrorism, on combating illicit trafficking of narcotic drugs, psychotropic substances and their precursors, on electronic digital signatures, on combating the legalization (laundering) of incomes and financing of terrorism, and many others (Sergeev, 2017).

In several areas, the CIS model laws contain *more advanced* legal and management mechanisms. For example, Belarusian author M. Gurina, considering the field of education, notes that in the CIS model legislation, there were such organizational forms of education as e-learning, cross-border education, and a network form of educational programs implementation, which at that time were not included in the national legislation of the CIS member states, including the current Belarusian Code on Education (Gurina, 2021). Thus, we are talking not only about bringing the legal regulation of post-Soviet countries closer together, but about filling gaps in national legislation and the adoption of more modern rules.

5. Problems of model legislation

Despite the established practice of adopting and following the CIS model legislation, experts highlight problems in this area.

Progressing economic cooperation between states and business circles places new demands on model law-making, since the process of transforming it into national legislation is not easy and is often distorted or simplified. In this regard, the main question arises – the simplification and acceleration of these processes. In the future, it is necessary to develop organizational and legal mechanisms and a system of measures to increase the demand for model acts (Shestakova, 2006).

Several IPA CIS model laws do not correspond to current integration processes, contain errors of a legal and linguistic nature, and in some cases the model laws duplicate already adopted model acts and recommendations, and sometimes contradict each other (Krasukhina, 2006).

Often, their compromise nature is pointed out as a significant drawback of unification acts. It is sometimes emphasized that the creation of a certain average regulatory version leads to the emergence of complex and detached from real-life legal structures. However, the search for a compromise lies at the heart of the unification process, since states are unlikely to accede to an international act that does not consider the specifics of their approach to regulating any issue. At the same time, it should be noted that in recent years, states are gradually moving away from the search for an *average* regulatory option that suits everyone, seeking to establish an *optimal* regulatory regime in relation to the chosen area of legal convergence (Bakhin, 2003b).

According to Bakhin, the most serious problem in relation to model acts is the problem of their uniform interpretation. Until now, it has not been the subject of special consideration, even though it has significant specifics. Domestic acts adopted based on the model law are incorporated into the system of national law according to the rules provided for in it. In recent years, many unifying

international acts have included a special article prescribing the obligation of their uniform interpretation (for example, the UNCITRAL model laws) (Bakhin, 2003a).

A serious problem in relation to model law-making is also the adjustment of previously adopted model acts. According to Yusupov & Vus, who analyse the legal regulation of issues of state secrets in the CIS, over the past decade, the national legislation of member states in the area under discussion has changed and improved, but the CIS model legislation has not responded to these changes, which has given rise to the question of the need for its revision and improvement (Yusupov & Vus, 2017).

Another example is given by authors who research legal regulation of security issues in the CIS countries. They note that an analysis of many adopted model laws indicates problems with legal comprehensiveness, quality and efficiency. There is a different semantic and normative content of the understanding of *security* and its types, a diverse approach of national legislation to defining *challenges* and *threats*, and the unstable state of national currencies, inflation, and budget deficits. The implementation of attempts to satisfy the positions of all CIS member states in the texts of model laws, as a rule, leads to the fact that legal norms are vague, unclear and do not contain an effective mechanism for legal regulation, which is completely unacceptable in relation to a whole range of issues united under the concept of *ensuring security* (Proletenkova & Belikov, 2021).

Some researchers propose to move away from the practice of developing advisory norms to mandatory ones to achieve more tangible results of model rulemaking. However, mandatory norms may be an obstacle to the adoption of such acts by as many states as possible (Bezborodov, 2003).

6. Conclusion

Now, when more than 30 years have passed since the creation of the Commonwealth of Independent States, we can say with confidence that the Organization has stood the test of time. The value of the Commonwealth is that it provides the opportunity for regular political contacts at the highest level. In the process of its reform, it is focused on maintaining the multidisciplinary nature of the association and, in the future, on expanding the scope of cooperation (Pivovar et al., 2021).

At the same time, in the highest-priority areas of cooperation within the CIS, the Eurasian Economic Union (EAEU) and the Collective Security Treaty Organization (CSTO) have emerged and are actively developing, confirming the transition to

multi-speed and multi-level integration in the post-Soviet space (Petrovich-Belkin et al., 2019).

Although the Commonwealth has adopted documents characteristic of highly integrated unions, a significant part of them does not work in full. Many are advisory in nature. The CIS model law-making is a tool for harmonizing legal norms in the post-Soviet space. We can agree with Trofimova that the word harmonization is increasingly used in jurisprudence in normative legal acts and, without a doubt, is becoming a characteristic of a new stage in the development of society (Trofimova, 2013). Model acts are aimed at creating unified or uniform legal norms not only with the aim of eliminating contradictions and differences between national legal systems or between international legal norms, but also with the aim of creating new norms that fill existing gaps in the regulation of certain issues (Bezborodov, 2004).

The problems of legal harmonization in the CIS primarily depend on the political will of states for rapprochement, and the very use of model acts in the process of harmonization of legal systems is a promising form of law-making, used to one degree or another all over the world (Makarova, 2019). For objective reasons, Russia remains the main moderator of economic and political processes taking place in the post-Soviet space (the developers of most of the CIS Assembly model acts are representatives of the Russian Federal Assembly) (Krasukhina, 2006). At the moment, there is broad consent in defining the priorities of the CIS: economic integration, ensuring stability and security, cooperation in the humanitarian sphere (Pivovar et al., 2021). And in the development of a common legal space, the CIS Interparliamentary Assembly, through its model legislation, plays a significant role.

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STUDIA JURIDICA ET POLITICA JAURINENSIA
VOL. 12, NO. 1, 2025, 93–121.
DOI: 10.71100/STUDIA.2025.1.8

PUBLIC POLICY FAILURES AND FIASCOS: A BRIEF UNDERSTANDING OF THE CAUSES AND CONSEQUENCES OF THE HIGH IMPACT ON LOW-INCOME COMMUNITIES

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ABSTRACT

The concepts of public policy failure and fiasco are often used in political discourse to describe the ineffectiveness of a particular policy, program or measure. Public policy failures are not only the absence of expected results, but often also highlight deeper social, economic or political problems. These failures can be due to a variety of reasons, including design flaws, weaknesses in implementation, lack of resources or even a lack of political will. This text explores the different dimensions of public policy failures, demonstrating how mistakes in policy design and implementation can have significant social, economic and political consequences.

KEYWORDS Public policy failure, low-income communities, social and economic impact, poverty and inequality, policy implementation

1. Introduction

The concepts of public policy failure and fiasco are often used in political discourse to describe the ineffectiveness of a particular policy, programme or measure. Public policy failures are not only the lack of expected results, but often also highlight deeper social, economic or political problems. These failures can be due to a variety of reasons, including design flaws, weaknesses in implementation, lack of resources or even a lack of political will. This text explores the different dimensions of public policy failures, showing how shortcomings in policy design and implementation can have significant social, economic and political consequences. Public policy failures and fiascos can have a profound and lasting impact on society and often have unintended consequences that harm the very populations they are intended to serve.

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2. Public policy failure

The causes of public policy failures can be many and varied. Among them, the following are worth highlighting (Brändström & Kuipers, 2003):

- Design failures – Many public policies do not consider the real social and economic context. The use of inappropriate or outdated data and the failure to consider local specificities are common causes of failure.
- Weaknesses in implementation – Even well-designed policies can fail if they are poorly implemented. This can be caused by a lack of administrative capacity, bureaucratic obstacles or a lack of support at local level.
- Lack of resources – The financial resources needed for public policies are often limited. A lack of funding can hamper the implementation of programmes and ultimately the achievement of their objectives.
- Lack of political will – A lack of political will is often behind public policy failures. If decision-makers are not committed to policy implementation, the necessary resources and support will not be available.
- Social opposition – Public policies often face opposition from society, especially if they do not reflect the needs or values of the community. Without the involvement of the groups concerned, policies cannot succeed.

3. The impact of public policy failures

Public policy failures not only affect the reputation of policymakers but can also have wider societal consequences. Failures can erode public trust in government institutions and contribute to political apathy (Gajduschek & Hajnal, 2023). Long-term consequences include increased social tensions, radicalisation and political polarisation. The most visible examples of public policy fiascos include "anti-poverty" programmes, which often fail to achieve the desired results. In many cases, these programmes have failed to make a lasting difference in reducing poverty by failing to address the root causes of the problems, such as a lack of jobs or access to education.

Another example is "green energy" programmes, which aim to reduce the use of fossil fuels. In many cases, plans were not sufficiently developed, and the deployment of renewable energy sources did not progress as planned, leading to a failure to meet environmental targets.

Public policy failures and fiascos can have a significant economic impact on low-income communities, often exacerbating existing inequalities and hindering opportunities for growth and development. The economic impacts of public

policy failures on low-income communities can be further explored through different dimensions, highlighting specific mechanisms and illustrated with examples ('t Hart, 1996).

3.1. Rising poverty levels

- Job losses – Poorly designed economic policies can lead to job losses or reduced job opportunities (Ferencz, 2021), which can push more individuals in low-income communities into poverty. Policies that do not encourage job creation or that inadvertently lead to job destruction (e.g. through excessive regulation or poorly designed trade agreements) can make it more difficult for low-income communities to recover economically. For example, the loss of manufacturing jobs in regions that relied heavily on these industries due to globalization and inappropriate adjustment policies has led to increased poverty.
- Welfare dependency – Misguided welfare policies can inadvertently encourage dependency rather than empower people, leading to a cycle of poverty that is difficult to break out of. For example, overly strict eligibility criteria for benefits can leave many people without the support they need.
- Income inequalities – Failures in social welfare policies may result in inadequate support, which can widen the income gap between low-income families and more affluent households.

3.2. Reduced access to basic services

Health policy failures, such as inadequate funding for public health programmes, can limit access to essential health services, resulting in increased health care costs for low-income families. Ineffective education policies can lead to underfunded schools in low-income areas, resulting in lower educational attainment and fewer job opportunities. Underfunding of public schools, especially in low-income areas, can lead to overcrowded classrooms, inadequate resources, and lower educational outcomes. In many cities in the United States, disparities between schools in affluent areas and schools in low-income neighbourhoods are striking.

3.3. Economic disintegration

If policies do not support small businesses, especially in low-income neighbourhoods, this can lead to closures and a lack of economic activity, which deepens poverty. Inadequate public investment in infrastructure can discourage businesses from operating in low-income areas, leading to fewer jobs and services. If local governments fail to create a favourable environment for small businesses – for example, due to high taxes, lack of infrastructure, or

inadequate support services – businesses may close or choose not to open in low-income areas. This can lead to so-called food deserts, where residents have no access to fresh food, exacerbating health and economic problems. Lack of investment in community development programmes stifles economic growth. For example, in areas where there are no subsidies for public transportation, residents have difficulty getting to jobs, limiting their economic mobility.

3.4. Housing instability

Housing policy failures can result in a lack of affordable housing options, leading to increased homelessness and housing instability among low-income families. Regarding gentrification, without protection for existing residents, policies that encourage gentrification can lead to the displacement of low-income families. Policies that do not address the shortage of affordable housing or that promote market-driven approaches can lead to rising rents. This phenomenon is evident in many cities experiencing gentrification, where long-time residents are being pushed out of their neighbourhoods by new developments targeting wealthier residents. Ineffective policies to address homelessness can lead to an increase in the number of individuals and families living on the streets. In cities where adequate shelter and support services are not provided, visible homelessness can increase, affecting community morale and safety.

3.5. Increased vulnerability to economic shocks

Poorly designed welfare policies leave low-income communities vulnerable to economic downturns, making it difficult for families to recover from job losses or unexpected expenses. Economic policies that do not address barriers to accessing credit can prevent individuals in low-income communities from borrowing for education, homeownership, or business ventures. Low-income communities often lack the financial reserves needed to withstand economic shocks, such as sudden job loss or a health crisis. The COVID-19 pandemic, for example, highlighted this vulnerability, as low-income workers were often in precarious employment situations, leading to immediate financial hardship. Policies that do not provide adequate emergency resources (such as unemployment benefits or food aid) can exacerbate the effects of an economic downturn. In times of economic crisis, low-income families often face serious consequences due to not receiving sufficient support.

3.6. Social unrest and economic instability

Economic instability resulting from policy failures can lead to higher crime rates, further hampering investment and economic growth in low-income areas. The failure of policies to address the needs of low-income communities can lead to frustration and disengagement from civic processes, ultimately affecting

community cohesion and economic cooperation. Economic inequalities and frustrations can lead to social unrest, as seen in protests against systemic inequalities in various cities. If policies do not address the needs of low-income residents, they can foment resentment and lead to civil unrest, creating an unstable environment that discourages investment. Continued policy failures can lead to a cycle of decline, with businesses leaving, jobs disappearing, and the economic fabric of the community deteriorating. This is particularly evident in regions where there has been long-term underinvestment and neglect.

3.7. Policy recommendations for improvement

Several policy recommendations should be considered to mitigate these negative impacts:

- Inclusive policymaking: involving community members in the policymaking process ensures that the needs of low-income populations are addressed.
- Investment in education and training: policies that ensure access to quality education and training can improve employment prospects for low-income individuals, which can lead to upward mobility.
- Affordable housing initiatives: implementing policies that promote the construction of affordable housing and provide protection from displacement can help to stabilize low-income communities.
- Economic diversification: encouraging economic diversification in low-income areas can make them more resilient to shocks by broadening the job base.

3.8. Conclusion

The economic impacts of public policy failures on low-income communities are profound and multifaceted. By exacerbating poverty, limiting access to basic services and discouraging investment, these failures create a cycle of disadvantage that is difficult to break. Tackling these problems requires a focus on inclusive and equitable policymaking that prioritises the needs of vulnerable groups to promote economic stability and growth. The economic impacts of public policy failures on low-income communities highlight the critical need for thoughtful, inclusive and adaptive policymaking that recognizes the unique challenges faced by these communities. By addressing the root causes of economic disenfranchisement and investing in sustainable solutions, policymakers can help promote stability, growth and equity. One of the most effective ways to avoid public policy failures is to promote participatory policies. Involving affected communities in decision-making processes can help ensure

that policies better reflect local needs and increase support for programmes. Ongoing monitoring and evaluation is also crucial. Regular evaluation of the effectiveness of policy measures will allow necessary corrections to be made and help lessons learned to be incorporated into future policies (Argyrous, 2009).

4. Summary

Public policy failures and fiascos are complex phenomena deeply rooted in political, economic and social structures (Bell & Hindmoor, 2012). Taking account of realities, involving stakeholders and continuously evaluating and learning are essential for effective public policy design and implementation. This is the only way to achieve the desired societal goals and reduce the risk of failure.

Public policy fiascos and anti-poverty programmes are often complex problems that depend on various social and economic factors.

a) Grants and benefits: in many countries, different types of support schemes are in place to fight poverty, such as cash benefits, food aid or housing subsidies. These schemes often fail to have the desired impact, however, if they do not target those in need properly or if they are overly bureaucratic.

b) Education programmes: for example, the Head Start programme in the United States focuses on early childhood education to help disadvantaged children. However, the effectiveness of the programme varies, and, in many cases, it does not provide the resources needed for sustained success.

c) Job creation schemes: job creation schemes, such as public works, sometimes do not provide a sustainable solution, as the jobs are often low paid and do not provide a long-term future for the participants.

d) Social enterprises: in some countries, social enterprises are established to reduce poverty and provide sustainable solutions. For example, the Grameen Bank model, which provides micro-loans to help people living in poverty, also faces challenges such as repayment rates and project sustainability.

e) Community programmes: some programmes seek to tackle poverty problems by involving local communities. However, if community participation is insufficient or if local needs are not taken into account, these initiatives can fail.

These examples show that the fight against poverty is a complex and often difficult task that requires well-designed and targeted public policies.

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