

passed, how fairly they are applied, and how effectively they work. Respect for the rule of law is essential for citizens to trust public institutions. Without such trust, democratic states cannot function. Likewise, in the EU, the respect of the rule of law by all member states produces mutual trust between all partners. Without such trust, the EU cannot function. In other words, the European project relies on the respect of the rule of law by all member states (CJ EU, 2018: C-64/16, C-216/18 PPU). It ensures the effective application of EU law and mutual trust. If the rule of law is applied in a member state, the judiciary of the other member states will trust the institutions of the former. Departure from the rule of law is the departure from the EU foundations. As a result, deficiencies in one member state impact both the other members and the EU as a whole. The Union has a shared responsibility in solving the rule of law issues wherever they appear. This is so because these threats challenge the legal, political, and economic basis of the EU.

That said, today, many European states seem to be less protective of their rule of law and more accepting of populism and nationalism, which adduce supposed widespread public grievances while seeking to exclude others. Populists invoke a proclaimed will of the people to discredit the opposition and to dismantle the system of checks and balances in which the rule of law is rooted, such as the separation of powers and the subsequent independence of the judiciary. For them, all actions are justified due to their exclusive moral authority to represent the people (Sanz Caballero, 2020). Thus, society is divided into two antagonistic groups: the pure people - which they claim to represent - and the despicable elite (Muro, 2017).

In other countries, populism is less advanced, but the rule of law is also regressing due to hard-line nationalist trends and xenophobia, which spread intolerance. Nationalists also invoke majority rule to dismantle the rule of law, to deny freedom of assembly the freedom of expression and/or to demonize migrants. Nationalists put themselves above democratic institutions and respect judicial decisions only if they go in their favour (Freixes Sanjuán, 2020). They defend the su-

premacy of a supposed “native” people whose language, traditions, or way of living is more “natural” and, hence, in their opinion legitimate than those of the rest of the local population.

2. Respect for the Rule of Law and Justice and the Process of Accession to the EU

According to Article 49 of the TEU, to become a member of the EU, the candidate State should respect the values referred to in Article 2 of the TEU and should be committed to promoting them. This is why it is worth examining how successful the European Union has been in changing the legal culture of its member states as it concerns the rule of law and justice standards. To do so, we will examine the role that these values have played in States that acceded to the EU recently, as compared to other “older” member states, which joined the process of European integration in the 1980s. Two points will be made in this respect: first, during the pre-accession and accession periods, the EU had a relatively positive influence on candidate countries in terms of newcomers acquiring a legal practice based on the rule of law standards. Second, after accession, in the new millennium, the EU proved powerless to confront the rule of law decline affecting some member states.

During the pre-accession and accession periods, conditionality played a significant role because there was a reward, namely, membership. That was the carrot (Wakelin, 2013). Unfortunately, at that time, the EU was too focused on the number of reforms and the number of new laws and new practices that accessing States were supposed to adopt. The European Commission proved to be a bit negligent in controlling both the quality of these reforms and their assumed (or presumed?) Europeanization message. As a result, formally, these States embraced the rule of law values, but it is not fully clear whether, in practice, the new values were sufficiently adopted and internalised in all the new member states.

After accession, as Kochenov and Bard (2018), put it: “The EU and its member states seem to be doing as little as they can to combat

the rule of law backsliding”. The EU was very naïve to consider that once a State was granted full membership, the rule of law would be guaranteed forever. But conditionality is useless once the State is already a member. There is no carrot anymore.

After accession, the EU is dependent on the goodwill of the new member state and on the robustness of its commitment towards the new values and standards. member states are supposed to respect the rule of law by conviction, not because of an incentive, since the promise of accession does not exist anymore. When values are breached in a member state, only the stick seems to apply: the respect of the rule of law will depend on the strength of the Commission’s enforcement powers. Sanctions for infringement, however, are not a good deterrent, especially if the defaulting State perceives that the EU is weak, that sanctions are light or that EU institutions disagree on how to confront the violation. That is the case presently. And the passing of time reinforces disobedient partners because the rule of law backslidings finally consolidates.

Unfortunately, there has been no monitoring mechanism in place to do follow up after accession. In other words, there has never been a kind of post-Copenhagen examination or review. In July 2019, in view of the seriousness of decisions taken in some Eastern European member states, the European Commission promised a Rule of Law Review Cycle for all member states. This is a good initiative that will have to be implemented by the new Commission. But this mechanism probably arrives too late for some member states where the denial of values has been steadily taking place, and the damage is already done. Right now, these countries can be easily labeled more as authoritarian regimes than democracies.

Once the previous point is clarified, it might be interesting to compare the accession experience of the countries of South Europe with that of Central and Eastern Europe since both geographic areas have had an authoritarian or totalitarian past. However, when Greece, Spain, and Portugal entered the European Communities in the 1980s, the Copenhagen criteria that define whether a country qualifies for

EU membership did not exist yet. Conditionality was not applied, at least explicitly. At that time, the constitutive treaties of the European Communities did not say a word about values nor about the rule of law, democracy, and the like. All of that came later, with subsequent treaty reforms starting from the 1990s onwards with the Maastricht Treaty, and continuing with those of Amsterdam, Nice, and Lisbon.

Yet, Greece, Spain, and Portugal knew that to become Members, they had to be full-fledged democracies. In fact, the attempt of General Franco to knock on the door of the European Communities in the 1960s ended up as a tremendous failure for Spain. The South European States understood that if they were to enter this exclusive club that is now called the European Union, they would have to transform their laws, administrative practices, judiciary, social schemes, armed forces, in order to show respect for the rule of law. European integration had a very positive impact on the democratization processes in these three States (Jurje, 2018). They knew that it was not only a question of putting out ballot boxes at regular intervals. It was a question of embracing, with conviction, principles such as pluralism, legality, separation of powers, judicial independence, freedoms, human rights, etc. It would have been extremely hypocritical and fraudulent if Greece, Spain, or Portugal had embraced democratic standards with the only purpose of being admitted in the European Communities and once inside to go back to autocracy against the spirit of European law. These States were recent democracies when they entered the European Communities, but from then on, they respected the non-written norms according to which only democratic States could qualify for accession, and members should continue being democracies.

Greece, Spain, and Portugal have respected the rule of law thus far with, of course, episodic failures that have been corrected by independent judiciaries because sporadic infringements are a normal feature of any legal order. We can quote the example of Spain, which after being a dictatorship for 40 years, has become a full democracy, and it did so in a peaceful and orderly manner. The main reason for it was the conviction of the Spanish population and the political elites during

the transition period of the need to go “back to Europe”. For them, Europe meant democracy, freedom, pluralism, separation of powers, legality, judicial independence, and human rights. It was believed that the adherence to these values had no turning point, as was demonstrated by the attempted *coup d’État* that took place in 1981, which was abhorred and rejected by the majority of the Spanish population.

3. Justice Backsliding in Hungary and Poland

The independence of the judiciary in Hungary and Poland is receiving serious and sustained attacks. Of course, justice backsliding is only part of the evidence of a wider plan to restrain both the freedoms and the democratic character of these societies. The governmental strategy in Hungary and Poland includes the curtailment of the power of the press and social media, NGO control, academic submission, anti-immigration rhetoric, and dissidence silencing, to name but a few (Marody, 2019).

In Hungary, the undermining of the judiciary started in 2010. The governing party *Fidesz* introduced wide-ranging laws impacting the legal status and the salaries of judges. It altered the organization and administration of the courts by changing the nomination process of judges to one favouring the majoritarian party in parliament. It also lowered the retirement age of acting judges, curtailed the powers of the Hungarian Constitutional Court, and increased the number of judges of this bench, the newcomers being all sympathetic to the *Fidesz* government. There was also gender discrimination concerning the retirement age.

In Poland, since the Law and Justice party came to power in 2015, Warsaw embarked on a process of de-Europeanisation affecting the separation of powers and the independence of the judiciary that allow for a functioning democracy (Owczarek, 2017). No less than thirteen laws were passed eroding the complete structure of the judiciary: the constitutional court, the Supreme Court, ordinary courts, the prosecutors’ office, and the council of the judiciary.

To name but a few of these changes, the Constitutional Court presented issues regarding the legality of the new method of appointing judges that depends on the executive branch, as well as the non-publication of judgments opposing government interests. Three constitutionally elected judges were banned from taking the oath of office, whereas three others who had been elected unconstitutionally, were allowed to do so. Severe budget cuts made the institution irrelevant and merely decorative. In addition, compulsory judicial decisions have been taken without the presence of the minimum quorum of members required by law.

Concerning the Polish Supreme Court, there has been a reduction in the compulsory retirement age while the judges were still in office with ongoing mandates. In so doing, Poland has breached the principle of non-removal. The Polish president has been given discretionary powers to extend the mandate of individual judges without any clear criteria and no obligation of judicial review of the final decision. The reform gave the President the power to make new appointments. The executive is also empowered to amend the rules of the procedure of the Tribunal and to decide on case allocations. An extraordinary appeal chamber now has the power to overturn final judgments within five years and, in some cases, within twenty.

Ordinary courts have suffered similar changes with the executive being empowered vis à vis the judges (Lavelle, 2019). Their capture happens by submitting and subordinating all the presidents of courts to the Minister of Justice. The latter has the power to dismiss them discretionally. Additionally, the offices of the Minister of Justice and that of the Public Prosecutor have been merged, affecting the impartiality of the latter.

Poland went further by establishing a disciplinary regime according to which ordinary judges could be sanctioned if they hand out a ruling which displeases the executive or if they ask the Court of Justice of the European Union for a preliminary ruling. As the President of the Court of Justice of the EU has put it: denying national judges the possibility to interact with the Luxembourg court and ask

it about the validity of the interpretation of EU norms is tantamount to attacking the independence of courts (Lenaerts, 2019). Judicial independence guarantees that judges will only introduce preliminary remissions based on legal grounds and not on political arguments. Judicial independence also ensures that national courts will execute the preliminary rulings delivered by the Court of Justice following only strict legal considerations.

Even the education of future judges is now under the strict control of the ruling party (Sanders & von Danwitz, 2018). It resembles political control of the judiciary and censorship. This has made the European Commission conclude that the separation of powers and the independence of the judiciary are at serious risk in Poland (COM, 2017). In the same vein, the United Nations Special Representative on judicial independence expressed concern after his visit to Poland (OHRHC, 2017). The Venice Commission went as far as to say that the constitutionality of Polish laws could no longer be guaranteed².

The Luxembourg-based court has condemned both Poland and Hungary on the previously stated grounds. Different judgments on infringements procedures (Article 258 of the Treaty on the Functioning of the European Union) have ruled that these reforms were contrary to EU Law and that Poland and Hungary had to restore the courts to the situation *ex ante* (CJ EU, 2019: C-619/18, C-192/18). And there are still many preliminary rulings pending because the Court has been

² CDL-AD(2017)031 11/12/2017 Poland - Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts, adopted by the Commission at its 113th Plenary Session (Venice, 8-9 December 2017); CDL-AD(2017)028 11/12/2017 -Poland - Opinion on the Act on the Public Prosecutor's office, as amended, adopted by the Venice Commission at its 113th Plenary Session (Venice, 8-9 December 2017); CDL-AD(2016)026 14/10/2016 Poland - Opinion on the Act on the Constitutional Tribunal, adopted by the Venice Commission at its 108th Plenary Session, (Venice, 14-15 October 2016); CDL-AD(2016)012 13/06/2016 - Poland - Opinion on the Act of 15 January 2016 amending the Police Act and certain other Acts, adopted by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016); CDL-AD(2016)001 11/03/2016 -Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016).

all but overrun by more than ten Polish tribunals seeking clarifications on the EU requirements on judicial independence³.

However, the EU should be criticised because of the scope of the lawsuits introduced by the Commission and also the final rulings of the Court. This is the case because both the lawsuits and their subsequent judgments did not get at the real and central issue, which is the systematic attack that the judiciary is undergoing in the two States. It is not only the technical question of the discrimination on the grounds of gender or age. It is neither the technical question of the judges' disciplinary regime nor the unexpected enlargement of the judicial bench on political grounds. It is all that at the same time, but it is also more than that. The problem is that the Court of Justice of the EU is not addressing the situation as a systemic attack on judicial independence, or as a general undermining of the judicial power for the benefit of the executive power.

The judicial reforms in Poland and Hungary are neither specific nor sporadic (Feledy, 2017). They pursue a systematic strategy of control of the judiciary by the executive (in the case of Poland) and by the executive and legislative branches (in the case of Hungary). These cases show a truly existential European crisis of values since the attack to the judiciary in one member state is an attack on the EU itself. The lack of limitations on illiberal practices may encourage other governments to follow suit and to abuse their citizens' rights.

The Justice Scoreboard is the Commission's comparative information tool that aims to assist the EU and the member states to improve the effectiveness of their national justice systems by providing objective and reliable data on their judiciary. Concerning the situation of the judiciary, the 2019 edition of the Justice Scoreboard indicates that five other member states received recommendations relating to their justice system. These five States are Croatia, Italy, Cyprus, Portugal, and Slovakia. Regarding Croatia, the recommendations touch upon lengthy court proceedings and sizeable backlogs as well as upon the

³ Cases C-522/18; C-537-18; C-585/18; C-624/18; C-625/18; C-668/18; C-824/18; C-558/18; C-563/18; C-623/18.

underuse of electronic means, which affects the quality and efficiency of the system (Council, 2018).

Other eleven member states, including Spain, are also facing specific challenges that are being monitored by the European Commission (EC, 2019). Some months ago, the Spanish Prime Minister pretended in an electoral interview that the State Public Prosecutor should follow his orders because she represented the interests of the government. He got it wrong since the Public Prosecutor represents the State's general interest, not those of the executive. This institution is autonomous from the government in its work. And the judiciary is steadily receiving increasing verbal attacks from one of the political parties, which is part of the coalition government, *Unidas Podemos*. The new polarization and fragmentation of the Spanish Parliament are progressively degrading national politics and empowering extreme left and extreme right populism as well as nationalistic and secessionist movements, all at the same time. The situation is explosive and could easily end up provoking the rule of law breaches. The situation is also putting the Spanish judiciary in a very delicate position in view of the new governmental rhetoric favouring a change in the way judges are trained and selected from a system based on merit and public exams to one where the members of the government would have more of a say.

4. Conclusions

The increased support for populist governments is not a phenomenon limited to Poland or Hungary. Unfortunately, populism is on the rise, and it will be a challenge for democracies in the near future. It will also test the strength of the system of the rule of law, including the robustness of the EU member states' judiciaries. However, populism is not the exclusive prerogative of newcomers. The rule of law is being challenged in old and consolidated democracies such as France, Netherlands, Germany, etc., where populism is also growing. Not to mention Italy or Spain, where leftist populist movements are already part of the government.

In times of crisis of values and of illiberal democracies, there is a need, more than ever, for a strong Europe. In the past, the EU was able to produce positive changes in the new member states in a way that led them to embrace the rule of law. The EU was also successful in deterring the founding member states from backsliding towards undemocratic regimes. But the truth is that if Hungary and Poland applied for membership today, they would not be admitted as members of this exclusive club that they already belong to. The shocking speed with which the destruction of the rule of law is taking place in these two countries proves the importance of a strong and convincing legal culture beyond merely written norms. The undemocratic drift of Hungary and Poland is a full attack against all European values as enshrined in Article 2 of the TEU. The separation of powers and judicial independence is at the core of the attack since ruling parties Law and Justice Party and *Fidesz* are aware that a robustly independent judiciary curbs plan to bypass the national constitutional order. Populist leaders know well that they need a tamed and controlled judiciary to implement their illiberal plans and policies.

Unfortunately, the rise of populism and nationalism in many other European States does not help as they blow up the existing consensus on the essential role played by the rule of law in our societies. As evidence of this, Croatia and Spain rank first and fourth, respectively, as the EU member states, where the general public most perceives a lack of independence of the judiciary, according to the Justice Scoreboard. This is not good news at all. Could the root of the problem be a lack of sufficient conviction and internalising of the role played by the rule of law and values within the EU? Probably. And it is a bad sign that Ursula von der Leyen needed the votes of Polish Law and Justice Party to be elected President of the European Commission. Has the new Commission had its hands tied concerning the implementation of strong and effective measures against defaulting States? The future will tell whether this is the case.

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Marco Giugni

PARTICIPATION AS A FUNDAMENTAL VALUE OF CITIZENSHIP: POLITICAL PARTICIPATION AND ITS TRANSFORMATION¹

1. Introduction

Participation is a much-valued notion today. More specifically, *political* participation enjoys a lot of consideration and is often viewed as a value *per se*. Why is it so? There are at least two good and inter-related reasons for this. Firstly, political participation is a fundamental component of citizenship, along with rights and membership (Bellamy 2008). This raises a paradox and dilemma of citizenship. The “paradox consists of our rights as citizens being dependent on our exercising our basic citizenship right to political participation in cooperation with our fellow citizens” (Bellamy 2008: 30). The related dilemma is “that we will be tempted to shirk our civic duties if we feel we can enjoy the collective goods and the rights they provide by relying on others to do their bit rather than exerting ourselves” (Bellamy 2008: 30). This is the well-known problem of freeriding, pointed out by Olson (1965) in his seminal book on the logic of collective action. Secondly, and relatedly, political participation is a fundamental component of democracy. For example, voting represents the main transmission belt between the citizens and political institutions, and contribute

¹ I would like to thank all those who provided helpful comments on a previous draft, in particular Dario Čepo. I keep full responsibility for the content of the chapter.

to the legitimacy of the latter. This opens up a number of formal as well as other, more substantive questions, such as: Which forms of participation are more legitimate today? Which are the underlying values supporting different forms of participation?

Literally, participation means “taking part” in something. According to the Merriam-Webster dictionary, the first known use of the term “participation” can be traced back to the 14th century to mean “the act of participating.”² Other definitions include “the act of joining with others in doing something” (kids definition) or “the action or state of taking part in something” (legal definition). The important point here is that, at least in this sense, participating means acting. It is not simply sharing a view or state of mind; it is a behavior. To be sure, the term sometimes is also used in a non-behavioral manner. However, here I would like to stress its behavioral side. Moreover, although there are more individual forms – voting being the most prominent example of this – participation has collective implications: participation has important consequences for other people and more broadly for society at large, not only for oneself.

This chapter aims to provide some answers to the following key questions: What is participation? Who participates? How has participation changed over time? What are the challenges posed by such a transformation? The discussion below is, therefore, structured along these questions. My main focus will be on *political* participation, which is just one form amongst others, yet a crucial one for both citizenship and democracy, as I said earlier.³

It is worth stressing that here I do not engage with a normative discussion about whether citizen participation is good or bad for democracy, desirable or not, or whether it is needed for the democratic functioning of contemporary society, and the like (see for example the seminal work by Pateman 1970 on this). Nor will I advance a specific argument about political participation. My goal is much more modest: to outline some elements of reflection about the role and value of

² “Participation.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/participation>. Accessed 6 Mar. 2020.

³ Therefore, whenever I refer to “participation,” I mean “political participation.”

political participation today, particularly in the light of its changing forms, as well as to point to some of the challenges posed by such a transformation.⁴

2. What is Participation?

The first challenge we face when dealing with political participation or engagement is a definitional one. What do we mean by political participation? As already hinted earlier, participation means “taking part” in something. Since we focus on political participation, this “something,” here, is politics. In this regard, the literature abounds of different definitions of political participation. While the specific focus might change, most agree that this concept has two main terms: it refers to the activities by “ordinary citizens” – as opposed to elites – and it involves attempts to influence political outcomes. These basic features of political participation are epitomized in the following definition: “action by ordinary citizens directed towards influencing some political outcomes” (Brady’s 1999: 737). The latter may be – and perhaps often are – political decisions (laws or other), but they might also be other kinds of outcomes, not necessarily depending on policies. Obviously, when it comes to voting, one key outcome in this regard is electing political representatives and officials. Yet, participating in elections does not exhaust the various forms of participation citizens have at their disposal, even much less so today.

While often used as a starting point in scholarly work, this general definition is admittedly very broad and, most importantly, perhaps at least in part outdated. Scholars have, therefore, started to reconceptualize the notion of political participation and to redefine its contours, not least because of the changing character of participation itself. The most systematic attempt to try to come to terms with the definition of political participation has been made by van Deth (2014). He suggested

⁴ There is a huge literature on the topic of political participation. Given the essayist nature of this chapter and since the aim is not to review this literature, I will purposively limit the number of references at a minimum.

an operational definition of political participation that identifies what participation means through a series of steps – or decision rules – following a tree logic. These steps or rules are: (1) Do we deal with behavior? (2) Is the activity voluntary? (3) Is the activity done by citizens? (4) Is the activity located in the sphere of government/state/politics? (5) Is the activity targeted at the sphere of government/state/politics? (6) Is the activity aimed at solving collective or community problems? (7) Is the activity used to express the political aims and intentions of participants?

Depending on the answer (positive or negative) given to each question or rule, we have a different definition of political participation. This yields at least four different definitions instead of a single one as often implied by scholars until recently, which can, in turn, be grouped in three main kinds of definition: a minimalist definition resulting from a “yes” answer to the first four decision rules above; targeted definitions implying that the activity is located in the sphere of government/state/politics or aimed at solving collective or community problems; and motivational definitions implying that the activity is the activity used to express political aims and intentions of participants, that is, it is politically motivated. In a subsequent, more expanded work this taxonomy was slightly modified, most notably by including an additional question rule – whether the activity is made in a political context – resulting in five distinct definitions of political participation: a minimalist definition, two targeted definitions, and two circumstantial definitions (Theocharis and van Deth 2017).

This approach shows that there is no single definition of political participation, but that definition depends very much on what we consider important as being part and parcel of what we call participation as well as the focus we wish to give to some aspects rather than others. This also suggests that the question of what is political participation cannot be separated from the question of which forms it takes. The traditional and most obvious distinction in this regard is the one between conventional and nonconventional politics or, perhaps more accurately, between institutional and noninstitutional politics. The

former refers to activities that take place within the traditional channels of institutional politics – in particular voting – whereas the latter occurs outside of them, including protest activities. Today, scholars often distinguish, even more specifically, electoral from nonelectoral forms of participation.

Yet, scholars have long acknowledged the fact that participation is a more varied and multifaceted phenomenon that cannot be reduced to the simple binary distinction or even opposition, whether between conventional versus nonconventional, institutional versus noninstitutional, or electoral versus nonelectoral forms. In liberal democracies, citizens today have at their disposal a wide, albeit limited, a repertoire of political activities, ranging from voting, participating in party and campaign activities or contacting public officials to signing petitions – sometimes binding, where instruments of direct democracy exist – taking part in public demonstrations or strikes, boycotting products for political reasons as well as engaging in more “muscular” forms such as illegal (for example, civil disobedience) or even violent protests.

Scholars have tried to make sense of such a varied repertoire of available means by grouping them in broader modes of participation according to their underlying logic. A number of typologies or taxonomies have, therefore, been proposed in the literature. Earlier efforts tended to “personalize” the forms or modes of participation by defining types of participants. For example, Milbrath (1965) distinguished voters and patriots, contact specialists, communicators, party and campaign workers, community activists, and protestors. Similarly, in their seminal study on political action, Barnes & Kaase (1979) identified the political action repertoire as made by four different profiles of citizens based on different combinations of a conventional political participation scale and a protest potential scale: inactives, conformists, reformists, activists, and protesters. Such an “essentialization” of political participation was avoided in subsequent works. Among the most influential works is Dalton’s (2019), who adapted the modes of activity identified earlier by Verba et al. (1978) – voting, campaign

activity, communal activity, contacting officials on personal matters, and protest – to show how each mode is characterized by a specific combination of the type of influence, scope of the outcome, degree of conflict, initiative required, and need to cooperate with others.

All these efforts to classify the range of citizens' political activities largely converge on a limited number of significantly distinct modes of participation. Teorell et al. (2007) have used three main criteria – the activity's channel of expression (representational or extra-representational), its mechanism of influence (exit-based or voice-based), and its targeted versus non-targeted character – to come up with the following five modes of participation (from the most to the least institutionalized): voting, party activities, contacting, consumer participation, and protest activities. The authors have empirically tested this typology through a principal component analysis of nearly 20 different forms of participation and largely confirmed the typology.

With respect to earlier typologies, here we see a new mode appear, namely consumer participation, also known as political consumerism. As I will discuss in more detail below, this is a mode of participation that has emerged and taken on increasing importance in the past decades. Therefore, researchers could not ignore it any longer. A similar phenomenon can be ascertained with regard to the rise of digital means of communication. The latter has opened up opportunities for previously unknown participation. In this vein, the typology proposed by Theocharis & van Deth (2014), while largely based on previous efforts, includes what they call "digitally networked participation." Similarly to Teorell et al. (2007), these authors also tested their typology by means of principal component analysis. They also showed the levels of participation for each mode based on survey data. Their analysis shows that 85 percent of respondents said they were involved in electoral participation, 57 percent in protest participation, 48 percent in consumerist participation, 41 percent in volunteering, 37 percent in institutionalized participation, and 22 percent in digitally networked participation. These percentages, however, vary, sometimes considerably, both across countries and over time (Giugni & Grasso 2019).

In another publication, they added civic participation as a distinct mode, yielding a multi-dimensional taxonomy covering the voting, digitally networked participation, institutionalized participation, protest, civic participation, and consumerist participation (Theocharis & van Deth 2018). Among the various existing typologies, finally, it is also worth mentioning the one proposed by Ekman and Amnå (2013). These authors have proposed a comprehensive typology that distinguishes between non-participation, civil (latent), and manifest participation, as well as between individual and collective forms of participation.

In sum, scholars today have come to acknowledge that there is no single definition of political participation but that it is a multidimensional concept. Furthermore, they realized early on that we need to distinguish between different types or modes of participation, some of which may emerge as a result of societal changes.

3. Who Participates?

The next obvious question that comes up concerns those who partake. Much scholarship in political science and political sociology more specifically, has dealt with the question of who participates in politics. This, indeed, is a crucial aspect, as its answer has profound implications concerning political equality and, therefore, also for democracy (Dahl 2006). The problem is not so much that people participate or not, but most importantly, that some participate and others do not. So the task for researches lies in identifying the characteristics of those who do participate and how they differ from those who do not, and this for different modes of participation, both institutional and non-institutional ones. Also, one should ask whether those who do not participate, say electorally, refrain from doing so also in other, less institutionalized forms, or they privilege some forms over others. In the former case, we have a problematic situation whereby some citizens are fully excluded from politics, while in the latter, it means that they value some modes of participation – based, for example, on a critical stance towards representative democracy – rather than others.

The question of who participates politically, in fact, is intimately linked to the question of why people participate. This is not the place to present the various theories of participation in detail. There are many of them. Verba and collaborators' civic voluntarism model (Brady et al. 1995; Verba et al. 1995) is probably the most influential of such theories to date, but for sure, it is the most comprehensive. These authors have reversed the question of why people participate politically and asked why they *do not* participate. They gave three main answers to this question, which capture three main explanatory factors most often studied by scholars of political participation: because they cannot, because they do not want to, or because nobody asked (Brady et al. 1995). In other words, people do not participate when they lack the necessary resources (they cannot), when they lack psychological engagement with politics (they do not want to), and when they are not mobilized to politics through recruitment networks (nobody asked). While all three factors are important, they stressed, in particular, the role of resources and, more specifically, civic skills, that is, "the communications and organizational skills that facilitate effective participation" (Brady et al. 1995: 271). To this explanations, especially when it comes to collective action, one might add the well-known Olson's (1965) thesis, according to which, in the absence of individual selective incentives or sanctions, rational individuals will usually not participate – or not contribute to the public good – preferring instead to free-ride because they can benefit anyway from the results of collective action insofar as the latter is aimed to produce public goods from which they cannot be excluded.

Although earlier accounts focused on participation in collective action stressed the role of grievances and social breakdown and linked participation to social strain and deprivation (for an overview see Buechler 2004), scholarship on political participation has soon come to suggest that more resourceful are more likely to participate. In particular, research has consistently shown that individuals with higher socioeconomic status and higher education are more likely to participate (Rosenstone & Hansen 1993; Verba et al. 1995). Education

plays a particularly important role in this respect (Berinsky & Lenz 2011) for a number of reasons, for example, by signaling attentiveness and heightened political knowledge allowing people the basic skills and comprehension to engage politically.

This also applies more specifically to participation in protest activities. As Van Aelst and Walgrave (2001), among others, have noted, the less well educated, the socially vulnerable, and the needy remain less likely to take to the streets. This obviously raises a problem in terms of political equality, or rather inequality, insofar as those who would be more in need of political decisions aimed to alleviate or solve their problems are, at the same time, less inclined to voice their concerns. Instead, the typical profile of those who take part in protests still largely reflects the “middle-class radicals” (Parkin 1968) or the “social-cultural specialists” (Kriesi 1989) portrayed in the literature as the core group of people mobilizing within the new social movements of the left. This should not let us forget that, while the left is traditionally more prone to get to the streets – leftists assign greater importance to protesting in the streets, whereas rightists tend to privilege more institutional channels (Kriesi 1999) – we also observe mobilizations from the right.

Thus, an important body of work on political participation and its significance bears on the specific profile of those who get involved, especially in non-institutional activities and even more specifically in protest activities. Against the idea of protesters being anti-state radicals who belong to socially marginal groups or who despise conventional forms of political participation, researchers have stressed the strong civic sense as well as the attachment to politics – albeit not necessarily to traditional or representative politics – of those who get involved in social movements and protests activities (Walgrave et al. 2005). In other words, protesters today are far from being politically alienated. Quite on the contrary, they are very much attached to politics, only in different ways: critical of the traditional institutions and representative democracy and more open to participative or even deliberative forms of democracy.

They are, in other words, “critical citizens” or “dissatisfied democrats” (Dalton 2004; Norris 1999): citizens who are highly interested in politics but show little system support and trust towards established political actors and institutions, cynical about established politics, and at the same time confident that both individual and collective action can help change things. These critical citizens often take part in protest activities, also owing to their low level of trust in traditional political institutions and high feelings of the efficacy of citizen’s direct participation (Gamson 1968). This is all the more true for those who often take part in protest activities such as street demonstrations (Giugni & Grasso 2019).

This also relates to the transformation of the ways politics is seen and political rights – or, even more broadly, citizenship rights – are exercised. From the point of view that is valuing and considering as legitimate above all – if not exclusively – the representative institutions and voting, politics has shifted for many, especially for the younger generations, to a view whereby direct involvement and participation becomes essential. In other words, we moved from “dutiful citizens,” who have a conventional view of citizenship and engage mainly in electoral participation, to “engaged citizens,” who put forward more individualized and direct forms of action (Dalton 2009). In a similar fashion, others have pointed to the rise of “self-actualized citizens” who emphasize the quality of personal life and social relations, especially in relation to the rise of the digital age and its impact on citizenship for young people (Bennett 2008).

That said, even if one can outline a specific profile of protesters, we should also acknowledge that participants in demonstrations today often form quite a heterogeneous *ensemble* of people (Giugni & Grasso 2019). As Walgrave et al. (2005: 203) have put it, “protest participation cuts across conventional divisions of class, education, and gender and draws disparate groups to the streets, although there remains a bias towards the younger generation more than the middle aged.” At the same time, “the social characteristics, systems support,

motivational attitudes, and behavioral characteristics of demonstrators varied by the type of event” (Walgrave et al. 2005: 203).

4. How Has Participation Changed Over Time?

As we can easily see, the discussion of who participates links up with another topic, namely the extent to which and ways in which participation has transformed itself. The world evolves, today rapidly under the effect of globalization. Consequently, political participation does so too. In his historical analysis of the transformation of the repertoires of contention, Tilly (1986, 1995) has masterfully shown how contention has undergone a major change since the 16th century. Under the push of two large-scale processes that have since then characterized European societies – the rise of capitalism and, most importantly, the state formation – which gave rise to new interests, opportunities, and organizations, an old repertoire made of local, largely patronized and often reactive actions were replaced by a new repertoire formed by national, autonomous, and proactive mobilizations. Modern social movements – but also elections – have emerged out of this transformation.

Closer to our times, I would like to point to a number of ways in which political participation has changed or is changing today. I will, in particular, point to a number of processes that have changed and are still changing, sometimes quite dramatically, the contours and features of political participation. Some of these processes concern a specific model of participation – namely, protest participation – while others are more general.

The first process of deserving attention has already been mentioned. It is the progressive expansion of the modes of participation that took place in the past decades. Such an expansion, in fact, is a much longer process that can be traced back to the shift so well described by Tilly (1986, 1995) in the repertoires of contention. More recently, scholars have debated how the modes of political participation have expanded over the last century. In this vein, Theocharis & van Deth (2017), among others, maintain that the repertoire of political partic-

ipation since the 1940s, starting from voting, has progressively come to include campaigning and contacting, then protest and new social movements, civic engagement, political consumerism, creative forms – especially when it comes to participation in protest activities – and, more recently, internet and social media. The result is that citizens today have at their disposal a much wider range of ways to express themselves politically and participate in politics.

A further process of transformation, concerning protest participation, in particular, is also well known by scholars. I am alluding to what some have called the “normalization of protest” (Van Aelst & Walgrave 2001) or the “normalization of the unconventional” (Fuchs 2001). By this, they mean that protest behavior has become increasingly important and legitimate over the years. In particular, street demonstrations have become one of the major channels of public voice and participation in representative democracies (Norris et al. 2005). Scholars of social movements have pointed to the rise of a “social movement society” to refer to a similar phenomenon, meaning that the forms of participation typical of social movements – most notably public demonstrations – have become part and parcel of the contemporary society (Meyer & Tarrow 1998). Furthermore, others have also stressed the fact that, in addition to a normalization of protest, we have witnessed a parallel process of normalization of protesters, meaning a broader spectrum of protesters coming to reflect more closely the characteristics of the average citizen (Van Aelst & Walgrave 2001).

The normalization of protesters points to a further, related process, which we may call the “pluralization” of participants in protest activities. Confirming other researchers’ assessments about the composition of participants in protest activities, in a recent study, we were able to show that a wide range of different social groups and generations take part in street demonstrations (Giugni & Grasso 2019). To be sure, as I mentioned earlier, not everybody protests: demonstrating is still largely the prerogative of the typical new social movement constituency and of highly educated people. However, in spite of such an overrepresentation of certain social strata among the

core group of protesters, the range of people who demonstrate is far from narrow. In addition to being seen in the range of people who participate in protest activities, furthermore, such a “pluralization” also lies in a widening of the mobilization channels through which people participate and of the range of motives that they express for doing so (Giugni & Grasso 2019).

Somewhat more speculatively, we can also refer to a further process we may call “homogenization.” This refers quite specifically to the separation of protest in distinct movement sectors depending on their thematic focus. Traditionally, students of social movements have stressed the substantial differences between “old” and “new” movements. While the former – basically, labor movements – focused on economic redistributive issues, the latter – the so-called new social movements – put forward more culturally oriented claims and lifestyle issues. We have suggested that a process of homogenization of protest has taken place in recent years or decades, whereby such a neat separation has become less relevant today, in particular as a result of the shared experiences of mobilization within the global justice movement first and anti-austerity movements later on (Eggert & Giugni 2012, 2015; Giugni & Grasso 2020). More precisely, we argued that a process of homogenization of the structural bases of the movements of the Left might have taken place, bringing old and new movements closer to each other. Therefore, the social basis of the old and the new movements might have become less pronounced than before, both in terms of social characteristics and in terms of value orientations.

The next two processes are very important for political participation in general and reflect two main contemporary lines of change in the modalities of participation. One is what we may call the individualization of participation. As I mentioned earlier, political consumerism is one of the emerging and increasingly widespread modes of participation in recent decades (Micheletti 2003; Stolle & Micheletti 2013). While initially, this referred mainly to boycotting (refusing to buy certain products for ethical or political reasons) or “buycotting” (purposely buying certain products for ethical or political reasons),

today this has evolved towards a broad range of activities which are often captured by terms such “food activism” (Lorenzini 2019) or, perhaps even more broadly, “lifestyle politics” (de Moor 2017). These terms suggest a shift in the forms of participation – or at least a rise of certain modalities to do politics – from citizens’ “outward” and public efforts to influence the decision-maker or the public opinion towards more “inward” and individual forms investing their everyday life and bearing on their consumption practices. In brief, this points to an increasing individualization of political participation.

Another mode of participation also discussed earlier that is taking on increasing importance today relates to the increasingly important role played by the internet in our societies and is represented by what Theocharis & van Deth (2017) call “digitally networked participation.” As an equally increasing number of works show, online forms of participation become more and more frequent and widespread, especially amongst the younger generations. Scholars have, in particular, documented such increasing importance of online activism and digital politics in the context of social movement activism and protest participation (Bennett & Segerberg 2013; Earl & Kimport 2011; Gerbaudo 2012; Trottier & Fuchs 2015). Some went so far as to say that the rise of a personalized digitally networked politics in which diverse individuals address common problems might be replacing or supplementing a more traditional network environment made of direct contacts and ties (Bennett & Segerberg 2013). While this might be, at least for the time being, a bit exaggerated, clearly, we are witnessing a digitalization of political participation, both in the electoral – think for example of e-voting as well as other forms of virtual participation such as in online deliberation – and nonelectoral realm. Besides contributing to the personalization of politics (Bennett & Segerberg 2013), this might have positive but also negative effects. For example, while sources such as Facebook, Twitter or other online social media surely facilitate the staging of protest events and help to gather a high number of people rapidly, the survival and sustainability of social movements might become more difficult in the absence of traditional – offline –

mobilizing structures that might function as “abeyance structures” (Taylor 1979) in time of poor opportunities for mobilization.

A final process of transformation worth mentioning relates to a change in the scope of participation, which students of social movements have referred to as scale shifts (Tarrow & McAdam 2004). Most typically, this refers to the shift of scope of collective action from the local to the national and, more recently, to the global level. Tilly’s (1986, 1995) analysis of the transformation of the repertoires of contention already hints to a large-scale shift from the local to the national level. Discussions in the literature, however, have more recently focused on the shift from the national to the supranational level, leading to a transnationalization of protest, with globalization as a background. A lot of ink has been spilled over transnational contention and global social movements (della Porta 2018; Tarrow 2001), which also shows the rise of activists that some have called “rooted cosmopolitans” (Tarrow 2005). A lot of works, especially in the early 2000s, have dealt in particular with the global justice movement, seen as the prototypical movements that have contributed to change the scope of political participation from the national to the global level, or at least which has combined different levels (della Porta 2007; della Porta & Tarrow 2004). It is important to note, however, that the shift in the scale of contention – or, more generally, political participation – is not a natural one, going from the lowest to the highest level. A reverse process may also take place, whereby political activities shift back from the global to the national level, signaling a “re-nationalization” of contention. It depends, among other things, on the specific sets of opportunities for participation and mobilization at the various levels.

5. What Challenges Does the Transformation of Participation Pose?

The changes in the contours and features of political participation outlined above pose a number of challenges, not only to analysts but also for citizenship and democracy. Let me mention just a few, which I believe are particularly relevant. We may summarize these challenges

along two main lines, hence grouping the above processes of transformation according to their implications. On the one hand, the joint processes of expansion, normalization, and pluralization modify the relationship between citizens and political institutions. This poses a challenge to the traditional view of citizenship. If we admit that the latter also consists of citizens participating actively on behalf of the “common cause,” then a shift in the main locus of participation from voting to a broader set of non-electoral forms means that we should rethink the ways in which citizens contribute to that cause.

Moreover, the broadening of the repertoire of participation beyond voting to embrace a wider range of activities often taking place outside the traditional channels of institutional politics as well as the increasingly central place taken by non-electoral modes of participation poses a challenge to democracy. No longer the unique site of legitimate political behavior – especially among younger citizens – voting has seen increased competition from other forms of participation. To be sure, even though parties are perhaps less crucial in this sense than before, elections remain the main avenues for the articulation of collective interests. However, other ways to do politics and participate politically have gained in importance today, therefore challenging the traditional view of democracy as being based on political representation or, at best, participation through institutionalized direct democratic channels, where available. Importantly, contrary to voting, the other forms do not require formal criteria to be used. Anyone can partake in street demonstrations or act politically in their everyday life, for example.

On the other hand, the processes of individualization and digitalization create another set of challenges, further questioning the traditional views of citizenship and democracy. As mentioned earlier, both processes contribute to a personalization of contentious politics (Bennett & Segerberg 2013) and of political participation more generally. Going back to the very definition of political participation, this means that the latter is shifting from a “logic of influence”, asking someone else to act, to a “logic of acting” in the first person. This clearly shuffles the cards in terms of both citizenship and democracy, at least potentially leading to a de-reponsabilization of political elites.

The digitalization of participation, in particular, in addition to the problems relating to the sustainability of collective action mentioned earlier, creates a number of additional challenges. One concerns specifically the young – the age group most involved in online participation thus far – and relates to two competing views differing views of what constitutes civic engagement and citizenship for young people: a view that sees them as reasonably active and engaged, and a view that sees them as relatively passive and disengaged (Bennet 2008). The use of online means of participation risks exacerbating the gap between these two competing views. Furthermore, given the differential access to the internet both across countries and across social groups, the digitalization of politics may also be problematic in terms of political equality. Although the digital divide might shrink as the access to the internet becomes more widespread and democratized, the use of online forms of participation today is a source of inequalities between different social and age groups.

Thus, the five processes of transformation of participation we have called – partly following previous work – expansion, normalization, pluralization, individualization, and digitalization are not only changing, sometimes quite dramatically, the ways citizens do politics, but also pose a number of challenges with regard to both citizenship and democracy, including how we define them, and how they work. This should lead to rethinking of the relationship between participation, citizenship, and democracy, not only on the part of scholars but also on the part of practitioners and, in particular, policymakers. In contrast, the other two processes of transformation discussed above seem less consequential. They have important implications for the study of participation, but they might not entail such profound consequences for citizenship and democracy.

6. Conclusion

In conclusion, let me recap the main issues addressed in this chapter. They can be summarized in five points. First, participation has different meanings. Depending on the criteria we consider as important for

defining what participation is and what it involves, the definition of political participation, we may include a narrower or broader range of activities. Second, participation is key for citizenship and democracy. This is underwritten by the fact that citizenship is not only a matter of rights and does not only assume membership in a national community but also has a participatory dimension: by participating politically, citizens not only take part in the democratic game but also contribute to the very same rights that underlie citizenship and strengthen at the same time their membership in that community. Third, there are many different ways to participate politically. While voting is still considered as the most important and legitimate way to participate in public affairs, other, less institutionalized means exist and have taken on increasing importance in recent years. Fourth, participation has transformed over time. In addition to such an expansion of the ways of doing politics, political participation has undergone a number of changes, in particular by becoming increasingly normalized and plural, individualized, and digitalized, but perhaps also by becoming more homogeneous across issues and by shifting scale from the local to the global. Fifth, such a transformation poses a number of challenges for citizenship and democracy.

Yet, concerning the last point, perhaps the greatest challenge related to political participation today has to do with the participation gap. There is growing social inequality in political participation, and this poses serious challenges – if not threats – to democracy. In other words, as a prominent student of political participation has put it, the democratic principle of the equality of voice is eroding: the politically rich are getting richer and the politically needy exercise less voice (Dalton 2017). Political participation is intimately linked to citizenship and democracy in a variety of ways, not least because of the issues it raises in terms of political equality.

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Zrinjka Peruško

CRITICAL JUNCTURES, MEDIA FREEDOM, AND ILLIBERAL TURNS

1. Introduction

After five years of membership in the EU (since 1 July 2013) the challenges posed by the state to the democratic role of the media in Croatia were growing, instead of diminishing. After having created a democratic media policy and environment in the preceding period, which enabled Croatia to start the EU accession process and to join the EU, the challenges to media freedom in Croatia since the 2015 and 2016 presidential and parliamentary elections rapidly threatened the attained levels of media freedom. The threats identified by the Croatian Journalist Association, and by policy experts, were the worst in the following four areas: an increased number of legal actions against journalists and the media for “shaming” and slander, brought by persons in political power or related to them; an increased pressure on the independent editorial and journalistic practices of the public service broadcaster, HRT, with a sharp ideological turn to the right; an unrelenting policy of non-support to the civic sector media, and pressures from the state and non-state actors on new forms of speech in the digital sphere and in the legacy media. All of these important problems were the result of the same illiberal and conservative cultural politics which were being forced on the population by the ruling conservative HDZ, often via the public service media whose control they seized.

These observed challenges were the result of the missed opportunity to fully introduce inclusive institutions and policies following four successive critical junctures in the first thirty years of Croatia's independence. This was more or less my pessimistic conclusion about the trends of media freedom in this country in the two round table discussions organized by the Centre for Democracy and Law Miko Tripalo, in March and December of 2019. Even if in Croatia these illiberal values never received enough citizen support (votes), as they did in Poland or Hungary, to enable a full illiberal backslide with legislative changes blatantly detrimental to media freedom (Surowiec & Štětka 2019; Surowiec, Kania-Lundholm & Winiarska-Brodowska 2019), a change of the observed path towards growing illiberal politics was difficult to imagine.

We would learn soon that the next critical juncture was already in the making, and that the exogenous circumstance of the global pandemic of the new corona virus SARS-CoV-2 will affect the whole world. At the time of writing this text, in May 2020 Croatia is at the end of the first phase of dealing with the pandemic and the gradual opening of activities has started. The measures have so far successfully contained and reduced the spread of the COVID 19 disease with telework and online-education, with closing of all service industries, with travel and public transport restrictions, and prohibited mass gathering, but no general quarantine or repressive measures apart from stay at home recommendations. The decision making about communication of the epidemic containment measures and reporting of the trends and events regarding the spread of the virus in the country was (as far as this is communicated with the public) entrusted to a team of university professors and medical doctors (including the health minister), and their daily news briefings are broadcast live. A preliminary assessment of the handling of the crisis in Croatia would positively evaluate the public trust that this had created, and the resulting willingness of the population to follow the recommendations that limited their rights of movement and public gathering (aided by police enforcement, mainly light, apart from a few widely reported incidents). While this text is

not about communicating in and about the pandemic crisis, which is a research task that will need to be approached in a focused and interdisciplinary way, the pandemic did create a new important critical juncture which enables the conclusions of this text to remain open in regard to the illiberal backslide and media freedom.

The text unfolds in three steps: first I clarify my use of historical institutionalism (HI) for the study of media freedom; next I reflect on the illiberal turn as a broader political trend in relation to the shortcomings of media freedom in Croatia in the recent period; finally, a reflection is offered on the democratic and media freedom prospects of the present critical juncture provided by the pandemic. The key argument of this chapter is that present-day media freedom is a result of policies and decisions that began the paths taken at certain previous critical junctures; they are difficult to change in normal times, but the path can more easily be shifted, for good or for bad, at the time of the critical junctures, just like the one we are living now.

2. The Historical Institutional Approach in Studying Media Freedom: Critical Junctures and Path Dependencies

One historical institutionalist (HI) study is particularly illuminating and provided a starting point for this analysis. It is the book by Acemoglu and Robinson (2012), *Why Nations Fail*, in which they show how the repeated choice of repressive actions that created/strengthened extractive institutions at several successive critical junctures can explain the backwardness and low economic and political development of Eastern Europe. The first such critical juncture that they identify, in which the Eastern Europe diverged from the West, was the pandemic of the Bubonic plague in the 14th century. The elites in the countries like Poland and Hungary, and others in the region, introduced even harsher pressures on their peasants in what is known as the second serfdom, in an effort to extract from a smaller number of people the same benefits for themselves. In the West, the same challenge had largely the opposite response, the controls were relaxed, peasants were allowed more freedom, and this opened the

path to the development of market economy, the development of the cities, education and political freedoms. The parallel with the present pandemic obviously comes to mind.

HI approach for media system analysis is described elsewhere (Peruško 2013b; 2016; Bannerman & Haggart 2015; Peruško, Vozab, & Čuvalo 2021), and will only be summarized here. As an approach for studying social change, HI differs from the predominating linear social development theories, like the classic modernization theory, in that it develops a processual approach to social change (Sztompka 1993). As a theoretical approach HI is mainly adopted in political science and sociology (Peters 2000). In communication and media studies it is less prevalent, partially also because the issue of (especially long term) social change is seldom the focus of communication and media studies (Stanyer & Mihelj 2016). HI is able to explain both the change and continuity in social processes, and is thus very useful exactly for the study of societies like Croatia and other CEE countries, which have suffered an inordinate amount of change in comparison to Western European states, yet the success of some of their changes, including democratization and media freedom, is seen as partial. By applying the HI approach we can explain long term changes in the circumstances as well as in the actions that shape historical conditions of the relationship of media and politics.

Two key concepts from HI have already been mentioned. The notion of *critical juncture* draws our attention to the fact of non-linearity of social processes, and to the fact that at some point in time, due to either exogenous or endogenous factors, or the combination of both, the existing social equilibrium is punctured and the prevailing power relations do not have the same degree of influence any more. This is the moment of revolutions like regime changes, or of communication revolutions where there is no regime change but a new policy window opens. Political scientists and sociologists have focused on the first (Mahoney 2000; Pierson & Skocpol 2002), communication scholars on the second (McChesney 2007; Humphreys 2012). *Path dependency* explains why change in institutions and values is so difficult, and

why sometimes even after revolutions, some institutional practices or values remain the same. Path dependency describes this institutional inertia. This process is the reason for pessimism about incremental development of media freedom in countries without prospects of critical junctures (which don't have to be the kind of extinction events or regime changing revolutions; a virus pandemic will do).

The *processual approach* is another concept which is quickly growing fashionable in sociologically oriented communication research (Mihelj & Huxtable 2018). The processual approach is nothing more than the recognition that the paths taken at past critical junctures were contingent, and not inevitable, and that they provide conditions for action/policy in the present day. This stresses the contingency of social change (Sztompka 1993). One and the same exogenous circumstance, like the present pandemic, will bring different changes to different societies, based on a combination of their existing circumstance (including the presently felt influence of the *longue durée*) and the actions and policies implemented at the time of the critical juncture.

In the long term historical view, three key critical junctures shaped media development in Croatia and the surrounding region: the fall of the feudal society and the advent of modern society (16th to the long 19th century), the introduction of the socialist regime after WWII (1945-1990), and the demise of the one party communist rule and the transition to democracy from 1989 (Peruško 2016). Each of these major critical junctures brought about a regime change influencing the broader strokes of society together with the conditions for media development. The fourth juncture is related to revolutions in communication and media technologies, institutions, and practices (Peruško, Vozab & Čuvalo 2021). The present communication revolution (McChesney 2007), like almost all of the earlier communication revolutions, is global in nature but again with varied responses in different countries.

The longitudinal set theoretical study by Peruško, Vozab and Čuvalo (2021) of six Southeast European media systems shows that the relatively successful development of democracy and media freedom in contemporary Croatia (even more so in Slovenia, in comparison

to the other former republics of the socialist federal Yugoslavia, the so called Western Balkans countries Bosnia and Herzegovina, Serbia, Montenegro and North Macedonia) is the result of a specific combination of historical conditions and policy decisions in the media systems following the three regime change turning points. In terms of the *longue durée*, the favorable socio-economic and political conditions of Croatia in the modernization period that contributed to better consolidation of democracy and media freedom in the post 1990s (similar as in Slovenia, they were favorable when comparing the six post-Yugoslav states), where the “Habsburg factor”, higher literacy rates, early development of printing and some industrial development, enabled in this period the development of the media and some degrees of professionalization of journalism. This development was continued in Croatia during the socialist period, where the accommodative pluralist political system (cf. Kitchelt et al 1999 on accommodative type of socialism) which included some development of civil society, dissent in the public sphere, and lower political parallelism with strong advertising development and the media market orientation, and contributed to a media environment and media culture which was more diverse and open than is usually expected of socialist media systems (Peruško 2013a; Peruško, Vozab & Čuvalo, 2021).

In the period of post socialist democratization three junctures can be identified: the first one is linked to the 1989 transition to democracy and is one of the main regime junctures mentioned above, the second mini juncture is linked to the year 2000, which marks the start of the democratic consolidation for Croatia (for some countries in the region the transition to democracy had a second start around that time), and the third juncture was seen in the southeast European region around 2010. For Croatia, the juncture is linked to 2013, the year of the EU accession, but builds on the policies of the preceding decade in which the process of legislative adjustment for EU accession was taking place. Decisions made in relation to these junctures had the possibility to change or maintain the previous institutional path.

The comparative longitudinal study by Peruško, Vozab and Čuvalo (2021) found that in the countries of the region in the post-socialist democratization period, the policy of EU integration was a necessary condition for the higher development of the media market (in terms of size of print media and PSB audiences) in the post-1990 period. Policies that supported digital media infrastructure and digital switchover for television and media pluralism, introduced in the early 2000, also contributed to the development of the more developed media market in the present day. These policies were able to cancel out the unfavorable conditions of the first decade of the transition in Croatia (war fought on its own territory, and a degree of authoritarianism in government) in combination with the positive consolidation of democratic institutions and a lower level of clientelism and higher socio-economic development (in comparison to the four eastern neighbors) after 2000.

Media freedom is best understood as a construct of several variables – Kenny's (2019) operationalization relies on a selection of variables from the international longitudinal V-Dem comparative expert survey (Coppedge et al. 2017) to describe and evaluate media freedom in different countries of the world. The variables included in Kenny's (2019) analysis are freedom of expression, government censorship of the media, government censorship of the internet, media pluralism as a range of perspectives provided by the media, the degree or existence of the harassment of journalists, media self-censorship and media bias against the opposition parties or politics. Peruško, Vozab & Čuvalo (2021) show that higher media freedom in Southeast Europe (the fsQCA calibrations of media freedom based on the described variables are, on a scale of 0 to 1, where the closer the country is to 1 it has more freedom: 0,18 for Bosnia and Herzegovina, 0,65 for Croatia, 0,23 for Montenegro, 0,07 for North Macedonia, 0,06 for Serbia, and 0,94 for Slovenia) results from a combination of conditions including lower asymmetric parallelism and media capture, and higher market development with media policies that support media pluralism and digitalization. The study shows that in Croatia, a combination of more favorable *longue durée* structural conditions and positive media

policies promoting pluralism and digitalization after 2000 (Peruško 2011) positively contributed to a media system which did not develop media capture or asymmetric political parallelism in which the right wing parties control mainstream commercial media (like in some other countries of the region).

Media capture is also a concept which has increasingly been used to describe the lack of independence of the media in new democracies through a collusion of media owners and governments (Schiffrin 2017). Based on the understanding of media capture by Besley and Prat (2004) in that the “degree of media capture influences the information of voters and their voting decisions” (p. 3), media capture in Croatia was found to be low after 2000 because of the high share of foreign owners in mainstream media, low rouge state advertising practices, the relatively regular political turnaround at elections and (comparatively in regional terms at least) low pressure on journalists (Peruško, Vozab & Čuvalo 2021). The same study found that low media capture is one of the necessary conditions for higher media freedom, alongside the resolved stateness issue, consolidated liberal democracy, EU integration and the state policy of support for the digital infrastructure. In the last two decades in Croatia, the development of asymmetric parallelism in which the right wing parties have their own media supporters while center and left parties rely on the mainstream media (Faris 2017) was mainly absent in the largely professional and not systematically biased mainstream legacy commercial media. While the findings of this comprehensive study explain why a comparatively better situation in the media system developed in Croatia than in the other countries of the Southeast European region (save Slovenia who shows better scores on many recent conditions), we cannot overlook a number of worrying developments regarding media freedom after 2014 that can be analyzed in the context of broader regional and international illiberal tendencies.

3. The Illiberal Turn and Media Freedom

The infamous quote by the Hungarian Prime Minister Viktor Orbán first defined the idea of illiberal democracy in Europe, in a speech he gave in Romania in July 2014. He said (quoted in Keane 2015: 249):

“we are parting ways with western European dogmas, making ourselves independent from them ... we have to abandon liberal methods and principles of organizing a society. The new state that we are building is an illiberal state, a non-liberal state.”

Although in 1999 the number of illiberal democracies was seen to be in decline, in the period under examination in this chapter the number seems to be on the rise again, especially in Eastern Europe where the transition to democracy was performed the quickest in comparison to other third wave transitions (Schneider & Schmitter 2004). For the first time an EU country is classified as an electoral authoritarian regime (Hungary), the majority of the world population live in autocracies again, Eastern Europe is at the lowest point since 1990s but autocratization is also affecting countries like the USA, and the attacks on the freedom of the media are recorded in 31 countries, up from 19 just two years ago (Lührmann et al 2020). In the “third wave of autocratization” (Lührmann & Lindberg 2019) the number of liberal democracies in the world fell from 45 to 37.

The media are the first visible victims, as well as pressure points, of illiberal democracies. They belong to several key indicators of democratization at the liberalization stage of post-authoritarian regimes when “there is an independent press and access to alternative means of information that are tolerated by the government” (Schneider & Schmitter 2004: 6). In Croatia and the other CEE countries, the turn of 1989/90 is often considered to be the period of the freest media, and post-socialist Europe is generally evaluated as having allowed access to the media in this period the fastest, when compared to other third wave transitions (Schneider & Schmitter 2004). In the consolidation phase of post-autocratic democracy, a formal or an informal agreement on the rules of governing and ownership and access to the media was

expected (Schneider & Schmitter 2004: 10). This had proved to be one of the most difficult tasks, especially in regard to governance of public service televisions. PSB is after thirty years still one of the most problematic issues in Southeast European countries (Irion & Jusić 2018), especially in those in which there is no clear political consensus to establish this type of independent broadcasting services (Peruško 2020). The rules of democratic media governance and access to the media were also the first where reversals were seen when democratic backsliding or illiberal tendencies developed (Mechkova et al 2017).

In CEE media landscapes the trend of illiberalism manifests itself in congruence with the rise of populist leaders and their control of television and in the reshaping of the public service media (Surowiec & Štětka 2019). Evidence of illiberal trends in the media is likened to the notion of state media capture, extending especially to the executive capture of media policy (example of Poland, in Surowiec, Kania-Lundholm & Winiarska-Brodowska 2019), and state actions that include censorship, capture of the media market, rogue advertising, and market distortion as a consequence (example of Hungary, Bátorfy & Urbán 2020).

4. The Current State of Affairs in Croatia

While Croatia was in the past years poised on the cusp (Mujkanović 2019), it escaped the illiberal backslide (Bieber 2020), partly because the conservative HDZ and other more radical right wing parties never gained such a prevalence in the Croatian Parliament. Obviously, although the radical illiberal voices are very loud, and corrosive in places where they have the opportunity to exercise power (the space of the NGO's or the so called civil society has been increasingly populated by the right, similarly to Hungary, cf. Greskovits 2020), they are not prevalent in the Croatian political body. In the absence of this, the relatively positive media policy framework introduced at the 2000 critical juncture enabled enough investigative journalism, independent media outlets and a diverse media scene, to force out,

mainly in relation to various corruption related topics, eight government ministers in the past few years. This role of the media was in the year preceding the current pandemic critical juncture often debated (especially in the digital public sphere of Twitter and Facebook) as the only democratic institution that actually works in Croatia. This does not, paradoxically, belittle the dire situation of most journalists in Croatia, both in terms of their precarious job positions, uncertain salaries, influence by owners or political interests or the changes brought onto journalism by the new digital media environment and the social media (Peruško, Čuvalo & Vozab 2016). Likewise, the economic situation of commercial media is notoriously difficult, with the transfer of print to digital going better for some than for the others. Media in Croatia face also the same challenges as the media in other EU members, primarily in terms of the changing audience practices related to social media, platforms and apps that are the new form of institutionalized entry into the public sphere. This transformation of the public sphere brings new challenges of inclusiveness and credibility, in addition to challenging the business model of legacy news production.

Four areas were identified in the introduction to this chapter as the most alarming in these recent pressures on the media. Recent negative examples related to freedom of expression and the media, are the examples of path dependencies of the *longue durée* from the time of the Habsburg monarchy but also from the 1990s. The present increase in the number of law suits for libel and “shaming” against the journalists has not seen such a steep increase since the 1990s, when this was one of the tools of the government in subduing the media. According to the latest report by the Croatian Journalist Association, more than 905 cases against journalists are active at the moment (early 2020), filed by prominent public or political figures. Of these, 44 are based on the Penal Code, the rest based on the Law on the Media (for libel and slander)¹. These SLAP law suits have the aim to pressure the media.

¹ <https://www.hnd.hr/hnd-ova-anketa-u-hrvatskoj-aktivno-najmanje-905-tuzbi-protiv-novinara-i-medija>

As another *longue durée* example, we again have the police as an actor in the practices of repression of freedom of expression. A recent instance is the court judgment² against a journalist for tweeting A.C.A.B. (i.e. all cops are bastards) as a comment, for which he was found guilty of insulting the police and fined. The same journalist was sued (also by the police) for the satirical change of lyrics in an historical poem, published on his twitter account. These actions were filed not on the basis of media legislature and libel articles, but on the basis of the Misdemeanor Code where the Tweets were treated in the same way as public disturbance of peace. Satire is another genre that has been repeatedly subject to censure in Croatia, where satirical TV programs are sued for slander.

The situation with the public service broadcaster HRT became especially troublesome in 2015 and 2016, after the coalition government of HDZ (led by the right wing extremists Tomislav Karamarko) and the party Most came to power, and installed an extreme right wing politician for the minister of culture who immediately proceeded to dismantle state aid to non-profit civil sector media (at that time predominantly left and critical). The governing right-wing coalition proceeded to change the CEO of HRT, who then changed the whole top tier of editors in the public service television and radio, canceled well-known programs led or produced by independent and professional journalists, and introduced a revisionist propaganda in many of its programs. This policy was starting to backfire – HRT had lost its ability to be a successful “ideological machine” because its obvious loss of independence has brought the loss of credibility necessary to perform its expected ideological role of legitimating the government – HR radio is ranked in the fifth place and HTV in the seventh place regarding trust in the news media in Croatia (Peruško 2019: 77).

While this government was soon replaced in an extraordinary election one year later, and Karamarko was ousted as the party president in the ensuing HDZ election, the conservative HDZ came to

² <https://www.jutarnji.hr/vijesti/hrvatska/odgodeno-izricanje-presude-novinaru-zbog-prerade-vile-velebica-policija-na-sud-poslala-ispravak-optuznog-prijedloga-terete-ga-zbog-jos-jedne-pjesme/9379895/>

power again, with an ostensibly moderate prime minister with an EU diplomatic background. The new minister of culture was also seen as a moderate. Neither of these changes influenced much the situation with the law suits, HRT, or the non-profit civic media. To the contrary, state support was further reduced and the EU funds earmarked for the civic media sector have not been distributed to date.

Although conservative, right wing and illiberal tendencies were always present in the Croatian body politic (as in any European one, always in competition with the liberal and progressive political and social values), the illiberal path that we can identify today started with the election of the president Grabar Kitarović in 2014, supported by Karamarko. Within the HDZ the more centrist values were confronted with the radical right, and the centrist stream was seen to prevail with the new party president and prime minister in 2016. Judging by their actions and policies in the media field, though, the illiberal path was not really changed by the election of the Plenković government in 2016. The media policy promoted by the current conservative government has continued to hold up the distribution of EU social fund money intended for non-profit media, has not reintroduced the special funding for non-profit media introduced by the Ministry of Culture during the previous social democrat-led government. It also obviously supports a conservative ideology in the media programming of the public service broadcaster (an increase in religious programs is visible, for example).

Illiberalism in Croatia is also seen in the policies, values and practices of the ruling party and uncivil society. The proposal of a new Law on Electronic Media³ also includes (in the first draft of the law which is at this time of writing this paper in the first reading in the parliament) an obligation for the electronic media, which can be fined with hundred thousand to one million kuna (i.e. 15.000 to 150.000 Euro), if the events are not “faithfully conveyed” or different opinions “adequately represented”, if the news are not truthful or impartial, and do not “encourage free shaping of opinion” (article 16). After

³ <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=13393>

an outcry by the Croatian Journalist Association, among others, the minister of culture said that this was a technical mistake and will not be part of the final proposal⁴. Earlier ideas included a Media Council, which would sanction libel and other transgressions in the print media, but this idea seems to have been abandoned together with the idea of presenting a “media strategy”.

5. Without a Conclusion – Reflections on the Ongoing Opportunity of the COVID-19 Pandemic Critical Juncture

Suddenly, in the midst of the ongoing crisis, the future illiberal path in this country seems less likely (or perhaps this is just wishful thinking on the basis of a very small sample of activities). It is a certainty, though, that as the plague in the 14th century was a common exogenous circumstance to which the responses of different countries varied – throwing Eastern Europe into second serfdom while improving the lives of peasants in Western Europe, which put them on the road of development, democracy, and freedom (Acemoğlu & Robinson 2012), the paths taken by different states in regard to managing the COVID-19 pandemic will be different. For some, the illiberal turn has already been strengthened with dictatorial moves (Hungary, Serbia). In Croatia, the professional team of medical doctors who were the face of the first pandemic response, their daily press conferences and frank answers to all the journalists questions, and genuine praise for journalist work in informing about the epidemic, seemed like a break with the previous stance. For the moment it may look like the previous practice of denigrating journalists has been abandoned.

On the other hand, the proposals of the government to introduce phone location tracking as a way to follow infected people (this is still in the legislative proposal in the first reading in the parliament, but it seems like the government has abandoned the idea) was met with the resistance by the opposition parties and especially the critical public. The instinct to introduce more controls is obviously there in

⁴ <http://hr.n1info.com/Vijesti/a505675/Obuljen-Korzinek-Mise-i-kazalista-suneusporedivi.html>

the ruling party, but they had to retreat after public protest – reported by the media who, in spite of the pressures outlined above, and the economic difficulties, continue to provide a good coverage of the epidemic response as well as the political sphere. We will see in the next period whether this new critical juncture brought to Croatia the necessary incentive to steer back towards democracy, media independence, and freedom.

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Višnja Samardžija

SUPPORT FOR THE EUROPEAN VALUES OR THE RISE OF EUROSCEPTICISM IN CROATIA FIVE YEARS AFTER THE EU ACCESSION?¹

1. Introduction

According to the Treaties of the EU, the fundamental European values comprise of the respect of human dignity, freedom, democracy, equality, the rule of law, respect for human rights, including the rights of persons belonging to minorities. These values are common to the member states in a society in which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail (European Commission, 2012, Article 2 and 3). Promoting the peace and well-being of its citizens represent its important integral part.

These values were deeply embedded in the conditionality for Croatia's EU accession and became the core of the newly designed Chapter 23, Judiciary and Fundamental Rights. Through this and other chapters, the fundamental values and rights were debated in Croatia during the period of EU accession. This particularly relates to the independence of the judiciary, combating corruption, the rule of law, tolerance, rights of minorities, citizens' freedoms, and other related

¹ Editor's note: this chapter has been submitted by the author in January 2020 and only slightly reviewed before publication in order to take into account the COVID-19 pandemic and the upcoming economic crisis. I thank the author for complying with our request for those alterations in the original work.

issues. After attaining EU membership, respecting European values became the issue of national responsibility and was approached in the context of reforms needed in relevant policy areas. However, after five years of EU membership, the reforms in some areas (particularly in the judiciary relating to combating corruption and independence of the judiciary) still need to be strengthened because, without an independent and efficient justice system, it is not possible to achieve the rule of law or the trust of citizens.

Today the citizens of Croatia are, to a certain extent, aware of what the European values are, but the awareness of their relevance for the development and functioning society differs significantly, depending on the priorities and expectations of society related to the European project. Awareness of and support for the socio-economic values (Article 3, Treaty on EU - TEU) is particularly strong, which is understandable for the country which recently passed a prolonged period of recession. This particularly relates to the free movement of persons and values related to socio-economic development in general and is elaborated in the continuation of this paper.

The term Euroscepticism, as is understood in this paper, means a combination of a lack of trust in the European Union and a lack of trust in the EU membership (Štulhofer, 2006). There is a distinction between the soft and hard type of Euroscepticism (according to the categorization of Taggart and Szczerbiak). In general, soft Euroscepticism is present in a country when there is no principled objection to European integration or EU membership, but there are concerns about some EU policy areas or a sense that 'national interest' might be endangered by the EU trajectory. Hard Euroscepticism means a principled opposition to the EU, particularly among those political parties aiming to withdraw their country from the EU or opposing EU integration or further developments (Taggart & Szczerbiak, 2002, p.7). The soft type could also be expressed as Euro-realism that includes the desire for more sovereignty for nation-states, while the hard type might relate to disagreement with the federalization of the EU (Miloradović, 2012, p. 69; Samardžija, 2016, p. 124).

2. Oscillations in Support for the EU in Croatia from the Start of Negotiations Onward

Croatia is the youngest EU member state that joined the European Union on 1 July 2013, after long negotiations, which lasted almost a decade. It was the first country that entered the EU within the framework of the Stabilization and Association Process and the first Western Balkan, post-conflict country that achieved EU membership. However, the overall support for the European project is not high in Croatia today, and soft Euroscepticism is present. The question is whether the citizens were not able to fully recognise the achievements and impacts of EU membership on Croatian society or were their expectations not fully met. Additionally, in spite of the progress over many areas, society as a whole is facing signs of regression due to many reasons.

Despite a long EU accession process and the difficult timing of joining the EU in the period of economic crisis, during the past years, Croatia was, in general, not considered a Eurosceptic country, particularly not a country facing hard Euroscepticism. This was one of the conclusions in the book contribution written by the author of this paper in early 2016 (Samardžija, 2016). The general attitude towards the European integration project during the last two decades oscillated significantly but could be understood as the Euro-realistic one. Different factors and developments have led to oscillations of support for the EU among Croatian citizens, but the EU membership was never seriously questioned. In the period following the accession, there was no big enthusiasm among citizens regarding its impact on their everyday life. The rise of Euroscepticism was recorded, mostly among political parties and groups of individuals of marginal influence. The number of Eurosceptic parties increased, and some of them took part in the Government coalition. Currently, Croatia has several Eurosceptic MEPs. Consequently, the more recent EU public opinion surveys (Eurobarometer) reflect the rise of Euroscepticism in Croatia.

Namely, citizens' expectations from the EU membership, primarily considered a higher standard of living, benefits from the freedom to

work and travel to the EU, the internal market and stronger potential for economic development. Not all these expectations were fulfilled during the first five years of membership. More significantly, it seems that Croatian citizens still do not fully recognize the main benefits of EU membership. With this in mind, the conclusion of the European public opinion survey that in 2018, five years after joining the EU, Croats continue to be among the most Eurosceptic citizens of the EU, is a worrying one (European Commission, 2018).

Pre-accession and post-accession developments reflect oscillations of support for the EU among Croatian citizens. In the initial phase (early 2000), one of the strongest driving forces in the country for EU accession was the political impact, namely a contribution to the stability and security of Croatia and the unstable Western Balkans region. A strong argument that the EU was effective in achieving these goals is the fact that during the accession process the EU facilitated a triple transition of the country, namely (1) transition from a communist one-party system to a democratic multi-party system, (2) transition from the state-run to a market economy and (3) transition from war to peace.

As opposed to strong public support in Croatia for the integration process in early 2000 (when most of the national public opinion polls showed that around 70% of the population had a positive attitude towards integration), the surveys that followed indicated a significant decrease in public support. One of the lowest levels of support in terms of trust in EU institutions (29%) was in spring 2007, which was well below the level of other candidate countries in their accession process (Samardžija & Vidačak, 2008).

One of the reasons for the rise of Eurosceptic views before joining the EU was the lack of transparency during the negotiations process with the EU. The issues of transparency and inclusiveness were underlined by different civil society associations in Croatia, primarily by GONG² (Škrabalo, 2012). The other reasons that contributed to

² GONG is a civil society organization founded in 1997 to encourage citizens to actively participate in the political processes.

the decreasing public support could be found in the long duration of the process and the delay in comparison with the 2004/2007 enlargement wave. Additionally, the process of EU integration became more demanding in terms of conditionality, and there were bilateral problems that Croatia was facing with Slovenia during the accession negotiations.

With the progress of negotiations, the external environment changed significantly. This made, Croatia's accession largely different from the previous two rounds of enlargement because the country joined the EU in the period of the Eurozone crisis that was not favourable for newcomers. It was evident that the country could not experience the same synergic effects that can boost the national economy, as it was the case in the 2004 enlargement. On the contrary, the economic future of Croatia strongly depended on its own efforts to successfully continue the structural reforms and fiscal consolidation, revival of economic growth, job creation, and strengthening competitiveness.

3. Reality after Becoming the EU Member State

Soon after achieving EU membership, Croatian citizens had mixed feelings since the first benefits of EU membership were overshadowed by economic problems and slow implementation of reforms. There was no big enthusiasm regarding the impacts of membership on their everyday life. The citizens shared a rather realistic attitude towards the EU at the time of accession; they were afraid of the crisis so it was the right time for joining the EU.

Croatia joined the EU at an unfavorable moment for the European economy and started as an economically weaker EU member state in comparison with the countries of the fifth enlargement. This needed to be counterbalanced by more efficient and faster implementation of national reforms. However, that did not happen quickly because the reforms, particularly those of a structural nature, were progressing at a slower pace than in other EU member states (Butković & Samardžija, 2019).

The economic crisis in Croatia lasted for six years. It should be mentioned that the EU membership was one of the factors that helped Croatia overcome the recession. Participation in the single market helped Croatia increase its exports, and the use of EU funds contributed to a slight increase of investment, while participation in the European Semester helped the country make progress in reforms and achieve macroeconomic stability. Finally, in 2015, the Croatian economy entered a period of slow but rather steady recovery with modest GDP growth of 2.4% (Samardžija et al., 2018).

However, despite some positive trends in 2016, the 2.8% GDP growth in 2018 was lower in Croatia than in all other new member states but still above the EU28 average of 2.1%. The expectation that economic growth will continue at a similar level in 2020 was not realised due to the negative economic impact of the COVID-19 pandemic. Croatia's economy is estimated to contract by about 9% in 2020, but should experience partial recovery by 7.5% in 2021 (European Commission, 2020).

According to the GDP per capita in purchasing power standard (PPS), Croatia is ranked low when compared to EU28. In 2017, Croatian GDP per capita accounted for 62% of the EU28 average, which positioned Croatia among the lowest-ranked new member states, and only Bulgaria (49%) lags behind (Eurostat).

Social recovery in Croatia is still slow, but there are certain labour market improvements after joining the EU. However, having in mind the fact that after the recession Croatia started off from a weaker position than the other new member states and that reforms related to the labour market are slow, Croatia is still at the bottom of the EU list according to employment (63.6% in 2017) and unemployment indicators (9.1% in 2018, Eurostat).

In 2019, the EU public opinion survey (European Commission, 2019) reflected a mix of positive and negative attitudes towards the EU. The general positive image of the EU is slightly lower in Croatia (43%), compared to the EU average (45%). However, trust in EU media and institutions in Croatia (46%) is somewhat higher than the

EU average (44%). This is a positive achievement considering the fact that trust in national institutions (the parliament and the government) continues to be extremely low (13%) and significantly below the level of support in the other member states (34%). In other words, the trust of Croatian citizens in EU institutions is not very high, but still significantly higher than the trust in national institutions.

Most Croatian citizens still do not share the feeling of being citizens of the EU (64%, according to the same Eurobarometer issue), while in the other countries, the sense of being European is stronger (73%). Nevertheless, according to the Parlemeter for 2019 (European Parliament, 2019), more than half of Croatians are totally satisfied with the way democracy works in the EU (51%) - which is almost the same as the EU28 average for the same year (52%). However, the same source shows that only a minority of Croatian citizens (33%) are totally satisfied with the functioning of democracy in their own country, which is well below the EU28 average support on other EU national levels (56%). According to this indicator, Croatia is almost the worst positioned EU member state, followed only by Spain. Democratic issues will represent a big challenge for Croatia in the coming years. This is especially important considering the fact that the country's candidate Dubravka Šuica was elected European Commission Vice-President, responsible for democracy and demography, with the special task of restoring public trust in the EU through the Conference on the Future of Europe.

Fight against corruption is another big challenge for Croatia, becoming a society that fully respects the rule of law. According to the Anti-Corruption Report (European Commission, 2014), based on the 2013 Eurobarometer special Survey on Corruption, 94% of the Croatian respondents believed that corruption was widespread in the country (while the EU28 average was 76%). Some 55% of citizens were of the opinion that corruption affected their daily lives (EU28 average 26%). Almost 90% of citizens identified bribery and the use of connections as the easiest way to obtain certain public services in Croatia (EU28 average 73%). According to the mentioned scores,

Croatia was ranked lowest among the five countries lagging behind the other EU members concerning both perceptions and the actual experience of corruption. In spite of some improvements, corruption still represents an enormous burden for Croatian society five years after EU accession and requires effective mechanisms for preventing and reducing corruption risks.

Additionally, in the recent 2019 EU Justice Scoreboard (European Commission, 2019a), Croatia scores the worst among the EU28 members according to the general public opinion expressing concerns about the lack of independence within the judiciary. In short, the general public opinion view is that, according to all three statements in the EC survey, Croatia ranks below the other EU members (namely: the status and position of judges do not sufficiently guarantee their independence; there is interference or pressure from economic or other specific interests, there is interference or pressure from government and politicians).

Croatian citizens continue to strongly support the EU enlargement process and thus share a strong sense of solidarity with their neighbouring countries (64%, while the EU average is only 46%). Croatia continues to be a proponent of the continuation of EU enlargement, with the position that the enlargement needs to be continued, complemented with the new innovative tools. Having this in mind, the intention was for Croatia to play an important role concerning the remaining countries of the Stabilisation and Association Process during its presidency of the European Council in the first half of 2020. Thus, the EU enlargement is highly ranked among the Croatian presidency priorities, having in mind that Croatia shares the region's common history, culture and has one of the longest EU external borders with these countries.

The perception of progress in achieving different European values in Croatia (the table below) shows that the most visible progress is recorded in the free movement of people, goods, and services within the EU (77% while the EU average is 60%). It could easily be ex-

plained by the fact that due to the high level of unemployment in the country after joining the EU, many Croatian citizens moved to other EU member states looking for a job. On the other hand, peace as a value is ranked lower than could be expected (Croatia 40%, while the EU average is 54%), having in mind that the country had relatively recently experienced war on its territory. This can be explained by the fact that Croatians' primary concerns are issues of socio-economic nature. Consequently, although the perception of progress in EU social welfare (health, education, pensions) is not high in Croatia (27%), it is still significantly above the EU average (18%). Additionally, support for the single currency Euro has a decreasing trend in Croatia and is lower than the EU average (16% while the EU average is 24%), after the country started with preparations to join the Eurozone through the Exchange Rate Mechanism II.

The Europarlometer for 2018 (European Commission, 2018) shows that Croatian citizens have a slightly different perception about the most important values, which should be supported specifically through the European Parliament priorities. Human rights protection in the world is positioned in the first place, both in Croatia and EU28. However, while Croatian citizens ranked solidarity among the EU member states (42%) in the second place, for the citizens of the EU28, the second most important value was the equality between men and women. Freedom of expression is also ranked lower as a priority value by Croatian citizens (30%) than the EU average (38%). On the other hand, solidarity between the EU28 and poor countries in the world is more supported as a value in Croatia (29%) than at the EU level (22%).

Table 1. Public opinion on EU and national matters in Croatia corresponding to EU28 average in 2018

<i>Positive opinion on ...</i>		
	Croatia	EU28 average
Total positive image of the EU	43%	45%
Trust in media and institutions in the EU	46%	44%
Trust in media and institutions - National Parliament	13%	34%
Trust in media and institutions - National Government	13%	34%
<i>Support for ...</i>		
Free movement of EU citizens	83%	81%
European Monetary Union (EMU)	42%	62%
Common defense and security policy	67%	74%
Common European policy on migration	65%	67%
Creation of EU foreign policy	63%	66%
Common energy policy	71%	72%
Common trade policy	67%	71%
Digital single market	70%	63%
Enlargement of the EU	64%	46%
Feeling like a citizen of the EU	64%	73%
The way democracy works in the EU	60%	55%
<i>Perception of progress in achieving different European values in the country</i>		
Free movement of people, goods and services within the EU	77%	60%

Peace among the EU Member States	40%	54%
Single currency – Euro	16%	24%
EU economic power	38%	23%
EU political power (political and diplomatic influence of the EU in the world)	19%	21%
EU social welfare (healthcare, education, pensions)	27%	18%

Source: European Commission, Standard Eurobarometer 91. Spring 2019.

Furthermore, according to the Eurobarometer (European Commission 2018), the three highest-ranked benefits which Croatia has gained from the EU membership are (1) freedom to work in EU, (2) the fact that EU contributes to the economic growth of the country and (3) the EU contribution to peace and security. This could be explained by the previous statements in this paper that Croatian citizens strongly prioritise economic issues relevant to their social security, wherein employment is highly ranked.

Therefore, EU funds are perceived by Croatian citizens as one of the key benefits of EU membership. Indeed, the funding available through the framework of European Structural and Investment Funds (ESIF) should play a key role in the implementation of the reforms in Croatia. After joining the EU, the funds allocated in the ESIF framework doubled for Croatia, and the 2014-2020 programming period has earmarked nine times more total funding.³ However, Croatia needs to invest significant additional effort in increasing its absorption capacity to use EU funds more successfully and, through it, stimulate the potential FDI inflow to the country, which is urgently needed.

³ More specifically, for the 2014-2020 period Croatia has a financial envelope of 972 million euros allocated (for the 2007-2013 period), while a total of 10.7 billion euros are allocated for the 2014-2020 period (European Commission, 2016, p. 74)

4. Conclusions

Most of the citizens of Croatia today seem to recognise European values, but the awareness of their relevance for the development of the functional society varies significantly. Awareness of and support for the socio-economic values is particularly strong. Free movement of people and the possibility of employment in the EU member states are recognised in Croatia as very important European achievements, together with the EU solidarity among the member states. Most Croats still do not share the feeling of being European citizens but appreciate how democracy works in the EU better than in Croatia.

The overall support for the European project was not high in Croatia during the process of negotiations. Today Croatian citizens are, according to EU public opinion polls, considered rather Eurosceptic. There are two possible answers to the question of why this is the case. Either they were not able to recognise the achievements and impacts of EU membership on Croatian society, or their expectations were much higher before the EU accession happened.

It seems that the benefits of being an EU member are still not completely transparent and visible to citizens, but the most profound changes could be noticed in the processes of transformation of society and institutions (although not completed), as well as in changing economic trends in a positive direction. One of the strongest economic benefits of EU membership is the fact that the single market became one of the drivers of the Croatian economy and has changed the trend from a negative to a positive one. However, not surprisingly, from the point of view of citizens, the most important benefit of membership is achieved through freedom of movement and the opportunity to work in other EU member states.

The EU membership is a long-term project, which requires a continued transformation of political and economic systems, as well as the transformation of society as a whole. Croatia needs to strengthen its own efforts to be more successful in utilising the advantages of EU membership to speed up the EU inspired reforms, leading towards stronger growth, better employment, and the inflow of investments.

Combating corruption is one of the crucial areas because it seems to be among the driving forces for the growing Euroscepticism.

A successful EU membership is the precondition for a better life of the citizens and for limiting the rise of Eurosceptic views. In fighting against the anti-European sentiments, it is important to demonstrate that Croatian citizens have benefitted from the EU project and that there are qualitative changes in their lives thanks to the efficient implementation of reforms. Strengthening the dialogue with citizens on all mentioned issues is, therefore, of key importance in the coming years.

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Josip Kregar

HRVATSKO PRAVOSUĐE: MOŽE LI SE IŠTA POPRAVITI?

1. Uvod

Pravo je temelj države, a osjećaj pravednosti temelj je društva. Pravo je istodobno prepoznavanje interesa dominantnih skupina, kao i izraz jedinstva i opće volje. Osjećaj identiteta i pravednosti skreće pozornost s golog interesa na konstrukcije koje svijet prikazuje kao zajednicu ljudi koji dijele iste vrijednosti, stavove i pogled na svijet. Tu se ubrajaju nacionalizam, revolucionarni pokreti i ideologije. Ideologije i posebne ideološke vizije su tu općenito iznimno važne. Taj pogled na svijet transformira se u unutarnji osjećaj zajedničkog porijekla, zajedničke budućnosti i vjere da su ljudi pred zakonom isti. Nije uvijek bilo tako, ali moderna društva slobodu, jednakost i bratstvo ne smatraju parolama, već načelima.

Pravednost nije samo opća idejna konstrukcija, ona je i unutarnje načelo koje se pripisuje svim institucijama, a posebno institucijama pravosuđenja. One djeluju prema tom konstrukcijskom i funkcionalnom načelu.

U svaki sustav političkog interesnog odlučivanja potrebno je ugraditi institucionalna jamstva pravednosti (dakle legitimizacije primjene prava). Pravo tumače institucije koje će se oslanjati na vještinu stvaranja pravila temeljenih na razumu, koja će važiti i kad se vlade mijenjaju, koja će vrijediti jer građani vjeruju da odlučuju suci

prema propisanim postupcima, po razumu i poštenju odabrani ljudi, obrazovani da poštuju pravo i da se pobrinu da ishodi budu pravedni. Takva jamstva, koja se rado opravdavaju metafizičkim razlozima, ideologijama i načelima, imaju sasvim praktično utemeljenje. Pravo je iskustvo stvaranja normi za društvene situacije u kojima važnu ulogu imaju i tvorci zakona (zakonodavci), ali i svi oni, prije svega sudovi, koji pravo tumače, a zapravo dograđuju i stvaraju. Pravo nije rezultat spekulativnog razuma, već empirijskoga praktičnog uma svjesnog posljedica norme i kritičkog razmatranja o tome što je (i kako) stvarnost spremna prihvatiti i odbaciti.

Pravni sustav treba dobrovoljno prihvaćanje i suglasnost utemeljenju na unutarnjem zahtjevu savjesti. Kako je za poredak i vlast bitno da ima legitimnost i vjerodostojnost, tako je i za pravo legitimnost presudna. Norma bez tog unutarnjeg elementa legitimnosti je tek nasilje ogrnuto slabom krinkom formalnog prihvaćanja. Postupak je najvažnije sredstvo legitimiziranja prava, no nerazdvojan je od minimalnoga dobrovoljnog prihvaćanja (legitimnost, vjerodostojnost, osjećaj pravednosti). Nema zajednice bez osjećaja da odluke nisu pristrane, da je rad suda bez vanjskog utjecaja i nepristran. To je legitimnost prava bez koje je pravo brahijalna sila, nametanje i neskrivena prinuda. A pravo je usustavljeno iskustvo o tome kako se rješavaju razlike interesa pojedinaca, njihovi sukobi i rasprave, u čemu će oni svjesno prihvatiti odluku suda, čak dobrovoljno ili bar vjerujući u sud, prihvaćajući zakone.

Ovaj uvod ima jedinu svrhu da naglasi da je povjerenje u institucije stvaranja i primjene prava uvjet i cilj njihovoga postojanja. Mora biti općenit jer se inače pretvara u nekoliko fraza uvoda uz pravne tekstove. Glavna institucija na kojoj se testira povjerenje u politički poredak i pravo je pravosuđe. Glavni parametri mjerenja sudstva nisu broj sudaca, proračunska sredstva i plaće, već društveni učinak i povjerenje.

Suci nisu prosječni ljudi niti su najbolji u tehnikama primjene i čitanju napisanoga zakonskog teksta. Treba uzeti u obzir da usprkos gorčini prema profesiji, nema promjene i poboljšanja sustava bez sudaca. Početak je shvaćanje da su oni odgovorni ne za svoj ured i

statistike riješenih slučajeva, već za društvene učinke, odgovorni ne samo za svoje neposredne materijalne dobitke i prava, već i za dužnosti izvedene iz smisla te društvene funkcije. Prema broju, sudaca ima dovoljno, ali se uvijek pozivaju na to, što znači da upravljanje, organizacija i pojedinačna opterećenja nisu u ravnoteži. Nemojte tvrditi da sudaca nema.

Cilj pravosuđa nije puko čitanje zakona, već pravedna primjena: isto prema svima i nitko iznad zakona. Ljudi više u to ne vjeruju. Veliki i moćni igraju se sa sustavom, izvješće o stanju pravosuđa svodi se na prazne statistike i izgovore. Izostaje kritička evaluacija. Suci inače traže više sredstava, iako su u usporedbama iznad europskog prosjeka. Podizanje plaća i bolji materijalni uvjeti nisu uvjet za smanjenje broja neriješenih predmeta i jedini motiv rada.

Ideja o autonomnoj regulaciji profesije, etici poziva i javnosti diskvalificirana je time da prednost imaju pitanja materijalne opremljenosti, uvjeti rada, nimalo ne komentirajući stanje vladavine zakona. Rezultati su sasvim prosječni, a zabrinjava činjenica da se podaci istraživanja o povjerenju u sud smatraju službenom tajnom. Pa europski podaci kažu da ste na dnu. I mi s vama.

Tko bi se osim sudaca trebao brinuti za stalno profesionalno uzdizanje, poštivanje etike poziva, stegovnu odgovornost? Pozivaju se na ustavom zajamčenu samostalnost, što ne osporavamo, ali onda oni sami, a ne Vlada i Sabor, odgovaraju za svoj ugled, radišnost, učinkovitost. Šute, a skandali o pravosuđu se nižu. Nije nikakav pritisak kad javnost traži da radite bolje. Nije ugrožena nezavisnost ako javnost upozorava na nepravde koje svi vide: bogati gaze bez kazne, moćni primaju mito, bježe bez mjera opreza i pritvora i smiju se poštenim građanima. Mogli bi pomisliti da vi ne znate svoj posao i da su skandali posljedica neznanja. Mnogi misle još gore, da motivi odluka nisu zakoni već osobni interes, a suci prije svega moraju biti iznad interesa; ne možemo se zadovoljiti boljim statistikama i prosjecima.

Ne mogu se suci opravdati time da nisu pisali zakone. Jesu. Suci bez pozivanja na diobu vlasti sudjeluju u radnim tijelima koji zakone pripremaju, predlažajući se redovito dogovaraju s predstavnicima

sudova. Ali suci se na to pozivaju tek kad javnost i mediji otkriju afere i incidente. Pa onda predlažu usavršavanja i izmjene. Kazneni i ovršni zakoni mijenjaju se brže od klime, a vi se pravite da u tome ne sudjelujete. Sudovi stvaraju praksu primjene i umjesto da budu mudri i priznaju nesavršenost, brane se time da su incidenti izuzetak. Državno sudbeno vijeće je stegovno kaznilo 11 sudaca u sedam godina, ali statistiku kvari i to da su neki bez mjera otišli iz sudstva. Predlažu se stroge mjere sigurnosnih kontrola. Zar vi želite sudstvo pretvoriti u objekt sigurnosnih provjera i istraga? Sudite sami, no strogo jer je povjerenje poljuljano.

Postupci su svjesno ili ne birokratizirani i formalizirani, tako da se nitko osim profesionalaca u njima ne može snaći. Jedino odvjetnici, ali za to prosječan građanin, koji se nije služio krađom i prevarama, nema sredstava. Zapušten je sustav besplatne pravne pomoći, koja se ostavlja udrugama i pravnim klinikama.

U prvi plan nameću se pozitivne promjene u smanjenju zaostataka, tehničkim mjerama unapređenja (e-spis), racionalizacije postupka, čime se jasno priznaje da su problemi sasvim suvremeni, da ih i stvara i rješava današnja generacija. Problem zaostataka i sporog suđenja nije nasljeđe turske okupacije i samoupravnog suda, već brutalne čistke koju ste proveli prema sucima, lustracijom početkom 1990-ih godina. Istina je da smo tada imali čistku sudaca. Čistku koja je opravdana političkim razlozima, izvedenu uz suradnju dijela sudaca, izgleda danas zaboravljenu. Mislim da se ona ne može zaboraviti, ma koliko neki sudionici to željeli.

Relativizacija problema pravosuđa jest i ideja kojom se tvrdi da sudstvo samo odražava stanje u društvu. Možda su ljudi slaboga karaktera, potkupljivi i materijalno motivirani, ali takvo ne smije biti i sudstvo. Osim što je takva pretpostavka jednostavno predrasuda koju opovrgavaju teorije organizacije i upravljanja, radi se o elegantnom izbjegavanju, odnosno prikriivanju da je osnovno pitanje povjerenje u pravosuđe.