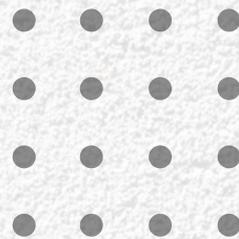


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**Giovanni GUGG, PhD**   
University of Naples “Federico II”, Italy  
giovanni.gugg@unina.it

## **ERASED NAMES, DIVIDED MEMORIES: TOPONYMY AS A BATTLEFIELD IN EAST GERMANY**

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**ABSTRACT:** *The naming of objects, animals, and places transcends mere linguistic function, acting as a cultural mirror that reflects beliefs, values, and systems of world classification. Toponymy shapes the physical and symbolic landscapes where communities live and move, offering a unique lens to study socio-political transformations. This essay examines the emblematic case of East Germany, where toponymy underwent profound shifts during the 20th century, mirroring the region’s turbulent political history. Under the Nazi regime (1933-1945), toponymy served as a tool of propaganda and control: Jewish names were erased, replaced by names glorifying militarism and National Socialist ideals. Following the establishment of communist East Germany (1949-1990), Nazi symbols were replaced with names celebrating socialism, equality, and internationalism, often honoring figures like Karl Marx, Friedrich Engels, and Ernst Thälmann. Streets and squares bore names such as Platz der Befreiung (“Liberation Square”) or Straße der Freundschaft (“Street of Friendship”), embedding ideological narratives into the urban fabric. After reunification (1990), historical, pre-communist names were often reinstated amid contentious public debates. The renaming of Karl-Marx-Stadt back to Chemnitz exemplifies the challenges of reconciling with the past while fostering an inclusive identity. The analysis of East German toponymy underscores the interplay between language, thought, and culture, revealing how names act as cognitive, social, and symbolic tools that shape human understanding of the world.*

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**KEYWORDS:** Toponymy; East Germany; Political Ideology; Cultural Identity; Renaming Processes.

### **1. The city that speaks: toponymy, power and identity**

Through a rhetorical device such as that of the “speaking city”, which suggests that the city is not simply a cluster of buildings and spaces, but a living entity, which communicates through the traces left by the daily interactions of its inhabitants, it is possible to have a more immediate and vivid idea of the city as a dynamic social space (Ferguson 2006). In other words, every urban corner, every street and every square tell stories that reflect the values, struggles and social transformations of a community. Toponymy, in this sense, becomes a form of language that the city uses to express itself, where every name carries with it a profound meaning that is intertwined with collective and individual history.

The concept of the city as an entity that “speaks” is made even more significant when we consider the social dynamics that take place in public spaces. Cities are, in fact, places of constant negotiation and interaction, where people confront, clash and, at times, ignore each other, as shown in the work of Duneier and Molotch (1999). The social practices that emerge in these contexts highlight how social inequalities and interpersonal tensions are an integral part of the urban fabric. The city, therefore, “speaks” also through these conflicts, which are symptoms of a deeper malaise and social stratification that manifests itself in everyday

behaviour.

Cities also “speak” through their transformations, from the construction of new neighbourhoods that reflect economic and political changes, to gentrification that, while improving some spaces, ends up eliminating or marginalizing other urban realities. These transformations, while making the city more modern or more inclusive in some cases, bring with them a narrative of loss and replacement, where the memories of previous places and communities risk disappearing. Thus, the city not only tells its past history, but, in turn, writes the future through the choices made today.

Ultimately, cities “speak” when we listen carefully to the stories that emerge from its spaces and social dynamics. Place names and the experiences of its inhabitants are like words that, woven together, form a story that goes beyond the physical dimension of the city, revealing the complex political, social and cultural realities that define it.

In this context, toponymy, or the activity of naming places, is not just a descriptive practice, but a fundamental act that is part of human nature, a creative act that shapes our perception of the world. The need to give a name to what surrounds us is inherent in our way of being: naming objects, places, animals, plants, feelings, means giving them a reality. This act of naming, therefore, does not limit itself to recognizing or cataloguing what exists, but actively contributes to creating the meaning and existence of what is named.

Naming things is not the simple practice by which human groups attribute a label to what surrounds them, because the names attributed to objects, concepts, social practices and even supernatural entities reveal crucial aspects of a culture, offering a window into its beliefs, values, and systems of classifying the world. Therefore, toponymy plays a fundamental role, because it shapes the physical reality in which a population lives and moves.

In particular, toponymy is interesting because it reflects the vision of those who hold authority in a given territory: the names of cities, streets, rivers and mountains describe the history, culture and power relations of an area, because they refer to government figures (kings, queens, emperors or other political leaders), who are thus celebrated and legitimized, or to the history of conquests (whoever conquers a territory often imposes their own names, in order to erase the culture of the defeated people and affirm their own dominion), or, again, they refer to social differences or minority languages to be preserved and so on.

From a linguistic point of view, Ferdinand de Saussure (2009) taught us that the linguistic sign is arbitrary: the connection between the word (signifier) and the concept it evokes (signified) is not natural, but conventional. However, once this relationship is established, it becomes a creative force that defines and structures our reality. When a name is attributed to a place, an object or a phenomenon, that name becomes an integral part of the experience of that phenomenon. Toponymy, therefore, is not just a matter of labeling places, but of structuring our way of relating to them, of giving them an identity that resonates through language.

From a philosophical point of view, Ludwig Wittgenstein (2009) has deepened the notion of “language games”, underlining that language is not simply a means to describe reality, but is an activity that constructs and shapes reality itself. According to Wittgenstein, every word, every linguistic expression, is inserted in a context of social and cultural practices that determine its meaning. Naming something is, therefore, not a neutral or passive act, but an active involvement in the creation of meaning. When we name a place, we are not only indicating a place, but we are participating in the process of defining that place and its identity.

In this sense, language not only reflects reality, but acts upon it. An emblematic example of this vision can be found in the act of naming a ship: when you say the phrase «I baptize this ship», you are not just making a statement, but you are carrying out a performative act that changes the state of the ship itself. The ship, in fact, takes on a new identity, a new reality, thanks to the act of naming.

Toponymy, therefore, represents a field in which language and reality are deeply intertwined. Naming a place is an act that not only reflects, but creates the reality of that place, attributing to it meaning and place in the world. This process is essential to understand how, through toponymy, we not only describe, but actively participate in the creation and evolution of places themselves. Starting from Guy Deutscher’s intuition (2013) according to which «language colors the world», we can affirm that language is the means through which we not only understand the world, but contribute to forming it, and toponymy is one of the spaces in which this linguistic power manifests itself most clearly.

From an anthropological perspective, the process of naming a place goes beyond the simple description of a geographical space; it implies the attribution of an identity that is intertwined with the collective memory and cultural identity of a community (Dall’Ò 2019). Naming a place is, in fact, an act of possession and recognition, which embodies the profound relationship between people and the environment they inhabit. Place names are not just labels, but real vehicles of stories, myths, shared experiences and historical transformations. They reflect the changes and challenges of a community, such as migrations, conflicts and cultural changes, and, for this reason, they are considered one of the most powerful aspects of identity construction.

Anthropology has devoted a great deal of space to the exploration of how place names can reveal the ties of a people with their history, their culture and, no less importantly, with their politics. In this context, it is essential to consider the lesson of Michel Foucault (1990), according to whom power is not exercised only through laws or overt actions, but is also manifested in the control of language and knowledge. Therefore, place names are instruments of control: those who have the power to decide how a place is called, also have the power to determine how it is experienced and interpreted. Changing toponymy, for example, is not only a linguistic or historical issue, but a practice that reflects and consolidates power dynamics.

The changing of place names often accompanies processes of restructuring of political and social power and, as highlighted by Foucault, can be a means of shaping social reality. Toponymic changes are in fact

frequent during periods of political transition, where new regimes or ideologies seek to legitimize themselves through the modification of symbols and words that define public space. The ceremonies and rituals associated with the change of name of a place amplify this process, endowing the act with a symbolic meaning that reinforces the legitimacy of the new social order. In this sense, toponymy becomes a form of ritual of power, which reinforces and perpetuates the new vision of the world.

This dynamic is clearly visible in the toponymic changes of 20th-century Germany, which offer a prime example of how toponymy can both reflect and contribute to profound political, social and cultural changes. Following the end of the Second World War and the Allied occupation, and then during the period of division between West and East Germany, numerous changes in the names of cities and streets were implemented, both to remove traces of Nazism and to affirm new political ideologies. These changes reflected not only the desire to distance oneself from the past, but also the desire to build a new collective identity in line with the values of the new political order.

Ultimately, the act of naming is a practice that goes far beyond semantics: it is an act of creation, control, and legitimation. Every change in toponymy represents a change in the perception of the world, and through these changes societies reconstruct and reaffirm their identity and power. Language, and in particular toponymy, becomes a tool through which communities and governments construct the world they inhabit and, ultimately, the world they want others to see.

## **2. The metamorphosis of Germany: history and meaning of toponymy in the twentieth century**

The German case represents one of the most complex and fascinating stories of political and social transformation of the twentieth century, a process that involved Germany in several phases, each of which left an indelible mark on its identity and geography. From the unification of the German Empire in 1871, through the birth of the Weimar Republic, the descent into totalitarianism of the Third Reich, the division into two opposing states after the Second World War, up to reunification in 1990, Germany has gone through historical events that have not only redesigned its politics and society, but have also left a profound imprint on its toponymy, the way in which cities and territories have been named and represented (Niven and Jordan 2003).

German toponymy is therefore a direct reflection of the different ideologies, regimes and visions that have shaped the nation, offering a mirror through which to observe not only political history, but also changes in collective values and identities. Each historical phase, from the Kaiserreich to the Third Reich, from the divided Germany of the Cold War to reunification, has brought with it a new symbolic language, which has found expression in the names of streets, squares and cities. These changes have not only been a way to honor political and historical figures, but also to legitimize or, on the contrary, dissociate themselves from the prevailing ideologies, as the many transformations of Germany in the last century testify. The history of Germany,

therefore, is also a history of places, signs and symbols, which tell of the complexity and contradiction of a country capable of going through wars, dictatorships, ideological divisions and, finally, a long and difficult reunification.

This reflection on toponymy is not limited to the mere chronicle of name changes, but becomes a tool for understanding how Germany has sought, through the passage from one era to another, to build and consolidate new identities and values, moving from monarchy to democracy, from Nazism to socialism, from division to recomposition. The “German case” is, therefore, the story of a country that, like its toponymy, is always evolving, constantly grappling with the memory of the past and the construction of the future.

**a) *Kaiserreich (German Empire, 1871-1918)***

The Kaiserreich, or German Empire, was founded in 1871 after the victory in the Franco-Prussian War. This event marked the unification of Germany under the leadership of Kaiser Wilhelm I, and later his grandson Wilhelm II. The empire was characterized by strong nationalism and a centralization of power, with the aim of consolidating the new German nation under an authoritarian monarchy.

Place names during the Kaiserreich period largely reflected the influence of the monarchy and the military victories that had led to the unification of Germany. Many street, square, and city names were changed or created to celebrate the royal family and historical figures associated with the monarchy. For example, names such as “Kaiserstraße” (Kaiser’s Road) and “Bismarckplatz” (Bismarck Square) became common, commemorating the emperor and first chancellor Otto von Bismarck, the architect of German unification, respectively. The Franco-Prussian War and other military conquests were celebrated through the naming of public places, with names that reflected the national pride and military might of the new nation. “Siegessäle” (Victory Avenue) in Berlin is a prime example, embodying the triumph and unity of the empire.

This phase of nationalism and monarchical celebration through toponymy not only strengthened national identity, but also served as a propaganda tool to legitimize and glorify the imperial regime.

**b) *Weimar Republic (1919-1933)***

With its defeat in World War I, Germany went through a period of profound political and social change. The war caused the fall of the Kaiserreich and the abdication of Wilhelm II in 1918, leading to the birth of the Weimar Republic in 1919. This transition marked the passage from an authoritarian monarchy to a democratic republic.

During the Weimar Republic, there was a clear effort to distance oneself from the symbols of the monarchy and the aristocracy, a change that was also reflected in toponymy. Many place names were changed to reflect the new democratic values. Streets and squares previously named after royal or military figures were renamed to honour figures of the revolution and democracy, as well as to express ideals of freedom and social

justice. Names such as “Friedensplatz” (Peace Square) and “Republikstraße” (Republic Street) became frequent, symbolizing the new democratic order.

Furthermore, the Weimar Republic commemorated the martyrs of the revolution and political figures who had fought for democracy. Figures such as Rosa Luxemburg and Karl Liebknecht, both assassinated in 1919, were celebrated through toponymy, with streets and squares bearing their names, thus reflecting an acknowledgement of the social and political struggles of the period.

These toponymic changes not only represented a break with the monarchic past, but also an attempt to build a new national identity based on democratic and progressive values. In this context, toponymy served to promote and consolidate the new republican ideology, trying to anchor the principles of freedom, peace and democracy in the collective memory.

### *c) The Third Reich*

Adolf Hitler’s rise to power in 1933 marked the beginning of a dark and tumultuous period in German history. The Nazi regime used various tools to consolidate its control over society, and place names were a key tool in this process. With the advent of the Third Reich, Germany saw a wave of place name changes designed to reflect and promote Nazi ideology.

One of the most visible aspects of this transformation was the introduction of names inspired by central figures of the Nazi movement and the ideologies of the regime. Streets, squares and even cities were renamed to honor party leaders and to celebrate key events and concepts of Nazism. For example, numerous streets were named after Adolf Hitler, such as “Adolf-Hitler-Straße”, and other leading figures of the Nazi party, such as Hermann Göring and Joseph Goebbels. These changes were not random, but designed to create an everyday environment permeated by Nazi ideology, thus reinforcing the presence of the regime in everyday life.

For entire cities there were no changes of name, but “honorary” titles were added. Five cities were “Führer cities” (Führerstadt) and many others were cities of particular importance to the Nazi regime.

The status of “Führer cities” was based on Hitler’s vision of undertaking gigantic urban transformation projects in these cities, carried out by German architects, including Albert Speer, Paul Ludwig Troost, Leonhard Gall, Paul Otto August Baumgarten and others. The initial idea called for reconstruction projects in 35 cities, but some were to have as many as 50; however, most of these plans were not realized due to the outbreak of World War II. The five Führer cities were:

- Linz: the city where Adolf Hitler spent his youth and where he planned to retire after the war. Hitler wanted to transform Linz into a “German Budapest”, more beautiful than the other German cities on the Danube (especially more beautiful than Vienna, which he hated).
- Berlin: Welthauptstadt Germany (World Capital Germany)
- Munich: The “Capital of the [Nazi] Movement”

- Hamburg: The “Capital of German Shipping”
- Nuremberg: The “City of the Reich Party Conventions”

This practice served not only to glorify Nazi leaders, but also to rewrite the national geography to reflect the values and goals of the regime. Clearly, the Nazi regime’s use of toponymy had profoundly propagandistic purposes. Renaming streets and squares was not only a matter of honoring party leaders, but also of consolidating ideological control over the population. Every time a German citizen walked down an “Adolf-Hitler-Straße” or went to a “Platz der SA” (Square of the Sturmabteilung, the paramilitary forces of the Nazi Party), was constantly reminded of the presence and power of the regime.

Toponymy thus became a tool to normalize and legitimize Nazi ideology, making it appear as an integral and immutable part of the social fabric. This process of normalization was fundamental to the Nazi project of creating a homogeneous society that was ideologically aligned with the principles of the regime. Continuous exposure to symbols and names linked to Nazism helped create an environment in which the party’s ideology seemed natural and indisputable.

In addition to the names of key party figures, Nazi place names also included propaganda symbols and concepts. Terms such as “Reich”, “Führer”, and “Volksgemeinschaft” (people’s community) were frequently used to name public places, thus reinforcing the central concepts of Nazi propaganda. These names not only glorified the regime, but also helped to spread and inculcate Nazi values into the collective consciousness of the German population.

#### ***d) Post-World War II***

With the fall of the Third Reich in 1945, Germany entered a phase of radical political, social and cultural reorganization. One of the first measures taken by the Allies was the removal of Nazi place names that had permeated the urban and rural landscape during Hitler’s regime. Denazification, the process of purging Nazi influences from German society, also included changing the names of streets, squares and cities that glorified the regime and its leaders.

The removal of Nazi toponyms often involved the restitution of pre-existing names, which had been erased or altered by the regime. In many cases, old names, linked to historical and cultural figures of pre-Nazi Germany, were restored to re-establish a sense of historical continuity and identity. However, in other cases, new names were introduced to mark a clear break with the past and to represent new democratic and humanistic values. This process of renaming was aimed at removing the ideological legacy of Nazism and promoting a new national identity based on the principles of democracy and peace. As is well known, at this stage history bifurcated, with one path taken by West Germany and a radically different one taken by East Germany.

In the first case, that of West Germany, known as the Federal Republic of Germany (BRD), the renaming process was an integral part of the democratic reconstruction of the country. The democratic approach adopted

by the BRD was reflected in toponymy, which aimed to recover historical memory and celebrate figures and events that represented the values of democracy, freedom and human rights.

Many place names were changed to honour figures of the resistance to Nazism and to commemorate the victims of the regime. Streets and squares were named after people such as Sophie Scholl and Claus von Stauffenberg, who had fought against the Nazi regime. In addition, names that recalled democratic and humanitarian concepts, such as “Freiheitsplatz” (Freedom Square) and “Demokratieallee” (Democracy Avenue), were introduced to emphasize the commitment of the new German state to building a free and just society.

Adopting a democratic approach to toponymy not only helped restore a sense of normality and historical continuity, but also educated future generations about the fundamental values of democracy and the dangers of totalitarianism.

In the second case, that of East Germany, known as the German Democratic Republic (DDR), the approach to toponymy was completely different, strongly influenced by socialist ideology and the Soviet presence. The GDR, under the influence of the Soviet Union, introduced toponyms that reflected the values of socialism and communism, and which served to consolidate the ideological control of the Socialist Unity Party of Germany (SED) over the population.

Many street and square names were changed to honor key figures of the socialist and communist movement, both German and international. Case in point are “Karl-Marx-Allee” in East Berlin and “Leninallee”, which commemorated Karl Marx and Vladimir Lenin, respectively, central figures of communist ideology. These changes not only celebrated the socialist legacy, but also aimed to inculcate the principles of Marxism-Leninism in the population.

The Soviet influence in the choice of names was evident, as many toponyms reflected the close alliance between the GDR and the Soviet Union. Streets and squares were named after Soviet leaders and events of the Russian Revolution, emphasizing the role of the USSR as a model and protector of the German socialist state. This use of toponymy as a tool of ideological propaganda was an integral part of the SED’s strategy to maintain control over society and to promote adherence to the values of socialism.

#### *e) Germany after Reunification*

All this changed with the fall of the Berlin Wall in November 1989, which was an epochal event that marked the beginning of the end of the division of Germany and led, less than a year later, to official reunification on 3 October 1990. This period of political and social transformation brought about a new wave of toponymic changes, particularly evident in the former regions of the German Democratic Republic (GDR).

One of the priorities after reunification was the removal of names associated with the communist regime. In cities and towns of the former GDR, many place names celebrating figures and symbols of socialism and communism were changed. Streets, squares, and buildings named after Karl Marx, Vladimir Lenin, and other

communist leaders were renamed to reflect the new democratic values and unified identity of post-communist Germany. This renaming process, also common in other parts of the former Soviet bloc (Jones 2006; BBC 2008), was not only a matter of eliminating symbols of the past, but also of fostering a sense of national cohesion and integration between the two Germanies.

### **3. Ideological legacy and urban transformation in post-reunification East Germany**

The case of East Germany (GDR) offers a fundamental starting point for understanding how political ideologies and authoritarian regimes influence not only everyday life, but also the urban layout and toponymy of a nation (Yoder 1999). The onomastics of the GDR closely reflected socialist ideology, making visible, through the naming of streets, squares and stations, the values and symbolic figures of the regime. The names of public places did not simply commemorate historical events or political figures, but were also a means of celebrating the principles and structures of the socialist system. The “Youth Road”, the “Unity Road” and the “Friendship Road” were not simple toponyms, but expressions of a political project that aimed to unite the population under the aegis of values such as socialist youth, international cooperation and solidarity between peoples. In this context, the names were not neutral, but tools to educate and remember the community.

The choice of names was not limited to historical figures or events of international importance, but also extended to more everyday areas. For example, streets named “work” commemorated the post-war reconstruction years, when the GDR was trying to revive the economy devastated by the Second World War. Streets such as those dedicated to agricultural cooperatives (LPG) and tractor-machine stations (MTS) testified to the importance of agriculture and industry in everyday life and the functioning of the country. Furthermore, many squares and streets were named after Lenin or Ernst Thälmann, a symbol of the socialist struggle, as evidence of a personality cult that permeated the public sphere, reinforcing the image of the GDR as a bastion of socialism.

Despite the end of the communist regime and the fall of the Berlin Wall, the process of de-communization of toponymy was neither rapid nor complete. In many areas, especially in rural areas, the memory of the socialist past remained firmly rooted. A survey conducted in 2006 by the Stasi Victims Memorial in Berlin (Knabe 2006) revealed that the GDR still had a significant presence in the urban landscape, with thousands of streets named after Marx, Engels, Luxemburg, Liebknecht and Thälmann, among others. The persistent presence of these toponyms, confirmed in 2019 again by Hubertus Knabe, testifies not only to the difficulty of dismantling such a deep-rooted ideological legacy, but also to the resistance to change that characterized the process of transition towards a new national identity.

Indeed, German reunification marked the beginning of a long and complex process of urban transformation, which saw an abandonment of the centralized planning of the GDR in favor of a more market-oriented

and private property-oriented model (Brandstetter 2003; Wiest 2005). The cities of Eastern Germany were subject to extensive restructuring interventions, with particular attention to the enhancement of historic centres and the redevelopment of residential neighbourhoods (Herlyn 2002). The “Plattenbau”, the large, prefabricated complexes that were symbols of socialism, were renovated, but the difficulties related to their structure prevented a complete redevelopment. In many cities, the difficulties related to demographic decline and peri-urbanization made the revitalization of some neighbourhoods problematic.

Another relevant aspect concerns the urban heritage, often ignored or destroyed during the socialist period, but which after reunification began to receive more attention. In fact, East Germany found itself having to reconcile modernization and the recovery of the past, a process that entailed not only economic challenges (Kauffmann 2015), but also cultural and identity challenges (Ferguson 2006). The speed of transformation and the need to integrate into the market economy highlighted the difficulties related to the adaptation of cities to a completely different context.

Another interesting element concerns the scarcity of toponyms linked to the resistance against the GDR regime. Despite numerous appeals by democratic activists and requests to honour the victims of the regime by dedicating streets and squares, only a handful of streets have been named after these figures (Knabe 2006). This silence on the resistance, together with the persistence of names linked to the regime, indicates how the process of memorialization of the GDR has been partial and fragmented. The tensions between official memory and alternative memory continue to mark East Germany’s relationship with its past, while cities are confronted with the difficult legacy of a system that, although collapsed, has left indelible marks on the urban fabric and collective memory (Knabe 2019).

The reunification of Germany and the modernization process of its eastern cities, therefore, reveal the complexity of an adaptation that cannot be limited to the simple copying of the Western model. The cities of eastern Germany must deal with a unique history and identity, which cannot be erased or rewritten in a linear way (Ertman 2000; Buchstaller et al. 2024). The future of these cities depends on their ability to balance new economic and social needs with respect for their historical heritage, to prevent the past from becoming only an obstacle, but can instead become a resource for the construction of a new urban identity.

#### **4. Rebirth and identity: the meaning of city name changes**

In the novel “Invisible Cities”, the Italian writer Italo Calvino (1994) tells that «Sometimes different cities succeed one another on the same soil and under the same name, they are born and die without having known each other, incommunicable», as in the case of the city of “Maurilia”, which is not better or worse than the old “Maurilia”, but simply different.

Other times, however, the same city – continues Italo Calvino – can have different names, as in the case

of the city of “Irene”, which is always the same, but takes on different names: “Irene” is a name of a city from afar, and if you get closer it changes. The city for those who pass by without entering is one, and another for those who are taken by it and do not leave; one is the city you arrive in for the first time, another is the one you leave and never return; each deserves a different name.

Throughout history, many cities have changed their names, often due to significant historical events, such as colonialism, nationalism or political transformations. These changes reflect not only the historical and political vicissitudes, but also the different perceptions and identities that a city can assume over time (Williamson 2023). For example, in India, cities such as Mumbai, Chennai and Kolkata have seen their identity change from colonial to post-colonial, with previous names linked to European rule, such as Bombay, Madras and Calcutta, being used by British colonizers. These new names, in fact, represent a return to India’s historical and cultural roots, detaching themselves from the colonial past.

Similarly, in Africa, cities such as Harare in Zimbabwe, Kinshasa in the Democratic Republic of Congo, and Maputo in Mozambique have changed their names to distance themselves from their European colonial heritage. Harare, for example, was previously known as Salisbury, a name that recalled the British colonial era, while Kinshasa was Léopoldville, a name that evoked Belgian rule, while Maputo was called Lourenço Marques until 1976, after the Portuguese navigator of the same name who explored the area in 1544. These changes are not just a matter of words, but mark the recovery of political and cultural autonomy, seeking to break with the colonial past (Santos 2022).

In Turkey, the case of Istanbul shows how the name of a city can evolve to reflect changes in culture and national identity. From Byzantium, a name of Greek origin, to Constantinople, a Roman name, to the current Istanbul, the change of name reflects the passage from one empire to another, but also the transformation of the city into a symbol of the new Turkish identity, more closely linked to Islamic culture and the secular republic founded by Atatürk (Georgacas 1947).

Another interesting example comes from Russia, with the cases of Volgograd and St. Petersburg, which have undergone significant name changes in response to political and ideological changes. Volgograd, once Tsaritsyn, then Stalingrad, underwent the change to mark the end of the Soviet era and Stalin’s personality cult, thus returning the city to its original name (Jones 2006). Similarly, St. Petersburg has seen its name change several times throughout its history, from Saint- Pieterburch to St. Petersburg, then Petrograd, Lenin-grad, and finally back to St. Petersburg, in a continuous reflection of the oscillations between monarchy, revolution, and the Soviet regime.

Finally, in Germany, cities like Wolfsburg and Chemnitz are examples of how name changes can be tied to the dominant political ideology. Wolfsburg, in fact, went from the Nazi name “Stadt from KdF-Wagens bei Fallersleben” to a name derived from a medieval castle (NDR 2023), while Chemnitz reverted to its original

Slavic name after the period in which it was known as Karl-Marx- Stadt, a tribute to the communist regime (Karababa Demirkan 2021).

In all these cases, the change of names of cities is not just a superficial change, but a symbolic act that reflects the changing identities and political, cultural and social transformations. As Calvino says, every city deserves a different name, because every change modifies its perception and its very nature, making it unique for those who live there in that historical moment.

City name changes are often a reflection of profound political, social and cultural changes. Each transformation brings with it motivations that range from the need to break with the past, to a celebration of new ideologies, to a simple linguistic change.

One of the main reasons why cities change their names is to renounce their colonial legacy and return to their roots. In many former colonies, such as Mumbai (formerly Bombay), Chennai (Madras) and Calcutta (Kolkata), changing their names is a symbolic act of detachment from British colonial powers and the recovery of a new national identity. These changes are not only linguistic, but also a liberation from imperialist influences and a reaffirmation of local cultural traditions. In this sense, new names become symbols of sovereignty and independence, reflecting a journey of self-definition.

Another significant reason why a city may change its name is to celebrate political or ideological figures. For example, Stalingrad and Leningrad were names imposed during the Soviet regime in honor of Stalin and Lenin, two of the most central figures of communism. These changes had a strong symbolic charge, using the name of the city to glorify the ideology and the regime in a period of strong political control. The city itself became a living monument to the dominant politics.

Political propaganda is another common reason for name changes, as in the case of cities during the Nazi era. In Germany, many cities were renamed with names that expressed Nazi power and ideology, as in the case of Wolfsburg, which initially bore a name that evoked the regime's industry. These changes were instruments of control, creating a link between the city and the regime that administered it.

In some cases, name change reflects a departure from a negative past. This is the case of Volgograd, which was known as Stalingrad during the Soviet era. After Stalin's death and the process of de-Stalinization, the city regained its original name of Tsaritsyn. This change symbolized not only the end of Stalin's personality cult, but also an attempt to distance itself from a past that, while marked by heroic resistance during World War II, was also associated with brutality and repression.

Other changes, such as Istanbul, are related to simple linguistic evolution. Istanbul is a name that has evolved over time, from Byzantium to Constantinople to its current form. This change is not necessarily related to political change, but rather to a natural process of linguistic evolution, reflecting the city's adaptation to new cultural and historical realities.

All these name changes are not just a superficial change of label, but are often full of symbolic and identity meaning. They reflect the desire of each city to tell its own story, to reaffirm its identity and to mark a separation from a past that it no longer wants to relive. However, these changes can also be controversial, since not all citizens always agree with the intention behind the new name. In some cases, the old names can evoke strong emotions, linked to historical or emotional memory, creating divisions between those who feel that the change represents liberation and those who perceive it as an unjustified cancellation of a significant past.

The changes in the names of cities – or monuments and memorials – are a powerful symbolic tool that reflects political, cultural and social transformations (Pistolesi 2022). Each city, through its name, tells a part of its history and its evolutionary process, sometimes with broad consensus, other times with controversy.

### **5. The Chemnitz case: memory, identity and historical transition**

Chemnitz, located in the state of Saxony, is a city with a complex and multi-layered history, marked by political, cultural and social change (Weber 2000). Famous for its mechanical and textile industries, the city experienced a period of great transformation after the Second World War. In the context of the division of Germany, Chemnitz became part of the German Democratic Republic (GDR), a socialist regime under the influence of the Soviet Union. This new political structure would have a profound impact on the city's identity, culminating in the city's name change to "Karl-Marx-Stadt" in 1953. The choice to name the city after Karl Marx, a symbolic figure of communism, reflected the GDR government's intention to inextricably link its identity to a socialist ideology. This gesture, however, was not only a symbolic act, but also a propaganda strategy that sought to consolidate the political order in the context of the Cold War.

The Karl Marx Monument, erected in 1971, with its gigantic 13-meter-high bust, became the visible symbol of the city and its most recognizable landmark. The city, now a testimony to an ideological past that had dominated East Germany for almost four decades, had to face radical change after the fall of the Berlin Wall in 1989. With the end of the communist regime and the reunification of Germany, the country embarked on a process of rediscovery and reconciliation with its historical and cultural roots, and Chemnitz was not immune to this change. In 1990, a referendum, promoted by a group of citizens, decided to return the city to its original name, demonstrating how historical memory and collective identity could be recovered from the bottom, through democratic participation (Mangasarian 1990). The referendum, which saw 76.1% of citizens in favour of restoring the name "Chemnitz", was symbolic not only for its political dimension, but also as an act of cultural and historical reappropriation (Bundesregierung 1990; MDR 2021). The decision to abandon the name "Karl-Marx-Stadt" represented an attempt to distance itself from the socialist past and to reaffirm the city's historical identity, based on centuries of industrial and cultural tradition (Karababa Demircan 2021).

This move marked the end of an era and the beginning of a new chapter for the city, a reappropriation that reflected the population's desire to separate themselves from an ideological past that, while having been an integral part of their recent history, no longer represented their future (Azaryahu 2012).

Despite this act of reappropriation by Chemnitz, the East German past, with its deep political and social scars, has not been easily erased. Many rural areas and cities of the former GDR still retain traces of that history through toponymy. The streets and squares of many of these cities are named after figures and ideals of the communist regime, a sign that the collective memory of the socialist past has not been completely overcome. Walking through these cities is, in a sense, a journey through time, where the regime of the Socialist Unity Party of Germany (SED) still seems present in everyday life.

The continued celebration of these Soviet symbols in the streets is a topic of debate and reflection. While other nations celebrate heroes, artists and historical events in their public spaces, East German cities seem to preserve a selective and problematic memory of the past. There is no uniform process of reworking the communist past, and this carries the risk of normalizing a regime that committed acts of repression and human rights violations. The memory of those who opposed the regime, of those who suffered its oppressions, is often overlooked. The figures of dissidents such as Robert Havemann and the victims of the 1953 uprising are almost invisible in the urban landscapes, while symbols of communism continue to dominate.

The issue of street names goes far beyond the simple question of toponymy. It is a question of collective identity and how a nation deals with its past. In many areas of the former GDR, the memory of the regime seems to be treated with a certain ambivalence, as if the weight of history is not fully understood or addressed. Street names that celebrate communism are not just a remnant of the past, but a way in which East Germany continues to negotiate its post-communist identity. The cities and villages that preserve these traces of history offer a kind of testimony to the difficult transition from dictatorship to a democratic system.

Furthermore, the insufficient memory of the regime's victims and the omission of events such as the 1953 uprising raise important questions about the nature of post-war reconciliation. How do you build a collective identity in a society that has been divided for decades by a totalitarian regime? The difficulty of dealing with the communist past in East Germany reflects a tension between the desire to forget and the need to remember. This debate concerns not only Germany, but all countries that have lived under totalitarian regimes. Historical memory, if not elaborated, risks becoming a force that hinders progress, fueling divisions and preventing true reconciliation.

The case of Chemnitz, with its historic decision to revert to its original name and the ongoing debate over the streets, is a powerful reminder of the importance of addressing and understanding one's past to build an inclusive, democratic and just future.

## **6. Conclusions: the power of toponymy**

The naming of public places, and of cities and streets, has never been a purely linguistic or geographical matter; it has been, and continues to be, a deeply political and cultural practice (Borer 2013). The name of a place is much more than a simple label: it is a powerful tool for the construction and legitimization of collective identity. As emphasized by anthropological theory and urban sociology, places are not only physical spaces, but are imbued with symbolic meanings that influence the behavior and perception of those who inhabit them. Every change of name is an act of re-signification that reflects a change in power relations, social values, and collective aspirations. Toponymy, in other words, is a means through which communities define themselves and their place in the world.

The French philosopher Henri Lefebvre (2005), in his idea of social space, suggests that urban space is never neutral, but is the product of power dynamics and social conflicts. The changes in the name of cities or streets can be read as strategies of social control, through which a dominant group attempts to impose itself on others or consolidate its own domination. In this sense, the power to “name” is linked to the possibility of constructing reality, of drawing the boundaries between what is considered legitimate and what is to be excluded. The case of cities that were renamed following regime changes, such as Stalingrad, Leningrad or the transformation of German cities during Nazism, clearly illustrates this dynamic of ideological legitimation. The name, in these circumstances, becomes a tool to establish a symbolic order that reflects the imposition of a new vision of the world.

Toponymy is also a means through which the collective memory of a city is constructed, since every change of name brings with it the removal or valorization of certain historical and social memories, and often the new names are accompanied by a reinterpretation of history. As Pierre Nora (1984) suggests in his theory of “places of memory”, public places that retain certain names become vehicles of collective identity. When the name of a place changes, its perception by the community changes, and with it also the historical memory that is associated with that place. This is particularly visible in post-colonial contexts, where the recovery of an original name represents an attempt to liberate itself from external domination and to reinvent one’s own history.

The change of name, moreover, can be interpreted as a reflection on the concept of fluid and evolving identity. Philosophers such as Michel Foucault (1982) have explored how power manifests itself in everyday details, practices and structures that are apparently not political but are deeply political. Foucault has underlined how power acts through the control and manipulation of language, and the name of a city is a perfect example of how language shapes our perception of the world. The same city can have a multiplicity of identities depending on how it is called and how it is experienced by the people who inhabit it and, evidently, this plays a central role in the formation of individual and collective consciences.

In the context of the philosophy of urbanism, one can reflect on how the name of a city not only speaks of its history, but also of the processes of power that shape its development. Cities, in fact, are concrete representations of political, economic and cultural ideas. For example, the name of a city can symbolize the will of a government to establish a new order, as in the case of the post-communist revival in Eastern Europe, where cities were renamed to mark a symbolic break with the Soviet past. In this way, toponymy becomes one of the main tools through which a society re-creates itself, rejecting or embracing certain historical legacies.

Ultimately, the naming of public places is a practice that goes far beyond the simple act of “naming”. It is a manifestation of the symbolic power that governs social and cultural dynamics, creating and recreating urban reality and collective memory. Cities are never neutral, and their names are the result of political and ideological choices that reflect struggles for power, memory, and identity. As Edward Said (1979) highlighted in his analysis of colonialism, the naming of a city is closely linked to symbolic violence, a process that Pierre Bourdieu defines as a coercion of the body and mind that is often unaware of its coercive nature. Said, drawing on Gramsci’s concepts of cultural hegemony and Foucault’s notion of power as rooted in discourse, illustrates how symbolic violence is never neutral. Every change of name involves an act of selection and removal, an interpretation of what is to be remembered and what is to be forgotten. This process, which is part of an epistemic and civilizing project, often operates through educational and cultural systems that transform the named places into repositories of a presumed objective truth.

In this sense, the naming of a city can be seen as a political action aimed at imposing a doctrine that elides cultural differences in the name of an alleged epistemic dominance. Talking about changes in the name of cities therefore means recognizing the government of collective memory as a process that profoundly shapes the way in which communities perceive themselves, narrate themselves and place themselves within a global order that continues to be marked by unequal power dynamics.

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**Katerina KLIMOSKA**   
Independent Researcher  
katerina.klimoska@yahoo.com

## THE EUROPEAN POLITICAL COMMUNITY: REIMAGINING EUROPE AS GEOPOLITICAL

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**ABSTRACT:** *The European Political Community (EPC), proposed by French President Emmanuel Macron, represents an approach of reshaping the political and strategic landscape of Europe. Emphasizing the “geopolitical” in Europe, the EPC seeks to foster cooperation among European states on shared values of democracy, stability and security. This paper frames the EPC as a geopolitical construction, analysing its potential to create a more inclusive and pragmatic form of political unity in response to contemporary challenges and geopolitical shifts. The paper gives a theoretical and conceptual review of the EPC, addressing its potential to reshape Europe’s borders, identity, and geopolitical role, and evaluates its capacity to deliver tangible results in areas such as security cooperation, energy security, and humanitarian efforts. Drawing on the theoretical frameworks of critical geopolitics, the paper argues that the EPC provides a model of political cooperation that transcends traditional notions of territoriality and expands Europe’s strategic influence. By examining the EPC through both practical and theoretical lenses, the paper offers insights into how it could evolve into a tangible and impactful entity in the future of European geopolitics.*

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**KEYWORDS:** EPC; Geopolitics; Europe; IR Theory.

### 1. Introduction

There is an insightful interview in *Le Grand Continent* from 2017 with Alain Lamassoure (*Le Grand Continent*, 2017), where he says: „The term 'community' can be understood as something warm, embodying the European ideal, as if we were a family of peoples.“ So, here is this term, in 2022, presented by Macron at the end of the Conference for Europe, European Political Community (Conference on the Future of Europe, 2022). Again, it is not something new, we can find similarities with the Fouchet Plan (Draft Treaty — Fouchet Plan I, 1982) drafted during General de Gaulle’s term and even more the Mitterrand's European Confederation, 1989, Grand Design (Bozo, 2008), but taking into account the geopolitical necessity in which we live in, it is something what Europe needs. Even we can go way beyond Mitterrand and de Gaulle, in the early 50s and the attempt of ratification of EDC and EPC (Risso, 2004) at the same time (which failed while enforcing to succeed). By this we could claim that Europe fundamentally was always geopolitical. From the founding fathers idea up to Maastricht treaty until today’s so called geopolitical Commission and finally the Macron’s EPC. In 1963 year Robert Schuman will say: "We must construct Europe, not only in the interests of the free peoples but also to welcome in it the peoples of eastern Europe, who freed from their repression ... We consider as integrating part of a living Europe all those who desire to re-join us in a re-constituted Europe." Furthermore, up to now, there are no clear demarking boundaries of Europe, at least not formally in the EU treaties. The

problem always was how to pursue with this idea, the clash of supranational structure and national sovereignty, different historical circumstances, or difference in understanding of the European project, were just some of the obstacles on the way. In 1994 speech, Jacques Delors stated: "Europe needs to know where it is going" which Baldwin reedited into claim of "Europe needs to know how to get where it's going and what to do in the meantime.", referring to the need of "intermediate steps" while the process of enlargement gives results (Baldwin, 1994). Today's European Political Community (EPC) is a new attempt in a form of a "platform for political coordination" that aims to go 'beyond enlargement' and steer political dialogue and coordination, mainly on security issues, with like-minded countries, those that have an ambition to join the EU and those that do not." This paper looks into current initiative of EPC.

### **Theoretical and conceptual review of EPC**

Emmanuel Macron's European Political Community (EPC) introduced as an initiative or platform, I would argue that it is also a concept. As a political idea that Macron introduced in 2022, it is a way to bring together European countries, both EU members and non-EU members, around common goals related to peace, stability, democracy and security in Europe. After all even the founding fathers, as Shuman, said the purpose and objective of Europe should be "peace and works of peace." In that line, the idea is to foster political dialogue and cooperation among European countries, transcending the EU and involving countries that may not be part of the EU but have shared interests in European security, economy, and democratic values. The EPC envisions a flexible, open forum that would allow for increased collaboration on issues such as security, energy, climate change and migration, among others. It aims to expand the EU's influence and integrate non-EU members like the UK, Ukraine, Turkey, and the Balkans into a larger European framework. But as well, the EPC is a real diplomatic initiative that has been put into action. So, thought EPC long-time efforts for common security, defence and foreign policy could be achieved. While the EPC has been discussed and some early meetings have occurred, it has not yet been fully established as a permanent institution or organization. Macron's idea aims to shape the future direction of European cooperation, and the EPC concept is still evolving. To sum up, the EPC is both a concept and an ongoing initiative, with real diplomatic efforts being made to turn it into a meaningful framework for European political cooperation. However, it remains to be seen how it will develop, and whether it will become a more formalized institution or remain a loose, flexible platform for dialogue and coordination. For the theoretical or academic purpose of this paper, I will refer to it as a concept.

The theoretical framework of the EPC will be examined from the perspective of two IR theories, which I believe will encompass the full scope of this concept. I will also attempt to answer the question use of the term "Community" from a theoretical standpoint. The use of the term "Community" is significant because it

conveys the idea of shared identity, collective goals, and cooperative action among European countries, both within and outside the EU. Finally, an explanation will be provided regarding the place of EPC in geopolitical theories. Through this, I believe the path will be opened for further analysis and new research on Macron's new project and its potential developmental forms in the future.

EPC, as a platform for cooperation, integration, diplomacy, and security between European states (those within the EU and those outside the EU with a tendency to move closer to it), is analysed in this paper through the IR theory of constructivism but also by the English school. In this way, the theoretical framework will be structured through a combination of a liberal-realist and at the same time constructivist approach. For a clarification, the use of English school is appropriate because here we don't talk about EU but of Europe as a wider idea.

Constructivism emphasizes the role of ideas, norms, and identities in shaping international relations. It sees international systems not as static entities, but as socially constructed through human interaction, dialogue, and norms (Wendt, 1992; Guzzini, Leander (Eds.), 2005). At the same time the English School, IR theory that uses the concept of "community", focuses on the idea of an international society (Watson, 1992), where states share a set of rules, norms, and values that govern their interactions (Bull, 2012). This is closer to the concept of "community" in the sense that states form an international community based on shared understandings of law, diplomacy, and governance. The English School suggests that states form an international society based on shared values and norms. This can be seen as a community of states that adhere to common rules, such as respect for sovereignty, non-intervention, and peaceful resolution of disputes.

From the side of constructivism, I argue that the EPC is designed to promote a shared European identity. It aims to unite countries through respecting common democratic values, human rights, and regional stability. Further, from constructivism, the EPC seeks to reinforce and spread European norms and identities across the continent, beyond the EU. By including non-EU countries, the EPC offers a platform for socialization of those states and adopting European norms and values (like rule of law, democracy, and human rights). Even in 1973 at the EC summit in Copenhagen when the political decision was made for establishing a European identity, the goal was attempt to re-establish an international order with a central place for Europe (Strath, 2010). So EPC could promote European identity while constructing community and feelings of cohesion and holism inside. Constructivists view communities not just as geographical or institutional entities but as spaces where states and actors learn to behave according to common rules and values. This process of norm diffusion can influence the behaviour and policies of the countries in the Community, helping integrate them more deeply into the European political sphere. Within EPC the reflexivity could be achieved in its best potential. Guzzini puts reflexivity as one of the central components of constructivism (Guzzini, 2013). Highlighting the importance of shared beliefs and interests in forming communities, the EPC could be seen as an effort to build a

larger, more inclusive European political community by emphasizing common principles, even in a flexible and informal way. Constructivism often focuses on communities of practice in international relations, where states cooperate on certain issues (e.g., climate change, human rights) because they share similar understandings and beliefs about the importance of these issues. EPC concept, for instance, fits into this model as Macron aims to bring together countries (both within and outside the EU) that share certain democratic and political values, working on strategic issues.

While the English school use the term "community" to describe cooperative arrangements among states, Constructivism provides a rich theoretical tools to explore how such communities are socially constructed and how norms, identities, and shared beliefs play a critical role in the formation and sustainability of these communities. Macron's EPC by combining elements of these theories, represents a modern approach to fostering regional stability and collaboration in a changing geopolitical landscape.

When applying the principles of the English School to Macron's EPC, several key elements of international society "community" come into play:

#### 1. Creating a New European Political Community

Macron's EPC is essentially an attempt to create a community of European states (both EU members and non-EU member countries) based on shared democratic values, human rights, and political stability. By using the term "community," Macron implies that the EPC will not just be a collection of states with common interests, but a space where states share deeper, underlying norms and principles that define their relationship to each other. Here the importance of using "Community" and not "Communities" is high, showing the construction of united Europe as a political and ideological project. By creating a common political space for countries that share a set of values, the EPC gives benefits to the envisaging of the European public sphere, as Nanz says "not only normative necessary, but already an emergent characteristic of the new Europe." (Nanz, 2006). These shared goals, as security, energy, climate change, and migration, represent the rules of international society in action, framing them as a legitimate political order that has regional appeal.

#### 2. Inclusive cooperation among states

The EPC aims to be an inclusive forum that includes countries that are not in the EU, such as Ukraine, Turkey, the Western Balkans, or UK. This also applies in their mutual recognition. This aligns with the idea that international society can accommodate a wide range of states, even those that may not fully share all institutional features of the EU, but still recognize common norms and agree to cooperate on key issues. The EPC, as a community, suggests that these states are being socialized into European norms and values, even if they are not yet part of the EU itself.

#### 3. A potential European "World Society"

The English school contemplates the idea of a world society, in which states and non-state actors (e.g.,

individuals, international organizations) share not just political and legal norms but also a deeper commitment to global norms like human rights, justice, and environmental sustainability (Buzan,2004). Macron's EPC could be seen as a step toward creating a European world society, where the community of European states, EU, but as well international organizations as NATO, OSCE or Council of Europe, not only cooperates on regional issues but also contributes to global governance, aligning European countries and organizations around common principles of rule of law, democracy and peace.

#### 4. European normative and soft power

The English School discusses the role of normative power in international relations, the ability of Europe to project influence through shared norms, values, and ideas (Manners,2001). Macron's EPC represents an attempt by Europe to exercise its normative power by promoting democratic values, peace, and human rights across the continent and its neighbours. This approach is grounded in the belief that states within the EPC will work together not just for practical reasons, but because they share a common political and normative community. Macron is positioning Europe as a geopolitical actor with a normative power.

#### 5. Balancing sovereignty with collective action

One of the key principles of the English School's idea of international society is the balance between state sovereignty and collective action. The EPC respects the sovereignty of states by not forcing them into the EU structure but encourages them to cooperate on European-wide issues. This fits with the English School's view that states can remain sovereign but still participate in a community where they recognize certain common norms and responsibilities. In practical terms, the EPC reflects the English School's tension between pluralism and solidarism (Bain,2018). Macron's idea tries to balance these two perspectives: respecting the sovereignty of states while also encouraging deeper normative alignment around shared European values.

To come back to the basic, the goal of the EPC is to provide a space for cooperation and political dialogue among European countries, including non-EU members such as Ukraine, Turkey, and the Western Balkans. Until now, the EPC is not meant to be a political union like the EU but rather a community where European countries, EU and non-EU, can share common political, foreign and security interests, engage in joint action, and reinforce European values like rule of law, democracy and human rights. Macron's EPC can be theorized as a regional version of international society, influenced by the English School's concept of community but with distinct characteristics tied to European norms, values, and political goals. The EPC aims to create a community of European states (both EU and non-EU) that share core values and seek to cooperate on issues like security, human rights, and democratic governance. While it shares similarities with the English School's vision of an international society based on shared rules and norms, the EPC emphasizes a more regionally

specific and value-based community that allows for diverse political systems but still enforces shared European values. Thus, the EPC can be seen as an attempt to forge a new kind of European community that respects state sovereignty while fostering greater political and normative cooperation among a diverse group of countries, very much in line with the pluralist strand of the English School, but with strong elements of solidarity in terms of shared European values.

**Table 1. EPC from the ground of the two IR Theories**

IR Theory	EPC
Constructivism	Social Construct
English school	Europe as a International Society

From the ground of the two theoretical frameworks, we could see EPC as:

*Constructivism: EPC as a Social Construct*

- The EPC can be viewed as a social construct, a platform for reimagining the political identity of Europe. Macron's concept seeks to shape a new European political community based not just on economic cooperation (as in the EU) or military alliances (as in NATO), but on shared democratic values, stability, and mutual understanding;
- From a constructivist perspective, the EPC is an attempt to construct a European identity that includes both EU and non-EU countries, with the idea that the perception of Europe and its place in the world can be redefined. The EPC can be a forum for establishing new norms of cooperation, identity, and collective action;
- Constructivism perspective highlights how the EPC is grounded in the promotion of shared democratic norms, human rights, and security. These shared norms are not intrinsic but are constructed through diplomatic interaction and cooperation between states. For instance, a country's decision to join the EPC may be based not only on security concerns but also on alignment with these broader normative ideals of European integration;
- Constructivism points how the EPC could challenge the traditional notion of Europe as being exclusively EU-centric. Through interaction, member states and aspirants shape new understandings of what it means to be part of Europe and how political, cultural, and geopolitical connections evolve.

Benefits of the Constructivist analysis is that it is providing a deep understanding of how the EPC can construct a shared European political identity, which is critical for the success of this initiative but as well for the Europe as a geopolitical actor. Also, through flexibility, it highlights an opportunity for the EPC members to actively reshape their interactions and the structure of Europe over time.

*English School: EPC as "Europe as a International Society"*

- The EPC could be seen as an effort to create an international society within Europe, where states, regardless of EU membership, adhere to common rules, norms, and understandings, thus creating an orderly and cooperative political space. This resonates with the English School's focus on shared values and cooperation among states, even in the absence of a single overarching governing body like the EU;
- The EPC could be analysed through both pluralist and solidarist lenses: EPC states may respect each other's sovereignty and territorial integrity, while still working together on issues like security, foreign relations or trade. This would emphasize a looser framework of cooperation with minimal interference in each other's internal affairs. But the EPC could also reflect a more solidarist vision, where members go beyond mere order and also emphasize human rights, democracy, and the rule of law. In this sense, EPC membership could entail active commitments to shared European values;
- The EPC could also contribute to Europe's role in the global order, acting as a normative and institutional space that positions Europe as a promoter of global norms. From the perspective of the English School, the EPC could be part of Europe's effort to lead by example in areas such as peacebuilding, democracy, and regional stability.

Benefits of the English School analysis would be the emphasis on shared norms. The EPC could be seen as creating a new societal framework for European states based on shared interests and values, which could help promote stability and cooperation. The English School's pluralism/solidarism distinction provides flexibility in understanding the EPC as both an inclusive and value-driven initiative, offering a middle ground between traditional state sovereignty and deeper integration.

If we view on possible limitations, they are both from the English School approach and Constructivist approach, ambiguity in norms and values and lack of tangible outcomes. The English School perspective might struggle to offer clear prescriptions for action or specify the precise role of the EPC within the broader international system. It focuses more on normative dimensions rather than concrete institutional arrangements or measurable outcomes; and Constructivism's focus on identity and ideas may overlook the practical aspects of creating institutional structures or policy outcomes, which are critical for the EPC to function effectively. That is why the necessity to use both theories while analysing the concept.

Both Constructivism and the English School offer valuable insights into the European Political Community (EPC), but with different emphases. Constructivism highlights the social construction of identity and norms, viewing the EPC as a platform for redefining Europe's political identity, while the English School focuses on the creation of a society of states based on shared norms and the balance between sovereignty and cooperation. The EPC could be analysed through both frameworks, with Constructivism providing a deeper

understanding of identity and the discursive elements of the project, and the English School offering a more structured approach based on norms and institutional cooperation. Both frameworks complement each other in exploring how the EPC can evolve as a new model for European cooperation. Through this lens, the EPC could be understood as both a normative value-based geopolitical project, seeking to build a European political community.

Now, when we analysed the theoretical framework, in addition to these theoretical insights, adding the geopolitical discourse, we could conclude the term "community" has also important geopolitical implications:

- Political cohesion in the face of external threats: The idea of a "community" reinforces the notion that Europe is a unified entity, especially when facing external threats, such as Russian aggression or global competition with China. By framing the EPC as a "community," Macron strengthens the idea of a European political space that transcends both the EU and NATO, potentially enhancing Europe's ability to act cohesively on the world stage;
- Soft power and normative influence: By framing the EPC as a "community", Macron signals that it's not just a geopolitical tool for security or economic interests, but a normative project meant to shape the political future of Europe. This aligns with the EU's approach of projecting its values of democracy, peace, and human rights through diplomacy and institutionalized cooperation.

### **EPC as a geopolitical construction of Europe**

Macron's European Political Community (EPC), as a geopolitical construction, can be framed within two geopolitical theories, particularly classical geopolitics and critical geopolitics, but by my understanding it could be best understood through a critical geopolitics lens due to its emphasis on normative values, flexibility in the political alliance, and its focus on shared principles rather than traditional territorial and hard power-based considerations. But I would argue, that in the time of come-back of the great geopolitical narratives, we must take into consideration as well the traditional approach. Here's how this paper approach it from both theoretical perspectives:

#### *Classical Geopolitics*

Classical geopolitics focuses on the strategic, territorial, and military dimensions of geopolitics. It's about the geography of power, the strategic positioning of states, and how geography and resources shape international relations. Classical geopolitics often emphasizes borders, territorial control, military strength, and the influence of large powers (Mackinder,1904; Mearsheimer, 2003; Gray,2015). In this sense, one could argue that the EPC could be analysed through a classical geopolitics lens, especially when focusing on its goal of strengthening Europe's strategic position against external threats and enhancing security cooperation among European states. The EPC's focus on geopolitical stability and regional security in its response to Russian

aggression (e.g. Ukraine) aligns with classical geopolitical themes of defence and the protection of borders. However, framing the EPC purely within classical geopolitics would miss its broader normative and political dimensions, such as values and the flexibility of its membership.

*Critical Geopolitics*

Critical geopolitics, on the other hand, challenges the traditional assumptions of classical geopolitics and places greater emphasis on how political narratives, discourses, ideologies, and identities, shape and construct geopolitical realities. Critical geopolitics does not only focus on territory and military power, but also on how these concepts are socially constructed, negotiated, and legitimized through discourse, symbolism, and narrative (Flint,2022; Agnew,1998; Tutathail,1997).

EPC could be better comprehensively analysed through the lens of critical geopolitics for several reasons. If I should give a ground to my argument why critical geopolitics is the best fit, I would wrap it up in the following points:

**Table 2: EPC critical geopolitics discourse**

EPC critical geopolitics discourse	
a. Emphasis on narrative, normativity and identity	The EPC is more about redefining Europe and its political identity than about traditional territorial politics or the direct exertion of power. Critical geopolitics allows us to examine how the EPC serves as a political narrative that shapes how European countries and others outside the EU think about their place in Europe.
b. Inclusion and exclusion: deconstructing the traditional boundaries	Critical geopolitics highlights the importance of inclusion and exclusion in shaping geopolitical spaces. The EPC is explicitly about who is included in the European political space, and this can be analysed as a discursive process through which political, social, and cultural norms determine who is part of Europe.
c. Geopolitical flexibility	Unlike classical geopolitics, which typically emphasizes fixed territorial boundaries and clear-cut distinctions between insiders and outsiders, the EPC reflects a more flexible approach to geopolitical space. The inclusion of countries like Ukraine, Moldova, and the Western Balkans

	challenges the fixed borders that many times have defined the EU and Europe itself.
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I am adding more explanation on each item in the Table 2, as follows:

a. Through the lens of identity and normativity:

The EPC is fundamentally about shaping a geopolitical space based not on military power or territorial control, but on shared values, democracy, rule of law, human rights, and stability. It is an attempt to create a political community that transcends the traditional borders of the European Union and includes countries that aspire to these values, such as Ukraine, Georgia, and the Western Balkans. From a critical geopolitical perspective, I would argue that EPC is a discursive construction of what it means to be European. *l'Europe vécue*, as explained in Nanz (Strath,2010). It represents an effort to redefine European identity and sense of political belonging, not just in geographic terms but in terms of norms and political aspirations. The EPC's inclusivity is shaped by the idea of Europe as a space of shared democratic values, and this ideological framing is a core component of critical geopolitics.

b. Deconstructing traditional geopolitical boundaries:

Critical geopolitics also emphasizes how geopolitical practices and relationships are often based on constructed boundaries rather than natural or static ones. The EPC deliberately blurs the lines between EU members and non-EU countries, challenging the conventional notion of a geopolitical Europe defined solely by EU membership or military alliances. The inclusion of countries that are not geographically or politically aligned with the EU, such as Georgia or Moldova, suggests a rethinking of Europe's geopolitical boundaries, which is a key theme in critical geopolitics.

c. Geopolitical flexibility - power and discursive practices:

Critical geopolitics also pays attention to how power and hegemony are embedded in geopolitical narratives. Macron's proposal for the EPC, as a French attempt to shape the future of Europe, promotes a vision of Europe that extends beyond the EU, as a geopolitical space that operates on soft power and normative leadership rather than traditional power politics based on territorial control and military influence.

While the EPC could theoretically be framed within classical geopolitics (due to its focus on security and geopolitical stability), it could not be well understood without the lens of critical geopolitics. The table below shows the breadth and depth of the EPC concept, following its members and their narratives across the 5 EPC summits held so far.

**Table 3: Meetings of the European Political Community**

meeting	1st meeting	2nd meeting	3rd meeting	4th meeting	5th meeting
date	6.10.2022	1.06.2023	5.10.2023	18.07.2024	7.11.2024
place	Prague	Mimi Castle in Bulboaca, Moldova	Granada, Spain	Blenheim Palace in Oxfordshire, the United Kingdom	Budapest, Hungary
number of part.	44	45	44	43	42
who participated	the 27 EU member states Albania Armenia Azerbaijan Bosnia and Herzegovina Georgia Iceland Kosovo* Liechtenstein Moldova Montenegro North Macedonia Norway Serbia Switzerland Turkey Ukraine the United Kingdom	EU27 member states Albania Andorra Armenia Azerbaijan Bosnia and Herzegovina Georgia Iceland Kosovo* Liechtenstein Moldova Montenegro North Macedonia Norway Serbia Switzerland Ukraine	26 EU member states Albania Andorra Armenia Bosnia and Herzegovina Georgia Iceland Kosovo* Liechtenstein Moldova Monaco Montenegro North Macedonia Norway San Marino Serbia Switzerland Ukraine United Kingdom	24 EU member states Albania Andorra Armenia Azerbaijan Bosnia and Herzegovina Georgia Iceland Kosovo* Liechtenstein Moldova Monaco Montenegro North Macedonia Norway San Marino Serbia Switzerland Ukraine	24 EU member states Albania Andorra Armenia Bosnia and Herzegovina Georgia Kosovo* Liechtenstein Moldova Montenegro North Macedonia Norway San Marino Serbia Switzerland Türkiye Ukraine United Kingdom

	<p>the President of the European Commission</p> <p>the President of the European Council</p>	<p>United Kingdom</p> <p>The President of the European Council, the President of the European Commission and the President of the European Parliament</p>	<p>The President of the European Council, the President of the European Commission, the President of the European Parliament, and the High Representative of the European Union for Foreign Affairs and Security Policy</p>	<p>United Kingdom; the President of the European Council</p>	<p>NATO secretary</p>
<p>what was discussed</p>	<p>peace and security, especially Russia's war in Ukraine; the energy crisis</p>	<p>joint efforts for peace and security</p> <p>energy resilience and connectivity and mobility in Europe</p>	<p>the leaders discussed how to make Europe more resilient, prosperous and geostrategic.</p>	<p>The leaders reaffirmed their continued support for Ukraine and discussed the topics of energy and connectivity, security and democracy, and migration.</p>	<p>Europe's security challenges, in the context of Russia's war of aggression against Ukraine and the ongoing escalation in the Middle East, irregular migration and issues related to economic security and connectivity in terms of energy, transport, IT and global trade.</p>

					EU-US relations was also a topic of discussion among leaders, in light of the recent US elections.
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Source: Consilium.europa.eu

Having on mind the earlier theoretical analysis of EPC and the Table 3 with data from the 5 EPC summits, EPC can be defined as a geopolitical construction of Europe because it represents a strategic, politically motivated framework designed to shape the geopolitical landscape of Europe. Rather than merely reflecting pre-existing political or economic structures, the EPC is a proactive attempt to create a new political space in Europe that aligns with specific geostrategic interests and aims to consolidate Europe's influence in the face of changing global dynamics.

1. Expanding the concept of Europe

The EPC expands the geographical and political boundaries of Europe beyond the European Union (EU). At the 5 Summits approximately 44 countries attended. With the evolving participation, the number of participants in the meetings fluctuated, with 44 members in the first meeting and 42 in the most recent one with participation of EU member states, along with several other countries such as Ukraine, Turkey, and the United Kingdom, showing inclusive discussions and cooperation. Demonstration of leadership engagement with the involvement of top EU leaders, including the Presidents of the European Council, European Commission, and European Parliament, leaders on high level of each participation state, further highlights the importance of these discussions in shaping EU policy and strategy, especially in terms of foreign affairs and security.

2. Strategic geopolitical objective: countering external threats

A core aspect of the EPC's geopolitical function is to enhance Europe's strategic cohesion in the face of external threats, particularly from Russia. At the 5 Summits the discussed topics were closely connected with security and stability as well international developments. The invasion of Ukraine and the broader Russian challenge to European security have highlighted the need for Europe to forge stronger ties with its neighbourhood and to solidify its geopolitical position against external pressures. The EPC provides a mechanism for cooperation and solidarity among European countries and their neighbours that are not yet part of the EU but seek to align with European values. By inviting countries like Ukraine, Moldova, and the Western Balkans

into the EPC, Macron is seeking to integrate these countries more closely into Europe's strategic orbit, simultaneously effectively strengthening Europe's eastern and southern frontiers. The geopolitical logic behind this is clear: by including countries vulnerable to Russian influence or direct aggression, the EPC aims to create a collective defence and diplomatic network that reinforces Europe's stability and deterrence capabilities. It's about forging security alliances that are not strictly military but also involve diplomatic coordination and political solidarity.

### **3. Geopolitical flexibility and soft power**

The EPC is also a flexible geopolitical framework, in that it offers a form of cooperation that doesn't demand the full institutional integration that comes with EU membership. The Table 2 shows countries which are EU candidates but and those which are not at the moment or their status is frozen. Exactly the EPC's flexibility is important for these countries that may not be ready or willing to meet the full criteria for EU membership but still seek a form of European affiliation. Through the EPC, these countries can participate in European political affairs, contribute to shared values, and align with the EU on matters of common interest, such as democracy, human rights, trade, and security. This flexibility allows the EPC to act as a kind of soft power tool, creating political influence through the attraction of European values and integration without the rigid structural requirements of EU membership. This kind of geopolitical construction helps Europe project influence in its neighbourhood and beyond, using diplomatic engagement and normative power rather than purely military or economic means.

### **4. Fostering regional stability and European unity**

The EPC can also be seen as a tool for reinforcing European unity by fostering cooperation among countries with varying degrees of integration into European institutions. Countries within the EPC can collaborate on regional issues such as conflict resolution, energy security, and economic development. For example, the Western Balkans, which have long struggled with political instability and tensions, could benefit from the EPC by engaging more directly with the EU and other European states in a peace-building and reconciliation process, making them seat on the same table as part of the family. The Table 3 shows also a continued support for Ukraine, being a central topic of discussion at every meeting. The EPC leaders have repeatedly reaffirmed their commitment to supporting Ukraine, a theme that has remained unchanged despite shifting global dynamics. The discussions also highlight Europe's security concerns, including the broader geopolitical situation in the Middle East and irregular migration. The EPC has remained focused on strategies to strengthen Europe's resilience to external and internal challenges. But the data shows focus on energy resilience, connectivity, and migration, emphasizing Europe's need to secure its energy supply and infrastructure, especially amid external shocks like the war in Ukraine and global trade disruptions.

## **5. Defining Europe's global role**

Beyond the immediate European neighbourhood, the EPC is a key part of how Europe seeks to define its global geopolitical role. In the context of an increasingly multipolar world, where the US, China, and Russia exert considerable influence, Europe must assert its own geopolitical identity. The EPC is a way for Europe to consolidate its power and project a united front on issues of global significance, from climate change to trade and security. By broadening its conception of who belongs to Europe, the EPC also aims to increase Europe's global leverage, creating a more expansive political bloc that can assert its values and interests in global governance institutions, such as the United Nations, the World Trade Organization, or Paris Climate Agreement. Table 1 also shows that the global relations discussions extended beyond Europe, with the EPC addressing global topics like EU-US relations, reflecting the interconnectedness of European issues with broader global geopolitics.

## **6. Response to EU Enlargement lethargy**

The EPC is also a response to EU enlargement lethargy. EU expansion has slowed in recent years due to challenges such as the financial crisis, the migration crisis, and the Brexit decision, but also the slow development at the side of country-candidates. The EPC provides a geopolitical framework that allows for cooperation with European countries that may not be able to meet EU membership criteria in the near future or whose inclusion in the EU may be politically sensitive, but and to those as UK or Norway. It avoids the institutional bottleneck of EU enlargement and offers a more flexible model of European political unity that can accommodate diverse levels of engagement, at least while the Enlargement policy starts giving tangible results.

In summary, the 5 EPC meetings (Table 3) have shown a consistent commitment to addressing key geopolitical and regional issues and EPC has proven to be a platform for deepening cooperation on critical security, energy, and geopolitical challenges facing Europe, with a strong focus on unity and resilience in response to external crises. EPC reflects the need for Europe to adapt to the realities of a changing global order by defining its geopolitical role more flexibly, creating a space for political cooperation that is both inclusive and strategic.

## **7. Conclusion**

The European Political Community (EPC), as proposed by Emmanuel Macron, is still evolving and remains a concept that lacks a precise and universally accepted definition. At this moment, we could conclude, that the key points of the EPC include: Inclusivity (It aims to bring together countries that share European values, even if they are not members of the EU); Political Dialogue and Cooperation (creates a forum/platform for states to discuss and collaborate on common challenges like security, energy climate change etc); Shared European Values (commitment to democracy, human rights, and peace, values fundamental to the European

identity). However, in order to develop the EPC into a tangible, actionable entity that delivers concrete results, a systematic approach to its formation and institutionalization is necessary.

### 1. Defined clear objectives and vision

As there is attempt for a coherent narrative framing the EPC as a project of political and economic stability, security cooperation, and democratic values in the face of external challenges, still it lacks clarity. One of the main characteristics for geopolitical entity is common foreign, security and defense policy. The EPC should go on to be a platform for enhanced military and civilian coordination, crisis management and humanitarianism in situations of external aggression or instability (such as Russia's war on Ukraine); to serve as a platform for promoting democracy, human rights, and rule of law in its member states, particularly those in Eastern Europe and the Western Balkans. Here the problem could be in compliance of the EPC's members countries, are they all share the European values (CoE) of democracy and human rights or some of their governance are not democratic one? This could be issue to think about;

### 2. Institutionalization and structure

The EPC needs a clear institutional framework that organizes its activities, decision-making, and cooperation. Up to now it is a platform for debate without any decision-making or binding documents release. In time, this would require creating a formal structure with clear roles for both member states and non-member participants.

-EPC Summit: The EPC should continue to have a regular summits that brings together heads of state or government. Also, the presence of the NATO, EU Commissioner or Council President shows the broader influence of EPC (world society);

-EPC Secretariat: A permanent body to support the EPC's work, focusing on coordination between members, facilitating discussions, and providing technical support. The secretariat would ensure continuity and institutional memory, making the EPC more than just a series of ad-hoc meetings;

-Working Groups and Task Forces: Specific working groups could be established to focus on particular issues, such as defense, energy, climate change. These groups would be tasked with producing tangible deliverables;

-EPC Consultative Assembly: A consultative assembly, made up of representatives from member countries, could serve as a forum for political dialogue and contribute to the democratic legitimacy of the EPC, fostering the deliberative democracy among European countries and with that further constructing the European public sphere.

### 3. Promote a shared European identity

The EPC should actively promote the idea of a shared European identity that transcends EU membership. This includes cultural exchanges, educational programs, and initiatives that bring people together across the

continent. Without this effort, no common ground of belonging would be present among the members and no feasible future for the initiative.

The EPC's success depend on tangible results that demonstrate its value to its members and the broader international community. These results should be measurable and visible.

By establishing clear goals, institutional structures, and tangible outcomes, the EPC can become a dynamic geopolitical framework that strengthens Europe's political unity, enhances its security, and contributes to regional stability and prosperity.

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**Katarzyna JEROMINEK, PhD Student** 

University of Warsaw, Poland

jerominek.uw@gmail.com

## EU SANCTIONS POLICY TOWARDS BELARUS FROM 2010 TO 2020

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**ABSTRACT:** *Restrictive measures (sanctions) are an important instrument of the European Union's Common Foreign and Security Policy (CFSP), used in response to political crises and human rights violations. The EU maintains almost 40 sanctions regimes, covering a wide range of restrictive measures from targeted individual sanctions to more comprehensive sectoral measures. In the face of rising geopolitical tensions, the role of sanctions is becoming increasingly important, and they are being systematically expanded in scope and intensity and implemented with increasing dynamism. The case study of Belarus presented in this article is an illustration of the long-term, variable and cyclical nature of the EU's sanctions policy towards this country over the past two decades, involving a wide range of applied measures. The aim of these measures has been to put pressure on the Belarusian regime to force democratic reforms and improvements in the human rights situation. The sanctions policy was not limited to their imposition, but also included their suspension and lifting, in response to both the changing political conditions inside Belarus and the wider geopolitical context. The article analyses the EU's sanctions policy from 2010 to 2020, focusing on the factors influencing its decision-making process. Particular emphasis is placed on a comparative analysis of the two periods: 2010–2013 and 2014–2020. The article also attempts to determine the extent to which the nature of the EU sanctions policy pursued during the period under review may have influenced both the Belarusian regime's decision to apply repression after the 2020 presidential election and the subsequent support provided to Russia in its aggression against Ukraine.*

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**KEYWORDS:** European Union; Belarus, sanctions (restrictive measures); Common Foreign and Security Policy (CFSP).

### 1. Introduction

Sanctions are one of the most commonly used instruments of the Common Foreign and Security Policy (CFSP), enabling the EU to respond to political challenges and developments that are contrary to its values and objectives, as set out in Article 21 of the Treaty on European Union (TEU, 2009).

From theoretical and practical perspectives, the analysis of the EU sanctions policy gains particular relevance in the context of the ongoing geopolitical transformation and its impact on the global balance of power.<sup>1</sup> An indecisive and ineffective sanctions policy weakens the EU's foreign policy, undermines its credibility as an important actor on the international stage and threatens democratisation processes.

The analysis of the EU's sanctions policy towards Belarus is illustrative, as the policy is characterised by its long duration, its volatility and cyclicity (measures were introduced, suspended and lifted) and the wide range of measures applied, from travel restrictions and asset freezes to arms embargoes and targeted economic measures.

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<sup>1</sup> The overhaul of US foreign policy implemented by the Donald Trump administration, including changes in strategy towards Russia and the EU, have a significant impact on the shaping of the global geopolitical configuration. In addition, further developments in Ukraine and the role of Belarus as an ally of Russia and a direct neighbour of the EU, pose challenges for the EU.

The main objective of this article is to identify the factors determining the decision-making process of the EU sanctions policy from 2010 to 2020 in the context of the Belarusian regime's increasing repression after the period under review and its support for a full-scale Russian invasion of Ukraine.

The article attempts to answer the following research question: what factors (axiological-normative or pragmatic) determined the decision-making process regarding the EU sanctions policy towards Belarus between 2010 and 2020?

The author formulates the hypothesis that the EU's sanctions policy towards Belarus between 2010 and 2020 was pragmatic, driven by the EU's pursuit of its economic interests and the changing geopolitical context, particularly in the context of the political rivalry between the EU and Russia.

This article offers a novel perspective on the analysis of the European Union's sanctions policy towards Belarus, focusing on the factors that shape its formulation in the context of an evolving geopolitical landscape. In particular, it examines the interactions between EU institutions and Member States within the decision-making process, highlighting both the constraints and opportunities for shaping the Union's sanctions policy.

The following structure of the article has been adopted: first, an explanation of the methodology used and the research framework will be presented. This will be followed by a discussion of the role of key EU institutions in shaping sanctions after the entry into force of the Lisbon Treaty. Next, the article will analyse the evolution of EU sanctions against Belarus from 2010 to 2020, divided into two periods, and identify the factors determining the decision-making process of this policy. The final section of the article will attempt to verify the hypothesis and answer the question of how the nature of the EU sanctions policy pursued during the analysed period might have influenced A. Lukashenko's decision on post-election repression in 2020, as well as his decision to support Russian aggression against Ukraine.

## **2. Methodology and research framework**

The analysis of the EU's sanctions policy towards Belarus between 2010 and 2020 is particularly relevant from the current perspective, as it allows an assessment of the long-term effects of the Union's actions towards authoritarian regimes and the effectiveness of its policy instruments in crisis situations. Understanding these mechanisms is crucial for adapting the EU's sanctions policy to new challenges in the face of growing threats to regional stability, particularly a full-scale Russian invasion of Ukraine and the involvement of Belarus on the side of Russia.

The study is based on the following research methods: content analysis, process tracing method and comparative method.

A content analysis was conducted to critically assess selected EU documents, both individual and collective institutional actors on sanctions. Resolutions and recommendations of the European Parliament (EP),

conclusions of the European Council (EUCO) and the Council of the European Union (Council), statements of the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission (HR/VP), the European External Action Service (EEAS), judgments of the Court of Justice of the EU (CJEU), as well as Council decisions and implementing regulations on sanctions, were analysed.

The process-tracing method was used to analyse the evolution of the sanctions policy and to identify the reasons for its changes over a specific timeframe. The comparative method was employed to analyse the two periods in the EU's sanctions policy towards Belarus.

The analysis of sanctions policy was carried out using the following variables: values (“human rights”, “democracy”), pragmatism (“economy”, “geopolitics/security”) and institutional aspects (positions of both collective institutional and individual actors towards the transformation of sanctions policy).

In order to carry out a coherent analysis of the EU's sanctions policy in relation to Belarus, it is necessary to divide the research framework into two chronological stages:

1. 19 December 2010 – 8 July 2014: the period from the presidential elections in Belarus after the entry into force of the Lisbon Treaty to the Council's first decision to suspend part of the sanctions in response to the new geopolitical situation (the annexation of Crimea and armed conflict in Eastern Ukraine) and the role of Belarus in the region.
2. 9 July 2014 – 9 August 2020: the period between the suspension of EU sanctions and the presidential elections in Belarus in August 2020.

In this article, the EU's sanctions policy towards Belarus between 2010 and 2020 will be analysed from the perspective of the liberal intergovernmentalism (Tosiek, 2016, 2020). This approach allows for the consideration of the national interests of Member States – both those maintaining strong economic relations with Belarus and those advocating a more principled, pro-sanctions, value-based approach. The analysis covers economic, investment and energy security issues, as well as the wider geopolitical context, including the EU's relations with Russia. This perspective also allows for an assessment of the functioning of the institutional mechanisms of the CFSP and of the role of key institutional actors – such as the HR/VP, the EUCO and the EP – in shaping the trade-off between the normative dimension of EU policy and the pursuit of its strategic interests.

### **3. The role of key EU institutions in the decision-making process on sanctions policy after the entry into force of the Lisbon Treaty**

In order to analyse the EU's policy towards Belarus and identify the factors influencing it, it is essential to critically assess the role of various EU institutions in this process, particularly in the context of institutional changes resulting from the entry into force of the Lisbon Treaty.

The Treaty of Lisbon established the EUCO as a fully-fledged EU institution (TEU, Art. 13), defining its tasks as “giving impetus to the EU's development and defining its general policies and priorities” (TEU, Art. 15). It also created the position of President of the EUCO for a term of two and a half years, which may be renewed once. Further changes were made to the remit of the HR/VP. Additionally, a subordinate body of the HR/VP, the EEAS, was established to support the EU's external action (Council, 2010).

The main foreign policy decision-making body, including sanctions, is the Foreign Affairs Council (FAC). The FAC is responsible for developing, deciding on the imposition, extension or lifting of sanctions and implementing CFSP actions by unanimous vote (TEU, Art. 24, Art. 31).

The Lisbon Treaty strengthened the position of the HR/VP by defining its responsibility for the implementation of the CFSP and the implementation of decisions taken by the Council and the EUCO. As far as sanctions are concerned, it has been granted the right to formulate and initiate proposals, as well as to submit relevant proposals to the Council (TEU, Art. 30; TFEU, Art. 215). However, there are indications that may point to some shortcomings in the institutional arrangements adopted. The treaty-based triple empowerment of the HR/VP, serving at the same time as Vice-President of the EC (supranational institution) and President of the FAC (intergovernmental institution), although intended to enhance the effectiveness and coherence of the EU's foreign policy, may in practice lead to complications of a political nature due to the unclear demarcation of competences and responsibilities within the CFSP (Korska, 2018, p. 364; Zajączkowski, 2014, p. 13).

Similarly, the division of competences concerning the external representation of the EU is imprecise (Zheltofsky, 2022, p. 666). The HR/VP plays a key role in representing the EU in matters related to the CFSP on the international stage. However, the President of the EUCO, acting “at his level and in that capacity” and “without prejudice to the powers of the HR/VP” (TEU, Art. 15), also represents the Union in CFSP matters. Authors point out that such an arrangement can generate disputes over competences, potentially undermining the coherence and effectiveness of EU foreign policy, particularly when the HR/VP and the EUCO President hold divergent positions (Przybylska-Maszner, 2012, p. 54; Skolimowska, 2014, p. 114; Zajączkowski, 2014, p. 14). The leadership capabilities of those individuals in these roles, as well as the dynamics of their interactions, also play a crucial part in this issue.

Decision-making in the field of CFSP remains intergovernmental (TEU, Art. 24) and the role of supranational institutions such as the EP and the European Commission (EC) is limited by treaty provisions.

As stipulated in the EU Treaties, the EP's role in the CFSP is limited to monitoring, advisory functions and providing a forum for discussion. The EP must be informed of sanctions regulations adopted by the Council (TFEU, Art. 215). The EP also has the possibility to address questions and make recommendations to the Council and HR/VP. Twice a year, the EP holds a debate on the progress of the CFSP and also consults the

HR/VP on this issue. The HR/VP in turn has a duty to ensure that the EP's position is duly taken into account (TEU, Art. 36).

However, as the only EU institution with democratic legitimacy, the EP has a significant impact on sanctions policy-making by exerting political pressure on other EU institutions, such as the Council and EC. This includes organising debates, adopting resolutions, recommendations and reports (Staszczyk, 2013, p. 258).

The EP's work under the CFSP primarily takes place in the Committee on Foreign Affairs (AFET), which analyses, evaluates and makes recommendations on the CFSP, presenting these recommendations in the form of reports and opinions. The AFET cooperates with other institutions, such as the EEAS, the Council, the EC and the diplomatic services of the Member States in an effort to ensure policy coherence and effectiveness. The work of specialised delegations is an important complement to the EP's activities, and in the context of Belarus, the Delegation for relations with Belarus is of particular significance. Although the EP does not have official relations with the Belarusian parliament or government, this delegation facilitates direct dialogue with representatives of the Belarusian democratic opposition and NGOs (European Parliament, 2014).

The EC (together with HR/VP) submits a draft regulation on economic sanctions to the Council, such as asset freezes or export bans, which require implementation at EU level (Treaty on the Functioning of the European Union (TFEU), 2009, Art. 215). The EC also provides the necessary economic and legal analysis in this regard. Effective implementation and enforcement of EU sanctions, as well as ensuring their compliance with existing EU laws and regulations, are a key priority for EC action. Additionally, the exit of the United Kingdom – a country with considerable expertise in sanctions design and consensus-building on the issue – from EU decision-making as a result of Brexit has meant that this role has been taken over to a greater extent by the EC (Jokela & Aula, 2020, pp. 61-69; Portela, 2023, p. 1126).

Persons and entities subject to sanctions may challenge the Council's decision before the Court of Justice of the European Union (CJEU) in accordance with the conditions laid down in the second paragraph of Article 275 and the fourth and sixth paragraphs of Article 263 of the TFEU (TFEU, 2009).

To conclude, the Lisbon Treaty, along with the transformation of the institutional framework of the CFSP, has also introduced changes that may give rise to conflicts of competence between EU institutions. Despite the Treaty's limitations, arising from the division of competences outlined in the Treaty, decision-making on sanctions results from a complex interaction between intergovernmental and supranational institutions.

This process requires taking into account the diverse preferences of Member States which possess veto power and the effective management of the consensus-building process, which further complicates CFSP decision-making.

#### **4. EU sanctions policy towards Belarus in 2010–2013**

Geopolitical tensions stemming from the 2008 Russian-Georgian conflict and the deteriorating economic situation of Belarus – resulting from the reduction of Russian subsidies to the Belarusian economy and Moscow's political pressure on Minsk to establish an integral Union State – forced the Belarusian regime to pursue a balancing policy between the EU and Russia (Mironowicz, 2011, p.171). An example of this policy was Belarus' failure to recognise the independence of Abkhazia and South Ossetia.

Political conditionality, combined with gestures from the regime, such as the release of political prisoners, the approval of state distribution of two independent newspapers and the declared liberalisation of the political system, influenced the EU's decision to suspend most of the sanctions in place at the time (Bosse, 2012; Council, 2008).

However, the presidential elections in Belarus on 19 December 2010, deemed by international organisations to have failed to meet democratic standards, along with the post-election repression – including mass detentions, disproportionate use of force against demonstrators, criminal trials against candidates, activists and independent media – marked a turning point in the review of EU foreign policy towards the country (Amnesty International, 2011; Human Rights Watch, 2011; Kubin, 2011, p. 140; OSCE/ODIHR, 2010).

The first significant EU political signal, which emerged a few days after the elections, was the article *“Lukashenko the Loser”* by the foreign ministers of the Czech Republic, Poland, Germany and Sweden. The ministers unequivocally emphasised the need for a thorough review of relations with the Belarusian regime, stating that “there can be no business-as-usual between the EU and Belarus' president, A. Lukashenko, after what has happened since the presidential election in Belarus” (Bildt et al., 2010). Furthermore, they sought to take a leadership role in shaping the EU's agenda towards Belarus, including sanctions policy.

In response to these developments, the Council introduced several sanctions packages between 2011 and 2013, systematically expanding the list of restricted individuals and entities. These sanctions included an arms embargo, visa bans, asset freezes and, for the first time, financial sanctions were imposed on Belarusian entities supporting the regime. In addition, to include more persons and entities responsible for the situation in Belarus in the sanctions and to prevent them from challenging the measures, the criteria for inclusion in the EU sanctions list were expanded in January 2012 (Council, 2012a).

To illustrate the course of the decision-making process on the EU's sanctions policy towards Belarus between 2010 and 2013, and to highlight the factors influencing this process – including the positions of the various EU actors on consensus-building in the Council – the table below presents it in chronological order.

Table 1. EU sanctions against Belarus (2011 – 2013)

Date	Type of sanction	Number of individuals/entities	Triggering situation	Consensus in the Council
31.01.2011	Travel ban Freezing of assets (including the reinstatement of sanctions suspended in 2008)	158/157 individuals <sup>1</sup>	The presidential elections of 19 December 2010 and subsequent post-election repression	Italy's initial opposition to visa sanctions. Opposition from most EU Member States to economic sanctions (except Poland, Germany, Sweden).
21.03.2011	Travel ban Freezing of assets	19 individuals		Opposition from Lithuania, Italy, Austria and Cyprus; no support from HR/VP C. Ashton for economic sanctions.
23.03.2011	Travel ban Freezing of assets	13 individuals		Follow-up to the conclusions of the EUCO of 4 February 2011.
20.06.2011	Travel ban Freezing of assets	4 individuals		Opposition by Italy, Latvia and Lithuania to sanctions against oligarch V. Peftiev.
	Financial sanctions	3 entities		
	Embargo on weapons and			

<sup>1</sup> The list of persons subject to the asset freeze measure turned out to be shorter than the list of those subject to the travel ban – former Interior Minister Yuri Sivakov was not on it. Such a situation may have been the result of a technical error or a deliberate act within the framework of a political compromise worked out by one of the EU Member States. However, his assets were subject to a freeze in the next round of sanctions.

	repression equipment			
10.10.2011	Travel ban Freezing of assets	16 individuals	Annual review of sanctions	Bulgarian foreign minister's unsuccessful at- tempt to mediate in Minsk for release of political prisoners in exchange for EU financial support
	Extension of sanctions	208 individu- als, 3 entities		
16.12.2011	Travel ban Freezing of assets	2 individuals		
23.01.2012	Extension of criteria		Protecting the EU institutions from lawsuits brought against them	
28.02.2012	Travel ban, Freezing of assets	21 individuals	Repression of civil society and the opposition Response to the Council of Eu- rope's call for economic sanc- tions (Parliamen- tary Assembly, 2012) US sanctions against Belarus (U.S. Congress, 2011)	Slovenia's veto, sup- ported by Latvia and Lith- uania, on sanctions against oligarch Y. Chyzh and his entities
23.03.2012	Travel ban	12 individuals		

	Freezing of assets		Belarus' diplomatic conflict with the EU	Removal of 4 entities following objections from Latvia and Slovenia. Follow-up to the Conclusions of the EUCO 1-2 March 2012.
	Financial sanctions	29 entities		
15.10.2012	Extension of sanctions	243 individuals 32 entities	Annual review of sanctions; a policy of critical engagement (Council, 2012e)	
29.05.2013	Removal from the list	1 person 2 entities		
24.06.2013	Suspension until 31.10.2013	Minister of Foreign Affairs of Belarus, Vladimir Makey	A policy of critical engagement	Lithuania's initiative to participate in the Eastern Partnership Summit 28-29.11.2013 in Vilnius
29.10.2013	Removal from the sanctions list	13 individuals, 5 entities	Action brought by V. Peftiev before the CJEU	
	Travel ban Freezing of assets	3 individuals		
	Extension of the sanction list	232 individuals, 25 entities	Annual review of sanctions	

Source: Author's own analysis based on EU decisions and regulations, available at <https://eur-lex.europa.eu/oj/direct-access.html>

The extent of the sanctions imposed during the period under review can be attributed to the difficulties of Member States in reaching a common position in the Council. This was primarily due to countries such as

Lithuania, Latvia, Slovenia, Italy and Austria maintaining significant economic and investment interests with Belarusian entities. Furthermore, the positions of these countries were influenced by the Belarusian regime's successful strategy of undermining EU unity through behind-the-scenes negotiations with selected Member States.

Slovenia, supported by Latvia and Lithuania, played a key role in blocking the adoption of the sanctions list. The economies of Latvia and Lithuania were closely linked to Belarus, particularly in the energy and trade sectors, while Slovenian companies were engaged in costly construction contracts in Belarus (Czwołek, 2016, pp. 45-52; Kadlubovich, 2013, p. 17; Kłysiński, 2013; Solash & Jozwiak, 2012).

Lithuania, pursuing a transactional policy towards Belarus since 2008, mainly influenced through lobbying and business channels, especially through the Lithuanian Confederation of Entrepreneurs, thus influencing the final shape of sanctions (Kłysiński, 2013). In addition, Lithuania, holding the Council Presidency in the second half of 2013, played a key role in shaping the policy of critical engagement with Belarus.

Lithuania initiated the lifting of visa sanctions against the Belarusian Foreign Minister Vladimir Makey to enable him to participate in the 2013 Eastern Partnership Summit in Vilnius and called on other EU institutions to review the sanctions policy, suggesting its easing (Czwołek, 2016, pp. 41-43). The controversial proposal by Lithuanian MEP Justas Paleckis, drafted after his visit to Belarus, suggested an alleged improvement in the human rights situation in the country. It advocated for dialogue with key representatives of the Belarusian authorities and the suspension of sanctions against them (Paleckis, 2013). This proposal aligned with Lithuania's pragmatic approach towards the situation in Belarus at the time.

Regarding the role of institutional actors in the sanctions policy towards Belarus, it should be emphasised that the EP, as the main advocate of human rights in the EU (Smith, 2014), had presented a strong and consistent position since the onset of the presidential election crisis. Through resolutions and recommendations, the EP exerted pressure on other EU institutions to introduce and extend sanctions, including economic sanctions (European Parliament, 2011a, 2011b).

In addition, the EP repeatedly highlighted the threat to the credibility of the EU's foreign policy posed by bilateral initiatives undertaken by some Member States towards the Belarusian authorities which bypassed EU institutions. This factor undermined the unity and coherence of actions of the entire Union. Despite the EP's strong and unequivocal position in the political discourse on sanctions, the other EU institutions – particularly the Council, HR/VP and EC – remained more cautious about tightening them.

Taking into account the principle of unanimity in Council decision-making, it should be pointed out that the HR/VP's ability to build consensus by securing the support of Member States is crucial to her effectiveness. HR/VP Ashton's actions in the area of sanctions have been characterised by a low level of initiative and a

preference for consensual decision-making mechanisms, despite her treaty powers enabling her to take more proactive action in this area (Smutek, 2016, p. 82).

During the parliamentary debates on the situation in Belarus, the HR/VP opposed the introduction of harsh economic sanctions, arguing this on the grounds that it feared a deterioration in the living conditions of Belarusian society and the risk of discouragement towards the EU (European Parliament, 2011c). Nevertheless, these concerns did not prevent the imposition of economic sanctions in subsequent years, especially after the 2020 presidential elections and in response to the Belarusian regime's support for Russia in its aggression against Ukraine. According to some authors, the aforementioned argument is partly justified, as these decisions were also the result of the economic interests of individual EU Member States and the difficulty of reaching a consensus within the EU institutions (Czwołek, 2017, p. 156). Moreover, the low level of activity of C. Ashton may have been due to both a lack of clear leadership qualities and her previous lack of experience in foreign policy management (Zięba, 2014, p. 34).

Analysing the conclusions of the EUCO it should be noted that between 2011 and 2019 the situation in Belarus, despite the difficult human rights situation, was discussed in the EUCO only twice: on 4 February 2011 and 1-2 March 2012 (European Council, 2011, p. 11; 2012, p. 14).

The conclusions adopted on 4 February 2011 underlined the FAC's readiness to "consider the application of sanctions in various areas". In contrast, in its conclusions of 1-2 March 2012, in light of the Minsk-EU diplomatic conflict and the difficulty of reaching a consensus within the Council on the introduction of economic sanctions, the FAC called on the Council to "continue working on further sanctions", without specifying the type of sanctions. The above may suggest that the Belarus issue was not a priority at the political level of the EU and in its foreign policy at the time<sup>1</sup>.

In summary, the sanctions imposed between 2010 and 2013 were symbolic in that they did not cover major Belarusian exporters to EU markets and were thus unable to have a real impact on regime change. They only represented a temporary problem for sanctioned companies and their counterparties to adapt, including by circumventing the restrictions (Hyndle-Hussein & Kłysiński, 2012). Despite declarations of the need to strengthen sanctions, most Member States and institutional actors lacked the political will to implement this transition, primarily due to their desire to maintain economic and business relations with Belarus.

Actions taken by the EU, such as the removal from the sanctions list in October 2013 of 13 individuals and 5 companies linked to a key Belarusian businessman supporting the regime at the time, are mainly evidence of an ad hoc response to current events. The aim of these actions was to force concrete concessions,

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<sup>1</sup>Analysing the conclusions of the European Council from 2011 to 2019, it can be concluded that the situation in Belarus was not a priority issue, and its presence on the EU agenda was limited by a number of complex geopolitical and internal challenges faced by the Union. These challenges included the economic crisis related to the problems of the Eurozone, the Arab Spring, the civil war in Libya, the migration crisis and growing tensions in relations with Russia.

such as the release of political prisoners, rather than to implement strategic systemic changes or develop a long-term policy concept towards Belarus.

Such actions could have been treated by the Belarusian regime as barter deals in its negotiations with the EU. Moreover, the EU's incoherent, reactive foreign policy, lacking a long-term strategy, undermined its credibility as a collective actor – not only in the perception of Belarus, but also in that of its key ally Russia, which was very likely taken into account by the Russian authorities when deciding on the illegal annexation of Crimea in 2014 and the military intervention in eastern Ukraine.

### 5. EU sanctions policy towards Belarus in 2014–2020

Tensions in the region in 2014, related to the growing threat from Russia (such as Russia's illegal annexation of Crimea in 2014 and military intervention in eastern Ukraine), had a key impact on the continuation of the EU's pragmatic policy towards Belarus, which had been initiated in 2012 -2013. Belarus, seeking to maintain a balance between Russia and the EU and declaring the need for a peaceful resolution of the conflict, became the negotiating platform for the Minsk I and Minsk II agreements to resolve the Ukrainian crisis (Minsk Agreement, 2015).

Geopolitical circumstances, combined with the regime's actions – such as the release of political prisoners on the eve of the 2015 presidential elections (without restoring their full civil rights) – and the declared liberalisation of the political system along the lines of the 2008 measures, prompted the EU to first gradually suspend and then lift most of the sanctions in place at the time (Bakunowicz, 2015).

To illustrate the evolution of the sanctions policy and the factors determining the decision-making process for its mitigation, the table below presents it in chronological order.

Table 2. EU sanctions against Belarus (2014 -2020)

Date	Number of individuals/entities	Triggering situation	Consensus in the Council
8.07.2014 Removal from the list	8 individuals	Amnesty for human rights defender Ales Bi-aliatski on 21 June 2014	"The decision does not reflect a change in EU policy towards Belarus based on critical engagement, as set out in the Council conclusions of 15 October 2012" (Council, 2012b).
Addition to the list	1 person	Geopolitical situation (the conflict in Ukraine) A policy of "critical engagement"	

30.10.2014 Removal from the list	24 individuals, 7 entities	Minsk's role as a negotiating platform 5 September 2014 on the resolution of the conflict in eastern Ukraine	
One-year extension	201 individuals, 18 entities	Annual review of sanctions	
13.07.2015 Removal from the list	2 individuals, 4 entities	Belarus' constructive role in the region: Minsk's role as a negotiating platform on 11-12 February 2015 during the meeting of the so-called "Normandy Four" (leaders of France, Germany, Russia and Ukraine)	The role of France and Germany in building consensus on the suspension and lifting of sanctions
31.07.2015 Removal from the list	24 individuals		
29.10.2015 Removal from the list	4 entities	Judgment of the General Court of the EU of 6.10.2015 in case T-257/12, T-276/12 (General Court of the EU, 2015)	
Suspension for 4 months	170 individuals, 3 entities	Belarus' constructive role in the region	Release of all political prisoners on 22 August 2015.  Improving relations between the EU and Belarus.  Holding the 2015 presi-
25.02.2016 Abolition of sanction	170 individuals, 3 entities		

			dential election “in a violence-free atmosphere”
Extensions of sanctions for one year:	4 individuals responsible for political disappearances 1999-2000. Arms embargo	Annual review of sanctions	
27.02.2017			
23.02.2018			
25.02.2019			
17.02.2020			

Source: Author's own analysis based on EU decisions and regulations, available at <https://eurlex.europa.eu/oj/direct-access.html>

In response to the release of all Belarusian political prisoners on 22 August 2015, on the eve of the presidential elections, and in light of the “improvement in relations between the EU and Belarus”, wishing to encourage the country to make further positive changes, on 29 October 2015, the Council suspended most of the sanctions then in force against Belarus (Council, 2015b). Subsequently, in February 2016, "as a goodwill gesture aimed at fostering a policy of engagement encouraging Belarus to respect human rights and the principles of democracy and the rule of law", the EU finally lifted them (Council, 2016b).

In justifying the decision to lift sanctions, the Council pointed to the release of political prisoners and the holding of the 2015 presidential elections “in an environment free from violence” (Council, 2015a; Council, 2016a). The EU also acknowledged “Belarus' constructive role in the region” in the context of efforts to reach a ceasefire agreement in Ukraine. It also highlighted Belarus' commitment to modernisation, the launch of negotiations on visa facilitation and readmission agreements, the Mobility Partnership and cooperation in the energy sector.

Nevertheless, while lifting sanctions, the Council expressed "concern about the human rights situation in Belarus" (also condemning the use of the death penalty), stressing that EU-Belarus relations should be based on common values, notably respect for human rights, democracy and the rule of law.

However, the final OSCE monitoring report on the October 2015 presidential election pointed out numerous cases of violations of the voting process and a lack of transparency in the counting of votes and tabulation of results.

As a result, the election was not recognised as free and democratic (OSCE/ODIHR, 2016). The EU's decision to lift sanctions was also at odds with the report of the UN Special Rapporteur's report on the situation

of human rights in Belarus, which pointed to a lack of systemic progress on the part of the Belarusian authorities in respecting human rights (including in the period between the suspension of sanctions in 2015 and their lifting in 2016), describing the situation as “the dismal state of human rights” (Haraszti, 2016a; Haraszti, 2016b; Viasna Human Rights Center, 2016).

None of the political prisoners released in 2015 were included in the rehabilitation procedure, meaning they did not regain their full civil and political rights, and some of them were forced to emigrate as a result of strong pressure and direct threats from the authorities. Furthermore, the Belarusian authorities then introduced a new form of repression – financial repression – by imposing disproportionately high fines on opposition activists and representatives of NGOs, with the aim of suppressing any attempts to oppose the regime (Kłysiński, 2016).

Belarusian opposition circles and human rights organisations have criticised the EU's decision to suspend or lift sanctions, describing it as resulting from behind-the-scenes talks without the participation of human rights defenders, deeming it unfortunate and constituting a “capitulation to the Belarusian regime”, as well as a “European vanity that ruins any decent enterprise” (The Guardian, 2016).

The main objective of the sanctions, i.e. to achieve significant progress in democracy and the political system, was not realised (Miadzvetskaya & Challet, 2022, p.14). The initial suspension and subsequent lifting of sanctions was not due to the achievement of the intended goals, but was motivated by the changing geopolitical context, including the growing role of Belarus in resolving the Ukrainian crisis.

According to the researchers, the EU's decision marked a significant departure from its long-standing principle of conditionality, whereby deepening relations with the regime was conditional on progress in democracy and human rights (Bosse, Höpner & Vieira, 2022, p. 295). In contrast, as in 2008, the EU focused on short-term geopolitical gains, prioritising them over normative values, which allowed the regime to instrumentalise political prisoners as bargaining chips in its relations with the EU.

It is also worth noting that some of the sanctions imposed on the entities were overturned as a result of court proceedings brought by the oligarchs against the Council, mainly due to insufficient evidentiary basis proving that these individuals actively supported or directly benefited from the regime (General Court of the EU, 2014; 2015; 2016).

Between 2016 and 2020, despite the deteriorating human rights situation, including the lack of electoral reform, the non-democratic parliamentary elections in 2016, local elections in 2018 and parliamentary elections in 2019, as well as the violent dispersal of peaceful demonstrators, the wave of detentions on Freedom Day in 2017 and the harassment by the Belarusian authorities of independent media outlets (particularly Charter'97), the EU did not impose new sanctions, limiting itself only to the annual extension of the then existing

sanctions against four persons responsible for political disappearances in 1999-2000. Despite calls from human rights defenders in connection with the repression of peaceful demonstrations in 2017, the meeting of the EU-Belarus Coordination Group aimed at strengthening bilateral relations was not cancelled. This Group's meetings had led, among other outcomes, to the conclusion of visa facilitation and readmission agreements with Belarus in 2020 (Bosse, 2021, p. 203; Eastern Partnership Civil Society Forum, 2017).

At the same time, the EU continued its process of rapprochement with Belarus, intensifying meetings with the Belarusian authorities both at the EU institutional level (with increased EC activity) and at the level of individual Member States (Italy, Austria), focusing on sectoral and economic cooperation, including within the framework of the Eastern Partnership<sup>1</sup>. The declaration by the then Polish Foreign Minister W. Waszczykowski during his meeting with A. Lukashenko in Minsk in 2016, regarding the initiation of dialogue with Belarus "without any preconditions" (Bornio, 2017, p. 69), was part of the broader concept and dominant narrative of EU policy towards Belarus during the analysed period.

Referring to the role of institutional actors in the process, HR/VP Federica Mogherini denied that the geopolitical context influenced the Council's decision to lift sanctions, describing the situation in Belarus as "definitely not a rosy or ideal picture" and the EU's actions themselves as "encouraging" (EEAS, 2016). Despite calls from Belarusian opposition leaders (Andrei Sannikov, Ales Bialiatski and Mikalai Statkevich) to maintain restrictions on the regime, F. Mogherini took no action on this issue (Spring96, 2015). The situation is reflected in the broader context of the transactional approach of EU Member States towards Russia and its satellites (Zheltovsyy, 2023, p. 33).

It is worth noting that F. Mogherini's role in the Belarusian issue raised doubts about her impartiality as a mediator, especially in the context of her conciliatory rhetoric towards Russia and her opposition to the introduction of further sanctions (Kaca, 2019, p. 213; Panichi, 2014). F. Mogherini's stance on the situation in Belarus can also be seen as a product of Italy's national preferences, which exhibited greater openness towards the Belarusian authorities. This was the result of pragmatism and Italy's long-standing desire to maintain stable economic and investment relations with Belarus<sup>2</sup>.

Referring to the role of EU institutions in the context of the changing geopolitical situation and pragmatism in foreign policy towards Belarus, the discourse of the EP— despite the continued emphasis on human rights violations – in terms of the possibility of sanctions remained in line with the general direction of EU

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<sup>1</sup> The EU focused its efforts primarily on developing economic and development cooperation, with priority given to border control issues, countering irregular migration and negotiating visa facilitation and readmission agreements. This approach, given the documented human rights violations by the Belarusian border and police services, caused serious controversy.

<sup>2</sup> Lukashenko's first foreign visits to EU countries, following the suspension of sanctions in 2008 and their lifting in 2016, were to Italy.

policy. Additionally, the number of MEPs and Eurosceptic factions increased during the 8th parliamentary term, which had a significant impact on the nature of the discourse on Belarus. This can be observed both in the decreasing number of resolutions (5 resolutions in 2014-2019 compared to 8 resolutions and 1 EP recommendation in 2011-2013) and in the content of the political discourse, which started to place more emphasis on sectoral cooperation with Belarus, dropping references to the possibility of re-imposing sanctions (European Parliament, 2016; 2017; 2018a; 2018b).

In summary, the EU's sanctions policy towards Belarus between 2014 and 2020, characterised by the gradual suspension and then lifting of sanctions despite unresolved human rights and democracy issues, was driven by the wider geopolitical context, including Belarus' role in resolving the Ukrainian crisis and the EU's political rivalry with Russia. The inconsistent policy undermined the credibility of the EU as a collective actor in the perception of Belarus, as well as its key ally Russia. An analysis of the regime's subsequent actions shows that Belarus' subsequent actions, supported by Russia, may have been based on an assessment of the inconsistency of EU policy, as illustrated by the post-election repression in 2020, as well as A. Lukashenko's decision to support Russia's aggression against Ukraine.

The EU's policy of sanctions against Belarus between 2014 and 2020 may also have sent a signal to the Belarusian regime, suggesting that it could continue its authoritarian practices without fear of more serious international consequences, while treating political prisoners as part of a bargaining chip in negotiations with the EU.

## **6. Conclusions**

The analysis of the EU's sanctions policy towards Belarus between 2010 and 2020 provides arguments for the confirmation of the hypothesis put forward by the author that this policy was pragmatic in nature. Indeed, it resulted from the EU's pursuit of its economic interests with Belarus and was also part of a broader political rivalry between the EU and Russia. The policy was characterised by a discrepancy between the declarations made (both in the political discourse of institutional actors and individual Member States regarding transformational changes) and the actual actions taken by them.

The sanctions, which were introduced with delay and considerable caution between 2011 and 2013, did not pose an immediate threat to the Belarusian regime or lead to a deeper political transformation in the country. Economic issues were key determinants of the decision-making process regarding sanctions. Despite the pro-sanctions approach of individual Member States (such as Poland and Sweden), as well as the EP, it was not possible to achieve a policy transformation towards Belarus during this period due to difficulties in reaching a consensus within the Council. This was largely dictated by the desire of a group of countries (Latvia, Slovenia, Lithuania, as well as Italy, Austria and Cyprus), to maintain the status quo with regard to Belarus,

by preserving existing economic relations, especially in the energy sector, and using Belarus as a transit country. As a result, the sanctions were largely symbolic and did not lead to political change in Belarus. Despite the high priority of human rights in the EU discourse, political pragmatism ultimately determined the course of action, and the concept of civilian power gave way to the dominance of state preferences over the promotion of democratic values.

The EU's further decisions to ease its sanctions policy between 2014 and 2016 and then to continue this process between 2016 and 2020, despite the lack of progress on democratic reforms, were the result of the geopolitical situation, related to the growing threat from Russia and the “constructive” role of Belarus in this process.

The EU's pragmatic and inconsistent sanctions policy – both in terms of the scope of sanctions, the dynamics of their introduction and their lifting in response to apparent concessions by the Belarusian regime, in the absence of real changes in human rights and democratisation – may have been taken into account by the Belarusian regime in its decision on post-election repression in 2020, reinforcing its belief that the Union was not taking effective action. This policy may also have contributed to the regime's decision to support Russia in its aggression against Ukraine.

In view of the above, a consistent, coherent, and effective EU sanctions policy towards third countries, including Belarus as an ally of Russia and a direct neighbour of the EU, is a key factor for the credibility of the Union as a relevant and independent actor, as well as a promoter of values in the international arena and for the future of democratisation processes.

An important challenge for the EU's future sanctions policy towards Belarus will be the ability of Member States to reach a sustainable consensus in maintaining a transformative approach to EU-Belarus relations. An important element of this process also remains the role of the veto power of Member States, especially those with a eurosceptic orientation (such as Hungary under Viktor Orbán and Slovakia under Robert Fico), which may constitute a serious barrier to the sanctions decision-making process.

In the context of the current geopolitical challenges, it seems advisable to reform the EU's decision-making process, including the possibility of introducing qualified majority voting in foreign policy, particularly on sanctions issues, as called for by the EU's supranational institutions. Additionally, reforms should include clarifying the division of competences and improving cooperation between EU institutions, which could strengthen Member States' confidence in the effectiveness and role played by institutions such as the HR/VP, the EEAS and the President of the EUCO.

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**Oleh POSHEDIN, PhD** 

Institute of World History of the National Academy of Sciences of Ukraine, Ukraine  
poshedino@gmail.com

**Yurii MELNYK, PhD** 

University of Educational Management of the National Academy of Educational Sciences of Ukraine, Ukraine  
yum156@ukr.net

## THE SOVEREIGNTY OF UKRAINE IN THE CONTEXT OF COOPERATION WITH THE EUROPEAN UNION AND THE INTERNATIONAL MONETARY FUND

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**ABSTRACT:** *The article examines the impact of Ukraine's cooperation with the European Union and the International Monetary Fund on the sovereignty of Ukraine. Analysing this cooperation, the authors show how collaboration, which is interpreted by some political forces and the population as interference in the internal affairs of Ukraine, can lead to the strengthening of Ukrainian sovereignty through the restoration of financial stability and sustainable economic growth, effective governance, effective anti-corruption policies, the creation of a solid and independent judiciary, reforming state-owned enterprises. It is concluded that if Ukraine successfully fulfils the requirements for the provision of financial assistance provided by the European Union and the International Monetary Fund, this helps strengthen the state sovereignty of the country. It is noted that the conditionality of financial assistance by implementing relevant reforms in Ukraine gives positive results. At the same time, these changes are only the beginning, and the final results will depend solely on Ukraine's willingness to follow a particular course of reforms in the future.*

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**KEYWORDS:** Ukraine; sovereignty; European Union; International Monetary Fund.

### 1. Introduction

In the context of cooperation with the IMF, the Ukrainian information space was full of statements such as “external management”, “unconstitutional demands”, “no tranche from the IMF is worth state sovereignty”, “the authorities surrendered our sovereignty to the IMF”, “you cannot sell Ukrainian sovereignty for hand-outs”, “is it really independence?”, “the IMF is dictating to Ukraine what the budget, social and tax policy should be, what reforms to implement and how to implement them”, “the IMF will cynically continue its policy of pressure, the destruction of the Ukrainian people”, and so on.

In late May and early June 2020, one of the most discussed topics was the content of the Memorandum between Ukraine and the IMF. Traditionally, pro-Russian politicians and media resources voiced criticism of the IMF. Journalists Strana.ua (a pro-Russian Internet resource, blocked since August 20, 2021) studied the Memorandum's text and listed the IMF's requirements from the Memorandum. According to the article, “new IMF loan means an additional tax burden and a complete ban on benefits and preferences for business, which minimizes the possibility of a quick economic recovery after the crisis”. “For ordinary Ukrainians, agreements with the IMF also do not promise anything good. Medicine will become less affordable, and so will schools for children. Utility tariffs will increase. There is also a risk of raising the retirement age”, the article reads.

This article was republished by the official Facebook page of Mykola Azarov, an ally of Viktor Yanukovich and Ukraine's PM from 2010-2014 (Ukraine World, 2020).

Tetiana Plachkova, former deputy of The Verkhovna Rada of Ukraine (the Ukrainian parliament) from the pro-Russian Opposition Platform-For Life party (banned in Ukraine since September 2022), wrote on Facebook, "If selling the country's sovereignty for another tranche is not problematic, what else can be said" (Plachkova, 2020). Andriy Portnov, a lawyer and former adviser to the President of Ukraine Viktor Yanukovich (2010-2014), wrote the following on his Telegram channel. "Dear rulers, it seems you gave away everything with a single document. Even your idol and former President's inspiration did not do this. You gave away all spheres and branches at once" (Portnov, 2020). Yulia Tymoshenko (Prime Minister of Ukraine from February to September 2005 and from December 2007 to March 2010), the leader of the Batkivshchyna party, which does not have a majority in the Ukrainian parliament now, argued that the government is negotiating with the IMF behind the backs of ordinary Ukrainians. "Laws which go against Ukraine's interests, such as the law on selling out agricultural land and the law destroying the National Bank, were signed by President Zelensky, but Ukraine received no loans from the IMF. We received a new negotiation process and new conditions instead," Tymoshenko said (Tymoshenko, 2020). Danylo Hetmantsev, deputy The Verkhovna Rada of Ukraine from the Sluha narodu party (party with the majority of seats in The Verkhovna Rada of Ukraine) and the Chairman of the Parliament Committee on Finance, Tax and Customs Policy called inflation control interference in sovereignty in a memorandum with the IMF. At the same time, the deputy said that the Memorandum 2020 is much better than all the previous ones (Interfax-UKRAINE, 2020).

As you can see, the IMF has been criticized both by pro-Russian parties and politicians, politicians whose parties do not have a majority in parliament but are not pro-Russian, as well as representatives of the ruling party. The motives of all three groups are different. Pro-Russian forces have traditionally attacked the West, accusing it of trying to bring Ukraine under external control. The pro-Ukrainian forces, opposing the current government, used the criticism of the IMF to raise their ratings since the IMF conditionality is often not popular among ordinary citizens. According to a sociological survey, 46 percent of Ukrainians believed it is better not to cooperate with the IMF and not receive new loans. The opposite point of view was observed by only 32 percent. In a referendum on agricultural land sale, 74 percent of those who participated in the vote would vote against the land sale (KIIS, 2020). The fact that representatives of the ruling party also criticized the IMF can be explained by the fact that the observance of conditionality creates implementation difficulties for the government.

As for the European Union, the criticism is not so pronounced. Macro-financial assistance from the EU is allocated once the International Monetary Fund accepts Ukraine's financing programs. Under such conditions, the IMF received the main criticism due to the unpopularity of certain obligations that Ukraine undertakes

within the framework of cooperation with the Fund. It is often noted that EU macro-financial assistance is not aid, but in fact, it is loans. At the same time, the EU mentions “Macro-financial assistance in the form of a loan” in its documents. At the same time, the EU provides such loans for an extended period and at minimal interest rates. For example, in June 2020, Ukraine received from the EU the second tranche within the framework of the fourth macro-financial assistance program for EUR 500 million at 0.125 percent per annum with a maturity period until June 2035 (Ministry of Finance of Ukraine, 2020).

Please consider that today the world is more interconnected than ever before, and the traditional interpretation of sovereignty as the complete independence of states in domestic and foreign affairs requires a new understanding. The European Union is the world’s biggest sovereignty experiment in modern history. There is an opinion that EU membership implies losing or at least limiting national sovereignty. The second and the third articles of the Treaty on the Functioning of the European Union (Eur-lex, 2012) is the basis for such discussions. These articles define the exclusive competencies of the EU, giving it the exclusive right to legislate within these competencies. The subsequent development of the European Union, advances in digital transformation, the energy sector, and the optimization of migration processes depend on strengthening exclusive competencies. Strive to become a member of the EU and Ukraine. According to one of the latest sociological studies, 92 percent of Ukrainians want Ukraine to join the EU (Balachuk, 2022).

This article does not deal with the theoretical aspects of sovereignty. The EU represents an unparalleled experiment in balancing national and collective interests.

The goal of the article is to examine the conditionality of financial assistance from the European Union and the International Monetary Fund (IMF). Using document analysis method, the conditionalities set by the EU and IMF that determine the provision of macro-financial assistance to Ukraine are identified. Due to the method of synthesis, the processed material is summarized and demonstrates how cooperation with the EU and IMF – sometimes interpreted as interference in Ukraine’s internal affairs – can ultimately lead to the strengthening of Ukraine’s sovereignty.

## **2. IMF and EU financial assistance conditionality**

Note that the IMF documents use the term conditionality. The EU, describing macro-financial assistance, uses the term conditions. In this article, these terms are used as synonyms. When a country borrows from the IMF, its government agrees to adjust its economic policies to overcome the problems that led it to seek financial aid. These policy adjustments are conditions for IMF loans and assure that the country will be able to repay the IMF. This system of conditionality is designed to promote national ownership of solid and effective policies.

Conditionality covers the design of IMF-supported programs – that is, macroeconomic and structural policies – and the specific tools used to monitor progress toward goals outlined by the country in cooperation with the IMF. IMF lending has always involved policy conditions. Until the early 1980s, IMF conditionality primarily focused on macroeconomic policies. Subsequently, the complexity and scope of structural requirements increased, reflecting the IMF's growing involvement in low-income and transitional countries, where multiple structural problems may hamper economic stability and growth (IMF, 2021). The conditionality becomes the reason for talking about the loss of sovereignty by states receiving IMF lending.

EU's macro-financial assistance (MFA) is a form of financial aid extended by the EU to partner countries experiencing a balance of payments crisis. It takes the form of medium/long-term loans, grants, or a combination of these and is only available to countries benefiting from a disbursing International Monetary Fund program. MFA is designed for countries geographically, economically, and politically close to the EU. These include candidate and potential candidate countries, countries bordering the EU covered by the European Neighbourhood Policy (ENP), and, in certain circumstances, other third countries.

MFA is exceptional in nature and is mobilized on a case-by-case basis to help countries having serious balance-of-payments difficulties. Its objective is to restore a sustainable external financial situation while encouraging economic adjustments and structural reforms. MFA is intended strictly to complement International Monetary Fund (IMF) financing. As a rule, MFA funds are paid to beneficiary countries' central banks and, generally, can be used however the government sees fit, be it for reserves, foreign exchange market intervention, or direct budget support. MFA is an emergency assistance measure that is not meant to provide regular financial support for economic and social development. A pre-condition for granting MFA is respecting human rights and effective democratic mechanisms, including a multi-party parliamentary system and the rule of law. MFA is also conditional on a non-precautionary credit arrangement with the IMF and a satisfactory track record of implementing IMF program reforms.

MFA funds are released in tranches strictly tied to the fulfilment of conditions aimed at strengthening macroeconomic and financial stability. These conditions tend to focus on public finance management and fiscal reform. Still, they may also touch upon other areas such as trade, enterprise restructuring, business environment, or financial sector reform. These conditions are listed in a Memorandum of Understanding signed between the EU and the beneficiary country (European Commission, n.d.).

### **3. Results of IMF and EU financial assistance to lending countries**

In 2014 the IMF published a report that compresses the experience of the IMF's cooperation with more than 20 post-communist countries in Central and Eastern Europe over 25 years. The IMF provided financial and technical support to early reform steps in Hungary, Romania, and Yugoslavia in the 1980s. But it was

after the collapse of communism in 1989 when the primary expansion of the Fund's membership and activities took place, with 25 new members from the ex-socialist bloc joining by the end of 1993. These countries were almost all in perilous economic conditions and desperate need of foreign financing and advice (Roaf, Atoyan, Joshi and Krogulsk, 2014, p.7).

The volume of transition programs remained high through the 1990s. But in the 2000s, the benign global environment and ready availability of market financing meant very few countries were turning to the IMF for financing. The situation changed dramatically with the onset of the global financial crisis in 2008-09, which saw eight countries in the region returning to the IMF for support. By 2014 the crisis programs had concluded, generally successfully (Roaf, Atoyan, Joshi and Krogulsk, 2014, p.9). For the most part, the transition countries have made remarkable progress in the past quarter century. The report notes that most are fully functioning market economies with stable macroeconomics, strong institutions, and income levels that have converged strongly with the West (Roaf, Atoyan, Joshi and Krogulsk, 2014, p.55).

The reports focus mainly on macroeconomic developments, the IMF's principal area of operations, and expertise. How macroeconomic indicators in post-communist countries have evolved is of interest in this context. The macroeconomic ranking is based on a weighted average of seven macroeconomic indicators (current account balance, inflation, unemployment, government balance and debt, GDP per capita at PPP and real GDP growth). As noted in the report, most countries by 2014 have significantly improved their macroeconomic indicators, especially Latvia, Estonia, Bulgaria, the Czech Republic, Poland, and Romania. At the same time, even after 25 years, some countries have not managed to make a decisive break with the past or former state command replaced by control by private interests. Such countries still struggle with low growth, high unemployment, and uncompetitive industries. Countries like Ukraine, Serbia, Albania, Bosnia and Herzegovina, and North Macedonia (Macedonia before February 2019) approaching 2014 had worsened their macroeconomic indicators relative to the 1998-2000 period (Roaf, Atoyan, Joshi and Krogulsk, 2014, p.56).

Michael Emerson analyses the experience of the macro-financial assistance instrument of the European Union from 2006 to 2011 (among European countries, MFA assistance was received by Bosnia and Herzegovina, Albania, Serbia, Moldova, Ukraine, Georgia, Armenia) and emphasizes that the MFA works as a supplement to macroeconomic aid programs of the IMF. This supplement is 'secondary' both in that the amounts are usually only a tiny fraction of the IMF. The MFA adds some of its conditions, notably focusing on medium-term structural reforms and, in particular, public finance management and auditing practices. The macroeconomic stabilization impact of the MFA has been limited or modest in all cases, both because of the small size of the MFA contribution and also because disbursements tended to follow IMF operations with a time lag of around 12 to 18 months. By that time, financial crisis conditions may have passed. The impact on structural reforms may be positive but only slight and takes longer to materialize (Emerson, 2014, p. 5).

Among the post-communist countries in Central and Eastern Europe that joined the European Union, only Slovenia did not resort to an IMF programs (Roaf, Atoyán, Joshi and Krogulsk, 2014, p.8) (if you do not take into account the time spent in Yugoslavia). Did they lose sovereignty by cooperating with the IMF? As can be seen from the 2014 IMF report, the use of International Monetary Fund assistance helped these countries improve their macroeconomic performance on the path to EU membership. No one believes that these countries, carrying out the necessary reforms, have sacrificed their sovereignty.

Despite Michael Emerson's reserved assessment of the effectiveness of the European Union's macro-financial assistance, it should be noted that the MFA was significant for Ukraine and, as we will see below, significantly complemented the IMF assistance.

There is a considerable amount of literature on transitology, particularly on the EU. IMF, World Bank "conditionality" see Carlos Puente (Puente, 2014), Turk Žiga (Turk, 2014), Nigel M. Healey (Healey, 1994), Ivan T. Berend and Bojan Bugarić (Berend, Bugarić, 2015), Garabed Minassian (Minassian, 2001).

These articles examine the reasons for the successes and failures of reforms in the post-communist countries of Central and Eastern Europe. At the same time, the authors do not raise the issues of loss of sovereignty by governments in the process of cooperation with the IMF and the EU. Issues of national independence are considered separately in the context of EU membership see Vlad Perju (Perju, 2008), Dieter Grimm (Grimm, 2017), Carmen E. Pavel (Pavel, 2022). But as noted above, this issue is not the subject of our study.

#### **4. Cooperation of Ukraine with the European Union**

Ukraine cooperates with the European Union on a wide range of issues. Priority reforms in Ukraine that the EU emphasizes include the fight against corruption, judicial reform, electoral reform, improvement of the business climate, and energy efficiency. The European Union supports public administration reform and decentralization and contributes to implementing the Association Agreement between the European Union and Ukraine. The EU provides this support to Ukraine through several mechanisms: technical assistance, budget support, macro-financial assistance, project financing, etc. In the context of the topic of this article, macro-financial assistance (MFA) is of the most significant interest to us.

The legal basis for macro-financial assistance to third countries is Article 212 of the Treaty on the Functioning of the European Union (Eur-lex, 2012).

At the beginning of 2020, Ukraine participated in four programs of the EU MFA. The conditions for granting a loan under the MFA were grouped into four areas. The requirements for public finance management concerned the creation of a transparent public procurement system, the introduction of an anti-corruption legislation system, the development of state internal financial control, and the expansion of the powers of the Accounting Chamber of Ukraine. The requirements on trade and taxation issues related to solving problems

of value-added tax (VAT) remuneration and bringing trade policy in line with the rules of the World Trade Organization (WTO). In the financial sector, Ukraine pledged to introduce International Financial Reporting Standards and prepare to implement EU legislation on financial services. In the energy sector, the requirements focused on the reform of Ukraine's gas sector (European Commission, 2013).

The decision to allocate funds within the framework of MFA I was made in early 2013. The ratification of the relevant Memorandum in the Verkhovna Rada took place only in March 2014 (European Commission, 2017). As can be seen, a year has passed since the conclusion of the Memorandum and its adoption by Ukraine. This can be explained by the fact that the Ukrainian leadership under President Yanukovich was not interested in carrying out democratic reforms and fighting corruption, which the EU insisted on. At the same time, the dramatic events known as the "Revolution of Dignity" unfolded in Ukraine in the fall of 2013, leading to the flight of former Ukrainian President Yanukovich to Russia and the formation of a new government in Ukraine in late February 2014. At that time, Russia took advantage of Ukraine's vulnerability to seize Crimea and provoke and lead a war in eastern Ukraine. In this situation, the Verkhovna Rada approved the terms of MFA II in order to reduce the external financial pressure on Ukraine, improve its balance of payments and provide for budgetary needs. Despite the loans received, the situation in Ukraine remained difficult. Therefore, in April 2014, the Council of the European Union decided to provide support to Ukraine within the MFA II framework for EUR 1 billion without the approval of the European Parliament (European Commission, 2014). The aid was provided in two installments of EUR 500 million each. The first installment of the loan was disbursed without any conditions, which allowed Ukraine to receive EUR 500 million as early as June.

It should be noted that the terms of the second installment were less complex than the terms of the MFA I and were set out within the same areas as in the MFA I. In the area of public finance management and implementation of anti-corruption measures, EU requirements were aimed at ensuring transparency of public procurement and the state budget, expanding the powers of the Accounting Chamber, and annual submission of asset declarations by persons defined by law as its subjects. The section on trade and taxation focused, as in MFA I, on compliance of trade policy with WTO rules and ensuring timely cash payments for VAT refunds. In the energy sector, the requirements included continuing the reform of the National Joint Stock Company "Naftogaz of Ukraine" and increasing the transparency of its activities. In the financial sector, Ukraine pledged to develop regulatory norms and rules concerning systemic banks, to disclose information about the ultimate owners of all banks, and to improve legislation regarding the regulation of financial services markets (European Commission, 2014).

It should be emphasized that during 2014 the economic situation in Ukraine remained difficult. In addition to the direct military invasion, Russia applied various trade restrictions against Ukraine. As a result, the economic recession in Ukraine continued, and there was a sharp depreciation of the hryvnia and a depletion of

international reserves. In this situation, Ukraine addressed the European Union, asked for macro-financial assistance of EUR 2 billion in September 2014, and repeated this request in December of the same year. Taking into account these requests and the economic situation in Ukraine, the European Commission offered to provide Ukraine with EUR 1.8 billion in the form of medium-term loans (European Commission, 2015a).

In April 2015, the European Union decided to provide Ukraine with a EUR 1.8 billion MFA package III. The requirements for MFA III resemble a well-considered government program with a transparent monitoring system.

The areas under which the conditions for macro-financial assistance III were determined have been expanded and supplemented, compared to two previous MFA programs. The three sections: public finance management, governance and transparency, and business environment, were made more detailed.

**Table 1: Conditions for granting MFA III distributed according to the spheres**

Spheres	Details
Public Finance Management	External audit Public procurement  Financial governance
Governance and Transparency	Anti-corruption Public administration State-owned enterprises
Business Environment	Trade and customs Competition policy Justice sector Deregulation

Source: created by the authors based on the Memorandum of Understanding between the European Union as Lender and Ukraine as Borrower (European Commission, 2015b).

Also, the sphere of social safety was added to the already existing financial and energy sectors. It was envisaged to create effective compensation mechanisms to protect the vulnerable layers of the population from an increase in energy tariffs. A separate requirement was the appropriate legislative provision and funding of social benefits and services for internally displaced persons affected by the hostilities in eastern Ukraine (European Commission, 2015b).

According to the Memorandum, the loans were to come in three tranches of EUR 600 million each. The

first payment was supposed to be made after the entry into force of the Memorandum, and the relevant Loan Agreement, subject to Ukraine receiving payments under the extended lending program concluded between Ukraine and the International Monetary Fund (European Commission, 2015b).

The second and third tranches were based on the European Commission's positive assessment of the progress made on this list of macroeconomic and structural policy conditions. The terms of the second and third tranches included seventeen and twenty-one obligations, respectively. As a result, two tranches of EUR 600 million each were paid to Ukraine in July 2015 and April 2017. Regarding the third tranche, Ukraine has fulfilled seventeen of the twenty-one obligations associated with this payment, including reforms in public financial management, public administration, the energy sector, and the judicial system. However, several measures were not implemented, including anti-corruption, such as introducing a mechanism to verify the declarations submitted by officials. As a result, the third tranche of MFA III was cancelled in January 2018 (European Commission? 2019).

In November 2017, the Ukrainian government submitted a formal request for additional macro-financial assistance from the EU. Given that Ukraine has not met all the conditions associated with MFA III, the European Commission, in contrast to previous macro-financial assistance programs, when the basis for granting the first tranche was the signing of relevant memoranda and the existence of a valid IMF program, proposed to define specific conditions for granting not only the second but also for the first tranche of this assistance (European Commission, 2018a).

In July 2018, the European Union decided to provide Ukraine with up to EUR 1 billion in macro-financial assistance in the form of a loan. This assistance was provided for the receipt of tranches over two and a half years.

**Table 2: Terms of macro-financial assistance MFA IV**

Conditions for the first tranche of the loan	Conditions for the second tranche of the loan
<p><i>Public Finance Management</i></p> <p>1. At least seven orders of the Ministry of Finance of Ukraine to improve the predictability of the tax environment for businesses.</p>	<p><i>Public Finance Management</i></p> <p>1. Improvement of domestic revenue mobilization and reforming tax and customs management.</p> <p>2. Enhancement of balance between customs control and trade facilitation.</p> <p>3. Progress toward meeting the minimum requirements of the Organization for Economic Cooperation and Development to combat tax evasion.</p>
<p><i>Proper governance and anti-corruption efforts</i></p> <p>2. Creation of an automated system for</p>	<p><i>Proper governance and anti-corruption efforts</i></p> <p>4. Full-scale use of the declaration logical and arithmetic control system. Conduct an automatic verification</p>

<p>verification of electronic asset declarations submitted by officials.</p> <p>3. Ensuring adequate verification of information on ultimate beneficial owners.</p> <p>4. Allocation of expenses for the High Anti-Corruption Court of Ukraine sufficient for its practical and independent functioning.</p>	<p>of at least 1,000 declarations of officials (including representatives of the executive branch, parliament, and judiciary branch) with follow-up decisions.</p> <p>5. Progress in ensuring the work of the High Anti-Corruption Court of Ukraine accordingly.</p> <p>6. Adoption of a law against money laundering in line with the EU-Ukraine Association Agreement.</p>
<p><i>Sector Reforms and State-Owned Enterprises</i></p> <p>5. Improving corporate governance in state-owned enterprises.</p> <p>6. Sale of at least 200 small state-owned facilities through electronic auction.</p>	<p><i>Sector Reforms and State-Owned Enterprises</i></p> <p>7. Reducing the high level of bad loans.</p> <p>8. Improving corporate governance in banks.</p> <p>9. Implementation of electricity market legislation.</p>
	<p><i>Social safety</i></p> <p>10. Introduction of health care financing reform.</p> <p>11. Improvement of the targeting, efficiency, and fairness of social payments.</p> <p>12. Approval of an Action Plan to Implement the Strategy for the Integration of Internally Displaced Persons.</p>

Source: created by the author based on the Memorandum of Understanding between the European Union as Lender and Ukraine as Borrower (European Commission, 2018b)

So, as we can see, the EU requirements for the MFA contributed to the reform of the Ukrainian economy and encouraged reforms, which for various reasons are pretty slow in Ukraine.

### **5. Cooperation with the International Monetary Fund**

Ukraine has been a member of the International Monetary Fund since 1992. For the reasons discussed above, loans from the IMF after the “Revolution of Dignity” were essential for Ukraine. In 2014, Ukraine received two tranches of about USD 4.3 billion under the Stand-by program. The program focused on reforms in the following key areas: monetary and exchange rate policy, the financial sector, fiscal policy, the energy sector, and public administration. In addition, Ukraine pledged to implement reforms to improve the business climate, public reform procurement, tax administration, strengthen money laundering prevention measures, and combat corruption (IMF, 2014). Due to economic difficulties, Ukraine turned to the IMF for additional support. In March 2015, the Stand-by program was replaced by the four-year Extended Fund Facility (EFF) (Ministry of Finance of Ukraine, n.d.).

The goal of the EFF program was to ensure foreign economic and financial stability and to restore sustainable economic growth through urgent reforms. In particular, measures to ensure financial stability implied restoring price stability, exchange rate flexibility to reduce the impact of external shocks on the economy, and strengthening the financial health of banks. In the area of enhancing state finance, efforts were directed toward reducing budget imbalances and achieving public debt sustainability. Ukraine envisioned various reforms, including anti-corruption and judicial measures, deregulation, tax administration reform, reform of state-owned enterprises, and the energy sector, including the restructuring of the National Joint Stock Company “Naftogaz of Ukraine” (IMF, 2015).

Given that the EFF program expired in March 2019, Ukraine asked the IMF for a new 14-month Stand-by program in December 2018. The same month, the IMF Board of Executive Directors approved an appropriate program for Ukraine and allocated the first tranche of USD 1.4 billion to Ukraine. The 2018 Stand-by program aimed to reduce public debt, maintain a flexible exchange rate and a tight monetary stance to reduce inflation, further strengthen tax administration, and improve governance and fight corruption (IMF, 2019). As part of this program, Ukraine assumed specific responsibilities in various areas. In the monetary and exchange rate spheres, a commitment to a policy ensuring an institutionally strong and independent National Bank of Ukraine, reducing inflation, enhancing the effectiveness of the monetary policy, and supporting the development of financial markets was guaranteed.

In fiscal policy, Ukraine pledged to refrain from tax amnesty, introducing new tax exemptions or privileges, reducing or introducing changes in corporate income taxation, introducing new special pensions or benefits, and introduction of a funded second-tier pension system. Commitments in public finance management concerned increasing confidence and predictability of fiscal policy.

To build modern and efficient tax and customs services, Ukraine has pledged to consolidate the divisions of the State Fiscal Service into two separate legal entities: the Tax Service and the Customs Service, by the end of April 2019. In the energy sector, it was decided that the National Joint Stock Company “Naftogaz of Ukraine” would be split into two companies and that gas for household consumers and thermal energy producer companies would be sold at prevailing market prices. In the financial sector, the commitments concerned the economic recovery of the banking system, the withdrawal of troubled banks from the market, and reducing the state’s costs from banks’ bankruptcy.

In light of the fight against corruption, Ukraine noted the need to ensure the independence and integrity of the new anti-corruption institutions - the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor’s Office, and the High Anti-Corruption Court of Ukraine. Comprehensive and public electronic declaration of assets by politicians has been recognized as a critical element of anti-corruption policy, as it is crucial for countering illicit enrichment and preventing the laundering of corruption revenue.

Ukraine has pledged to privatize and reform the state-owned enterprise sector, reduce their number, improve regulatory policy, and work to create a transparent agricultural land market.

It should be noted that the relevant Memorandum formulated quantitative performance criteria, indicative targets, and requirements for reporting on specific reforms and tasks, conditioning the IMF loan to Ukraine.

At the end of 2019, the economic situation in Ukraine remained difficult. As Ukrainian President V. Zelenskyy noted, our state could not change its commodity-based economy and had a dependence on foreign markets, which, together with stalled reforms, put Ukraine in 2020 before the next potential economic crisis (Zelenskyy, 2020). The COVID-19 pandemic intensified the negative trends in the economy. Under such conditions, Ukraine once again turned to the IMF for help.

During lengthy negotiations, preliminary activities were identified. The implementation of these activities stipulates IMF program approval. The most important of these conditions was adopting legislation aimed at introducing a land market and improving banking regulation (IMF, 2020). IMF Managing Director

The law “On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Circulation of Agricultural Land” was adopted by the Verkhovna Rada on March 31, 2020, and signed by the President of Ukraine at the end of April 2020. The land market in Ukraine was opened on July 1, 2021. Up to 2024, Ukraine's citizens can buy only agricultural land with a limitation of 100 hectares. At the beginning of August 2022, 114 076 land agreements are incorporated in Ukraine (Ministry of Agrarian policy and Food of Ukraine, 2022).

The law on improving banking regulation mechanisms was necessary for the IMF and was aimed at preventing impaired privatized banks from returning to their former shareholders. This law was adopted by the Verkhovna Rada on May 13 and signed by the President on May 21, 2020. The implementation of the preliminary measures made it possible to launch a new Stand-by program in June 2020 and receive the first tranche under the program for USD 2.1 billion. Policies under the new agreement focus on four priorities: mitigating the effects of the economic crisis, ensuring central bank independence and exchange rate flexibility, supporting financial stability, continuing public administration reform, and anti-corruption measures (IMF, 2020a).

The IMF Board of Director's decision on the first Stand-by Program review completion and the allocation of the second tranche under the program for USD 0.7 billion, as well as the extension of its term until June 2022, was adopted on November 8, 2021.

The Letter of Intent contains measures and conditions that the Government of Ukraine and the National Bank of Ukraine (NBU) have implemented and plan to implement within the program. It is noted that Ukraine has fulfilled seven of the nine structural beacons set for the period from the end of June 2020 until the end of March 2021. Among them are such important ones as changes to the law on the National Bank of Ukraine (NBU), which strengthen the autonomy and good governance of the NBU; enactment of amendments to the

Law on Banks and Banking to improve corporate governance of banks; changes to the law on the National Anti-Corruption Bureau of Ukraine to provide legal certainty in its continued effective and independent operation and the status of its head; enactment of amendments to the law on the High Council of Justice (HCJ), to improve the selection process, which should ensure that its members have impeccable reputation and integrity.

The Memorandum contains plans for further measures to implement structural reforms in 2022. In particular, reforms in the monetary, fiscal, and financial sectors aimed at improving the business climate and strengthening the rule of law and the fight against corruption. Implementing relevant measures is necessary to pass the reviews successfully and receive the subsequent tranches of the program.

A further focus of the Stand-by Cooperation Program will be on the vital task of supporting macroeconomic and financial stability and will cover, in particular, the following areas: fiscal policy; monetary and exchange rate policy; financial sector policy; structural policy (anti-corruption legislation and the rule of law, energy sector reforms, reforming state-owned enterprises – corporate governance and privatization) (IMF, 2021).

## **6. The impact of cooperation with the IMF and the EU on Ukrainian sovereignty**

There is no doubt that the requirements of both the EU and the IMF if successfully implemented, will contribute to strengthening the state sovereignty of Ukraine. They aim to ensure foreign economic and financial stability in Ukraine and restore sustainable economic growth, as Ukraine needs an institutionally strong and independent National Bank, an effective anti-corruption policy, a stable and independent judiciary, effective sectoral reforms, and reform of state-owned enterprises and the energy sector.

Corruption leads to significant budget losses and, consequently, affects ordinary citizens' lives. The German newspaper *Süddeutschen Zeitung* published an investigation revealing large-scale losses for Ukraine due to customs corruption – we are talking about an annual loss of at least USD 4.8 billion (Hassel, 2018). In Corruption Perceptions Index, Ukraine sat in 122nd place out of 180 countries in 2021 (Transparency International, 2022). On this basis, it is clear why the IMF and the EU pay much attention to eradicating corruption in Ukraine and insist that the new anti-corruption institutions are created at their request (NABU, the Special Anti-Corruption Prosecutor's Office, and the High Anti-Corruption Court of Ukraine) remain independent and objective. This attention is justified because of the numerous attempts by various political forces to take these structures under their control and to distort the electronic assets declaration by officials.

As can be seen, the IMF and the EU also focus on good governance. The Democracy Index confirms the relevance of these requirements for Ukraine. In the 2020 Index, Ukraine ranked 79th out of 167 countries. It should be noted that Ukraine is in the "Hybrid regimes" group, which is characterized, among other things, by the spread of corruption and the weak rule of law. The overall ranking in the Democracy Index is formed

as an arithmetic average of five indicators, one of which measures the level of government functioning. Ukraine's rating neighbours are North Macedonia, with an index of 5.71, and El Salvador – 4.29. Ukraine's index is only 2.71 (Economist, 2021). In the previous rating, Ukraine was in 78th place with the same Government functioning index (Economist, 2019). Consequently, the attention of international partners to the issues of public administration reform in Ukraine is entirely justified. Recently, the European Commission emphasized that while Ukrainian public administration has proven to be resilient during Russia's war of aggression against Ukraine, reform has slowed or stopped in several sectors, in particular in merit-based recruitment and selection, job classification and salary reform, as well as the roll-out of the Human Resources Management. It was emphasized that political support for public administration reform remains uneven. While it has been demonstrated in digitalization and service delivery, in other areas, particularly civil service and salary reform, the practical measures fall short of the declared objectives (European Commission, 2023).

The claims of IMF and EU aid critics about the fallacy of focusing on public finance management and financial stability do not seem convincing. It is hard to imagine that sustainable economic growth, successful business lending, and an attractive investment climate are possible in a country with an unstable currency and imperfect banking system.

There is no doubt that stronger and better-functioning States are more sovereign.

## **7. Conclusions**

Pressure on the leadership of Ukraine, providing financial assistance through implementing appropriate reforms, gives positive results. The reports of the IMF (IMF, 2021) and the European Commission (European Commission, 2022) confirmed this. Before the Russian invasion in 2022, several critical legislative changes were passed. Such changes have been postponed for various reasons, including the fear of politicians losing ratings. But, as a rule, these changes are only the beginning, and the final results will depend solely on Ukraine's willingness to follow the course of reforms.

The fact that Ukraine is forced to apply for loans from the EU and IMF is evidence of problems in the Ukrainian economy and imperfect approaches to solving them. To stop talking about external management, de-sovereignization, and building equal relations with the IMF and EU it is necessary to pursue an effective economic policy and eliminate the critical dependence on external borrowing.

Huntington, comparing the economic statistics of Ghana and South Korea in the early sixties of the last century, noted that the economic indicators of these countries were about the same. These countries were close in the distribution of gross national product per capita, had a similar branch structure of the economy, and existed mainly due to the export of raw materials. The volumes of economic assistance provided to both countries were also roughly equal. Three decades later, South Korea has become an industrial giant and succeeded

in consolidating democratic institutions. It was not the same in Ghana. According to the American political scientist, this striking difference is explained primarily by cultural differences (Huntington, xiii). Ukraine today must decide which way to choose, Ghana's or South Korea's. The European Union and the IMF can provide some assistance. How effectively this assistance will be used depends on Ukraine.

Russian aggression against Ukraine in 2022 significantly impacted the development of European integration. Ukraine has obtained candidate status for EU membership (European Commission, 2022a). EU candidate status and the European Council's decision to start accession negotiations with Ukraine (European Commission, 2023a) will be a powerful vehicle for reforms in Ukraine that can transform it into a modern, democratic, competitive state. As noted in a 2014 IMF report, while the IMF played a leading role in the early stages of the transition from socialism to a market economy, for many countries, the process of joining the European Union was a critical catalyst for subsequent reforms, and European integration remains the main driver of structural change today (Roaf, Atoyán, Joshi and Krogulsk, 2014, p. vii). The Ukrainian experience confirms this statement. In 2022, the European Commission recommended that Ukraine be granted candidate status on the understanding that Ukraine will carry out specific reforms, in particular in the field of fighting corruption, will enact and implement legislation on a selection procedure for judges of the Constitutional Court of Ukraine, tackle the influence of vested interests by adopting a media law that aligns Ukraine's legislation with the EU audio-visual media services directive and empowers the independent media regulator (European Commission, 2022a). Although by the following report of the European Commission, Ukraine had yet to fulfill all the requirements (European Commission, 2023), during 2023, a number of reforms were executed, the implementation of which the Ukrainian authorities avoided for a long time for various reasons.

The Russian aggression began at the end of February 2022 and has already caused enormous damage to Ukraine. Total damage as of April 2022 alone was \$60 billion (The World Bank Group, 2022). Under such conditions, Ukraine is doomed to long-term cooperation with the IMF in order to rebuild itself after the war. After the end of Russia's war against Ukraine and the stabilization of the economic situation, there is a danger of certain politicians who, to achieve their interests, will try to speculate on the issue of sovereignty. It will be necessary to communicate the idea of the positive relationship between conditionality and sovereignty among the population of Ukraine and also about the fact that, in the context of Ukraine's future negotiations on membership in the EU, talking about sovereignty in the traditional sense is meaningless with considering the relevant articles of the Treaty on the Functioning of the European Union (Eur-lex, 2012).

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Václav ŠMEJKAL, PhD 

Škoda Auto University, Czech Republic

vaclav.smejkal@savs.cz

**BIG PLATFORMS' OBLIGATIONS AFTER THE ECJ'S ANDROID  
AUTO JUDGMENT:  
IN THE NAME OF COMPETITION, YOU WILL SERVE YOUR COMPETITORS!**

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**ABSTRACT:** *The paper is devoted to the CJEU's decision in Android Auto (C-233/23) of February 25, 2025. In this decision, the ECJ argued for a relatively very large scope of dominant platform obligations dictated by the application of Article 102 TFEU. The analysis seeks to answer two research questions: 1. What are the limits of what a dominant online platform can be forced to do by competition law following the Android Auto decision? and 2. In particular, what does the decision mean for the as yet unsatisfactorily unresolved dispute under EU law between the independent automotive aftermarket (IAA) and original equipment manufacturers (OEMs) over the provision of access to connected vehicle functions and resources? Although on the one hand the obligations of dominant platforms to act at the request of and in favour of a competitor are now substantial, on the other hand the ECJ decision does not bring a breakthrough solution for the IAA.*

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**KEYWORDS:** EU competition law; digital platform; abuse dominant position; interoperability requirement; access to connected cars' functions and resources; European Court of Justice.

### **1. Introduction: a decision that deserves attention**

The decision of the Court of Justice of the EU (ECJ) in Case C-233/23 *Android Auto*, or *Alphabet/Google v Italian competition authority*, of February 2025 (EU:C:2025:110), has rightly received the attention of commentators already at the stage of the original proceedings in Italy (Ibáñez Colomo, 2021), then after the Advocate General's opinion (Mandrescu, 2025) and now that the answer to the preliminary questions of the Italian Council of State has been given by the Grand Chamber of the ECJ (Bandhakavi, 2025; Boero, 2025; Ibáñez Colomo 2025a, 2025b). Major pronouncements on the application of Article 102 TFEU to dominant online platforms were expected and the ECJ has indeed moved forward with pieces on multiple chessboards. Its decision can be seen as a further refinement of the essential facility doctrine (the so-called Bronner criteria set out in the ECJ's judgment C-7/97 in 1998), but also as a convergence of Article 102 TFEU with the positive obligation of internet gatekeepers to ensure interoperability under the EU Digital Markets Act 2022/1925 Regulation (its Articles 6(7) and 7) and thus a deeper embedding of the "contestability of markets" objective in the application of the traditional prohibition on abuse of dominance.

In addition, we have also learned from the ECJ's decision that the markets that must remain contestable include markets that do not yet exist, i.e., those that are only potential or hypothetical, the creation of which the dominant's conduct should not prevent but help. In addition, the judgment may also be significant for the

independent automotive aftermarket (and potentially the entire IoT aftermarket), which is seeking access to vehicle functions and resources in order to increase the value of vehicles to users through newly added technological solutions. These are all reasons why the ECJ's judgment in the Android Auto case should be given due consideration and remembered for future reference, as what the Court said in it, as well as what it declined to say, will undoubtedly come back to haunt future disputes over third-party access to platform systems in various sectors of the digital economy.

The following text does not intend to be a critical step-by-step analysis of the entire case. It asks the following two questions: 1. After the Android Auto decision, what are the limits of what the dominant online platform can be compelled to do using competition law, and 2. What does the decision mean specifically for the still unsatisfactorily unresolved dispute under EU law between the independent automotive aftermarket (IAA)<sup>1</sup> and the original equipment manufacturers (OEMs - i.e. mainly carmakers and their selected suppliers from their emerging eco-systems) to free up access to the functions and resources of connected vehicles? The answers will be sought primarily by critically reading and reflecting on the ECJ's conclusions as well as the early commentaries on its Android Auto decision. The section on the implications for the disputes between IAA and OEMs will also draw on several specialised secondary sources that have addressed this unresolved issue of EU law in recent years (Kerber, 2019; Clark, 2021; Gill, 2022; Šmejkal, 2023, 2024).

## **2. The Android Auto case in a nutshell**

Before seeking answers to the research questions, it is worthwhile to outline the nature of the dispute.<sup>2</sup> The dispute has been between Enel X Italia Srl (Enel), which has developed the JuicePass application that allows drivers to find and optimise the charging of their electric cars, and Alphabet/Google, the originator of the Android operating system and its version Android Auto, a system through which it is possible (via a built-in screen in the car) to use Android applications on smartphones. In September 2018, Enel asked Google for the possibility of linking Juice Pass with Android Auto. Google refused, arguing that there is no template that would allow this, as the only existing templates allow the linking of those third-party apps that make messaging and multimedia work. On Enel's repeated request, Google then added that there were also security reasons for the refusal, and the need to rationally manage the resources that would be required to develop a new template.

In essence, therefore, the dispute was about ensuring the interoperability of a new application with the dominant system of digital platform, but for which there was no technical solution at the time of the dispute

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<sup>1</sup> The independent automotive aftermarket comprises a wide range of entities supplying products, services, technological solutions to car owners and operators, and possibly also to car manufacturers and repairers, but is not controlled by the car company or its network of affiliated original equipment manufacturers, components and services.

<sup>2</sup> The facts of the case are taken from the text of the ECJ judgment.

and the dominant company was required not just to tolerate something (the use of a resource under its control) or to concede something (access to existing technology), but to act proactively according to the needs of the applicant and thus to help it to succeed in a market that was then more potential than real. An interesting background fact is that, given the slow transition to electromobility, this refusal of interoperability could have had an impact on only 0.04% of all cars in use in Italy at the time (Bandhakavi, 2025).

In this dispute, Enel was "lucky" from the start: in 2021, the Italian Competition Authority (AGCM) found an abuse of dominance in breach of Article 102 TFEU, fined Google and ordered it to make available a version of the template enabling the JuicePass app to work in Android Auto. The AGCM also saw Google's refusal to provide the template as a competitive struggle, as there was competition between Google Maps and Juice Pass, including with a view to the future, since Google Maps could also incorporate the features newly offered by JuicePass. Google defended itself by bringing an action before the Court for the Lazio region, which was unsuccessful. The next instance was the Italian Council of State (Supreme Administrative Court), which put five preliminary questions to the ECJ and offered the ECJ its own view of the case, which is summarised in the judgment as follows (para 22):

*According to the referring court, Google's conduct appears potentially to be capable of eliminating competition on the market. In the light of the characteristics of digital markets, it could be argued that, if access to Android Auto had not been made possible for the JuicePass app, that app would have lost its appeal to consumers and that such conduct could have resulted in users being prevented from enjoying a better product for which there is potential demand.*

The preliminary questions put by the Italian Council of State, which were reformulated and partially consolidated by the ECJ, concerned, first of all, whether the prohibition of Article 102 TFEU can be applied to the conduct of a dominant platform which refuses to ensure its interoperability with another undertaking's application, while at the same time access to the platform is not necessary for the commercial use of the third undertaking's application on the upstream market, but may increase the attractiveness of that application to consumers. Despite the refusal, both the access applicant and its competitors have remained active in the market and have further developed their market position, and there are therefore doubts about the actual effects of the refusal of interoperability on competition.

The ECJ refused to deal with part of the questions because of their consultative character, namely when the Italian Council of State asked, quite logically, if a dominant undertaking is obliged under Article 102 TFEU to act in favour of an interoperability applicant, then, in a situation where it receives several requests from different undertakings, will it also have to establish objective criteria for assessing them and determining the order of their satisfaction? (para 64). This question, which is certainly relevant for future practice, was therefore left unanswered by the ECJ. However, the core issue was not avoided by the ECJ, because it gave

an answer to the Italian State Council on the question of whether the dominant undertaking could be obliged to develop a new template that would ensure interoperability with the applicant's application, and also on the question of whether the dominant undertaking had any possibility of defending its refusal of the interoperability request.

### **3. Where is the limit of the dominant platform's obligation to comply with third party requests?**

From the ECJ's judgment we have learned that a dominant undertaking has an obligation to act actively on another undertaking's request to ensure interoperability, even if its platform is not necessary for the commercial survival of the applicant's application, but it is sufficient that the dominant platform was not created as a closed platform, i.e. not only for the needs of its creator, and that its interoperability with the applicant's application may increase the attractiveness of the new application to consumers (point 1 of the operative part of the judgment). The negative effects of the refusal of interoperability on competition do not have to be actually present, it is sufficient that they are objectively possible (point 2 of the operative part of the judgment).

The ECJ further held that a refusal of interoperability can only be validly justified in situations where the new application would compromise the integrity of the platform or the security of its use, or where it is technically impossible to do so. In the absence of these objective reasons, the dominant undertaking must comply with the request for interoperability and develop the new template for the applicant within a reasonable time and for reasonable financial compensation (including the possibility of a reasonable profit) (point 3 of the operative part of the judgment). The fact that the market, in which the abuse of dominance would be likely to occur if interoperability were refused, cannot be precisely defined does not matter, it is sufficient that it is identified as a potential downstream market (point 4 of the operative part of the judgment).

Not only Google, the addressee of this decision, but also other comparably situated companies must ask themselves now a question similar to the headline of this chapter. The answer must consider the conditions and limits of such an obligation arising from the ECJ's judgment.

#### ***3.1. Issues of openness of the platform, their design, the business model of their operation***

Firstly, it is clear that those dominant platforms that have not been framed as closed only to their creator's applications and are at least partly in the position of intermediary for other companies' applications are in a

more vulnerable position.<sup>1</sup> Those open platforms cannot rely on the aforementioned Bronner criteria<sup>2</sup>, formulated by the ECJ formulated in C-7/97, in particular the key one that a dominant undertaking cannot be forced to open its infrastructure (original system) to third parties without proof that it is indispensable, irreplaceable, and that competition cannot exist on the market without such opening.

This seemingly paradoxical protection of closed platforms, according to the ECJ, stems from the fact that the forced opening would interfere with the dominant undertaking's freedom of contract and right to property, and that neither the company concerned, nor its competitors would be incentivised to invest in the creation of new solutions (paras 41 and 42). By contrast, the above reasons do not apply to open platforms for which the dominant undertaking has already envisaged use by other undertakings when developing them. If this is the case, then even a reduction in the dominant undertaking's incentive to invest in the further development of a platform from which third parties benefit to compete with their own applications is no longer a valid reason that can be invoked by the dominant undertaking for its defence.

These conclusions of the ECJ are very pro-competitive, as they limit the power of a dominant undertaking to regulate the entry of new applications to its platform, when such entry may neither be denied nor hindered or delayed by it (para. 51). However, one may question whether these claims are legitimately applied to the present case. Just consider the ECJ's statement (para 45) that "the fact of requiring the undertaking in a dominant position to provide access to that infrastructure to a third-party undertaking does not fundamentally alter the economic model which applied to the development of that infrastructure." It can, however, be inferred from Google's arguments that (a) the undertaking appears to have envisaged only that third-party media and messaging applications would have access to Android Auto and that the platform was developed by it as only partly open and partly closed<sup>3</sup>; (b) it may well be that the further development of the Google Maps and Waze applications (also under Google's control), supported by their operation in Android Auto, was part of an economic model that Google considered promising for itself; (c) in defence of its refusal, Google also argued that the development of a new template that did not exist and that it had not envisaged went against its concept of

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<sup>1</sup> This is not a new finding; this approach of EU competition law has been interpreted in detail, based on previous developments in ECJ case law, by the European Commission in its 2024 draft *Guidelines on the application of Article 102 of the Treaty on the Functioning of the European Union to abusive exclusionary conduct by dominant undertakings*, parts 4.2.3. Refusal to supply and 4.3.4. Access restrictions. (European Commission, 2024)

<sup>2</sup> „The *Bronner criteria* stipulate that the denial of access to an essential infrastructure facility only constitutes an abuse of market power if it would be capable of eliminating all competition on the downstream market, cannot be objectively justified and the infrastructure facility itself is indispensable for the performance of the competitor's activity in the sense that there is no actual or potential substitute for it. Only in such cases is the serious interference with the freedom of contract and the right of property of the company, which solely developed the property itself, justified.“(Heimann, 2024).

<sup>3</sup> Ibáñez Colomo rightly emphasizes that after Android Auto “if access is requested for application A, indispensability will not be an element of the legal test when access is requested for application B.” This is in his view a significant shift in when competition law requires proof of the "indispensability" of access set out by the ECJ in the aforementioned *Bronner* judgment (Ibáñez Colomo, 2025a).

the rational allocation of (in this case, presumably human rather than financial) resources to the development of new solutions.

In the light of these facts, a question whose answer could have far-reaching implications imposes itself: Should the dominant platforms now be aware that if they do not remain completely and, in every way, closed to third-party applications, their opening to access seekers will never be subject to the Bronner criteria? The intention to open a platform or operating system only to third-party applications of a particular type or nature of service (e.g., communications only), but to keep it closed to other (even future, not-yet-existing) services, clearly does not offer a Bronner criteria defence even for that closed part of a platform.

The next question: What are the parameters of the situation in which the conduct ordered by the application of Article 102 TFEU would alter the original design of the platform to such an extent, that the development of new tools (functionalities, parameters) on the basis of requests from third parties would mean an interference with the business model and would reduce the willingness of the platform's creator to invest further in it?<sup>1</sup> The subjective view of a dominant semi-opened is obviously of minor importance here, if it is relevant at all, and presumably only the reasons that the Court of Justice admitted in the judgment under discussion for its defence are relevant.

### ***3.2. Acceptable reasons for rejecting active interoperability measures***

We have learned from the ECJ judgment that possibilities of defending the rejection of a new applicant for interoperability with a partially open dominant platform are very limited. In such a case, the ECJ has only allowed defences based on threats to the "integrity" of the platform, threats to its security, or impossibility for technical reasons. The ECJ did not elaborate on what all the terms integrity and security of the platform, or impossibility for other technical reasons, specifically encompass.

If we start from the Cambridge definition of integrity (or rather the loss of it), then the platform would have to cease to be "whole and complete" (Cambridge, 2025), i.e., it would probably "break up" into parts that do not fully communicate with each other and lose the intended added value of a coherently functioning system in which individual applications usefully complement each other. In her opinion, the Advocate General Medina also offered the defence that ensuring interoperability by the platform "could run counter to its economic model or purpose" (opinion, para 65)<sup>2</sup>. Here, one can perhaps find a tiny room for discussion as to whether the integrity of the platform might not also include the main business objective with which it was developed

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<sup>1</sup> The Android Auto decision is not in fact the first in this regard, it just goes further than previous decisions. It should be recalled here that almost twenty years ago (2004), the European Commission in the Microsoft case (Case COMP/C-3/37.792 - Microsoft), and after it the General Court (T-201/04, EU:T:2007:289 from 2007), ordered Microsoft to change the content of the product it offered, namely to offer the Windows operating system without the Media Player application. The rationale was similar: to enable competition in the neighbouring market for apps that allow media content to be played.

<sup>2</sup> However, no similar formulation of a justification for the refusal appears in the text of the Court's decision.

and therefore the defence against its possible substantial distortion or devaluation due to unforeseen interoperability measures. Regarding the security of the platform, it would probably be lost by ceasing to be reliable and becoming susceptible to easy hacking. And it is only when these threats cannot be overcome with the current state of modern technology that objective reasons for rejection are given.

If we think about the allowed defence in this way, it is true that if it is objectively possible to develop a technical solution that enables interoperability, i.e. a solution that does not render the platform dysfunctional and unsafe, then this defence cannot be applied. The fact that ensuring interoperability will mean that the dominant enterprise is distracted from the priorities it wanted to focus its developers on, that it is economically disadvantageous for it, or that it even directs further development of the platform in a different direction than it had envisioned, does not seem to play any role, or such defences will have to be tested in the future. It is only a weak patch that the interoperability applicant has to consent to adequate time and remuneration to do so. This hardly compensates for the fact that the dominant has placed itself in an essentially 'public service' position as a custodian, having to maintain, develop and change the platform depending on whether it is approached by a third party with a new application that would be more successful on its platform than off it.

### ***3.3. Interoperability for the benefit of developing possible future markets***

What is also interesting about the judgment is that the markets that might suffer from a refusal to interoperate may be hypothetical, potential markets (i.e. not being more precisely defined as specific relevant markets). While the ECJ also used the criterion of "neighbouring market, in particular a downstream market" (para 84) to define them, it is questionable what this means in the world of digital platforms. It is clear from settled case law (e.g. the ECJ judgment Case C-333/94 P *Tetra Pak II* of 1996) and also from the GA's Opinion on the case that it should be a product or service market "which is at least potentially in competition with a product or service capable of being provided by the dominant undertaking" (opinion, para 56). Starting from the premise that a platform around which an eco-system of interconnected and mutually reinforcing smaller systems and applications emerges can hypothetically absorb every new technological idea and expand into a new area, it is not clear what all is a potentially existing neighbouring downstream market. If modern cars are becoming "computers on wheels" or rather "communication hubs" it is difficult to determine which markets are truly neighbouring. They will certainly not be limited to markets closely related to the operation of the car, as even multimedia and messaging applications are not limited to exchanges with car service stations or petrol/charging stations. It is already gradually possible to control a smart home from a platform in the vehicle, to link its charging to solar panels on the roof of the family home and, of course, to search for destinations and be guided to them, whether these destinations are related to work, shopping, learning, entertainment... and not just to ensure the functionality of the car.

It is therefore difficult to determine where the interoperability obligation imposed on the dominant platform ends, given the unboundedness of what is a potential neighbouring downstream market. Theoretically, any application that consumers might be interested in using on their car journeys will satisfy both of the two conditions arising from the ECJ's decision: it will be in some potential downstream market and it will be impossible to rule out that the creator of the dominant platform would not also want to operate it, because if there is potential interest among consumers, it is hard to deny that even a dominant player at the head of a wide-ranging eco-system would not think of extending its system with such an application.

As a sub-conclusion - the answer to the first research question - it can therefore be concluded that the obligation of the dominant platform to provide interoperability is extensive, indeed almost limitless, after the Android Auto judgment.<sup>1</sup> It even goes as far, if not further, on its face, than what the Digital Markets Act requires from designed internet gatekeepers. The latter requires enabling interoperability with selected core platform services, but the application of Article 102 TFEU is not so limited, and the digital neighbouring downstream market may, as has been said, be defined by services which we are now only able to contemplate hypothetically.

If the applicant for interoperability is willing to provide the dominant platform with the time and resources to develop a technical solution, that solution is actually feasible and will operate safely and efficiently on the platform, then the applicant cannot be rejected without infringing Article 102 TFEU. The self-interests and plans of the dominant undertaking that has developed the platform as semi-open to third-party applications are secondary at such a moment. And what the applicant's app actually provides to the driver is also irrelevant, unless it is illegal or dangerous for the car's infotainment system.

It is unfortunate for practice that the ECJ rejected the part of the preliminary question relating to the conditions for assessing the acceptability and order of satisfaction of multiple concurrent interoperability applications. A platform that is dominant will, by definition, be in demand, and potentially increasingly so as the digitisation of our lives is far from reaching the limits of what is possible. Will the dominant enterprise then have to dedicate a non-negligible part of its development activities to finding technical solutions to enable its platform to interoperate with increasingly creative third-party ideas?

#### **4. Is access to vehicle functions and resources opening up?**

Back in 2022-2023, the European Commission carried out a public consultation on four possible scenarios for what the relationship between automotive original equipment manufacturers (OEMs) and independent automotive aftermarket (IAA) applicants should look like for the data they hold, as well as for access to the

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<sup>1</sup> Boero believes that the ECJ's decision may redefine for good the obligations of tech giants to third-party developers (Boero, 2025).

functions and resources of the cars (and the systems in them) they produce (European Commission, 2023). The Commission has recognised that the thriving and innovative IAA, which is made up of both traditional garages and parts manufacturers, as well as the producers of sophisticated digital solutions of the future, cannot be cut off from access to smart car data, functions and resources. It has therefore considered scenarios for sector-specific regulation aimed at this issue, in four variants according to increasing perfection, meaning on the one hand a progress towards the ideal of data sharing with high protection of the legitimate interests and rights of all concerned, but on the other hand an increasing administrative and financial burden for supervisors and supervisees, and ultimately the taxpayers and the car owners. In the end, the Commission, which was in office until the second half of 2024, did not publish any legislative proposal, and its current successor has not yet done so either (European Parliament, 2024).

On issues of access, of course, the OEMs' and the IAA's positions completely diverge. The former refuse further burdensome sectoral regulation, the latter cannot imagine their future without it and therefore strongly demand it (ACEA, 2024; CLEPA, 2024). At a time when regulation is under discussion and when completely conflicting demands are being made against it, the question arises whether access to vehicle data, functions and resources cannot be ensured by the application of competition law, namely Article 102 TFEU. Here, the issue intersects not only with the economic sector concerned but also with the area of law, which were at stake in the Android Auto decision. And on the face of it, it may seem that the independent aftermarket should welcome the ECJ's findings, while OEMs may worry about what they may start to be asked to do by those interested in - here specifically - accessing the functions of the vehicles they manufacture or equip.<sup>1</sup> Given the conclusion reached above about the relative limitlessness of the mandatory interoperability that can be required of a dominant firm, it may be tempting to make such an assessment.

For the sake of brevity, let us directly focus on the circumstances that relativize the ease of such a conclusion. Certainly, the Android Auto decision opens the way to satisfy the requirements for actively ensuring interoperability with systems under the dominant control of the carmaker or a branded supplier from its ecosystem. And sure, it is likely that in terms of access to vehicle functions and resources, i.e. the ability of third parties to improve something on the car through added sensors, appliances or software, the OEM concerned will very likely be in a dominant position. At the same time, however, it is also likely that most of the vehicle's functions and resources are not in the nature of an open intermediating platform. Enhancing a driver's warning of approaching obstacles or remotely enabling them to do more than close and open the car door etc., is not the same as adding another useful application to the on-board infotainment system.

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<sup>1</sup> The data generated by cars belongs to a different category of problem, as regarding the technical data required for maintenance this issue is already addressed by the EU regulation 2018/858 concerning the sharing of OBD data and partially in the EU Data Act 2023/2854 regulation. Also, the Android Auto decision analysed here does not concern data sharing, but the proactive measures necessary for a third party's IT solution to be included in an existing operating system.

It can therefore be argued that the demanding Bronner criteria (explained above) for applicants will likely be applicable to disclosure of most vehicle functions and resources, while at the same time more objective reasons justifying denial of access will be available to OEMs. For sure, if a new technical improvement is attractive to drivers and there is no other way to use it than to make a particular vehicle function or resource available, the indispensability condition should be satisfied. But at the same time, the question of integrity and safety will no longer just be about the digital platform, but more importantly about the moving car, the people in and around it. While each unit or sensor in the car may have a different level of importance for functionality and safety, it is always a more sensitive issue than adding a new app icon to the dashboard monitor. Thus, to rejoice that the Auto Android ruling will be a readymade precedent to most access disputes between OEMs and independent aftermarket access seekers would be premature.

It should also not be forgotten that the ECJ in *Android Auto* established that a dominant undertaking may seek a reasonable remuneration covering its costs and a reasonable profit for implementing interoperability measures. This is no obstacle for a company like Enel, which is part of the Italian electricity giant's group<sup>1</sup> and has developed an app that can potentially work in any electric car in which its owner chooses Android Auto as the platform. However, the IAA in today's EU is made up primarily of smaller and medium-sized businesses<sup>2</sup>, and many of their innovations will not be applicable to all cars regardless of mark and model but will inevitably require interoperability with a car of a particular mark and often a specific model range within that mark. Paying a car company to develop technical solutions to enable safe interoperability will then be beyond the means of a significant proportion of the independent aftermarket.

Finally, consider that the *Android Auto* litigation began in 2018, and we did not see a final verdict until 2025. While this does not usually mean that a reversal of a dominant company's behaviour will occur only after the final judgment<sup>3</sup>, it may require a willingness to engage in a years-long legal battle while being uncertain of the outcome. Is this a path that aftermarket applicants would want to take and one that would bring something to the already burdened automotive OEMs in the EU? The time and, with it, the intellectual and financial demands of competition law litigation lead to the conclusion that, while it is possible to achieve a landmark judgment on a dominant undertaking's obligation to ensure interoperability even by developing a technical solution that does not yet exist, this is not the way to effectively ensure the viability of the thousands of entities that make up the IAA in Europe in the 21st century.

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<sup>1</sup> Enel S.p.A. was in 2023 the 59th largest company in the world by revenue (Pulcini, 2023).

<sup>2</sup> „Europe's aftermarket is a chain of operators: 848 000 companies 4,7 million employees; 93,7% of all parts distributors on the European automotive aftermarket are small, 5,6% medium and only 0,7 % large companies.“(Gotzen, 2013; EBRD, 2016).

<sup>3</sup> An action against a final decision of a competition authority does not normally have suspensive effect unless the court itself grants it at the well-founded request of the complainant.

Thus, while the Android Auto judgment may be seen as a point in favour of the aftermarket side, hopes for the 'breakthrough' it is expected to cause in the automotive sector should not be high. Aftermarket representatives seeking to unlock access to smart vehicle functions and resources should continue to seek a sectoral solution through ex-ante regulation, in the manner of the EU's Digital Market Act in the key online platform services sector.

## **5. Conclusion**

The ECJ's Android Auto decision is certainly worth careful analysis and more than one comment. It confirms the trend that, particularly in the digital economy, the remedy for distortions of competition (Article 102 TFEU) will increasingly consist not in prohibiting a particular anti-competitive behavior, but in forcing a particular positive action or adaptation (product, business model) on the part of the dominant undertaking. Market shaping will prevail over deterrence; remedies will not so much eliminate the defective situation as create a desirable one. This will be more in line with the requirements of 'fairness and contestability' of markets than of greater efficiency of their outcomes. In the author's view, the Android Auto decision not only confirms this trend, but further deepens and advances it. It is only objective reasons of functionality and security, or an insurmountable technical barrier, which can exempt the dominant platform from the obligation to develop, for the benefit of the applicant - an actual or potential competitor - a technical solution enabling interoperability of its application with the dominant platform.

This trend may seem promising for the specific issue of accessing functions and resources from connected cars that remain under the control of OEMs and are sought by access seekers from the independent aftermarket. More precedents like this could create pressure and an environment in which OEMs are more willing to accommodate aftermarket requests. On the other hand, the specific circumstances of the Android Auto case, the need to pay for the dominator's positive cooperation, and the difficulty and length of the litigation involved should reduce any hopes for a breakthrough in this area to a realistic minimum. The Android Auto judgment is not an automatic opening of the gateway to smart cars' functions and resources.

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**Dominika Liszkowska, PhD** 

Koszalin University of Technology, Poland

dominika\_liszkowska@wp.pl

## THE REGULATORY POWER OF THE EUROPEAN UNION IN RELATIONS WITH TÜRKİYE AND THE BRUSSELS EFFECT ON TURKISH REGULATION IN THE AREA OF DIGITAL POLICY AND NEW TECHNOLOGIES

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**ABSTRACT:** *The European Union, due to the promotion of its own market standards and the externalization of the norms it has developed, has been referred to in the literature as a “regulatory power”, and the influence it exerts as the “Brussels effect.” One of the states that, as a result of the Europeanization process, is implementing EU solutions and is subject to the Brussels effect is Türkiye. The EU is an important regulatory entity in the field of digital markets and artificial intelligence. It can therefore be assumed that this area also concerns the convergence of the policies and laws of the European Union and Türkiye. The purpose of this article is to answer the following question: Are the solutions undertaken in the field of digital markets and new technologies in Türkiye the result of the Brussels effect and the EU's regulatory power? In order to answer the above question, the article first clarifies the definition of the EU's regulatory power and presents the framework of this concept. Then, during the research process, an analysis of three issues in the sphere of the digital market and new technologies and the impact of EU regulations on Turkish law was carried out. The spheres selected for analysis are: personal data protection, digital markets, and artificial intelligence.*

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**KEYWORDS:** Brussels Effect; European Union; Digital Markets; Türkiye; Artificial Intelligence.

### 1. Introduction

The ability of the European Union (EU) to externalize norms and promote its own market standards is referred to in the literature as the “Brussels effect” and “regulatory power” (Bradford, 2020). In recent years, the impact of EU solutions has been particularly noticeable in the digital sphere. The EU has proven to be one of the pioneers in this new field of regulation (Yoshizawa, 2024, p. 2). Its regulations, for example, regarding identical chargers, forced Apple to abandon its previous solutions in favor of those adopted by the EU. In turn, the privacy policies of companies such as Google, Facebook, and Microsoft applied worldwide refer to the European General Data Protection Regulation (GDPR) (Malarz, 2024). Although in recent years the Brussels effect in the global sphere has been assessed as decreasing, among others in the context of the decline of the EU's share in the global economy. The EU is one of the largest and richest consumer markets in the world. This issue does not allow global corporations to approach the EU's market with indifference.

Other states are also following the EU model and introducing similar regulations. They are convinced,

among other things, by the quality of EU legislation, which has gone through a long and complicated legislative process. In addition, international companies offer their products and services on markets outside the EU in accordance with its legislation. These companies therefore address demands to the governments of the countries in which they operate to harmonize their national regulations with the EU *acquis*. The same may be true for local companies (Bradford, 2021). The Brussels effect thus manifests itself in two ways: (1) in terms of changes in the way international companies operate, and (2) in adapting the legislation of other countries in line with the requirements of international companies (Doğru 2022).

Türkiye has also been taking steps to move closer to the European Union for many years. Although formally, the country has to adopt certain EU regulations due to its candidate status. Given that this process has been going on for a long time and is also uncertain, the result is partial and uneven implementation of EU solutions (Korkmaz Tümer, Van Zeben, 2024, p. 1). Although this style of policy is maintained in some areas, it seems that the issue of the digital market and new technologies cannot be included in it. Against this background, the following research question is posed: Are the solutions taken in the field of digital markets and new technologies in Türkiye the result of the Brussels effect and the EU's regulatory power? In order to answer this question, this article first clarifies the definition of the EU's regulatory power and presents the framework of this concept. Then, in order to better understand the EU's regulatory role, an analysis of three issues in the field of the digital market and new technologies is carried out. These are regulations on the protection of personal data, regulations on digital markets, and solutions in the field of artificial intelligence. The study used the desk research method and comparative analysis. The application of this last method is aimed at comparing Turkish law with EU regulations.

### **Theoretical Framework: The Brussels Effect and the EU's Regulatory Power**

The concept of the Brussels effect was created in 2012 by Anu Bradford. It is based on the California effect, which describes a “regulatory race to the top” within the United States (USA, U.S., US) (Princen, 1999, p. 1). It refers to California regulations, including those concerning employee and consumer protection, freedom of the press, building codes, data security, and technology regulations, which are among the most frequently implemented in other US states. As early as the 1970s, California legislators insisted on an exception to the national Clean Air Act, imposing stricter regulations on car manufacturers that wanted to sell their cars within the state. Fearing loss of market share, both domestic and foreign manufacturers successfully lobbied their own legislators to introduce standards modelled on California's legislation (Tager, Lee, 2023). Since then, California's law has become the norm throughout the country (Fredriksson, Millimet, 2022) and in other states as well.

The Brussels effect as a concept transfers the California effect to the international system and identifies

the conditions and mechanisms by which the externalization of legal regulations of the European Union occurs (Tamim, 2024). According to Bradford, the rules and regulations adopted by the community have permeated many aspects of economic life in Europe and beyond. This has occurred through the process of unilateral regulatory globalization, which is referred to as the Brussels effect, (Columbia Law School, 2025) taking place through market mechanisms. “Unilateral regulatory globalization is a development where a law of one jurisdiction migrates into another in the absence of the former actively imposing it or the latter willingly adopting it” (Bradford, 2015, p. 159). This is a different situation from the case of political regulatory globalization, within which political bodies adopt standards through negotiation and agree to comply with them. And also unilateral coercion, within which regulations are adopted by means of threats or through the application of sanctions (Bradford, 2020, p. 4).

Achieving the Brussels Effect is possible if certain conditions are met. First, the entity must have a large local market. Therefore, only economies with significant market sizes can create global regulatory standards. However, being a large market is not a sufficient condition for exerting global regulatory power, as the examples of the USA and China show. The entity must also have significant regulatory capabilities and capacities, and the EU has the institutional structures and necessary expertise that allow for effective creation and enforcement of regulations. Moreover, the entity through which the Brussels Effect is carried out tends to enforce strict rules for inflexible purposes (e.g., consumer markets) as opposed to flexible purposes (e.g., capital) (Bradford, 2015, p. 159). In the case of the EU, the regulations adopted are often much more comprehensive and demanding than those established by other entities. This reflects the EU's significant commitment to building standards in the field of, among others, the protection of consumer interests. The EU's focus on regulating this sector has limited the possibility of companies relocating and avoiding EU regulations if their goal is to enter the European market (The European Crypto Initiative, 2024). The Brussels effect therefore occurs when companies conclude that it is in their interest to pursue a uniform conduct or production pattern rather than benefit from lower regulations in other markets (Bradford, 2021). Thus, the important issue is that the benefits of adopting a single global standard outweigh the benefits of complying with multiple regulatory standards, including less stringent ones (Bradford, 2015, p. 159).

In order to understand the Brussels effect, it is important to articulate the differences between the de facto effect and the de jure effect. The de facto Brussels effect concerns the unilateral ability of the EU to regulate global markets by setting standards in areas such as competition policy, environmental protection, food safety, privacy protection, or regulations on hate speech in social media. In this case, the EU does not have to impose its standards on other entities through coercion, because they are the result of market forces (Bradford, 2021). Therefore, companies themselves, when certain conditions are met, decide to comply with EU regulations for their products or services in the international arena (Tamim, 2024).

The de jure effect, in turn, is to some extent a complement to the de facto effect. It can occur when companies, after deciding to adopt EU regulations for their product in other markets, lobby governments outside the EU to adopt EU solutions. When a given foreign government decides to adopt a rule similar to the EU rule in its legal acquis and adopt “EU-style” (Bradford, 2021) regulations, then the de facto effect becomes a de jure rule (Tamim, 2024).

The characteristics of the European Union allow it to be described as a European regulatory power that externalizes its policies and regulations related to the market. According to Chad Damro, this externalization has until recently been overlooked as a way in which the EU exercises its power in the international system. However, this can be both a deliberate and unintended action to regulate given issues on a global scale. This means that the EU actually has greater possibilities and is more willing to use coercive means and tools than those indicated until recently by the concepts characterizing its power. The EU's approach to adopting certain solutions is the result of its own policies, political preferences, and the complex process of law-making at the European level. In some areas, however, there is a greater awareness of the EU's ability to set global standards in areas of emerging law than in others (Damro, 2011, p. 1). Ignacio Garcia Bercero and Kalypso Nicolaidis draw similar conclusions. They point out that, on the one hand, the EU's aspiration to use access to its market can be a means to achieve its own geopolitical goals through the use of a unilateral tool of power. This is because the EU simply has the ability to do so. On the other hand, the EU's regulatory power allows it to play the role of a “responsible authority” in world politics. This is achieved by projecting a rules-based approach to regulation. In this case, territorial expansion is based on normatively clear goals that strengthen international institutions (such as the World Trade Organization or the Paris Agreements) (Garcia Bercero, Nicolaidis, 2021, p. 15).

According to Theodore Christakis, however, there are several limits to what Europe can and wants to regulate, and these are due to both internal and external factors. Internal regulatory actions can be blocked by political disagreements between EU member states. In addition, they can be limited by legal obstacles (starting with the exclusion of national security) or economic considerations (as an example, he points to the fear of excessive regulation of artificial intelligence (AI), which could hinder innovation and affect competitiveness). External regulatory factors, in turn, constitute situations of interdependence that may make international cooperation necessary to avoid retaliation and find constructive solutions to resolve conflicts of law and jurisdiction (Christakis, 2020, p. i).

## **2. The Regulatory Power of the European Union and Cooperation with Other States in the Field of the Digital Market and New Technologies**

Digital diplomacy has become one of the tools of the EU's foreign policy on digital markets and technologies. The foundations of the EU's engagement in digital policy were set out in the Council Conclusions on EU Digital Diplomacy of July 18, 2022, and June 26, 2023 (The Diplomatic Service of the European Union, 2023). The European Union has decided to strengthen cooperation on digital issues in relevant multilateral forums. To this end, the EU is to, among other things, “address multilateral issues in digital partnerships and other relevant dialogues with countries around the world with a view to building consensus around EU positions and promoting the key principles underpinning its own regulations” (Rada Unii Europejskiej, 2023). The European Union is therefore engaging with other countries to promote their interests, norms, and values related to digital transformation. This is done through strategic partnerships, which provide a framework for regular bilateral exchanges at various levels (Lavenex, Krizic, Serrano, 2017, p. 4). With some partners, cooperation is structured and regular, while with others it is implemented through high-level dialogue. In the case of the United States, cooperation with the EU is implemented through the EU-U.S. Trade and Technology Council, which was established at the EU-U.S. Summit held in Brussels on June 15, 2021. It was established to coordinate approaches to key global issues in the areas of trade, economy, and technology and to deepen bilateral relations based on these shared values (European Commission, 2024). On April 4–5, 2024, the Council held its sixth ministerial meeting, during which it agreed, among other things, to develop transatlantic cooperation on artificial intelligence, 6G, semiconductors, and new technology standards, including those related to mapping digital identities.

Cooperation with India was also based on the framework of the EU-India Trade and Technology Council, announced in April 2022 and launched in February 2023. An important aspect of it was to use the strengths of both entities “to ensure their technological and industrial leadership while maintaining common values” (Think Tank European Parliament, 2024). For the EU, cooperation with India complements the partnerships signed with Asian countries (Japan: May 2022, Singapore: February 2023, and South Korea: November 2022), which aim to address issues related to digital exclusion as well as to strengthen “an inclusive and equal digital environment for all.” As part of this initiative, solutions were also adopted that are important for other EU actions, including in the field of digital transformation, the EU-Africa Shared Vision 2030, and the EU-Latin America and Caribbean (LAC) Digital Alliance (European Parliament, 2024).

In addition to the three aforementioned digital partnerships with Asian countries (Japan, Singapore, and Korea), the EU also launched a similar dialogue in November 2023 with Canada. It covered areas of cooperation such as artificial intelligence, secure international connectivity, cybersecurity, digital identity, and digital

skills. It aims to continue joint activities and exchange information in the area of platform regulation, as well as strengthen cooperation in developing best practices in countering the manipulation of foreign information and disinformation. The partnership (as with the other three) establishes an annual high-level meeting of the Digital Partnership Board. It is chaired by the EU Commissioner for the Internal Market and the relevant minister for each of the four partner countries. The Digital Partnership Board is tasked with providing political leadership and setting and implementing priorities (European Commission, 2023).

In terms of regulating the digital market, the European Union also engages in dialogue with entities that do not necessarily share all of its values. China is one such example. So far, the European Union has held two High-level Digital Dialogues with representatives of this state (September 2020, September 2023). During the last of them, the European Commission presented, among other things, an update of EU regulatory changes (including the Digital Services Act and the Digital Markets Act). It also expressed its concern about the difficulties faced by EU companies in China due to the growing amount of foreign data processed by Chinese entities and the control of this process by the Chinese authorities (Przychodniak, 2024). It also called for ensuring a reciprocal business environment in the digital sector (European Commission, 2023a).

Thus, since 2015, the EU has begun to achieve significant success in externalizing its norms and principles in the arena of digital policy. As Annegret Bendiek and Isabella Stürzer note, the EU's regulatory authority in digital foreign policy stems from its economic strength. According to the researchers, this is evidenced by the fact that digital technology companies from outside Europe (mainly from the US and China) are adjusting the terms of their services in such a way as to ensure access to the European internal market (Bendiek, Stürzer, 2022, p. 1). However, it seems that the size of the EU market, as well as the lack of significant US action on digital regulation, were the reasons why countries and companies started to use European solutions (Hobbs, 2020).

### **3. Türkiye as an Example of the European Union's Influence in the Field of Digital Policy**

The European Union is not a military power and also has limited influence through imposing financial sanctions on third countries. However, as the example of digital policy shows, its regulatory power allows it to be defined as an international entity that prepares a qualitative legal framework that is applied in many areas of people's lives around the world. The mechanism developed within the EU institutions is also an effective instrument for motivating other countries to adopt European regulations. Inter-institutional and multi-level shaping of policies in the EU forum affects the legal certainty and credibility of European strategic goals and political commitments in the eyes of partners (Bendiek, Stuerzer, 2023).

Other states are ready to use EU models for a reason, and one example is Türkiye. For many years, this

country has been trying to approximate its legal *acquis communautaire*. Recently, digital policy has also become an important element of cooperation at the Türkiye-EU level. In 2023, the European Commission signed an association agreement with Türkiye under the Digital Europe Programme. Thanks to it, companies, public administration, and eligible Turkish organizations will have access to the Digital Europe Programme budget for 2021-2027. Digital development in Türkiye is possible in areas such as artificial intelligence or advanced digital skills. It also offers an opportunity to strengthen Türkiye-EU digital technology ties by using Ankara's potential in areas covered by EU programs (European Commission, 2023b). Given Türkiye's strategic geopolitical location, cooperation in digital policy can significantly contribute to the country's economic and social rapprochement with the EU. EU-Türkiye relations in the field of digital policy, in addition to promoting technological progress and economic growth, will have a number of consequences for regional stability and international partnerships.

### **The Impact of EU Regulations on Personal Data Protection on Turkish Law**

In the face of the growth of the data-driven economy, the European Union has become a leader in attempts to protect data and privacy rights with the General Data Protection Regulation (GDPR) (Raines, 2020). Although this document applies primarily within the EU, its extraterritorial scope requires companies around the world to comply with its provisions when processing the personal data of EU residents (The European Crypto Initiative, 2024). The willingness of other entities to support the GDPR principles is closely linked to their enforcement. This is a key factor in the EU's ability to unilaterally influence the global behaviour of companies (Mahieu, R., et al., 2021, p. 301). Failure to comply with the GDPR provisions results in severe sanctions. Data breaches are punishable by financial penalties of up to EUR 20 million, or 4% of the company's global turnover. In addition, the Office for Data Protection may impose additional remedial measures, such as an order to cease processing personal data (Your Europe, 2024).

As for Türkiye, the first data protection law was prepared based on the provisions of EU Directive 95/46. Part of the EU regulations were then reflected in the Personal Data Protection Act No. 6698 of April 7, 2016 (Kişisel Verileri Koruma Kanunu - KVKK) (KVKK, 2016). In turn, after 2020, various other political documents showed that the direction of their adjustments would be related to the EU GDPR. This evolution was defined as a response to the needs of the business ecosystem. In addition, the urgent need for change was also emphasized by new challenges in the processing of special categories of personal data, especially for employers and the healthcare sector (Güven Taştan, 2024). According to Asli Deniz Helvacioğlu and Hanna Stakheyeva, both the Turkish and EU data protection systems have three objectives, which, although they are competitive, are complementary to each other. They define them as (1) protecting the personal data of natural persons (citizen aspect); (2) strengthening the capabilities of technology markets (business aspect); and (3)

ensuring an effective system that monitors and regulates the relationship between the company and the data owner (governance aspect) (Helvacioğlu, Stakheyeva, 2017).

The secondary law introduced in Türkiye in the form of regulations and announcements has therefore led to a similar development of changes to those that the GDPR has caused in the EU. There are many similarities in the areas covered by the KVKK and the GDPR. Among them, the subject scope can be identified, as both legal acts provide comparable definitions of key concepts such as personal data, sensitive data, and processing. In addition, they apply to the processing of personal data in an automated or non-automated manner if the data is part of a submission system. Also, in terms of the general obligations specified in both documents, both for data controllers and data processors, both documents are similar. They concern, among other things, obligations regarding the rights of data subjects, notifications of data breaches, and data security measures. In some cases, these are identical regulations. For example, both the GDPR and the KVKK provide for a 72-hour period for notifying the competent supervisory authority of a breach (OneTrust DataGuidance, Esin Attorney Partnership, 2020, p. 5).

In addition, the provisions of both legal acts are enforced by data protection authorities (DPAs) and through legal claims filed by data subjects. In the case of Türkiye, responsibility in this area falls to the Turkish data protection authority, Kişisel Verileri Koruma Kurumu. In the case of the EU, each Member State has at least one national data protection authority responsible for enforcing the provisions of the GDPR (Bateman, Pegarella, 2024). Both documents also provide for fines. However, those regulated by the GDPR are significantly higher than those regulated by the KVKK (Uz, 2020). The upper limit of fines under the KVKK is set at TRY 20,000 to TRY 1,000,000. In turn, the upper limit under the GDPR can be set at EUR 20,000,000, or 4% of the annual turnover of the previous tax year. The maximum fines under the KVKK can range from TRY 5,000 to TRY 1 million (USD 186 to USD 37,300). Under the GDPR, they reach an amount of up to EUR 20 million (or USD 21.4 million) or 4% of annual turnover. In addition to differences in administrative penalties, both documents also address other issues in different ways, including the liability of data protection officers and the right to be forgotten (Güner, Güner, 2019, p. 52-53). And although the GDPR is longer and more detailed than the KVKK, in both cases the data protection framework is solid and imposes many obligations on companies (Bateman, Pegarella, 2024).

### **EU Digital Markets Act and the “Brussels Effect” in the Case of Türkiye’s Regulation**

Another example of the European Union's Brussels effect is the Digital Markets Act (DMA), which came into force on November 1, 2022 (European Commission, 2022). However, it should be noted that its full implementation took place in the following months. The DMA regulations therefore went beyond Europe even before their practical effect was tested (Kiss, 2024). This was done by introducing similar rules for tech giants

and innovations around the world. EU regulations for large technology companies, referred to as “gatekeepers” (Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft), regulate numerous prohibitions and orders to limit the use of personal data in the course of services provided by “gatekeepers” (Meretz, 2024). The DMA imposes on companies, among other things, rules on avoiding anti-competitive data practices, giving users control over settings and software, and ensuring fair treatment of business users and other service providers. An important aspect of the DMA is “interoperability of communication services,” through which gatekeepers are ordered to ensure that their platforms work smoothly with other entities (Kiss, 2024).

Over time, it has become clear that the Regulation, along with every other element of the legal framework currently governing digital markets in the EU, may have the effect of reducing competition. One of the concerns was the shift from an ex-post to an ex-ante regulatory regime through the wide range of prohibitions that ignore the nature and nuances of competition contained in the DMA. The proactive rules were established before specific anti-competitive activities occurred. They may therefore inadvertently influence pro-competitive behavior or fail to address the anti-competitive practices they were intended to prevent. In practice, this may have unintended consequences (Kiss, 2024), such as reducing competition and stifling innovation in the EU (Meretz, 2024).

In order to address the challenges of digital markets, in October 2022, Türkiye published the Draft Regulation on Amending Law on the Protection of Competition. The provisions of the document concern amendments to Law No. 4054 on the Protection of Competition. The publication of the proposal was aimed at gauging public opinion on the proposed changes. The new regulations on digital markets in Türkiye and ensuring the protection of the competitive environment of these markets were prepared in light of the EU DMA as well as the provisions of §19a of the German Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen – GWB) (Girgin, Horozoğlu, Utku Çal, 2023, p. 16). They mainly included defining the basic services of platforms and imposing specific obligations and restrictions on undertakings with significant market power.

In June 2024, a new version of the proposed amendments to Law No. 4054 was made available to some parties for feedback and comments (Doğan, 2024). Parliamentary discussions on the provisions of the document, known as the “Turkish DMA,” are scheduled for December 2024 (Coniglio, Kiss, 2024). In the case of several key provisions and definitions, the draft Turkish law even copies the provisions of the DMA and, in some cases, applies even more stringent regulations. In this way, lawmakers aim to reduce competitive harm in the digital services market while ensuring that the positive economic effects of digital access are preserved (Dailey, 2024, p. P2). However, some analysts express concerns that the new EU-inspired regulations (like the DSA) are actually aimed at limiting the growth of disinformation on social media (Broadbent, Strezewski, 2024).

#### **4. EU Artificial Intelligence Act and Türkiye**

The European Union (EU) Artificial Intelligence Act (AI Act, AIA) was published in the Official Journal of the EU on July 12, 2024, and entered into force on August 1, 2024. The law aims to establish the first comprehensive regulatory regime for AI.

Even before it entered into force, it was described as a law that “will not stop at the EU’s borders” and will set global standards (Engler, 2022). This pioneering regulation provides guidance to many countries in defining their national policies and strategies, as well as in legislative actions on AI and related issues (Yavuzdoğan Okumuş, Talay, Takmaz, 2024).

The EU’s drive to be a pioneer in comprehensive regulation of AI technologies has resulted in the development of regulations that significantly influence how countries such as Türkiye deal with the integration of AI into their technology and economic regulations (Ünsal Özden, 2024). One of the major steps taken by the Turkish government in the context of the AI roadmap and its application was the announcement of the National AI Strategy for 2021-2025 on August 20, 2021. This action was described as a step of fundamental importance for Türkiye's future in the international arena. When properly adapted and used, AI technology has the ability to boost the country's economy while providing strategic benefits, resulting in greater global influence (Shkurti Özdemir, 2021, p. 5).

Following the publication of the EU AI Act, Türkiye also prepared a draft law on the regulation of artificial intelligence (Draft No. 2/2234, the so-called “AI Bill”) (Werner, 2024). It was submitted to the Grand National Assembly of Türkiye on June 24, 2024 (TBMM, 2024) and is currently undergoing the legislative process. The document consists of eight articles that aim to “ensure the safe, ethical, and fair use of artificial intelligence technologies, ensure the protection of personal data, prevent violations of privacy rights, and establish a regulatory framework for the development and use of artificial intelligence systems” (TBMM, 2024). Türkiye's AI proposals are therefore based on the principles of security, transparency, equality, responsibility, and privacy. However, they lack details on how to adopt and enforce the established principles in practice (Insight, 2024).

One of the most serious shortcomings of the Turkish draft, according to lawyers, is the introduction of general regulations on risk management and assessment instead of specifying all the risk levels, measures, and compliance assessment defined in the EU Act. The EU solutions establish four main risk levels: (1) unacceptable, (2) high, (3) limited, and (4) low risk. At the same time, they define the compliance requirements and obligations of users and developers with each specified level. The Turkish draft lacks such a classification, limiting itself only to the statement that “risk assessment should be carried out during the development and

use of AI systems” (Yavuzdoğan Okumuş, Talay, Takmaz, 2024). Another problem is the amount of penalties specified in the Turkish AI Law. For using prohibited AI applications or systems, a penalty of up to 35 million Turkish liras (approx. 1 million US dollars) or up to 7 percent of the entity's global turnover from the previous tax year may be imposed. In turn, failure to comply with the provisions of the AI Law may result in a fine of up to 15 million TL (approx. 455,000 USD) or 3 percent of the entity's global turnover from the previous tax year. A fine of 7.5 million Turkish liras (approx. USD 245,000) or 1.5% of the entity's global turnover from the previous tax year is imposed for providing false information (Insight, 2024). According to Begüm Yavuzdoğan Okumuş, Yalçın Umut Talay and Seda Takmaz, such a regulation of penalties may lead to the establishment of quite high monetary limits for Türkiye, which could potentially limit the activity of technology companies in this country. The Turkish draft has some provisions that raise concerns and is less comprehensive compared to the EU AI Act. The transformation of the regulations into more detailed solutions will therefore relate to developments in the EU (Çiftçi, Özdoğan, Öner, 2024).

## **5. Conclusions**

Analyses of the characteristics of the European Union as a participant in contemporary international relations primarily point to its role as a “soft power.” Thus, the influence of the community of European states on the external environment primarily concerns the use of peaceful means as well as the promotion of democracy and human rights in the international arena. This aspect of the EU's foreign policy is based on a system of European values, deeply embedded in the *acquis communautaire* and the *acquis politique* of the EU (Barburska, 2016, p. 346). This is one of the reasons why Ian Manners has described the EU as a “normative power”, the strength of which is its ideology, opinions, and standards (Manners, 2002, p. 238-244).

Using the EU as a much stronger entity than the individual states that make it up gives the opportunity to participate in defining the possibilities of regulating diplomatic, strategic, economic, and social negotiations in the international arena. This aspect is used to a significant extent in international trade and the creation of regulations for the digital market and artificial intelligence. Actions in this area are extremely difficult. This is due to the continuous development of technology and the emergence of new phenomena in cyberspace. This situation therefore requires a departure from established ways of thinking and the need to create pioneering legal regulations, the effects of which are *de facto* difficult to predict in the long term (Centrum Analiz Klubu Jagiellońskiego, 2022). Therefore, certain practical solutions of EU regulations are often criticized, among others, for achieving effects opposite to those planned. However, the mechanisms developed within the EU structures are still an effective instrument for motivating companies to adopt European regulations. The EU is one of the largest and richest consumer markets in the world, which is why global corporations cannot ap-

proach its decisions with indifference. However, the EU's influence reaches not only foreign business practices, but also the political choices of other countries (Hadjiyianni, 2021, p. 243). The Brussels effect and the EU's regulatory power allow us to define the EU as a participant in international relations that prepares a qualitative legal framework applied in many areas of people's lives around the world.

The European Union has long been a point of reference for Türkiye. In recent years, the country's technology sector has grown at an impressive rate of 67% between 2012 and 2021. By 2022, the information and communication technology (ICT) industry accounted for around three percent of Türkiye's GDP. As a result, securing investment in this area has become a key economic priority for the Turkish government (Coniglio, Kiss, 2024, p. 3). Therefore, when it comes to modern technologies and services offered by digital leaders, Türkiye, "as one of many advanced developing countries, aspires to emulate Brussels in applying a comprehensive regulatory approach" (Broadbent, Strezewski, 2024). The fact that the country still intends to draw on the regulatory *acquis* of the European community is evidenced by, among other things, the plan to align the Personal Data Protection Act with the EU's General Data Protection Regulation (GDPR) (Presidency of the Republic of Türkiye, Presidency of Strategy and Budget, 2023). This goal was echoed in The Medium Term Program (2024-2026) announced by the Turkish government in 2023.

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Gökhan AKŞEMSETTİNOĞLU, PhD 

Çankaya University, Faculty of Economics and Administrative Sciences, Türkiye

gokhana@cankaya.edu.tr

## NATO-EU COMPLEMENTARITY THROUGH STRATEGIC CONCEPT AND THE STRATEGIC COMPASS: THE IMPACT OF THE STRATEGIC COMPASS ON EUROPEAN INTEGRATION

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**ABSTRACT:** *The Russia-Ukraine war and the changing geopolitical interests of the major powers have created several new threats for Europe. At the same time, new challenges such as cyber-attacks, hybrid wars and climate change have alarmed the European states. Therefore, these developments required NATO and the EU to take measures separately and proceed by common action. In line with this need, NATO issued the Strategic Concept and the EU issued the Strategic Compass. Examining the two strategies has revealed that they are not competing but completing documents to provide European defence and security. Therefore, the first purpose of this article is to present the idea of complementarity between NATO and the EU in European security. This understanding will also serve the second purpose of the article, which is the manifestation of the impact of the Strategic Compass on European integration. In other words, complementarity will create a structural framework for strengthening the Strategic Compass and the European integration process. In this context, since the Strategic Compass has reflected a consensus of the EU member states to cooperate on defence and security issues, it is essential to know whether it has contributed to the European integration process by deepening policies on defence and security. Thus, the article concludes that, strengthened by NATO's strategic concept in the context of complementarity, the strategic compass has become an important step in the European integration process.*

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**KEYWORDS:** European Security; NATO-EU Relations; NATO's Strategic Concept; EU's Strategic Compass; European integration process.

### 1. Introduction

The Russia-Ukraine conflict in 2014 triggered a rethinking of the European security architecture. It also opened a new period for the North Atlantic Treaty Organisation (NATO) and the European Union (EU), two organisations responsible for European defence and security. Starting in 2014, both NATO and the EU have intended to develop defence strategies and security policies on threats and challenges, separately (Hoeffler and Hofmann, 2024, p.8). Therefore, the European states have changed or rearranged their policies. Indeed, some actors have entirely abandoned their previous policy frameworks. For instance, Germany has decided to increase its defence spending. Denmark reversed its 30-year opt-out of the EU's Common Security and Defence Policy (CSDP). Maybe, more importantly, Sweden and Finland became new members of NATO (Borges de Castro and Lobo, 2022, p.114).

Also, other challenges such as climate change and cyber threats have exacerbated security concerns in Europe. However, the Russian invasion of Ukraine and the following war, among others, have dramatically changed Europe's security landscape (Sus, 2024, p.942). In such a security environment, both NATO and the

EU have intended to improve cooperation. They have also looked for coordination, joint exercises and a sense of complete determination (Blessing, Elgin, and Ewers-Peters, 2021, p.71). In this context, both NATO and the EU have announced new strategies to respond to European military threats and other challenges.

Therefore, this article concerns NATO's Strategic Concept and the EU's Strategic Compass. NATO and the EU have announced these two strategies as guiding lights to respond to new threats and challenges in Europe. In this context, this article has two interrelated purposes. The first purpose is to affirm the view put forward by other researchers that NATO and the EU are complementary organisations in ensuring defence and security in Europe. The second purpose is to answer the question supported by NATO's Strategic Concept, in the context of complementarity, to what extent have the objectives set out by the EU with the Strategic Compass contributed to the political-military leg of the European integration process?

To reach these purposes, the author of this article has used qualitative research methods. Therefore, documents/data analysis has become the primary source of information throughout the research. In this context, official documents of NATO and the EU and academic journals written by interested authors have been used to make inferences on the subject and reach a conclusion.

The article has seven parts within this framework, including an introduction and a conclusion. The second part is the literature review, which explains the ideas of some other authors on both strategies and the cooperation and the concept of complementarity between NATO and the EU. The third and fourth parts are about the strategy. However, each part also explains the earlier developments paving the way for the strategy. Therefore, the third part explains the "NATO 2030" document before explaining the Strategic Concept. Similarly, the fourth part explains the "EU Global Strategy" and "Defence Initiatives" before explaining the Strategic Compass. The fifth part is about the Joint Declaration on EU-NATO Cooperation of 2023. The declaration is necessary because, in a way, it contains a summary of both strategies and emphasises the cooperation and complementarity between NATO and the EU. The sixth part is about the assessment of the findings. This part is also composed of two sections. The first section affirms the complementarity between NATO and the EU. The second section reveals how the objectives announced by the Strategic Compass have yielded practical results for the EU, especially in the last two years. Therefore, it has put forward how the Strategic Compass has contributed to deepening the political-military leg of the EU.

In this context, authors studying European defence and security have contributed to the subject by expressing their ideas. Therefore, it would be helpful to refer to some of their studies to learn more about what topics they generally focus on.

## **2. Literature review**

Some writers have analysed NATO's new Strategic Concept in depth. For example, Gottemoeller et al.

(2022) have underlined cyber, space, and technology as emerging domains in the Strategic Concept. They have also demonstrated how to address these domains through pre-emptive consensus on actions, communication of capabilities, and cooperation with industry partners. In this sense, they argued that NATO must integrate these domains to increase the effectiveness of the Alliance. Similarly, Webber et al. (2022), noting the return of great power rivalry, emphasised the emerging domains of the Strategic Concept and identified “cyber” as the most vulnerable area for the member states. Moreover, they highlighted climate change and the Arctic as additional areas of competition among major powers. Ringsmose and Rynning (2021) have stressed the multiple purposes of earlier Strategic Concepts, including providing the Alliance with strategic direction, codifying piecemeal decisions, and serving as a vehicle for public diplomacy. They also pointed to the Strategic Concept’s role in facilitating compromise and unity of thought. Becker, Duda, and Lute (2022) have viewed the new Strategic Concept as part of global security competition, helping manage rivalry with China and Russia. Szenes (2023) has defined the Strategic Concept as NATO’s long-term vision and explained its updated perceptions of deterrence and defence, as well as its planned measures. He regarded the Strategic Concept as an usher leading NATO into a new era of great power competition. Finally, Calmels (2020) reminded readers of the cohesion among member states and explained that the 360-degree approach is an integral part of the Strategic Concept.

Some other writers have identified similarities in the explanation and definition of both the Strategic Concept and the Strategic Compass. For example, Hoeffler and Hofman (2024) have examined organisational overlap and revealed its role in empowering international bureaucracy. They found that such overlap strengthened the European Commission’s ability to consolidate its position within the EU. Similarly, Tangör (2021) has sought to determine whether the NATO-EU strategic partnership has created specific institutions to enhance complementarity between the two organizations. He has also shown that Permanent Structured Cooperation (PESCO) and the European Intervention Initiative (EI2) have positively contributed to improved security governance practices. Ewers-Peters (2023), on the other hand, has focused on the roles of EU member states within NATO-EU interactions and examined the strategies enabling them to cooperate. Likewise, Daehnhardt (2022) has emphasised the urgency for NATO and the EU to enhance their partnership, strengthen NATO-EU cooperation, and maintain the unity and cohesion of the transatlantic relationship under the shadow of the Russian-Ukrainian war.

Therefore, according to the literature on the subject, we understand that the authors mainly focus on new threats and challenges that the European states have faced in the context of a competitive and complex international system, based on power politics. Accordingly, the authors have emphasised that Russia and China are important threats militarily, economically, and strategically. Also, they have highlighted hybrid wars, cyber-attacks, and climate change as new challenges. To solve these problems, the authors have primarily drawn

attention to the cooperation and coordination between NATO and the EU and the complementarity of the Strategic Concept and the Strategic Compass. Within this framework, the authors underline coming together around a standard view before taking action, improving communication skills and collaborating with industry partners as new goals to implement the policies announced by the strategies. In this context, in the following two parts, explaining the Strategic Concept and the Strategic Compass with their earlier developments can give us an insight into new principles and conditions on European security and defence.

### **3. NATO's strategic concept**

After the Second World War, NATO was established in 1949 as the leading organisation to defend European countries and has continued this function until today. During this period, NATO put forward eight strategic concepts that fit the changing conditions of international politics. The seventh Strategic Concept, "The 2010 Strategic Concept, Active Engagement, Modern Defence", became a political document. The 2010 Strategic Concept explained three core tasks: collective defence, crisis management, and cooperative security. In this context, it identified threats such as the proliferation of Weapons of Mass Destruction (WMD), terrorism, cyber-attacks, and fundamental environmental problems (Szenes, 2023, p.541). It also confirmed NATO's purpose to improve international security through coordination.

After the 2010 Strategic Concept, NATO was silent for a while before announcing a new strategy. At the 2014 NATO Summit in Wales, however, the member states discussed improving their capabilities and achieving a fairer burden-sharing. In this context, the member states launched the Readiness Action Plan (RAP) at the Summit to adopt several solutions to lead the Alliance to adapt to a rapidly changing and challenging security environment. In this context, NATO defence ministers approved a document called "Defence and Deterrence of the Euro-Atlantic Area" (DDA) in June 2020, which adopted "military effects" and placed them in a geographical context (Ringmose and Rynning, 2021, p.155). In this sense, thanks to these developments, NATO was able to respond to the Russians' aggressive attitudes. In other words, NATO has focused on force employment to deter and defend (Szenes, 2023, p. 554). In this context, NATO presented the "NATO 2030: United for a New Era" report on 25 November 2020, leading to the Strategic Concept 2022.

#### **3.1. NATO 2030 document**

The NATO 2030 document is about policy recommendations. It reveals significant challenges that NATO will face in the upcoming years, such as the rise of China, technological acceleration and climate change. Within this framework, the document has proposed to realise deeper political coordination and strengthen defence issues. The report highlights the need for a new strategic concept that reflects the recent changes in NATO. Similarly, it has revealed the need for allies to comply with the consultative process and the idea of

consensus (Tardy, 2020, p.4). In this context, the NATO 2030 document intends to reconfigure NATO globally and strengthen its political capacity. In this sense, the NATO 2030 document is a guideline for the alliance and the member states (Panke, 2019, p.122).

Therefore, after the 2010 Strategic Concept, and the announcement of the NATO 2030 document, NATO's security understanding has rapidly changed to include new challenges such as cyber, space, and "Emerging and Disruptive Technology" (EDT) (Gottemoeller, et al., 2022, p.516). In this sense, NATO has sought to enhance its capability to protect energy-related issues and ensure energy supplies (Gjoreski and Nacev, 2022, p.31). In this context, the strategic concept underlines communication as a catalyst for properly integrating cyber and space. Thus, following the NATO 2030 report, the Madrid Summit, which was held on 29 June 2022, approved the new Strategic Concept and started implementing it simultaneously, introducing the new NATO Force Model (Szenes, 2023, p.554).

### 3.2. The new strategic concept of 2022

The eighth (last) strategic concept, the new Strategic Concept, announced in 2022, aims to respond to the latest challenges the European states have faced in the international system. In other words, NATO's new strategic concept is crucial in terms of defining principles that will ensure the security and defence of Europe, as shown by the newly formed geopolitical structure, reshaped after the Russia-Ukraine War. Therefore, Article 1 of the Strategic Concept presents the determination of NATO to safeguard the freedom and security of allied countries. Article 2 identifies NATO as the transatlantic tie between states and describes it as indispensable to security. It brings members a shared understanding of the security environment (Becker, Duda, and Lute, 2022, p.490). This framework outlines NATO's purpose and core missions.

Hereunder, NATO's basic purpose is to provide defence to its member states, based on a 360-degree approach. According to Article 20 of the Strategic Concept, NATO will deter and defend all domains. In this context, the so-called "360-degree Threat Analysis" aimed at showing NATO's will to adapt by supporting its Eastern front defence while not neglecting Southern challenges (Calmels, 2020, p.416).

Also, the new Strategic Concept defines NATO's three primary missions. The first is "collective deterrence and defence" based on the collective self-defence principle. According to Article 21 of the Strategic Concept, for this mission, NATO will strengthen its deterrence and defence position to deny any potential adversary and possible opportunity for aggression (Ringsmose and Rynning, 2021, p.154). The second is "crisis prevention and management", where NATO has a set of security capabilities. In this sense, Article 8 defines the Russian Federation as a chief threat to the allies' security. The third is "cooperative security", where the Alliance actively consolidates international stability through like-minded countries (Piechowicz and Maliszewska-Nienartawicz, 2020, p.27).

Without a doubt, these missions require strength and resilience, which encourages an in-depth engagement with the endogenous structures and capacities of member countries (Wagner and Anholt, 2016, p.416). Moreover, the Strategic Concept has highlighted the EU as a special partner for NATO. Article 43 of the Strategic Concept explains NATO-EU cooperation as complementary. According to the article, both organisations increase cooperation on issues of common interest (Panke, 2019, p.120).

#### **4. The EU's strategic compass**

Historically, the foreign and defence ministers of NATO had decided in their respective meetings in Brussels (1994) and Berlin (1996) to develop European Security and Defence Identity (ESDI) within the alliance. The ESDI requires at least some standard European defence capability and a European defence industry and technology development (Batora, 2009, p.1076). In this context, another significant step was taken in St. Malo, where Britain and France decided on a common defence policy and independent military operation capability of the EU (Merand, 2010, p. 364).

##### **4.1. The EU global strategy and defence initiatives**

On the road to ensuring security and consolidating defence, the EU member states announced the European Security Strategy (ESS) in 2003 and the EU Global Strategy (EUGS) in 2016. The ESS identified the threats facing the EU, defined its strategic objectives, and defined the political implications for Europe. It was the first attempt for the EU member states to demonstrate a will to act together on security and defence issues. (Ivasechko, et al., 2023, p.88). In 2016, a survey found that 74 % of Europeans want to see a stronger EU globally (Tocci, 2016, p.462). In response to this request, the EUGS calls for the EU to be more assertive, confident, determined, and resilient while confronting its challenges and fears (Davis Cross, 2016, p.405). Therefore, in 2016, the EU realised that transformation rather than more preservation was necessary to safeguard multilateralism (Tocci, 2017, p.497). Also, the policy-making of the EUGS reveals integration dynamics in the institutional structure of EU foreign policy (Barbe and Morillas, 2019, p.761).

Therefore, the EU Global Strategy (EUGS), with its specific logic and focus (Bargues, 2022, p.2), underlined that the EU should consider the concept of “strategic autonomy” seriously. In this context, the EUGS noted that NATO cannot be the only security framework for the entire EU, as member states are not a part of the alliance. In this sense, Strategic Autonomy is intended to make Europe more independent from other actors (Blessing, Elgin, and Ewers-Peters, 2021, p.79). To do that, Strategic Autonomy has put forward three elements. The first is the territorial security of the EU and deterrence provided by NATO. One should remember that Strategic Autonomy is about acting without the US, not without NATO (Biscop, 2016, p.440). The second is that the EU must build up its defence capabilities to be operational at the periphery of the EU. The third element is defence industry initiatives that should be directed to the future, interoperable components of the

European defence architecture (Pascu and Chiriac, 2021, p.29). In this context, industrial autonomy is developed through increasing defence potential to achieve autonomy in military activities (Ivasechko, et al., 2023, p.74).

Therefore, Strategic Autonomy has become the foundation to assess the Permanent Structured Cooperation (PESCO), the European Defence Fund (EDF), and the Coordinated Annual Review on Defence (CARD) (Sweeney and Winn, 2020, p.225). Also, they are the necessary steps for Strategic Autonomy, a prerequisite of the ultimate goal, which is the Defence Union (Koppa, 2019, p.4). In this context, the EU member states have intended to use PESCO, the EDF, and CARD as new defence initiatives to develop military capabilities (Tardy, 2018, p. 126).

Therefore, the Council approved PESCO in 2017 to achieve results for a more effective defence of Europe. In this context, PESCO allows EU member states to cooperate in shared projects to develop their defence capabilities further. In this sense, PESCO is intended to increase the capabilities and interoperability of European armed forces and therefore can be seen as a tool for military-security integration of EU member states (Ivasechko, et al. 2023, p.81). It is also important to note that PESCO is compatible with the European Intervention Initiative (EI2), which was designed to enhance European integration (Tangör, 2021, p.85).

The EU member states established the EDF in 2017 to support defence research and development. In other words, they intended to promote defence-industrial collaboration through the EDF (Besch, 2019, p.5). Therefore, the EDF has acted as a centre for defence expenditures and development incentives and as a national coordination centre (Ivasechko, et al., 2023, p.85).

In addition to PESCO and EDF, the EU launched the CARD in 2017 to rationalise military spending across the EU as the mechanism of collective defence planning (Ivasechko, et al., 2023, p.83). In other words, it is designed for mutual adaptation of national security organisations (Fiott, 2017, p.1). Therefore, the establishment of PESCO, EDF, and CARD has consolidated the defence policies of the EU member states on the road to the integration process.

However, a major geographical challenge is the Russian-Ukrainian conflict that the EU member states have encountered in recent years, revealing a necessity of arranging a new strategy to fulfil the new need (Ivasechko, et al., 2023, p.78). Therefore, the need to solve the security problems that the EU member states have faced has triggered the EU member states to agree on an EU policy leading to the Strategic Compass (Sweeney and Winn, 2022, p.196).

#### 4.2. The EU strategic compass of 2022

Following the EUGS, some other developments have prepared a foundation for creating a Strategic Compass in the EU. For example, in 2019, as a first step, Germany proposed drawing up a Strategic Compass, co-authorised by the civilian and military sides of the European External Action Service (EEAS). Also, in January

2020, the European Commission created a Directorate-General for Defence Industry and Space (DEFIS), responsible for EU policy on defence industry and space. Moreover, the EU Threat Analysis of 2020 explained threats and challenges on both global and regional levels that the EU member states would face in the coming years. According to the threat analysis, climate change and interstate conflicts have become new threats and challenges for European countries (Rehri, 2021, p.44). In this context, the Council decided to launch the process of developing the Strategic Compass in June 2020, and then formally approved it as a part of the Defence and Space packages on 21 March 2022 (Sus, 2024, p.956). In this sense, the Strategic Compass is about a shared strategic vision for EU security and defence policy over the next 5-10 years. Maybe more importantly, it is intended to describe a specific role for the EU in collective defence (Perot, 2024, p. 15).

The Strategic Compass has revealed four dimensions: crisis management, resilience, capability development, and partnership. These dimensions directly relate to four directions: act, secure, invest, and partner (Branda, 2022, p.239). Therefore, in the Strategic Compass, the EU member states have agreed, first, to act rapidly in crises, which needs strengthening the EU's situation as an effective crisis management actor in defence of EU interests. Second, they have agreed to guarantee secure access to strategic issues. Third, they have endorsed investing in innovative technologies. Fourth, the EU member states have decided to strengthen cooperation with partners.

Therefore, the Strategic Compass is interested in developing the capabilities of the EU member states in terms of defence (Branda, 2022, p. 245). In this sense, the Strategic Compass is a "mid-range strategy" that underlines urgent situations (Sweeney and Winn, 2022, p.196). In a way, it tries to fill the gap between the common objectives of the EU set out in the earlier strategies (EES and EUGS) and the instruments for building up military forces and capabilities (Ivasechko, et al., 2023, p.69).

Following the Strategic Concept and the Strategic Compass, the latest development in understanding the relationship between NATO and the EU has announced the Joint Declaration on EU-NATO Cooperation, dated 10 January 2023.

### **5. Joint Declaration on EU-NATO Cooperation, 10 January 2023**

The EU-NATO Joint Declarations announced in 2016 and 2018 signalled a turning point for consolidating relations between NATO and the EU. In this sense, the Joint Declaration of EU-NATO Cooperation (2016) has defined seven areas in which NATO and the EU sought coordination, such as hybrid warfare, cyber security, and space security (Blessing, Elgin, and Ewers-Peters, 2021, p.71). On the other hand, the Joint Declaration of EU-NATO Cooperation (2018) has stressed the need for cooperation in certain areas, namely cyber security and hybrid threats. It has also welcomed the recent EU efforts in security and defence, which would also strengthen NATO (Koppa, 2019, p.7).

Following the joint declarations of 2016 and 2018, a third joint declaration, the "Joint Declaration on EU-NATO Cooperation", was signed on 10 January 2023. This declaration is based on the strategic partnership between NATO and the EU, shared values, and collective determination against common problems. According to the declaration, the main objective of the strategic partnership is to maintain peace and security and ensure stability among member states (Joint Declaration on EU-NATO Cooperation, Article 1). In this sense, the declaration underlines NATO's continued role as the basis of collective defence for Euro-Atlantic security. The Joint Declaration has also emphasised that a stronger European defence will contribute positively to global security so that the strategic partnership between NATO and the EU will complement each other in strengthening security both in Europe and outside Europe (Joint Declaration on EU-NATO Cooperation, Articles 8-9).

In this context, some writers have emphasised the significance of the Joint Declaration, which aligns with the priorities of NATO's Strategic Concept and the EU's Strategic Compass. For example, according to Simonet (2023), the Joint Declaration is important in conveying that a strong union has been formed against the most serious threat that Euro-Atlantic security has faced in decades. Thus, while the declaration emphasises the importance of NATO in ensuring the security of Europe, it also mentions the need for a stronger and more qualified European defence. Giuglietti (2023) sees the Joint Declaration as a critical step towards a more united transatlantic community. For him, the declaration carries an important political value, including expanding and deepening cooperation. For Monaghan, et al. (2023), the Joint Declaration is symbolic and emphasises the importance of NATO and the EU against today's increasing security concerns. Therefore, the declaration's language emphasises NATO's superiority in collective defence and highlights the complementary roles of NATO and the EU.

Therefore, the declaration defines the factors that pose a threat to the EU and NATO, determines the areas of cooperation against the threats, and emphasises the importance of NATO in the security of Europe, while emphasising the necessity of the two international organisations to act together (Clapp, 2023).

## **6. Assessment of the Findings**

This article concerns NATO's Strategic Concept and the EU's Strategic Compass. The Strategic Concept concerns how NATO member states and their partner countries plan to defend themselves (Becker, Duda, and Lute, 2022, p.494). In this sense, they are expected to prioritise collective defence and intensify internal political-military dialogue (Ringsmose and Rynning, 2021, p.160). According to the Strategic Concept, China's inclusion in the document for the first time has been an absolute novelty. In this context, the Strategic Concept has stated China's coercive policies that could challenge NATO's interests, security, and values (Szenes, 2023, p.546). The Strategic Concept has also explained new threats and challenges such as hybrid threats, climate

change, cybersecurity, and maritime security. It has even underlined some of them as a source of intensifying the effects of the threats and challenges. For example, the Strategic Concept has labelled climate change as a threat multiplier (Ringsmose and Rynning, 2021, p.147).

On the other hand, the Strategic Compass has revealed a wide range of geographic interests, including Russia, China, the Western Balkans, the Eastern Neighbourhood, the Arctic, the Southern Neighbourhood, and Asia (Branda, 2022, p.239). In this context, the analysis of threats in the Strategic Compass has emphasised the need for “hard power” as necessary for the EU (Ivasechko, et al., 2023, p.79). The Strategic Compass has also combined the Strategic Autonomy with the 2030 Action Plan to fill the EU’s specific military gaps and intensify the already started initiatives (Ivasechko, et al., 2023, p.89). In this framework, the increased autonomy of bodies such as HR/VP and the EEAS has facilitated the merger of initiatives in security and defence (Morillas, 2020, p.231). In this sense, Strategic Autonomy is a potential cause for a de-linking between Europe and NATO. Some writers have even suggested that the Strategic Autonomy complement NATO’s collective defence (Credi, Marrone, and Menotti, 2020, p.6).

Within this framework, Military Mobility became a prime project between NATO and the EU, announced in December 2017 when members decided to act together. (Hoeffler and Hofmann, 2024, p.14). In this sense, it has consolidated the strategic interests of the European states in both ordinary military activities and crises (Perot, 2024, p.10). Therefore, the Military Mobility project facilitates military and civilian logistics and has the potential to grow into a “military Schengen Zone” (Ivasechko, et al., 2023, p.89). In this context, it requires troops and capabilities to be transported across the Euro-Atlantic security space (Blessing, Elgin, and Ewers-Peters, 2021, p.80). Also, the project is intended to consolidate EU-NATO relations in security and defence (Hakansson, 2023, p.437). This initiative is a shared strategic interest for both NATO and the EU and could be a chief example of intense cooperation. Consequently, Military Mobility has signified the beginning of a strategic collaboration between NATO and the EU. Therefore, NATO and the EU are complementary and coherent, leading to security governance in supporting international peace and security.

In this context, the article has two purposes. The first is to show that the Strategic Concept and the Strategic Compass are documents that complement each other. The second purpose is to investigate to what extent the Strategic Compass is effective in the European integration process; with the complementary support it receives from NATO’s Strategic Concept. Therefore, this assessment part evaluates the findings to achieve both purposes separately.

#### 6.1. NATO and the EU as two complementary organisations in providing security and defence of Europe.

Following the Russian-Ukrainian War, both NATO and the EU announced their new strategies, the Strategic Concept and the Strategic Compass, respectively, to respond to new threats and challenges the European

states have recently experienced. Since both methods have been intended to realise a similar purpose, providing security for the European states, researchers studying European security have begun to discuss whether the Strategic Concept and the Strategic Compass are created to replace or complement each other. As confirmed by others, the findings have revealed that NATO and the EU complement each other in their strategies

Even before these strategies, the relationship between NATO and the EU has indicated its non-zero-sum characteristic (Dyson, 2008, p.737). For example, the EU-NATO Declaration on European Security and Defence Policy (ESDP), announced in 2002, has defined the NATO-EU relationship as a "strategic partnership" (Duke, 2008, p.28). The characteristics of a strategic partnership have been quoted on different occasions. For example, the strategic concept has described the EU as the strategic partner of NATO (Borges de Castro and Lobo, 2022, pp.126-128). Similarly, the EU-NATO Joint Declarations have emphasised that the EU and NATO are strategic partners. Even the third EU-NATO Declaration of 2023 has underlined that NATO and the EU have complementary roles in ensuring security within and outside Europe (Joint Declaration on EU-NATO Cooperation, Articles 8 and 9). Article 43 of the Strategic Concept defines the relationship between NATO and the EU as a relationship based on a strategic partnership and "complementing each other".

Similarly, the EUGS defined the EU as the organisation responsible for the security of Europe and NATO as the organisation responsible for the defence of Europe and referred to the complementary views of the organisations (Pascu and Chiriac, 2021, p.29). It also stated that initiatives such as PESCO, CARD, and EDF are important tools for fulfilling the strategic partnership between NATO and the EU. In this sense, the EUGS emphasised a deep cooperation between the EU and NATO based on "complementarity" (Piechowicz, Maliszewska, and Nienartawicz, 2020, p.25).

The concept of NATO-EU "overlap" has occupied academic circles since the Cologne Summit of 1999, when the EU member states agreed to develop capabilities for autonomous action. Although the "overlap" is a negative word, it is supportive in facilitating the ironing out of problems the organisations have faced and strengthening their policy-making mechanisms. For example, organisational overlap can empower bureaucratic actors between the organisations by improving communication between them. Similarly, functional overlap means that both organisations are active in a broad range of security and defence activities such as crisis management and cyber-security, which entails coordinating and sharing material resources, personnel, and expertise (Hoeffler and Hofmann, 2024, p.6). On the other hand, membership overlap refers to the number of states that are members of both organisations simultaneously. That is, 21 members of NATO are members of the EU. This means that issues discussed at NATO's North Atlantic Council are transferable to the EU's Political and Security Committee, and vice versa (Ewers-Peters, 2023, p.29). Therefore, contrary to popular belief, NATO-EU overlap can be evaluated as a development that strengthens the relations between NATO and the EU. It even eliminates the deficiencies of activities between the two organisations. Thus, we can think

that the Strategic Concept and the Strategic Compass are complementary documents.

Consequently, NATO and the EU complement each other because both organisations have constituted different puzzle pieces. For example, NATO is primarily a political-military organisation, while the EU is mainly an economic organisation, underlined through the framework of a political organisation. Therefore, while NATO is the prominent defence actor, the EU is a security actor (Tangör, 2021, p.78).

#### 6.2. The deepening effect of the strategic compass in the European integration process

The institutional structure established by the EU with the Strategic Compass and the common policies and regulations agreed upon by its members will seriously strengthen the political-military leg of the EU in the European integration process. Accordingly, the European Commission has shown that it is determined to take the integration process to a new stage in the military-security field with Directorate-General for Defence Industry and Space. Also, the Threat Analysis, announced in the same year, showed that the EU will face increasing economic competition between global powers, climate change, and competition for natural resources. The EU has explained how to deal with these threats with the Strategic Compass announced in 2022.

The Strategic Compass has revealed four goals and four directions to achieve these goals. Crisis management, resilience, capacity development and partnership are the goals, and act, secure, investment, and partner are the directions determined to achieve these goals. Therefore, to understand to what extent the Strategic Compass contributes to European integration, it is important to investigate how the four directions became effective and active in achieving the goals. The findings have revealed that these directions have yielded positive results, in a short time, not only for implementing the pillars and therefore serving the EU's defence and security policies but also for contributing to the European integration process.

For example, first, "acting" rapidly in crises, the EU Military Assistance Mission in support of Ukraine has trained 60000 soldiers. Similarly, the EU Partnership Mission to the Republic of Moldova, launched in May 2023, helped enhance the Moldovan security resistance in crisis management and hybrid threats. Also, the EU provided 137 million Euros in assistance for these missions (for the 2021-2024 periods) through the European Peace Facility (EPF) (Annual Progress Report, 2024, pp. 10- 11). At this juncture, the EPF was adopted by the Council on 22 March 2021 as an off-budget fund. It totalled 5 billion Euros from 2021 to 2027 to be financed through contributions from EU member states (Christian, 2023, p.174). It is intended to enhance efforts to help defence capacity and complement CSDP crisis management efforts.

Second, guaranteeing "secure" access to strategic issues, in April 2023, the EU proposed a Cyber Solidarity Act to increase cyber protection and strengthen cooperation at the Union level. In this context, the first threat analysis was made in January 2024 by the Single Intelligence Analysis Capacity. Also, the EEAS Crisis Response Centre has become functional since September 2023. In this context, the EU Hybrid Toolbox has improved the collective capacity to investigate possible hybrid threats. In this context, the EU has established

the EU Hybrid Rapid Response Teams to help member states and like-minded partners (Annual Progress Report, 2024, p.14-18).

Third, “investing” in innovative technologies, the EU has adopted the 2023 EU Capability Development Priorities to understand the need for high-intensity and conventional warfare. Also, the Act in Support of Ammunition Production was adopted in July 2023 with a budget of 500 million Euros. Similarly, the EU adopted the European Defence Industry Reinforcement through Procurement Act in October 2023 with a total budget of 300 million Euros. Therefore, the EU launched a Defence Equity Facility in January 2024 with 175 million Euros to support innovative dual-use technologies with potential defence applications. The European Defence Fund has dedicated around 3 billion Euros to support defence-related research and development actions (with 101 projects) within this framework. Moreover, Denmark joined PESCO in May 2023 as the 26th participating member state (In 2023, 11 new projects were added). Similarly, in February 2024, the EU member states agreed to establish the Strategic Technologies for Europe Platform to support EU technological sovereignty and investments with an additional 1.5 billion Euros for defence investment (Annual Progress Report, 2024, pp. 21- 22).

Fourth, strengthening cooperation with “partners”, a partnership with NATO remains indispensable for Euro-Atlantic security. In this context, the first structured dialogue on space occurred in December 2023 (Annual Progress Report, 2024, p.10). Also, the two Schuman Security and Defence Forums took place in March 2023 and May 2024, respectively. In this framework, the Strategic Compass provides the strategic perspective to provide more rapid, decisive and robust EU action.

Strategic Compass are being quickly put into action by the member states. This means the EU members have made effective decisions on military-security issues in the last two years. In other words, the EU has made greater strides in strengthening the military-security leg of the integration process in the previous five years than in the fifty years before that (Bunde, 2021, p.244). Therefore, these actions, of which the Russian-Ukrainian war was the primary trigger, show that the EU has begun to take bold steps on defence and security-related issues. Accordingly, the transformation of these goals into actions reveals that the EU has started implementing the decisions it needs towards political integration. Thus, these developments indicate that the EU, which has taken necessary steps towards political and economic integration, has significantly contributed to the European integration process with the Strategic Compass.

## **7. Conclusion**

As a conclusion, in the last two years, NATO and the European Union (EU) have considered the Russia-Ukraine War as the most critical threat to European security. Also, they have described China as a systemic rival and a challenge to both organisations. They have emphasised other challenges to European security, such

as climate change, hybrid threats and cyber challenges. Therefore, both NATO and the EU announced the Strategic Concept and the Strategic Compass in 2022 as new steps to defend Europe and consolidate European security.

Within this framework, NATO has emphasised a pool of military forces in high readiness with the “Strategic Concept”. In this context, it defined this new formation as the “New Force Model”. Accordingly, NATO has revealed its intention to pre-allocate the military forces in this pool to specific defence plans. The European Union, on the other hand, has explained its goal of becoming a stronger and more capable “security provider” with the “Strategic Compass”. To achieve this goal, the EU has emphasised its aim to establish a rapid deployment force to respond to crises and challenges by 2030.

Therefore, NATO and the EU have agreed on the cooperative use of security and defence tools belonging to these two strategies, which complement each other. They consolidated this agreement when they announced the Third Joint Declaration in 2023. This means we can expect more positive results from NATO and the EU in the coming years. Accordingly, eliminating hesitations over concepts thought to evoke competition, such as “Strategic Autonomy”, may enable us to see the real functioning of the strategic partnership between these organisations.

In a way, European states evaluated the Russian-Ukrainian War and other challenges as a new European crisis. As Jean Monnet emphasised years ago, European states can unite in crises and create opportunities for themselves. In that context, the Strategic Concept and the Strategic Compass represent opportunities for the European states to strengthen European defence and security and integrate on the political-military level within the EU.

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**Ferit BAÇA, PhD**   
University of Tirana, Albania  
ferit.baca@unitir.edu.al

**Majlinda KETA, PhD**   
University of Tirana, Albania  
majlinda.keta@unitir.edu.al

## DEMOCRACY AND HUMAN RIGHTS: PREREQUISITES FOR THE INTEGRATION OF ALBANIA INTO THE EUROPEAN UNION

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**ABSTRACT:** *The Europeanization of Albanian society is the process through which Albania aligns its cultural, economic, and political systems with those of the European Union to promote respect for freedoms and human rights. These strategic objectives can be best achieved by enhancing pluralistic democracy, state institutions, and the educational system attended by young people. Given that the democratic quality of any society is determined by the conduct of free and fair elections, it is vital to educate the youth about democratic principles and norms. Therefore, Albania's journey towards European integration should not be interpreted as a "melting" and loss of national identity but rather as a fusion of universal political, economic, and military values and interests in support and enhancement of democracy. To enrich the tapestry of European culture, young Albanians should be well-versed in the material and spiritual customs inherited by our people. The study aims at recognizing and implementing freedoms and human rights as prerequisites for Albania's integration into European Union structures. It synthesizes the links between democracy and respect for human rights in relation to improving citizens' living conditions and implementing democratic reforms and values. At the core of its analysis are the challenges facing Albanian democracy, such as citizens' emigration, their participation in electoral processes, and political elites' role in social life. The study examines efforts to provide deeper understanding of the challenges and opportunities for strengthening democracy and improving Albania's political structures in its integration processes toward the EU.*

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**KEYWORDS:** European Union; Albania; Human rights; Democracy; Integration; Freedom; Society.

### Introduction

A democratic society represents a fresh correlation between authority and individual liberty. Human rights and freedoms take the form of a "spiral" that only sees progression, starting from the time when different intellectuals introduced the notion of "human rights", culminating in the United Nations Charter, which embodies the rights and freedoms of individuals and human society as a whole. Breaching these rights would indicate the violation and downfall of democracy within society itself. Throughout a prolonged and challenging phase of transition, several scholars and prominent figures from the EU and the US have evaluated Albania's advancements in upholding and enforcing the rule of law, in addition to human rights and freedoms.

Thus, democracy and the implementation of human rights operate on two tracks: one as theoretical and philosophical concepts, and the other as practical application in democratic societies. Therefore, Albania's integration into Euro-Atlantic structures requires a continuous effort to recognize the Union's standards and their correct application in daily life. Due to the communist dogma's legacy, Albania has been sluggish in the

implementation of fair governance and faces challenges. The slogan of the country's youth and intellectuals during the democratic changes, "We want Albania like all of Europe," remains relevant as a guiding principle in Albania's journey towards Europe. In all these historical events, the key role is played by shaping a new contemporary mentality that paves the way for changes in Albanian society. A critical indicator of content and democratic governance is the respect for human rights and freedoms, which have at times sped up or slowed down the integration processes.

Democratic principles and governance promote social collaboration, assuming people are interested in developing their skills and capacities. Culture fosters an environment for voluntary engagement in shared activities, enhancing social effectiveness that preserves and reinforces democracy's ethical values. In a democratic system, the main focus is governance and decision-making by the majority in compliance with the constitution and democratic laws and norms. Therefore, breaching freedom and human rights values has become a defining boundary that has transformed the country's governance into a political structure and a regressive power. Today's concept advancements underscore the ongoing need to enhance democracy and its fundamental qualitative components.

Contemporary notions on democracy and human rights intertwine with a series of democratic values within a political system, where the essence is linked to broad public participation in public affairs and crafting policies to promote overall welfare. Contemporary theorists emphasize that a regime is democratic when the majority has the right to vote and elect their leaders. The materials focus on the theoretical-philosophical exploration of the following topics: freedom and human rights: premises for democracy, Albania and human rights, democracy and the integration of Albania into the EU and culminate in focused conclusions.

### **1. Methodology of the paper**

While addressing the topic "Democracy and human rights - prerequisites for the integration of Albania into European Union" many questions arise about the directions and problems that Albanian society faces in everyday life. The study methodology presents a theoretical and analytical report in examining the relationship between human rights, freedom, and democracy in Albania. In the elaboration of the study, we have referred to the concepts of prominent philosophers, such as Aristotle, Hobbes, Locke, Rousseau, Montesquieu, Spinoza, Nietzsche and others, to highlight their meaning and influence on Albanian society. A reinforcing support for the study is the treatment of Freedom, Human Rights, and the premises of democracy. The methodology relies on philosophical literature and various theories on freedom and democracy to analyze the historical and theoretical developments of these concepts.

The methodology used is analytical-interpretative, which enables the use of various philosophical sources in examining the relationship between freedom and the state, as well as how these ideas have found application

in contemporary political systems. Critical analysis has helped understand the concept of freedom and human rights, which have developed within the framework of the rule of law and democracy and occupy an essential place in the legislation and practices of various states. The panorama of human rights treatment in Albania enriches contemporary philosophical literature.

The methodology for addressing this issue focuses on analyzing Albania's efforts to meet the standards for membership in the European Union with the aim of building a common family that wants to live in harmony, based on shared values of brotherhood and solidarity between their peoples, respecting the culture, history, and traditions of each country. The methodology also analyzes political developments in Albania, focusing on the challenges of creating sustainable democracy and efforts to strengthen the rule of law. The study addresses the challenges faced by Albanian society in building a democratic system.

In this context, the problems of the electoral system, voting rights, and governance processes, which are important for the functioning of a healthy democracy, have been examined. The study uses theoretical methodology and in-depth analysis to highlight Albania's challenges and opportunities for strengthening democracy and respecting human rights. The use of literature and periodical sources helps reflect the problems closely related to democracy and human freedoms in Albania. The methodology creates opportunities for examining changes in the electoral system and the impact of recent laws on Diaspora participation in political processes, and analyzes these changes' impact on political rotation and elite circulation. The arguments are based on Albanian Institute of Statistics (INSTAT) data and other analyses related to increasing democracy's efficiency.

## **2. Freedom and human rights: premises for democracy**

In every historical era, people's relationship with freedom has been and remains the subject of philosophical studies, and there are different perspectives on it. Freedom, as a natural right, embodies the essence of individual beliefs and free will. The concept of freedom serves as a critical indicator of a society's advancement and its citizens concerning the challenges posed by all authorities, including the legislature, the executive, and the judiciary. Nietzsche, the German philosopher, viewed freedom as enriching, deepening, and broadening its boundaries: *"Freedom is the will that makes you responsible for yourself, distancing and separating you from the influences of others for a unique independence of thought about existence"* (Nietzsche, 1999. 28). In a more pragmatic sense, freedom denotes the aspiration to satisfy our needs and desires within the constraints of our circumstances. Spinoza, in his book *"A Theological-Political Treatise"* published in 1670, asserted that *"the people, or a public body of citizens, is a majority of individuals who, through a social contract, act collectively as if directed by a single mind"* (Spinoza, 2013. 61). This idea underscored by Spinoza openly expresses that the sovereignty of a state stems from the people. Despite individuals unconditionally obeying

their state, their right to think remains unrestricted as they possess the liberty to deliberate and evaluate according to their understanding. Spinoza cautions that "*when a government attempts to restrict the freedom of thought and speech of its citizens, even when they adhere to the laws, it behaves irrationally and jeopardizes its survival*" (Spinoza, 2013. 63). By articulating these perspectives on the values and threats to freedom, he concludes that "*under a democratic system, citizens can uphold their freedom as long as the state adheres to its fundamental goal, i.e., the welfare of its citizens, their freedom of thought, and speech; that is, as long as the state maintains its rational essence*" (De Cuzzani, 2015). This acknowledgment leads reasoning to prevail over impulses in safeguarding common interests. For Spinoza, democracy is the most intrinsic form of governance as it encapsulates the freedom bestowed by nature to every individual and best achieves the objectives of the state. This is because, through free assemblies, individuals establish the laws that will govern them.

Patrice Canivez identifies the source of authority in the law; thus, he asserts, "*Citizens must acknowledge or accept the authority of the law and not the personal authority of an individual, a family, or a social class*" (Canivez, 2001. 23). A citizen is free as long as they recognize the supremacy of this principle; they are not subject to any specific individual, meaning no individual possesses the sole power to govern. The harmonious interplay of rights and responsibilities in a democratic society is evident in the fact that while individuals enjoy rights such as freedom of speech, assembly, and religion, which epitomize the democratic level of a society, these rights are not solely to be used by individuals as instruments or "freedom of expression" to oppose the majority. Democracy necessitates collaboration, concession, and tolerance among all citizens. Ultimately, the utmost significance of freedom is closely linked to assuming accountability for one's own fate and the community in which they reside, rather than liberation from responsibility towards them. Democracy cannot magically transform all its citizens into model citizens; however, it demands that all citizens uphold their rights and obligations.

Another scholar who elaborates on the concepts of authority and power is Jacques Maritain. He distinguishes between them stating, "*Authority is the right to direct and command others, and power is the right for others to listen to or obey a leader. Authority requires power; power without authority is tyranny.*" (Maritain, 2008. 167). Thus, authority is about the right, while power signifies strength. The basis of authority among people originates from natural law, where the absence of justice leads to a lack of authority. Just as an unfair law is not a law and an unjust authority is not authoritative, the foundation of a democratic state relies on the establishment of a reciprocal relationship between the citizens and the state. This relationship is defined by the democratic ethos and ambiance that fosters the necessity for democratic standards and laws, most effectively realized through a legal state that represents and serves the interests of the populace. Moreover, the interaction of citizens with the state involves the state's right to institute norms and laws and the citizens'

obligation to adhere to these regulations. Genuine democracy thrives in a state only when its laws are formulated by the citizens themselves.

Democracy denotes constitutional governance; it embodies the democratic validation of political authority, the separation of governmental powers, and the acknowledgment and respect of political and civil rights. *“A democratic system is one founded on a set of constitutional principles, the confidence in society's advancement, and the articulation of a set of human rights”* (Baça, 2003 136). Democracy epitomizes the pinnacle of the philosophical and political concepts of governance. Philosophical perspectives on democracy reflect the evolutionary sequence of transformations and political-economic systems within a society. Representing the acme of philosophical-political deliberations, democracy continues to captivate the interest of scholars, philosophers, and policymakers who introduce numerous theories explaining the emergence of democratic regimes and in the face of society's resilience as engines of transformation and evolution in social frameworks.

In the context of escalating demands for expanded rights in daily life and active participation in legislative, governmental, and judicial bodies, societies worldwide exhibit an unceasing necessity for improvement. This realization underscores the fact that regardless of the level of democracy, *“a true democracy has never existed nor will it ever exist.”* Rousseau emphasizes this point when he asserts that, *“If a people of gods existed, it would be democratically governed. Such a perfect government does not suit the nature of the people.”* (Abellán Artacho, P. 2019)). Rousseau believed that a sound government should prioritize the freedom of its citizens; hence, the most desirable form of governance in modern society is one that upholds the individual freedoms of all citizens, with constraints deemed acceptable in a civil society. Despite this, Rousseau argued that *“freedom and equality are not genuine if equality only exists in the law but is not realized in practice. Furthermore, if there is a lack of equality or excessive inequality in property, then freedom and equality are just shams”*. (Trang Do. 2023). However, he upheld the idea that certain government principles, if implemented, could offer societal members a degree of freedom that approximates the liberty experienced in the state of nature.

Within Rousseau's philosophical framework, significant attention is paid to his notions of human rights. Alongside Rousseau's beliefs, various ideas from other philosophers of his era began to emerge, profoundly influencing not only philosophical works but also many national and international organizations. These ideas substantially contributed to the formulation of the Universal Declaration of Human Rights, ratified by the UN General Assembly on December 10, 1948 as well as the drafting of the constitutions in leading European countries and the United States. As stated by Hallo de Wolf, A., & Moerland, R: *“The adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations on 10 December 1948 marked the beginning of the modern international system for the protection of human rights”* (Hallo de Wolf, A., & Moerland, R. 2023). Freedoms and human rights were acknowledged as values embraced by the entire global community.

From these reflections, it is evident that the concept of freedom's relativity hinges on the societal stage of historical development, serving as the foundation for the multitude of theories and ideas surrounding human rights and freedoms through both practical applications and daily life experiences. These human rights and freedoms embody the core of democracy within an advanced society. Consequently, human existence can be encapsulated as a pursuit of peace and its preservation in all conceivable forms, premised on the notion that peace is a collective human good.

Declarations in favour of human freedoms have their origins in various philosophical theories. The idea that man has rights by nature that no other person, not even the state itself, can appropriate or eliminate was developed by the father of modern naturalism, John Locke. According to Locke, *"the true state of man is not the civil state but the natural state, that is, the state of nature in which people are free and equal"* (Locke 2005, 84). The civil state is an artificial creation that has no other purpose than to permit the greater development of liberty and natural equality. Aristotle emphasized: *"Man is a political animal"* (Aristotle 2003, 9). As the only creature that produces thoughts and ideas, it generally acts from the point of view of purposes projected towards the future. By tending to the good, man has made progress on its path. We recall the development of the French Revolution, which was nothing but as Kant would repeatedly point out a moral attitude toward humanity. The cause of Kant's enthusiasm, or more precisely, as he expressed it, the sign of the moral attitude of humanity, was the appearance on the stage of history of the right that a people have not to be hindered by other forces to produce a civil constitution, which he considered good. According to Kant *"A civil constitution is a relationship among free men who are subject to coercive laws, while they retain their freedom within the general union with their fellows."* (Wit, 1997). Thus, by civil constitution He meant a constitution in harmony with the natural rights of man, such that those who obey the law must also make the laws. By defining natural rights as the right of every person to obey only the law for which he himself is the legislator, Kant defined freedom as autonomy and the power to give laws to oneself.

In addition to the usefulness of the law, which is assumed to be equal for the leading elite of the state as well as for the common people, in reality the primary function of the law is to tighten and reduce the spaces of freedom as much as possible and to protect and uphold the freedom of the majority of the people. Of particular interest is the perspective of examining the relationship between rights and duties, which are two sides of the same coin. The ratio of relations between the laws implies the rule of law and the protection of freedom and human rights, and also the level or degree of democracy in a country. In the pyramid of the relationship between the individual and the state, the relationship between the rights and duties between them is of particular importance. If this relationship is viewed from the perspective of the individual, the rights come first in society, and if seen from the perspective of state interests, the duties and then the rights of the members of the society come first.

Jean-Jacques Rousseau was a supporter of exercising the right to direct voting on laws by the people. If the laws are the product of a general sovereign will, then, each individual is the true author of these laws, and in this way, each person obeys only himself. Moreover, he underlines that there will never be any genuine democracy. From the above, individualism turns into a philosophical basis of democracy itself according to the principle: one head, one vote. In states where dictatorial systems rule, individuals delegate their rights to the representatives of the monarch. In contrast, in the rule of law, the individual directly exercises his power through participation in elections, i.e., through his direct vote on many issues of vital importance to the fate of the country. In this sense, the state of the law is also the state of the citizens.

In the implementation of representative democracy, voting citizens do not make decisions about the organization of their lives but delegate these rights to their representatives. Experience has shown that no system of government is perfect. Philosophy and political sciences have offered people the most acceptable system of all systems to date, with its many benefits and also the shortcomings that accompany it. Despite the great advantages represented by representative democracy, it has not escaped the critique of Rousseau, who pointed out with despair: *"In any case, from the moment when a people submits to representatives, it is no longer free"* (Rousseau, 2008, 313). Views of philosophers on freedom, democracy, and other human rights have been sanctioned in various international treaties and conventions as the fundamental rights of man, the individual, and human society.

The notions of democracy and freedom encompass the way of governing people, their division and categorization, and the selection of the most suitable form and content of democracy for society as a whole. The essence of democracy encompasses the meaning attributed by Abraham Lincoln in the phrase *"government of the people, by the people, and for the people,"* (Richard A. Epstein, 2011), whose values remain inherent. Hence, we can posit that all political-social systems must inevitably undergo the scrutiny of the standards of demands for freedom and democracy of distinct peoples, varying based on their level of awareness. Democracy signifies a specific form of leadership or governance conducted in the name and interest of the majority. Its most democratic and accepted form is seen in societies where pluralism is nurtured, and the powers of the executive, legislature, and judiciary are both separate and autonomous, ensuring no single entity among them wields boundless and unmonitored power. Democracy also signifies the principle that the people collectively form the foundation upon which the entire political life of society is structured.

True democracy embodies prudent, conscientious, far-sighted governance, the rule of law, and order in pursuit of the common welfare of all its inhabitants. Therefore, democracy strives to be governed by the people, safeguarding their shared values and rights in the pursuit of justice and the law. Democracy, defined as the governance by the people, implies that every citizen, through their free will, casts their vote to represent themselves and entrusts the right to govern the nation solely to their chosen representative. Hence, it is the

people who determine the type of government in a democratic setup. The extent of freedom naturally hinges on the societal stage of historical development. This stage serves as a firm foundation to commence and reflect theoretically as concepts, and also in daily life, as the enactment of human rights and freedoms. This array of human rights and freedoms essentially constitutes the crux of democracy in an advanced society. The correlation between freedoms and human rights forms the bedrock of the democracy of a community. The articulation and philosophical underpinning for human freedoms and rights, starting from Hobbes, Rousseau, etc., also emanated from Kant's notions on "Perpetual peace." Even in the Kantian proposition, human rights exhibit a symbiotic relationship and interconnection with "perpetual peace" itself. Human rights now stand as the nucleus of a community's very democracy. They also mark the distinction between a democratic system and an autocratic one. Freedoms and human rights play a progressive yet intricate role in the safeguarding of religious beliefs, as they act as definite constraints on religious convictions, which indeed must be free but should not infringe upon the beliefs or freedom of others.

### **3. Albania and human rights**

The crucial aspect of contemporary society remains the ways of communication for ensuring the collaboration among different segments of society and within the society as a whole. This outcome of scientific progress serves as the foundation of human society, as a unique phenomenon that has not been witnessed in previous eras. In our era, the concept of human rights and freedoms is encroaching on wider vital spaces, such as the world and global unity, with clusters of nations facing similar issues and struggles of human existence and grappling with inherited issues from their socio-economic development history. In this era, the expansion of the concept of human rights and freedoms extends to broader essential spheres like the global field of environmental contamination, etc. Based on historical accounts of the progression of freedom and human rights, it is apparent that attaining a progressive objective signifies a level or point of growth, the infringement of which could result in society regressing. This illustrates that human rights and freedoms have turned into a protective barrier to the advancement of democracy, not only theoretically but also as a tangible asset of human society. Present-day individuals benefit from numerous advantages compared to those born half a century ago. Similarly, specific social groups are granted distinctive statuses, including children, minors, persons with disabilities, visually impaired individuals, individuals from various professions like miners, sailors, etc., notably women who account for approximately half of the global population; they now have increased rights safeguarded by national and international laws and treaties.

Thus, the democratic nature of a governing system must fulfil key rights in order to join the advanced European structures. Political pluralism, the organization of free elections, the necessity of democratic legiti-

macy of government, and the recognition and respect of the basic rights of citizens are conditions for international and regional cooperation of a country aspiring to build a democratic society. In the Maastricht Treaty, it is emphasized that democracy and human rights are prerequisites for membership in the European Union. The recognition and implementation of the will of the sovereign constitute the essence of democracy as a specific form of government. Thus, Montesquieu accurately underlines: *"In a republic, if the people as a whole have sovereign power, then this is democracy"* (Montesquieu, 2001, 15). Throughout its thousands of years of history, Albania, both geographically and culturally, has exhibited a European spirit and orientation, despite pressure and direction from foreign invaders attempting to influence its political, economic, and cultural life. Our ancient Illyrian history and culture, the struggles for freedom and independence led by the national hero, Gjergj Kastrioti (Skanderbeg), as well as the National Renaissance program infused with a European spirit, exemplify this trend, notably during the Anti-Fascist Front Decisive for World War II.

Crucial to the history of the Albanian people were the political system changes in the 1990s when the monist regime collapsed. The first step taken by democratic Albania in the 1990s was establishing diplomatic relations with the European Union. In 1992, both sides signed agreements covering trade and cooperation development. This allowed Albania to benefit from EU programs.

After these steps, naturally came the expansion of these relations in many other developing countries. Subsequently, these relations expanded into multiple areas of interest to Albania. The country became among the first to receive EU aid for Eastern European countries through the PHARE program, encompassing diverse aspects of the country's development. This progress led to negotiations for an association agreement and Albania's membership in the Council of Europe, providing substantial support for democracy building in Albania. However, a significant political-economic crisis hit Albania, slowing its relations with the EU. This period marked a setback in deepening relations with the European Union, with a sense that Albania was losing its privileged status with the EU. Developments on the Balkan scene raised concerns within the European Union, particularly due to nostalgic tendencies towards old monist regimes. The Balkan situation was worsened even more by the role evident in some Balkan countries.

The Balkan situation was further complicated by the influence of eastern regions with Russian orientation, exemplified by Slobodan Milosevic, who initiated a campaign of genocide and ethnic cleansing against non-Slavic populations in former Yugoslav republic territories. Wars erupted between the peoples of this former republic, who had maintained unity through communist ideology, leading to challenging conditions for Albania, which had a fragile democracy. In response, the European Union introduced the "Association Stabilization Process" to support democratic, political, and economic developments in Southeast Europe. The EU prioritized deepening reforms and promoting the rule of law and market economies among institutions resulting from popular votes. This process aimed to bring Balkan countries closer to the EU than ever before.

The core of this process focused on stabilizing the political-economic situation in Balkan countries and enhancing relations with the European Union. Tasks for Western Balkan countries included embracing EU values, enhancing democracy, upholding the rule of law, protecting human rights and minorities, boosting market economies, and ensuring social justice. A key achievement for most Balkan countries was signing the Stabilization-Association Agreement with the EU, establishing a framework for cooperation and gradual adoption of European standards. To become an EU member, Albania must meet criteria set for all candidate states, approved by the Copenhagen European Council in June 1993 including: “*ensuring democracy, the rule of law, and human rights*”. (François d` Arcy, 2007. 24).

Albania and Albanians being an integral part of the European continent alongside the success of Western European democracies underlines the aspiration that Albania not only belongs to the geographical, genetic, historical, and traditional framework of Europe but also contributes to its current community and new European identity by absorbing and transmitting values. Integration into the European Union entails aligning with and embracing the basic values on which the organization operates. It should be viewed as a reform program aligning the country with the European model of state, democracy, and economy rather than just a move towards the West.

#### **4. Democracy and the integration of Albania into the EU**

Both geographically and culturally, Albanians are people with European orientation. As evidence, it would suffice to recall the heritage of ancient Illyrian culture, its efforts in the Middle Ages (Medieval era) for freedom and independence, led by the national hero Gjergj Kastrioti Skanderbeg, and the program of the National Renaissance that embodies a Europeanist spirit. With the dream of democracy, Albanian society strives to join the European Union family. Other peoples of this family once dreamed and succeeded in turning their dream into reality. The pace of this progress accelerates, as do the demands for a society with broader rights in everyday life, for more active and decisive participation in the legislative, governmental, and judicial systems.

Albania's progress toward democracy requires respect and implementation of the law. Article 4, point 1, of the Constitution of the Republic of Albania states: “*Law constitutes the basis and limits of the activity of the state.*” (QBZ, 2022. 2). The rule of law must be based on the recognition and respect of fundamental human rights and freedoms. This represents the legal, social, and political framework that embodies the state's functions. The constitution, relevant legislation, and all state power organs must clearly declare the acceptance, recognition, and respect of fundamental human rights and freedoms.

Building a democratic system requires preparing citizens to recognize the rights and duties that stem from constitutional law. Citizens must obey constitutional obligations and relevant legislation. Open communication between citizens and government is an essential characteristic of democratic societies. Through this interaction, trust between parties is further strengthened, creating a positive climate in which all parties can engage in dialogue and find solutions to various problems that concern the community.

However, this system faces several phenomena that attempt to distort its nature to benefit individuals in power. In countries with developing democracies, the risks exceed those with consolidated democratic systems. Thirty years of democracy represent a brief period for a country like Albania, whose elites have adopted Western democracy as their standard. The experience of these years has highlighted several risks that require timely attention, as they can undermine its essence, transforming it from a government of the people and for the people into the government of powerful groups serving their interests. Since the initial years of political system changes in Albania, society has confronted the corrosive phenomenon of mass emigration, with people seeking better economic opportunities—a trend that persists today. According to data from the Institute of Statistics (INSTAT, 2020, 8), the Albanian Diaspora abroad increased to 1,684,135 individuals, comprising 884,719 males and 799,416 females. Their absence has adversely affected numerous areas of social and economic life in Albania. This phenomenon has not only significantly diminished the labor force in the country, causing the corresponding crisis, but it has also severely impaired their participation in the electoral process, the political rotation of ruling elites, and Albania's fragile democracy. The phenomenon of stagnation among ruling elites has been criticized by many scholars from academic circles and EU observers. Only after pressure from civil society and EU observers did parliamentary parties in Albania recently approve legislation allowing Albanian citizens in emigration the right to participate in elections. This significant step is expected to pave the way for the rotation and circulation of ruling elites. Another phenomenon undermining democratic values is the lack of democratic culture. Political party leaders participating in elections are guided by the principle: "The winner claims all victories, while the losers bear all losses!" Albania and Albanians, as an integral part of the European continent's mosaic of countries and peoples, have consistently been inspired by Western European countries' democratic achievements. Their goal remains integration into the European community.

The process of establishing and expanding the European Union follows a specific philosophy. This process relies on respecting treaties and joint decisions of relevant institutions. These relations are maintained through applying principles of compromise and consensus. The European Union is a community of states that enables free movement of people with equal rights. Citizens of this common society are united by social and moral values guided by solidarity, tolerance, and human rights protection. Integration into the European family requires the development and implementation of democratic processes.

The commitment and efforts toward EU integration are persistent. Among numerous demands and conditions for Albania's "homework" the requirement for developing free elections is prominent. The path to integration into the European Union family is exhausting and lengthy, filled with difficulties and fluctuations. However, the focus and attention of Albanian society's elites and people remain fixed on the light at the tunnel's end.

## **5. Conclusion**

However, the study on "Democracy and human rights - prerequisite for the integration of Albania into European Union" examines Albania's efforts to meet democratic standards and human rights as prerequisites for membership in the European Union. The changes that occurred during the transition from a monist to a democratic regime have brought significant improvements to social life, including the strengthening of Albania's ties with international structures and the fulfillment of conditions for EU membership. The path taken in the democratic process has brought new challenges to Albanian society: massive emigration, stagnation of political elites, and citizen participation in electoral processes.

The determination of society and elites in Albania to continue deepening necessary reforms in political, legal, and economic fields remains essential. The concept of human rights and freedoms has expanded and deepened, being recognized as an essential element for democracy's development and European integration. These rights, strongly supported by international laws and conventions, have aided the progress of Albanian society and strengthened its ties with Europe. Human rights and freedoms are established as the cornerstone of the democratic system and socio-political developments.

Recent developments further promote movement toward the future and a united world, with states and groups of states facing similar challenges of human existence while carrying specific problems from their socio-economic development past. Viewed from the dialectic of development, the concepts and practices of Freedom and Human Rights progress systematically: achieving a goal or development threshold creates premises for future goals. People of our time enjoy many more freedoms and rights compared to those of a century ago. Notably, the concept that a democratic society represents the relationship between power and individual freedom stands out. During democratic changes, various theorists and high representatives of the European Union and USA have provided important assessments of Albania's achievements in protecting and implementing the rule of law and human rights.

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**Kristine Kuprava, PhD student** 

Ivane Javakhishvili Tbilisi State University, Georgia

kristikuprava@gmail.com

## POWERS OF THE CONSTITUTIONAL COURT TO CHECK THE CONSTITUTIONALITY OF CONSTITUTIONAL AMENDMENTS

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**ABSTRACT:** *An essential prerequisite for the effective exercise of the right to a fair trial is a complete understanding of the matters falling within the jurisdiction of the Constitutional Court of Georgia. In this regard, it is important to have a legal analysis of whether a judicial body of the Georgian Constitutional Review is equipped with the authority to verify the constitutionality of constitutional amendments. Accordingly, the article is dedicated to the complex and comparative analysis of the theoretical and practical problems arising to decide on the issue of admission for the consideration of constitutional claims substantially, particularly whether the constitutionality of constitutional amendment belongs to the jurisdiction of the Constitutional Court of Georgia. The article will also discuss specific recommendations for the improvement of legislation in this field and the establishment of unified judicial practices.*

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**KEYWORDS:** Constitutional Control; Effective Constitutional Justice; Admissibility of Lawsuit; Constitutional Amendments; Unamendable Provisions.

### 1. Introduction

In a constitutional state people has constituent power. Anyone who has the power to amend the constitution, participates in this sovereignty. The power to amend or change the constitution also includes anyone who, with constitutional force, disproves the doubtful content of the constitution (Guggenberger, Bernd/Würtenberger, in Erkvania 2017, 218). The question of the admissibility of reviewing constitutional laws remains, according to the prevailing opinion, a matter for the interpretation of the respective national constitutional law. „If there are no special provisions on unamendability, then it can usually be inferred that all parts of the constitution are subject to possible amendment. In some national constitutional systems, some basic principles have been considered to be protected in the sense that it would be ‘unconstitutional’ to change them. This question depends on the interpretation of national constitutional law, and there is no general solution to the issue, even though it can be argued that there are legal principles that are so fundamental that even the constitutional legislator should not be allowed to break them. This could be of particular importance in times of crisis and turmoil, or in countries where the democratic legitimacy of the constitutional legislator can be called into question, even if the question of which basic principles should be considered important enough to set implicit limitations to constitutional change is debatable and, to some extent, subjective. On the other hand, it can be held that proposals for unacceptable constitutional amendments should be met with open debate, and criticised on substance (as well as on the basis of binding international law and European standards) – not by formally invoking unwritten and unclear principles of implicit unamendability“ (Venice Commission, 19 January 2010).

There is no universally accepted standard in comparison with the participation of constitutional courts in the process of making constitutional amendments (Venice Commission, 20 December 2010). "In the theory of constitutional law and practice, the exercise of judicial control over the process of revision of the Constitution is a relatively uncommon practice. As a rule, it can be expressed in the form of further constitutional control over preventive, procedural, and/or "unamendable/permanent" norms. However, the fundamentals, scale, and frequency of applying these forms are varied." (Ruling N1/1/549 of the Constitutional Court of Georgia, 2013).

In this article will be covered the discussion on the constitutionality of the constitutional amendment, indeed this jurisdiction has contentious contradiction or not in the comparative constitutional law. It will be also related to the concern - has the Constitutional Court of Georgia has the legal opportunity, based on a claim related to basic human rights or within the abstract norm control, to discuss the constitutionality of the constitutional amendments in a formal sense or in a material perspective. What is more, the article will cover the criterion, in which cases can be judicial review of constitutional amendments a valid and effective mechanism and in under which condition.

The article examines the legislative requirement referring to the admission for submitting the constitutional claim for the consideration providing to refuse it in the admissibility stage when a matter does not belong to the judgment of the court. In particular, the purpose of the article is to scrutinize the authority of the Constitutional Court of Georgia to discuss the constitutionality of constitutional amendments. The article surveys the pertinent legislative grounds and the practice of the Constitutional Court of Georgia as well as studies the experience of other countries on the jurisdiction of constitutional amendments. The conclusion embraces an analysis of the results of the study including possible solutions to problems and relevant recommendations.

## **2. Analysis of the legislation for exercising constitutional control over constitutional amendments**

The norms regulating the activities of the Constitutional Court of Georgia give the court the authority to accept only the issues that fall within the scope of its powers for consideration on merits. A constitutional claim/submission shall not be accepted for consideration unless the Constitutional Court judges any disputed issues specified in it (Organic Law of Georgia on the Constitutional Court of Georgia, Paragraph 1(a) of Article 31<sup>3</sup>(1), 1996). This basis for the admissibility of a constitutional claim in constitutional proceedings is of important function and has a great practical purpose.

To evaluate the scope of constitutional control, it is necessary to analyze the Supreme Law of the country which provides the issues (Constitution of Georgia, paragraph 4 of Article 60, 1995) related to the jurisdiction of the Constitutional Court of Georgia. The list does not allocate the authority of the Constitutional Court to assess constitutional law. Nevertheless, the Constitutional Court of Georgia shall review the constitutionality

of the normative act concerning the fundamental human rights recognized by Chapter 2 of the Constitution based on the claim of a natural person, legal entity, or public defender. In addition, the Constitutional Court of Georgia shall make a decision in compliance with a claim of the President of Georgia, one-fifth of the Members of the Parliament, or the Government about the procedure established by the Organic Law (Constitution of Georgia, sub-paragraphs (a) and (b) of Paragraph 4 of Article 60, 1995).

The analysis of the adjacent legislation establishes that the constitutional amendment in Georgia is a normative act and occupies the highest place in the hierarchy of normative acts with together the Constitution of Georgia (Law of Georgia on Normative Acts, Article 7(2), 2009). "The Constitution of Georgia shall be the supreme law of the state. It takes precedence over other legal acts. All other legal acts shall comply with the Constitution of Georgia." (Law of Georgia on Normative Acts, Article 10(1), 2009). "The Constitutional amendment of Georgia is an integral part of the Constitution of Georgia" (Law of Georgia on Normative Acts, Article 10(2), 2009) and is adopted in cases of strict scrutiny.

Analyzing legal grounds, it is necessary to mention a controversy about "permanent" norms of the Constitution of Georgia. Some of the authors indicate the absence of similar norms in the Constitution of Georgia, and according to them, the reforms of the Constitution of Georgia did not affect the permanence of the norms of the Constitution and its internal hierarchy (Luashvili 2018, 90). The others believe that Article 4 of the current Constitution (Article 7 of the Editorial Board of the Constitution applicable before December 16, 2018) should be considered as such a provision (Kobakhidze 2019, 49; Erkvania 2017, 218). Following this provision, "the State acknowledges and protects universally recognized human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the State shall be bound by these rights and freedoms as directly applicable law. The Constitution shall not deny other universally recognized human rights and freedoms that are explicitly referred to herein, but that inherently derive from the principles of the Constitution." (Constitution of Georgia, Paragraph 2 of Article 4, 1995).

Although Georgian legislation does not envisage a formal hierarchy between constitutional norms, the abovementioned informal hierarchy is established in the Constitution of Georgia deriving from its content and logic. An obvious example of this is Article 4 of the Constitution: "Based on this constitutional record, universally recognized human rights and freedoms are acknowledged inalienable and supreme human values, which provide the status of permanent constitutional provisions, the so-called protected norms for the relevant norms of the Constitution in a conceptual point of view." (Kobakhidze 2019, 49).

It is important to focus on paragraph 3 of Article 3 of the current version of the Constitution of Georgia, according to which "no one has the right to seize power. The current term of office of a body elected in the general election shall not be extended or reduced by the constitution or law." Unlike the previous version of the Constitution, the current version of the Constitution of Georgia contains a norm, a legislative basis that

allows for discussion of the internal hierarchy in the Constitution and the "permanent" norms (Kobakhidze 2019, 235; Baramashvili, Macharashvili 2021, 162). It provides authority for the Constitutional Court and in fact, obliges to consider the constitutionality of the constitutional amendments if, for example, the Parliament of Georgia decides the term of the President of Georgia to extend or reduce by constitutional law." (Kobakhidze 2019, 235). Therefore, this is another legal basis for the Constitution of Georgia to be equipped with this particular power.

### **3. Practice of the Constitutional Court of Georgia on the procedural/substantial review of the constitutional amendment**

The Constitutional Court of Georgia, following its firmly established practice, does not discuss the content of the constitutional amendment with the Constitution of Georgia. The issue of examining the compliance of constitutional amendment with the Constitution has become the subject of judgment of the Constitutional Court three times (Ruling N2/2/486 of the Constitutional Court of Georgia, 2010; Ruling N1/2/523 of the Constitutional Court of Georgia, 2012; Ruling N1/1/549 of the Constitutional Court of Georgia, 2013). However, these claims were not accepted by the court for consideration on merits. Since 2013, the issue of similar content has not been appealed to the Constitutional Court to revise within the current version of the Constitution.

The recent case (Ruling N1/1/549 of the Constitutional Court of Georgia, 2013) is of particular importance, within which the claimant appealed the amendments and additions of the Constitutional amendment of Georgia to determine the term of the next elections of the President of Georgia. According to the disputed norm, paragraph 9 of Article 70 of the Constitution of Georgia was created by the following edit: "Regular presidential elections shall be held in October of a calendar year when the President's powers expire. The President of Georgia shall fix the date of the elections not later than 60 days before the elections." As reported by the claimants, imposing the disputed norm contributed to extending the term of the incumbent President, therefore, the regulating norm of holding any public office was granted a retroactive status by the Parliament of Georgia, grossly violating the principles of public law. The authors of the lawsuit believed that it is not allowed to change the authority of any official during the period for which he is elected (appointed).

Justifying the refusal to accept the claim for consideration the Constitutional Court based its logic on the constitutional amendment, which from the moment of its coming into force, loses its independent normative content and becomes a constituent part of the Constitution. Accordingly, the satisfaction of the claim meant that the provision of the Constitution was invalid simultaneously (Ruling N1/1/549 of the Constitutional Court of Georgia, 2013). In addition, the motivational section indicated that the Constitutional Court is not equipped with the authority to declare the norms of the Constitution invalid concerning the principles of the Constitution

since there was no resource for discerning normative concepts in the Constitution of Georgia (Ruling N1/1/549 of the Constitutional Court of Georgia, 2013). Some scholars still share the developed opinion of the court (Khetsuriani 2020, 99; Eremadze 2013, 78).

The judicial body exercising constitutional review did not deem it necessary to change the practices established in the previous two cases. Regarding the proper performance of the role and functions of constitutional justice, it pointed out that "the Constitutional Court shall apply all the resources provided by the Constitution to effectively and adequately implement its (Constitutional Court) purpose and function. But, in the meantime, it shall operate within the confines of the Constitution because it is the basis of its performance and the limit of competence." (Ruling N1/1/549 of the Constitutional Court of Georgia, 2013)

The Board did not share the opinion of the authors of the constitutional claim regarding permanent norms, noting that the Constitution of Georgia neither specified the norms based on the principle of "permanence"/"invariance", nor did it establish a formal hierarchy between constitutional norms according to legal force. The fact that the different norms of the Constitution may adhere to different values did not indicate their hierarchical subject.

The Constitutional Court did not rule out the authority of the court to assess the constitutionality of the constitutional amendments concerning the Constitution of Georgia from a formal point of view, in particular, the extent to which the procedure provided by the Constitution for adopting a constitutional amendment was protected. However, since the legislation did not explicitly state the consequences of violating the procedure established by the Constitution for the adoption of constitutional amendment, in the assessment and the discussion of the content of the amendments, the court did not consider it necessary to determine the scope of its competence in this section (Ruling N1/1/549 of the Constitutional Court of Georgia, 2013). However, some authors do not share this assumption of the Constitutional Court (Loladze, 2013).

In conclusion, the court summarized that "the Constitution of Georgia does not provide for revising the Constitution and adopting a constitutional amendment, except for the free and democratic manifestations of the will of the constitutional majority of the legislative government. The revision of the constitution is part of the political process, which is executed following the will of the people, through representatives elected by them." (Ruling N1/1/549 of the Constitutional Court of Georgia, 2013)

#### **4. Constitutional control over constitutional amendment abroad**

As a result of analyzing the legislation of foreign countries, the following categories are mainly identified in terms of exercising the powers of constitutional control over constitutional amendment: 1) Countries that discuss the constitutionality of constitutional amendment neither in content nor formal terms (e.g. Belgium, France (Venice Commission, 2012)); 2) The countries that discuss the constitutionality of constitutional

amendment includes two subcategories: a) pre-control (e.g. Armenia (Venice Commission, 2020), Ukraine (Venice Commission, 20 June 2022; Constitution of Ukraine, Article 159,1991) and post-admission control; b) substantial control (e.g. Germany (Gröpl 2014; BVerfGE 3, 225, 1953; Gegenava, Papashvili 2015, 62) and only control of the admission process, the same procedural control (e.g. Hungary (Venice Commission, 2013; Decision 45/2012. (XII. 29.) of the Constitutional Court of Hungary; Case II/648/2013 of the Constitutional Court of Hungary).

Scrutinizing the reviews of the Venice Commission (Venice Commission, 7 December 2022) on the constitutionality of constitutional amendments over the years, it can be said that the Venice Commission has not established a rigid standard regarding the compatibility and scope of constitutional amendments, and it does not provide a unified approach to the time of control (a priori or a posteriori) and the nature of control (procedural or substantial) (Venice Commission, 7 December 2022).

Considering the report, the legal provision in some countries is unclear, in others, it is theoretically possible to review the constitutional amendments but it has never been applied in practice, and in certain states, the trial is rejected based on the argument that courts cannot challenge the constitutional legislature (Venice Commission, 20 June 2022) (which was shared by the Constitutional Court of Georgia).

Following the report of the Commission on Constitutional Amendments, designing the adherence to the constitutional amendments procedure by the Constitutional Court is much more widespread than a further consideration of whether the amendment violates the "permanent" provisions or principles of the Constitution (discussion about content) (Venice Commission, 20 June 2022).

A rather rare procedural mechanism found in some new democratic countries is a mandatory and systematic review of constitutional amendments by the National Constitutional Court before it is adopted by the Parliament (A Priori Review) (Venice Commission, 19 January 2010). Such a requirement is especially met in Azerbaijan, the Republic of Kyrgyzstan, Moldova, and Ukraine (Constitution of Azerbaijan, Article 153; Constitution of the Kyrgyz Republic, Article 97; Constitution of Moldova, Article 141.2; Constitution of Ukraine, Article 159). Although the Constitutional Courts made a useful contribution to guide further parliamentary and public debate, the involvement of a Priori court in the process of making amendments introduced excessive rigidity and blocked political debate (the pattern of a strong intra-executive conflict between the the Parliament and the president over the constitutional reform in Moldova, in 2000) (Venice Commission, 19 January 2010).

The Venice Commission recognized the posterior reviews of constitutional amendments in several countries such as Austria, Germany, Bulgaria, Turkey, Portugal, the Czech Republic (Venice Commission, 2013; Decision Pl. US 27/09 of the Constitutional Court of Czech Republic, 2009) and identified abolished constitutional amendments for breaching the procedures or even violating material boundaries.

According to the Venice Commission, even though further consideration of the Constitutional Court (A Posteriori Review) is more widespread, such control cannot be observed as a general rule of law and a requirement for supremacy (Venice Commission, 2012). Conforming to the Commission's assessment, the Constitutional Courts' power to review and repeal part of the Constitution is a controversial and extremely difficult issue, especially when the Constitution does not contain "unamendable/permanent norms" (Venice Commission, 2015). Substantial constitutional review of constitutional amendment is a "problematic instrument that must be implemented only in countries where it already derives from a clear and established doctrine and even there it should be exercised with the margin of appreciation of the constitutional legislator." (Venice Commission, 2022).

Some constitutions include "unamendable/permanent" norms, provisions that are legally excluded from revision. For instance, the basic law for the federal Republic of Germany (The Basic Law for the Federal Republic of Germany, Article 79, para. 3, 1949; Battis, Edenharter 2022, Rn. 205) treats federalism as a form of German territorial arrangement and regards it "unamendable" provision (2 BvE 2/08, 216; Marsch, Vilain, Wendel, 2015, Rn. 36; Dürig/Herzog/Scholz/Herdegen, 2024, Rn.89; ; BeckOK GG/Dietlein, 2024, Rn. 22-53; Javakhishvili 2021, 179). In this respect, the constitutions of Italy (Constitution of the Italian Republic, Article 139, 1947) and Turkey (Constitution of Turkey, Article 4, 1982; Barak 2011, 322; Roznai, Yolcu 2012, 185) are also noteworthy. "unamendable/permanent" constitutional provisions indicate an internal hierarchy of constitutional provisions.

A review of comparative constitutional law specifies that most constitutions do not take into account "unamendable/permanent" provisions. In this regard, the Venice Commission believes that the imposition of an internal hierarchy with permanent norms does not comply with international standards (Venice Commission, 19 January 2010) and it cannot be regarded as a European standard. However, this characteristic is increasingly met in countries where Constitutional Courts are competent to repeal unconstitutional laws (Venice Commission, 20 June 2022; Venice Commission, 2013).

According to the assessment of the Commission, most constitutional systems operate on the assumption that all constitutional provisions have similar/equal normative power, and the government that revises the Constitution has the power to change existing and other constitutional provisions. As a result, one constitutional provision cannot be evaluated against another. The lack of judicial scrutiny of the constitutional amendments is due to the idea that the constitutional revision is legitimized by the people and is an expression of public sovereignty (Venice Commission, 2012).

On the other hand, it is important to focus on the assessment of the Venice Commission related to "unamendable/permanent" provisions (such as Article 157 of the Constitution of Ukraine), following which these provisions help to strengthen the justification of the exercise of further substantial control, even if it is a very

"controversial and extremely difficult issue". (Venice Commission, 20 June 2022). The "unamendable/permanent" norms serve to immunity to a certain part of the Constitution from any constitutional amendment (Preuss, 2011, 430).

The Venice Commission recommends only formal/procedural revision of the constitutional amendments and reinforces the position that all constitutional systems must ensure democratic judicial control to provide the adoption of constitutional amendments under the established constitutional procedures. Such formal review exercised by the court cannot interfere with the sovereign rights of the constituent government to protect democracy (Venice Commission, 2020).

The Venice Commission applies a more accurate approach to the substantive consideration of constitutional amendments in comparative constitutional law (Venice Commission, 2020). The Commission notes that the constitutional amendments should be reviewed only in countries where they derive from a clear and established doctrine. Even there, the process should be exercised with the margin of appreciation of the constitutional legislator (Venice Commission, 2020).

The Venice Commission recognizes that the determination of the scope and nature of the constitutional amendments in a particular country is the result of making a complex balance between the principles of "public sovereignty" and "rule of law", which also implies the imposition of reasonable boundaries on judicial interference. Even if the Parliament is the main arena for providing constitutional amendments in almost all European states, it may also be appropriate for the National Constitutional Court to compulsory and systematic review before or after adopting the proposal for the constitutional amendments by the Parliament (Venice Commission, 20 June 2022).

To sum up, the Venice Commission has acknowledged that even if it is a complex issue that varies between countries, judicial review of constitutional amendments can be a valid and effective mechanism under certain conditions, especially when the Constitution contains eternal articles, and considering the constitutionality of such amendments, following a clear and established doctrine, help states avoid the changes accepted in violation of constitutional requirements (Venice Commission, 20 June 2022). The substantial revisions of constitutional amendment in compliance with the basic principles of Constitution can be observed when the Constitution explicitly establishes such a hierarchy (Dürr, Schnutz, in Yildirim, Engin 2024, 819).

## **5. Conclusion**

In conclusion, the discussion on the constitutionality of the constitutional amendment is not characterized by contentious contradiction since the court considers not one provision of the Constitution with another, but

a new document/law that implies amendments to the old text of the Constitution. This is supported by international practice, according to which, when an amendment is made to the Constitution, the relevant constitutional amendment is appealed and not the new provision of the Constitution.

The Constitutional Court of Georgia has the legal opportunity, based on a claim related to basic human rights or within the abstract norm control, to discuss the constitutionality of the constitutional amendments – the relevant constitutional law or a part thereof concerning the fundamental principles of the Constitution of Georgia or fundamental human rights (Kobakhidze 2019, 235). Comparative-legal research has shown that in countries of a similar order where constitutional amendments are normative acts and the Constitutional Court has the competence to evaluate normative acts referring to human rights, the Constitutional Courts consider them not only in a formal sense but also from a material perspective.

Since this analysis of the chapter clearly outlined the differences of opinion, whether the Constitutional Court has the jurisdiction to review constitutional amendment, there are two possible ways to resolve this issue:

1. To provide greater definition and clarity, it shall be recommended to amend the first paragraph of article 19 of the Organic Law of Georgia on ‘the Constitutional Court of Georgia’ and specify that according to the Constitution of Georgia, the Constitutional Court shall evaluate normative acts with the force of law including the constitutional amendments which is a normative act following the Law of Georgia "On Normative Acts".

2. In addition, it will be reasonable to establish a separate provision for the form, content, scope, and most importantly, the results of satisfying the relevant constitutional claim by the Constitutional Court.

3. It is recommended (independently of the legislative amendments which is the prerogative of the legislature) for the Constitutional Court to take into account the result of the 2017-2018 reform of the Constitution of Georgia, as well as the "unamendable/permanent" norms in the basic law following the legal literature and consider/revise/alter the practice, which has not changed since its establishment in 2013.

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**Levan Ghavtadze, PhD student** 

Ivane Javakhishvili Tbilisi State University, Georgia

levangh97@gmail.com

## CONTROL OF THE CONSTITUTIONALITY OF EARLY TERMINATION OF THE POWERS OF A MEMBER OF THE PARLIAMENT

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**ABSTRACT:** *The institution of early termination of the powers of a Member of Parliament includes some aspects that on the one hand, protect democracy (not to carry out parliamentary activities by the members of the Parliament who threaten the effective function/authority of the Parliament), and on the other hand, the will of the people should not be arbitrarily overcome by applying the mechanism of early termination of the powers. This article examines the institute for early termination of the powers of a Member of Parliament. It emphasizes the concept of "self-defence democracy". Taking into account the political and legal nature of the decision of the Parliament, the determination of the role of the Constitutional Court in assessing the constitutionality of the issue is of great importance in exercising the right to a fair trial. Discussing individual issues, the article will focus on international practice as well.*

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**KEYWORDS:** Early Termination of the Powers of a Member of Parliament; Constitutional Law; Political and Legal Nature; Access to the Right to a Fair Trial; "Self-defence Democracy".

### 1. Introduction

“If angels were to govern men, neither external nor internal controls on government would be necessary.”

(The Federalist Papers: No.51)

The Constitution of Georgia, on the one hand, defines the special status of a member of Parliament, and on the other hand, establishes the grounds for early termination of the powers of a member of the Parliament by the principle of "Numerus clausus". Based on the Constitution the Parliament of Georgia acquires exclusive powers to decide on the issue of early termination of the powers of a member of Parliament. The Constitutional Court is a judicial body that exercises control over the decisions of the Parliament through the competence assigned by the Constitution of Georgia. The strengthening of judicial power, especially the creation of a special body carrying out constitutional justice, is assessed as one of the reasons for the separation of power (Loladze 2015, 376).

Protecting the powers of Members of the Parliament from early termination is an integral part of the constitutional guarantee of the smooth implementation of their activities (Judgment No 1/7/1688 of the Constitutional Court of Georgia, 2022). Modern democracy can only function with essential limitations that are legitimate and reasonable. The early termination of the powers of an MP is an issue that "restricts" democracy, but democracy itself provides this possibility (Venice Commission, 2012).

To determine the authority of the Constitutional Court for considering the early termination of the

powers of a Member of the Parliament there will be analyzed the following issues: the purpose of the mechanism for early termination of the powers of a member of the Parliament, the scope of evaluating the matters to be reviewed by the Constitutional Court, the problem of the deadline for consideration of the issue and decision made by the Constitutional Court, the purpose of the circle of subjects and the deadline for appealing the decision of the Parliament in separate sub-chapters.

To study individual issues, the article covers descriptive, historical, analytical, logical, systematic, and comparative-legal research methods.

## **2. The purpose of the mechanism for early termination of the powers of a Member of the Parliament**

The effective functioning of democracy requires creating a mechanism for the early termination of powers of the representative of the people, which shall be used only when the early termination of power is justified in protecting the robustness of governance and maintaining the trust of the people in it (Judgment No3/2/1473 of the Constitutional Court of Georgia, 2020).

The issue of early termination of a Member of Parliament is inextricably related to the content of the constitutional and legal status of the MP, including the mandate model of the MP established in the legislation of a particular country whether a free or imperative mandate is valid (Чмыга, 2009). Accordingly, the institution of early termination of the powers shall be interpreted through the prism of the constitutional and legal status of a Member of Parliament. The constitutional standard for upholding the right to a particular position shall arise from its constitutional status (Judgment No1/2/569 of the Constitutional Court of Georgia, 2014). Members of Parliament having the mandates of the people act on behalf of the whole nation (Nemtoi, Nesteriuc 2019, 248).

The issue of early termination of a Member of Parliament at the legislative level is regulated by the Constitution of Georgia and the Rules of Procedure of the Parliament of Georgia (Constitution of Georgia, paragraph 5 of Article 39 and sub-paragraph (g) of paragraph 5 of article 39, 1995; Rules of Procedure of the Parliament of Georgia, article 9, 2025). The Constitution of Georgia defines a decision-making entity and the issue where and by whom the resolution on the early termination of the powers of a member of Parliament may be appealed. Rules of Procedure of the Parliament of Georgia shall establish both material and legal reasoning for the early termination of the powers of a Member of Parliament.

The scope protected by Article 3 of the First Additional Protocol to the European Convention on Human Rights includes the right to be a Member of Parliament after he/she has been elected by the people. This right shall be subject to restrictions to which the state has the scope of protection. Such restrictions must be legal, have a legitimate purpose, and be proportionate. According to the Venice Commission, the issue of

the smooth exercise of the rights and activities of a member of Parliament determines the "core" of democracy and its functionality (Venice Commission, 2019).

### **2.1. Numerus clausus principle related to the early termination of the powers of a Member of the Parliament**

The reasons for the early termination of powers of a Member of Parliament are regulated by the Constitution, in particular, according to paragraph 5 of Article 39 of the Constitution of Georgia, the principle of "Numerus clausus" (Numerus clausus“ is a Latin word meaning closed number and refers to an exhaustive list provided for by law) defines the reasons for early termination of the powers of a member of Parliament, which are exhaustive and are not subject to expansion/reduction based on subordinate acts (Judgment No 1/7/1688 of the Constitutional Court of Georgia, 2022).

More than 40% of the Council of Europe member states have regulations for early termination of the powers of a member of the Parliament at the constitutional level, while the rest of the countries regulate the issue at the legislative level (Venice Commission, 2018). The mentioned reasons can be conditionally divided into several categories:

- First) a Member of Parliament does not want to exercise his/her powers and submits a personal application to terminate his/her powers to the Parliament.
- Second) a Member of Parliament fails to exercise his/her powers (for example, he/she fails to attend without good reasons the regular settings during regular sessions, has been recognized as a beneficiary of support by a court decision or missing, etc.).
- Third, a member of Parliament, based on his/her actions, shall no longer exercise his/her powers (for example, holds a position incompatible with the status or is engaged in incompatible activities, or has been convicted under a court judgment that has entered into legal force, etc.).

### **2.2. The political and legal nature of the decision on early termination of the powers of a Member of the Parliament**

According to the Constitution of Georgia, Parliament shall have exclusive powers to make decisions on the early termination of the powers of a Member of Parliament. The decision of the Parliament is political-legal by its nature, in which the legislature has a certain scope of protection. After the reason provided by Article 39(5) of the Constitution of Georgia arises, the issue of early termination of the powers of a Member of Parliament shall be voted on and made a relevant decision by the Parliament. The Parliament can theoretically make two types of decisions: a resolution on the termination of the powers of a member of Parliament or a resolution on the non-termination of the powers of a member of Parliament (Kakhiani 2011, 376).

It is noteworthy to follow the practice of the European Court of Human Rights in the case *Kart v.*

Turkey (Application no. 8917/05), which disputed the inability of removal of a Member of Parliament to give up parliamentary immunity. The complainant raised the issue of removing parliamentary immunity before the Joint Committee of the Grand National Assembly but the complainant was not removed immunity and the criminal proceedings against him were postponed until the expiration of the powers of the MP. The decision was appealed by the complainant to the European Court of Human Rights because he believed that his case should be considered based on the right to a fair trial and that the process should not impede parliamentary immunity as a privilege. The European Court of Human Rights made an interesting explanation regarding the nature of a similar decision, in particular, the mechanism of parliamentary responsibility by deciding on the removal or refusal of removing parliamentary immunity is one of the means of parliamentary autonomy. In their nature, these decisions are political and do not meet the same criteria as required by court decisions (ECHR, *Kart v. Turkey*, 2009).

It is interesting to discuss the approach of the Constitution of Ukraine to the procedure on the early termination of the powers of a Member of Parliament, in particular, the Ukrainian Verkhovna Rada (Parliament) decides on the early termination of the powers of an MP based on a personal application, loss of citizenship/departure from Ukraine for permanent residence abroad. If a judgment of conviction against a member of the Parliament of Ukraine enters into legal force or is declared to be incapacitated/missing, the powers shall be terminated by the entry into force of the relevant court decision (Constitution of Ukraine, article 81, 1991). According to the Finnish Constitution, if a Member of the Parliament substantially and repeatedly ignores the performance of representative duties, the Parliament may terminate the powers of an MP for a permanent or limited period after getting the conclusion of the Constitutional Law Committee (Constitution of Finland, section 28, 1999).

The Constitution of Georgia does not take a differentiated approach to the reasons for the early termination of the powers of a Member of the Parliament, specifically, putting it on the agenda does not result in the automatic termination of the powers of an MP and the Parliament must make a decision.

### **2.3. The concept of "self-defense democracy"**

“The best joke of democracy is that democracy gave its  
deadly enemies the means by which it was destroyed.”  
(Loewenstein, 1937)

The doctrine of defensive democracy has evolved since the 30s of the last century, and it is related to the rise of the National Socialist Movement in the last phase of the Weimar Republic. According to this theory, the enemies of democracy should not be allowed to use the rights and freedoms provided by democracy to pose a threat to it (O'Connell, 2009). The creation of the principle of defensive democracy is associated with

the names of German scientists Karl Loewenstein and Karl Manheim (Papier, Durner 2003). Loewenstein created and in 1937 discussed the model of defensive democracy (militant democracy) in his English-language work (Loewenstein, 1937).

Within a defensive democracy, freedom and security are opposed, and legislators have to find a reasonable balance between them. Defensive democracy should exclude the danger of misuse of this tool by the state (Sajó, 2008).

### **2.3.1. The right of the state to take measures to protect the democratic order**

The legal good to protect defensive democracy is the democratic constitutional order of the state. Within the democratic process, using the mechanisms of democracy (freedom of speech, assembly, and choice), it is possible to establish a regime that undermines democracy. In this regard, the European Court of Human Rights decision in the case *Ždanoka v Latvia* is interesting. The Communist Party of Latvia attempted to overthrow Latvian democracy and allowed Soviet troops to conduct several military operations in the country. In 1991 the Communist Party was declared unconstitutional. According to the 1995 law, persons actively involved in the Communist Party of Latvia were inappropriate to participate in parliamentary elections. The Grand Chamber ruled that in protecting its democratic order the state had the right to take specific measures (ECHR, *Ždanoka v. Latvia*, 2006).

Article 17 of the Convention on Human Rights and Fundamental Freedoms reinforces the ban on abuse of rights. Article 30 of the Universal Declaration of Human Rights also supports the activity aimed at the destruction of any of the rights. Since the termination of the powers of a Member of the Parliament is the most stringent form of interference in his/her activities, the mechanism for early termination of powers should be applied when it is required by objective reality. If the particular members of the Parliament decide to risk the normal functioning of the Parliament of Georgia as a constitutional body using a procedural instrument, the Parliament may not terminate the parliamentary mandate of the Members of Parliament.

#### **2.3.1.1. Where is the line drawn between the ability of a Member of the Parliament (to refuse to his/her mandate) and the protection of the essence of democracy?**

The goal of a defensive democracy is to prevent lawmakers from using their mandates against the democratic constitutional order. The MP enjoys a free mandate and forcing him/her to carry out parliamentary duty is not allowed, however, in some cases, the MPs misuse the right through the destructive refusal of the mandate (*Destruktiver Mandatsverzicht*) when part of MPs (and their substitutes) collectively renounce mandates (Dicke, Stoll 1985, 457). The Constitution does not force an MP to fully embrace the mandate for the

entire 4 years, but he/she should not exercise the right to renounce the mandate, thereby endangering the functioning of Parliament (Ziekow 1990, 119). The right to renounce the mandate should not be construed as the principal right of an MP. When an elected MP refuses to fulfill his obligation without any legitimate basis it is considered an act of betrayal of his voters (Winfried 1981, 119).

The purpose of collective refusal of mandates may mean coercing the government to dissolve the Parliament and cause new elections to take place (Urteil vom 30.08.2005, 1 A 335/05). Destructive refusal of mandates may be an act of a party when its members not only personally apply to the relevant authorities to exercise their early terminated powers, but they do not allow their substitutes to use their mandates in Parliament, thus creating a state of crisis. There are cases when intra-party decisions that oblige its members to refuse the mandate do not have legal force (Schäfer 1982, 166). The free mandate protects the MP from being recalled by the party bodies (Schneider, Zeh 1989, 497).

### **3. The role of the Constitutional Court in assessing the constitutionality of a decision on the early termination of the powers of a Member of the Parliament**

“Power should hold power.”

(Montesquieu, *The Spirit of Laws*)

The Constitutional Court belongs to the powerful government institutions (Cepreeb 2005, 19). The Constitution has a special role in the legal system (it is a political and legal document) and it cannot be replaced by other documents (Barak 2005, 371).

The argument of constitutional control in addition to protecting the rights of the individual (minorities) is also that the Constitution is a "fundamental vision" of society, and there is a presumption against the rest of the legislative acts regarding their narrow interests. In this respect, the doctrine "Dualism and Higher Politics" developed by Bruce Ackerman is interesting, according to which the bodies exercising constitutional control should adapt the decisions made daily to the "fundamental vision" of society (Sandalow 1991, 312).

The dissemination of constitutional control over the decision to terminate the powers of a Member of the Parliament stems from the principle of a democratic and legal state. According to the Venice Commission, members of Parliament who have heavily violated the law should not participate in law-making activities. The decision must be made quickly. Basic guarantees such as public hearings and the right to have a representative shall be determined by the parliamentary procedure. Appealing the decision to the Constitutional Court must not be accepted as a requirement and shall be considered as an additional guarantee if the procedure in the Parliament meets the above requirements (Venice Commission, 2017).

This approach was applied by the European Court of Human Rights in the case Paunović and Milivojević v. Serbia (Application no. 41683/06). Before the election, all candidates, including applicants, were

asked by the political party to sign undated resignation letters and hand them over to the party. These documents allowed the party to appoint other candidates for replacement if necessary. Following the conclusion of the Administrative Committee of the Parliament both applicants resigned and their parliamentary mandates were terminated (ECHR, Paunović and Milivojević v. Serbia, 2016).

In this case, the members of the Parliament submitted the letter of resignation to the Parliament by a representative of his political party, against the desire of the applicant. The European Court of Human Rights found that the termination of the powers of an MP violated the law, which required the resignation of a Member of the Parliament based on a personal statement, following his true will when he was the holder of the mandate (and not in advance). This contradicted the requirements of Article 3 of the First Additional Protocol of the European Convention on Human Rights (ECHR, Paunović and Milivojević v. Serbia, 2016).

#### **4. The powers of the Constitutional Court of Georgia considering the issue of early termination of the powers of a Member of the Parliament**

In connection with the early termination of the powers of a Member of Parliament, Parliament may make two types of decisions: (1) a resolution on the termination of the powers of a Member of Parliament and 2) an ordinance on the non-termination of the powers of a Member of Parliament (Kakhiani, 2011). Accordingly, both cases in the Constitutional Court may become the subject of dispute.

The task of the Constitutional Court as a body exercising constitutional control is to examine if the decision is made arbitrarily by Parliament (Loladze, Matcharadze, Pirtshalashvili 2021, 269). The Constitutional Court of Georgia has established by its practice the scale of the examination of the constitutionality of the early termination of the powers of a Member of Parliament, in particular while examining the constitutionality of the issue of early termination of the powers of a Member of Parliament, the court makes a decision not through the proportionality of the restriction and/or justification of a release, but by assessing how correctly the Parliament of Georgia applied the basis defined in paragraph 5 of Article 39 of the Constitution (Judgment No3/2/1473 of the Constitutional Court of Georgia, 2020). According to the aforementioned provision, The powers of a Member of Parliament shall be terminated early if he/she:

- submits a personal application for terminating his/her powers to Parliament;
- holds a position incompatible with his/her status or is engaged in an incompatible activity;
- fails to attend without good reason more than half of the regular sittings during regular sessions;
- has been convicted by a court judgment that has entered into legal force;
- has been recognised as a beneficiary of support by a court decision and admitted to a respective inpatient care facility, or has been recognised as missing or declared dead by a court;
- dies;

- loses citizenship of Georgia;
- is subject to the termination of his/her powers by a decision of the Constitutional Court (Constitution of Georgia, paragraph 5 of article 39, 1995).

The purpose of the Constitutional Court is to ensure the compliance of normative acts with the Constitution of Georgia, and the lawfulness of individual acts is usually the competence of the common courts. Judicial control of a decision made by the Parliament of Georgia regarding the early termination of powers of a Member of Parliament shall be an exception to this common rule. Taking into account the specifics of the subject of the dispute, the Constitution attributed the resolution of the issue to the jurisdiction of the Constitutional Court (Khetsuriani 2020, 196). According to Section 41(1) and (2) of the Basic Law of the Federal Republic of Germany, the Bundestag decides on the early termination of the powers of its members, and the decision may be appealed to the Federal Constitutional Court of the Federal Republic of Germany (The Basic Law for the Federal Republic of Germany, Article 41, 1949).

Assessing the constitutionality of the issue of early termination of the powers of a Member of Parliament, the Constitutional Court shall take into account not only the formal requirements of the legislation but also the content and factual side of the issue. The Constitutional Court interpreted the main factors regarding the case of Valeri Gelashvili, particularly, "The actual exercise of the powers of the head of the enterprise shall not contradict the constitutional-legal assessment as it describes the constitutional, legal, and organizational framework governing the law-making process. It is unacceptable to carry out entrepreneurial activities not only in the usual form (a defense of formality) but also in actual implementation (Judgment No1/2/378 of the Constitutional Court of Georgia, 2006). In this regard, the approach of the European Court of Human Rights applied in the case *KOKËDHIMA v. ALBANIA* (Application no. 55159/16) is very compelling. The court considered the early termination of the powers of a member of Parliament to be compatible with the Convention due to the conflict of interests. The subject of the court's assessment was whether the applicant could sufficiently consider taking legal steps to avoid conflicts of interest incompatible with the status of a Member of Parliament. The applicant argued that the company stopped participating in public tenders immediately after his election as a Member of the Parliament, however, the company continued to receive income from previously concluded agreements with state authorities. The national legislation of Albania was not engrossed in specifying the time to conclude contracts, but in the fact that the company carried on getting any payments derived from public resources after the complainant performed his duties as a Member of the Parliament. From this perspective, the European Court of Human Rights did not see the elements of arbitrariness in the decision to terminate the powers of a member of Parliament and considered it compatible with the requirements of Article 3 of the First Additional Protocol of the European Convention on Human Rights (ECHR, *Kokëdhima v. Albania*, 2024).

In the aforementioned case, the European Court of Human Rights focused on several key criteria in its assessment: Legitimate Aim; Proportionality (Balance between means and ends); Arbitrariness / Manifest Unreasonableness; Foreseeability; Margin of Appreciation of the State; Sufficiency of Safeguards against arbitrary decision-making.

#### **4.1. The purpose of the term and the circle of the entities appealing a decision on early termination of the powers of a Member of the Parliament**

During the review of the powers of the Constitutional Court to assess the constitutionality of the early termination of the powers of a Member of Parliament, it shall be necessary to analyze the purpose of the circle and the term of appealing a decision on the early termination of the powers of a Member of Parliament.

##### **4.1.1. The purpose of the circle of the entities appealing a decision on early termination of the powers of a Member of the Parliament**

According to Article 60, Paragraph 4, sub-paragraph g) of the Constitution of Georgia, the authorized subjects shall appeal to the Constitutional Court. Authorized subjects of a constitutional lawsuit are represented by one-fifth of the full composition of members of the Parliament or a relevant representative. The respondent party is the Parliament of Georgia. Whom the Georgian Constitution regards a "relevant representative" depends on the decision made by the Parliament of Georgia:

- If the powers of a member of Parliament are terminated early, he/she shall be recognized as the person who has terminated the powers of a member of Parliament early.
- If the powers of a member of Parliament are not terminated, he/she is recognized as a member of Parliament who has not been prematurely terminated his/her powers and/or the person who became a member of Parliament by rotation (Kobakhidze 2023, 233), (e.g., the member of parliament died and the Parliament did not terminate the powers because of rotating a "relevant representative" of the party list).

Without the mentioned prerequisites, the Constitutional Court is deprived of the opportunity to assess the constitutionality of the decision made by the Parliament. The assigning of the authority to file a constitutional claim to at least one-fifth of the members of the Parliament of Georgia shall be related to the protection function of the parliamentary minority (Vanberg 2001, 347).

##### **4.1.2. Purpose of the deadline for appealing a decision on early termination of the powers of a Member of the Parliament**

According to paragraph 3 of Article 40(3) of the Organic Law of Georgia on the Constitutional Court of Georgia, the time limit for filing a constitutional claim shall not exceed two weeks from the entry into force of a resolution of the Parliament of Georgia. Based on Article 1 of paragraph 48 of the Law of the Federal

Constitutional Court of Germany, the issue of early termination of the powers of a Bundestag Member shall be appealed to the Federal Constitutional Court within two months after the Bundestag makes a decision (The Act on the Federal Constitutional Court of Germany, Section 48, 1993).

The period of two weeks for filing a constitutional claim prevents a person whose powers had to be terminated by the Parliament from being admitted to the legislative body, still, a person has the opportunity to restore the powers of a Member of Parliament as quickly as possible if the Parliament has terminated the powers of a member of Parliament in violation of the requirements of the Constitution. The constitutional claim of violation of the established term without good reasons shall not be accepted for consideration by the court. The legislation does not define the list of good reasons, and in each case, the Constitutional Court shall decide whether the violation of the time limit should be considered. The Constitutional Court did not accept the constitutional claim of Shalva Natelashvili, a member of the Parliament of Georgia for violating the established time limit for appealing. The Claimant disputed the resolution of the Parliament of Georgia on the failure to prematurely terminate the powers of a member of the Parliament, which was adopted on February 2, 2021, and came into force immediately. The Claimant appealed to the Constitutional Court on March 23, 2021, after the expiry of the time limit for appeals provided by law. In addition, the constitutional claim did not reveal a good reason for violation of the term of appeal (Ruling No 3/1/1581 of the Constitutional Court of Georgia, 2021).

#### **4.2. Problematic period of review and decision-making on the issue of early termination of the powers of a Member of Parliament by the Constitutional Court**

The constitutionality of the issue of early termination of the powers of a member of the Parliament of Georgia shall be judged by the Board of the Constitutional Court. The same law provides the transfer of the judgment of the Board of the Constitutional Court to the Plenum of the Constitutional Court. The practice has seen the precedents when the constitutional claims for early termination of the term of the powers of an MP were reviewed by the Plenum of the Constitutional Court with the argument that the case under consideration may arise a rare and/or particularly significant legal problem in the definition and/or application of the Constitution of Georgia. This proposal was shared by the Plenum of the Constitutional Court (Recording Notice No3/1-1/1473 of the Constitutional Court of Georgia; Recording Notice No3 3/1-1/1565,1568,1569 of the Constitutional Court of Georgia).

According to paragraph 1 of Article 22 of the Organic Law of Georgia on the Constitutional Court of Georgia, the time limit for consideration of a constitutional claim/constitutional submission must not exceed nine months after its registration. In special cases, the Chairman of the Constitutional Court shall extend the

time limit for consideration of a claim by a maximum of two months.

The deadline for the decision by the Constitutional Court is quite long, in many cases, it lasts even several years. A good example of this is the constitutional claims of N3/5/1565,1568,1569. The Constitutional Court held the substantive hearing on June 10-11, 2021 but for more than 3 years the Court has not made a decision yet. Before evaluating the decision by the Constitutional Court, the Parliament terminated the term of both claimants Zurab Girchi Japaridze and Elene Khoshtaria (Decree No1008-VIms-Xmp of the Parliament of Georgia, 2021; Decree No1363-VIIIms-Xmp of the Parliament of Georgia, 2022). As a result, the plaintiffs have lost interest in constitutional claims because even if theoretically constitutional claims are satisfied, the purpose of the plaintiffs (early termination of power) has already been achieved.

The constitutionality of the issue of terminating the powers of a Member of Parliament is of great importance from both perspectives of the individual right of a Member of Parliament (effective application of the right to a fair trial) and determining the Parliament as the supreme representative body in compliance with the requirements of the Constitution.

To eliminate the mentioned problem, it is prudent to amend the legislation and determine the deadlines for reviewing/making a constitutional claim on the early termination of the powers of a Member of Parliament. The time limit for making a decision by the Constitutional Court is determined by the legislation of several countries, for example, according to the legislation of the Constitutional Court of the Republic of Latvia, the term for each stage of legal proceedings is defined separately (Constitutional Court Law of the Republic of Latvia, 1993). According to paragraph 9 of Article 79 of the Constitutional Law of the Republic of Armenia on the Constitutional Court, the decision of the Constitutional Court on the termination of the powers of the MP shall be made not later than 30 days after the claim is filed (Constitutional Law of the Republic of Armenia on the Constitutional Court, 1995).

## **5. Conclusion**

The institution of early termination of the powers of a Member of Parliament is compatible with democracy and guarantees the protection of democratic governance. On the one hand, its purpose is to ensure the effective implementation of parliamentary activities by persons who are capable of doing them and on the other hand, to deprive legislative activities of persons who threaten the institutional reputation and credibility of Parliament by their actions (Judgment No3/2/1473 of the Constitutional Court of Georgia, 2020).

The Venice Commission considers it appropriate to regulate the essential aspects of the institution of premature termination of the powers of a Member of Parliament (Venice Commission, 2018). Procedural guarantees should be extended on this issue. Appealing the decision of the Parliament to the Constitutional

Court seems to be an additional guarantee, but ought not to be appraised as a requirement (Venice Commission, 2017). Since the early termination of the powers leads to interference with the right, it is necessary to observe the proportionality considering the nature of the crime, its severity, and/or the duration of the sentence (Venice Commission, 2018). In such a case, the deprivation of the authority to hold public office serves the legitimate purpose of maintaining the proper functioning of the democratic order and supporting trust in it (ECHR, *M.D.U. v. Italy*, 2003).

Including any reasons for the early termination of the powers of a member of Parliament on the agenda does not lead to the premature termination of the mandate of an MP. In its nature, the decision of Parliament is political-legal having a certain scope of protection of the legislative body. Based on the fact that the political neutrality and impartiality of the Constitutional Court is an essential part of the principle of the rule of law (Khubua 2016, 3). Taking into account the importance of the issue of early termination of the powers of a member of Parliament, the Constitutional Court of Georgia should not only evaluate the formal side but also analyze the Constitutionality of the resolution made by the Parliament (Khetsuriani 2014, 19).

The existence of two weeks for filing a constitutional claim on the issue of early termination of the powers of an MP is due to prevent the person from entering into the legislative body for whom the Parliament had to terminate the powers, and on the other hand, to provide the person with the opportunity to restore the powers of a member of Parliament within a tight period, if the Parliament terminated his/her powers in violation of the requirements of the Constitution. In addition, to avoid delaying the process of reviewing/making a constitutional claim on the issue of early termination of the powers of a member of Parliament at the Constitutional Court (which is confirmed by practice), it is necessary to determine the tight deadlines.

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