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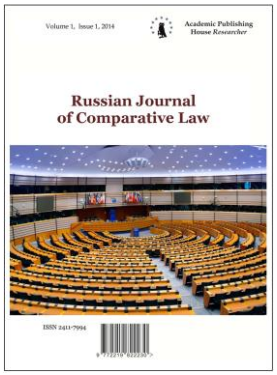

Articles

Forum-Shopping in Insolvency Law through the Example of Mr. Kekhman's Case

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Abstract

Globalization is a worldwide process, that influences peoples' lives practically in every sphere. International private law is not an exception. The article is dedicated to the problems, that may arise in cross-border insolvency cases. Namely, one of the main reasons for it is such phenomenon as "forum shopping". In other words, debtors try to find the most favorable situation for themselves and very often it does more harm than good for their creditors. The analysis of the problem is made on the decisions of the English High Court of Justice and the Russian Commercial Court on the case of Russian businessman, Vladimir Kekhman. The difference of views of two conflicting jurisdictions made the case highly debatable among scientific researchers. In this article the author shows the main points and arguments, on which the two decisions were based. Their careful examination can lead to means of solving such practical and significant problems. It should be stated, that some controversial questions are touched upon, for example reasons, advantages and disadvantages of forum-shopping; the confrontation of universality and territoriality principles; the term «Centre of Main Interests» and its interpretation in international community; ways of solving the conflict of jurisdictions problem according to the current case.

Keywords: Cross-border insolvency, forum-shopping, personal bankruptcy, V. Kekhman, case law, COMI.

1. Introduction

Insolvency is one of the classical institutes in law. As soon as the term «obligation» had been occurred, some serious questions arose: what should be done if the debtor cannot or does not want to perform his/her obligation?

One of the main goals of any insolvency procedure is to distribute the debtor's property among creditors, that are eligible for it. As very often there is more than one creditor, the urgent problem is: how to make such a distribution proper and fair? In other words, effective mechanisms for the applicable foreclosure are required.

But insolvency is not only a situation according to which the debtor does not have the ability to perform his/her obligations. First of all, it is a procedure that can be characterized as control and balance. Thus, there are certain consequences of adjudication in bankruptcy:

- Creditors become materially and procedurally bound, forming the category of «involuntary partnership»;

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- Creditors must act in good faith (Bona Fide standard);
- Creditors have fiduciary obligations towards each other.

When the insolvency procedure starts, it is clear that the debtor's property is not enough to cover all of the debts. That is why the next step of the process is to find out all of the bankrupt's assets available and to divide them equally among creditors (without any doubt, there are some exceptions in certain cases). This is the simplified version of the idea of the whole insolvency procedure. In other words, pro rata is the underlying concept of efficient asset allocation.

Unfortunately, though Bona Fide standard is an obligatory one, many debtors do not want to lose their assets and that is why they try to escape from this situation. One of the ways for doing it is «forum-shopping».

Understanding of the term «bankruptcy tourism» (or cross-border insolvency) and its international legal regulation is of a high relevance both for theory and practice. Though historically, insolvency cases were the cases of internal, local jurisdictions, now they may be subjected to jurisdictions of more than one country due to rapid globalization tendencies and multiple business trade (Chakrabarti, 2018).

It is a legal institute, according to which the debtor is deliberately trying to change the court's jurisdiction on cases of insolvency (the article will analyze only cases of personal insolvency). In order to do it, the debtor has to go to extremes, for example, to change rapidly the place of residence, which entails cross-border disputes (when the place of residence is presented by the country A; the place of property's location – the country B; and the place of creditors' location and activity – the country C). That is why such debtors are called «tourists».

This phenomenon has its own pro et contra for the participants of legal relations. Namely, it is significant when talking about practical applicability through the prism of legal cooperation between creditors and their debtors. In other words, one of the aspects of the problem is the efficiency of debt recovery procedures during personal insolvency cases.

The institute of «bankruptcy tourism» can either make such procedures more convenient or, on the contrary, deprive creditors of their reasonable expectations and leave them with nothing. Forum-shopping is mainly about finding the most favorable jurisdiction for the debtor or as it is called "pro-debtor's mechanisms" (Mohova, 2015) and that is why it can do more harm than good. In various jurisdictions such procedures as: time periods of debts' relief, full debtor's rehabilitation and etc. differ. And the debtor itself will do his/her best to avoid exacting terms. Thus, it is essential to find answers to 3 main questions:

1. The law of which county is applicable?
2. Where the insolvency procedure should be administered?
3. How and where the judgement should be enforced?

The article is nevertheless dedicated to several important issues. As the theme is rather broad and massive, it is reasonable to concentrate on one of the cases, which is an illustrative example of the phenomenon itself.

Firstly, it is necessary to find out the point of contractual obligations of JFC Group towards Russian and international creditors, as well as personal guarantees of Mr. Kekhman. Secondly, the analysis of the decisions of English courts on the case of personal insolvency is essential for basic understanding of «forum shopping» in international private law. And the last but not least issue, that is worth researching, is an attitude of Russian courts towards the English case law. In this part some reasoning will be made on the following theoretical questions: principles of universalism and territoriality; understanding of the term «Centre of Main Interests» in cross-border insolvency. It should be stated, that the conflict of 2 different jurisdictions made this case truly resonant and controversial.

2. Materials and methods

The article is made in the form of scientific research and is based, first of all, on the decision of Mr. Kekhman's case, made by High Court of Justice Chancery Division ([2015] EWHC 396 (Ch)) and on the decision of Federal Commercial Court of North-Western District (Resolution of FCC 2016/F07-9292). The problem of cross-border insolvency is popular in the legal scientific society, that is why there are some authors, the academic publications of which, were rather supportive for this article (Sobina, 2010; Mohova, 2014; Mohova, 2015; Kokorin, 2017; Morhat, 2019; Kolyada, 2018; Budylin, 2019).

The author of the work managed to select the appropriate methods for research in order to establish the basic framework of the main problem. They are mostly theoretical to be able to illustrate the cross-border insolvency in the prism of contemporary trends: analysis as a leading method to understand the nature of the main theme; the method of comparison to describe an attitude of different jurisdictions; and forecasting to predict possible ways of solving the problems encountered.

3. Discussion

3.1. Contractual obligations of JFC Group towards Russian and international creditors and personal guarantees of Mr. Kekhman

The case of Vladimir Kekhman, Russian businessman and cultural figure, attracted public attention in an unexpected way. These events have been continuing up till the moment, the author is writing this article. It is to be mentioned, that V. Kekhman is not the only businessman, who is infamous in such a situation, for example Il'ya Yurov («National Bank»), Maksim Finskij («Nornickel»), Murat Derev («Derways»), Andrej Puchkov and etc.

Speaking about V. Kekhman, it should be said, that the corporation of JFC (Joint Fruit Company) was established in 1994. In 2012 it went out of business. The activity of the company was characterized as successful and was at the peak of its tradability. JFC was believed to become the largest fruit-importer in Russia.

It is important to notice that Vladimir Kekhman was an international businessman, his holding company JFC (BVI) Limited cooperated with its partners not only in Russia, but also in Luxembourg, Panama and so on. What is more, this business was financed with the help of loan granting by such serious creditors as Sberbank, Raiffeisen Bank, VTB, etc. Most of these loans (credits) were provided by personal guarantees of Mr. Kekhman himself.

When JFC began to have difficulties with finances (the loss of the demand's market, investments and business partners), it made its creditors to feel concerned about contractual obligations of the company towards them. The extent of debts was huge (~ billions of euro) and personal guarantees of V. Kekhman were not enough. Thus in 2012 JFC was declared bankrupt, while at the same time Mr. Kekhman left Russia hurriedly. He went to Great Britain in order to open a personal insolvency case.

3.2. English case law on personal insolvency of Mr. Kekhman

The English court immediately froze the debtor's assets and took jurisdiction.

Before analyzing the line of court's thinking, it is essential to explain why Vladimir Kekhman chose British jurisdiction. To make the process cross-bordered, special conditions must be fulfilled (bankruptcy must be complicated by a foreign element). At the beginning of the article it was mentioned, that bankruptcy proceedings differ in many countries.

Great Britain, without any doubt, is a leader in providing the debtor with the most attractive insolvency relief mechanisms as soon as possible. According to the legislation, this period is about 1 year (Insolvency Act, 1986). This period is very short in comparison with other legal orders (in German Insolvency Statute – 6 years, in Ireland Bankruptcy Act – 12 years). Some specialists call this phenomenon «… an advantageous personal Insolvency regime» (Fox, Harrison, 2015), as it does not respect or protect creditors' interests.

The debtor explained his decision of choosing this very jurisdiction:

1. The Russian Federation did not have any regulation on the procedures of personal insolvency. Such a legislative gap led to the necessity of payments in full discharge, which, in his view, was impossible.

2. The character of business activities had an international nature, that is why the English jurisdiction is able to solve this case in an appropriate manner.

3. The place of economic activity (= Centre of Main Interests) is in Great Britain, as there are beneficiaries of JFC here – trusts, which are under regulation of the UK.

The English court noticed, that the case of Mr. Kekhman is a unique one and it is not about «bankruptcy tourism», the main aim of which is to change fictitiously the Centre of Main Interests of the debtor. And that is why, according to the insolvency legislation of the UK, all of the debts of Mr. Kekhman were to be discharged after the lapse of 1 year. It meant giving him social and financial rehabilitation. This turn of events made the creditors to manage to challenge the English court's decision, but the attempts were unsuccessful.

It is necessary to notice what arguments and reasons was the English court guided by, when making such a decision? The High Court of Justice came to the conclusion that the Centre of Main Interests (COMI - standard) of the debtor was in Switzerland and, as Switzerland is not the member of the European Union, the main international document about cross-border insolvency procedures (EU Insolvency Regulation 2015/848) was not applicable in this case. From this perspective, the court applied rules of national jurisdiction (Insolvency Act, 1986). The fact of place of residence (the last 3 years) in the UK was the argument of using jurisdictional authorities.

Another reason of the decision of V. Kekhman's non–extradition by the UK may lie in foreign policy. This phenomenon involves international affairs and cooperation of the two countries as ambitious actors on a global scene. Despite the fact that after the collapse of the USSR, the confrontation between the two blocs (capitalistic and socialistic) ended, the relations between the Russian Federation and its allies, as well as the countries of the Western world, remain rather tumultuous. That is why factors of exerting pressure and using force on each other are not excluded.

Indeed, one of the examples, that confirm Great Britain's «unfriendly» attitude towards the Russian Federation is the refusal to extradite Russian citizens who are prosecuted by the law of the latter. It should be noted that it is not the first such case in the modern practice of international relations between the two states. Speaking about this situation, it is sometimes called «extradition umbrella». It is a phenomenon, according to which certain personalities (citizens of the RF) can hide from system of justice in another country.

Moreover, such behavior of the British side is beneficial to it not only from the political point of view, but also from the economic one. Since most of the citizens of the Russian Federation who cannot be extradited from the territory of the Kingdom have shadow finances or offshore companies. Thus, funds can be withdrawn and used in various markets in England (for example, real estate, etc.).

3.3. The attitude of Russian courts towards the case of Mr. Kekhman's insolvency

First of all, it is necessary to mention about some important theoretical cross-border insolvency issues. Namely, there are two main forms of cross-border's insolvency recognition: full recognition (which has different variations) and full non-recognition (Wood, 1995). According to this very classification, the Russian Federation belongs to the latter one, the principle of conventional exequatur has been carrying out since the nineteenth century (Muranov, 2003). As, one of the scientists in this field, L. Sobina mentions, the most important factor is that the absence of an international treaty leads to non-recognition of insolvency international procedures (Sobina, 2010).

Sometimes such form is chosen to protect the rights of the creditors, which are on the territory of the country (before the EU Regulation, for example, Sweden supported this approach).

However, this approach cannot be called an up-to-date one for several reasons. Firstly, the rejection of an international cooperation is impossible in globalized world, where business activities operate on an international scale. Secondly, some obstacles may arise during the process of finding the bankrupt's property in foreign countries. And what is more, insolvency procedure can start in a foreign court, the decision of which won't have any legal force for the country with the non-recognition form of cross-border insolvency.

Though, there is an alternative in the Russian current legal order, which is the principle of reciprocity. Unfortunately, this principle is rather controversial and does not have any common understanding in an international society (Sobina, 2010). Thus, many states face difficult choices.

What is more, according to some scientists, the principle of reciprocity is understood incorrectly in Russian legal order (Lagarde, 1977), namely, because of its restricted approach. Following another point of view, this principle can be explained as *comitas gentium* (Sobina, 2010), which is non-binding mutual politeness and gentleness among actors. This is how reciprocity is understood in many countries, including the UK. This way of thinking helps both to keep the freedom and sovereignty of the state, and also to respect foreign courts' decisions in different situations (Kozyris, 1990).

In Russia the reciprocity cannot be presumed automatically, some evidence of foreign recognition of Russian court decisions is required. This fact makes international cooperation in the sphere of cross-border insolvency rather complicated as there is different understanding of this principle by other countries.

The main problem is, that there is no any legal act, that regulates cross-border insolvency. What is more, the country is not a member of international treaties on bankruptcy procedures. In other words, the regulation is developing only on the national level. The provisions on personal insolvency were created by the legislative power only in 2015 (Federal Law on Insolvency, 2002). And as for the international level — the question is still unsolved.

An alternative way of settling the problem is to resort to a special institute, which is called Centre of Main Interests of the debtor (COMI). It should be stated that there are also some controversial issues.

A serious gap can be found when analyzing the term COMI in international law practice. The cause lies in the existence of foreign business-partners, assets overseas, imports and exports processes and etc.

On the one hand, such business models allow its owners to gain more profit and develop overall production. On the other hand, some problems in various spheres may arise, for example, there is always a risk of insolvency for entrepreneurs and as such activities are made with the help of partners, many people are involved in this process. That is why it is important to find out the place, where this business is centralized in order to make it a starting point for insolvency procedures.

Understanding of the term «Centre of Main Interest» varies in different countries. Such multi-item interpretations entail problems in law practice. It is reasonable to make it plain and to analyze alternative points of views.

The Supreme Court of the Russian Federation has been making attempts to create a legal basis for future international regulation on cross-border insolvency's issues. For example, in one of the cases the term «Centre of economic interests of the debtor» was used (The SC Decision 2019/308-ЭС18-25635). It is impossible not to notice, that there is a similarity with the definition of COMI – standard (EU Insolvency Regulation 2015/848), which is a foundation for protecting creditors from the misconduct of the debtor.

There were also some criteria made by the Supreme Court:

1. The place where the property is located;
2. The place of business activities of the creditors and their location;
3. The location of corporate partners (legal entities).

According to international experience, COMI is compared to the «debtor's nerve center» (Rochelle, 2017). What is more, very often the debtors' headquarter or registered office is meant to be the COMI.

Nevertheless, the EU Insolvency Regulation is interpreted differently by the UK. Great Britain's regulation prefers to define the Centre of Main Interests in another way. In other words, this jurisdiction does not have a clear concept of this term. In each case objective factors, such as business operations or third parties' locations are used. It should be noticed, that it is a big problem for harmonious international regulation and unique key terms' understanding.

Sometimes the Supreme Court of the Russian Federation (The SC Decision 2019/306-ЭС19-3574) uses another argument as a ground for liability. The fictitious change of place of residence entails infliction of harm to creditors. Consequently, the aim of such actions can be called unlawful. That is why the most applicable remedy for the community of creditors is art. 10 of the Civil Code of the Russian Federation. This article is used as a special one, when there is a contravention of the principal of good faith (*bona fides*).

In 2015 there were created the provisions on personal insolvency as a result of the legislative reform. At the same time, banks and other serious creditors began their activities again in order to make Mr. Kekhman to perform his obligations towards them. The community of creditors disagreed with the English court proceedings and sued for the adjudication of personal bankruptcy in the Commercial Court of Saint Petersburg. In 2017 Vladimir Kekhman was declared bankrupt but the criminal prosecution was stopped on the reason of the expiration of the limitation period. Now this decision is being appealed by creditors.

Thus, Vladimir Kekhman is declared bankrupt both in the UK and in the Russian Federation. The main question is: what are the consequences of confrontation of the two jurisdictions? In order to answer it correctly, the line of reasoning of Russian courts (Resolution of FCC 2016/F07-9292) should be discussed.

The Russian Commercial Court cannot agree with the decision of the English High Court. There are several clear reasons for it:

1) Exclusive jurisdiction of Russian courts was established according to this very case. Therefore, the main deterrent factor of unfair conduct is to be used. It is a connecting factor, called *lex fori concursus*, which means, that bankruptcy proceedings are to be regulated by the law of the country, which is dealing with such proceedings. It seems to be a logical argument, as the exclusive jurisdiction makes this case automatically inaccessible for other jurisdictions.

In this sphere another important theoretical question arises, when talking about confrontation of universality and territoriality principles. The first one represents the idea of shared legal force of any insolvency procedure in all other countries. According to this understanding, other jurisdictions with their regulation are ignored and must comply with that one, that has already taken the decision. The second one is about strict territorial effect of insolvency procedures. However, the problem of property's plurality in various countries makes this idea not the best one.

Some scientists suppose (Israel, 2005), that both of them are quite irrelevant nowadays because of their extreme character and it is difficult to argue with this point of view. Middle-ground should be found in this case, as it is not only a theoretical issue. On the reason of its practical applicability, cross-border regulation must be elastic and adaptable as we are talking about the best ways of collection and optimization of the debtor's property. That is why, international regulation and its acknowledgment by countries is aimed at finding compromise between jurisdictions and is essential nowadays.

2) There had been made several decisions of Russian courts on the case of Mr. Kekhman before he went to the UK. Such decisions are of a preclusive effect and this fact cannot be argued with.

3) The legal and economic connection between Mr. Kekhman and the Russian Federation is much deeper, than it has been claimed by him in Great Britain. Most of debtor's business activities and his creditors are situated in the Russian Federation. For foreign court decisions to be recognized in Russia, there must be an international treaty or, if there is none, the principle of reciprocity *can* be used. And as this country is not the member of any international treaties on personal bankruptcy and cross-border insolvency, the justification for the application of principle of reciprocity has not been established yet, according to sec. 6, art 1 of the Insolvency Federal Law. If looking through the art. 244 of Arbitration Procedural Code of the Russian Federation (the procedure of courts' decisions recognition is the same as in the Federal Law №127), it can be noticed, that there are some grounds for non-recognition of foreign courts' decisions. According to one of them, the decision of the English High Court of Justice can be not recognized as there has been already a Russian court's decision on this very case. This decision is lawful and enforced.

4) The last, but not least argument is that there was an infringement of public order and all of the actions of Mr. Kekhman are aimed at doing harm to his creditors, the reasonable expectations of which are based on the civil legislation of the Russian Federation. Such interests must be protected.

4. Results

To sum it up, final outcomes of the foregoing should be outlined:

• Vladimir Kekhman, being a founder of JFC Group, had a lot of contractual obligations towards his creditors. Among them there were serious banking companies, which lent him assets for his business activities. These obligations were supported only by Mr. Kekhman's personal guarantees, which, as a result, were not enough for performing them.

• To avoid Russian jurisdiction, the debtor went to the UK, where the cross-border insolvency procedure started. The choice of British jurisdiction was not baseless: it is supposed to be the most «advantageous personal Insolvency regime» (Fox, Harrison, 2015) for the debtor, whose main aim is to become free from all of the obligations he/she cannot perform. The English court, in its turn, stated, that the actions of Mr. Kekhman were of a good faith and declared him bankrupt, applying its national legislation. The Centre of Main Interests was defined to be in Switzerland and the EU Regulation was not applicable there.

• The gap in personal insolvency's regulation in the Russian Federation made this case really difficult. Namely, it was important to justify and answer the following question: why the case must

be solved according to Russian law? After the legislation reform has been carried out, the arguments of Russian courts found their basis. Firstly, the establishment of exclusive jurisdiction can explain the connecting factor lex fori concursus, which is an important indicator for solving disputes of international character. Secondly, the preclusive effect of previous decisions of Russian courts took place, which is impossible to ignore. Thirdly, Russian legislation had not any reasons for recognizing foreign decisions of the English court. What is more, the interests of the creditors are an essential part of public order, this fact entails the necessity of their protection.

5. Conclusion

Many Russian scientists expressed their opinion on the case of Mr. Kekhman (Mohova, 2015; Budylin, 2019; Morkhat, 2019, etc.). All of them agree, that the English legal order is welcoming, when speaking about debts' relief. So does the author of the article. What is more, the negative effect of this case is that the actions of V. Kekhman can become a bad example for those, who are not going to perform their obligations. At last, he has managed to prove the applicability of foreign jurisdiction, having only little part of assets in the UK and the fictitious place of residence there.

It seems, that the applicable jurisdiction was defined incorrectly for some reasons. Namely, it is impossible to deny the fact, that, according to COMI – standards (or Centre of Economic Interests, as it is in Russia), the Centre of business activities of the creditors is situated in the Russian Federation. It can be proved by their location, business transactions, dealings and partners.

This clearly shows that the point, from which most of the processes are directed and on which they are focused, is in the country, that has an exclusive jurisdiction to protect these creditors. The second issue is that there are no legal grounds for accepting for execution of the decision of the High Court of Justice. There is a strong rule of the necessity to find evidence of the principle of reciprocity, otherwise Russian courts are not obliged to take this decision into account.

The decision of the court of the UK appears to be strongly unfair towards the creditors, who, according to insolvency regulation and common principles of equity, must be protected by law. Otherwise, (often voluntary) failures to perform obligations and absence of legal levers of pressure will be an encouragement for careless debtors.

From this point of view, «Forum-shopping» constitutes a real problem. In order to avoid such cases in the future, competent and universal regulation should be created. The European Union has already coped with this task rather successfully. But, as practice shows, unscrupulous debtors exist out of the bounds of the EU. That is why, the creation of a special document of an international character is a necessity for the international community nowadays. Moreover, for the international treaty to be successful, it is possible to adopt the experience of the EU and to create it on the basis of this regulation. In this case Russia and other countries can become its members and get rid of legislative gaps on the international level.

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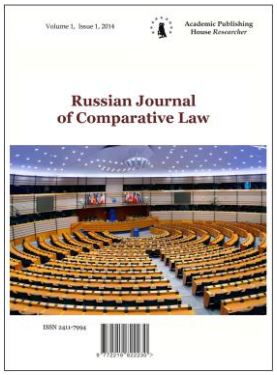

Attitudes of Russian-speakers in Finland towards AntiCOVID-19 Restriction Measures in Spring, 2020

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Abstract

This contribution comments on mitigating the vulnerability of individuals belonging to national minorities amidst the COVID-19 crisis by inquiring how governmental campaigns affect the adherence to observing anti-pandemic recommendations by Russian-speakers in Finland. This is done by virtue of contextualizing the findings of an internet survey of attitudes of Russian speakers towards governmental antiCOVID-19 restriction measures conducted during the period of 1-8 April 2020 – or amidst the culmination of restrictions introduced by the Finnish government. The goal of the survey was to study the attitudes of Russian-speakers towards COVID-19 limitations with respect to observing self-isolation measures.

Keywords: minority media, antiCOVID-19 recommendations, attitude studies, social norms approach, Russian speakers in Finland.

1. Introduction

It is not only a matter of scientific curiosity to extend the existing state of knowledge of accommodating minority-majority relationships in separate legal and societal systems. More importantly, it is vital to explore the reasons for the adherence of minority group members to governmental recommendations in situations of national emergency. The interest in this theme is also driven by significant policy considerations in investigating the social implications of the current legislative and organizational framework of minority protection vis-à-vis the COVID-19 pandemic, promoted by international bodies. For instance, on 28 May 2020, the Advisory Committee on the Framework Convention for the Protection of National Minorities (the FCNM Committee, 2020) pointed out that the COVID-19 crisis has exacerbated the vulnerability of persons belonging to national minorities in the CoE member States. Response for this should come from inclusive societies where rights of persons belonging to minorities are protected and respected which is also “a prerequisite for ensuring democracy, peace and security.” (The FCNM Committee, 2020).

These two rationales justify our goal to study possible solutions to mitigating the vulnerability of individuals belonging to national minorities amidst the COVID-19 crisis by inquiring how governmental campaigns affect the adherence to observing anti-pandemic recommendations by Russian-speakers. We examine the hypothesis that during the COVID19 crisis situation, the urgency of Russian speakers in Finland to adhere to the majority social norms was transformed into the matter of both, common and self-interest. In other words, in a crisis situation, the pressure to observe social norms coincides with conscious self-interest to counteract a significant national threat, which then becomes a common goal for the entire society. Thus,

the survey lets us further contextualize its findings against the background of scholarly findings in the area of majority-minority relationships.

During the period of 1-8 April 2020 – or amidst the culmination of restrictions introduced by the Finnish government, – the author launched an internet survey of attitudes of Russian-speakers towards restriction measures. The goal of the survey was to study the attitudes of Russian-speakers towards COVID-19 limitations with respect to observing self-isolation measures. This is a preliminary inquiry rather than a representative survey since distribution the question forms via internet makes it difficult to verify the representation samples. The article nevertheless comments on the findings of the said survey.

2. Methods and materials

Attitude study methodology was used for the purposes of devising survey questions. Attitudes include three elements: cognitive element (what I know about X), affective element (how I feel about X), and behavioral element (what I do about X) (Marcinkowski, Reid, 2019). Although the relationship between attitudes and behavior has been a topic of considerable debate (Kraus, 1990), it is established that the attitudes majorly predetermine the behavior (Ajzen, 2001).

As mentioned earlier, our understanding of the impact of antiCOVID-19 governmental campaigns on practicing self-isolation is based on the social norms approach. The authorities issued recommendations on how to behave in a certain societal context which can be considered social norms, if followed by society. Adherence to social norms comprises two elements: "reputation-driven" and "self-motivational" (Lubchenco et al, 2016). When the governments appealed to citizens to abstain from visiting friends and public places in order to slow down the COVID-19 contagion, the reputational element of anti-pandemic recommendations was reinforced, enabling individuals to act "in their self-interest in a fashion that also aligns their behavior with the larger goals of communities or society" (Lubchenco et al, 2016). A reputational element can thus affect individual, personally motivated incentives, which are "primarily intrinsic and driven by a belief in what constitutes "correct" individual behavior" (Lubchenco et al., 2016).

3. Discussion

3.1. The position of Russian-speakers in Finland

Inquiries into the issues of majority-minority relationships and social cohesion are important for Finland, where interethnic relations are characterised by a lower degree of cultural diversity. On the one hand, foreign language speakers make up 7.7 % of the total population (Statistics Finland, 2019), and, on the other hand, there is an increasing emphasis on labour migration (National report by Finland to the OECD, 2019). Currently, Russian-speakers are the greatest foreign language speaking group in Finland. With regard to the level of integration, the Russian-speakers of Finland can be considered a heterogeneous group (Varjonen, 2018). Despite – or because of – the geographical proximity and the intertwined histories of Finland and Russia, the intergroup relations between the Finnish majority and the Russian-speaking minority were characterised a decade ago by prejudice and discrimination towards the minority group (Renvik et al., 2020). In a 2009 European survey on minorities and discrimination, one quarter of Russians in Finland reported perceived discrimination, scoring highest among the four EU member states with considerable Russian minorities. The most recent 2017 European survey already demonstrates progress achieved in alleviating or reducing discrimination: "compared to all other groups, respondents from the Russian minority target group "indicate the lowest discrimination rates" (EU-MIDIS, 2017: 29). These changes might be a result of a stronger effort in achieving the ideal of diversity in Finland. Yet the recent recommendations of the FCNM Committee to Finland still regard the need to provide an "effective and inclusive channel of communication, consultation and influence on the decision-making process by all minority groups, in particular Russian and Karelian speakers" (FCNM Report of Finland).

3.2. Anti-COVID-10 governmental recommendations as distinct social norms

As mentioned earlier, governmental recommendations in Finland evolved into a distinct social norm where "social" – in a situation of emergency – applied to society as a whole. Emergency situations hardly reflect the diversity of cultures. Consequently, in both majority and minority communities, individual emotional responses to the COVID-19 crisis may well "fluctuate from straightforward panic and fear to disbelief and anguish born out of helplessness and

uncertainty" (Djolai, 2020). Following the Finnish mainstream media and the Facebook discussions among the Russian-speakers, it was possible to find those who strongly disagree with governmental anti-COVID-19 recommendations. Finnish-speaking forums showed that the supporters of the Social-Democrats which is the governmental majority party, mostly agreed with the Government's course, whereas the supporters of the opposition remained skeptical about anti-COVID-19 recommendations. In Russian-speaking internet forums, this disagreement was mostly associated with downplaying the threat and the consequent willingness to maintain social contacts (based on the author's personal experience).

3.3. Special vulnerability of minority groups vis-à-vis the COVID-19 media discourse

Members of minorities often find themselves in situations of special vulnerability, resulting from the negative consequences of self-isolation, i.e. possible inability to join discussions in social media due to language limitations, economic hardships, reliance on public transportation or a lack of possibilities to work at home. Moreover, a lack of access to effective information about COVID-19 can reduce the efficacy of the reputational element in governmental campaigns thus potently discouraging members of minority groups following governmental recommendations. Accordingly, the FCNM Committee concluded that at their worst anti-pandemic measures can "endanger the enjoyment of some rights and freedoms of national minorities such as the freedom of expression, freedom of peaceful assembly and freedom of religion" (FCNM Committee, 2020). With respect to self-isolation, the WHO delivered a more nuanced recommendation, i.e. "to take into account people's capacity to act on the advice being given" [individual motivational element – the author] since the recommended behaviour must be "doable and be adapted to people's lifestyle; otherwise, it will not be widely adopted" (WHO, 2020).

During Spring 2020 minority rights violations unfortunately took place in during the reporting of news about the pandemic in Finland. It was *inter alia* reported that the Somalis had high rate of COVID-19 infections and that special efforts were made to inform Somali-speakers of the risks. Reports condemning those groups who ignored recommendations on self-isolation pointed out the customs of Somali-speakers to meet relatives and friends while not observing social distancing (News Finland, 2020). Yet suddenly the news feeds and fact-spreads on the topic "COVID-19 and Somali-speakers in Finland" disappeared soon after the Equality Ombudsman released her special blog (Equality Ombudsman, 2020), claiming that authorities "racialized" the spread of the infection by targeting specific group in terms of their ethnicity. After this blog appeared - Helsinki authorities ceased to talk publicly about infection rates among Somali-speakers, instead providing general information webpages about social distancing.

Although this example refers to a different minority group than Russian-speakers, it proves the need for refining recommendations for authorities on minority protection during crisis situations. When it comes to concrete vulnerability factors related to protecting Russian-speakers in Finland and applying these impediments to the COVID-19 crisis, we address the findings of the previous research. In particular, cultural habits as impediments are critical for understanding Russian speakers' attitudes to self-isolation as that the latter experiences less loneliness than the native population (Varjonen, 2018). This can be traced to social habits, i.e. to communicating regularly with friends, relatives, and other associates. Employment in essential jobs as a vulnerability factor is precluding distance work. Yet research indicates that although the Russian-speaking minority is generally well educated, the employment rate is lower than that of the native population and the level of earnings is also often lower, compared to the native population (Varjonen, 2018).

3.4. On the media use of Russian-speakers in Finland

Previous research on the media use of Russian-speakers in Finland reveals certain ambiguities. In particular, the 2016 report of a project led by Davydova-Minguet, et al., entitled "Finland's Russian Speakers as Media Users," launched by the Finnish government, found that the use of Russian language media by the target audience is "rather extensive, albeit scattered" (Davydova-Minguet et al.,, 2016). In contrast, the 2020 Report by Culturas Foundation suggests that during the COVID-19 pandemic Russian-speakers seek information mainly from national Finnish media channels (both in Finnish and in Russian), while only 22 % of respondents consider Russian TV channels as main sources of information (Culturas Foundation, the 2020 Report). According to this 2020 study, the role of the Russian-language section of the national news media

corporation "YLE" in crisis communication was important, not only for those who understand only Russian. The Culturas Foundation's report, nevertheless, acknowledges its major limitation, i.e. "failing to reach a significant portion of those Russian-speaking immigrants who, for one reason or another, are alienated from Finnish society" (Culturas Foundation, the 2020 Report).

According to the report by Davydova-Minguet et al., Russian television "produces an image of the world and different events that serves the objectives of the rulers as media users" (Davydova-Minguet, Sotkasiir, Oivo & Riihiläinen, 2016). As a reminder, the introduction of antiCOVID-19 measures in Russia took place two weeks later than in the Nordic states. At the same time, the study by the Cultural Foundation demonstrates that during the COVID-19 crisis, the respondents placed more trust in the actions of the Finnish authorities: on average, the respondents were satisfied with the decisions by Finnish authorities during the crisis, with Russian-speakers in particular satisfied with the information provided to them. Thus, a question to pursue by making our future inquiries would be whether exposure to Russian media-outlets reporting the negative consequences due to the late adoption of antiCOVID-19 measures in Russia, even by those minority members who wouldn't have otherwise supported the course of the Finnish government, convinced these groups to follow the antiCOVID-19 recommendations in the name of slowing down the spread of the virus?

4. Results

An internet survey of attitudes of Russian-speakers towards restriction measures in Finland was launched by the author of this review during the period of 1-8 April 2020. It aimed to study the attitudes of Russian-speakers towards COVID-19 limitations with respect to observing self-isolation measures.

In response to the pandemic, the WHO proposed *inter alia* non-pharmaceutical anti-pandemic measures: social distancing, various movement restrictions, etc. (WHO 2020). In Finland, restrictions of basic rights during the Spring, 2020 pandemic remained at a minimum: the Governments limited public gatherings, as well as closed down educational institutions and public cultural, sport and recreational centers. Yet strict home-quarantine measures were precluded and no GPS tracking was employed. The authorities thus relied on citizens' own judgment in respect of complying with recommendations to slow down the spread of the virus, i.e. social norms or recommendations on how to behave in a certain societal context. Such a social norms approach can be used as an "intervention strategy for promoting positive health-related behaviors" (Dempsey et al., 2018). Governmental recommendations in Finland evolved into a distinct social norm where "social" – in a situation of emergency – applied to society as a whole.

Emergency situations hardly reflect the diversity of cultures. Consequently, in both majority and minority communities, individual emotional responses to the COVID-19 crisis may well "fluctuate from straightforward panic and fear to disbelief and anguish born out of helplessness and uncertainty" (Djolai, 2020). Following the Finnish mainstream media and the Facebook discussions among the Russian-speakers, it was possible to find those who strongly disagree with governmental anti-COVID-19 recommendations. Finnish-speaking forums showed that the supporters of the Social-Democrats which is the governmental majority party, mostly agreed with the Government's course, whereas the supporters of the opposition remained skeptical about anti-COVID19 recommendations. In Russian-speaking internet forums, this disagreement was mostly associated with downplaying the threat and the consequent willingness to maintain social contacts.

Thus, our survey questions were formulated in such a way that would elucidate the following components: *affective* element or feelings, e.g., I am afraid of COVID-19 (corresponding to the ***individual motivational element*** in the social norms approach); *behavioral* element indicating what I am going to do about it, e.g., I will follow governmental COVID-19 recommendations as well as the *cognitive* element showing what I understand and know, e.g., I read and understand the following things about COVID-19 (corresponding to ***the reputational element*** in the social norms approach).

In total 243 responses were obtained in Finland and 71 in Norway. The overwhelming majority, except 1,2 % in Finland and none in Norway, knew what the Coronavirus was 73,3 % respondents in Finland and 70,4 % in Norway considered coronavirus a serious threat. Again, the majority were updated on the restrictions introduced by the governments, except 0,4 % of the respondents in Finland and 2 % in Norway. Only 7.8 % of respondents in Finland and 9,9 % in

Norway reported a lack of support for the restrictions. Concerning the focal points of our inquiry, i.e., the attitude to social norms related to self-isolation, 7,8 % in Finland and 12,7 % in Norway have not complied with social distancing. However, when the question was posed differently, i.e., instead of asking if someone is going to comply with social distancing, we asked which measures are you going to use as a means of slowing down the spread of the virus, the figures were different: 53,5 % respondents in Finland and 57 % in Norway mentioned minimizing social contacts (abstaining from inviting friends for tea, shopping less, abstaining from not-urgent trips, observing social distancing, etc.).

5. Conclusion

As for our main hypothesis regarding the impact of strong antiCOVID-19 governmental campaigns on practicing self-isolation, our background inquiries demonstrate a high level of adherence to recommendations by Russian-speakers in Finland. The results of our survey showed that, albeit the individuals demonstrated good intentions of complying with self-isolation, not all the respondents fully grasped the meaning of self-isolation and social distancing. This again proves the need for more rigorous information campaigns in times of crisis. As for our main hypothesis regarding the impact of strong antiCOVID-19 governmental campaigns on the positive response of the Russian speakers in Finland in the crisis situations, these inquiries demonstrate a high level of adherence to governmental recommendations by Russian-speakers in Finland. Nevertheless, COVID-19 pandemic, like any other crisis, revealed an unclear vision of how to pursue information campaigns reveals incongruities between individual and group identities and a new emergency social order.

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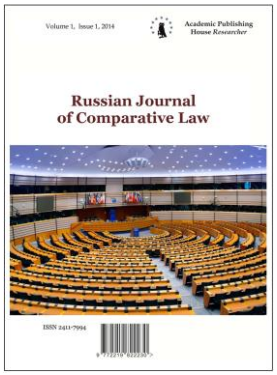

Evolution of Legal Topics, Rights and Obligations in the United States

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Abstract

What new constitutional rights does the American Legal system have to offer? The United States Constitution is a document that continues to be interpreted every year. The Supreme Court hears recent cases with the purpose of interpreting the meaning of the Constitution. Since the creation of the Supreme Court, the Constitution has been analyzed in different ways – some interpretations lasting decades and some amendments going through changes depending on the different ideologies of the Justices on the Court.

This article discusses some of the rights established by the Supreme Court from 2016 to 2019 and provides the background as to what led and influenced the evolution of such rights. Some of the most recent evolutions that have been decided by the Supreme Court include topics on: 1) travel restrictions, 2) digital privacy, 3) refusing services based on religious beliefs, 4) limiting dissemination on information about abortion, 5) double jeopardy, 6) detention of certain noncitizens with criminal records, 7) limiting voting rolls, 8) gerrymandering, and 9) affirmative action plans in university decisions.

Keywords: travel restrictions, digital privacy, gerrymandering, limiting voting rolls, detention of noncitizens with criminal records, refusing services based on religious beliefs, abortion, double jeopardy, affirmative action plans in university admissions.

1. Introduction

Individual rights play a major role in modern day society. Individual rights in the United States grant U.S. citizens the freedom and liberties necessary to pursue and live their lives without any interference from the government or other individuals (Rights or Individual Rights). Without individual rights, true American democracy would not exist and individuals would be deprived of social equality. The United States, through its Constitution, recognizes an extensive variety of individual rights, especially through its Bill of Rights (Nanzer). Nonetheless, the Constitution continues to be construed and new rights keep getting interpreted for the most part by the Supreme Court and some by the lower level federal courts especially the courts of appeals. Even though most new rights are derived from preexisting rights, these new rights continue the development of American society.

There are two general categories of rights that are recognized in the United States: natural and non-natural rights. Under the category of natural rights, there is a right to life, a right to liberty and a right to property. Further, there are many other recognized rights that derive from these previously mentioned natural rights. For example, the right against deprivation of one's life and the right against suffering abuse and injury are derived from the right to life. Another example comes

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from the right to liberty. This natural right led to the incorporation of the Bill of Rights, which includes the right to free expression and the right to bear arms. Finally, the right to reside in a good home is derived from the right to property. On the other hand, non-natural rights are divided into two general categories: rights of the person and citizenship rights. Non-natural rights of the person include the right to contract and the right to due process of the laws for those individuals who are subjected to criminal prosecution. Among other rights, non-natural citizenship rights include the right to vote and to be elected, and the right to the enforcement of these rights. Furthermore, in the world, there are universal rights adopted by the United Nations (UN), which are adopted internationally through treaties, conventions and declarations. These universal rights, otherwise known as human rights, were recognized by the UN for the first time in 1952 in the Universal Declaration of Human of Rights. There are four main principle rights adopted by the UN through the Universal Declaration of Human Rights. These principles include: 1) The right to freedom of speech and expression, 2) The right to freedom of religion, 3) The right to obtain economic security for well-being, and 4) The right to be free from fear or apprehension.

Following, this article will focus and analyze the new legal evolutions established by the Supreme Court of the United States of America between 2016 and 2019. More specifically, the article will address: 1) travel restrictions, 2) digital privacy, 3) refusing services based on religious beliefs, 4) limiting dissemination on information about abortion, 5) double jeopardy, 6) detention of certain noncitizens with criminal records, 7) limiting voting rolls, 8) gerrymandering, and 9) affirmative action plans in university decisions.

2. Materials and methods

The principal sources for this article writing are as follows:

(1) Crucial legal right developments shaped by the decisions of the Supreme Court of the United States of America,

(2) the Constitution of the United States of America, which has been amended and interpreted throughout the years by U.S. Supreme Court decisions, and

(3) the Universal Declaration of Human Rights, which has influenced some of the rights incorporated into the Constitution of the United States of America.

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3. Discussion

3.1. Travel Restrictions

On January 27, 2017, President Donald Trump signed Executive Order No. 13769, which suspended entry for 90 days of foreign nationals from seven countries, banned entry of all refugees for 120 days, and banned Syrian refugees entry for an indefinite amount of time. The seven countries affected by this order were Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen (Exec. Order No. 13769). The executive order was found to be sufficiently justified by national-security concerns to survive rational-basis review in *Trump v. Hawaii* : "…I determined that, for a brief period of 90 days, while existing screening and vetting procedures were under review, the entry into the United States of certain aliens from the seven identified countries – each afflicted by terrorism in a manner that compromised the ability of the United States to rely on normal decision making procedures about travel to the United States to rely on normal decision-making procedures about travel to the United States—would be detrimental to the interests of the United States." (Executive Order 13769, Protecting the Nation from Terrorist Entry Into the United States, 82 FR 8977 (Jan. 27, 2017)).

The executive order reasoned these seven countries were identified because Congress had restricted their use of the Visa Waiver Program (Iraq and Syria), the Secretary of State identified them as a state sponsor of terrorism (Iran, Syria, and Sudan), or the Secretary of Homeland Security designated them as countries of concern (Libya, Somalia, and Yemen).

The purpose of the Proclamation was to improve the vetting procedures of certain countries with deficiencies in the information they provide the United States, and assess whether citizens of that country were a public safety threat. The Department of Homeland Security conducted a comprehensive evaluation of every country's compliance with the information and risk assessment

baseline. This evaluation applied a system with three components to all countries to determine the sufficiency of their vetting procedures.

1. "identity-management information," which focuses on whether a foreign government ensures the integrity of travel documents by issuing electronic passport, reporting lost or stolen passports, and making available additional identity related information.
2. Consideration of a country's disclosure of a person's criminal history and suspected terrorist links, provides travel document exemplars, and facilitates the receipt of information about airline passengers and crews traveling to the United States to the U.S. Government.
3. Analysis of several factors such as national security risk, including whether the country is known or potentially a terrorist safe haven, and declines to receive returning nationals with final orders of removal from the United States.

The Department of Homeland Security (DHS) identified countries through their three-component system, and then conducted diplomatic efforts for fifty days to encourage the foreign government to improve their practices (Trump v. Hawaii). After the fifty days, DHS determined the vetting procedures were still not sufficient. Therefore, it was recommended to the President to limit travel of their citizens until more information could be obtained.

The Executive Order caused outrage by the public, who called it the Muslim Ban, since the majority of the countries on the list are predominantly Muslim countries (Trump's Executive order..., 2017; Diamond, 2017; Thrush, 2017). Ever since 9/11 when the Twin Towers were bombed, there has been anti-Muslim sentiments in the United States and a large misconception of terrorism being a tenant of the religion (Jetter). This Executive Order highlighted the continued comparison of Muslim people with terrorists, even though the order reasons that was not the intention (Exec. Order No. 13769). Additionally, U.S. citizens believed it violated the Establishment clause of the U.S. Constitution by banning majority Muslim countries. he values of the Establishment Clause are incorporated into the INA.

"...no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." (INA 1152(a)(1)(A)). Moreover, President Trump shared throughout his presidential campaign his desire to limit Muslim immigration and belief that Muslim are a national security risk. President Trump published, "Statement on Preventing Muslim Immigration," which called for a total ban on the entry of Muslim immigrants. These views did not change during his presidency, as he continued to make comments with expressing the same beliefs, and sharing anti-Muslim videos on social media (Trump v. Hawaii).

Immigration law in the United States is governed by the Immigration and Nationality Act (INA) (Immigration and Nationality Act, 2019). The INA enables the President to suspend the entry of all immigrants or any class of immigrants whenever the President finds that the immigrants' entry would be detrimental to the interests of the United States (8 U.S.C. § 1182(f)).

"Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate." (8 U.S.C. 1182(f)).

Millions of Muslims were banned from entering the United States once the Proclamation went into effect. This led to people losing jobs, unable to continue schooling at U.S. schools, unable to visit with family members, and other effective legal prejudice reasons despite having a visa and entitlement to one (Waheed, 2018). Some of those hurt by the Proclamation were the state of Hawaii – as operator of a state university, individual citizens or lawful permanent residents with relatives applying for immigrant or nonimmigrant visas, and a nonprofit organization that operated a mosque in Hawaii. These groups came together and filed suit with the U.S. District Court for the District of Hawaii. The District Court granted a nationwide preliminary injunction barring enforcement of the restriction. The Ninth Circuit Court of Appeals affirmed the District Court's decision (Hawaii v. Trump).

In Trump v. Hawaii, 138 S. Ct. 2392, 2018, the Supreme Court held President Trump correctly exercised his authority to deny entry to immigrants or classes of immigrants if their entry would be detrimental to U.S. interests. The issues addressed by the Supreme Court were

(i) whether the President had the authority to under the INA to issue the Proclamation, and (ii) whether the Proclamation violated the Establishment Clause of the First Amendment.

The Supreme Court held 8 U.S.C. 1182(f) grants President Trump the authority to suspend the entry of immigrants when found to be detrimental to the interest of the United States. The Plaintiffs argued the president's power under 8 U.S.C. 1182(f) was limited to a discrete group of immigrants engaged in harmful conduct, and findings should include sufficient detail to enable judicial review. The Court reasoned the plain language of 8 U.S.C. 1182(f) granted the President the broad discretionary power rather than a residual power to temporarily stop the entrance of a small number of immigrants. The only requirement for 8 U.S.C. 1182(f) to be invoked is for the President to find that the entrance of a certain group of immigrants would be detrimental to the United States. President Trump exercised the power to limit the entry immigrants after a thorough review, which included the cooperation of several government agencies, such as the Department of State and Department of Homeland Security. The Proclamation was then issued applying the findings of this multi-agency review and diplomatic efforts with each individual country listed in the Proclamation. Additionally, the Court reasoned a President's methods on addressing national security is not relevant to the scope of their authority, and their measures should not be thoroughly explained for a court to determine whether the conclusion is valid. Lastly, the Court reasoned that the Proclamation's restrictions were only conditional and would remain in force only as long as necessary to address the information inadequacies and risks with the identified countries.

The Court held the Proclamation was facially neutral, and therefore, did not violate the Establishment Clause of the First Amendment. This means the Proclamation denies the entry to citizens of certain countries; it does not deny the entry to immigrants who practice a certain religion. Thus, the Proclamation is facially neutral because religion is not a factor for entry. The Court discussed what standard of review should be applied in this situation, and revisited cases where the denial of a visa affected a U.S. citizen (Trump v. Hawaii). Immigrants do not have a constitutional right to enter, however, judicial inquiry is involved when the denial of a visa burdens the constitutional rights of a U.S. citizen. The Supreme Court applied the standard of review established in *Kleindienst v. Mandel*, where it was discussed whether the denial of a visa infringed on a U.S. citizen's constitutional right to receive information. The Court will not analyze the President's use of discretion nor ask for a justification when the law is facially legitimate and has a bona fide reason (Kleindienst v. Mandel). However, the Court decided to apply rational basis review. Rational basis considers whether the policy is rationally related to the government's objective, which in this case, would be the vetting process. The Court held the Proclamation met the rational basis review, and the Proclamation did not merit to be struck down because it did not have the desire to harm a politically unpopular group (Trump v. Hawaii compare with Department of Agriculture v. Moreno).

Since the ruling in this case, the Trump administration has continued to sign Executive Orders that affect Muslims and severely affect their entrance to the United States (Exec. Order No. 13780; Proclamation No. 9645, 2017; Proclamation No. 9983, 2020). For example, an Executive Order was issued on January 31, 2020. This Proclamation expands Executive Order 9645 by adding six additional countries (Presidential Proclamation 9645…) These orders continue to be met with a lot of opposition (Doe et al. v. Trump).

3.2. Digital Privacy

Cell phones have increasingly become a part of our daily life (Mobile Fact Sheet, 2019). As cell phone technology improves, the more information is gathered on the owner in order to meet its owner's needs, whether it is the shortest route to a specified location or is there a place nearby that sells a certain item. The gathering of information by cell phone network providers has led to many questions regarding how this information can or should be used, who should have access to this information, and many others. Internet service providers store data on the location, date, and time of the usage, among other things. The Fourth Amendment has become a central part of the discussion when the Government is wanting access to the owner's cell phone information (What Information Does…, 2020).

The Fourth Amendment of the United States Constitution prohibits unreasonable search and seizures. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon

probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized (US CONST. amend IV).

The purpose of the Fourth Amendment is for people to be free from arbitrary invasions by the government (Camara v. Municipal Court...). The Fourth Amendment was created as a response to unrestrained searches for evidence, as the British did before the American Revolution (Riley v. California). Historically, the Fourth Amendment had applied to cases where there was physical trespass (United States v. Jones). However, with the advancement of technology, a trespass now encompasses more than physical trespass. The Fourth Amendment is binding on the states by virtue of the Fourteenth amendment's due process requirement (Wolf v. Colorado).

A search involves a visual observation or physical intrusion by the government, which infringes upon a person's reasonable expectation of privacy or property (Kyllo v. United States). A reasonable expectation of privacy requires the person to exhibit an actual expectation of privacy, and that the expectation be recognized as reasonable by society. This privacy interest is dependent on the person's behavior (e.g., talking loudly in a public place), and the social context (e.g., using a telephone booth to conduct a phone conversation) (Katz v. United States).

A seizure under the Fourth Amendment requires some meaningful interference with an individual's liberty (an arrest) or possessory interest (a seizure) (Michigan v. Chesternut). For an item to be seized, the police must have a warrant. A warrant requires that it is (i) issued by a neutral and detached magistrate; (ii) based on probable cause established from facts submitted to the magistrate by a government agent upon oath or affirmation and (iii) particularly describe the place to be searched and the items to be seized (United States v. Ventresca). A warrant will be issued only if there is probable cause to believe that sizable evidence will be found at the premises or person to be searched (Carroll v. United States). The officers requesting the warrant must submit to the magistrate an affidavit containing sufficient facts and circumstances to enable the magistrate to make an independent evaluation of probable cause. In other words, an officer cannot present a conclusion for probable cause to exist (United States v. Ventresca).

Mr. Timothy Carpenter was charged with robbery and carrying a firearm during a federal crime of violence after the government identified him to be at robbery locations using his cell phone data. In 2011, the Federal Bureau of Investigations (FBI) believed Mr. Carpenter was a part of robbing several Radio Shack and T-Mobile stores. The police arrested one of Mr. Carpenter's accomplices who confessed to having robbed nine different stores throughout a period of four months. The accomplice provided cell phone numbers of others he worked with during the robberies, including Mr. Carpenter's (Carpenter v. United States). The FBI applied for a court order under the Stored Communications Act to obtain Mr. Carpenter's wireless carrier cell-site records. The order was granted and the FBI obtained information from Mr. Carpenter's cell phone providers: MetroPCS and Sprint. Every time Mr. Carpenter used the internet on his phone, MetroPCS and Sprint, respectively, saved the location, date and time of where he was accessing the internet. The FBI was able to track Mr. Carpenter's movement for 129 days during a period of four months and obtained a total of 12,898 location points. This information led to confirming Mr. Carpenter's presence at the scenes of the robberies. Mr. Carpenter argues tracking his location through wireless cell-site records is a violation of the Fourth Amendment as an unlawful search.

In Carpenter v. United States, 138 S. Ct. 2206, 2018, the Supreme Court held the warrantless seizure and search of cell phone records revealing the location and movement of a cell phone is a violation of the Fourth Amendment. The issue of the case was whether the government conducts a search, as defined by the Fourth Amendment, when it accesses historical cellphone records that provide information of the person's movement. The Court addressed (i) a person's expectation of privacy in their physical location and movements, and (ii) what information a person keeps to themselves and what is shared with others.

There is no privacy to physical location and movements when driving a car. In *Knotts*, the government placed a beeper in a container before it was purchased by one of Mr. Knotts conspirators. The government tracked the movement of the car where the container was placed. The Court reasoned there is no expectation of privacy because a vehicle's movement can be tracked by anyone who sees it. The Court held tracking one's movement with a beeper was not a violation of the Fourth Amendment. However, if the technology used is more invasive and for a long period of time, then it is a seizure for purposes of the Fourth Amendment. *United States v. Jones* involved the police placing a GPS on Mr. Jones' car and remotely tracking his movement. The Court

reasoned it was a seizure because the government allowed to track every single movement of Mr. Jones for a long period of time, infringing on a person's reasonable expectation of privacy.

A person does not have a reasonable expectation of privacy over information provided to others, even if believed to be used for a limited purpose. Consequently, the government may obtain information about a person without violating the Fourth Amendment. The Court reasoned that information shared to another is not a confidential communication, and if it is a document, there is no ownership or possession of the document. Therefore, there is no seizure under the Fourth Amendment. One takes a risk when verbally sharing information or providing documents. This principle has also been applied to the use of pen register, an instrument that registers the numbers dialed on a phone. The Court reasoned there is no expectation of privacy for the numbers one dials.

Here, the Court decided not to apply *Smith*, even though the wireless cell provider is a third party and Mr. Carpenter provided his information to the third party. Cell phone location records have a unique nature, which possess an expectation of privacy. The Court held an individual maintains a legitimate expectation of privacy in the record of their physical movements as captured by wireless carrier cell-site records (ECPA, 1986).

3.3. Refusing Services Based On Religious Beliefs

Same sex marriage was previously restricted through federal and state law (A Brief History of Civil Rights in the United States). The Defense of Marriage Act (DOMA) allowed states to only recognize marriages from other states that were between a man and a woman (Defense of Marriage Act, 1996). However, the movement to obtain marriage rights for same-sex couples expanded in the early 2000s, and by 2014, seventy percent of U.S. states recognized same sex marriages (Same-sex Marriage, State by State, 2015). In 2015, the Supreme Court held the fundamental right to marry extended to same-sex couples (Obergefell v. Hodges). Despite this decision, there are still people who oppose same sex marriage based on their religious beliefs.

The freedom of speech protects the free flow of ideas—an important function in a democracy. Protection for having differing views nationwide is granted by the First Amendment. The First Amendment protects the freedom of speech, religion, and the press.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

I amend.

The freedom of speech includes not only the right to speak, but also the right to refrain from speaking or endorsing beliefs with which one does not agree. The government may not compel an individual personally to express a message of which he or she disagrees (U.S. CONST. amend. I).

Charlie Craig and David Mullins, a same sex couple, were in the process of planning their wedding in July 2012. They went to the cake shop, Masterpiece Cakeshop in Lakewood, Colorado, to order their wedding cake. Jack Philips, the owner of Masterpiece Cakeshop, does not support gay marriage based on his religious beliefs. Mr. Philips refused to bake a wedding cake for the couple based on his views. Mr. Phillips is a devout Christian. At the time this happened, the state of Colorado did not recognize same sex marriage, and the couple planned to get married in a state that did recognize same sex marriage.

The couple filed a complaint with the Colorado Civil Rights Commission alleging discrimination under the Colorado Anti-Discrimination Act. The Commission held the cakeshop's actions were a violation of the Anti-Discrimination Act. Mr. Philips argued that being required to create a cake for a same-sex couple would violate his First Amendment right to free speech because he would be forced by the government to express a message that he disagreed with. Additionally, Mr. Philips argued that being required to create a cake for same-sex weddings would violate his right to the free exercise of religion, also protected by the First Amendment. Mr. Philips appealed his case all the way to the Supreme Court. The Supreme Court was presented with the issue of whether the order violated the U.S. Constitution.

In Masterpiece Cakeshop v. Colorado Civil Rights Commission, 584 S.Ct. 1719, 2018, the Supreme Court held objections to same-sex marriage is a protected view by the First Amendment. One's protected views cannot be used against them in disapproving of their decision making; therefore, one is free to have their own opinion.

Gay persons should be treated with dignity and worth, and in some instances, protect the exercise of their civil rights. However, opposing views of same sex marriage are protected views and may also be protected speech. The Court's discussion involved (i) does the state and its government entities have the authority to protect gay persons who are, or wish to be married, but face discrimination when they seek goods or service, and (ii) the right for all people to exercise the fundamental freedom under the First Amendment.

While religious and philosophical objections to gay marriage are protected under the First Amendment, it is a general rule that such objections do not allow business owners and other actors of the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law. The Court reasoned Mr. Philips activity was more than just the sale of goods; Mr. Philips would use his artistic skills that make an expressive statement when making the cake. This artistic expression formed an important component in Phillip's religious beliefs, which had to be applied in a neutral manner under a Colorado anti-discrimination statute. The Court reasoned Mr. Philips was justified for his actions in denying to make a cake for the couple. At the time, same sex marriage was illegal in Colorado, and Mr. Philips cake would have promoted illegal activity. Additionally, also at the time, Colorado law allowed storekeepers to decline to crate specific messages they considered offensive.

The Court held the Colorado Commission's treatment against Mr. Philips violated the state's duty under the First Amendment to not base laws on hostility to a certain viewpoint. The government cannot impose regulations that are hostile to the religious beliefs of affected citizens, and act in a manner that passes judgment upon a specific religious belief. The Free Exercise clause of the First Amendment bars even subtle departures from neutrality. The seven member Commission conducted several meetings open to the public and on record. Commissioners made comments implying that religious beliefs are not entirely welcome in the state's business community, and business owners must compromise their religious beliefs in order to conduct business. Laws and regulations must be viewpoint neutral, and the commissioners actions showed the regulation was meant to protect some and not all (Masterpiece Cakeshop…).

Since the decision in this case, other courts have held that business owners may discriminate based on their religious beliefs (Brush & Nib Studio v. City of Phoenix). Business owners can use religious beliefs to deny service to certain customers (Ripple Effect of the Supreme…, 2018).

3.4. A State Limiting Dissemination Of Information On Abortion

Abortion has been a political and heavily litigated subject in the United States. In 1973, the Supreme Court ruled pregnant women have the liberty to choose whether to have an abortion without excessive government restrictions. State laws have placed restrictions on abortions, from what information must be provided, waiting periods before obtaining an abortion, and the stage of the pregnancy when the abortion can be had (Roe v. Wade).

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

I amend.

During the last decades, Crisis Pregnancy Centers or CPCs have become more common throughout the United States. In an effort to prevent CPCs from disseminating false reproductive health information, several states have passed laws trying to regulate them. When an individual types "pregnant," "abortion," "clinic," and any similar keyword on an internet search engine, the results of the search will show the websites of Crisis Pregnancy Centers. Crisis Pregnancy Centers provide minimal information and limited services to women seeking help with an unintended pregnancy. These centers are commonly staffed by volunteers that are committed to Christian beliefs with no medical background. CPCs advertise to women who are pregnant or think they are pregnant. Most CPCs are unlicensed and do not have individuals certified in medicine, however, they often portray themselves as a legitimate medical facility offering reproductive services (Duane, 2013).

When a state government attempts to regulate speech—which is protected by the First Amendment–courts will weigh the importance of the right to free speech versus the interests or policies that the law is meant to serve. The speech being restricted by the regulation at issue is analyzed in two different categories: (i) content-based speech and (ii) content-neutral speech (Ward v. Rock Against Racism).

A content-based regulation forbids communication of a certain idea. It is presumptively unconstitutional for the government to place a burden on speech because of its content. Content-based regulations are subject to strict scrutiny and are less likely to be upheld by the court. To justify a content-based regulation, the government must show that the regulation is necessary to achieve a compelling state interest and is narrowly drawn to achieve that end.

Content-neutral regulations are subject to intermediate scrutiny. The regulation will be upheld if the government can show that it advances an important interest unrelated to the suppression of speech and does not burden substantially more speech than necessary or is narrowly tailored to further those interests (Reed v. Town of Gilbert, Ariz).

In 2015, California passed the California Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act (FACT) in 2015. The FACT Act imposed a two-notice requirement on facilities that provide pregnancy-related services—one for licensed facilities and one for unlicensed facilities. The Act required licensed pregnancy-related clinics to disseminate a notice stating the existence of publicly funded family-planning services, including contraception and abortion. The Act also requires that unlicensed clinics disseminate a notice stating that they are not licensed by the state of California.

The first notice requirement applied to licensed facilities, and in order to fall under this category, a clinic had to be a licensed primary care, a specialty clinic or qualify as an intermittent clinic under California law. In addition, two of the following six requirements had to be met:

(1) The facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women;

(2) the facility provides, or offers counseling about, contraception or contraceptive methods;

(3) the facility offers pregnancy testing or pregnancy diagnosis;

(4) the facility advertises or solicits patrons with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling;

(5) the facility offers abortion services;

(6) the facility has staff or volunteers who collect health information from the clients.

The FACT Act required licensed facilities to disclose a government-drafted notice on site stating that "*California has public programs that provide immediate free or low-cost access to comprehensive family planning services, including all FDA-approved methods of contraception, prenatal care, and abortion eligible for women. To determine whether you qualify, contact the county social services office at [insert the telephone number].*" Furthermore, the notice had to be in English and any additional languages identified by state law, posted in the waiting room, printed and distributed to all clients, or provided digitally at check-in.

The second notice requirement of the Act applied to unlicensed facilities, which meant that the facility was not licensed by the State, did not have a licensed medical provider on staff or under contract, and did not have the primary purpose of providing pregnancy-related services. Furthermore, an unlicensed facility had to satisfy two of the following four requirements: (1) the facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women; (2) the facility offers pregnancy testing or pregnancy diagnosis; (3) the facility advertises or solicits patrons with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling; (4) the facility has staff or volunteers who collect health information from clients. The Act required facilities to provide a government-drafted notice stating "this facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services." The notice had to be shown in all advertising materials and posted conspicuously at the entrance of the facility and at least in one waiting area.

California passed this act for the purpose of regulating crisis pregnancy centers. These centers offer a limited range of free pregnancy options, counseling, and other services to individuals that visit the center. There are nearly 200 licensed and unlicensed crisis pregnancy centers in California. The centers have discouraged and prevented women from obtaining abortions. In addition to these centers, the National Institute of Family and Life Advocates (NIFLA) is an organization with the stated goal of opposing abortion (Nat'l Inst. of Family & Life Advocates v. Becerra). NIFLA's mission is to stand up for unborn children through their action of defending pro-life centers, such as CPCs, from unconstitutional laws.

In *National Institute of Family and Life Advocates v. Becerra*, the Supreme Court held the Act was a content-based regulation of speech, and was unconstitutional because the notice requirements unduly burdened speech. Clinics were required by the Act to provide a government-drafted script about the availability of state sponsored services, including abortion. Organizations, such as the National Institute of Family and Life Advocates is an organization who opposes abortion. This organization, as well as others, would alter the script and dissuade women from using the services listed in the script. It is a violation of freedom of speech to not allow organizations to express their views (NIFLA).

The First Amendment prohibits laws that abridge freedom of speech. However, content-based or content-neutral regulations can be applied (U.S. CONST. amend. I). Content-based regulations are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. This standard shows the fundamental principle that governments do not have the power to restrict expression because of its message, ideas, subject matter or content. The notice requirement for licensed facilities by the FACT Act was a content-based regulation of speech making it subject to strict scrutiny. Licensed clinics were being required to give a government-drafted message about the availability of state-sponsored services, along with contact information on how to obtain them because California wanted to provide low-income women with information about state sponsored services. However, this reason did not make the regulation justifiable because it was not narrowly tailored to serve a compelling state interest. California's goal to educate low-income women about its abortion services was underinclusive. The notice only applied to facilities which primary purpose was to provide family planning or pregnancy-related services that provide two of six categories of specified services. Other facilities or clinics which serve another primary purpose or that provide only one category of those services, happen to serve low-income women and could educate them about the services the state can provide. California has almost one thousand community clinics that serve more than five million patients. However, most of those clinics were excluded from the licensed notice requirement without explanation. This raised a serious doubt about whether the government of California was authentically seeking to achieve the interest mentioned. Rather than achieving that interest, California looked like it was targeting a particular speaker or type of speech.

As for the second notice for unlicensed facilities, the state of California feared that women would seek the services of such facilities unaware of the fact that the facilities are not licensed under California law. In order for the notice requirement for unlicensed facilities to be upheld, the disclosure could not be unjustified or unduly burdensome. According to the Court, a disclosure has to remedy a harm that is potentially real and not just hypothetical and no broader than reasonably necessary. In this case, California had the burden of proving that the unlicensed notice was not unjustified or unduly burdensome, which they did not achieve. California failed to demonstrate that the unlicensed notice was more than just hypothetical. The state of California's only justification for the notice was to ensure that pregnant women in California know when they are getting medical care from professionals. California did not provide any evidence which could prove that pregnant women do not already know that the facilities are staffed by unlicensed medical professionals.

The services that provoked the creation of the notice requirement for unlicensed facilities can be practiced without having a medical license. Even if California had presented a non-hypothetical justification for the unlicensed notice, the Act unduly burdened protected speech. The requirement was deemed unduly burdensome for the reason that it required a twenty-nine word government issued statement on every print and digital advertising materials by an unlicensed facility. Each advertisement had to include the statement, "this facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services." This would make facilities give more attention to the message the government wants to show than the one the facilities are trying to convey. Therefore, the unlicensed notice was considered to violate the first amendment. California did not offer any justification for the required notice, it targeted speakers, not speech, and it imposed an unduly burdensome disclosure requirement that would chill protected speech (Nat'l Inst. of Family & Life Advocates v. Becerra).

3.5. Double Jeopardy

The Double Jeopardy Clause in the Fifth Amendment of our U.S. Constitution states, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval force, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, not be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (US CONST. amend V).

The Double Jeopardy Clause offers four different types of protections. First, it prohibits the government from prosecuting an individual a second time for the same offense after he or she has already been tried and acquitted. Second, it prevents the government from prosecuting an individual twice for the same offense after he or she has already been convicted. Third, it precludes the government from imposing multiple penalties on an individual for the same offense in succeeding proceedings. Lastly, in certain situations, it stops the government from prosecuting a person twice for the same offense after a judge has prematurely ended his or her trial, either by mistrial or by dismissing a charge before a verdict has been reached in a case (Rudstein, 2005). Nonetheless, the primary purpose behind this safeguard clause is to prevent an individual to be subject to embarrassment, expense, ordeal, and a continuing state of anxiety and insecurity a second time for the same offense (Double Jeopardy).

The Double Jeopardy Clause goes back in history, but its meaning and function has reformed throughout time. Although this clause's exact origin is unclear, it has been traced back to the common law of England and Roman law. The first recorded mention in English law for Double Jeopardy traces back to the beginning of the thirteenth century in England. While the Double Jeopardy doctrine continued to develop in England, it also began to take root in North America during the seventeenth century. In 1639, the very first "American Bill of Rights" were enacted through the Act for the Liberties of the People created by the Maryland General Assembly. This Act contained a clause that is very similar to the modern Double Jeopardy clause contained in our Constitution; however, it's existence changed throughout the decades. For example, after the Revolution, in 1777, the Articles of Confederation did not contain a Bill of Rights, nor did it express any protection against Double Jeopardy. Following this, State Constitutions began incorporating similar protections against Double Jeopardy (Rudstein, 2005), but it was not until 1789, that the Fifth Amendment officially created a protection against Double Jeopardy in our U.S. Constitution). (U.S. CONST. amend. V; Rudstein, 2005).

Today, the Double Jeopardy Clause applies to both the federal and state government. However, throughout most of its history, it only applied to the federal government (Double Jeopardy, 2019). In *Palko v. Connecticut*, 302 U.S. 319 (1937), Frank Palko was charged with first-degree murder, but he was instead, convicted of a second-degree murder and sentenced to life in prison. The State of Connecticut, however, appealed this decision, and won a new trial. The decision of the new trial found Palko guilty of first-degree murder, and he was sentenced to death. In *Palko,* the Supreme Court refused to view the protection against Double Jeopardy as a fundamental right applied to the States through the Fourteenth Amendment's Due Process clause; thus, they upheld Palko's second conviction, which caused his death through the electric chair (Palko v. Connecticut).

However, in *Benton v. Maryland*, 395 U.S. 784, 1969, the Supreme Court reversed their holding in *Palko* and held that the Double Jeopardy Clause of the Fifth Amendment applies to the States through the Due Process Clause of the Fourteenth Amendment. In *Benton*, the petitioner was charged with both burglary and larceny, but the jury only found him guilty for the burglary charge and was sentenced to 10 years in prison. Petitioner appealed the decision and won because the jury's selection was unconstitutional. The case was remanded, and the petitioner chose to face a new trial with a new grand jury. This new trial indicted him on both the larceny and burglary charges, and he was found guilty on both. Petitioner appealed and disputed that he had already been acquitted on the larceny charge; he argued that indicting him again for the larceny charge amounted to double jeopardy. The Court reasoned that every right established by the Bill of Rights is to be seen as a fundamental right, and it should apply with equal force to the States as it does to the Federal government (Benton v. Maryland).

Most recently, the Double Jeopardy Clause has been highly controversial regarding the "separate sovereigns" exception that applies to it. This separate sovereign exception was created over 60 years ago, and it allows for the double prosecution of an individual for the same crime under federal and state governments. The reasoning behind the separate sovereign exception is that the federal and state government are two different entities with different laws (Fifth Amendment, 2019).

In Gamble v. United States, 139 S.Ct. 1960, 2019, the Supreme Court upheld the dual-sovereignty doctrine and reasoned that the doctrine is not an exception, rather it is corollary to the text of the Fifth Amendment of the U.S. Constitution (Gamble v. United States). In *Gamble*, the petitioner was convicted of a second-degree felony robbery resulting in getting barred from possessing firearms under federal and state law. (Gamble v. United States; Shapiro, 2018). Seven years after getting convicted, the petitioner was pulled over for a tail light malfunction (Shapiro, 2018). The police officer smelled marijuana, and searched his vehicle. During the search the officer found a handgun and arrested him. Gamble was then prosecuted in both state and federal courts (Williams, 2018).

The Court explained that the Double Jeopardy Clause prohibits individuals from being prosecuted twice for the same offense and that offenses are determined by law; thus, laws are determined by each sovereign. Further, the Court reasoned that two different laws by each sovereign create two different offenses, so a double prosecution is allowed. The Court explained that a sovereign specific interpretation of the Double Jeopardy Clause honors the substantive differences between the interests that two separate sovereigns can have in punishing the same crime. The Court adhered to their interpretation that even though the Constitution rests on a principle where the American people are sovereign, it does not mean that the same applies to the government regulation because the Constitution *splits* into two different regulations.

Through the *Gamble* decision, the Supreme Court has addressed the dual-sovereignty doctrine which is still in practice today. Therefore, individuals who presently engage in an offense that imposes penalties or regulations that vary through federal and state law can be prosecuted twice. Thus, it does not matter that he or she has already been prosecuted through the State or Federal government because they are seen as two separate entities (Gamble v. United States).

3.6. Detention of Noncitizens With Criminal Records

In 1996, a mandatory detention law was created through the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The IIRIRA extended the definition of what is known as an aggravated felony and increased mandatory detention for individuals engaged in these type of crimes with limited opportunities for judicial review. Under this Act, noncitizens, such as asylum seekers and lawful permanent residents, are placed in mandatory detention and are put on expedited removal proceedings if convicted of an aggravated felony. An aggravated felony includes any violent crime, theft, burglary with a term of imprisonment for at least one year, and illegal trafficking of drugs, firearms, or destructive devices (IIRIRA, 1996).

(43) The term aggravated felony means:

(A) Murder, rape, or sexual abuse of a minor;

(B) Illicit trafficking in a controlled substance;

(C) Illicit trafficking in firearms or destructive devices;

(D) An offense described in section 1956 of title 18 [of the U.S. Code] (related to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property deprived from specific unlawful activity) if the amount of the funds exceeded $ 10,000.

(E) An offense described in

(i) Section 841(h) or (i) of Title 18, or section 944(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

(ii) Section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of Title 18 (relating to firearms offenses); or

(iii) Section 5861 of Title 26 (relating to firearms offenses);

(F) A crime of violence for which the term of imprisonment at least one year;

(G) A theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least one year;

(H) An offense described in section 875, 876, 877, or 1202 of Title 18 (relating to the demand for or receipt of ransom);

(I) An offense described in section 2251, 2251A or 2252 of Title 18 (relating to child pornography);

(J) An offense described in section 1962 of Title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

(K) An offense that-

(i) Related to the owning, controlling, managing, or supervising or a prostitution business;

(ii) Is described in section 2421, 2422, or 2423 of Title (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

(iii) Is described in any of section 1581-1585 04 1588-1591 of Title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

(L) An offense described in-

(i) Section 793 (relating to gathering or transmitting national defense information), 789 (relating to disclosure of classified information), 2153 (relating to sabotage), or 2381 or 2382 (relating to treason) of Title 18;

(ii) Section 3121 of Title 50 (relating to protecting the identity of undercover intelligence agents); or

(iii) Section 3121 of Title 50 (relating to protecting the identity of undercover agents);

(M) An offense that

(i) Involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) Is described in section 7201 of Title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

(N) An offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

(O) An offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) An offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

(Q) An offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) An offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) An offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) An offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) An attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other

provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996 (INA 101(a)(43) (2020)).

In *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018), the Supreme Court held that periodic bond hearings for detained foreign citizens are not available under Section 235 and Section 236 of the Immigration and Nationality Act (INA). In *Jennings*, Alejandro Rodriguez, was a noncitizen, specifically a lawful permanent resident, who was convicted in 2004 for possession of a controlled substance and joyriding a stolen vehicle. Rodriguez was detained under 8 U.S.C. § 1226(c) for over 3 years without a hearing to determine what action was going to be taken against him, and he was released after several appeals in federal court. (Jennings v. Rodriguez).

(c) DETENTION OF CRIMINAL ALIENS

(1) CUSTODY. The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence [1] to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(2) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien (8 U.S.C. § 1226(c).

Under 8 U.S.C. § 1226(c), the attorney general allows for the mandatory detention of undocumented individuals and noncitizens for the commission of aggravated felonies or crimes involving moral turpitude. This statute allows for the detention of noncitizens who are awaiting the determination of whether they'll remain in the U.S. or not; thus this statute has been subject to a lot of controversy (8 U.S.C. § 1226(c) (2018)). One of the main arguments towards this statute is the violation of individuals' substantive due process due to their detention without any determination of whether they pose a danger to society or if they are flight risk, which are the determining factors that grant or deny their deportation (Lutz, 2019).

In July 2004, Rodriguez was subject to deportation, and he appealed the decision to the Ninth Circuit Court. The Ninth Circuit granted Rodriguez's cancellation of removal, after they found that joyriding a stolen vehicle was not an aggravated felony which would require deportation. The Ninth Circuit also reasoned that 8 U.S.C. § 1226(c) imposed an implicit six-month time frame on detention without a bond hearing before it became unconstitutional. The Ninth Circuit therefore held that the detention statute granted individuals in detention a statutory right to a bond hearing.

However, the Supreme Court did not agree with the Ninth Circuit, and they reasoned that constitutional avoidance can only apply to ambiguous statutes that could have more than one interpretation. The Court held that 8 U.S.C. § 1226(c) did not have any other interpretation because it did not mention anything with regard to bond hearings. Therefore, the Supreme Court refused to uphold any periodic bond hearings for noncitizen individuals detained in immigration centers (Jennings v. Rodriguez).

Furthermore, after the *Jennings* decision, another major immigration case arose in the Supreme Court in 2019. In Nielsen v. Preap, 139 S.Ct. 954, 2019, the Court held that a noncitizen

who is not immediately placed into immigration custody after being released from criminal custody, does not automatically get exempt from mandatory detention under 8. U.S.C. § 1226(c). In *Nielsen*, three lawful permanent residents were detained and taken into immigration custody years after they had finished serving their criminal sentences for crimes that could put them through removal. The petitioners argued that they had not been detained when they got released from their criminal custodies, so they shouldn't be subject to mandatory detention under 8 U.S.C. § 1226(c). The lower courts sided with the plaintiffs, and held that immigration detention under 8 U.S.C. § 1226(c) must be immediately after a noncitizen's release from their criminal sentence. The Ninth Circuit further explained that the text from 8 U.S.C. § 1226(c) explicitly states that immigration detention should immediately follow after release from criminal custody, and they rejected arguments that allowed detentions after substantial delays.

Nonetheless, the Supreme Court declined petitioners' arguments, and they held that a noncitizen is not exempt from mandatory detention under 8 U.S.C. § 1226(c) when immigration officials fail to take him or her into immigration custody as soon as they get released from serving their criminal sentences. The Court's reasoning was that the grammar and textual meaning of statute 8 U.S.C. § 1226(c) fixes the scope and term of a noncitizen's offense even if they were not immediately taken into immigration custody after serving their criminal custody. Furthermore, the Court also reasoned that even if a noncitizen is not detained under 8 U.S.C. § 1226(c)(1), he or she may be put into mandatory detention under 8 U.S.C. § 1226(c)(2) (Nielsen v. Preap).

The *Jennings* and *Nielsen* decisions have provided guidance for our judicial systems to follow with regards to noncitizens and their rights to periodic bond hearings and mandatory immigration detention following a criminal sentence. Today, noncitizens in the U.S. can be detained in immigration detention without any periodic hearings granted to them by our government, and those who have served criminal sentences can face mandatory immigration detention even if they were not automatically detained after their criminal release (Jennings v. Rodriguez; Nielsen v. Preap).

3.7. Limiting Voting Rolls

Voting is an important principle and rightful privilege for U.S. citizens under the democratic system of the United States (Douglas, 2008). Surprisingly, even though our Constitution prohibits discrimination to vote based on race, color, previous condition of servitude, and sex, there is no amendment that touches base on an explicit constitutional right to vote. Nonetheless, it is still a valued principle that gives the American people a voice and choice under representative democracy (Right to Vote Amendment).

When the U.S. Constitution was first enacted, the right to vote was only exercised by white male citizens over the age of 21. After many years of fighting for equal justice, the right to vote has now expanded to all American citizens over the age of 18, regardless of race, religion, sex, disability, or sexual orientation. Additionally, every state in the U.S. controls their own registration process, and in most states, citizens need to register first before being able to vote (Our Government: Elections & Voting). One of the problems that arises with states having the power to enact their own registration process is their authority to purge voting rolls (Smith, 2020). States, for example Ohio, have purged their voting rolls by taking out or erasing voter registrations from individuals who have not exercised their right to vote for several past elections (Lopez, 2018).

In *Husted v. A. Philip Randolph Institute*, 138 S.Ct. 1833 (2018), petitioners challenged Ohio's voter rolls clearing process. This process removes voter rolls of individuals who have died or relocated, and those who have not voted for the past 2 years. The latter are sent a notice to confirm their registration, and if the state does not receive a response back and the individual does not vote for the next four years after notice has been sent, they are cleared out from the voting rolls (Husted v. A. Philip Randolph Institute). Plaintiffs contended the process by arguing that it violated the National Voter Registration Act of 1993, which prohibits maintenance through the removal of an individual from the official list of voters for failure to vote. Plaintiffs also argued that the Ohio process also violated the Help America Vote Act of 2002 (HAVA) (Husted v. A. Philip Randolph Institute; see also National Voter Registration Act, 1993).

The National Voter Registration Act of 1993 (NVRA) gives Americans the opportunity to vote through a user-friendly and easier registration process.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS. The Congress finds that:

(1) the right of citizens of the United States to vote is a fundamental right;

(2) it is the duty of the Federal, State, and 2 local governments to promote the exercise of that right; and

(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

(b) PURPOSES. The purposes of this Act are:

(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;

(2) to make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;

(3) to protect the integrity of the electoral process; and

(4) to ensure that accurate and current voter 20 registration rolls are maintained. (NVRA § 2(a)-(b)).

The Act was created to enhance and promote voting opportunities for citizens of the United States. Under NVRA § 8(b)(2), any state's program in charge of maintaining an accurate voter registration roll shall not remove the name of any individual from the official voter list by reason of the person's failure to vote (National Voter Registration Act, 1993).

However, in *Husted*, the Supreme Court reasoned that through the Act's plain text, it only forbids the removal of an individual for failure to vote if that's the sole reason for removal. The Court explained that Ohio's removal process does not violate the NRVA because failure to vote is not the sole reason for removal; instead, Ohio's process only triggers removal based on an individual's failure to vote.

Through this decision, the Court allows States to enact maintenance processes that allow for the removal of individuals who have not exercised their right to vote as long as failure to vote is not the sole basis for removal (Husted v. A. Philip Randolph Institute).

3.8. Gerrymandering

Gerrymandering, also known as redistricting, has been a highly controversial topic within the political system of the United States (Fazel, 2019). Gerrymandering is the practice of drawing boundaries of political or electoral districts in an effort to give one political party (OR RACE) an unfair advantage over its rivals (Gerrymander). Gerrymandering may also minimize the voting power of members of minority groups and may result in districts with bizarre or strange shapes (Ingraham, 2019).

The gerrymandering process is typically handled by the state legislatures, and the newly drawn maps are approved by each state's governor. Due to the state's legislatures and governors being in charge of redistricting, it typically results in biased district divisions (Prokop, 2018). The primary problem that arises with gerrymandering is that political parties utilize it as a weapon to favor themselves over the other party. (Tausanovitch, 2019). Using gerrymandering as a political weapon to favor one political party over the other effectively disenfranchises millions of American citizens from true population representation. As mentioned, gerrymandering has been highly critiqued in the political sphere, and there have been various challenged issues in the Supreme Court regarding the constitutionality and legality of this practice (Tausanovitch, Root, 2020).

First, in Gill v. Whitford, 138 S.Ct. 1916, 2018, the State of Wisconsin won a majority Republican state assembly, senate, and governor. The newly elected Republican government proceeded by developing a voting district map specifically designed to allow Republicans to maintain a majority despite any voting situation. The district map was introduced, passed, and signed by the governor into law. However, shortly before being signed, the new map plan was already facing a couple of legal challenges based on constitutional and statutory grounds; still, it was upheld by a federal court. The plaintiffs in Gill contended this plan as unconstitutional partisan gerrymandering against the Democratic party and voters in Wisconsin.

The Supreme Court vacated and remanded the judgment of the district court in this case on the basis of standing as per Article III of the U.S. Constitution. The Court held that plaintiffs in this case failed to demonstrate standing. The plaintiffs alleged harm based on partisan gerrymandering,

but they did not prove individual harm that would give them standing for a ruling on the plan (Gill v. Whitford).

Shortly after the Court's decision in Gill, the Court faced another issue regarding partisan gerrymandering. In Benisek v. Lamone, 138 S.Ct. 1942, 2018, Republican plaintiffs alleged that Maryland's Sixth Congressional District was gerrymandered on retaliation grounds against their political views. In 2017, before the 2018 election, plaintiffs sought a preliminary injunction in a District Court to prevent the congressional election to be held under the alleged gerrymandered district map. The District Court denied the motion and held plaintiffs failed to display a likelihood of success on the merits which was sufficient for a preliminary injunction, and that they did not have the power to award plaintiffs the remedy they sought with such time constraint. Lastly, the District Court reasoned that in order to make a diligent decision, it would be best to wait and rely on the outcome of the *Gill* case, which was facing the Supreme Court. The plaintiffs proceeded by petitioning the Supreme Court to vacate and remand the District Courts' order, as well as to review the District Court's decision for abuse of discretion.

The Supreme Court held that the District Court did not abuse its discretion by denying the motion for preliminary injunction. The Court explained that a party seeking a preliminary injunction must show a likelihood of success on the merits, irreparable harm in the absence of the preliminary injunction, that the balance of equities tips on petitioner's favor, and that it is the public's interest to get motion granted. Furthermore, the Court held that plaintiffs unreasonably delayed seeking the motion, and it was not in favor of public interest (Benisek v. Lamone).

Thirdly, in Virginia House of Delegates v. Bethine-Hill, 139 S.Ct. 1945, 2019, Virginia voters brought an action under the Equal Protection Clause of the Fourteenth Amendment alleging racial gerrymandering in 2014. In 2017, the Supreme Court heard the case and remanded it to the lower court since they applied the incorrect legal standard when they evaluated the racial gerrymandering claim. In 2018, the lower court determined that most of the gerrymandered districts were based on race against African Americans, so they struck them down as unconstitutional. The Virginia House of Delegates appealed the lower court's decision.

The Court held that the Virginia House of Delegates lacked standing to file its appeal. To bring an appeal in federal court, the complainant must have judicial standing, and they must show: 1) a concrete and particularized injury, 2) that is fairly traceable to the challenged conduct, and 3) likely to be redressed by a favorable decision. The Court held that the Virginia House of Delegates was not a primary party, and as an intervenor, they needed to independently show standing, which they did not. Lastly, the Court found that the Virginia House of Delegates did not have standing to represent the State's interests, nor did it have standing for their own right (Virginia House of Delegates v. Bethine-Hill).

Finally, in Rucho v. Common Cause, 139 S.Ct. 2484, 2019, a 2016 North Carolina congressional map was struck down by a District Court which found that the plaintiffs had standing, and the map was based on partisan gerrymandering. Following, the District Court enjoined North Carolina from utilizing the congressional map after November 18. This enjoinment led North Carolina Republicans to appeal the District Court's decision to the Supreme Court.

The Supreme Court found for the petitioners, and held that partisan gerrymandering claims are political questions that are beyond the reach of federal courts, such as the Supreme Court itself, therefore, the claims are not justiciable. According to the Court, a federal court's job is to resolve cases with judicial nature, not political issues. Because gerrymandering had existed prior to the creation of the Constitution, the Court reasoned that the Framers left the power of deciding partisan gerrymandering to the states' legislatures. Lastly, the Court explained that although they can decide on issues such as racial gerrymandering, they cannot decide on issues that lack any limited and precise standard, such as this one.

Overall, partisan gerrymandering is still a highly controversial political subject that has ultimately not been resolved through our judicial system. After several efforts to try and get a constitutional ruling on this subject, the Supreme Court has made it clear through *Rucho*, its most recent decision, that partisan political gerrymandering is a legislative issue that should be resolved through legislative reformation (Rucho v. Common Cause).

3.9. Affirmative Action Plans in University Admissions

College admissions criteria has been heavily debated, and each university applies a different method when deciding what applicants to admit. Affirmative action is the practice of including and

increasing the representation of different minorities based on gender, race, or nationality in an effort to increase diversity in the classroom and compensate for their history of exclusion and oppression in the areas of employment, education, or culture (Affirmative Action). This practice has been widely critiqued and has raised several controversies within the different races when it creates preferential selections in the areas it targets (Mansky, 2016; see also Affirmative Action, 2018).

The affirmative action policy was first brought up by President John F. Kennedy in 1961 through Executive Order No. 10925, where he mandated federal financed projects to take affirmative action to ensure that workplaces were free of racial bias or discrimination (Exec. Order No. 10925; Brunner, Rowen, 2020). However, it was not until 1965, that former President Lyndon B. Johnson issued Executive Order No. 11246, which enforced and required contractors to take affirmative action towards minorities in all aspects of the workplace including hiring and employment. The order instructed contractors to take and document the adequate measures to ensure equality in hiring; the order was amended in 1967 to include gender discrimination (Exec. Order No. 11246). Finally, the strongest forceful plan to promote fair hiring policies in construction jobs was the Philadelphia Order initiated by President Richard Nixon in 1969. The Philadelphia Order did not include quotas, but it forced federal contractors to demonstrate affirmative action to increase minority employment (Golland, 2014). After these orders, several cases based on affirmative action have been litigated in the Supreme Court of the United States throughout the decades, including Fisher v. University of Tex. at Austin, 136 S.Ct. 2198, 2016, which is the most recent in its category.

In *Fisher v. Univ. of Tex. at Austin*, a white female was denied to the University of Texas (hereinafter, UT) located in Austin, Texas. During her admission, UT was practicing Texas' Top Ten Percent Plan, which granted automatic admission to the top ten percent of every Texas high school's graduating class. Besides the Top Ten Percent program, UT's remaining seats where determined by different factors, primarily race. Fisher, the white female, made a claim under a District Court alleging that UT's consideration of race for the remaining part of admissions violated the Equal Protection Clause of the Fourteenth Amendment. The lower court held that UT's admission process was in fact constitutional. Plaintiff appealed the decision to the U.S. Court of Appeals for the Fifth Circuit, which sided with the lower court and held UT's consideration of race as constitutional. The Supreme Court held that the lower courts had applied the incorrect scrutiny standard to UT's admission process and remanded the case back. After applying the strict scrutiny standard, the lower courts once again determined that UT's admissions process was constitutional. The decision was once again appealed, and the Supreme Court granted its review for a second time.

The Supreme Court held that UT's consideration of race as one of its primary factors in its admissions process was constitutional and did not violate the Equal Protection Clause of the Fourteenth Amendment. The Court reviewed UT's admissions process policy under a strict scrutiny standard (Fisher v. University of Tex. at Austin). Strict scrutiny requires a policy to further a compelling governmental interest and is narrowly tailored to achieve that interest (Strict Scrutiny). The Court reasoned that educational diversity is a compelling interest as long as is not based on a quota nor a vague and unstructured idea. Furthermore, the Court held that UT expressed a focused and narrow goal of creating educational diversity, and provided a thorough explanation as to why this policy was the best possible way and why previous attempts had failed. Lastly, UT's consideration of race in its admission process is narrowly tailored to its compelling interest because there were no other viable ways of achieving their educational diversity goals (Fisher v. University of Tex. at Austin).

4. Results

The United States Constitution establishes the fundamental basis of law in the United States. This document keeps evolving and getting interpreted by the United States Supreme Court throughout the years. The results of these new interpretations are the developments of individual and fundamental rights afforded to American citizens. These protections have evolved as a result of societal shifts in U.S. societies in order to keep up with society. A strong sense of solidarity has emerged, as well as a commitment to human rights and civil liberties. These new rights should also be seen as a global success from a legal perspective, as they can aid prior work from other countries engaged in comparative studies of law between U.S. law and their respective countries' laws.

Finally, these freedoms can also be used to comprehend diplomatic agreements that the U.S has obtained before the rest of the world.

5. Conclusion

The legal structure of the United States of America, specially the United States' Constitution, encompasses so many innovations and evolutions, that it would be difficult to include them all in this post. Federal and state legislation, as well as Supreme Court rulings, determine the rights afforded to Americans. Further, the reason all of these different types of rights can coexist is because the U.S. government requires fundamental rights, created by the U.S. Constitution, to be secured on a federal basis while still allowing individual states to protect those rights that are important to them without intervention by the federal government. These fundamental rights are the descendants of the inherent and civil rights recognized by the United States, and they can be further split and defined into rights created out of need and rights created as a result of social shifts. Not only do most citizens believe that these constitutional protections are important, but they have already been defined by federal law and they must be recognized by every jurisdiction in the United States.

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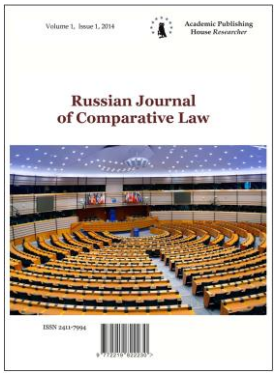

The Right to a Constitutional Complaint in Eastern Europe

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Abstract

The purpose of the article is to study the legislation on constitutional courts and constitutional complaints in Eastern Europe. The authors investigate the right of citizens to a constitutional complaint in Eastern Europe. The authors conclude that in four countries of Eastern Europe there is no right of citizens to have individual access to constitutional justice. The right of citizens to a constitutional complaint has not been established in Bulgaria, Belarus, Moldova and Romania. The authors analyze the models of constitutional complaints in the countries of Eastern Europe: Russia, Czech Republic, Slovakia, Hungary, Poland, Ukraine. In particular, the authors analyze the list of acts that can be appealed in the constitutional courts of these countries. The first group includes countries that establish the right of citizens to a full constitutional complaint, which includes the right to appeal an administrative act, a court decision and a normative act in a constitutional court (Czech Republic, Slovakia). The second group includes countries that establish the right of citizens to file a normative constitutional complaint, which includes the right to appeal to the constitutional court against any normative act applied in a specific case of the applicant (Poland). The third group includes countries that establish the right of citizens to file a normative constitutional complaint, which includes the right to appeal in a constitutional court against a certain list of normative acts applied in a specific case of the applicant (Russia, Hungary, Ukraine). The authors do believe that a full constitutional complaint could become a reality in Eastern European countries.

Keywords: Constitutional Courts in Eastern Europe, constitutional complaint, individual access to constitutional justice, subject of constitutional complaint, full constitutional complaint, normative constitutional complaint, comparative law.

1. Introduction

The right of citizens to a constitutional complaint is one of the most important rights in a democratic state. A complaint to the constitutional court is an opportunity for citizens to directly influence the legislation of their country. A constitutional complaint is an effective mechanism for protecting the constitutional rights of citizens in the field of law enforcement and in the field of legal regulation.

There are various classifications of constitutional complaints. So, for example, the European Commission for Democracy through Law – Venice Commission conducted a Study on individual access to constitutional justice (Venice Commission, 2010). This study identified the following types of individual complaints to national constitutional courts:

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1) Actio popularis, which means «anyone is entitled to take action against a norm after its enactment, even if there is no personal interest»;

2) Quasi actio popularis, which means an applicant has the right to file a complaint against the published normative act, but there is «necessity to prove a lawful interest»;

3) Normative constitutional complaint, where an applicant has the right to file a complaint against a normative act if the norm has been applied to the applicant in a specific case;

4) «Constitutional revision, where an individual is given a remedy against final decisions by ordinary courts, but not against individual administrative acts»;

5) Full constitutional complaint, where a person can appeal against any act of authority (normative act, judgment, administrative act) if this act violates fundamental rights of applicants;

6) Some other types of complaints, for example, a constitutional petition in Ukraine, where citizens have the right to apply for an interpretation of a normative act to the constitutional court. Thus, a constitutional petition can be considered as a type of normative constitutional complaint.

The Constitutional Court was created in Russia in 1991, the Federal Constitutional Act «On the Constitutional Court of the Russian Federation», 1994 enshrines the right of citizens to a constitutional complaint. A constitutional complaint in Russia is a normative constitutional complaint. Over the past 25 years, the right to a constitutional complaint has developed in Russia.

First, the list of subjects who have the right to submit a constitutional complaint has increased. The Constitutional Court substantiated the right of foreign citizens and stateless persons, as well as legal entities, to file a complaint with the Constitutional Court, thereby expanding the range of subjects for filing a constitutional complaint. For example, the Constitutional Court of Russia indicated that «the possibility of protecting rights and freedoms through constitutional justice should be provided to everyone, including foreign citizens and stateless persons, if their rights and freedoms guaranteed by the Constitution of the Russian Federation are violated by law». (Decision of Constitutional Court of Russia № 6-P, 1998).

The right to file a constitutional complaint by foreigners is still not enshrined in legislation, but exists only in the form of an obligatory legal position of the Constitutional Court. In Russia, in 2020, a reform of the legal regulation concerning the constitutional complaint took place. According to the amendments, the subjects of the constitutional complaint are «the citizens, legal persons and municipalities represented by municipal authorities», «as well as – in the interests of such natural and persons – the High Commissioner for Human Rights in the Russian Federation, ombudsmen for the constituent entities of the Russian Federation, other ombudspersons for particular spheres of rights or particular persons provided for by the federal laws, other authorities or officials in accordance with federal law, All-Russian organisations that in accordance with federal law can represent the interests of such citizens and legal persons». (Constitutional Court Act of Russia, 1994).

Second, the requirements for filing a constitutional complaint have become more complex. The initial version of the Constitutional Court Act of Russia enshrined the applicant's right to submit a constitutional complaint about the constitutionality of the law «that has been applied or could be applied in a particular case». Since 2010, the applicant has the right to submit a constitutional complaint against a law that has been applied and the case must be completed. In 2020, the conditions for filing a complaint were supplemented by the requirement to exhaust all other domestic remedies.

Thirdly, the list of normative acts, the constitutionality of which could be appealed to the Constitutional Court of Russia, has also undergone changes. In the initial version of the Federal Constitutional Act «On the Constitutional Court of the Russian Federation» only the law could be the subject of a complaint. From November 9, 2020, a list of normative acts was established. This list includes laws and regulations.

In connection with the reform of the constitutional complaint in Russia, it is of interest to study the constitutional complaints regulation in other countries.

Aim. Based on the classification of constitutional complaints developed by the Venice Commission, we aim to investigate the right to a constitutional complaint in Eastern European countries, as well as highlight the features of the legal regulation of constitutional complaints in Eastern European countries.

2. Materials and methods

2.1. The main sources for writing the article were the constitutions and the constitutional court acts of the Eastern Europe countries, the official websites of the constitutional courts of the Eastern Europe countries, materials of journal publications. The authors used the classification of countries in the UN regions. According to the UN classification Eastern Europe includes Belarus, Bulgaria, Hungary, Poland, Moldova, Russia, Romania, Slovakia, Ukraine, Czech Republic.

2.2. The study used the method of comparative jurisprudence. The method of comparative jurisprudence determines the difference in the models of constitutional complaints in the countries of Eastern Europe. The authors also used a pro-gonostatic method, making an assumption about the development of the right to direct access to constitutional justice in the Eastern Europe countries.

3. Results

Comparing the countries of Eastern Europe, we used the following criteria:

1. Constitutional control bodies;
2. The right to a constitutional complaint and types of constitutional complaints in Eastern European countries;
3. Features of the subject to appeal in the constitutional courts.

Constitutional control bodies in Eastern Europe. Bodies of constitutional control are created in all countries of Eastern Europe in the form of a constitutional court. Comparing the countries of Eastern Europe with all European countries, we can note that constitutional control is an institution that exists in all European countries, except for one - the Vatican. The analysis showed that in 30 European countries constitutional courts have been created, in two European countries (France and San Marino) constitutional councils have been created, in 11 European countries the constitutional review function is entrusted to the supreme courts or ordinary courts, depending on the model of centralized or decentralized constitutional control. The analysis is presented in form of Table 1 «Constitutional control bodies in Europe».

Table 1. Constitutional control bodies in Europe

Country	Constitutional Court	Constitutional Council	Supreme Court or ordinary courts as constitutional control bodies	No institution of constitutional control
Eastern Europe				
Belarus	V			
Bulgaria	V			
Hungary	V			
Poland	V			
Moldova	V			
Russia	V			
Romania	V			
Slovakia	V			
Ukraine	V			
Czech Republic	V			
Western Europe				
Austria	V			
Belgium	V			
Germany	V			
Luxembourg	V			
Liechtenstein	V			
France		V		

Monaco			V	
Switzerland			V	
Netherlands			V	
Northern Europe				
Latvia	V			
Lithuania	V			
Andorra	V			
Denmark			V	
Ireland			V	
Iceland			V	
Norway			V	
Estonia			V	
Great Britain			V	
Finland			V	
Sweden			V	
Southern Europe				
Albania	V			
Bosnia and Herzegovina	V			
Spain	V			
Italy	V			
Malta	V			
North Macedonia	V			
Serbia	V			
Slovenia	V			
Croatia	V			
Montenegro	V			
Portugal	V			
Greece	V			
San Marino		V		
Vatican				V

The presented analysis shows the countries of Eastern Europe in comparison with all European countries. In Europe, there are three models of constitutional control bodies: constitutional courts, constitutional councils, constitutional review through supreme courts or ordinary courts. All Eastern European countries have established constitutional courts.

The right to a constitutional complaint and types of constitutional complaints in Eastern European countries. The right to a constitutional complaint and direct individual access to constitutional justice is established in 6 out of 10 countries in Eastern Europe: in Hungary, Poland, Russia, Slovakia, Ukraine, Czech Republic. The legislation of Belarus, Bulgaria and Moldova does not enshrine the right of citizens to a constitutional complaint. (Constitutional Court Act of Belarus, 2014; Constitutional Court Act of Bulgaria 1991; Constitutional Court Act of Moldova, 1994). In Romania, despite the fact that there is no right to a constitutional complaint, there is a mechanism for the indirect access of citizens to constitutional justice: “exception of unconstitutionality”. The Romanian Constitution provides for such powers of the constitutional court as «to decide on objections as to the unconstitutionality of laws and ordinances, brought up before courts of law or commercial arbitration». (Constitution of Romania, amended in 2003). «The exception can be raised at the request of either party or ex officio, by the court of law or of commercial arbitration hearing the case. Likewise, the prosecutor is entitled to raise this exception before the court in cases where he attends trial proceedings» (Constitutional Court Act of Romania, 1992).

So, the right to a constitutional complaint is provided in 6 countries of Eastern Europe. The legal regulation of each country has common and different features. The types of constitutional complaints in Eastern European countries are presented in Table 2.

Table 2. The types of constitutional complaints in Eastern Europe

	Actio popularis	Quasi actio popularis	Normative constitutional complaint	Constitutional revision	Full constitutional complaint
Czech Republic	–	–	V	V	V
Slovakia	–	–	V	V	V
Hungary	–	V	V	V	–
Poland	–	–	V	–	–
Russia	–	–	V	–	–
Ukraine	–	–	V	–	–

The analysis showed that the countries of Eastern Europe have not established in their legislation the right of citizens to abstract control in the "Actio popularis" procedure. Hungary is the only country in Eastern Europe, which established the citizens' right to abstract review in the "Quasi actio popularis" procedure, where the applicant is obliged to prove that the published normative act affects his or her rights and his or her rights were violated by the published normative act. A court decision is not required if there is no judicial procedure for the protection of rights. (Constitutional Court Act of Hungary, 2011).

T. Dumbrovsky and L. Tichy describe the reasons why the power of the constitutional courts for abstract review is less common than the power of review related to a specific case: «Rulings of the Constitutional Court are, in general, better received when Constitutional Court's interference with the contested act or decision is only minimal and thus avoids judicial activism. This moderate approach is typical for Constitutional Court's adjudication on constitutional complaints in concrete review. Ruling on constitutionality of laws in abstract review is typically subject to sharp criticism. This is because, among others, the Constitutional Court deems not only the decision, but also its reasoning to be generally binding, that is, a source of law. Nevertheless, the approach of the Constitutional Court must be defended from the perspective of the protective function of the Constitution» (Dumbrovsky, Tichy, 2019).

Citizens in the following Eastern European countries can file a costitutional complaint related to a specific case: Hungary, Ukraine, Poland, Russia, Slvakia, Czech Republic. The right to a full constitutional complaint is established in the Czech Republic and Slovakia (Constitution of the Czech Republic, 1993; Constitution of the Republic of Slovakia, 1992). The full constitutional complaint provides the possibility to appeal against an individual act of the authorities, against a judgment, against a normative act. Researchers note some problems that arise from establishing a full constitutional complaint in Czech Republic: «With respect to the judiciary, the Constitutional Court may review decisions of ordinary courts. This review is restricted solely to the constitutionality of such decisions, that is, to their compliance with constitutionally-guaranteed fair trial rights. Most constitutional complains target decisions of general courts in civil, administrative, and criminal matters, which causes a significant overload of the Constitutional Court. The Court has repeatedly emphasized its determination to minimise its interference with adjudicative practice of general courts» (Dumbrovsky, Tichy, 2019).

Hungary has established the right of citizens to constitutional review and normative constitutional complaint. And finally, in Russia, Poland and Ukraine, citizens are granted the right to a normative constitutional complaint. Thus, we can state that the most common model of constitutional complaint in Eastern European countries is a normative constitutional complaint.

Features of the subject to appeal in the constitutional courts in Eastern European countries.

Constitutional complaints in Eastern European countries differ in the subject to appeal.

Russia. Applicants in Russia can petition the following regulations to be unconstitutional:

A) Federal constitutional acts;

B) Federal acts;

C) Normative acts of the State Duma;

D) Normative acts of the Federation Council;
E) Decrees of the President;
E) Government decrees;
G) Constitutions and charters of the constituent entities of the Russian Federation;
I) Acts of the constituent entities of the Russian Federation;
K) Other normative acts of the constituent entities of the Russian Federation. (Constitutional Court Act of Russia, 1994).

In Russia, the list of regulations that may be the subject of a constitutional complaint is strictly established. This list does not include normative acts of the Ministries, as well as normative acts of local self-government bodies. A normative constitutional complaint is established in Russia. An individual act cannot be the subject of a constitutional complaint in Russia, but only a normative act. However, in Russia there is a tendency towards full constitutional complaint. «The Constitutional Court of the Russian Federation shall pass the decision on the case assessing both the literal meaning of the act under consideration and the meaning attributed to it by an official and other interpretations or the prevailing law-applying practices» (art. 74 of Constitutional Court act of Russia, 1994). This formulation is similar to the right to constitutional appeal against a court decision, which, for example, is enshrined in Hungary.

Poland. In accordance with the Constitution of the Republic of Poland «everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution» (Constitution of the Republic of Poland, 1991, art. 79). «A constitutional complaint shall be considered by the Tribunal in accordance with the rules and procedures for the consideration of applications concerning the conformity of statutes to the Constitution as well as the conformity of other normative acts to the Constitution or statutes» (Constitutional Tribunal Act of Poland, 2016). As we can see, the subject of a constitutional complaint in Poland are a) statutes, b) other normative acts. Subject of a constitutional complaint in Poland includes all legal acts, with no exceptions.

Hungary. According to the Constitutional Court act of Hungary, 2011: «Person or organisation affected by a concrete case may submit a constitutional complaint to the Constitutional Court if, due to the application of a legal regulation contrary to the FundamentalLaw in their judicial proceedings their rights enshrined in the Fundamental Law were violated» (Constitutional Court Act of Hungary, 2011, section 26). A regulation of any legal force can be appealed for unconstitutionality in Hungary. However, the Hungarian Constitution limits the powers of the constitutional court to review fiscal laws. «Insofar as the level of the government debt exceeds half of the gross domestic product, the Constitutional Court shall - within its competence under Points b)-e) of Paragraph (2) of Article 24 - have powers to review laws on the central budget, the implementation of the central budget, central tax revenues, duties and contributions, customs duties, and on the central government conditions for local taxes for conformity with the Fundamental Law solely as pertaining to inherent rights to life and human dignity, the right to protection of personal data, the right to freedom of thought, freedom of conscience and freedom of religion, or the rights in connection with Hungarian citizenship, and may annul such laws only in the case of any infringement of these rights. The Constitutional Court shall have powers to annul the aforementioned laws unconditionally, if the formalities and procedures laid down by the Fundamental Law concerning the adoption and publication of those laws are not satisfied» (Fundamental Act of Hungary, 2011, art. 37).

Péter Krasztev and Jon Van Til conclude: «The Fidesz government restricted the Constitutional Court's jurisdiction. In order to plug gaping budget holes, the Fidesz government established a 98 percent retroactive tax on the customary departing bonuses of those who had left public employment in the preceding five years. The Constitutional Court, before it could be packed with a working majority of new judges, struck down this tax as unconstitutional. Parliament responded by amending the constitution to take away the court's power over fiscal matters» (Krasztev, Van Til, 2015).

Ukraine. The Constitutional Court act of Ukraine establishes the following: «The powers of the Court shall include deciding on conformity to the Constitution of Ukraine (constitutionality) of laws of Ukraine (specific provisions thereof), upon a constitutional complaint of an individual who

considers that the law of Ukraine applied in the final court judgment in his or her case contradicts the Constitution of Ukraine» (Constitutional Court Act of Ukraine, 2017). Thus, we can conclude that only laws are the subject of a complaint to the Constitutional Court of Ukraine. The Constitutional Court Act of Ukraine did not establish the right of citizens to file a constitutional complaint against regulation other than the law.

Czech Republic. A full constitutional complaint is established in the Czech Republic, which implies the possibility of submitting a complaint against any act of the state to the constitutional court. At the same time, there are no restrictions on appealing the constitutionality of any types of normative ats. «A constitutional complaint may also propose annulment of a provision of a legal regulation, but, under § 74 of the Act on the Constitutional Court, only if application of that provision led to a circumstance that is the subject matter of the constitutional complaint, and only if the complainant claims that the legal regulation or the provision is inconsistent with a constitutional act (or another law, in the case of a sub-statutory legal regulation) (Guide on proceedings on constitutional complaints, 2021).

Thus, in the Czech Republic, the subject of a constitutional complaint regarding normative acts is not limited, if the applicant proves that they violate not only the applicant's rights, but also the constitution (Constitutional Court Act of Czech Republic, 1993).

Slovak Republic. Slovakia has established the right to a full constitutional complaint. In accordance with the first paragraph of Article 24 of the Constitutional Court Act, anyone who demonstrates legal interest may lodge a petition to initiate the procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority. In accordance with the second paragraph of the same article, legal interest is deemed to be demonstrated if a regulation or general act issued for the exercise of public authority whose review has been requested by the petitioner* directly interferes with his rights, legal interests, or legal position (Constitutional Court Act of the Slovak Republic, 2018). Thus, legislation of Slovak Republic does not limit the range of normative acts that can be appealed in the constitutional court.

Thus, the 6 countries of Eastern Europe provide citizens with the opportunity to petition for the unconstitutionality of the normative act. The difference lies in the scope of the subject matter of the constitutional complaint.

Table 3. Countries that provide citizens with the opportunity to petition for the unconstitutionality of the normative act

Country	All regulations	Acts and regulations, but there are exceptions	Acts only
Czech Republic	V		
Slovakia	V		
Poland	V		
Hungary		V (Limiting the powers of the constitutional court in relation to fiscal acts)	
Russia		V (The Constitutional Court does not decide on acts of ministries and local self-government bodies)	
Ukraine			V

All normative acts can be the subject of a constitutional complaint in countries where the right to a full constitutional complaint has been established: Slovenia and the Czech Republic,

as well as in Poland, where the right to a normative constitutional complaint has been established. In Russia, Hungary and Ukraine, the right of citizens to a normative constitutional complaint is established, but the subject of this complaint is limited. In Russia there is a list of regulations that can be the subject of a complaint, in Ukraine only acts can be the subject of a complaint. In Hungary, the constitutional court is limited to appeal against fiscal acts.

4. Results

Thus, our analysis showed differences in the countries of Eastern Europe in the right to a constitutional complaint, as well as in the subject to appeal.

The first group includes countries that establish the right of citizens to a full constitutional complaint, which includes the right to appeal an administrative act, a court decision and a normative act in a constitutional court (Czech Republic, Slovakia).

The second group includes countries that establish the right of citizens to file a normative constitutional complaint, which includes the right to appeal to the constitutional court against any normative act applied in a specific case of the applicant (Poland).

The third group includes countries that establish the right of citizens to file a normative constitutional complaint, which includes the right to appeal in a constitutional court against a certain list of normative acts applied in a specific case.

The fourth group includes countries that do not provide for the right of citizens to a constitutional complaint (Belarus, Bulgaria, Moldova, Romania).

5. Conclusion

On the one hand, there is a worldwide pattern of expanding human rights. Based on this, we can assume that a full constitutional complaint can become a reality in more and more countries in Europe. On the other hand, the establishment of the right of citizens to a full constitutional complaint entails the workload of the constitutional courts, and can reduce the effectiveness of constitutional justice. It is premature to state that there is a tendency to establish a model of full constitutional complaint in all Eastern European countries. However, governments may consider the possibility of expanding the rights of citizens in the framework of constitutional proceedings, using the experience of other countries. We believe that the right to a full constitutional complaint may nevertheless become a common model in European countries.

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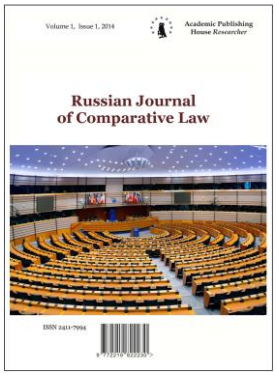

The Role of the Committee of the Regions in the European Union

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Abstract

In this paper authors analyze the organizational structure, competence and role of the Committee of the Regions (hereinafter – CoR) in the functioning of the European Union and its Member States, the interaction of the Committee with the institutions of the European Union. The article justifies the importance of the principle of subsidiarity in the activities of the European Union and the formation and further development of the institution of the Committee of Regions. A number of rules of primary law of the EU, establishing a framework for the Committee of Regions, as well as to study the internal rules governing its activities is given. It considers a number of examples from actual practice of the various committees of the Committee and its structures. Local and regional authorities, represented in the EU by the European Committee of the Regions, have always been the backbone of democracy. Local and regional leaders as the driving force of local communities. This entails showcasing and strengthening the role of local and regional authorities in the EU.

Keywords: the European Union, Committee of the Regions, the legislative process of the EU.

1. Introduction

The Committee of the Regions (CoR) appeared in the structure of the European Union according the Maastricht Treaty in 1992 (Christiansen, Lintner, 2005: 7-13; Hönnige, Panke, 2013: 452-471; Wagstaff, 1999). As a result of the development of the principle of subsidiarity within the EU, laid down in Article 5(3) of the Treaty on European Union (hereinafter TEU), the CoR has become an objective need to improve the representation of regional interests at the EU level. Under the principle, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality (Protocol № 2). National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol (Fabbrini, Granat, 2013: 115-143; Craig, 2012: 72-87). Moreover, the Committee has its own practical guide on the infringement of the subsidiarity principle (Practical guide).

This principle set the vector for the realization of good governance in the areas of EU competence (Cygan, 2013: 161-188), such as support for regional policy in the sphere of industry, tourism, education and science. The Committee's role was to promote the local and regional

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interests with respect to the EU law. CoR does this by submitting reports (opinions, reports, resolutions) in response to a proposal of the European Commission (CoR at a glance).

2. Material and methods

When writing this article, the author used EU documents, national legislation of the EU member states, jurisprudence, as well as scientific articles by foreign authors.

On the basis of the historical-chronological method, the author examined the functioning of the Committee of the Regions. The comparative legal method made it possible to study the dynamics of the development of the Committee. The dialectical method was used to characterize the work of the Committee as a whole and its structural divisions as its parts.

3. Discussion

3.1. The formation and functioning of the Committee

At the present time the activities of the CoR are regulated by the Treaty on the Functioning of the European Union (Consolidated versions) (hereinafter TFEU). According to Article 300(1) TFEU, the Committee shall assist the European Parliament, the Council and the Commission, exercising advisory functions. Before making decisions, these authorities should consult with the Committee on issues related to local and regional authorities in the EU (in the framework of employment policy, the environment or public health issues, and others.).

In accordance with the provisions of Section 2 of Chapter 3 TFEU, the Council unanimously on a proposal from the Commission establishes a Committee (Committee members and their alternates). In accordance with Article 305 TFEU number of members should not exceed 350 (and their 350 deputies). However, these figures were increased in connection with the accession of Croatia to the European Union. Currently, the Committee has 353 members (and the same number of alternates) from all 28 EU Member States (Key facts...).

Members of the CoR and their deputies are appointed for a term of five years by the EU Council on the proposal of their States. While each State chooses its own candidates a whole composition should reflect the national political, geographical and regional / local balance. Members are elected from the leaders and key figures of the local or regional authorities in their home region of the Member State.

For instance, Germany is represented in the CoR by 24 delegates and 24 deputies (National Delegation of Germany). Their election is particularly arising from the federal structure of Germany. The delegation of Germany consists of: a) 21 members and 21 deputy representing the 16 federal states and the German Parliament; five seats are in the rotation system on the basis of population; b) three members and their alternates representing the three local government organizations: the German Association of Cities (Deutscher Städtetag), German Association of Land (Deutscher Landkreistag) and the German Association of Towns and Municipalities (Deutscher Städte- und Gemeindebund). The federal government sends to the EU Council the names of the delegates on the proposal of the above land authorities and government organizations.

The Finnish delegation is composed of nine members and nine alternates. The members represent municipalities, towns and regional councils. The Ministry of Employment and the Economy asks the Association of Finnish Local and Regional Authorities to nominate persons to be elected to the CoR. Following their Autonomy Act the Åland Islands (Act 1991/1144) nominate one member and one alternate. The political distribution of the delegation seats is determined according to the outcome of the previous local election. In the election of members the geographical balance and the balance between local authority members and regional council members shall be observed. The representation between men and women shall be equal in the delegation.

The members are appointed for five years at a time by the Council of the European Union on the proposal by the Finnish Government. The CoR was the first of the EU bodies to produce documents addressing the Northern Dimension. The Finnish delegation finds it necessary that there will be additional focus on the Northern Dimension. The Northern Dimension is linked to cooperation between states in the Baltic Sea region and EU policy towards Russia, the development of which is both timely and necessary. Moreover, the delegation emphasizes the importance of the Baltic Sea strategy, employment policy, enlargement issues, the European digital strategy, information society and sustainable development, among others (National Delegation of Finland).

The CoR elects the chairman and officers from among its members for a term of two and a half years (Art. 306 TFEU). The Committee also adopts its Rules of Procedure (Rules of Procedure).

On the basis of Article 304 TFEU the Committee of the Regions shall be informed by the European Parliament, the Council or the Commission of the request for an opinion. Where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter. The Committee may make an opinion on its own initiative when it considers useful, according to the Article 41(b) Rules of Procedure of the CoR. For example, the CoR made on its own initiative opinion EDUC-V-040 «Measures to support the creation of high-tech start-up ecosystems» (Measures to support...). The opinion of the Committee, together with a record of the proceedings, shall be forwarded to the European Parliament, to the Council and to the Commission.

Thus, the Treaty of Lisbon has radically changed the relationship of the CoR with key EU institutions. The Committee has gained more influence at all stages of the creation of the EU law (Boronska-Hryniewiecka, 2013a; Domorenok, 2009: 143-163).

A novelty in the work of the CoR is an «early warning procedure» provided by TFEU (Kiiver, 2012: 18-34; Kiiver, 2012: 98-108). The European Parliament may reject a legislative proposal by a simple majority votes of MEPs, if a majority of national parliaments express objections to the subsidiarity (De León, 2012: 305-321). Thus, the CoR, pointing to the «doubts» of national parliaments, indicates that they will be forwarded to the European Parliament. This fact testifies to strengthening the political ties of the CoR and the European Parliament (Boronska-Hryniewiecka, 2013a). The Council of the EU has a similar competence.

The Committee's ability to monitor the the implementation of the EU law by regional and local authorities of EU member states is also important, as they implement around 70 % of all EU law (Biriukov, 2020).

The Lisbon Treaty extended the competence of the CoR (A new treaty), including to the list of policy areas civil protection and climate change for which the EU institutions are obliged to consult with it. So, the Committee adopted: Opinion of the Committee of the Regions ENVE-V-042 «Affordable Energy for All» (Affordable Energy for All).

The Committee convenes by the Chairman at the request of the European Parliament, the Council or the Commission. According to Article 307 TFEU, the EU institutions shall consult with the Committee where the Treaties so provide and in all other cases (The Quality Framework for Traineeships), in particular those which concern cross-border cooperation, in which one of these institutions considers it appropriate (Mobility...).

3.2. Internal structure of the CoR

The structure of the CoR consists of the President, First Vice-President, the Bureau, the Plenary Assembly, the CoR commissions, the Secretary-General, the Secretariat-General (Organization Chart, 2021).

President of the CoR is elected at a plenary session for a term of two and a half years and directs the work of the Committee, led by its plenary meetings and is an official representative of the CoR. First Vice-President is also elected by the plenary and represents the President in his absence.

The Bureau is the executive body of the CoR. It includes: the President, First Vice-President, 28 Vice-Presidents (one for each EU member state), the presidents of the political groups of the CoR and other members of national delegations (The Bureau...). This allows the Bureau to reflect national and political interests. The Bureau generally meets seven/eight times a year, presents the program of the policy and requests the implementation of its decisions.

Committee of the Regions conducts five or six plenary meetings a year to determine the general policy and adopt opinions, reports and resolutions.

For example, in the framework of the 108th session, the Committee adopted a number of important documents. In particular, Opinion of the Committee of the Regions «A policy framework for climate and energy in the period from 2020 to 2030» was expressed (A policy framework).

There are eight CoR commissions to prepare the opinions to be debated in plenary which consider the various policy areas (territorial cohesion (COTER); Economic and Social Policy (ECOS) and others). The Commissions are actively functioning, in particular, they adopt «opinions». For example, the Commission for Citizenship, Governance, Institutional and External Affairs (CIVEX) expressed Draft opinion of the Committee of the Regions «Reconnecting Europe with its citizens – more and better communication at local level» (Reconnecting Europe). The Commission's «opinions» shall reflect such important principles of regional policy of the EU as

the principles of multi-level governance in the EU and the close relationship of the individual citizen to EU institutions (proximity), greater democratization and transparency of the dialogue beetween citizens and the Union at all levels of the political mechanism.

The Secretary-General of the CoR shall be appointed for five years by the Bureau. He is responsible for implementing Bureau decisions and the smooth operation of the administration. It is composed of seven departments: Administration and Finance; custom services and the Registry; advisory work; PR, media and events; horizontal policies and networks (Secretary General).

After the entry into force of the Lisbon Treaty the role of the Committee was sufficiently increased. The Treaty of Lisbon confirmed for the first time the right of the CoR for the first time to appeal to the European Court of Justice to protect its prerogatives and the principle of subsidiarity.

In general, the CoR has two grounds of appeal to the Court of Justice:

1) when the EU legislation violates the principle of subsidiarity and, in particular, violates certain regional or local authority (Horsley, 2012: 267-282);

2) if, during the legislative procedure, the EU institutions have not consulted with the CoR, thereby detracting its institutional rights. However, it has not yet been initiated any such procedure, and the technical and legal framework in this matter is still in the process of development (Boronska-Hryniewiecka, 2013b: 14). However, this power strengthened the political role of the CoR, allowing it to operate more efficiently at EU level to promote its interests.

Under the Lisbon Treaty the European Commission is obliged to consult with local and regional authorities and their associations of the EU before the legislative stage. Committee as the «voice» of local and regional authorities should take an active part in this dialogue. For example, it is important to notice Opinion of the Committee of the Regions «A European Platform against Undeclared Work», in which the Committee «welcomed the Commission's proposal on the European Platform against informal labor» (A European Platform against Undeclared Work). Section 3 of the Opinion contains a number of important amendments to the Commission's Proposal for a Decision of the European parliament and of the Council «On establishing a European Platform to enhance cooperation in the prevention and deterrence of undeclared work» (Proposal for a Decision).

3.3. The impact of the CoR on EU regional policy

Committee has a major impact on all European Union policy in general. The Committee's annual «impact reports» are quite interesting which analyze the impact of its opinions in the key areas of political activity (CoR Impact Report 2020). Thus, in the opinion on the Green Paper Long-Term Financing of the European Economy (Green Paper), the Committee expressed its concern over the fact that certain local and regional circumstances prevent the provision of long-term financing and implementation of legal measures aimed at it.

The Committee of the Regions in its activities is closely associated with all the EU institutions. Committee's actions, in turn, are reflected in some documents and provisions of the European Parliament and the European Commission. The main EU institutions refer to the Committee's activities with due attention, cooperate with it and take into account its recommendations on current issues of economic and other policies. However, this is the bilateral cooperation, the dialogue between them, which is reflected in the recommendations of the EU institutions addressed to the Committee. This kind of a cooperation increases the overall coordination of the joint work and its effectiveness in the long run.

However, the main actor in the field of regional policy in the institutional structure of the Committee's is the Commission on economic and social policy (ECON). It's interesting to view its Opinion «On the Long-Term Financing of the European Economy» (Opinion Long-Term Financing), based on the consultation procedure, in accordance with Article 41(a) of the Rules of Procedure of the CoR and Article 307(4) TFEU. This Opinion is a particular example of a legal instrument aimed at developing a regional economic policy of the EU. It was expressed by the ECON on the Communication from the Commission to the European Parliament and the Council «On Long-term Financing of the European Economy» (Communication from the Commission...). The Commission, in turn, intends to carry out initiatives and calls on it to support their EU member states and institutions of the Union. The Committee expressed its general policy recommendations of the communiqué and confirmed its support to the proposal on the structural reform of the European banking sector (Opinion Structural reforms).

3.4. The Committee's right to appeal to the European Court of Justice

The agreement gives the Committee the right to challenge EU documents before the Court, if there is reason to believe that in the process of creating them were not taken into account regional or local aspects, and if the EU institutions have violated the rights of the Committee for consultation. The presence of such a guarantee contributes to the implementation of the Committee's powers to protect regional interests and compliance with the subsidiarity principle in EU decision-making, as well as the effective implementation of its consultation rights. The right to appeal to the Court of Justice will ensure that the EU institutions will consult with the Committee again when the Commission, the European Parliament or the Council substantially change the contents of the bill. On behalf of the Committee, the application to the Court is served by the President.

There are two main cases, when the Committee can initiate a case in the Court of the EU: a) where the EU law was adopted in violation of the principle of subsidiarity; b) if, during the legislative procedure of the EU institutions have bypassed the Committee and neglected its consultative right.

Thus, the Committee of the Regions carries out its work on the basis of three principles: multi-level governance; proximity; subsidiarity.

Fields of competence of the Committee of Regions reflect a key policies of the Committee, which, in turn, aims to promote the priorities of the European Union in the regions. In preparing the Committee's opinion on the bill of the Commission it is performing most of the work: receiving a request from the EU institutions, the President of the Committee determines the relevant committee, which shall be assigned to prepare a report. This report will be subsequently discussed at the plenary session of the Committee. It lays down, in fact, on the basis of the received opinion.

4. Results

The European Committee of the Regions (CoR) holds a European Summit of Regions and Cities. These summits bring elected representatives from regional and local authorities together to discuss the main challenges facing the European Union. The national delegations to the CoR have good working relations with their respective national permanent representations to the EU. Contacts with national permanent representations could be used as a platform for developing cooperation between the European Union and the CoR. Such cooperation would serve as an important channel for promoting the interests of local and regional authorities at EU level. The promotion of cooperation between the member state currently holding the EU Presidency and the CoR is particularly important. All European decisions should be taken in light of commitment to tackle the major societal transformations facing villages, cities and regions of the EU. These include global pandemics, the green and digital transitions, demographic challenges and migratory flows.

5. Conclusion

Thus, the Committee of the Regions is an EU consultative body representing local and regional authorities in the European Union. Today the organizational structures of the CoR have an extensive legal practice in different areas of the regional policy, reflecting the actual implementation of the principle of subsidiarity. The Committee has a significant influence on the development of European law in the area of economic policy, using specific procedures for cooperation with the EU institutions. It is in practice protects the interests of the regional economic sector, expresses the needs of small and medium-sized businesses for its security and sustainable growth.

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