

Central Europe in search of (lost) identity. Literary and legal findings

I. Introduction: defining Central Europe

When I think about Central Europe, a title of one of Norman Davis's books comes to my mind – *God's Playground*. While the work in question focuses on Poland, its witty title could be applied to the whole region. Over centuries, Central Europe was literally a playground, with constantly shifting borders – and the people and their identities either followed, or stayed and gradually merged with the new society, often losing their original identity.

Convoluting history is only one of the traits distinguishing Central Europe. Looking into the past, one may also distinguish three others¹: mixed populations – in pre-war Poland, for example, Poles constituted only 69% of population², living along with Germans, Ukrainians, Jews, Belarussians, Russians, Tatars, Armenians, Lemkos, and others; being the periphery of the empire³, either Habsburg, Russian, or German (all three in the case of Poland) for an extended period; and the perpetual 'catch-up' with modernity, often played for its own sake, at the expense of the Central and Eastern Europeans themselves, be that after WWI, or 1989.

¹ J. Mikanowski, 'Goodbye, Eastern Europe!' [2017] *L.A. Review of Books* <lareviewofbooks.org/article/goodbye-eastern-europe/> accessed 8 January 2018.

² GUS, 'Ludność. Stan i struktura demograficzno-społeczna' <stat.gov.pl/cps/rde/xbcr/gus/LUD_ludnosc_stan_str_dem_spo_NSP2011.pdf>, accessed 14 March 2016.

³ R. Mańko, M. Škop, M. Štěpáníková [2016] *Wroclaw Review of Law, Administration & Economics* vol. 6, no. 2 4–28, 10.

However, one may be inclined to ask a general question: Why Central and not simply Eastern Europe? There are two main reasons for that. The first is, quite obviously, geographical – not only is Prague west of Vienna, but also all but one location of the disputed geographical ‘centre of Europe’, are located east of the Elbe⁴.

Secondly, and perhaps more importantly, both before, and especially after the times of Communism (or rather AES, Actually Existing Socialism)⁵, the region positioned itself ‘*vis-à-vis*’ the East and the West⁶. To quote Jacob Mikanowski, „Central Europe is a claim to belonging. Eastern Europe is an act of exclusion”⁷. As Bohumil Hrabal put it, while Central Europe is not a part of the West, it is place where Western influences finish: „Eastern Europe doesn’t start outside the gates of Prague, it starts at the last Empire-style railroad station somewhere in Galicia, at the outer limits of the Greek tympanum”⁸.

Central Europe thus is a unique region, neither part of the West, nor part of the East, an entity in-between, stretching from Lithuania, Latvia, and Estonia on the North, to Poland and Czechia in the West, Romania and Bulgaria in the East, and parts (or all, or none, depending on the researcher) of the Western Balkans in the South⁹. Does this region, delimited by history of shared experiences, have a common identity, both a social and a legal one? I will venture to find the answer to this question in this paper.

⁴ *Interia* <turystyka.interia.pl/ciekawostki/news/gdzie-lezy-srodek-euroopy,1840837,238> accessed 25 July 2018.

⁵ R. Mańko et al., *op. cit.*, 12.

⁶ R. Mańko et al., *op. cit.*, 11.

⁷ J. Mikanowski, *op. cit.*

⁸ B. Hrabal, ‘Too Loud a Solitude’ (Harcourt, New York 1990, *Kindle Edition*) Chapter Three.

⁹ R. Mańko et al., *op. cit.*, 6.

II. Part one: In the search of lost identity – theory and literature

I would like to start with a theoretical question. What exactly is identity, „people’s source of meaning and experience?”¹⁰ When I am asked to define identity, out of its numerous definitions and concepts, I choose Zygmunt Bauman’s understanding of this idea – the Polish sociologist remarked that „‘identity’ is a name given to the escape sought from [...] uncertainty. Hence ‘identity’ though ostensibly a noun, behaves like a verb, albeit a strange one to be sure: it appears only in the future tense. [...] To say ‘postulated identity’ is to say one word too many, as neither there is nor can there be any other identity but a postulated one. Identity is a critical projection of what is demanded and/or sought upon what is; or, more exactly still, an oblique assertion of the inadequacy or incompleteness of the latter”¹¹.

To understand the peculiarity of the Central Europe, however, one more definition is needed – that of national identity. National identity is a „feeling of belonging to a nation – that is, identification with one’s own nation on the basis of deep-rooted criteria: shared values, symbols and representations”¹², a „dynamic system of elements that may be both compatible and contradictory[; that] may change in the historical context of the existence of a nation and in the context of the life of an individual”¹³.

When all of the experiences and histories are taken into account, could one thus say that the Central European countries have a shared, regional identity? Do the Central European coun-

¹⁰ M. Castells, *The Power of Identity, vol. II of The Information Age: Economy, Society and Culture* (Blackwell, Oxford 1997), 6.

¹¹ Z. Bauman, *Zygmunt Bauman, From Pilgrim to Tourist – or a Short History of Identity in Stuart Hall and Paul du Gay (eds), Questions of Cultural Identity* (Sage, London 1996), 18–36, 19.

¹² M. Zemko, ‘History – A Fundamental Pillar of National Identity’ in Hannes Swoboda and Jan Marinus Wiersma (eds) *Politics of the Past: The Use and Abuse of History* (Renner Institut, Vienna 2009), 171–179, 172

¹³ *Ibidem*, 173.

tries share more than a common geographical location and similar pasts, similar languages, ethnicity, and religion?

I would like to answer this question by turning to literature – because, as it has been noted, literature is „the best way to enter” Central Europe, as the region „doesn’t just hide at the end of rural lanes like Faulkner’s Yoknapatawpha County. It appears and disappears like Doctor Who’s telephone booth”¹⁴ and only literature allows us to find our way through the „too many countries, too many peoples, too many contradictory narratives and multisyllabic, polymorphously accented names”¹⁵.

From the wide array of authors and works about Central Europe, I have chosen four authors I feel managed to capture the complexities of Central European identity the best: Milan Kundera (a Czech), György Konrád (a Hungarian), Czesław Miłosz (a Pole), and Timothy Garton Ash (an Englishman married to a Pole). I would like to analyse their essays on the region chronologically, in the order of writing.

In 1983, Central Europe has been crushed once again, this time by the introduction of the martial state in Poland two years earlier, which ended ‘the joyful carnival of Solidarity’. The world’s attention, however, remained focused on the region – which is why Milan Kundera decided the time has come to remind the West that Central Europe is not an integral part of the East.

Kundera’s 1983 essay ‘A Kidnapped West or Culture Bows Out’¹⁶ begins with a dramatic story of the head of Hungarian News Agency, who just before being killed during the 1956 revolution managed to send a telegram ending with the words ‘We are going to die for Hungary and for Europe’. For him, the Soviet aggression was an attack not only on Hungary, but also on Europe itself. Because for the Hungarians, Czechs, and Poles Europe is not a geographic term, but rather a synonym of the West, a value worth

¹⁴ Mikanowski.

¹⁵ Mikanowski.

¹⁶ M. Kundera, ‘A Kidnapped West or Culture Bows Out’ [1983] *Granta* <granta.com/a-kidnapped-west-or-culture-bows-out/> accessed 9 August 2018.

dying for – and in this, according to Kundera, Central Europeans differ greatly from Russians.

Milan Kundera goes on to observe how for centuries Central Europe was part of the West, only to find itself after 1945 still „situated geographically in the centre’, but „culturally in the West and politically in the East”. And this is the very reason for the numerous revolts against the Russian rule in this region – they were not the revolts of the East, but of the West – „a West that, kidnapped, displaced, and brainwashed, nevertheless insists on defending its identity”. Kundera notes also how culture played a key role in all these revolutions, much greater than in any other of the revolts in the European history.

Next, Kundera responds to the claims that the situation of Central Europeans is not ‘unique’, as the fate of Russians is similar or even worse. The Czech thinker argues that one cannot put the two on one level, as their mindsets are completely different – while Central Europe has for centuries ventured to achieve ‘the greatest variety within the smallest space’, Russia has always tried to have ‘the smallest variety within the greatest space’.

Milan Kundera then observes that the great ‘tragedy’ of the region was the fact that the West forgot about it post-WWII. It happened, he argues, partially due to the region’s turbulent history – with countries constantly appearing and disappearing from the map, they have „never been entirely integrated into the consciousness of Europe, they have remained the least known and the most fragile part of the West – hidden, even further, by the curtain of their strange and scarcely accessible languages”, remaining, in the European collective memory, a ‘source of dangerous troubles’.

Further into his essay, Kundera remarks on the might of the Central European culture, which was boosted by the need of all nations of the region to choose between retaining their „authentic national life and being assimilated into a larger nation”. This fight for existence is, Kundera argues, what unites ‘the small nations’ of Central Europe – because of it they share the knowledge that ‘a

small nation can disappear' at any moment, and a deep distrust of History, of which they are both victims and outsiders

Milan Kundera concludes his argument with a bitter observation that 'Europe hasn't noticed the disappearance of its cultural home because Europe no longer perceives its unity as a cultural unity', as in the times of mass media culture has lost its importance in the West; culture has, however, remained a key point of reference in the fight of Central Europe for its rightful place on the European map.

György Konrád's essay 'Does the Dream of Central Europe Still Exist?'¹⁷ was first presented in 1984, as its author accepted the Herder Prize from the University of Vienna¹⁸. Published one year later, it presents the Hungarian essayist's programme of Central Europeism, and also includes the most thorough analysis of the Central European identity in the recent history.

Konrád begins with an observation that Central Europe belongs to the West on the one hand, and to the East on the other. Despite the fact that it is divided (Konrád includes Germany and Austria to Central Europe), it „survives as a goal; [and] centuries-old goals do not fade away without a trace”.

The Hungarian notes that the better we know our neighbours, the more Central European we are – it is not the place of birth that decides whether one belongs to the region, but the acquired knowledge – „those who don't want to get to know their neighbours become culturally debilitated; those who understand others best are the strongest”.

György Konrád accurately observes that time has had a huge impact on the region – „different time layers are mixed in our cultures. [...] Here we can still save a great deal of what has perished

¹⁷ G. Konrád, 'Does the Dream of Central Europe Still Exist?' [1985] *Cross Currents* vol. 5 109–121 <quod.lib.umich.edu/c/crossc/anw0935.1986.001/121:ANW0935.1986.001?page=root;rgn=author;size=100;view=image;q1=Konrad%2C+Gyorgy> accessed 9 August 2018.

¹⁸ *Konradgyorgy.hu*, 'Biographical Information' <konradgyorgy.hu/eletrajz.php?lang=eng> accessed 9 August 2018.

in the developed West (where life is bleaker for its loss) [...] We are not called upon to give up our history quickly". As a result, Central European societies are multi-dimensional and cannot be easily categorised.

Further on in his essay, Konrád remarks how the weakness of the region's states in a way led to WWII, which also provided only fleeting solutions – due to its extraordinary diversity, the region could only be united forcibly and temporarily. Because the very idea of Central Europe „implies a flourishing diversity made up of many components and conscious of itself". The author then remarks about the uniqueness of political thought in the region, as „in our area, the mechanical notion that each nation should have its own closed national state did not apply, because here various fragments of peoples and linguistic groups were sandwiched in among one another on the same soil. No matter whom a certain region belonged to, there were bound to be minorities living there who demanded their rights – and not just individual civil rights but collective national rights for their group as well".

György Konrád then enumerates, in various parts of his essay, on what constitutes being a Central European, i.e.: the ability „to keep our nationalism, our national egotism, under control"; a feeling that the „public life in [one's] own country seems artificial to him, not quite in tune with reality"; the prerequisite that „so long as it is impossible to go over to Vienna from Budapest for an evening at the opera, without special permission, we cannot be said to live in a state of peace"; the permanent sensation that „the partition of our area [is something] painful, upsetting, disturbing"; knowledge that this „partition seems neither natural nor final"; this particular sentiment that while „we tend to treat every unfavourable turn of a card as an act of fate, still we never give up"; and that ultimately, „we are strangely given to pathos, and so we are ironical. Since we like to see ourselves as tragic, we cannot leave the existing state of things alone, with oriental submissiveness. We are a grotesque, improbable bunch, subjects not objects, obstinate, strong, unwilling to bow to our environment. A Central

European is someone not quite normal”, because „such a person has gotten something into his head and won't budge from it, even though it's not advisable, even though the prospects of success are doubtful. It's always the same battered, desperate, up-and-at-'em-once-again kind of autonomy”.

He notes too that there exists a certain 'Central European Tao', „a secret alliance of taste [...] and an analogous cultural anthropology; similar views on love and death, marriage and burial; a common glossary of references, an ability to understand though few words are spoken”, not „just tact but solidarity, not just good humour but passion”. According to Konrád the Central European outlook would be defined by the ability to „engage those who live to the east of us and to the west”.

The Hungarian writer also observes how much Central Europe is a paradox: „a venture, a cultural alliance, a literary chivalry; record-holders of ambivalence, problematic by profession. [...] more poets than activists”. Because, ultimately, the region „is no more than a dream”, a place where „many peoples live [...] who have seen better days and remember them”. Moreover, in order to be truly Central European one has to rise above oneself, be able to acknowledge the neighbours' stereotypes about oneself, and to also acknowledge on the one hand that „to be Central European is to be in a minority; to be in a minority is Central European”, but that on the other „if there is no Central Europe, then there is no Europe. [...] If there is no Central European consciousness there is no European consciousness, and people overseas can speak with good reason of poor decadent little Europe. If we don't cling to the utopia of Central Europe we must give up the game”.

In the final parts of his essay, György Konrád remarks on how the Central European nationalism (German in particular) led to both world wars; how it led to the obliteration of Jews, for whom „there was no place [...] in [the new] unitary conception”; and how the idea failed in the end, because „the essence of Central Europe is that it lies in the middle and its borders are undefined; we don't know where it ends. It lies on the eastern fringes of the West and

the western fringes of the East. It has the allure of nostalgia and utopia”.

Concluding his piece, the Hungarian responds to the claims that Central Europe does not exist, refusing to accept the Cold War *status quo* for several reasons: because the changes happening in the 1980s are bound to lead to democratisation, because „for a thousand years Central Europe did not give up its sovereignty”, because the people of the region know that only together East and West constitute Europe, that because „of the East, the West cannot be sufficient unto itself; [and] because of the West, the East cannot be sufficient unto itself”, and, ultimately, because „the Central European dream speaks of something that is natural and that cannot be given up. If we continue to think, we can scarcely avoid it”.

Three years after Kundera, and a year after Konrad, another major Central European thinker decided to speak up about the region. In his 1986 essay ‘About Our Europe’¹⁹ Czesław Miłosz answers the claims that Central Europe does not exist – he begins with an argument that while in the second half of the 20th century it seems to exist only in the minds of a few individuals, yet „the past of this region, shared in spite of its many languages and nations, is always present there and very palpable thanks to the architecture of its cities, traditions of its universities and works of its poets”.

Miłosz then argues (similarly to Kundera) that Central Europe is not a geographical term – it is in the feelings and in the minds of its inhabitants that one may demarcate the region. The influence of history is always visible, also in the Central European literature – whereas in the West time is neutral and linear, in the works of writers from the region time is something intense, spasmodic, one of the heroes of the story – because here time seems to be something dangerous, a threat to national identity.

The Polish Nobel prize winner also answers the claims that Russian management prevents the region from descending into

¹⁹ Cz. Miłosz, ‘O naszej Europie’ [1986] *Nesweek Polska* <newsweek.pl/europa/o-naszej-europie,45872,1,1.html> accessed 9 August 2018.

chaos – Miłosz argues that the shared identity, different from both the Eastern and Western neighbours would prevent any national chauvinism.

Further on into the essay Miłosz notes that irony was the region's only weapon against the empires wanting to control it – and how ironic it is that in the era of decolonisation the entire region is controlled from the outside. Then the Pole turns to the West and its fascination with Marxism – to which the Central Europeans, who are neither Marxist or non-Marxist can only reply with a shrug and a smile – because they know too much, and because one cannot tell the truth about it to someone who had never seen it 'in action'.

Czesław Miłosz then explains how much the Central Europeans are isolated on the Western political spectrum (which perhaps is one of the reasons for the region's recent illiberal turn) – while only conservatives understand their love of freedom, and are their allies on the international scene, they could never grasp the Central Europeans' fondness of the welfare state. A Central European is also often critical of the West – but not because of the communist propaganda, but rather in seeing the dangers in the West's decadent relativism.

Miłosz concludes his essay pessimistically, not seeing a chance for the change of the fate of Central Europe in the near future, but reiterating his argument that Central Europe does exist – despite the Iron Curtain, „in poetry, painting, theatre Warsaw, Prague and Budapest have more in common with Paris, Amsterdam and London than with Moscow”. This gave Miłosz hope for the future of a 'Central European federation'.

And, as it turned out, the future was not so grim – in three more years came the break of 1989. I would thus like to finish this short and personal review of literature speaking about Central European identity with an analysis of another essay, from 1999, which tells us how Central Europe came to be as we know it.

As Timothy Garton Ash admits in 'The Puzzle of Central Europe'²⁰, in the 1980s he was sceptical about the existence of Central Europe. However, both he and the West in general were proven wrong. As Ash notes, the triumph of Central Europe came in 1990 when during a Warsaw speech Henry Kissinger said „I'm delighted, to be here in Eastern, I mean Central Europe'. And for the rest of his talk he kept saying 'Eastern, I mean Central Europe'”.

In spite of being virtually absent from the Western discourse post-1945, Central Europe re-emerged in the 1990s – as Ash remarks „even Queen Elizabeth II has spoken of 'Central Europe', in the Queen's Speech to the British Parliament. So it's official. If the Queen and Henry Kissinger say it exists, it exists”.

While admitting its existence, further on in his essay Ash tries to fathom out how to determine Central Europe, and to know which definitions are right, and which are wrong – if there are any wrong ones – as he ironically notes, „tell me your Central Europe and I will tell you who you are”.

He starts in the search of the Western boundary, the most disputed one before WWI, and the much less disputed now – it is to be found in Germany, which lies on the borderline between Western and Central Europe – to quote Vaclav Havel, it is in Central Europe 'with one leg'. Similarly, the case of the Northern border is not controversial – Scandinavia is not a part of Central Europe, whereas the Baltic states lie on the frontier between the two.

Ash then notes that the biggest problems arise when one is to decide what are Central Europe's Eastern and Southern borders. As he notes, the 'new' Central Europe, symbolised by the Visegrad Group, had no problem in differentiating itself not only from „the new eastern (with a small e) Europe: Belarus, Ukraine, and European Russia”, on the one hand, and from the Balkans on the other – „for Polish, Hungarian, and Czech politicians, the Manichaeian

²⁰ T. Garton Ash, 'The Puzzle of Central Europe' [1999a] *New York Review of Books* <nybooks.com/articles/1999/03/18/the-puzzle-of-central-europe/> accessed 9 August 2018.

contrast between 'Central Europe', bathed in light, and 'the Balkans', drenched in blood, was irresistible".

The British historian later applies Samuel Huntington's theory of the clash of civilisations to Central Europe, noting that if one was to take Huntington literally, it would put large parts of Central Europe (those belonging to the Orthodox family) at perpetual disadvantage – „if your heritage is Western Christianity, the Renaissance, the Enlightenment, the German and Austro-Hungarian empires, Baroque architecture, and coffee with Schlagobers, then you are destined for democracy. But Eastern (Orthodox) Christianity or Islam, the Russian or Ottoman empires, minarets, burek, and Turkish coffee? Doomed to dictatorship". Ash calls it 'Vulgar Huntingtonism', after Vulgar Marxism.

Then Ash reminds us that not all of the Central European transitions after 1989 were initially successful – the newly independent Slovakia transformed into the so-called *demokratura*, a system based on the „state television, the secret police, and the misappropriation of the formerly state-owned economy by regime members and supporters" – in this case the supporters of prime minister Vladimír Mečiar. Ultimately, the Slovakian 'delayed velvet revolution' took place in 1998, when the democratic opposition won the elections, and „as if by magic, Slovakia [was] back in Central Europe again".

Timothy Garton Ash argues that the main reason for the Slovakian 'falling out' with the rest of Central Europe (apart from the weakness of the opposition and a brief history of statehood) were the problems regarding the large Hungarian minority in this country – he argues that „the greater the ethnic mix in a post-communist country, the more likely it has been to take a nationalist authoritarian path rather than a liberal democratic one". As he (correctly, in my opinion) notes, this is the 'new' Central Europe's greatest irony and paradox – historically the region was characterised by its diversity; whereas „one of the preconditions for being seen as part of the political Central Europe in the 1990s was precisely not to be Central European in this earlier sense".

Ash concludes his essay with a realisation that while Central Europe changed, the Eastern Europe (Belarus, Ukraine, and European Russia) did not – and „today, the eastern frontier of the West runs no longer along the river Elbe, or along the Oder and Neisse, but along two rivers most people have never heard of: the Bug and the Uzh”. The East may change, as the Balkans may change (after twenty years we know they changed), but they will never be part of Central Europe – because ultimately the region „does have to stop somewhere”. Political criteria are not enough to be part of it – shared culture and history are equally important.

And this seems to be true to this day – the unique Central European identity, which Kundera and Miłosz believed in, and Konrád dreamed about – is based not only (I would even say not so much) on geography or politics, but also on the past – which continues to influence the Central European present – and thanks to (or because of) which Central Europeans share similar, and often the same, values, symbols and representations, the basis of any national – and in this case regional – identity.

III. Part two: in the search of lost identity – a shared (legal) identity?

While one can clearly speak about a general Central European identity, what about the region’s legal identity? Does it exist and is it different from the Western and Eastern legal traditions? Researchers have divergent answers to these questions.

It is widely agreed that „prior to the civilian codifications of the 19th century, there was a general presumption of the binding force of Roman law in the continental West and, to the contrary, only isolated cases of Romanist influence in the East”²¹ as before becoming parts of various empires, Central European countries had their own customary law²². Ultimately, the so-called great

²¹ T. Giaro, ‘Legal Tradition of Eastern Europe. Its Rise and Demise’ [2011] *Comparative Law Review* vol. 2, iss. 1 1–23, 4.

²² *Ibidem*, 14.

codifications – Code Napoleon, BGB and ABGB – lastingly ‘connected’ Central Europe to the rest of the continental legal family²³. Not even the ‘instruments of Sovietisation’ applied after 1945 could break this bond. After WWI, while the newly independent countries of Central Europe ventured to establish new laws, „the intense circulation of western legal models [...] continued”²⁴.

Ultimately, even after the changes of WWII, the old, ‘imperial’ civil codes either survived – for example „in Eastern Germany, where the BGB [...] was in force until 1976, as well as in Romania, where the codul civil of 1864 was not abrogated even much longer, i.e. until the fall of communism”²⁵ – or, when replaced, as in the cases of Hungary in 1959 and in Poland in 1964, „substantially shadowed the good old tradition of German Pandectism”²⁶. While countries like Czechoslovakia initially „followed socialist innovations with more faith and hope”²⁷, they rejected them after 1989 – thus „following the fall of communism, the independent states of Eastern Europe are there again, but their legal tradition prior to the 19th century disappeared long ago”²⁸.

In short, six stages in the legal history in Central Europe may be distinguished: the ‘long persistence’ of customary law²⁹; the imposing of Western legal systems in the 19th century; post-WWI efforts to create new national law; the influence of Actually Existing Socialism; post-1989 transformation; the influence of EU law³⁰.

Whether or not the above-mentioned legal journey of Central Europe proves that a Central European legal identity exists or not is widely disputed.

²³ *Ibidem*, 16–19.

²⁴ *Ibidem*, 19–20.

²⁵ *Ibidem*, 21.

²⁶ *Ibidem*, 21.

²⁷ *Ibidem*, 21.

²⁸ *Ibidem*, 22.

²⁹ *Ibidem*, 14.

³⁰ R. Maňko et al., *op. cit.*, 11.

Tomasz Giaro argues that a particular Central European legal identity does not exist, because „the ongoing differences between legal life in East and West are a matter of legal culture and of juristic style rather than of substantive law”³¹, and in the present the connections between individual CEE countries and the countries of the Western Europe are much stronger than the regional ones: „[i]n the realm of civil law Romania and [...] Poland, even if both during the 19th century received the French code civil, were and still are in principle scarcely interested in an exchange of experiences, seeking rather a direct relationship with France than with each other; the same holds for Bohemia and Croatia, as countries which received the ABGB, with respect to its fatherland Austria”³². According to him, the only distinctive traits of legal culture in Central European countries are „the legacy of their peripheral or semi-peripheral nature” and „their tendency to gravitate around a western centre”³³.

Rafał Mańko *et alia* disagree, arguing that a Central European legal identity may exist, as the legal systems in the region have all four elements required to distinguish an individual legal style, the concept proposed by Zweigert and Kötz³⁴.

The first requirement, i.e. the historical origins of a group of legal systems, is met, because of the lack of reception of Roman law, the eradication of local customary law, legal transplants from the West – which, as Mańko et al. remark, in spite of having different origins (Austrian, German, or French), had similar consequences – and because of the unifying effect of the times of Actually Existing Socialism³⁵. The second aspect, i.e. the mode of legal thought, is also covered, as the whole region is characterised by ‘ultra-formalism’³⁶. The third element, i.e. the sources of law, re-

³¹ T. Giaro, *op. cit.*, 21.

³² T. Giaro, *op. cit.*, 23.

³³ T. Giaro, *op. cit.*, 22–23.

³⁴ R. Mańko et al., *op. cit.*, 16.

³⁵ R. Mańko et al., *op. cit.*, 17.

³⁶ R. Mańko et al., *op. cit.*, 17.

mains the same throughout Central Europe, as all the countries hold a positivist view of the law, remaining 'sceptical' towards precedent³⁷. The fourth, final requirement, i.e. ideology, may be met through the emerging „differences in approaching national sovereignty and constitutionalism” in the region³⁸, i.e. illiberalism, which I discuss in the following part of the paper.

Mańko et al. conclude their argument with a call for the Central Europe to „become a permanent and solid concept on the socially constructed map of legal geography³⁹”. While personally I am not entirely sure we may speak about a Central European legal identity just yet (Mańko et al. themselves also express caution throughout their study), however their point of view seems more plausible than Giaro's. As in the case of a general regional identity, the region's legal identity is clearly distinct both from the East and the West, as evidenced by the rise of a relatively new political concept – illiberalism – which is gaining popularity in the countries of Central Europe. But this is the question for analysis in a separate paper.

IV. Conclusion: where to now/what now?

Last year it was suggested that we should bid farewell to Central Europe. With the very idea of it 'disappearing', „[w]hatever held the region together in the mind's eye — a shared experience of occupation and exclusion, the permanent-seeming weight of economic backwardness, treasured memories of defeat — is gone, or at least not as present as it had been”⁴⁰.

The author of this iconoclastic observation, Jacob Mikanowski went on to observe that perhaps the region „never existed in the first place. Maybe it was only a figment of the Cold War imagination. If the fall of the Iron Curtain removed the geopolitical rationale for studying the region, it also removed the main thing binding

³⁷ R. Mańko et al., *op. cit.*, 17–18.

³⁸ R. Mańko et al., *op. cit.*, 18.

³⁹ R. Mańko et al., *op. cit.*, 23.

⁴⁰ J. Mikanowski, *op. cit.*

it together. After all, what does Albania have in common with Estonia, or Belarus with Slovenia? Besides being fragments of long-vanished empires, they share almost nothing in terms of culture, economy, or creed"⁴¹. He concludes with another thought-provoking remark that „[n]ow that the Soviet Union is gone, [...] the region shifts to being defined by memory instead of politics"⁴².

To agree with this statement would be easy, perhaps even in vogue in the era of globalisation. However, as both the review of the literature and the analysis of the views on the existence of Central Europe's legal identity show, there is much more to the region than meets the eye. Intersections between various countries run much deeper than the times of the Soviet Union and other long-vanished empires. They need to be investigated further in the near future, as the Central European identity is the key to understanding the present-day changes taking place in the region.

ABSTRACT

Central Europe in search of (lost) identity. Literary and legal findings

Why Central, and not Eastern Europe? This is the question that people from the West often ask. Central Europeans, on the other hand, do not doubt that they are not a part of the East. The purpose of this paper is to analyse the notion of Central Europe and to investigate whether a common Central European identity exists, both in the general and legal aspect. In the first, introductory part of the paper the author ventures to define the idea of Central Europe. The second part of the paper is devoted to the question of a general Central European identity. The author approaches the problem through the analysis of four authors describing the region – Milan Kundera, György Konrád, Czesław Miłosz, and Timothy Garton Ash. In the third part of the paper the author focuses on the concept of a potential Central European legal identity, whose existence is still widely debated, comparing and contrasting two opposite ap-

⁴¹ J. Mikanowski, *op. cit.*

⁴² J. Mikanowski, *op. cit.*

proaches to this problem. In the final, concluding part of the paper the author outlines the ideas for further research into the intersections between the countries of the region.

STRESZCZENIE

Europa Środkowa w poszukiwaniu (utraconej) tożsamości. Ustalenia literackie i prawne

Dlaczego Środkowa, a nie Europa Wschodnia? To jest pytanie, które często zadają ludzie z Zachodu. Z drugiej strony, mieszkańcy Europy Środkowej nie wątpią, że nie należą do Wschodu. Celem tego artykułu jest analiza pojęcia Europy Środkowej i zbadanie, czy istnieje wspólna tożsamość środkowoeuropejska, zarówno w aspekcie ogólnym, jak i prawnym. W pierwszej, wprowadzającej części artykułu autor podejmuje próbę zdefiniowania idei Europy Środkowej. Druga część artykułu poświęcona jest kwestii ogólnej tożsamości środkowoeuropejskiej. Autor podchodzi do problemu poprzez analizę czterech autorów opisujących region - Milan Kundera, György Konrád, Czesław Miłosz i Timothy Garton Ash. W trzeciej części artykułu autor skupia się na koncepcji potencjalnej środkowoeuropejskiej tożsamości prawnej, której istnienie jest nadal szeroko dyskutowane, porównując i kontrastując dwa przeciwne podejścia do tego problemu. W końcowej, podsumowującej części artykułu autor przedstawia pomysły na dalsze badania dotyczące powiązań między krajami regionu.