

III. 3. A Doktori Iskola által 2012-ben szervezett nyári egyetem írásos anyagai

A Doktori Iskola 2012 júliusában szervezte meg *Effects of the Economic Depression to Law and State in Central Europe* címmel nyári egyetemét, amelyre számos országból érkeztek résztvevők. A nyári egyetemen elhangzott egyes főelőadások és workshop-előadások írásos anyagai jól szemléltetik azt a fajta tudományos értéket, amellyel a rendezvény hozzájárult a tudományos diskurzushoz, a gazdasági krízis jogi, politikai és gazdasági vetületeinek feltérképezéshez, ezáltal pedig egyes megoldási módozatok megfogalmazásához. Az alábbiakban eme – angol nyelvű – tanulmányok kerülnek bemutatásra.

III. 3. Papers of the 2012 Summer Seminar organized by the Postgraduate Doctoral School

The Postgraduate Doctoral School organized its habitual summer seminar under the title of *Effects of the Economic Depression to Law and State in Central Europe* in July 2012. The event hosted numerous participants from several European countries. The papers of the keynote speeches and workshop presentations delivered at the summer seminar clearly and unambiguously demonstrate the scientific value that was added to them by these lectures, which undoubtedly promoted the scientific discourse in order to analyse and conceive the causes and solution methods of the economic crisis via legal, economic and political ways. The studies below summarize these challenges and issues in English.

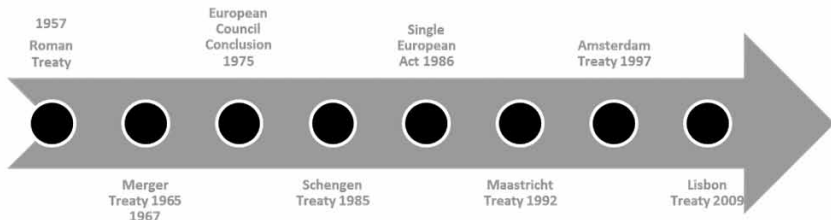
MILASSIN, LÁSZLÓ PHD.

associate professor/head of department
Széchenyi István University

EU – Questions and Answers for the future

I.

Walter Hallstein, the first president of the European Commission, was a German politician and professor. He was one of the emblematic figures of European integration. In his famous metaphor, this was the “bicycle theory” of integration: if we do not keep riding the bicycle forward, we will all fall off. Looking at the structural evolution of the European integration, we could observe different stages of a certain development, from the cooperation of member states towards a possible federal “United States of Europe”. (See the table below).



On this scale, probably, we could place the above mentioned federal state at the point 10th. The bicycle’s forward motion could lead to the next evolutionary stage of the European integration. Concerning the further procedure of the integration, the following questions can be arisen: how to preserve the *aquis communautaire* and how to extend it? There is no consensus among the member states in this respect on the European *finalité politique*.

But on the other hand, the European Union is also a community of law. Nevertheless, the EU does not focus on the creation of one European Law in contrast to the laws of its Member States. Instead, the European Union focuses on the harmonization of the national legal system only to the extent that is required for functioning of the common internal market.¹ The har-

1 See Mock, Sebastian: Harmonization, Regulation and Legislative Competition in European Corporate Law, 3 *German Law Journal* (2002).

monization of national laws is one of the main fields of the continuous process of European integration and – at the same time – the harmonized EU law is the precondition for keeping the “bicycle” of the European integration in motion. The aim in the EU is to make a consistent whole of law. Important concept of the EU is to create a common standard in the internal market.

II. Harmonization, approximation

The legal definition of the harmonization in the EU includes the cooperation between governments to make laws more uniform and coherent. A policy of the EU is can be considered as to achieve uniformity in laws of member states to facilitate free trade and protect citizens. Generally, the EU harmonises laws as standard by issuing Directives. Directives set out standards and objectives that must be realised. Members States are obliged to implement it within certain time limits. It is worth mentioning that the general principle is the mutual recognition.²

The harmonization of the EU law has three different types:

- (1) *Full harmonisation*. Characteristics: i) no room for member state to take action, ii) the national rules are replaced by a single EU rule leaving no room for national state to take action.
- (2) *Completely harmonised* standards include banking financial services, insurance of motor vehicles, cosmetics, telecommunication, etc.
- (3) *Minimum harmonisation*: The EU provides minimum standards but the member states are free to impose higher standards on goods and services. Minimum standards mean a floor below, which national standards cannot fall. A Member State might apply more stringent provisions than those resulting from the EU law.³

Most important legislative instrument to harmonize the Member State's laws is the Directive. The very purpose of the Directives is to reconcile the dual objectives of both securing the necessary uniformity of Union Law and respecting the diversity national traditions and structures. They try to remove contradictions and conflicts between national laws. The main aim of this whole exercise is not the unification but harmonisation and by so doing, to build and maintain the Single Market.

The Treaty on the Functioning of the European Union (TFEU) deals with harmonization - with other terms approximation. The general legal basis for

2 Compare with McMahon, Paul: *Harmonisation of Laws, Lavelle, Coleman Solicitors*. www.lovel-leetcode.ie/cuuploads/editor/file/England%20and%20

3 *Ibid*.

the approximation of laws in EU can be found in the Article 114 and Article 115 of the TFEU. The European Parliament and the Council have the competence to adopt the measures for approximation of the provisions laid down by law, regulation or administrative action in Member States in order to secure the establishment and functioning of the internal market. Such measures cannot be applied to fiscal provisions (free movement of persons – rights and interests of employed persons, as well).

An important aspect of the approximation of national laws is that the European official organs, actors, entities will take as a base of high level of protection concerning health, safety, environment and consumer protection, taking account in particular of any new development on scientific facts. After the accept of the European provisions concerning the approximation of national laws, a Member State is able to maintain its regulation on grounds of public morality, public policy or security, protection of the environment and working environment (based on new scientific evidence), moreover on grounds of health, national treasure, industrial and commercial property. In this case, the Member State is obliged to notify the Commission of the envisaged provisions as well as the grounds for introducing them. The Commission can approve or reject the national provisions.

III. European Stability Mechanism (ESM)

The ESM is set up by 17 euro area Member States. The Treaty was signed on 2 February 2012. This is an organization to provide assistance to member states with unstable economies. Its aim is to provide precautionary financial assistance to its Member States that are experiencing and being threatened by financing problems.⁴ It grants loans for recapitalisation of financial institutions of the Member States. The EU Member States have different options outside of the open market to seek financial support. Other than the European Financial Stability Facility, EU countries can seek money from European Financial Stabilization Mechanism (EFSM), which is guaranteed by the EU's budget, or the International Monetary Fund (IMF). Starting in 2013, the EFSF will be replaced by the European Stability Mechanism (ESM). It is foreseen that the new ESM will enter into force on 1 July 2013, following an amendment to the Treaty on the Functioning of the European Union.⁵ The ESM will be an intergovernmental institution established under public international law.

The most important decision in relation to the ESM will be taken by its Board of Governors (Ministers of Finance from the euro area). European

⁴ See www.investopedia.com.

⁵ *The European Stability Mechanism*, ECB, Monthly Bulletin, July 2012.

Commissioner for Economic and Monetary Affairs and the President of European Central Bank has the observer status. The chairperson will be elected by the Board of Governors. One Director will be appointed by each of Member State (and one Alternate).

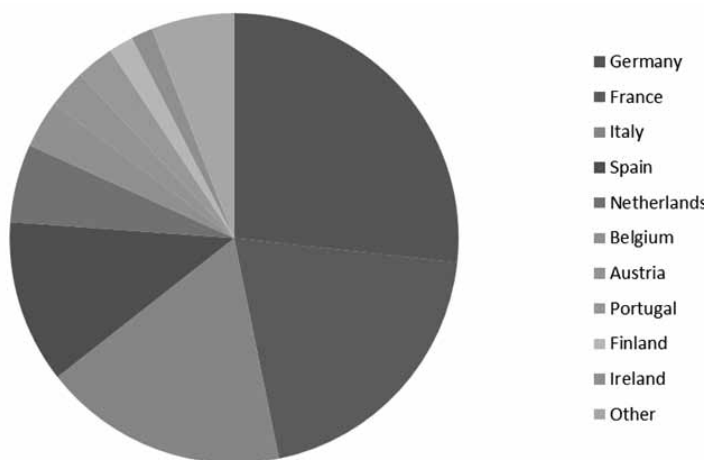
Decisions on four principal questions will be taken by mutual agreement:⁶

- a) Granting of financial assistance;
- b) Terms and conditions of financial assistance;
- c) Lending capacity of ESM;
- d) Changes to the menu of instruments.

The other decisions of the Board of Governors will be taken by qualified majority (urgent decision, with the majority of 80%). The votes will be weighted in number of shares allocated to the country in the capital stock of EMS. The Board of Directors is also a decision-making body. This body is responsible for specific issues delegated by the Board of Governors.

How the ESM is funded? The capital (EUR 80 billion) of EMS comes from Member States. Furthermore EUR 620 billion will be able to call. Total lending capacity of EUR 700 billion („firewall”). Its purpose is to support countries that have got into financial trouble and cannot obtain loans normally.

IV. Contributions



The diagram is the authors.

⁶ Mutual agreement means the decision, which is taken unanimously (abstentions do not prevent the decision from being adopted).

Critics have expressed that ESM severely limits the economic sovereignty of its member states and criticise that it provides extensive powers and immunity to the Board of Governors without parliamentary influence or control.

Some critical questions were formulated by *Zivile Koalition für Deutschland, Die freie Welt (Die Internet – und Blogzeitung für Zivilgesellschaft und Abgeordneten Check*:⁷

- By whom and on what bases had been the total lending capacity of EUR 700 billion calculated?
- “ESM Members hereby irrevocably and unconditionally undertake to pay on demand any capital call made on them (...) within seven days of receipt of such demand.” (Art. 9 ESM Treaty). *What irrevocably and unconditionally really mean? What happens, if a new parliament does not want to pay for ESM? Does the Member State have to pay anyway?*
- “The Board of Governors may decide to change the authorized capital and amend Art. 8 (...) accordingly.” (Art. 10 ESM Treaty) *Is 700 billion just the beginning? Are The Member States required, under Art. 9, irrevocably and unconditionally to pay up?*
- “1. The ESM (...) shall have full legal capacity (...) to institute legal proceedings. 2. The ESM, its property, funding and assets (...) shall enjoy immunity from every form of judicial process (...)” Art. 27 ESM Treaty. *Can the ESM programme sue us and can the Member States challenge it in court?*
- “4. The property, funding and assets of the ESM shall (...) be immune from search, requisition, confiscation, expropriation or any other form of seizure, taking or foreclosure by executive, judicial, administrative or legislative action.” Art. 27. *Does it mean that neither the governments, nor legislators, nor any of our democratic laws had any effect on ESM organizations?*
- “1. Governors, alternate Governors, Directors, alternate Directors, the Managing Director and staff members shall be immune from legal process with respect to acts performed by them (...) and shall enjoy inviolability in respect of their official papers and documents.” Art. 30 ESM Treaty. *So, anyone who involved in ESM cannot be accountable for anything? Cannot the people see the papers and documents? Is there no independent reviewer? Is that the new EU?*

These questions are remaining to be answered.

7 See <http://www.youtube.com/watch?v=BM5udVZbHpw&feature=endscreen>.

LUKÁCS, ESZTER PHD.

Senior lecturer, Kautz Gyula Faculty of Economics, Széchenyi István University
Member of Presidium, United Nations Association of Hungary (UNA-H)

Economic Downturn: Fiscal Responses and the Role of FDI in Job Creation

I.

The year 2012 has brought significant changes in the approaches how a country's development could and should be measured. On one hand, the inadequacy of the traditional macroeconomic indicators, primarily that of the GDP, in reflecting the expansion of actual welfare is almost a platitude, on the other hand assessment methods such as the GNH (gross national happiness) that underline the primacy of spiritual and cultural values over economic performance leave a great room for subjectivity and are short of an exact quantitative definition.

The ten day mega-summit in June 2012, the United Nations Conference on Sustainable Development, ended with a document that entails the idea of measuring sustainable development, a progress that encompasses economic, social and environmental dimensions within the entire UN system. Though the indicators are yet undefined, there is a consensus in the creation of a set of measurable targets (latest by 2015) that "incorporate in a balanced way all three dimensions of sustainable development and their interlinkages."¹

The adequacy of the GDP was, *inter alia*, challenged as pre-crisis growth even within the confines of a single nation has been often accompanied by massive intra-regional disparities and the increase of the output has not always been translated into a rise of living standards or, in any case, not for all the members of a country's society.

The financial turmoil and the economic downturn that started in 2007, smote the advanced world in 2008 and reached the developing countries in 2009 not only raised responsibility issues in the sense of the global financial architecture but also in the context of finding a solid basis, a source for future development.

1 Report of the United Nations Conference on Sustainable Development, A/CONF.216/16, 46-47.
<http://www.uncsd2012.org/content/documents/814UNCSD%20REPORT%20final%20revs.pdf>.

II. *Fiscal stimuli*: robust but short-lived

To stabilise the financial system and to prevent the global community from an even more severe economic meltdown governments ensured astonishing amounts of cash for bank bailouts and introduced various forms of fiscal stimuli. (The US Senate has committed itself, with the Emergency Economic Stabilization Act, to a fund of \$700 billion in October 2008, while EU governments have pledged to offer a sum of €3000 billion, some \$4000 billion, for “guarantee umbrellas, risk shields and recapitalisation measures for the financial sector”, in April 2009.² In Japan, a framework of 27000 billion Yen was promised, but the part really funded by the government was in fact no more than 5000 billion Yen, approximately \$55 billion.)³

“During the financial crisis, many national economies have looked to their government and foreign lenders for financial support, which has translated to increased spending, borrowing and, in most cases, growing national debt. Overleveraged consumers and companies struggled to survive their crippling debts, while highly indebted governments enacted austerity measures and sought the aid of international organizations for bailouts in the face of sovereign defaults. Deficit spending, government debt and private sector borrowing are the norm in most Western countries, but due, in part, to the rough economy, some nations are in considerably worse debt positions than others.”⁴

According to the IMF’s World Economic Outlook 2012 database the public debt per GDP ratio in the US and Japan grew to 102.94 and 229.77% in 2011 while that of the EU increased to 82.5 in the same year.⁵ Figures rose from the 2008 level of 74.1,⁶ 191.8 and 62.5, respectively.⁷ The Japanese bank bailout was modest compared to its American and European counterpart most probably for the country had already experienced a massive indebtedness for at least the previous two decades. However, this is to underline that fiscal stimuli were more like a “one-time” therapy, immediate answers to the most daunting shock the developed world has ever experienced since the great depression. Further fiscal policy responses can be characterized

2 Vucheva, Elitsa: *European Bank Bailout Total: \$4 Trillion*, http://www.businessweek.com/globalbiz/content/apr2009/gb20090410_254738.htm.

3 Junhong, Liu: *Japan’s bailout package subtly different*, http://www.chinadaily.com.cn/opinion/2009-03/17/content_7585236.htm.

4 Toscano, Paul: *The World’s Biggest Debtor Nations*, http://www.cnbc.com/id/30308959/The_World_s_Biggest_Debtor_Nations.

5 Eurostat: *Provision of deficit and debt data for 2011 – first notification*,

http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/2-23042012-AP/EN/2-23042012-AP-EN.PDF.

6 *US National Debt & Interest Expense by Presidential Term, Percentage of GDP*, <http://www.skymachines.com/US-National-Debt-Per-Capita-Percent-of-GDP-and-by-Presidential-Term.htm>,

7 Japan Country Report, <http://www.gfmag.com/gdp-data-country-reports/247-japan-gdp-country-report.html#axzz29OEYUss1>.

as tightening in their nature, especially in countries with high external and fiscal deficits, in order to reassure financial investors of the solvency of their governments and banking systems.

UNCTAD's Trade and Development Report, 2010 stressed that employment creation should be "the" global economic priority and "warned" above all the developed states that without further fiscal spending they would not be back on track. In the context of the sources of growth, UNCTAD cautioned that "there is a high risk that a withdrawal of fiscal stimulus before the return of strong domestic consumption and investment will jeopardize economic recovery."⁸ The document further stated that "while developing countries are leading the recovery, it remains fragile and uneven in developed countries."

Among the developed countries, in a repeat of global pre-crisis patterns, the United States has witnessed a stronger recovery in domestic demand than the leading current-account surplus countries – Germany and Japan. But in moving forward, the United States has to deal with the problem of 8 million crisis-related job losses and it faces strong headwinds as the fiscal stimulus peters out in the course of 2010.

In 2011, its overall fiscal stance could even become restrictive as fiscal retrenchment is expected at the state and local levels. Europe has become the centre of the global crisis and a laggard in the global recovery, as its home-grown problems add to the vulnerability of its shaky financial markets."⁹

III. ILO reports on recovering trade and investment figures accompanied by long-term unemployment

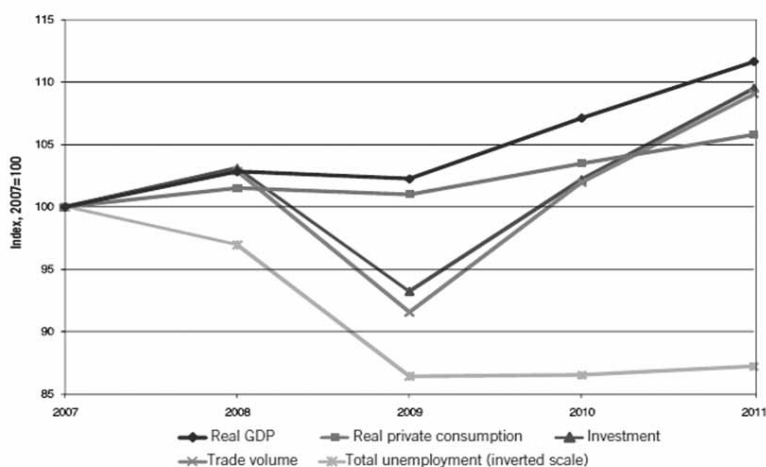
ILO's Global Employment Trends 2011 report explains that „despite the negative GDP growth rate registered in 2009, real global GDP never actually shrank below the 2007 level during the crisis and is estimated by the IMF to have been more than 7 per cent higher in 2010 as compared with 2007. Similarly, private consumption declined only modestly in 2009 and is estimated to have been 3.3 per cent higher in 2010 than in 2007. Gross fixed investment contracted sharply in 2009, falling by nearly 10 per cent; however, investment is estimated to have surpassed the 2007 level in 2010. Global trade dropped by nearly 12 per cent in 2009, but this too is estimated to have risen above the 2007 level in 2010. Thus, while there is clearly tremendous regional and country-level variation in economic performance and recovery patterns, despite the massive and widespread shock that accompanied the collapse in

8 See UNCTAD: *Trade and Development Report*, 2010. http://unctad.org/en/Docs/tdr2010_en.pdf, 33.

9 See *Ibid.* IV.

growth in 2008 and 2009, based on these four key macroeconomic indicators, the global economy has recovered.

IV. Global trends and projections in GDP growth, consumption, investment, trade and unemployment, 2007-11



Source: ILO: *Global Employment Trends 2011*. 6.

Unfortunately, the contrast between recovery in the macroeconomic indicators and the unemployment indicator could not be starker. Global unemployment began to grow in 2008 as the crisis increased uncertainty and led to reduced hiring. This was followed by a massive increase of more than 22 million in global unemployment in 2009. The year 2010 brought little change to this elevated level of unemployment. In all, there were 27.6 million more unemployed people in the world in 2010 as compared with 2007, with little hope for this figure to revert to pre-crisis levels in the near future. The current projections for these indicators for 2011 show a further widening of the gap between the macroeconomic recovery and a recovery to pre-crisis unemployment levels.”¹⁰

10 ILO: *Global Employment Trends 2011*. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_150440.pdf. 6.

V. Austerity measures to regain investors' confidence

The World of Work Report 2012 is introduced with an editorial section where *Raymond Torres*, the Director of the International Institute of Labour Studies (IILS) poses the question: “How to move out of the austerity trap?” The subject raised epitomises the main concerns of the whole document, which portrays a labour market picture that has “fallen between two stools” where governments fail to finance job creation because of credibility reasons and companies are reluctant to come up with major, employment creating investments due to uncertainty considerations.

According to Torres “since 2010 and despite the job-friendly statements in successive G20 meetings and other global forums, the policy strategy has shifted its focus away from job creation and improvement and concentrated instead on cutting fiscal deficits at all costs. In European countries, cutting fiscal deficits has been deemed essential for calming financial markets. But even in countries which have not suffered from the effects of the crisis this remedy is being applied for pre-emptive reasons – fiscal deficits are being reduced to avert any negative reactions from financial markets. This approach was intended to pave the way for greater investment and growth, along with lower fiscal deficits.”¹¹ The latter suggests that governments are more willing to struggle with the consequences of long term unemployment than with negative credit ratings and diminishing investments.

In 2011 *Standard & Poor's* adjusted its long-term sovereign credit ratings for 45 nations, compared to 34 ratings changes in 2010. In the first few weeks of 2012 S&P has downgraded 10 further countries. The main headline grabbers have been the countries that lost their coveted AAA ratings: United States (Aug. 2011), New Zealand (Sept. 2011), Austria (Jan. 2012) and France (Jan. 2012). In all, the January 2012 changes encompassed downgrades to nine of the 17 Eurozone countries, with three others having already seen one or more downgrades during 2011 (Belgium, Greece and Ireland). In January 2012 only 16 countries or organizations around the world had the AAA rating; interestingly, the Eurozone was one of them, even though only four member countries were rated AAA by S&P (Finland, Germany, Luxembourg and Netherlands).¹²

Fitch cut Japan's sovereign credit status in May 2012 to the lowest level among global ratings agencies as they viewed the political stalemate dimmed the chance that the country could curb its snowballing debt. *Fitch* warned

11 ILO: *World of Work Report 2012*. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_179453.pdf. VIII.

12 Ups in Downgrades: S&P accelerates negative credit ratings changes in 2012. <http://www.factset.com/insight/2012/2/sp-downgrades-2012>,

further downgrades were possible unless the government takes new fiscal policy measures to stabilize public finances and its ratio of debt to gross domestic product. “The downgrades and negative outlooks reflect growing risks for Japan’s sovereign credit profile as a result of high and rising public debt ratios” andrew Colquhoun, head of Asia-Pacific sovereigns at Fitch said in a statement. The Fitch rating is one notch below its rival ratings agencies. Moody’s Investors Service rates Japan Aa3 with a stable outlook. Standard & Poor’s rates Japan at AA minus with a negative outlook.¹³

Though eight of the ten least-risky countries for investment were European till June 2012, *Moody’s* ratings for the Netherlands and Germany (9th and 10th places) were revised to negative in July. (The outlooks of France and the U.K. had previously been revised to negative.) *Moody’s* put the European Union on notice at the beginning of September that its top-notch Aaa rating is at risk of downgrade, cutting the outlook on the EU’s creditworthiness to “negative” from “stable” because of the continent’s ongoing debt crisis.¹⁴

The latter suggests that the worries of the governments are not unfounded thus they rather tend to abide by long-term unemployment rates than lose the trust of the investors. The major problem currently is that there are approximately 200 million people unemployed globally and around 50 million jobs are missing relative to the pre-crisis situation. Projections further indicate that, on present trends, employment in advanced economies will not reach pre-crisis levels until late 2016. The current economic slowdown has also affected employment prospects in emerging and developing economies. The general issues of youth unemployment along with involuntary part-time and temporary employment touch both advanced and developing economies. Youth unemployment rates have increased in about 80 per cent of advanced economies and in two thirds of the developing economies and share of informal employment remains high, standing at more than 40 per cent in two-thirds of emerging and developing countries for which data are available.¹⁵

VI. Unemployment and social unrest

ILO’s World of Work Report 2011 warned governments that unemployment is a matter that should not be taken lightly as it can destabilize political systems. The publication explains that unemployment and disposable income

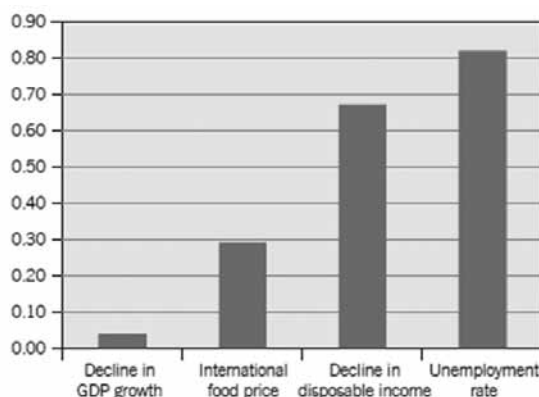
13 FOX Business: *Fitch Cuts Japan’s Credit Rating*, <http://www.foxbusiness.com/markets/2012/05/22/fitch-cuts-japan-credit-rating/>.

14 CNN Money: *Moody’s puts European Union on notice*, <http://money.cnn.com/2012/09/03/news/economy/moodys-european-union/index.html>.

15 ILO: *World of Work Report 2012*. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_179453.pdf. 1-2.

are the major factors of social unrest whereas the growth of the GDP has much less impact on the welfare perception of people. Further determinants that may destabilise societies and hinder governments in their efforts putting their economies back on track are income inequalities and perception of injustice; austerity measures; and higher food prices; the heavy-handedness of the state when tackling with social upheavals; the presence of educated but dissatisfied (young) populace and the prevalence of mass media and 21st century communication technologies that enable a swift spread of information and the organisation of mass movements.¹⁶

VII. Determinants of Social Unrest, 2010



Source: ILO, World of Work Report 2011. 16.

A 2012 spring interview with ILS director *Raymond Torres* confirms the findings above stating that “out of 106 ILO countries with available figures, 54 per cent reported an increase in the score for the risk of unrest in 2011 compared to 2010. The two regions with the highest risk are Sub-Saharan Africa and the Middle East and North Africa. However, there are also important increases in advanced economies and in Central and Eastern Europe. On the other hand, Latin America and some Asian countries have experienced a decline in the risk of social unrest over this period. These regions have performed relatively well in terms of creating jobs and reducing income inequality – although there are still concerns regarding poverty and high informal employment in China, India and much of Latin America. In

16 ILO: *World of Work Report 2011*. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_166021.pdf. 16-17.

advanced economies, the situation is very different. Unemployment rates remain high in the majority of countries and income inequality has increased in more than half of the cases.

In 2011, 54 per cent of the countries analyzed reported lower confidence in their national government compared to 2010. It is not surprising to see low levels of confidence in some Arab countries. This can be seen as a consequence of the recent struggle for democracy. In advanced economies, notably in Europe, there is also a decline in confidence towards national governments. On the other hand, we see an increase in confidence in Latin America and the Caribbean, East Asia and Sub-Saharan Africa.

Policies aimed at creating good-quality jobs are crucial to reduce the risk of exclusion and promote a sense of fairness. Key policies include:

- i) strengthening labour market institutions and ensuring that wages grow in line with productivity (not less, as has been the case until now);
- ii) adopting special measures – and there are many examples of good practices in this area – for young workers and other vulnerable groups;
- iii) restoring credit to small firms, which are key providers of jobs; and, in Europe,
- iv) avoiding ill-conceived fiscal austerity – which has affected job prospects while failing to reduce fiscal deficits.

Governments have also been long on promises and short on action when it comes to financial sector reform. All these measures would help to enhance the sense of fairness that the current model of globalization is so lacking.”¹⁷

The ILO further argues that while “austerity driven” employment growth could be around 0.8 million in 2013 government spending is not necessarily a source of indebtedness. They say that “a fiscally neutral change in the composition of expenditures and revenues would create between 1.8 and 2.1 million jobs in the following year alone, depending on the policy mix selected.”¹⁸

Though the ILO urges governments to stop further financial restrictions as – according to their findings – they only result in short term GDP boosts; they also acknowledge that “additional public-support measures alone will not be sufficient to foster a sustainable jobs recovery. Policy-makers must act decisively and in a coordinated fashion to reduce the fear and uncertainty that is hindering private investment so that the private sector can restart the main engine of global job creation. Incentives to businesses to invest in

17 ILO: *High unemployment and growing inequality fuel social unrest around the world*, http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_179430/lang--en/index.htm.

18 ILO: *World of Work Report 2012*. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_179453.pdf. 60.

plants and equipment and to expand their payrolls will be essential to jump-start a strong and sustainable recovery in employment.”¹⁹

VIII. The role of FDI in job creation

As detailed above employment creation does not seem to be a current priority among most governments of the world, yet the “sad news is” that companies are similarly reluctant in job creation as states. According to UNCTAD’s World Investment Report (WIR) 2012, global FDI flows rose by 16 per cent in 2011 to \$1,524 billion, up from \$1,309 billion in 2010. Though this has been already the second consecutive year of growth in FDI flows after the decreasing values of 2008 and 2009 and Multinational Enterprises’ (MNEs) foreign affiliates’ economic activity rose across all major indicators of international production the record levels of cash have so far not translated into sustained growth in investment levels.

During the year 2011, foreign affiliates of MNEs employed an estimated 69 million workers, who generated \$28 trillion in sales and \$7 trillion in value added. Although recent figures suggest that TNCs’ capital expenditures in productive assets and acquisitions are picking up, rising 12 per cent in 2011, the additional cash they are holding – an estimated \$105 billion in 2011 – is still not being fully deployed. Renewed instability in international financial markets will continue to encourage cash holding and other uses of cash such as paying dividends or reducing debt levels. Nevertheless, as conditions improve, the current cash “overhang” may fuel a future surge in FDI. Projecting the data for the top 100 TNCs over the estimated \$5 trillion in total TNC cash holdings results in more than \$500 billion in investable funds, or about one third of global FDI flows.²⁰

The main reason behind the corporate unwillingness to invest is uncertainty. Though major macroeconomic indicators tend to bounce back and reach their pre-crisis levels, there is a massive and underlying global shift behind the aggregate figures. The main investors of the early 21st century are still the advanced economies yet the structure of host regions has altered immensely with developing nations attracting more than half of all FDI inflows. The prominence of East and Southeast Asia and partly Latin America in capital attraction is remarkable whereas other regions of the world have gained less momentum.

19 ILO: *Global Employment Trends 2012*. http://www.ilo.org/wcmsp5/groups/public/---dgreports/-dcomm/---publ/documents/publication/wcms_171571.pdf. 86.

20 UNCTAD: *World Investment Report 2012*. <http://www.unctad-docs.org/files/UNCTAD-WIR2012-Full-en.pdf>. XVI.

Traditionally multinational enterprises prefer their own home regions when seeking for investment locations the economic downturn triggered an impulse of going global for many transnational corporations (TNCs) of the world. According to UNCTAD's World Investment Prospects Survey (WIPS) 2009-2011 "while most of the respondent TNCs have been focusing more on regional than on global expansion strategies in the past few years, they might progressively expand their geographical scope in the future.

There is an ongoing debate about the geographical scope of the largest TNCs. Are they only regional giants? For instance Rugman and Verbeke (2004) assert that very few TNCs can be considered global or even bi-regional. Are they becoming progressively more global? Dunning, Fujita and Yakova (2007) for example found that while TNCs from some home regions may exhibit a strong regional character in their investments, the trend of outward FDI is towards a more dispersed, global pattern. The results of this year's WIPS seem to support their analysis. Respondent TNCs, while still according greater emphasis to their home regions, expressed a growing interest in other regions of the world as well."²¹

Going global is rather an economic compulsion than a matter of real choice where investors choose outsourcing instead of downsizing. *Pankaj Ghemawat's* CAGE distance framework explains how cultural, administrative (government), geographic and economic distances may negatively influence investment relations between countries and within companies.²² The rise of East and South-East Asia as outstanding host regions is thus a circumstance that European and North American investors have to live with however the relationships are loaded with all forms of distances that each bring about uncertainties. To abridge them companies do their best to find the least risky modes of entry into the unknown business environment. A significant trend of the years 2010 and 2012 became the so-called non-equity modes (NEMs) of entry into the host country.

According to WIR 2011, "non-equity modes of internationalisation, such as contract manufacturing, services outsourcing, contract farming, franchising, licensing, management contracts and other types of contractual relationship through which TNCs coordinate the activities of host country firms, without owning a stake in those firms, estimated to have generated over \$2 trillion of sales in 2009." In most cases, NEMs are growing more rapidly than the industries in which they operate.

21 UNCTAD: *World Investment Prospects Survey 2009-2011*. http://unctad.org/en/Docs/diaeia20098_en.pdf. 27.

22 See Ghemawat, Pankaj: *CAGE Comparator*, <http://www.ghemawat.com/cage/>.

NEMs can yield significant development benefits. They employ an estimated 14-16 million workers in developing countries. Their value added represents up to 15 per cent of GDP in some economies. Their exports account for 70-80 per cent of global exports in several industries. Overall, NEMs can support long term industrial development by building productive capacity, including through technology dissemination and domestic enterprise development and by helping developing countries gain access to global value chains.²³

NEMs also pose risks for developing countries. Employment in contract manufacturing can be highly cyclical and easily displaced. Concerns exist that TNCs may use NEMs to circumvent social and environmental standards. And to ensure success in long-term industrial development, developing countries need to mitigate the risk of remaining locked into low-value-added activities and becoming overly dependent on TNC-owned technologies and TNC-governed global value chains.”

At the start of the twenty-first century, MNEs were estimated to directly employ over 95 million people, representing 3.4 per cent of the world's total employment of 2.8 billion. Early ILO estimates put direct employment in MNEs at around 40 million in the mid-1970s and at around 65 million in the mid-1980s. After growing slowly throughout most of the late 1980s and early 1990s, partly as a result of relatively slow employment growth in United States multinational parents and affiliates, employment in MNEs began to quicken in the mid-1990s.²⁴

Based on the statistics of WIR 2012 the employment by the foreign affiliates of MNEs grew from 21 million in 1990 to the 2005-2007 pre-crisis average level of 51 million and to further 63 and 69 million in 2010 and 2011, respectively.²⁵ Though estimations on MNEs home and host country employment are rather imprecise and scarce, as they omit work places created by NEMs and are loaded with national data provision divergences, it is undeniable that FDI play a key role in the job creation of undercapitalised developing and transition economies.

According to *McKinsey Global Institute* (MGI) “from 1980 to 2010, the number of workers in the world rose by 1.2 million, to approximately 2.9 billion. Most of this growth was in developing economies, where a massive “farm-to-factory” shift also took place that raised non-farm jobs from 54% of global employment in 1980 to nearly 70% in 2010. This shift not only

23 UNCTAD: *World Investment Report 2011*. <http://www.unctad-docs.org/files/UNCTAD-WIR2011-Full-en.pdf>. XII.

24 Compare Kim, Kee Beom: *Direct employment in multinational enterprises: Trends and Implications*, *International Labour Office* – Geneva, http://www.ilo.org/wcmsp5/groups/public/---ed_emp/--emp_ent/---multi/documents/publication/wcms_125661.pdf. 13-14.

25 UNCTAD: *World Investment Report 2012*. <http://www.unctad-docs.org/files/UNCTAD-WIR2012-Full-en.pdf>. 24.

drove the growth of national economies in China, India and other developing countries, but also contributed to the exit from poverty of an estimated 620 million people worldwide in the past 20 years.

We estimate that at least one-fifth of non-farm jobs created in developing countries in the past decade were associated with rising exports, in effect bringing 85 million workers to the global economy. Also adding to this pool are immigrants from developing countries, who contributed an estimated 40% to labour force growth in advanced economies in the past three decades.”²⁶

FDI attraction remains a challenge for many European countries. The investment per GDP ratio world average was 21.7% in 2012, it equalled 18.6, 18.5 and 20.8 for the EU, the advanced economies and Central and Eastern Europe respectively, whereas it totalled 31.0 in the emerging and developing economies and 42.1% in developing Asia. In China and India the ratio reached 48.7 and 37.8%, correspondingly.²⁷

Though the inadequacy of the GDP as a measure of development was underlined in the introductory remarks of this paper it has to be acknowledged that major FDI attraction factors are market attractiveness, the availability of low-cost and skilled labour, the presence of natural resources and enabling infrastructure. Market attractiveness; entailing the size of the market (GDP purchasing power parity), spending power (per capita GDP PPP) and the growth potential of the market (real GDP growth rate);²⁸ dominates the determinants with half of the companies going abroad being “market-seekers”. The “size and growth of the market are by far the most important location criteria followed by the quality of resources (including skilled labour) and of the technical and administrative business environment. On the other hand, government incentives play a limited role in attracting FDI.”²⁹

In the absence of fiscal stimuli and the presence of heavy indebtedness, European countries have no way out of the crises but the maintenance of their unity as this is the only possible chance in competing for FDI with the huge economies of the US or the BRIC countries.

26 MGI: *The world at work: Jobs, pay and skills for 3.5 billion people*, June 2012. http://www.mckinsey.com/Insights/MGI/Research/Labor_Markets/The_world_at_work. 3-4.

27 Economy Watch: *Investment (% of GDP) Data for All Countries*, http://economywatch.com/economic-statistics/economic-indicators/Investment_Percentage_of_GDP/.

28 UNCTAD: *World Investment Report 2012*. <http://www.unctad-docs.org/files/UNCTAD-WIR2012-Full-en.pdf>. 30.

29 UNCTAD: *World Investment Prospects Survey 2008-2010*. http://unctad.org/en/Docs/wips2008_en.pdf. 37.

ŞENER, HASAN ENGİN PH.D.¹

assistant professor

Yıldırım Beyazıt University,

School of Management, Ankara

Hungary's Anti-Crisis Policies and the "Goulash" Way

Introduction

The traditional Hungarian dish called "goulash" (*gulyásleves*) is not only very famous in the world cuisine, but also in politics since it has "political" connotations indicating the exceptional "Hungarian way". For example the Hungarian way of socialism is called "goulash communism."² Furthermore, according to Pogátsa,³ Hungary was the pioneer of the model called the "dependent competitive state"; "dependent" upon foreign direct investment and "competitive" for "accommodating foreign investments i.e. low wages" in the early 1990s in Central and Eastern Europe (CEE) except for Slovenia. It should also be underlined that Hungary is one of the rare examples of the peaceful transformation from communism to capitalism without even abolishing the constitution adopted in the communist era in the CEE.⁴ It seems that Hungary is even today also following a unique path in order to overcome the political and economic crisis experienced in the year 2007 and onwards, although it is questionable how successful they are.

The aim of this article is to discuss anti-crisis policies implemented in Hungary and to show that Hungary is following a sort of a "goulash" way in-between neo-liberalism and unorthodoxy. On the one hand, Hungary is playing the game to an inch of the rules in terms of anti-debt and anti-deficit policies; on

1 I would like to thank to Pogátsa Zoltán, Nacsa Mónika and Laki Ferenc for their valuable comments on the draft version of this article.

2 Even according to Clark it is also possible to talk about goulash liberalism: "[s]ome time ago someone coined the phrase "goulash communism" to describe the revisionism of Khrushchev & Company; if this be so, then the mixture of bourgeois liberalism and Southern nationalism put forward by SSOC in its final months could very well be characterized as goulash liberalism." See Clark, Ed: Southern Students Defeat Liberalism: The South Must be Won. *Progressive Labor*, 1969/7(3).

3 Pogátsa, Zoltán: Hungary: From Star Transition Student to Backsliding Member State. *Journal of Contemporary European Research*, 2009/5(4), 600.

4 For the constitutional changes in Hungary between 1989 and 2010 and the re-design of the Hungarian constitutional system in 2010-2011, see Smuk, Péter: *Constitutional Changes in Hungary and the Character of the Hungarian Democracy*. International Conference "Constitutional and Political Processes in Central and Eastern Europe: 20 Years After" February, 2012. Moscow.

the other hand, Hungary is infiltrating unorthodoxy into the rules of the game.

In the first section, the macroeconomic performance, that is the relationship between growth, inflation and unemployment, of Hungary will be evaluated. Then in the second section, the effects of the crisis on the new constitution, which was entered into force on 1 January 2012, will be discussed. In the third and final section, anti-crisis policies in terms of (un)employment will be discussed.

1. Macroeconomic performance of Hungary: before and after the economic crisis

As is seen in Table 1, during the membership negotiations (1998-2002), Hungary achieved a reduction both in inflation (from 14,2% to 5,2%) and the unemployment rate (from 7,8% to 5,8), while keeping the growth rate band between 3,2-4,5%. The figures show that between 1997 and 2011, the correlation between the unemployment and the GDP growth rate is negative and significant.

Table 1: Macroeconomic indicators of Hungary

Years	GDP growth	Inflation	Unemployment rate
1997	3,1	18,5	8,7
1998*	4,1	14,2	7,8
1999	3,2	10	7
2000	4,2	10	6,4
2001	3,7	9,1	5,7
2002	4,5	5,2	5,8
2003	3,9	4,7	5,9
2004**	4,8	6,8	6,1
2005	4	3,5	7,2
2006	3,9	4	7,5
2007	0,1	7,9	7,4
2008	0,9	6	7,8
2009	-6,8	4	10
2010	1,3	4,7	11,2
2011	1,6	3,9	10,9

Source: Eurostat, National Accounts at a Glance 2011.
OECD 2011, Economic Surveys: Hungary – OECD, 2012.

* Negotiations between 1998 and 2002;

** EU Membership

Except for 2004-2006, after EU membership Hungary experienced bad economic performance. GDP growth fell to 1.6% in 2011 from 2004's 4.8%,

hitting the highest negative GDP change in 2009 with -6.8%. Moreover the unemployment rate increased from 6.1% to 10.9%. The only positive development regarding the macroeconomic performance was the decrease in the inflation rate from 6.1% to 3.9%. Although there was a tendency in favor of inflation and to the detriment of unemployment between 2004 and 2006, GDP growth was relatively high. Despite the fact that economic crisis mostly hit Hungary especially in 2009 when the Prime Minister resigned in March, Hungarian economy could not climb over 1.6% growth rate on average in a year after 2007. From 2007 to 2011, while unemployment increased from 7.4% to 10.9%, the inflation rate decreased from 7.9% to 3.9% confirming Phillip's curve that unemployment was the price to be paid for the sake of inflation.

Table 2: Expected macroeconomic performance according to convergence programs (%)

Years	1st convergence program March 2011			2nd convergence program April 2012			Difference (1 st program - 2 nd program)		
	GDP*	U*	Inflation	GDP	U	Inflation	GDP	U	Inflation
2011**	3,1	10,9	4,0	1,7	10,9	3,9	1,4	0,0	0,1
2012	3,0	10,5	3,4	0,1	10,9	5,2	2,9	-0,4	-1,8
2013	3,2	9,9	3,0	1,6	10,3	4,2	1,6	-0,4	-1,2
2014	3,3	9,3	3,0	2,5	9,5	3,0	0,8	-0,2	0,0
2015	3,5	8,7	3,0	2,5	8,9	3,0	1,0	-0,2	0,0

Source: Government of Hungary: *Convergence Programme of Hungary 2011-2015*, Budapest, 2011; Government of Hungary: *Annex 1: Convergence Programme of Hungary 2012-2015*. In: *A következő lépés, Széll Kálmán Terv 2.0*, Budapest, 2012. "U" stands for unemployment;

* According to the conservative but not dynamic path of growth;

** Prediction for the 1st Plan.

According to the OECD economic predictions, priority of inflation against unemployment would continue. According to the OECD Economic Outlook,⁵ inflation would drop to 2.9%, while unemployment hit 11.8% in 2013. However, the 2nd Convergence Program says the opposite. Instead of increase, the plan foresees a decrease in the unemployment rate to 10.3%, while it predicts

⁵ The consumer price index for 2013 is expected to be at 2.9% and the unemployment rate (% of labour force) is expected to be at 11.8. Projections from 2011 onwards are from OECD *Economic Outlook No. 90*. In: *OECD Economic Outlook: Statistics and Projections* (database), 2011. (28 August 2012).

an increase in the inflation rate to 4.2% in 2013 as is seen from Table 2. So, at least as of 2012, it is possible to argue that the Hungarian government gave priority to unemployment instead of inflation. Table 2 also shows that the 1st Convergence Program released in March 2011 was not so realistic that Hungary had to readjust the predictions about the data in April 2012.

As of 11 September 2012, according to the latest data released by the Hungarian Central Statistical Office (*Központi Statisztikai Hivatal* – KSH) the inflation rate (consumer price changes) in July 2012 is 6%, the unemployment rate in May-July 2012 is 10.5% and GDP for the 2nd Quarter of 2012 is –1.3%. It seems that despite readjustments in the figures in the 2nd Convergence Program, realizations for 2012 (except for the unemployment rate⁶) are still worse than expected and the Hungarian economy is still in crisis with deteriorated macroeconomic performance.

2. Deficit, debt and the new constitution

Due to the latest elections in 2010, *Fidesz* (*Fiatal Demokraták Szövetsége – Magyar Polgári Szövetség/Federation of Young Democrats – Hungarian Civic Alliance*) and Viktor Orbán could get the supermajority (with the 68%) of the seats in the parliament with the 53% of the votes.⁷ With this supermajority, the ruling government could have power to change the constitution adopted in 1949. The influence of the crisis on the constitution is quite clear especially in terms of fiscal regulations, which will be discussed at the end of this section.

Table 3: Government deficit and debt in Hungary,
1995-2011, percentage of GDP

Years	General government deficit/surplus	General government gross debt
1997	-6,00	62,90
1998*	-8,00	60,90
1999	-5,50	60,80
2000	-3,00	56,10
2001	-4,10	52,70
2002*	-9,00	55,90
2003	-7,30	58,60

6 However, despite the relative amelioration of the rate of unemployment, there is still long way for the pre-crisis level of unemployment.

7 For an elaborate analysis of the political composition of the Hungarian Parliament between 1990 and 2010, see Smuk, Péter: *The Hungarian Parliament 1990-2010*. In: *Časopis pro právní vědu a praxi*, 2010/18(2), 153-157.

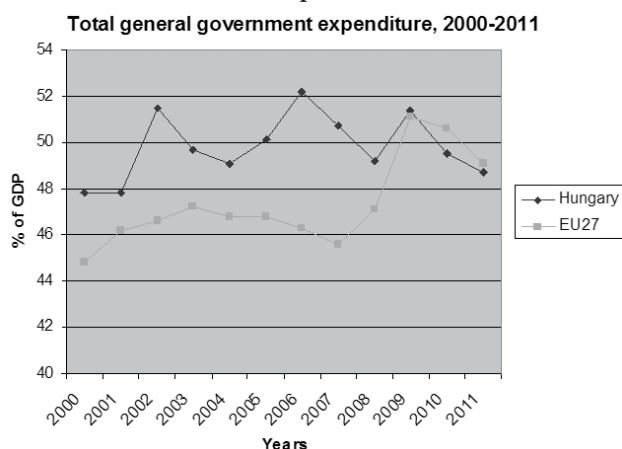
2004	-6,50	59,50
2005	-7,90	61,70
2006*	-9,40	65,90
2007	-5,10	67,10
2008	-3,70	73,00
2009	-4,60	79,80
2010*	-4,20	81,40
2011	4,30	80,60

Source: Eurostat,

*Elections.

In order to understand why debt and deficit related rules are included in the constitution, it will be useful to look at the government deficit and debt figures of Hungary. In Table 3, two out of five Maastricht criteria, namely budget deficit and public debt rates,⁸ are indicated in terms of Hungary. For the ruling government, these two variables are the biggest challenges as they are the two of the main policy objectives in the structural reform programme.⁹

Graphic 1



Source: Eurostat

<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=en&pcode=tec00023>

⁸ It is interesting to note that Hungary's general government gross debt (80.60% in 2011) is relatively better than EU17 Euro Area (87.2% in 2011) and EU27 (82.5% in 2011) according to Eurostat data. See: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsieb090>.

⁹ Ministry for National Economy: Hungary's Structural Reform Programme 2011 – 2014 based on the Political Thesis of the Széll Kálmán Plan, Budapest, 2011. 12.

Hungary's government surplus performance in 2011 of 4.30% is quite positive due to a sudden increase of total general government revenues from 45.2% in 2010 to 52.9% in 2011 and decrease in total general government expenditures from 49.50% in 2010 to 48.70 in 2011. What is also striking is that after the economic crisis, Hungary's level of total general government expenditures, for the first time after passing to capitalism, is below the average of the EU27 in 2010 and even continued in 2011 as indicated in Graphic 1. Furthermore, it seems that for the first time, "electoral cycle"¹⁰ did not apply to 2010 elections. There used to be a steady pattern in Hungary that in each election year, public expenditures and budget deficit hit the highest rate when compared to previous four years term. However this pattern was broken in 2010. On the contrary, even the level of general government expenditures went down in the same year. However, this time, Hungary's debt hit record high with 81.4% in 2010 election year.

As part of structural challenges' strategy, the first aim of the government is to reduce public deficit and debt, by improving the structure of expenditures,¹¹ which means revenue increase, debt and expenditure reduction.¹² At this point, it should be underlined that on the one hand Hungary is following the neo-liberal way in terms of decreasing public expenditures; on the other hand it is flirting with the unorthodoxy in terms of decreasing the debt. Unorthodox policies of the Hungarian government are as follows:¹³

Orban's government nationalized about \$14 billion in assets from private pensions, imposed big taxes on corporations and fixed the exchange rate for loans taken by individuals from banks in Swiss francs for three years, to make it easier for people to pay.

Kotosz¹⁴ adds the anti-IMF stance into the unorthodoxy as arguing that IMF has seen as an "enemy" against the "independence" of Hungary.

10 The general trend was that "in the election years both budget deficit and public expenditures increase together." See Şener, Hasan Engin: *Administrative Reform as an Opportunity: The EU Accession Process in Hungary and Turkey*, Phoenix, Ankara, 2009. 252. See also Pogátsa: *op.cit.* 605. and Jankovics, László: *Public Finance Reform in Hungary: Light at the End of the Tunnel? In: ECFIN Country Focus*, 2008/5(4), 1-6.

11 Government of Hungary: *National Reform Programme of Hungary 2011-2015*, Budapest, 2011. 81.

12 Government of Hungary: *Convergence Programme of Hungary 2011-2015*, Budapest, 2011. 32.

13 Compare Oprita, Antonia: *Investors Unnerved by Hungary's 'Unorthodox' Measures*. In: CNBC, 25 September 2011. http://www.cnbc.com/id/44639381/?Investors_Unnerved_by_Hungary_s_Unorthodox_Measures.

14 Kotosz, Balázs: *The unorthodox answer of Hungary to global financial crisis*. http://www.assoeconomiepolitique.org/political-economy-outlook-for-capitalism/wp-content/uploads/2012/06/kotosz_balazs_The-unorthodox-answer-of-Hungary-to-global-financial-crisis.pdf.

As for the role of the nationalization of the pensions in terms of the debt reduction András Giró-Szász,¹⁵ government spokesman, explains the point that “the private pension scheme blew a 400 billion forint hole in the state budget each year.” Therefore it is argued that the nationalization policy was followed for the sake of expenditure reduction. As to “plugging the revenue gap with a windfall tax on banks”¹⁶, which was initiated for the sake of revenue increase, Giró-Szász¹⁷ argues that the transaction tax has spread to France and Slovakia after Hungary. Nevertheless, these unorthodox policies attracted much criticism and “Fitch became the third ratings agency to downgrade Hungary’s debt to junk”¹⁸ after *Standard and Poor’s* and *Moody’s*.

Under these circumstances, the Hungarian government added new and hard measures in the constitution to challenge the two archenemies, namely government deficit and debt. As already mentioned, the constitution’s anti-crisis feature is quite clear. By using Szente’s titles,¹⁹ it is possible to explain the situation with the following amendments and consequences:

- i. Debt ceiling rules;
- ii. Restricting judicial control over public finance;
- iii. The restriction of budgetary power of the Parliament;
- iv. Curbing the freedom of action of the next governments.

Debt Ceiling: It is a fact that anti-debt policy priority is reflected in the constitution with strict regulations. Although Maastricht criterion is 60%, according to the constitution (or the Fundamental Law of Hungary) the objective of the debt is set to 50% of the GDP.²⁰ If there is a reverse situation (as always was) the constitution rules that budget act must envisage a debt reduction.²¹

Restriction of Judicial Control over Public Finance: What is also important to note is that the constitution introduced a controversial limitation²² to the

15 Giró-Szász András: *Government Spokesman: Unorthodox Hungarian Economic Policy is Spreading in Europe*. In: *Website of the Hungarian Government*. <http://www.kormany.hu/en/prime-minister-s-office/news/government-spokesman-unorthodox-hungarian-economic-policy-is-spreading-in-europe>.

16 The Economist: *Hungary's Economy: Hat in Hand Again*. 21 November 2011.

17 Giró-Szász: *op.cit.*

18 Oprita, Antonia: *Fitch Cuts Hungary to 'Junk' on 'Unorthodox' Policies*. In: CNBC, 6 January 2012. http://www.cnbc.com/id/45898685/Fitch_Cuts_Hungary_to_Junk_on_Unorthodox_Policies.

19 Szente, Zoltán: *The Constitutional Effects of the World Economic and Financial Crisis – a Case Study of Hungary*. Summer Seminar: Effects of the Economic Depression to Law and State in Central Europe, Széchenyi István University, Doctoral School of Law and Political Sciences, Győr, Hungary, 17 July 2012. <http://doktiskjog.sze.hu/downloadmanager/details/id/4395/m/3620>.

20 The Fundamental Law of Hungary, Article 36(4): “Parliament may not adopt a State Budget Act which allows state debt to exceed half of the Gross Domestic Product.”

21 The Fundamental Law of Hungary, Article 36(5): “As long as state debt exceeds half of the Gross Domestic Product, Parliament may only adopt a State Budget Act which contains state debt reduction in proportion to the Gross Domestic Product.”

22 The Fundamental Law of Hungary, Article 37(4): “As long as state debt exceeds half of the Gross Domestic Product, the Constitutional Court may, within its competence set out in Article 24(2)b-e),

power²³ of the Constitutional Court, which was criticized²⁴ by Venice Commission²⁵ as follows:

In its March Opinion, the Venice Commission has already expressed its regrets with regard to this serious limitation of the competences of the Constitutional Court introduced in November 2010 by constitutional amendment. In its view, such a limitation creates the impression that capping the national budget at 50 per cent of the GDP may be considered to be such an important aim that it may even be reached by unconstitutional laws.

Restriction of Budgetary Power of the Parliament: Budget council (a.k.a. fiscal council or monetary council) is another important regulation in the new constitution, which limits the power of the Parliament. The fiscal council was firstly introduced by the “Act LXXV – Cost efficient State Management and Fiscal Responsibility” in 2008 and became functional in 2009. However, the functions of the council were highly limited and “the council did not receive any decision-making powers.”²⁶ The old system was changed in 2011 with the “Act CXCV of 2011 on the Economic Stability of Hungary”²⁷ and “a right to return the draft budget” for only once was granted.²⁸ However, with the new constitution, a veto right was granted to the council²⁹ and became a very powerful constitutional institution.

only review the Acts on the State Budget and its implementation, the central tax type, duties, pension and healthcare contributions, customs and the central conditions for local taxes for conformity with the Fundamental Law or annul the preceding Acts due to violation of the right to life and human dignity, the right to the protection of personal data, freedom of thought, conscience and religion and with the rights related to Hungarian citizenship. The Constitutional Court shall have the unrestricted right to annul the related Acts for non-compliance with the Fundamental Law’s procedural requirements for the drafting and publication of such legislation.”

23 According to Gniazdowski and Sadecki (2011) “Fidesz reduced the court’s powers already in 2010. When the court deemed a law retroactively imposing an additional 98% tax on the highest severance pays in the public sector to be unconstitutional, Fidesz amended the constitution to reduce the court’s competences in budget and tax related issues and adopted the law in an unchanged form.” As for the changes related to the Hungarian Constitutional Court, see Smuk: *Constitutional...* 5-6.

24 However, State Secretary for Government Communication argues that “with the introduction of the national debt ‘cap’ we are not weakening control, but *strengthening* it.”

25 Venice Commission: *Opinion on the new Constitution of Hungary adopted by the Venice Commission at its 87th Plenary Session* (Venice, 17-18 June 2011), CDL-AD(2011)016, 25.

26 Domokos, László: Credibility and Flexibility: Changes in the Framework of Hungarian Public Finances. *Public Finance Quarterly*. 2011/3, 294.

27 What is interesting to note is that Fidesz was critical of the fiscal council’s previous version. See Fehér, Margit: Hungary to Disband Fiscal Council. *Wall Street Journal*, 22 November 2010. <http://blogs.wsj.com/emerging europe/2010/11/22/hungary-to-disband-fiscal-council/>.

28 Domokos: *op.cit.* 294.

29 The Fundamental Law of Hungary, Article 44(3): “The adoption of the State Budget Act shall be subject to the prior consent of the Budget Council in order to meet the requirements set out in Article 36(4)-(5).”

Curbing the freedom of action of the next governments: Independence of the Central Bank (whose president is elected for 6 years by the President of Hungary) and the State Audit Office (whose president is elected for 12 years by a 2/3 vote of the members of Parliament) becomes crucial since the presidents of these institutions will form the council with the president of the council to be appointed for six years by the President of Hungary.³⁰ This means that the future governments will have to work with the bureaucrats appointed under the influence of the current Prime Minister *Orbán*. Fiscal council, once a “toothless lion,” despite its smallest organizational structure in the world, today becomes the strongest.³¹ That is why the Hungarian government is criticized by *Fukuyama* as follows: “[a]ffected institutions include the National Bank of Hungary, controlled now by a Monetary Council largely in turn loyal to Fidesz – what’s gotten the IMF upset.”³²

3. Employment policies against the crisis in Hungary

In the National Reform Program of Hungary³³ there are five annual growth priorities and five national targets in the context of Europe 2020 strategy.

Annual growth survey priorities are as follows:

- i. Growth-friendly fiscal consolidation;
- ii. Restoring normal lending to the economy;
- iii. Strengthening Growth and Competitiveness;
- iv. *Tackling unemployment and the social consequences of the crisis;*
- v. Modernizing public administration;

As for Europe 2020 Strategy and national targets:

- i. *Increase of employment rate to 75% for the 20 to 64 year old population;*
- ii. Increasing the level of expenditure on research and development to 1.8% of the gross domestic product;
- iii. Increasing the proportion of renewable energy resources to 14.65%, a total energy saving of 10% and a maximum increase of 10 % in the emis-

30 The Fundamental Law of Hungary, Article 44(4): “*The members of the Budget Council shall include the President of the Budget Council, the Governor of the National Bank of Hungary and the President of the State Audit Office. The President of the Budget Council shall be appointed for six years by the President of the Republic.*”

31 See Domokos: *op.cit.* 299.

32 Fukuyama, Francis: What’s Wrong with Hungary? *The American Interest*, 6 February 2012. <http://blogs.the-american-interest.com/fukuyama/2012/02/06/whats-wrong-with-hungary/>.

33 Government of Hungary: Annex 2: National Reform Programme of Hungary 2012-2015. *A következő lépés, Széll Kálmán Terv 2.0*, Budapest, 2012.

- sion of greenhouse gases outside the EU's emission trading system (compared to the level in 2005);
- iv. Increasing the share of those having completed tertiary level education or equivalent to 30.3% within the population aged 30-34 and reducing the share of early school-leavers (those without education or training in lower secondary education) to 10 per cent within the population aged 18-24;
 - v. The poverty rate of families with children, the number of people living in severe material deprivation and the number of people living in low work intensity households by 20% each (reducing the above numbers by 450 thousand people by excluding overlapping figures).

As can be seen from the objectives of the government, (un)employment policies are among the top priorities. According to *Pogátsa*³⁴ “the central weakness of the Hungarian economy” is low employment. Indeed, according to 2011 Eurostat data,³⁵ Hungary has the lowest employment rate for persons aged 20 to 64 rate (60.7%) after Greece (59.9%).³⁶

In this section, some of the policies supported by the government will be evaluated including pensions, early retirement, disadvantaged people and flexibility.

3.1. Pensions and early retirement

Regarding the pension system,³⁷ the government implemented a very controversial policy by nationalization of private pensions³⁸ as mentioned above as part of unorthodox policy. This policy has been especially criticized in that it is against the “property rights.”³⁹

Another dimension of pensions is related to the removal of early retirement schemes, which is recommended by the European Commission,⁴⁰ as well. The early retirement scheme has been reviewed and a new law was introduced on 28 November 2011 and came into effect on the 1st of January 2012.⁴¹

34 See Pogátsa: *op.cit.* 610.

35 See on this issue further on the official site of the Eurostat:
<http://epp.eurostat.ec.europa.eu/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tsdec420&language=en>

36 Although the employment rate is still very low, as of May-July 2012, Hungary reached the pre-crisis level of 62.6%. See: <http://www.ksh.hu/docs/eng/xftp/gyor/fog/efog21207.pdf>

37 “Public expenditures on pensions are projected to increase from 11.9% to 12.6% of GDP between 2010 and 2060” (Government of Hungary, 2012. 44).

38 “Argentina is the only other country to nationalize private-pension assets in this way” (OECD, 2012. 79).

39 See Szente: *op.cit.*

40 European Commission: *Annual Growth Survey 2012*. 23 November 2011. Brussels, 4, 11.

41 MTI: MPs vote to scrap early retirement pensions. *Politics.hu*, 29 November 2011. <http://www.politics.hu/20111129/mps-vote-to-scrap-early-retirement-pensions/>.

Former police officers, other law enforcement and disaster management staff under 57 who used to be eligible for early pension will pay personal income tax on their pension if they decide not to return to work. This pension, however, cannot be lower than 150% of the minimal wage.

The objective was “to redirect as many people receiving pension below the retirement age into the labor market as possible.”⁴² Until 2012 the statutory retirement age was 62 for both men and women. It will gradually increase to 65 in the future. For men, only if they complete the statutory retirement age, can they qualify as pensioners. However as for women, it is possible to qualify as pensioners after 40 years of service.⁴³ So the government did not review the regulation regarding the women concerning early retirement.⁴⁴

Another change is related to the budget to be paid for pensions. Instead of the social security fund, the central budget⁴⁵ will be used to finance the early pensions. However, “support paid to family members (widow’s pension, orphan’s benefits, parent’s benefits) will continue to be financed from the Pension Insurance Fund.”⁴⁶

3.2. Disadvantaged people and flexibility in labor market

According to the Hungarian government’s job protection plan as indicated in Table 4, there are five prioritized groups who are considered the most disadvantaged segments of society in terms of employment.

Table 4: Prioritized groups in the job protection action plan	
Prioritized groups	Action
1.Unskilled job seeker & employee	* Social contributions will be cut 50% * Vocational training contributions
2.Below the age of 25 job seeker & employee	
3.Above the age of 55 job seeker & employee	

42 Government of Hungary: *Convergence...*62.

43 Government of Hungary: *Annex 2...*24-25.

44 See *Ibid.* 65.

45 “Pursuant to the Act on the Central Budget of Hungary, the budget of the Pension Insurance Fund is already a “pure” budget for pensions only and the benefits that are not considered pensions anymore have been moved to two other Funds: the National Family and Social Policy Fund and the Health Insurance Fund.” Government of Hungary: Annex 1: Convergence Programme of Hungary 2012-2015. *A következő lépés, Széll Kálmán Terv 2.0*, Budapest, 2012. 56.

46 Government of Hungary: *National...*65.

4.The long-term unemployed	<ul style="list-style-type: none"> * Employer liabilities by 100% for the initial two years of employment * Third year on payable contributions will be half as much as they are today
5.Mothers with small children	<ul style="list-style-type: none"> * If they return to work from child care/maternity leave, no contribution payment will be required either in the initial two years and only half of the current liabilities from the third year

Source: <http://www.kormany.hu/download/e/8c/90000/Job%20protection%20action%20plan.pdf>

Main incentive for the disadvantaged people is the tax relief for the employers if they employ one of those categories. There are multiple programs in Hungary, which are called START. START is a program aiming at young people below the age of 25 (in the case of university, threshold is 30). Up until 31 December 2011, there used to be START Plusz and START Extra program for those who took parental leave and those over the age of 50. As from 1 January 2012, START Bónusz program and cards were initiated for those “job seekers registered permanently for no less than 3 months and after receiving child care allowance/parental leave/child raising allowance/care allowance.”⁴⁷ Benefits also exist for people with disability and low-skilled labor.

Looking at the figures in Table 5, unskilled (those who took fewer than 8 grades of primary school or finished primary school) persons are mostly unemployed. 49.8% of those completed less than 8 grades of primary school are jobless, as for those who finished primary school, 23.8% of them are unemployed. Government would like to promote vocational training to make those unskilled persons skilled. However, it should also be underlined that due to huge numbers of vocational school graduates, they constitute the most unemployed percentage. Nevertheless, despite their huge numbers, 12.2% of their graduates are unemployed, which is closer to the average number of unemployed.

47 Government of Hungary: *Annex 2...*117.

Table 5: Unemployed persons by highest educational qualification in Hungary, 2011

Educational level	Unemployed (Thousands)	Unemployed (%)	$(U*100)/(U+E)^*$ (%)
Less than 8 grads of primary school	10	2,1	49,8
Primary (general) school	127,8	27,3	23,8
Vocational and apprentice school	154,9	33,1	12,2
Grammar School	40,7	8,7	10,5
Other secondary School	89,1	19,0	8,6
College	31,3	6,7	5,1
University	14,1	3,0	3,4
Total	467,9	100,0	10,9

Source: KSH http://www.ksh.hu/docs/eng/xstadat/xstadat_long/mpal9807_03_05a.html?943

*Derived by the author from KSH data.

U=Unemployed (thousands), E=Employed (thousands)

According to the KSH's latest figures of May-July 2012,⁴⁸ the unemployment rate of persons aged 15-24 increased by 3.1% to 28.1%. It seems that despite the relative decrease in the unemployment rate, youth employment is continuing to increase. As for the unemployment rate of those aged 55-64, it decreased by 1.3% to 7.3%.⁴⁹ New regulations concerning early retirement may have had an effective on the decrease of the unemployment rate of the 55-64 age group. As for long-term unemployment, 46.8% of unemployed people had been searching for a job for one year or more. It was 49.6% in 2011.⁵⁰

As a consequence of the conservative ideology of the ruling government, family and women with children become highly important issues to be tack-

48 See www.ksh.hu/docs/eng/xftp/gyor/mun/emun21207.pdf

49 "The number of employed young people aged 15-24 years – which is low anyway – lessened to 211 thousand and their employment rate decreased by 0.4 percentage point to 18.2% compared to the same period of the previous year. On the other hand, the number and rate of employed people in the 'best working age', i.e. the age group 25-54 years, as well as in the older, 55-64 age group increased. The employment rate in these age groups showed an improvement of 1.9 and 1.5 percentage points and grew to 75.2% and 37.6%, respectively." See. www.ksh.hu/docs/eng/xftp/gyor/fog/efog21207.pdf

50 See www.ksh.hu/docs/eng/xftp/gyor/fog/efog21207.pdf

led. On the one hand the government is trying to increase the population; on the other hand, it is trying to attract women with children to work. It is a fact that Hungary is one of the EU countries having the lowest employment rate of women except for Malta, Greece and Italy according to the 2011 Eurostat data.⁵¹ In May-July 2012, the number of women aged 20 to 64 in employment increased by 1.9% to 57% compared to the same term in 2011.

As of 1 January 2011, the modified family support system increased the age of the child from two to three for childcare allowances. Furthermore, tax allowances⁵² for families are applied for parents raising children to reduce their tax base.⁵³ Government also promises to take measures in order to reduce labor costs of those returning from parental leave.⁵⁴

One of the policies to increase the number of those returning from parental leave to the labor market is the promotion of part-time employment.⁵⁵ The promotion works as follows. If an employer fills one full-time position with two part-time employees and if one of this part-time positions is allocated to an employee returning from parental or childcare leave, then the employer will receive tax relief, that is, allowance from the social contribution tax.⁵⁶ Similar promotion exists for the youngsters. "Employers may also be eligible for a social contribution tax benefit in the event of the part-time employment of young workers."

According to the Act I of 2012 on the Labor Code, which was entered into force on 1 July 2012 and adopted by Parliament on 13 December 2011, part-time workers can be "employed under employment contract in jobs for up to six hours a day," (193/1) that is 30 hours a week. It should be underlined that 30 hours a week is the maximum working time for a part-time worker. According to the article 99(1), working time may even be less than four hours a day for part-time workers. The duration is very important because, the employee will acquire a right to terminate a contract without an obligation to provide information to the employee: "[t]he employer's obligation to provide information shall not apply if the working time does not exceed eight hours per week." (46/5b) Also the working time arrangement becomes very flexible since an employer can change the working time if the employer "informs the employee of the time of working at least three days in advance" (193/2).

51 <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tsdec420&plugin=1>

52 Government of Hungary: *National...* 60.

53 Government of Hungary: *Convergence...* 49-51.

54 Government of Hungary: *National...*, p.27.

55 *Ibid.* 26 and 53.

56 *Ibid.* 118.

Furthermore, it is possible to work on Saturdays or Sundays according to the article 101(1f) for part-time workers.⁵⁷

Nevertheless, although the government is promoting part-time employment as a solution for unemployment, the rate is still the lowest among European countries with 6.4% as is seen in Table 6.

Table 6: Part-time employment rate (2000–2011)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Hungary	3,4	3,3	3,4	4,1	4,3	3,9	3,8	3,9	4,3	5,2	5,5	6,4

Source: http://www.ksh.hu/docs/eng/xstadat/xstadat_annual/i_int014.html

Conclusion

Hungary's anti-crisis policies fit to neo-liberal priorities up to a certain point. However, unorthodox policies diverge from neo-liberalism. That is why in this article the way followed by Hungary is defined as the "goulash" way. It is not the Blairite "third way" since it has nothing to do with the aim of social democracy, but rather "Hungarian" way of neo-right policies.

The Hungarian government is aiming at decreasing public expenditures, however, in terms of the inflation vs. unemployment clash as depicted by Phillips curve; *Orbán* has chosen the unemployment as a primary concern after 2011.

The government introduced a budget council having a veto power for the sake of budgetary discipline, but levied a transaction tax on the monetary transmissions and even considered the extension of the tax on the central bank taking a risk to clash with the IMF.

While making early retirement difficult and increasing the retirement age, the Hungarian government nationalized pensions.

The government on the one hand promotes the flexibility of labor market; on the other hand it prioritizes the employment of the disadvantage people.

It remains to be seen if Hungary will be successful or not *vis-à-vis* economic crisis, since the biggest problems are still there despite incremental amelioration: Low employment and high indebtedness. But what is clear now is that Hungary is following a unique "goulash" way.

57 *Ibid.* 30.

LAZAREVA, MARINA CSC.,
Candidate of Legal Sciences,
Moscow State Law Academy

Development of Democracy in Russia and the World Economic Crisis

I.

The global economic crisis was exactly at the same time then the presidency of *Dmitry Medvedev*, who held this office from May 2008 to May 2012. However, the basis of his presidency (including economic, political and legal conditions) of course was formed during the terms of the previous presidents. In this article I will focus on supreme bodies of state power and elections in Russia, as these are essential parts of the political regime.

The current Constitution of the Russian Federation adopted at the referendum in 1993 was drafted in very hard economic and political conditions, when there was a real danger that the country could disintegrate, there was a high level of crime, national economy was on the verge of collapse and standard of living fell to a very low level. The Constitution of 1993 was based on the draft developed under the guidance of the then Russian President, *Boris Eltsin*. In the science of constitutional law the following pattern can be found: the one who develops the constitution, gets and ensures the dominant position for himself under this constitution (that is why it is better that the constitution is drafted and adopted by a specially established representative body – a constitutional convention).

A pro-president constitution is not a unique phenomenon in Russia, we can draw on the example of the existing French Constitution of 1958 which was drafted for and under the actual guidance of *Charles de Gaulle*; this constitution has, for a long time, carried a noticeable anti-parliament character, but gradually, together with the development and democratic evolution of the political system, the anti-parliament character of the French constitution has been softened (numerous amendments to this effect were introduced during the term of Nicolas Sarkozy, at the very beginning of the global economic crisis in July 2008). However, in Russia, unlike in France, during further implementation of the Constitution, powers of the President were more and more increased due to the use of presumption of “implied powers” (powers which are not written in the Constitution directly but are implied by

their meaning). Basically, the concept of “implied powers” is known to other countries, for example, to the USA, but there it is limited by the system of “checks and balances.”¹

So, what kind of system exists in Russia?

Firstly, the President of Russia is elected by the population with direct elections and due to this, the president already enjoys a considerable political power.

Secondly, though the government is formed jointly by the president and the Parliament, the president dominates this process.

Thirdly, the same goes for the dissolution of the government: though the government bears political responsibility before the president and the Parliament, the main role here is played by the president.

Last but not least, under the Constitution the president has the right to dissolve State Duma (lower chamber of the Parliament). However, this right of the president is rather limited.

So, Russia is a mixed republic with a dominating president. Most Eastern Europe countries are parliamentary republics or mixed republics with dominating parliaments.

A certain role was played by the Constitutional Court of the Russian Federation. In general, the Constitutional Court has a huge authority in the Russian Federation, the court employs highly qualified specialists, doctors of sciences, professors of law. However, a number of the court’s judgments directly or indirectly increased the power of the president. With an example: in any country a procedure for forming the government has a great significance. Under Article 111 of the Constitution the President of Russia appoints the Prime Minister “with the consent of the State Duma.” If the State Duma declines the candidates offered by the president three times, the president appoints the Prime Minister himself, dissolves the State Duma and declares new elections. In 1998, the Constitutional Court ruled that the president has the right to offer the one and the same candidate two or three times, or to offer a new candidate each time.² Thus, right from the start, the president can decide upon one candidate of the Prime Minister, can offer only this candidate three times and the State Duma, under threat of dissolution, evidently, finally has to approve the candidate chosen by the president. As we can see in this process the dominance of the president has been enhanced.

1 See *Конституционное (государственное) право зарубежных стран* [Constitutional (State) Law of Foreign Countries]. (ed. Strashun). Moscow, 2008. 92.

2 Compare *Постановление Конституционного Суда РФ от 11.12.1998 N 28-П «О толковании части 4 статьи 111 Конституции РФ»* [Decision of Constitutional Court of Russian Federation on 11 December 1998, on interpretation of the part 4 article 111 of the Constitution of Russian Federation].

Some people call Russia a presidential or even a super-presidential republic. But this is not quite correct. The USA is a model of a presidential republic. For example, the USA does not have a Prime Minister. The president is the head of the government (administration). The government bears no responsibility before the Congress. Unlike the USA, the Russian Parliament participates in issues related to the government, though to a limited extent. The president of the USA has no right to dissolve the Congress.

Let me explain these statements and draw on some examples from the practice of the last years.

President

In the modern history Russia has had three presidents.

Boris Eltsin was the first Russian President since presidency was introduced after the Soviet regime (the first president of the USSR was *Mikhail Gorbachev*), Eltsin was president for one and a half term (from 1991 to 1999).

Vladimir Putin was the second Russian President, he held this position for two successive terms, from 2000 to 2008 and now he became the president for the third time – since May 2012. In domestic affairs *Putin* followed a policy to centralize and strengthen state power. He changed the procedure of the formation of Federation Council (upper chamber of the Russian Parliament representing territories of the Federation), abolished direct elections of Governors of the territories of the Federation and State Duma was exclusively formed by party lists. Active measures were taken against terrorism, including Chechnya.

In the area of economics the most well known events were court proceedings over *Mikhail Khodorkovsky*, the owner of the oil company, named UKOS. The direct result of the proceedings was that all oil companies specified their taxes and started to pay more money into the budget.

During *Putin's* term a deputy of his Administration set forward a concept of a sovereign democracy, which means that policy of the president must, first of all, be supported by majority of the population in Russia, such majority support is main principle of a democratic society. A sovereign-democratic regime develops democracy and at the same time defends personal and state independence as much as possible in the modern world.

Dmitry Medvedev was the third Russian president; he held this position from May 2008 to May 2012. To describe the political regime of *Medvedev*, they often use the phrase – imitation of democracy – it is a form of political system where there is formal democratic legislation and formal elections, but civil society does not take part in ruling the state and feedback from society is minimal. Imitation of democracy as a rule has a political system with one dominant party. During his term there were important amendments to the

Constitution of Russia, which rose the term of the president to 6 years and the State Duma to 5 years and he also introduced the responsibility of the Government to submit annual reports to the State Duma about results of its activity (formal increase of the Parliament's controlling functions). *Medvedev* actively and demonstratively fought against corruption in state bodies. During his term a reform of militia was performed, the main change was made to its name (a clear sign of the imitation of democracy): militia is now called police; there were checks of militia, but these checks were mainly formal and ineffective. Of course, results of the presidential and parliamentary elections, electoral and party legislation and existing party system are also significant.

Presidential elections

The president of Russia is elected according to a rather standard way, as in France, Poland and many other countries – through direct elections by the population, under the system of absolute majority; in other words, to win the candidate must get over half of the votes of the turned-up voters (if over half of the registered voters turn up at the elections). If none of the candidate gets such a majority, there is a second round for the two strongest candidates and the winner is the candidate who gets more votes than his competitor; in other words, relevant majority decides. As you know, since direct presidential elections were introduced in France, all the presidents have been chosen in the second round.

If we look at the statistics of the presidential elections in Russia, we can see that the main struggle has always been between two direct opposite candidates – communists and anti-communists. To put it more correctly, there has always been a battle between the candidate of the “party of power” and the communist candidate (this is also a feature of the post-socialist character of this historic period). The democratic period of modern Russia is not long; there have not been such a great number of elections (only six).

1. In 1991 out of six candidates *Boris Eltsin* (a non-party candidate, supported by “the Democratic Russia”) received 57.30% of the votes. His main competitor, *Nikolay Ryzhkov* (Communist Party of the Soviet Union) received 16.85% of the votes. This was the first nationwide presidential election in the history of Russia. In 1990, *Gorbachev*, president of the USSR was not chosen nationwide; he was elected by the convention of the USSR Deputies.
2. In 1996, out of eleven candidates the main competitor of *Boris Eltsin* (who was not a member of any party at that time) was *Gennady Zyuganov*, leader of the Communist Party of Russia. This was the only presidential election so far when the second round was required. The struggle was very strong; the main issue was which way Russia would decide – demo-

cratic or communist. In the first round the gap between the candidates was small: *Eltsin* got 35.28% of votes, *Zyuganov* – 32.03%. In the second round 53.82% of votes were cast for *Eltsin*, while 40.31% of votes were cast for *Zyuganov*. It is interesting that now some media say that at that time the actual winner in the second round was *Zyuganov*, but *Eltsin* gave him money “to back off”. Other authors say that manipulations in favor of *Eltsin* really took place, but this only affected the gap between the candidates, not the general outcome of the elections.

3. The only pre-scheduled presidential election was in 2000. *Eltsin* resigned at the very end of 1999, not just due to a very low level of support within the population (the GDP in 1990-98 decreased by 40%, 44% of the population found themselves below the poverty level), but due to poor health (a little-known fact is that between the 1st and the 2nd round of the 1996 elections *Eltsin* was sent to hospital with a heart attack, but he managed to hide this from the voters). Out of eleven candidates *Vladimir Putin* had the biggest chance to win the 2000 elections; in 1999 he was appointed as Government Chairman and as acting president. The main intrigue was whether *Putin* would win in the first round or a second round would be required. As a result, *Putin* (from the Party “Unity”) received 52.99% of the votes, *Zyuganov* (Communist Party of the Russian Federation) – received 29.24%.
4. In 2004, out of six candidates no one presented a real danger to the then President *Vladimir Putin*. The main competitor of *Putin*, the Communist party of *Gennady Zyuganov* was represented by a newcomer, *Nikolay Kharitonov*. As a result, *Vladimir Putin* (a self-nominated candidate) got 71.31% of the votes, while *Nikolay Kharitonov* (Communist Party of the Russian Federation) – got 13.69%.
5. In 2008, *Putin*, despite of a strong temptation and persuasion, decided not to violate the Constitution and run for the third term. Out of four candidates the main challengers were: *Dmitry Medvedev*, officially offered by the Party “United Russia” and supported by President *Putin* and other three parties, the First Deputy of the Government Chairman, *Gennady Zyuganov* from the Communist Party of the Russian Federation. The result was that *Medvedev* (“United Russia”) got 70.28%, *Zyuganov* – 17.72%.
6. In 2012, the then President of Russia, *Dmitry Medvedev* under the Constitution had the right to run for the second term. He repeatedly declared about his possible participation in the elections. However, in September 2011 the convention of the “United Russia” Party offered the then Prime Minister and the former President, *Vladimir Putin* as presidential candidate for 2012. *Medvedev* supported him. *Putin* in return for this offered the position of Prime Minister to *Medvedev*, if he wins the elections. Out of five candidates *Putin* got 63.6% of the votes, *Zyuganov* got 17.18%.

Parliament

Under its current Constitution Russia has a two-chamber Parliament (Federal Assembly, which consists of the State Duma and the Federation Council). Speaking of the formation of the Russian Parliament, it is necessary to mention the feature specific to all post-socialistic countries, this is being the instability of electoral and party legislation. This is the area of active competition of political parties and state bodies which, through changes of electoral and party rules, try to influence the structure of supreme state bodies and number of parties in the country. So, very often this is a way to fight political opposition.

Formation of the State Duma

To this date there have been six compositions of the State Duma. Unlike some Eastern Europe countries, the Russian Parliament has never been pre-scheduled or dissolved since 1993, in other words, it has always worked its full term in office, which is a very good sign (though, let us not forget that before the Constitution was adopted in 1993, there was an armed conflict between the president and the Parliament in October 1993, which resulted in the dissolution of the then Parliament, called the Supreme Soviet). The first State Duma was elected for two years (1993 – the first calling). Successive State Dumas were elected for four years (1995, 1999, 2003, 2007 – 2-5th callings, respectively). The current Duma was elected at the end of 2011 for the period of five years (the 6th calling).

If we study the State Duma's election results, we can see patterns valid to the present day. At each election, the leading positions were taken by three parties:

1. "The party of power", namely, the party set up by high officials to occupy pro-presidential and pro-government positions. It is interesting to see that the party of power, unlike its competitors, was not formed straight away and could not get majority in the chamber. Firstly, it was an electoral bloc "Choice of Russia" (most famous leaders are *Egor Gaidar*, *Anatoly Chubais*), then – a political organization "Our home is Russia" (its leader was *Viktor Chernomyrdin*), later – electoral blocs "Unity" (its leader was *Sergey Shoigu*) and "Homeland – All Russia" (its leaders were *Yury Luzhkov* and *Evgeny Primakov*). Almost all the above mentioned people were either Prime Ministers or Ministers at their time. In 2001, political organizations "Unity", "Homeland" and "All Russia" united into the party called "Edinaya Rossiya" (United Russia). Since the elections of 2003, this party achieved majority in the State Duma, moreover, twice it did not only get majority, but constitutional majority, which enabled it to apply amendments to the Constitution as it wished. Notably, the party regards itself

- as a right-of-center, conservative party. The basis of the party ideology is “conservative modernization” (a rather conflicting notion). Now, Prime Minister *Dmitry Medvedev* is the chairman of the party (before him, *Vladimir Putin* was the party chairman).
2. The Communist Party of the Russian Federation is the largest (extreme) left-wing political party of modern Russia. In fact, it is direct successor of the Communist party of the Soviet Union. But legally it does not have any relations to the Communist party of the Soviet Union, because since 1991, activity of the Communist party of the Soviet Union on the territory of Russia has been forbidden. In their documents the party declares that it is guided by teachings of Marx-Lenin and stands for building a “renewed socialism” in Russia. It is mainly supported by elderly people who look back to the Soviet Union and their youth with nostalgia. The Communist Party of the Russian Federation was founded at the beginning of 1993 and it immediately started its fight for positions of president, State Duma Deputies and members of the government. In 1993, due to strong anticommunist moods it lost its leadership to the right-wing parties. However, already in 1995 when voters were disappointed with President *Eltsin's* policy, the party won the first place by the number of deputy seats in the State Duma (157). Now, it often takes the second place at parliamentary elections and asserts itself as a party opposed to the existing power. Its constant leader is *Gennady Zyuganov*.
 3. Liberal Democratic Party of Russia is a right-wing political party. It was set up at the end of 1992. It is direct successor of the Liberal Democratic party of the Soviet Union. Despite its name, many political scientists believe that it does not use liberal democratic ideas. In reality, it is an extreme right-wing populist party, “a party of one man”, its constant leader, *Vladimir Zhirinovskiy*, who is famous for his emotional behavior and speeches. That is why this party is mostly favored by young people. Since its formation, it asserts itself as an opposition party, but this position is doubted by some political scientists. Despite of emotional behavior of its leader, the Liberal Democratic Party managed to achieve 3-4th places at each election and in 1993 it gained as many votes as “the party of power”. As you know, in any country, especially at the time of economic crisis there are people with nationalistic feelings.
 4. I would like to tell you about one more party, which has recently appeared – the party called “A Just Russia”. This is a left-of the center party with ideology of social democracy and modernized socialism. It was set up in 2006, as usually, with participation of the Kremlin. It was intended to be the second large party, together with the United Russia, within the two-party system desirable for the Kremlin. It was supposed that it would attract and channel the left-wing opposition voters who do not support any kind of administration into positive direction. At first, “A Just Rus-

sia” worked together with the ruling party, “United Russia” and supported the policy of *Vladimir Putin* and *Dmitry Medvedev*, but in 2011 the party started to assert itself as opposition to the existing power. After that its leader, *Sergey Mironov* who, as a chairman was removed from his office of the Parliament’s upper chamber, which he had held since 2001. At last at two elections “A Just Russia” took 4th and 3rd places in the State Duma.

As it is emphasized before, the structure of the parliament is influenced by electoral and party laws. The largest number of parties took part in the elections to the State Duma in 1995 (at the time of political and social crisis) – 43 parties. It is very important that the smallest number of parties participating in the elections was during the last elections in 2011 – only seven (and only four parties could pass to the Parliament). This is connected to the high requirements of member numbers in political parties as well as to the current electoral laws. I am referring to the Federal law “On political parties” adopted in 2001. Since that time it has been changed over fifty times. We can distinguish three stages in the development of legislation in this area.

1. At first, in 2005-2007 strict rules for minimal number of party members and party regional branches were introduced, as a result, out of many parties there were only seven left. These are “United Russia”, “A Just Russia”, Communist Party of the Russian Federation, LibDem Party of Russia, Ya-bloko (Apple), “A Just Cause” and “Patriots of Russia
2. Then in 2007, the State Duma, regional and municipal parliaments were elected by party lists, in other words, exclusively by proportional system. This improved and strengthened the position of the existing seven parties.
3. Since 2004, the third stage started, when President *Dmitry Medvedev* in the last months of being in office offered to carry out a political reform to make party legislation more liberal.

Before, the minimal number of the parties was 40 000, now it can be only 500 people (so, it is 80 times smaller). This part of the reform had the most heated discussions. The point is that current electoral laws forbid political parties to set up electoral blocs at elections. This can lead to the situation when there are many new parties (now there are about 85 of them), however, they can participate only one by one at elections, which will divide the political opposition. There is a phrase from a famous political scientist, called *Alexis de Tocqueville* about media, “*the only way to decrease influence of newspapers is to increase their number*”. Besides, the procedure for party registration at the department of justice was simplified and now such parties exist as “Against all”, “Club of Russian people friends”, “Subtropical Russia”, “Party of social nets” and even a political party “Without a name”, “Kind people of Russia”, “Party of love”, “Russian party of ten commandments”.

Let us not forget about the electoral barrier (threshold to enter Parliament). According to the law of 2007, the barrier was 7% for a party to pass to the State Duma. If we study foreign experience, this is a rather high figure for parties (not coalitions). At the next parliamentary elections in 2016 it will be lowered to 5%, which is still high. Opposition considers this reform as “an attempt to keep monopoly of power”, as “political fraud intended to eliminate the opposition”.

Government

The third supreme body of the state power in any country is the government. This is a key body for understanding the form of state rule. In Russia, the president plays a dominant role in the formation and taking responsibility of the government; thereby, we can see changes of government depending on the personality of the president.

First term of Boris Eltsin (1991 – 1996)

During his term heads of the government were:

Boris Eltsin, in other words he, himself – from November 1991 until June 1992 (eight months). He ran the government as president of the Russian Federation, because under the last revision of the soviet Constitution of 1978 the president was at the same time the head of the Government, like it is now in the USA.

Egor Gaidar – from June 1992 until December 1992. He held the position of the Prime Minister for six months only, but he took important measures to reform the Russian planned economy into a market one, though, with huge social losses (this policy was called “shock therapy”), that is why people still have different feelings for him.

Viktor Chernomyrdin – from December 1992 until March 1998 (five and a half years). His name was closely connected to the name of President Boris Eltsin.

Thus, over five years, three heads of the government replaced each other. The average term in office was fifteen months.

The second term of Boris Eltsin (1996 – 1999, that is he was president for three and a half years, then resigned from his office before the schedule).

Viktor Chernomyrdin continued to carry out functions of the government chairman until March 1998 (about one year and eight months).

Sergey Kirienko – from March 1998 until August 1998. Like Gaidar, he was Prime Minister only for six months, but he left a bad fame, because during his term Russia had a significant economic crisis which led to a considerable devaluation of people’s monetary stock. After the economic crisis of 1998 there was a succession of dissolved governments.

After Kirienko, Chernomyrdin came again, though, for less than a month. He was followed by *Evgeny Primakov* – from September 1998 until May 1999 (nine months), by *Sergey Stepashin* – from May 1999 until August 1999 (four months) and by *Vladimir Putin* – from August 1999 until May 2000.

But when Eltsin resigned before schedule in December 1999, according to the constitution, Putin as being the Prime Minister, temporarily became the president and his functions were actually performed by his first deputy *Mikhail Kasyanov*. In other words, Putin was the Government head for 5 months during the term of Eltsin.

Thus, over three and a half years six heads of the Government replaced each other, this shows political crisis of power. Average term of the Prime Ministers in office was seven and a half months.

Vladimir Putin (President for four years – first term was between 2000 – 2004). Prime Ministers:

Mikhail Kasyanov – from May 2000 until February 2004 (almost four full years, three years and ten months).

Viktor Khristenko – from February 2004 until March 2004 (two weeks).

Vladimir Putin (second presidential term of four years, 2004 – 2008).

Mikhail Fradkov – from March 2004 until September 2007 (again, almost a complete term in office, three years and seven months).

Viktor Zubkov – from September 2007 until May 2008 (nine, in total).

Dmitry Medvedev (2008 – 2012). Right at the time of the global economic crisis.

Vladimir Putin – from May 2008 until May 2012 (four full years in office). So, all previous terms, especially the two last presidential terms of Putin created a good basis for the existing power and helped to survive a serious economic crisis. Another question is why the situation became stable during the time of Vladimir Putin. The point is that before he came to power, Eltsin had carried out important reforms.

Vladimir Putin (2012 – 2018, this term lasts for six years).

Dmitry Medvedev – from May 2012 up to this date.

Summary

History of relations between the president and the Parliament shows that during *Eltsin's* time they were often in conflict (I have already mentioned the pre-scheduled dissolution of the Supreme Soviet in October of 1993 – it was armed).

In 1995 (that is at the end of the first term of *Eltsin*), it was the only time in history when State Duma used its constitutional right to pass a no-confidence motion against the government, but this led nowhere because it did not vote again on this issue in three months as it was required by the Russian constitution.

Later, in 1998 (already during the second term of *Eltsin*) the State Duma under the threat to be dissolved refused to give its consent to the president to appoint the Prime Minister two times, besides, in the first case, the threat of dissolution made the Duma to approve the candidate offered by the president (*Sergey Kirienko*), while in the second case, the Duma was ready to be dissolved, but at the end a compromise candidate for the position of the government chairman was approved (*Evgeny Primakov*).

Finally, in 1998, the State Duma made an attempt to impeach the president. 177 State Duma deputies put their signatures to initiate this procedure, a special deputy commission was set up, but in 1999 none of the four charges against the president collected a qualified majority in the State Duma as the Constitution required (however, the simple majority of the deputies voted for each charge).

However, when *Vladimir Putin* came to power in 2000 and especially since his second term in office, in 2004 the situation changed to opposite. All employment issues which required consent of the Parliament were and are settled as the president desires. Of course, it was helped by the fact that since 2003 the pro-presidential party "United Russia" has the majority in the parliament, due to certain party and electoral laws. The form of rule fixed in the Russian constitution assisted to it. But let us not forget about the support and popularity that *Putin* enjoys among ordinary people.

Of course, apart from state bodies, a political regime includes other elements: rights and freedoms of citizens (this is a topic of its own). The global economic crisis gave rise to a wave of active protests among citizens. There was dissatisfaction, protest votes and meetings took place against *Putin* and for democratization of political life in the autumn of 2011 and spring 2012, during the elections of the State Duma on 4th December and presidential elections on 4th March. Moreover, political activity of citizens was helped by globalization, development of IT and social nets. People are used to getting information quickly, evaluating activity of state bodies this information based on these information, getting together into public interest groups.

The conclusions are that it is necessary to set up and develop competitive political environment in Russia, to exclude monopoly of one party (group of people), to develop active civil society and to increase powers of the Parliament, rights of opposition.

NACSA, MÓNKA

*PhD Candidate**University of Szeged*

Lost and Found: Regulation of Personal Insolvency in the 19th Century in Hungary

1. Introduction

Privacy and independence are truly capitalist needs of human beings. They extend to almost every aspect of one's life, let it be having private life or making ends meet for guaranteeing private life. In terms of legal thinking and at the legislative level, these concepts mean autonomy for the individual and rule of law for the society. If economy goes on the rocks and insolvency among business participants takes place, it means in legal terms that the creditors entitled to the right of being satisfied by the debtors cannot be satisfied, the debtors' default results in the impairment of creditors' rights. If such a phenomenon reaches a critical number and revelation comes that the occurring problems cannot be solved by already existing solutions, tendency is that finally the legislature is asked to give answers for those relations in question that fall under the scope of regulation.

Nowadays, the public debate is fuelled by the possible introduction of personal insolvency proceeding in Hungary. In recent years both non-governmental organizations and the government articulated their wish to solve the problem of heavily indebted members of the society by legal measures. The present regulation of individual economic conduct does not contain any provision about personal insolvency, while Act XLIX of 1991 on bankruptcy proceedings and liquidation proceedings covers only economic operators that are mostly legal entities and unincorporated business associations. The economic operators¹ are expected in their business conducts to bear higher standards of responsibility than natural persons in their contracts of minor

1 See for the term of former Civil Code of Hungary, Act IV of 1959 Article 685 c): economic organizations: state-owned companies, other state-owned economic agencies, cooperatives, business associations, professional associations, nonprofit companies, companies of certain legal entities, subsidiaries, water management organizations, forest management associations and private entrepreneurs. The provisions governing economic organizations shall be applied to the state, local governments, budgetary agencies, associations, public bodies and foundations in connection with their economic activities, unless the law provides otherwise for such artificial persons.

importance aimed at satisfying their everyday needs. If an individual debtor finally becomes insolvent, now the creditors are entitled to several rights before different authorities to find remedy for their impairment. But none of these possibilities give the right to a third person or group of creditors to gain full sight over the individual debtor's estate or gain the right to control the debtor's economic conduct. While insolvency proceedings relative for legal entities and unincorporated business associations mostly result in the termination of independent economic conduct and with the vanishing of independent operations, a third person and/or group of creditors are put in a decisive position over the debtor's estate. Evidently insolvency results in the loss of economic independence.

The phenomenon of heavily indebted individuals cuts its two ways. One can argue against personal insolvency proceeding and the limitations brought upon autonomy, however in certain social and economic establishments individuals are used to the thought of having the chance to rely on a third person, let it be the State, who supports in need. The simple fact that the possible introduction of personal insolvency proceeding occurred shows that in Hungary a critical number of heavily indebted individuals broke the ceiling of perception, whilst actors in name of the state find the present regulation and conduct insufficient in terms of the individual creditor-debtor relations.

The present paper is aiming to elaborate an overview about the ongoing debate about the possible introduction of personal insolvency proceedings in contemporary Hungarian legislation, while the second part of the paper covers the first regulatory measures taken by the state about personal insolvency proceedings in the late 19th century in Hungary. Relevant acts of the Parliament and comprehensive secondary scholastic legal sources and law report books of the Hungarian Royal Supreme Court will be used. Lastly, necessary conclusions will be drawn about the measures taken by the state a hundred years ago and nowadays and the author here expresses her wish to be able to give the answer for the question: is there anything new under the sun?

2. Developments of the recent years

The Hungarian society and especially households in recent years have built up as much as 728 billion HUF (almost 250 billion EUR) in foreign exchange debts which amount tends to reach the point at which neither the full satisfaction of creditors can be pursued, nor already existing solutions can be used for the decrease of the indebtedness of the society.² In legal terms it

2 „Non-performing loans to households and firms are high at 14 percent and are expected to continue to rise over the coming two years”, *IMF Country Report* No. 12/13, Hungary, 2011 Article IV

means in a simplified sense that the debtors cannot satisfy the creditors as it was originally agreed between the parties. Let it be satisfaction of the creditors through judicial execution under the provisions of Act LIII of 1994 or other non-judicial means of satisfaction, the key point is that there is an ultimate tension between the main interest of the creditors namely that the debtors must perform their contractual obligations and the interest of the debtors in getting possible easements on their individual obligation to payment.³

At this point it is essential to highlight important details of the Hungarian insolvency procedure and the ruling philosophy behind the conduct: ever since Act 22 of 1840 introduced the first provisions of insolvency proceedings and later on other acts entered into force in Hungary regulating insolvency, it is safe to say that insolvency proceedings were and are created in order to support mainly if not exclusively the interests of the creditors and the possible satisfaction of their claims once the debtor's insolvency was declared by the court.⁴

Lőrinczi in his work⁵ described the well-seen differences between the Anglo-Saxon and the Austro-German insolvency conducts: while the former system of insolvency leaves more flexibility for the debtor, the latter focuses on the satisfaction of the creditors and leaves almost no possibility for the debtor to restart economic operations. The Hungarian system of insolvency proceedings stands on Austro-German grounds.⁶ In theory insolvency proceedings in Hungary cover bankruptcy proceedings and liquidation proceedings.⁷ There are also provisions of Act V of 2006 on Public Company Information, Company Registration and Winding up Proceedings relative for the so-called „wind-up procedure” in which business associations are to be wound up without succession if they are not insolvent. However, a business association deciding termination without succession by a „wind-up procedure” may be finally terminated in a liquidation proceeding. The most important feature above all is that presently in Hungary a natural person cannot be qualified insolvent in a sense as it is used for business associations.⁸ In such circumstances it can be better understood why the Hungarian regulation has been unable to adapt to the current demands of both regulatory and market actors and ultimately the society as such.

Consultation and Second Post-Program Monitoring Discussions, January 2012. 10., available at: <http://www.imf.org/external/pubs/ft/scr/2012/cr1213.pdf>.

3 http://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_zrh001.html.

4 See Lőrinczi, Gyula: *A mai magyar csődjogi szabályozás jogtörténeti gyökerei (Szomorújáték három felvonásban)* [The Historic Background of the Contemporary Hungarian Bankruptcy Regulation]. *Jogtörténeti Szemle* 2011/4. 19.

5 *Ibid.* 20.

6 See *Ibid.* 21.

7 Act XLIX of 1991 on Bankruptcy Proceedings, Liquidation Proceedings.

8 Lőrinczi: *op. cit.* 25.

Providing proper legal solutions for problems not completely originated from legal grounds lies in the hands of the Parliament and the initiative bodies of the legislation. The most favored solution for the distressed household debtors' financial problem is the desired introduction of personal insolvency procedure. The most recent developments on the subject are connected to the negotiations between the relevant international organizations – the IMF and the EU respectively – and representatives of the Hungarian government in 2012.⁹

In March 2012, the Parliament issued its 21/2012. (III. 20.) parliamentary resolution on the subjects related to the non-performance of household loans.¹⁰ The draft of the decision contained a provision according to which the Parliament asked the Government to observe the potential introduction of the personal insolvency proceedings.¹¹ In its wording the resolution focuses on debt restructuring that can serve as a complex solution for the debtors. In order to gain full picture on the subject, it must be also mentioned that as early as October 2010 a private member's bill was submitted to the Parliament on the subject of personal insolvency proceedings however the draft was not even consulted by the legislation.¹²

3. The first regulation of personal insolvency proceeding of Hungary

According to our present knowledge, the first insolvency procedures took place before municipal courts in the early 18th century in Hungary.¹³ Legal practice of municipal courts demonstrated that both natural persons and business associations were put into legal procedure by the end of which creditors were granted only with fractions of their original claims.¹⁴ Customary rules applied for the litigation, no specific or detailed regulation existed in the early 18th century for insolvency procedure.¹⁵ It was in 1840 that the legislation passed the first comprehensive act on insolvency proceedings.¹⁶ The

9 „To provide further safeguards, staff urged the finalization of a bank resolution framework as well as creation of a *personal insolvency regime* to aid in the process of addressing distressed debtors and troubled institutions.” See IMF Country Report No. 10.

10 Compare 21/2012. (III. 20.) OGY határozat a 2002-2010 közötti lakossági deviza-eladósodás okainak feltárásáról, valamint az esetleges kormányzati felelősség vizsgálatáról szóló jelentés elfogadásáról, available at: <http://www.complex.hu/kzldat/o12h0021.htm/o12h0021.htm#kagy2>.

11 <http://www.parlament.hu/irom39/06068/06068.pdf>.

12 <http://www.parlament.hu/irom39/01273/01273.pdf>.

13 Kállay, István: A csődeljárás kezdetei Magyarországon a 18-19. században [Beginnings of Bankruptcy Proceedings in the 18th and 19th Centuries in Hungary]. *Jogtudományi Közlöny*, 1992. augusztus, 377.

14 See *Ibid.* 377.

15 Apáthy, István: *A magyar csődjog rendszere, Első rész, Anyagi csődjog* [The System of the Hungarian Bankruptcy Law]. Eggenberger-féle Könyvkereskedés, Budapest 1887. 41.

16 Act XXII of 1840 on insolvency proceedings, also Act VII of 1844 on the modification of Act XXII of 1840.

timing of the codification of the already existing rules of insolvency practice was strongly attached to the introduction of the Commerce Code and the Bill of Exchange Act.¹⁷

Act XXII of 1840¹⁸ was relative for persons pursuing economic activities without expressed differentiation upon their commercial or non-commercial status and also defined the concept of insolvency for the first time in Hungarian private law.¹⁹ One can argue about the procedural concept of the regulation: instead of substantive verification of the debtor's financial positions, the early statutory regulation of insolvency focused on the procedural aspects of the possible declaration by the court.²⁰ The contemporary jurisprudence distinguished between the so-called *concursum materialis* and the *concursum formalis*.²¹ The first term stood for the situation in which there was no asset available, so that the debtor was unable to pay his current debts, while the latter definition described such a situation in which the authority declared insolvency because the debtor was unlikely to be able to pay his future debts when they became due. Apáthy described that in their effects the *concursum materialis* and the *concursum formalis* did not differ however the *concursum formalis* was applied for only merchants.²² In such a procedure the debtor did not have to verify the actual lack of assets, it was a formal procedure indeed. *Concursum materialis* was mostly applied for individuals of non-commercial activity.

The jurisprudence that evolved upon the application of the First Bankruptcy Act in Hungary led to the adoption of Act XVII of 1881.²³ In the Second Bankruptcy Act the legislation made clear distinction between the so-called ordinary bankruptcy and commercial bankruptcy.²⁴ At that time the Hungarian regulation of insolvency proceedings was in accordance with European trends.²⁵ Even in the cradle of merchant law, in England the first

17 Kertész, Gábor: *Csődeljárás és csődbüntetés a reformkorban* [Bankruptcy Proceedings and Bankruptcy Offences in the Era of Reforms]. *Jogtörténeti szemle* 2007/1. 40., see also: Rákosi, Tibor: *A csődjogi fejlődés a 19. századi Magyarországon, különös tekintettel az 1881. évi XVII. törvénycikkre* [Evolution of the Legal Regime of Bankruptcy in the 19th Century in Hungary with Special Regard to Act XVII of 1881]. *Studia Iurisprudentiae Doctorandorum Miskolciensium*, Tomus: 4/2, Fasciculus: 1-14. 78-79.

18 Hereinafter: the First Bankruptcy Act.

19 Kertész: *op. cit.* 40., On the definition of insolvency see also: Apáthy: *op.cit.* 2.

20 Lőrinczi: *op. cit.* 20.

21 Apáthy: *op.cit.* 2.

22 *Ibid.* 3.

23 Hereinafter: the Second Bankruptcy Act.

24 Act 17 of 1811 in relevant parts: Article 1 About insolvency of the ordinary debtors, while Article

72 About the commercial bankruptcy of business associations. See also: Juhász, László: *A magyar fizetési képtelenségi jog kézikönyve* [Handbook of Hungarian Insolvency Law]. Novotni Alapítvány, Miskolc, 2010. 29.

25 Apáthy: *op.cit.* 3.

modern code was introduced only in 1861²⁶ as the result of reform movements. It was “applied to all debtors whether traders or not.” In a comparative overview it is noteworthy to mention that the German Bankruptcy Act of 1876 did not regulate the dual system of bankruptcy, it only covered in its provisions the ordinary bankruptcy proceedings.²⁷

Declared insolvency meant the impoundment of the debtor’s estate that was under the sole control of the so-called liquidator. The creditors were authorized to form a so-called creditors’ select committee that gained the right to supervise the conduct of the liquidator.²⁸

Insolvency proceedings focused on the satisfaction of the registered creditors’ claims, at this time no reorganization or debt forgiveness could take place as a comprehensive easement for the debtor’s burdened economic position. Satisfaction meant practically the effectuation of execution over the debtor’s assets that left no space for the release for all or part of the bankruptcy debts.

In such circumstances the debtor not only lost influence over his/her assets and business activities but also had to face possible criminal charges related to the circumstances resulting insolvency.²⁹ Those individuals who were proven to be guilty of using deeds and even falsifying them in order to camouflage their *de facto* insolvent position were sentenced for committing bankruptcy offences.³⁰ In Hungary shortly after 1861, the everyday practice of courts showed that fraudulent bankruptcy and other offences were widespread and this trend was mostly the result of the insufficient regulation of the restored Act 22 of 1840.³¹ Besides private law and commercial law influences over the codification of the Second Bankruptcy Act, one can see that the criminal aspects of bankruptcy also had their own effects on the necessary changes of the regulation.

The jurisprudence of the Second Bankruptcy Act shows a continuous tendency until 1949 in Hungary when the first socialist regulation appeared in bankruptcy law, as well.³² Given the fact that the present paper is not aiming to cover either the regulatory aspects or the practical consequences of the statutory changes after 1949, the last part of the analysis will cover the application of Act XVII of 1881 by focusing on the jurisprudence of the Royal Hungarian Supreme Court between 1895 and 1900.³³ In the observed period

26 The Bankruptcy Act

27 Apáthy: *op.cit.* 3.

28 Kertész: *op. cit.* 41.

29 Kertész: *op. cit.* 43.

30 See *Ibid.* 44.

31 Apáthy: *op.cit.* 46.

32 Lőrinczi: *op. cit.* 21.

33 See for the relevant Royal Hungarian Supreme Court decisions: *A magyar kir. Curia felülvizsgáló tanácsa által a sommás eljárásról szóló törvény (1893. évi XVIII. tcz.) alapján hozott határozatok*

the available law report books of the Supreme Court contained five major cases in which the Court decided in its judicial review procedure about legal issues related to the individual insolvency or ordinary bankruptcy procedure and interpreted the provisions of the Second Bankruptcy Act.

The first observed decision of the Supreme Court dated back to 1895.³⁴ The legal question rose about how to interpret Article 22 of the Second Bankruptcy Act. In relevant parts the provision said that the liquidator had mandate only to represent the estate under bankruptcy but was not authorized to take mandate to represent the debtor before third person or in court procedure for those liabilities that the debtor take as an individual person. In its decision the Supreme Court ordered that in absence of a special mandate, *ex lege* the liquidator could not take representation for the debtor before third person or in court procedure. This decision delivered a limited interpretation for Article 22 of the Second Bankruptcy Act.

On the subject of individual debtor's contractual obligations the Supreme Court delivered its decision in 1896.³⁵ In its orienting decision the Court explained that once the individual debtor became insolvent and his contracts were to be terminated, the debtor's contracting parties could only make claim for the damages originated from the contract but not for the interests.³⁶ The third relevant, bankruptcy related decision of the Supreme Court also dealt with the same legal issue dating back to 1897.³⁷ In its decision the Court argued for the limited interpretation of the debtor's contractual liabilities deriving from those contracts that had been made before insolvency happened to take place. As for the contractual liabilities, the forth decision of the Supreme Court also delivered the limited interpretation of liability but this time in favor of the creditor.³⁸

The fifth and last decision carried interpretation of both the Second Bankruptcy Act and the contemporary Civil Procedure Code.³⁹ The Supreme Court had to decide if the debtor's contractual performance in form of judicial deposit shortly before the order of bankruptcy fell within the scope of such an action that could be challenged in a court trial by the liquidator. The Supreme Court finally declared that the debtor's performance by satisfy-

gyűjteménye, összeállította Dr. Fabiny Ferencz, I-V. kötetek [Law Report Book of the Decisions Delivered in the Judicial Review Procedure of the the Hungarian Royal Supreme Court under the provisions of Act XVIII of 1893, Volume I-V]. Franklin Társulat, Budapest (hereinafter: Fabiny-döntvénytár I-V.)

34 Fabiny-döntvénytár I. (1895): 133.

35 *Ibid.* 253.

36 The Supreme Court argued for the application of the provisions of the Commerce Code in the relevant case however the debtor was a non-trader individual.

37 Fabiny-döntvénytár III. (1897): 467.

38 Fabiny-döntvénytár V. (1900): 276.

39 *Ibid.* 118.

ing the creditor's claims with judicial deposit did not violate other creditors' interests.⁴⁰

4. Conclusions:

The author of the present paper asked the question if there was anything new under the sun in terms of the initiatives of personal insolvency proceedings regulation in Hungary. It is now time to draw the conclusions.

The possible introduction of personal insolvency regulation in nowadays Hungary may result a new act but it is not guaranteed that the non-performing household loans and the debts behind them will vanish. Possible debt restructuring and easement on the obligations are not in comply with the historic and systematic evolution of Hungarian insolvency proceedings however both national and international actors envisage personal insolvency proceeding as a magic wand for indebtedness.

Personal insolvency proceeding in a historic perspective shows that the creditors' claims and their satisfaction overruled the debtors' interests. Even as the jurisprudence of the Royal Hungarian Supreme Court was observed, the concerning cases of individual/ordinary bankruptcy demonstrated the *pro* creditor approach of the insolvency proceedings.

Considering present economic conditions and the historic example of personal insolvency proceedings regulation in Hungary, in that regard, if the problem of indebtedness cannot be solved, let us hope that we will not enlarge it.

40 Ibid. 120.

MIROSHNYCHENKO, IVAN V.

PhD Candidate

Scuola Superiore Sant'Anna

The Nature and Extent of Informal Economy in Post-Crisis Ukraine

I. Introduction

The right to decent work for everyone is widely recognized all over the world (European Commission, 2007; UN, 2006; ILO, 2002a). The informal sector is an essential obstacle in terms of its size and vulnerability of its participants (ILO, 2002b). Owing to drain in tax and social security contributions, it directly affects the state (Williams, 2007). The knowledge about informal economy and its implications are rather limited due to its naturally hidden form (Williams, 2009; Pfau-Effinger, 2003).

In recent years, the European Commission has made several attempts to obliterate informal economy (European Commission, 2007; European Commission, 2005). The Commission has established a 'knowledge bank' of policies tackling informal employment (European Commission, 2007). The first known empirical survey of the Ukrainian informal sector, using activity-based definition, reveals need for developing an increasingly multilayered understanding of informal economy (Williams and Round, 2007; Round and Kosterina, 2005). This provides an opportunity to examine the informal sector in Ukraine by synthesizing contrasting theories of informal economy.

The present paper investigates the nature and extent of informal economy in post-crisis Ukraine. A better understanding of the diverse nature of the informal sector can assist the development of a more comprehensive policy, while promoting enhanced working conditions and paying in the Ukrainian formal economy. The remainder of this paper is organized as follows: first, a literature review presents an overview of prior researches and theoretical foundations for this paper. Then an overview of the Ukrainian informal sector is provided. Next, the focus will turn to research design and methodology. This is followed by discussion of the results. Finally, an overall summary and conclusions are drawn from the research.

II. Literature review of indicative references

Informal economic practices are extensive in many nations across the world (Williams and Round, 2008; European Commission, 2005; UN, 2006). They have been linked to the drain in tax and social security contributions (Williams, 2009; Pfau-Effinger, 2003). The private sector is the major creator of employment and the state establishes conditions for the productive employment of people (OECD, 2002; European Commission, 1998). Therefore, recent decades have witnessed calls for effective policies to encourage compliance rather than punish non-compliant economic agents (Williams and Round, 2007). However, the informal economy is still considered to be one of the major concerns of the European member states (European Commission, 2007; Stefanov, 2003).

The first cross-national survey of the extent and the nature of undeclared work in EU27 brought a fresh understanding of this phenomenon (Williams, 2008; European Commission, 2007). According to Williams (2008), in Nordic countries and Continental Europe, informal economic activity is practiced on a self-employed basis, while in southern Europe and East-Central Europe it is more likely to be connected to official employment. The motives behind informal employment are not always conducted for the financial benefits of employees or enterprises (Williams and Round, 2008).

A complex geography of informal economy across EU nations has been revealed by Williams (2008). Besides that, the ‘knowledge bank’, combining European states’ experiences, for developing measures to combat informal economy, was created in 2007 (European Commission, 2007). Thus, an important step has already been made by the European Commission in creating a global learning hub for tackling undeclared employment in various contexts.

A significant body of literature suggests three contrasting types of definition: *i)* enterprise-, *ii)* job- and *iii)* activity-based definitions. In studies of developing countries, enterprise- and job-based definitions have predominated until recently (ILO, 2002a, ILO, 2002b). An activity-based definition is commonly used for studies in OECD countries and European states (European Commission, 2007; Williams, 2006).

Informal sector is widely recognized as “involving the production and sale of goods and services that are licit in all respects besides the fact that they are unregistered or hidden from the state” (European Commission, 2007. 47.). As part of what has been called informal sector (ILO, 2002a, OECD, 2002), employees and businesses seek to participate in both formal and informal operations in market society (Williams, 2004; ILO, 2002b).

1. Informal economy as a residue

Until recently, a widespread belief was that both formal and informal economic practices belong to completely separate spheres (Williams and Round, 2008; Williams and Round, 2007; OECD, 2002). Consequently, a large proportion of hidden earnings have been invisible to state authorities (Williams, 2008). The formalisation thesis depicts formal sector as ‘advancement’ while the informal sector represents a ‘sign of underdevelopment’ (Williams and Round, 2008; Smith and Stenning, 2006).

In spite of the wide acceptance of traditional theory, in recent years a body of literature has contested and rejected various assumptions of this traditional theory (Williams and Round, 2007). Several scholars have indicated that businesses and populations are quite often simultaneously engaged in both formal and informal sectors (UNDP, 2008; Williams and Round, 2008; Smith and Stenning, 2006). In short, it has been widely recognized that shadow sector actively grows in the modern global economy (Williams and Round, 2008; Williams, 2007; ILO, 2002a).

2. Informal economy as a by-product of the formal economy

The second discourse represents the informal sector as a by-product of the formal sector in global economy (Williams and Round, 2008; Williams and Round, 2007; Amin et al, 2002). Economic players of informal economy are forced to participate not by choice, but more likely by necessity (Williams and Round, 2007; Pfau-Effinger, 2003). Moreover, informal economy is displayed “as a new form of work emerging in late capitalism as a direct by-product of the advent and deregulated open world economy” (Williams and Round, 2008. 370.). In this by-product understanding, informal economy is enormous in marginalised groups of western and developing nations due to weak status of formal economy (Williams and Round, 2007; Amin et al, 2002). Marginalised populations engage in the informal sector in order to survive in this sphere as a last resort (Williams, 2008). Thus, within market economy, informal sector exists as an opposite realm to the formal sector (Williams and Round, 2008; Round et al, 2008).

3. Informal economy as a complement to formal economy

For the third school of thought, the relationship between the formal and informal sector is seen as complementary rather than substitutive (Williams, 2009; Williams and Round, 2008; Williams and Round, 2007). In this perspective, informal sector is read as consolidating disparities produced by the formal sector (Williams and Round, 2007; Williams and Windebank, 2003). Both realms of the economy are seen as intertwined with each other (Wil-

liams and Round, 2007).

Williams and Round (2008) posit that affluent households, as main beneficiaries of shadow economy, conduct more informal economic activities than marginalised households. From this view, informal economy tends to possess more positive attributes than residue and by-product theorisations (Williams, 2009; Williams and Round, 2008). Until recently, the complementary approach has been commonly investigated in context of western nations (Williams and Round, 2008; Williams and Round, 2007).

4. Informal economy as an alternative to formal economy

The final approach reads the informal sector as a chosen substitute for the formal sector (Williams and Round, 2008. 372.; Williams and Round, 2007; Williams, 2005). For this group of researchers, the state over-regulation represents the main obstacle to economic growth and sustainability (Williams and Round, 2008; Williams, 2008). Besides that, these authors advocate the deregulation of the labour market from an over-burdensome state as a “re-surgence of the free market against state regulation” (Williams and Round, 2008. 372.). This discourse is mainly applied in relation to developing countries (Williams and Round, 2007).

5. An integrative understanding of the nature of informal economy

The evidence suggests that different theories of informal economy are valid when analysing different types of informal economic activities (Williams and Round, 2008; Williams and Round, 2007; Williams, 2008). This is exemplified by the assertion that the range of an informal sector can simultaneously possess positive, as well as negative features and can be relatively separate from the formal sector (Williams and Round, 2008; Williams and Round, 2007). In a study concerning the informal sector’s nature in Ukraine, *Williams and Round* (2008. 384.) argue that “universal theorisations are not possible.” These authors suggest an integrative understanding of the theories of informal employment to achieve a more nuanced and multilayered understanding of the phenomenon.

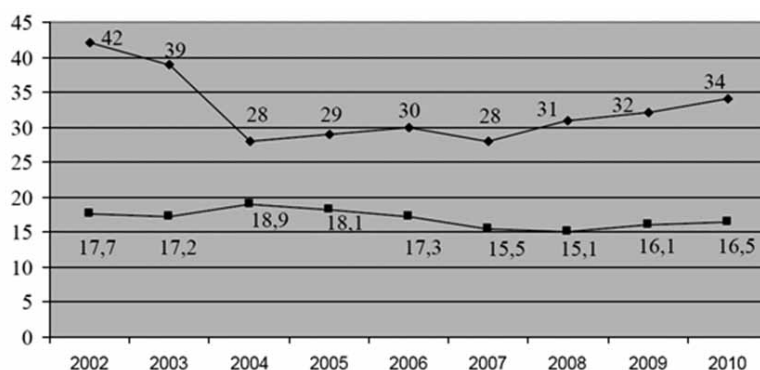
III. Overview of the informal sector in Ukraine

Ukraine is the largest state in Europe by territory and the second most-populated post-Soviet state after Russia (Mykhenko and Swain, 2010). It possesses one of the biggest natural resources in Europe (Tkachuk, 2010a). The Orange Revolution accelerated the state’s regional divergence to the highest levels in

Europe (Mykhenko and Swain, 2010). Due to the political turmoil, Ukraine has difficulty in capitalizing on its well educated human capital, abundant resources and strategic trade position between two major markets, the European Union (EU) and the Commonwealth of Independent States (CIS).

In Ukraine, the informal economic behaviour is accepted as part of everyday life, as previously identified by researchers in other East-Central European countries (Tkachuk, 2010b; Round and Williams, 2010). The informal sector grows as a consequence of the deteriorating formal sector (Wallace and Latcheva, 2006). It gains economic players forced by the need to survive (Williams, 2009) (see Figure 1).

Figure 1. Size of the Informal Sector in Ukraine 2002-2010 (percentage)



Source: Ministry of Economy of Ukraine, 2011.;
State Statistics Committee of Ukraine, 2011.

This figure indicates that there are different estimates of the informal sector among public institutions due to usage of an enterprise-based definition of employment, or indirect measures using proxy indicators. According to the Ministry of Economy of Ukraine (2011), size of the informal sector in Ukraine was 34% in 2010, while using the estimates of State Statistics Committee of Ukraine, it was 16.5% during the same year. The first known empirical survey of the Ukrainian informal sector by Williams and Round (2008) reveals that around 16% of households in Ukraine are involved in the informal sector. Three main categories of undeclared work complement the informal sector in Ukraine, such as informal waged work, informal own-account work and paid favours for friends, neighbors and kin (Round and Williams, 2010).

Given the relatively low levels of economic development and economic freedom, Ukraine has maintained low rankings regarding its transparency in public life, levels of corruption, barriers of formalisation and tax morality

(Transparency International, 2009; UNDP, 2008). Rent-seeking behaviour and bureaucracy became main barriers to both economic growth and the formalisation of economy in Ukraine (Chernyshev, 2006; Hanson, 2006). According to Rose (2005), 73% of Ukrainians indicate that their main income is not sufficient to purchase basic goods. The unemployment rate in Ukraine increased to 9.5% in 2009 due to the global financial crisis of 2008-2009 (The World Bank, 2009). In the category of world countries, Ukraine was referred to as most vulnerable to global crisis effects (Tkachuk 2010b). GDP of Ukraine fell by 14% and national debt increased by 59% during 2009 (Tkachuk 2010a).

Briefly, as a consequence of the stagnant formal economy in post-crisis period, informal economy dramatically grows in Ukraine. There are various estimates of the Ukrainian informal sector due to the usage of direct or indirect proxy indicators. The most prevalent types of undeclared work are informal waged employment, informal self-employment and paid favours for friends, neighbors and kin.

IV. Methodology

Traditionally, the methodology to be adopted has occupied the center stage in scholarly discussions, whether it should be quantitative, qualitative, or mixed-method (Bryman and Bell, 2007; Fabozzi et al, 2005). There is also a question of whether large or narrow data collection is preferable (Baker, 2001). Quantitative research can be defined as a research strategy that focuses on quantification during data collection and analysis involving statistical techniques (Fabozzi et al, 2005). It is founded on numerical measurements of indicators of unique phenomena (Bryman and Bell, 2007). Qualitative research emphasizes words rather than quantification in data collection and analysis (Eisenhardt and Graebner, 2007). It aims at gathering an in-depth understanding of human behaviour and the reasons behind it (Flyvbjerg, 2006). Mixed-method research can be defined as a strategy that uses qualitative and quantitative approaches (Scandura and Williams, 2000).

1. Research Approach

This study uses a mixed-method research approach to investigate the nature and extent of the informal economy in post-crisis Ukraine. The activity-based definition of the informal sector was used in the present study. Survey appeared as a justifiable research strategy to achieve the purpose of the study. The research process included the following steps: literature review, setting the objective of the study, research design (data collection and limitations), data analysis and discussion of the results, reliability and validity of the study and conclusions.

1. Data Collection

The evidence can be quantitative, qualitative, or both (Bryman and Bell, 2007; Eisenhardt and Graebner, 2007). Quantitative data can be collected from surveys, experiments, questionnaires, official statistics and structured or semi-structured interviews (Eisenhardt and Graebner, 2007). In comparison, qualitative data can be collected from observations, unstructured interviews and documents (Baker, 2001). Primary data collection was conducted from 200 surveys in late 2009 and early 2010. The survey questionnaire has been adopted from previous studies by Williams and Round (2007). Secondary data was obtained from other comparable studies conducted in Ukraine, as well as from literature written on this subject. An extensive literature review was created to identify the contributions and gaps in this field. Detailed information regarding the phenomena was revealed from official sources related to the study (see Appendix 1).

2. Sample

Maximum variation sampling was used for this study due to the evidence that there are essential inequalities in the extent and nature of informal economy between deprived and affluent populations of Europe (European Commission, 2007; Williams and Round, 2007; Williams, 2004). Two contrasting regions were investigated in Ukraine – Donetsk and Sumy regions. 100 surveys were distributed in the affluent area of Donetsk that is one of the leading industrial, educational and scientific cities in Ukraine. 100 surveys were distributed in the deprived area of Sumy city. Sumy relied heavily on its manufacturing industry that is currently undergoing a reorganization process. Since then it has suffered from a high rate of unemployment and lack of financial support from the government.

V. Findings

First and foremost, we investigate whether participation in the informal or formal sectors represents the main income source of households for their standard of living. Table 1 indicates that some 23% of households in Ukraine rely on the informal sector as the principal source of livelihood. Every sixth household (15%) indicates dependence on other informal form of employment as their income source on a daily basis. Overall, around 38.1% of Ukrainian households identify informal economic activities as either major or secondary income sources to their standard of living. In a previous study by Williams and Round (2008), around 16% was found to heavily rely on the informal sector. This suggests that the amount of informally self-employed

people has doubled after the financial downturn of 2008-2009 in Ukraine. In short, the Ukrainian informal economy can not be classified as a residual and underdeveloped sphere under the ‘formalization’ thesis.

Table 1. Major Income Sources for Living Standard (percentage of households)

	Primarily Source	Source	Total
Self- provisioning	2.8	1.2	4.0
Informal work	23.0	15.1	38.1
Formal work	27.0	23.4	50.4
Pension/benefits	4.1	3.3	7.4

Source: 2009/10 Ukraine survey.

Therefore, our focus turns to the different forms of participation within the informal economy in Ukraine. Some 55.3% of respondents belong to a group of informal employees working for an informal or formal organization (see Table 2). This suggests that the most common type of informal employees is the one that receives primary official wage and secondary informal wage that is called “envelope-wage” from employers. Official wage is used for tax declaration purposes, while informal wage is paid in cash. This finding is supported by similar studies of undeclared work in Ukraine (Williams, 2009; Williams and Round, 2008). In addition, similar informal practices have been identified by researchers in Bulgaria and Russia (Tkachuk 2010a; Stefanov, 2003). Furthermore, vast amount of gender studies highlighted that women are more likely to be involved in the informal sector (Smith and Stenning, 2006; Losby et al, 2002). This study, confirms the stated-above assumption that women have higher incidence of informal waged work than men. So, women prevail over men in informal waged work in informal or formal enterprises in Ukraine, corresponding to 30.1 and 25.2% (see Table 2). The prevalence of informal waged work shows how formal and informal sectors are intertwined and interdependent within Ukraine. Moreover, it highlights on how modern Ukrainian capitalists avoid meeting certain legal standards such as minimum wages, maximum hours, safety or healthy standards. Waged informal work is mainly common in domestic services (housecleaning, childcare, cooking), trade (salesforce) and tourism-related industries (i.e. regarding waiters and cooks). Briefly, the nature of informal waged work can be considered as complement to the formal economy in Ukraine.

Table 2. Engaging in the Informal Sector (percentage of households)

	Women	Men	Total
Informal waged work	30.1	25.2	55.3
Informal own-account work	20.4	15.7	36.1
Paid favours for kins, neighbours and relatives	3.1	4.5	7.6

Source: 2009/10 Ukraine survey

As Table 2 reveals, 36.1% of households operate their own business as a primary source of income or as the way to supplement their income from formal work. In particular, women prevail over men in own-account work on an informal basis, with corresponding shares of 20.4 and 15.7%. However, Losby et al (2002) argues that in transition economies specifically large percentage of both genders engage on a regular basis in informal economic activities. The most common types of the informal own-account work belong to construction (masonry, painting and carpentry), agricultural (seasonal employees) and IT sectors (mainly consultancy). In short, informal own-account work can be seen as an alternative to the formal economic sector in Ukraine.

In recent years, the factor of social relations has been identified behind informal employment by several researchers and been associated to analogous unpaid community exchange (Round and Costerina, 2005; Williams, 2006; Williams, 2004). From Table 2 we can see that some 7.6% of respondents engage in paid favours for kins, neighbours and relatives on a regular basis. This finding corresponds to similar results that depict paid informal work on the basis of motives other than making financial gain (Williams, 2004). Due to the social relations factor, paid favours are mainly conducted in the service sector. Given the above-mentioned, the 'alternative' discourse describes informal economy as the chosen substitute to the formal one.

This study reveals that the informal sector in post-crisis Ukraine incorporates simultaneously different theories of the informal economy. These results correspond to the similar findings by Williams and Round, 2007; Williams, 2006. The informal economy in Ukraine is not an underdeveloped and residual sphere. In contrast, it is highly intertwined and interdependent within the formal economic sector. Therefore, the formalization thesis does not describe the nature of the Ukrainian informal economy. Analysis of the informal waged work reveals that by-product perspective of the informal economy is the most appropriate that depicts the informal sector as a substitute to the formal economy. The alternative approach, meanwhile, is valid

when examining the informal own-account work of the households engaged in informal economic activities by necessity. In the dimension of paid favours, however, complementary discourse of informal economy is relevant as consolidating the disparities produced by formal economy. To sum it up, our results suggest that different theoretical discourses are valid for different kinds of informal economies.

There are some implications and opportunities for researchers and policy-makers to create a collaborative platform on the informal economy in Eastern Europe. Primarily, cross-disciplinary studies could help obtaining an in-depth understanding of the phenomenon in the region. Given the essential inequalities in the extent and nature of informal economy between the deprived and affluent populations of European states, development of specific context-based scenarios of tackling informal sector might be more appropriate rather than the common usage of best policy practices borrowed from advanced economies. Finally, in terms of future policy directions, it appears that instead of struggling with an informal economy it would be more efficient to remove barriers to formalize informal economic activities (i.e. informal taxes, bureaucracy and bribes).

VI. Conclusions

By using data from two regions in a single country, we were able to investigate the nature and extent of the informal economy in post-crisis Ukraine. This study finds that the informal sector incorporates simultaneously different theoretical discourses of the informal economy in Ukraine. Our results go in line with previous researches in the field suggesting that different theories are valid for different kinds of informal economy (for example, Williams and Round, 2007; Williams, 2006).

Informal economy in Ukraine is not an underdeveloped and residual sphere. In contrast, it is highly intertwined and interdependent within the formal economic sector. We find that the amount of informally self-employed people has doubled after financial downturn of 2008-2009 in Ukraine. The present study confirms the assumption that women have higher incidence of the informal waged work corresponding to the prior literature on gender studies.

This study makes several contributions to the existing literature on informal economy. Firstly, it adds to the limited knowledge about informal sector due to its naturally hidden form. Then, it investigates empirically the phenomena of informal economy using an activity-based definition in post-Soviet states, such as Ukraine. Finally, it extends the growing body of literature based on a better understanding of the diverse nature of the informal sector by synthesizing the contrasting theories of informal economy.

It would be interesting to carry out a survey of households on the nature and extent of informal economy using a larger sample size in Ukraine. It could help to obtain an in-depth understanding of the diverse nature of the informal economy in the region and to develop specific context-based scenarios of tackling the informal sector. Furthermore, it would be interesting to carry out similar studies in other regions of the Eastern European states to compare with the present study. This could assist in the development of a more comprehensive public policy, while promoting enhanced working conditions in the Eastern European region.

References

- Amin, A. – Cameron, A. – Hudson, R. (2002): *Placing the Social Economy*. Routledge, London.
- Baker, M. (2001): Selecting a Research Methodology. *The Marketing Review*, 1(1) 373-397.
- Bryman, A. and Bell, A. (2007): *Business Research Methods*. Oxford, New-York.
- Chernyshev, I. (2006): Socio-Economic Activity and Decent work in Ukraine: A Comparative View and Statistical Findings. *Working Paper №76*. ILO, Geneva.
- European Commission (2005): *Feasibility of a Direct Survey and Pilot Study of Undeclared Work in the European Union*. European Commission, Brussels.
- European Commission (2007): *Stepping up the Fight against Undeclared Work*. European Commission, Brussels.
- Eisenhardt, K. – Graebner, M. (2007): Theory Building From Cases: Opportunities and Challenges. *Academy of Management Journal*, 50(1) 25-32.
- Fabozzi, F. – Focardi, S. – Ma, C. (2005) : Implementable Quantitative Research. *The Journal of Alternative Investments*, 8(2) 71-79.
- Flyvbjerg, B. (2006): Five Misunderstandings about Case Study Research. *Qualitative Inquiry*, 12(2) 219-245.
- Hanson, M. (2006): *Transition in Ukraine*. NATO Parliamentary Assembly, Report Number 065 Escew 06 E.
- International Labour Organisation (2002a): *Resolution and Conclusions Concerning Decent Work and the Informal Economy*. Available from: <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/pr-25res.pdf> [Accessed on the 6th August 2012]
- International Labour Organisation (2002b): *Decent Work and the Informal Economy*. Available from: <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-vi.pdf> [Accessed on the 5th June 2012]

- Losby, J. L. – Else, J. F. – Kingslow, M. E. – Edgcomb, E. L. – Malm, E. T. – Kao, V. (2002): *Informal Economy Literature Review*.
- Available from: http://www.kingslow-assoc.com/images/Informal_Economy_Lit_Review.pdf [Accessed on the 5th of September 2012]
- Mykhenko, V. – Swain, A. (2010): Ukraine's Diverging Space-Economy: The Orange Revolution, Post-Soviet Development Models and Regional Trajectories. *European Urban and Regional Studies*, 17(2) 141-165.
- Ministry of Economy of Ukraine (2011): *Review of Ukrainian Economy Development*.
Available from : http://www.me.gov.ua/control/publish/article/main?art_id=168886&cat_id=153948 [Accessed on the 8th September 2012]
- Organisation for Economic Co-operation and Development (2002): *Measuring the Non-Observed Economy*.
Available from: <http://www.oecd.org/dataoecd/9/20/1963116.pdf> [Accessed on the 8th September 2012]
- Pfau-Effinger, B. (2003): *Informal/Undeclared Work: Research on its Changing Nature and Policy Strategies in an Enlarged Europe*.
Available from: ftp://ftp.cordis.europa.eu/pub/improving/docs/conf_work_pfaueffinger.pdf [Accessed on the 8th September 2012]
- Round, J. – Williams, C. C. (2010): Coping with the Social Costs of 'Transition': Everyday Life in Post-Soviet Russia and Ukraine. *European Urban and Regional Studies*, 17(2) 183-196.
- Round, J. – Williams, C. C. – Rodgers, P. (2008): Corruption in the Post-Soviet Workplace: the Experiences of Recent Graduates in Contemporary Ukraine. *Work, Employment and Society*, 22(1) 149-166.
- Round, J. – Kosterina, E. (2005) The Construction of Poverty in Post-Soviet Russia. *Perspectives on European Politics and Society*, 6(3) 403-434.
- Rose, R. (2005): *Insiders and Outsiders: New Europe Barometer 2004*. Glasgow: Studies in Public Policy 404, Centre for the Study of Public Policy, University of Strathclyde.
- Scandura, T. – Williams, E. (2000): Research Methodology in Management: Current Practices, Trends and Implications for Future Research. *Academy of Management Journal*, 43(6) 1248-1263.
- Smith, A. – Stenning, A. (2006): Beyond Household Economies: Articulations and Spaces of Economic Practice in Postsocialism. *Progress in Human Geography*, 30(2) 1-14.
- Stefanov, R. (2003): *Undeclared Work in the Acceding States and Candidate Countries*.
Available from: ftp://ftp.cordis.europa.eu/pub/improving/docs/conf_work_stefanov.pdf [Accessed on the 8th September 2012]
- State Statistics Committee of Ukraine (2011): *Consolidated Statistical Analysis*. Available from: <http://www.ukrstat.gov.ua/> [Accessed on the 8th September 2012]

- Transparency International (2009): *Global Corruption Barometer 2009*. Available from: http://www.transparency.org/policy_research/surveys_indices/gcb/2009 [Accessed on the 8th September 2012]
- Tkachuk, V. (2010a): *People First: The Latest in the Watch on Ukrainian Democracy*. Available from: http://www.kyivpost.com/news/opinion/op_ed/detail/87598/#ixzz14tITMJqv [Accessed on the 7th September 2012]
- Tkachuk, V. (2010b): *An Invitation to Corruption: Constitutional Turmoil Disaster for Ukraine Should be a Major Concern for EU*. Available from: <http://www.kyivpost.com/blogs/blogger/601/post/5538/> [Accessed on the 7th September 2012]
- United Nations (2006): *Full and Productive Employment and Decent Work*. Available from: <http://www.un.org/docs/ecosoc/publications/ECOSOC%20BOOK%202006.pdf> [Accessed on the 8th July 2012]
- United Nations Development Programme (2008): *Global Economy, Local Effects: Poverty in Ukraine*. Available from: [<http://europeandcis.undp.org/poverty/show/5C2C1F7F-F203-1EE9-B7380FF2BCFE3C9A>]. [Accessed on the 8th July 2012]
- Williams, C. C. (2009): Illegitimate Wage Practices in Central and Eastern Europe: A Study of the Prevalence and Impacts of “Envelop Wages”. *Journal of Contemporary Central and Eastern Europe*, 17(1) 65-83.
- Wallace, C. – Latcheva, R. (2006): Economic Transformation outside the Law: Corruption, Trust in Public Institutions and the Informal Economy in Transition Countries of the Central and Eastern Europe. *Europe and Asia Studies*, 58(1) 81-102.
- Williams, C. C. – Round, J. (2008): Retheorizing the Nature of Informal Employment: Some Lessons from Ukraine. *International Sociology*, 23(3) 367-388.
- Williams, C. C. – Round, J. (2007): Beyond Formalization: Rethinking the Future of Work. *Foresight*, 9(3) 30-41.
- Williams, C. C. – Windebank, J. (2003): The Slow Advance and Uneven Penetration of Commodification. *International Journal of Urban and Regional Research*, 27(1) 250-264.
- Williams, C. C. (2005): Market Delusions: Rethinking the Trajectories of Post-Socialist Societies. *Foresight*, 7(3) 48-60.
- Williams, C. C. (2008): Cross-National Variations in Undeclared Work: Results From a Survey of 27 European Countries. *International Journal of Economic Perspective*, 2(1) 46-63.
- Williams, C. C. (2006): Evaluating the Magnitude of the Shadow Economy: a Direct Survey Approach. *Journal of Economic Studies*, 33(5) 369-385.
- Williams, C. C. (2004): Beyond Commodification: Re-Reading the Future of Work. *Foresight*, 6(6) 329-337.

- Williams, C. C. (2007): Tackling Undeclared Work in Europe: Lessons from a Study of Ukraine. *European Journal of Industrial Relations*, 13(1) 219-237.
- The World Bank (2011): *Country Brief of 2011*.
Available from: <http://www.worldbank.org/en/country/ukraine> [Accessed on the 5th September 2012]

Official sources related to the study

Ministry of Economy of Ukraine, Ministry of Finance of Ukraine, Ministry of Labour and Social Policy of Ukraine, Ministry of Justice of Ukraine, Chamber of Commerce and Industry of Ukraine, Ukrainian National Committee of International Chamber of Commerce, National Academy of Sciences of Ukraine, the State Statistics Committee of Ukraine, the Sumy Municipal Council, the Donetsk Municipal Council, the World Economic Forum, the World Bank, the Commonwealth of Independent States, the European Commission, the Council of Europe, the Organisation for Economic Co-operation and Development, the United Nations, the International Labour Organisation, the World Trade Organisation, the International Financial Corporation, Transparency International.