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im. Gabriela Szerszeniewicza

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CENTRUM BADAŃ NAD PRAWEM EUROPY WSCHODNIEJ I AZJI CENTRALNEJ

UKŁAD SIŁ

Articles:

Editor's Note 3

Oleksiy Kresin, *FROM "A CRISIS" TO "THE EFFECTIVE CONTROL": THE PROBLEM OF QUALIFICATION OF THE RUSSIAN INVASION IN UKRAINIAN AND INTERNATIONAL LAW IN 2014–2022* 5

Ekaterina Mishina, *LOST CAUSE: AN ATTEMPT TO ESTABLISH THE PRIMACY OF INTERNATIONAL LAW IN POST-SOVIET RUSSIA* 35

Veronica Cheptene, *THE RIGHT TO LIBERTY AND SECURITY OF THE PERSON: NATIONAL REGULATIONS OF THE REPUBLIC OF MOLDOVA, STANDARDS, AND VIOLATIONS* 45

Abai Magauiya, Aiman Omarova, Madina Tuktibayeva, *COPYRIGHT CONCERNS IN ARTIFICIAL INTELLIGENCE TRAINING: A LEGAL PERSPECTIVE* 59

Fariza Abugaliyeva, Mira Zhaskairat, *WOMEN'S ENTREPRENEURSHIP AS A FORM OF FAMILY ENTREPRENEURSHIP* 69

Olga Minnik, *THE JURISDICTION OF THE ESTONIAN ORTHODOX CHURCH OF THE MOSCOW PATRIARCHATE: THEOLOGICAL AND LEGAL PROBLEMS OR KREMLIN POLITICS?* 79

Vasily Zagretdinov, *THE RULE OF LAW AS THE CONSTITUTIONAL IDENTITY OF THE EUROPEAN UNION* 91

Anna Vardanyan, *THE WESTERN BORDER POLICY AND ITS GEOPOLITICAL RELATIONSHIP (RATIO) WITH DEVELOPING COUNTRIES* 121

Reviews and Reports:

Alexander Tevdoy-Burmuli, *IS A RUSSIAN POLITICAL NATION POSSIBLE? THE VIEW OF A MODERN RUSSIAN NATIONALIST (REVIEW OF SERGEEV S. RUSSIAN NATION, OR THE STORY OF THE HISTORY OF ITS ABSENCE. – MOSCOW, TSENTRPOLIGRAF, 2025. – 575 P. – IN RUSSIAN)* 155

Jarosław Turłukowski, *REPORT FROM THE 15TH INTERNATIONAL SCIENTIFIC AND PRACTICAL CONFERENCE ON ADMINISTRATIVE LAW ENTITLED "VERWALTUNGSRECHT UND VERWALTUNGSPROZESSRECHT: AKTUELLER STAND UND KUNFTIGE HERAUSFORDERUNGEN"* 163

Michał Patryk Sadłowski, *REPORT ON THE 50TH ANNUAL CONFERENCE OF THE STUDY GROUP ON THE RUSSIAN REVOLUTION (SGRR), HELD AT NORTHUMBRIA UNIVERSITY, UNITED KINGDOM* 165

Jarosław Turłukowski, *REPORT FROM 10TH ASIAN CONSTITUTIONAL LAW FORUM (ACLF) ENTITLED "CONSTITUTIONAL CHANGE IN ASIA IN THE 21ST CENTURY"* 167

Editor's Note

Dear Readers,

It is with great pleasure that I present to you the second issue of this year – and the sixth overall – of the legal journal The Warsaw East Law Review.

As in the previous issue, all articles, reviews and conference announcements have been published in English. The present volume is quite diverse in terms of subjects it addresses. In addition, it has brought together scholars from a range of countries, reflecting a growing tradition within our journal.

Although the journal has, from the very beginning, addressed a wide range of topics, including history, political science, and geopolitics, it remains primarily a legal publication. Accordingly, it is to our satisfaction that this issue is predominantly devoted to articles in the field of law. These include an article by Oleksiy Kresin "From 'a crisis' to 'the effective control': the problem of qualification of the Russian invasion in Ukrainian and international law in 2014-2022," an article by Ekaterina Mishina "Lost cause: an attempt to establish the primacy of international law in post-Soviet Russia," and an article by Veronica Cheptene "The right to liberty and security of the person: national regulations of the Republic of Moldova, standards, and violations." It is particularly noteworthy that this issue includes two research articles by scholars from Kazakhstan, as research on Kazakhstani law remains relatively little-known in Europe. These are the article co-authored by Fariza Abugaliyeva and Mira Zhaskairat, "Women's entrepreneurship as a form of family entrepreneurship," and the article by three authors, Abai Magauiya, Aiman Omarova, and Madina Tuktibayeva entitled "Copyright concerns in artificial intelligence training: a legal perspective." In fact, Vasily Zagretdinov's article "The Rule of Law as the Constitutional Identity of the European Union" should also be included in this group.

On the other hand, legal, political and religious topics are addressed in Olga Minnik's article "The Jurisdiction of the Estonian Orthodox Church of the Moscow Patriarchate: Theological and Legal Problems or Kremlin Politics?". Topics from several different fields, such as history and geopolitics are discussed in Anna Vardanyan's article entitled "The Western Border Policy and its Geopolitical Relationship (Ratio) with Developing Countries."

As is our tradition, the issue concludes with a section of book reviews. Alexander Tevdoy-Burmuli authored a review entitled "Is a Russian Political Nation Possible? The View of a Modern Russian Nationalist" (review of Sergeev S. Russian Nation, or the Story of the History of Its Absence. – Moscow, Tsentrpoligraf, 2025. – 575 p. – in Russian).

In addition, several short notices of scientific events by M. Sadłowski and J. Turłukowski have been included in the issue.

I warmly encourage you to contribute and
submit your own original research for future issues.

Editor-in-Chief of The Warsaw East Law Review
Dr. Jarosław Turłukowski
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From “a crisis” to “the effective control”: the problem of qualification of the Russian invasion in Ukrainian and international law in 2014–2022

Abstract

The author studies the problem of legal qualification of Russian invasion to Ukraine in the context of the core quasi-legal Russian official thesis on the “self-determination of peoples of Ukraine”. He shows that this thesis, characteristic of Russian legislation, diplomacy, and propaganda, is a carefully crafted intellectual construct, based on the systematic falsification of the history of Ukraine and Eastern Europe and ethno-political concepts, the skillful manipulation of complex and not fully agreed issues that fall into the so-called “gray zone” of international law, and masterly exploitation of the insufficiency, complexity, duration, and even unavailability of the mechanisms of international judicial, quasi-judicial, and political qualification of the actions of the Russian Federation. The evolution of the legal qualification of the events in Crimea and Donbas in the Ukrainian legislation, international agreements and resolutions of international organizations is analyzed. The author shows that the legal qualification of the Russian aggressive war both in Ukrainian national and in international law had been ambiguous for a longer period because of different political and diplomatic motives. This was also connected with a disguised character of the Russian invasion, seemingly as a means to protect the ‘self-determination of peoples of Ukraine’, which has created legal complexity and misunderstanding from many states. This ambiguity and vagueness have created a potential for understanding the conflict as a non-international one, at least ab *initio*, thus for legitimation of aggression and impunity of Russia. The author proves that the 2020 and 2022 decisions of the ECHR finally solved the dilemma, providing a detailed and fundamentally argued picture of the Russian official and disguised actions, and unequivocal qualification of the conflict as international one originating from the Russian aggression.

Keywords: Russian aggressive war against Ukraine, international conflict, non-international conflict, propaganda, effective control, occupation, aggression.

Russia's "self-determination" thesis

"Self-determination of peoples" became the only quasi-legal by its character thesis elaborated by Russia to legitimate the aggression against Ukraine. Other theses, like the protection of compatriots or the defense of a security grey zone around Russia, lack even imaginary legal character. Russia insists on two somewhat contradictory modes of self-determination thesis: (a) Ukrainians are a part of Russian people and their desire to "reunite" with Russia is obvious and natural, and they have never shown a will to establish an independent Ukrainian state; (b) every major administrative unit of Ukraine is inhabited by a separate people that has a right to self-determination.

The thesis of "self-determination of the peoples of Ukraine", consistently promoted in Russian political, legal, diplomatic and propaganda discourses, despite its apparent absurdity for any educated person, is a carefully crafted intellectual construct, based not only on the systematic falsification of the history of Ukraine and Eastern Europe and ethno-political concepts. It also builds on the skillful manipulation of complex and not fully agreed issues that fall into the so-called "gray zone" at the junction of international security law, international human rights law, international humanitarian law and other branches of international law.

Also, it is important and obvious that the authors and promoters of this thesis count on the insufficiency, complexity, duration, and even unavailability in the context of Russian aggression of the mechanisms of international judicial, quasi-judicial and political qualification of the actions of the Russian Federation and of the disproof of the "self-determination of the peoples of Ukraine" proclaimed by it.

The primitivization or ignoring of this thesis as obviously null and void, characteristic of Ukrainian science and the expert environment, does not create a basis for understanding its roots, structure, or manipulative appeal to the norms of international law. Neither does it make it possible to understand the ways in which this thesis affects the official positions of many states, the mechanisms of its weaving into the current agenda and modes of thinking of the non-Western world, its mobilization potential for the Russian consumer of information.

In particular, Russia is trying to justify its aggression as an allegedly forced intervention to protect the "self-determination of the peoples of Ukraine", and also – in connection with this but without any consistency – to protect Russian citizens, ethnic Russians, the Russian-speaking population, human rights in general, avoid a humanitarian catastrophe, restore the constitutional order, self-defense, etc. Insufficient awareness of representatives of foreign governments and societies of the real course of events in the war between Ukraine and

Russia, together with other factors, certainly forms a favorable ground for the spread and rooting of Russian propaganda theses.

If "self-determination of the peoples of Ukraine" is considered real, the conflict is initially non-international, internal, civic. Hence, the "new independent states" were real and could decide to access Russia. THerefore not Russia, but Ukraine is the aggressor. And Ukraine is "failed", it is no longer the internationally recognized state we know but some lands controlled by "Kyivan nazi regime" (proclaimed by Russia to be illegal, originating from the "coup") in conflict with "new independent states" and then invading Russian territories. And so on. That is why the meticulous legal qualification is crucial at this point, as well as the understanding of all challenges and problems of past qualifications.

2. Problems of legal qualification of events in Crimea and Donbas in Ukrainian legislation and international law[1]

The direct annexation of the Autonomous Republic of Crimea and the city of Sevastopol by Russia in 2014 simplified the qualification of the relevant events in Ukrainian legislation and acts of international law of a recommendatory nature. And even in this case, the legal qualification of the events by an international judicial institution – the ECHR – had to wait until 2020.

Instead, the question regarding the qualification of the events in Donbas turned out to be more difficult considering the establishment and long-term existence of the "Donetsk People's Republic" and the "Luhansk People's Republic". The "republics", despite their obvious falsity, had the main formal attributes of states, while at the same time not completely renouncing being part of Ukraine, and Russia tried to achieve their recognition as political entities formed as a result of the will of the population (or peoples) of certain districts of the Donetsk and Luhansk regions (ORDLO). Accordingly, Russia also sought to prove and legally consolidate the seemingly internal, non-international nature of the conflict in Ukraine, and to present itself as a mediator.

In this regard, the qualification of the status of the ORDLO territory in the legislation of Ukraine must be considered chronologically and depending on the types of regulatory legal acts. After all, in 2014-2017, a significant difference can be observed between the these types in the qualification of the nature of the conflict in this territory. Changes in the qualification of events in Donbas during 2014 - 2021 are also obvious.

1 Published in part in: O.V. Kresin, The United Nations General Assembly Resolutions. Their Nature and Significance in the Context of the Russian War against Ukraine / Ed. by W.E. Butler, Hannover, Stuttgart, 2024; O.V. Kresin (ed.), Peacekeeping Operations in Ukraine / Transl. and ed. by W.E. Butler, London, 2019; O.M. Stoyko, I.O. Kresina, O.V. Kresin, Відродження постконфліктних територій: світовий досвід і Україна: наукова записка, Київ, 2020; O.V. Kresin (ed.), Міжнародно-правові засади миротворчої діяльності міжнародних регіональних організацій у контексті відновлення територіальної цілісності України: наукова записка, Київ, 2019; O. Kresin, I. Kresina Illegal control over the territory in international law and the status of Donbas determination, "Przegląd Strategiczny", Iss. 14, 2021.

2.1. Ukrainian legislation of 2014 – 2017

The Law of Ukraine "On the Administration of Justice and Criminal Proceedings in Connection with the Anti-Terrorist Operation" of 2014 defined the territory of the ORDLO as "the area of the anti-terrorist operation". It recognized the impossibility of administering justice by some courts (Article 1) and the impossibility of conducting a pre-trial investigation (Article 2).[2]

According to the Law of Ukraine "On the Special Procedure for Local Self-Government in Certain Districts of Donetsk and Luhansk Regions" of 2014, the aforementioned procedure was established temporarily with a date of its termination. The territory of application of the law, which was called "certain districts of Donetsk and Luhansk regions", was to be determined by a decision of the Verkhovna Rada of Ukraine (Article 1). The conflict in this territory is called "events that took place in Donetsk and Luhansk regions" (Article 3).[3] In the same year, the "List of settlements in the territory of which state authorities temporarily do not exercise their powers at all or to the full extent" was approved by order of the Cabinet of Ministers of Ukraine.[4]

The conflict is simply defined as a "situation" in the ORDLO by the Law of Ukraine "On the Creation of Necessary Conditions for the Peaceful Settlement of the Situation in Certain Areas of the Donetsk and Luhansk Regions" No. 2167-VIII of 6 October 2017.[5]

Only one resolution of the Verkhovna Rada of Ukraine met the qualifications in the laws of this period – "On approval of appeals on behalf of Ukraine to the United Nations Security Council and the Council of the European Union regarding the deployment of an international peace and security operation on the territory of Ukraine" (2015). It called the conflict "a crisis situation that has developed in certain areas of the Donetsk and Luhansk regions".[6]

All other resolutions since 2015 have contained significantly different qualifications of the conflict and the status of the ORDLO. In particular, in the resolutions "On the

2 Закон України «Про здійснення правосуддя та кримінального провадження у зв'язку з проведенням антитерористичної операції» №1632-VII від 12.08.2014 р. URL: https://zakon.rada.gov.ua/laws/show/1632-18/ed20140812#Text

3 Закон України «Про особливий порядок місцевого самоврядування в окремих районах Донецької та Луганської областей» №1680-VII від 16.09.2014 р. URL: https://zakon.rada.gov.ua/laws/show/1680-18/ed20140916#Text

4 Розпорядження Кабінету Міністрів України від 07.11.2014 № 1085-р. «Про затвердження переліку населених пунктів, на території яких органи державної влади тимчасово не здійснюють або здійснюють не в повному обсязі свої повноваження». URL: https://zakon.rada.gov.ua/laws/show/1085-2014-%D1%80/ed20141107#Text

5 Закон України «Про створення необхідних умов для мирного врегулювання ситуації в окремих районах Донецької та Луганської областей» №2167-VIII від 6 жовтня 2017 р. URL: https://zakon.rada.gov.ua/laws/show/2167-19#Text

6 Постанова Верховної Ради України «Про схвалення звернень від імені України до Ради Безпеки Організації Об'єднаних Націй та Ради Європейського Союзу стосовно розгортання на території України міжнародної операції з підтримання миру і безпеки» №253-VIII від 17.03.2015 р. URL: https://zakon.rada.gov.ua/laws/show/253-19#Text

Appeal to the UN, the European Parliament, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, the GUAM Parliamentary Assembly, and national parliaments of the world on the recognition of the Russian Federation as an aggressor state" of 2015[7] and "On the Statement of the Verkhovna Rada of Ukraine "On the recognition by Ukraine of the jurisdiction of the International Criminal Court over the commission of crimes against humanity and war crimes by senior officials of the Russian Federation and leaders of the terrorist organizations 'DPR' and 'LPR', which led to particularly grave consequences and mass murder of Ukrainian citizens" adopted in the same year[8] it was determined that the ORDLO is an occupied territory and at the same time under the control of the terrorist organizations 'DPR' and 'LPR', which are supported (material support, supply of weapons, equipment and manpower) by the Russian Federation. The latter, in this and other forms, carries military aggression against Ukraine (also armed aggression, undeclared war).

According to the Resolution of the Verkhovna Rada of Ukraine "On the Recognition of Certain Districts, Cities, Towns and Villages of Donetsk and Luhansk Regions as Temporarily Occupied Territories" No. 254-VIII of 17 March 2015, the ORDLO was recognized as temporarily occupied territories – "until the withdrawal of all illegal armed formations, Russian occupation troops, their military equipment, as well as militants and mercenaries from the territory of Ukraine and the restoration of full control of Ukraine over the state border of Ukraine".[9]

The Resolution "On the Declaration of the Verkhovna Rada of Ukraine "On Repelling the Armed Aggression of the Russian Federation and Overcoming Its Consequences" of 2015 calls the establishment of the "DPR" and "LPR" in April 2014 the second (after the occupation of Crimea) phase of the armed aggression (and aggressive war) of the Russian Federation against Ukraine, carried out by armed bandit formations (or mercenary formations) controlled, directed and financed by the Russian special services, as well as systematically reinforced by its irregular armed formations, Russian mercenaries from among the military personnel of the Russian Armed Forces released into the reserve. It also indicated the systematic supply of weapons and military equipment to them by Russia.

7 Постанова Верховної Ради України «Про Звернення Верховної Ради України до Організації Об'єднаних Націй, Європейського Парламенту, Парламентської Асамблеї Ради Європи, Парламентської Асамблеї НАТО, Парламентської Асамблеї ОБСЄ, Парламентської Асамблеї ГУАМ, національних парламентів держав світу про визнання Російської Федерації державою-агресором» № 129-VIII від 27.01.2015 р. URL: https://zakon.rada.gov.ua/laws/show/129-19#Text

8 Постанова Верховної Ради України «Про Заяву Верховної Ради України «Про визнання Україною юрисдикції Міжнародного кримінального суду щодо скоєння злочинів проти людяності та воєнних злочинів вищими посадовими особами Російської Федерації та керівниками терористичних організацій "ДНР" та "ЛНР", які призвели до особливо тяжких наслідків та масового вбивства українських громадян» № 145-VIII від 04.02.2015 р. URL: https://zakon.rada.gov.ua/laws/show/145-19#Text

9 Постанова Верховної Ради України «Про визнання окремих районів, міст, селищ і сіл Донецької та Луганської областей тимчасово окупованими територіями» № 254-VIII від 17.03.2015 р. URL: https://zakon.rada.gov.ua/laws/show/254-19#Text

Since 27 August 2014, the third phase of armed aggression has been ongoing – a massive invasion of the territory of Donetsk and Luhansk regions by special forces and regular units of the Russian Armed Forces.

When qualifying the crimes committed by Russian representatives, the Resolution referred in detail to acts of international humanitarian law. Ukraine declared the right to regain the occupied territories, to compensation for the damage caused to it, and bring to criminal responsibility those guilty of armed aggression and war crimes and crimes against humanity.[10]

The Resolution "On the Declaration of the Verkhovna Rada of Ukraine "On Ukraine's withdrawal from certain obligations defined by the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms" of 2015 indicated the armed aggression of the Russian Federation, which consists in the introduction of illegal armed formations (terrorist formations) led, controlled and financed by the Russian Federation, as well as Russian occupation troops, into the territory of the ORDLO.

This qualifies as the exercise of de facto occupation and control over the occupied part of the territory of Ukraine. The responsibility of the Russian Federation for the observance and protection of human rights in the occupied territories is determined both under international humanitarian law and international human rights law.[11]

2.2. Ukrainian legislation of 2018–2021

In 2018, the difference in interpretations in the legislation of Ukraine regarding the qualification of events in Donbas disappeared. In particular, the effect of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" of 2014,[12] which initially applied only to the Autonomous Republic of Crimea and the city of Sevastopol, was extended to the ORDLO in 2018.[13]

10 Постанова Верховної Ради України «Про Заяву Верховної Ради України "Про відсіч збройній агресії Російської Федерації та подолання її наслідків"» № 337-VIII від 21.04.2015 р. URL: https://zakon.rada.gov.ua/laws/show/337-19#Text

11 Постанова Верховної Ради України «Про Заяву Верховної Ради України «Про відступ України від окремих зобов'язань, визначених Міжнародним пактом про громадянські і політичні права та Конвенцією про захист прав людини і основоположних свобод» № 462-VIII від 21.05.2015 р. URL: https://zakon.rada.gov.ua/laws/show/462-19#Text

12 Закон України «Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України» № 1207-VII від 15.04.2014 р. URL: https://zakon.rada.gov.ua/laws/show/1207-18/ed20140415#Text

13 In connection with the adoption of other law. See: Закон України «Про особливості державної політики із забезпечення державного суверенітету України на тимчасово окупованих територіях у Донецькій та Луганській областях» № 2268-VIII від 18.01.2018 р. URL: https://zakon.rada.gov.ua/laws/show/2268-19/ed20180118#Text. The function of the law no. 1207-VII was finally extended on all occupied territories of Ukraine only in the edition of 20 March 2022. See: Закон України «Про внесення змін до Закону України «Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України» у зв'язку з військовою агресією Російської Федерації проти України» № 2138-IX від 15.03.2022 р. URL: https://zakon.rada.gov.ua/laws/show/2138-20#Text

The law stated that "the presence in the territory of Ukraine of units of the armed forces of other states in violation of the procedure established by the Constitution and laws of Ukraine, the Hague Conventions of 1907, the IV Geneva Convention of 1949, as well as contrary to the Memorandum on Security Guarantees in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons of 1994, the Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation of 1997, and other international legal acts, constitutes the occupation of part of the territory of the sovereign state of Ukraine" (preamble).

Both in the title of the law and in its text, this occupation was defined as temporary. The temporarily occupied territory of Ukraine remains an integral part of the territory of Ukraine, to which the Constitution and laws of Ukraine apply (Article 1). The forced automatic acquisition of Russian citizenship by citizens of Ukraine residing in the temporarily occupied territory is not recognized by Ukraine and is not a basis for the loss of Ukrainian citizenship (Article 5).

State bodies and local self-government bodies established in accordance with the Constitution and laws of Ukraine, their officials and service personnel in the temporarily occupied territory shall act only within the limits of their powers and in the manner provided for by the Constitution and laws of Ukraine (Article 9). Any bodies, their officials and service personnel in the temporarily occupied territory and their activities shall be considered illegal if these bodies or persons are established, elected or appointed in a manner not provided for by law; any act (decision, document) issued by such bodies and/or persons shall be invalid and shall not produce legal consequences (Articles 9, 11).

According to this law, "responsibility for violation of the rights and freedoms of a person and a citizen defined by the Constitution and laws of Ukraine in the temporarily occupied territory rests with the Russian Federation as the occupying state in accordance with the norms and principles of international law" (Article 5). The Russian Federation is fully responsible for compensating for material and moral damage caused as a result of the temporary occupation to the state of Ukraine, legal entities, public associations, citizens of Ukraine, foreigners and stateless persons (Article 6).

Ukraine, for its part, declared that it will further guarantee the rights and freedoms of individuals and citizens in the temporarily occupied territories, and in particular through non-recognition of forced automatic acquisition of citizenship of another state, constant monitoring of the state of observance of the rights and freedoms of individuals and citizens in the temporarily occupied territory, appeal to international organizations in the field of human rights protection, and assistance in compensating for material and moral damage by Russia (Articles 5, 6).

Ukraine also reserved the implementation of a number of social rights of residents of the occupied territories (to employment, mandatory state social insurance in case of unemployment, in connection with temporary loss of working capacity, from an accident

at work and occupational disease that caused loss of working capacity, to the provision of social services).

At the same time, the payment of pensions to such citizens is provided only if they do not receive pensions and other social benefits from the authorized bodies of the Russian Federation, and in a separate procedure determined by the Cabinet of Ministers of Ukraine (Article 7). At the same time, certain rights of residents of the occupied territories are limited: elections of members of local councils and of village, town, city mayors are not held there (Article 8).

The Law of Ukraine "On the Peculiarities of the State Policy for Ensuring the State Sovereignty of Ukraine in the Temporarily Occupied Territories in the Donetsk and Luhansk Regions" No. 2268-VIII of 18 January 2018 states that the armed aggression of the Russian Federation began with undeclared and covert incursions into the territory of Ukraine by units of the Armed Forces and other agencies of Russia, irregular illegal armed formations, armed gangs and groups of mercenaries created, subordinated, controlled and financed by the Russian Federation, as well as through the organization and support of terrorist activities.

One of the consequences of the armed aggression of the Russian Federation became the temporary occupation and exercise of general control over part of the territory of Ukraine, which does not create any territorial rights on the part of Russia. At the same time, the occupation administration of the Russian Federation consists of its state bodies and structures, functionally responsible for the management of the temporarily occupied territories of Ukraine, and self-proclaimed bodies controlled by Russia, which have usurped the performance of public administration functions in the temporarily occupied territories of Ukraine. The activities of this administration are illegal, and the acts issued by it are invalid, except for documents confirming the fact of birth or death of a person in the temporarily occupied territories (Preamble, Articles 1, 2).

The Russian Federation is held responsible for material or non-material damage caused to Ukraine as a result of armed aggression (Article 6). Ukraine is not responsible for the illegal actions of the Russian Federation or its occupation administration in the temporarily occupied territories or for illegal decisions made by them (Article 6). To the contrary, the Russian Federation is responsible for violations of the protection of the rights of the civilian population in accordance with international humanitarian law (Article 7).

The limits of the temporarily occupied territories of the ORDLO, according to the Decree of the President of Ukraine No. 32/2019 of 7 February 2019, "are determined by the actual line of demarcation of the parties".[14]

It should also be noted that in the case at the International Court of Justice regarding

14 Указ Президента України №32/2019 «Про межі та перелік районів, міст, селищ і сіл, частин їх територій, тимчасово окупованих у Донецькій та Луганській областях» від 07.02.2019 р. URL: https://www.president.gov.ua/documents/322019-26050

the downing of flight MH17 in 2014, Ukraine pointed to military and financial support from the Russian Federation for illegal armed formations in the ORDLO, which may indicate effective Russian control over this territory.[15] In Ukraine's applications against the Russian Federation submitted to the ECHR, Russia's control over the ORDLO was characterized as either de facto or effective.[16]

2.3. International law

The same vagueness and different interpretations as in Ukrainian legislation were characteristic of international law when qualifying the events in Donbas in the first years of Russian aggression.

The Minsk agreements of 2014-2015 **are of great importance for determining the parties to the conflict in eastern Ukraine and the status of the ORDLO.**

Their predecessor was the Statement following the results of the quadrilateral talks between the senior diplomatic representatives of Ukraine, the EU (High Representative), the USA and Russia in Geneva on 17 April 2014. According to the statement:

- the unnamed parties pledged to refrain from violence;
- all illegal military formations were to be disarmed, captured buildings were to be returned to their legal owners, occupied areas (streets, squares, etc.) were to be liberated;
- participants in the riots, except for those guilty of serious crimes, were guaranteed amnesty on condition that they vacate buildings and public places and surrender weapons;
- the participants agreed on the activities of the OSCE Special Monitoring Mission, which was to assist the authorities and local self-government bodies of Ukraine in the immediate implementation of the provisions of this statement, and pledged to support the efforts of this mission;
- an inclusive, transparent and credible constitutional process was to take place in Ukraine, which would include a nationwide dialogue involving all regions and political forces in order to work out amendments to the Constitution of Ukraine;
- the participants expressed their readiness to further discuss the issue of supporting economic and financial stability in Ukraine after the implementation of the provisions of the statement.[17]

15 Міжнародний Суд ООН в Гаазі: Україна проти Росії. 09.03.2017. URL: https://mtot.gov.ua/ua/mizhnarodnyj-sud-oon-v-gaazi-ukrayina-proty-rosiyi

16 Формулювання «ефективний контроль» в міждержавних заявах України проти Росії дає шанс вигравати справи в ЄСПЛ. 10.02.2017. URL: https://mtot.gov.ua/ua/ponyattya-efektyvnyj-kontrol-v-mizhderzhavnyh-zayavah-ukrayiny-proty-rosijskoyi-federatsiyi

17 Text of Joint Diplomatic Statement on Ukraine, "The New York Times", 17 April 2014.

It should be noted that the provisions of the statement did not apply to the territories of the Autonomous Republic of Crimea and the city of Sevastopol, annexed by Russia.

There were no other meetings in the "Geneva format". In my opinion, there were no parties interested in its existence, except for Ukraine. Yet, initiative was demonstrated to bring the EU back to the negotiating table, in particular to restore the 'Geneva format' or establish a new, expanded one. On 14 January 2016, the President of Ukraine Petro Poroshenko proposed a "Geneva Plus" negotiation format, which, in addition to the "Geneva format", was to include the states that were signatories to the 1994 Budapest Memorandum.[18] The European Parliament resolution of 4 February 2016 on the human rights situation in Crimea approved and supported the initiative to establish an international negotiation process "Geneva Plus" on the de-occupation of Ukrainian territories, which "should provide for the direct participation of the EU".[19] A public statement on this was made in December 2017 by the Minister of Foreign Affairs of Poland, Witold Waszczykowski.[20] Instead, back in 2014, after the conclusion of the first Minsk agreement, Russia rejected in principle the possibility of returning to the "Geneva format", insisting on direct negotiations between Ukraine and the "DPR" and "LPR".[21]

The Minsk agreements became bilateral international agreements mediated by the OSCE and confirmed by the UN Security Council. With the help of these agreements, Russia tried to avoid responsibility for its disguised aggression against Ukraine in the Donetsk and Luhansk regions and occupation of these territories, and to achieve international recognition of the non-international nature of the conflict in Ukraine, the essence of which is the fake "expression of the will of the population of Donbas".

On the other hand, Ukraine, under the influence of the use of force and the threat of force by Russia, as well as pressure from European states, was forced to participate in such a negotiation process and be a party to the Minsk agreements. However, Ukraine's position was primarily to prevent the recognition of the "DPR" and "LPR" as real political entities, as well as their "expression of will".

The very first agreement of 5 September 2014, "Protocol on the Results of the Consultations of the Trilateral Contact Group…", referred to two parties to the conflict. They were not named, but the authorized parties specified in the document were Ukraine and the Russian Federation. They, together with the OSCE Ambassador, were the two authorized signatories. It is clear that the "persons", "illegal military formations", "militants"

18 Президент пропонує новий формат переговорів із деокупації Криму, "Українська правда", 14 січня 2016 р. URL: https://www.pravda.com.ua/news/2016/01/14/7095393/

19 European Parliament resolution of 4 February 2016 on the human rights situation in Crimea, in particular of the Crimean Tatars (2016/2556(RSP). URL: http://www.europarl.europa.eu/doceo/document/TA-8-2016-0043_EN.html

20 Ващиковський: Женевський формат дав би Донбасу шанс на мир. Укрінформ. 04.12.2017. URL: https://www.ukrinform.ua/rubric-polytics/2357154-vasikovskij-vvazae-so-zenevskij-format-dav-bi-donbasu-sans-na-mir.html

21 Лавров назвав "женевський формат" минулим, "Українська правда", 19 листопада 2014. URL: https://www.pravda.com.ua/news/2014/11/19/7044703/

and "mercenaries" mentioned in the agreement could not be recognized as parties to the conflict and parties to the agreement.[22]

The subsequent "Memorandum on the Implementation of the Provisions of the Protocol on the Results of the Consultations of the Trilateral Contact Group …", dated 19 September 2014, indicated the withdrawal from the territory of Ukraine of "foreign military formations… militants and mercenaries," which emphasized the international element in the conflict. At the same time, the mention of "representatives of certain districts of Donetsk and Luhansk regions" in the document is a rather complex formulation; yet, it did not imply the recognition of these districts as a party to the conflict, since the format of the Trilateral Group was not changed, the document itself had a subordinate meaning to the agreement of 5 September, and the role of "representatives of districts" was reduced to technical functions.[23]

Instead, the "Complex of Measures for the Implementation of the Minsk Agreements" of 12 February 2015 named the Ukrainian troops and "armed formations of certain districts of the Donetsk and Luhansk regions of Ukraine" as the parties to the military confrontation. Ukraine also undertook to consult with "representatives of certain districts of the Donetsk and Luhansk regions" to achieve a "comprehensive political settlement" and to coordinate with them the legal regulation of local self-government and the organization of elections to local self-government bodies in these districts.

The agreement declared the need for Ukraine to fully restore social payments in the ORDLO, including pensions, although it indicated that Ukraine did not control this territory. This document noted the need to adopt certain temporary legal norms (even before Ukraine restored control over the ORDLO) regarding the "procedure of local self-government", and later permanent legislation regarding the special status of the ORDLO.

After the restoration of Ukrainian control over the ORDLO, the following features of the exercise of the rights of the population of these territories were envisaged: amnesty; "the right to linguistic self-determination"; participation of local self-government bodies in the appointment of heads of prosecutors' offices and courts within the ORDLO; the possibility of contractual relations between central executive bodies and local self-government bodies of the ORDLO regarding economic, social and cultural development; "the creation of people's militia units by decision of local councils in order to maintain public order"; the powers of members of local councils and officials elected in early elections in the ORDLO after the restoration of Ukrainian power there could not be terminated early.

22 Протокол по итогам консультаций Трехсторонней контактной группы относительно совместных шагов, направленных на имплементацию Мирного плана Президента Украины П. Порошенко и инициатив Президента России В. Путина. 5 сентября 2014 г. URL: https://www.osce.org/ru/home/123258

23 Меморандум об исполнении положений Протокола по итогам консультаций Трехсторонней контактной группы относительно шагов, направленных на имплементацию Мирного плана Президента Украины П. Порошенко и инициатив Президента России В. Путина. 19 сентября 2014 г. URL: https://www.osce.org/files/f/documents/a/1/123807.pdf

However, it was not specified who the "armed formations of certain districts of Donetsk and Luhansk regions of Ukraine" are subordinate to, who are the "representatives of certain districts of Donetsk and Luhansk regions". It was confirmed that the ORDLO is part of Ukraine, the format of the Trilateral Group was not changed, the indication of the need to withdraw foreign armed formations and mercenaries from the territory of Ukraine remained, and the disarmament of "all illegal groups" was envisaged.[24]

The Minsk agreements and the approaches they provided to understanding the essence of the events in Donbas were supported by UN Security Council resolutions. Security Council Resolution No. 2166 of 21 July 2014 recognized that the crash site of the MH-17 plane and the surrounding area were controlled by armed groups carrying out military activities.[25] Security Council Resolution No. 2202 of 17 February 2015 reaffirmed respect for the sovereignty, independence and territorial integrity of Ukraine. Calling the events in the Donetsk and Luhansk regions a crisis, it supported the "Complex of Measures for the Implementation of the Minsk Agreements" of 12 February 2015.[26]

The ***UN General Assembly resolutions*** until 2022 did not address the issue of Russian aggression outside the territory of Crimea and the territorial waters of Ukraine in the Black and Azov Seas. However, in the context of my research, the 2014 UNGA "Crimean" resolution should be mentioned as an example of the simultaneous non-recognition of the "self-determination of the peoples of Ukraine", the search for internal causes of the conflict, and the refusal to name its parties.

The first and basic resolution of the UN General Assembly, which reflected the position of the majority of UN member states regarding Ukraine in the context of Russian aggression, was "Territorial Integrity of Ukraine", which was adopted on 27 March 2014. It indicated in a very cautious style:

- the need to "de-escalate the situation";
- the need for an "inclusive political dialogue" within Ukrainian society;
- that the "referendum" of 16 March 2014 in the Autonomous Republic of Crimea and the city of Sevastopol was invalid, its results should not be recognized and it can't serve as a basis for changing the status of these administrative-territorial units;
- a call "on all states" to abandon and refrain from actions aimed at violating the national unity and territorial integrity of Ukraine;
- a call on "all parties" to immediately begin seeking a peaceful solution to the "situation regarding Ukraine" through direct political dialogue;
- the need for continued efforts by the UN and OSCE to assist Ukraine in protecting minority rights;
- the confirmed commitment of UN member states to the independence and territorial integrity of Ukraine.

At the same time, the resolution emphasized such principles as refraining from threats to use force and its actual use against other states; non-recognition of territorial changes resulting from such threats or use of force; and the resolution of international disputes by peaceful means.[27]

Opening the discussion on the draft resolution, the representative of Ukraine, Andrii Deshchytsia, referred in particular to the principles of territorial integrity of states and the refusal to use force to resolve disputes. He noted that the draft resolution "does not break any new legal or normative principles. Yet it sends a crucial message that the international community will not allow what has happened in Crimea to set a precedent for further challenges to our rules-based international framework". Despite the fact that he defined the events in general as a "situation" that grossly violates international law, the speech directly points to the military occupation and forcible annexation of Crimea, the existing and potentially even broader aggression of the Russian Federation against Ukraine.[28]

The qualification of the conflict in eastern Ukraine and the related status of the ORDLO was contained in the ***resolutions of the Parliamentary Assembly of the Council of Europe***. PACE Resolution No. 2132 (2016) of 12 October 2016 "Political consequences of the Russian aggression in Ukraine" emphasized that this aggression began in 2014 and led to a violation of the sovereignty and territorial integrity of Ukraine. The forms of this external aggression were the illegal annexation of Crimea and "support for separatists in eastern Ukraine and its [Russian Federation's] growing role in the ongoing conflict". The resolution pointed out the presence of Russian troops, mercenaries and weapons in eastern Ukraine and Russia's military supply to "separatists".[29]

PACE Resolution No. 2133 (2016) of 12 October 2016, "Legal remedies for human rights violations in the Ukrainian territories outside the control of the Ukrainian authorities," referred to the "military intervention by Russian forces in eastern Ukraine," which violates international law.

It was noted that the self-proclaimed "DPR" and "LPR" were created, supported and effectively controlled (and de facto controlled) by the Russian Federation and have no legitimacy under international law. The same applies to their "institutions", including

24 Комплекс мер по выполнению Минских соглашений. 12 февраля 2015 г. URL: https://www.osce.org/files/f/documents/5/b/140221.pdf See also: Мінські угоди: юридичний статус та обов'язковість виконання. 20.01.2017. URL: https://mtot.gov.ua/ua/minski-ugody-yurydychnyj-status-ta-obov-yazkovist-vykonannya

25 Resolution 2166 (2014). Adopted by the Security Council at its 7221st meeting, on 21 July 2014. URL: file:///C:/Users/User/Downloads/S_RES_2166(2014)-EN.pdf

26 Resolution 2202 (2015). Adopted by the Security Council at its 7384th meeting, on 17 February 2015. URL: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2202.pdf

27 Territorial integrity of Ukraine. Resolution 68/262, adopted by the General Assembly on 27 March 2014. URL: https://digitallibrary.un.org/record/767883?ln=en&v=pdf

28 United Nations General Assembly. 68th session. 80th plenary meeting. Official records. A/68/PV.80. 27 March 2014.

29 Council of Europe. Parliamentary Assembly. Resolution 2132 (2016). Political consequences of the Russian aggression in Ukraine. URL: https://pace.coe.int/en/files/23166/html

"courts", established by the de facto authorities.

Effective control here is "based on the crucial and well-documented role of Russian military personnel in taking over and maintaining power in these regions, against the determined resistance of the legitimate Ukrainian authorities, and on the complete dependence of these regions on Russia for logistical, financial and administrative matters".[30] Notably, the report of the PACE Committee on Legal Affairs and Human Rights, which became the basis for Resolution No. 2133, contained even tougher formulations regarding the effective control of the Russian Federation over the ORDLO, noting the de facto authorities and their Russian puppet masters, etc.[31]

This Resolution pointed out the responsibility of the Russian Federation: "Under international law, the Russian Federation, which exercises de facto control over these territories, is responsible for the protection of their populations. Russia must therefore guarantee the human rights of all inhabitants of Crimea, and of the 'DPR' and the 'LPR'."

PACE called on the competent authorities of the Russian Federation to effectively investigate all cases of serious human rights violations in the territories under its effective control, punish the perpetrators, compensate the victims, stop the repression of persons loyal to the Ukrainian authorities, restore the rule of law and ensure the protection of fundamental human rights, independent monitoring of the situation in this sphere, meeting the minimum needs of the population in these territories, in particular by exerting influence on the de facto authorities. In addition, unrestricted access for representatives of international organizations and consular officers to convicted persons transferred from the occupied territories to the Russian Federation was demanded, along with the transfer of all willing convicts to serve the remainder of their sentences in Ukraine.

PACE also stressed that the amnesty provisions contained, in particular, in the Minsk agreements, "cannot justify impunity for the perpetrators of serious human rights violations."

At the same time, Ukraine was also left with some responsibility for protecting human rights in the ORDLO. A requirement was made to make life easier for residents of uncontrolled territories by reducing administrative obstacles to accessing their pensions and social benefits, as well as enabling their access to justice.[32]

As emphasized in the commentary of the Ministry for the Reintegration of the

30 Council of Europe. Parliamentary Assembly. Resolution 2133 (2016). Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities. URL: https://pace.coe.int/en/files/23167

31 Council of Europe: Parliamentary Assembly. Committee on Legal Affairs and Human Rights. Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities. Report. Rapporteur: Ms Marieluise Beck. 26 September 2016. Doc. 14139. URL: https://www.refworld.org/docid/5836f4394.html

32 Council of Europe. Parliamentary Assembly. Resolution 2133 (2016). Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities. URL: https://pace.coe.int/pdf/20d22932f59d66ff5a2dd4340a35fd4b6e328f033326667a8259ffe25682ae848428feba12/resolution%202133.pdf

Temporarily Occupied Territories of Ukraine on Resolution No. 2133, this is the first international document that recognized the Russian Federation as a party to the conflict and used the term "effective control" for this purpose.[33]

In Resolution No. 2198 of 23 January 2018, PACE defined the Russian aggression in the Donetsk and Luhansk regions as "the ongoing Russian war against Ukraine". These territories were defined as temporarily occupied; yet, they are controlled by illegal armed formations. The applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War to the Russian war against Ukraine was pointed out.[34]

It stressed human rights violations in the ORDLO by illegal armed formations, for which Russia is responsible. At the same time, PACE called on Ukraine to: ratify the Rome Statute of the International Criminal Court to conduct effective investigations into cases of violations of international humanitarian law during the war; amend the legislation to fully guarantee social protection and ensure the minimum humanitarian needs of the civilian population in the occupied territories; amend the law on humanitarian assistance to enable the delivery of humanitarian assistance to the territories affected by the war; introduce state programs to assist families of prisoners or missing persons in the occupied territories, provide psychological assistance to those suffering from post-traumatic stress disorder, compensation for the wounded and relatives of the killed; simplify the procedures for receiving social and pension payments; introduce administrative procedures for updating identity documents for residents of the occupied territories; ensure the rights of those who left Ukraine after the start of the war in order to eliminate the risk of statelessness.[35]

It should also be mentioned that the ***reports of the International Criminal Court*** in 2016-2019 indicated the examination of "allegations that the Russian Federation has exercised overall control over armed groups in eastern Ukraine" during part or all of the armed conflict.[36]

In the 2019 report on its preliminary investigations, the ICC noted that the mutual shelling of the parties' military positions and the capture of Russian servicemen by Ukraine and vice versa "assessed that direct military engagement between the respective armed forces of the Russian Federation and Ukraine, indicated the existence of an international armed conflict in eastern Ukraine from 14 July 2014 at the latest, in parallel to the non-international armed conflict" that has been ongoing since at least 30 April 2014 and to

33 Деякі роз'яснення щодо резолюції ПАРЄ від 12.10.2016. 07.02.2017. URL: https://mtot.gov.ua/ua/deyaki-roz-yasnennya-shhodo-rezolyutsiyi-parye-vid-12-10-2016

34 Council of Europe. Parliamentary Assembly. Resolution 2198 (2018). Humanitarian consequences of the war in Ukraine. 23 January 2018. URL: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24432&lang=en

35 Council of Europe. Parliamentary Assembly. Resolution 2198 (2018). Humanitarian consequences of the war in Ukraine. 23 January 2018. URL: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24432&lang=en

36 International Criminal Court. Report on Preliminary Examination Activities (2016). 14 November 2016. URL: https://www.icc-cpi.int/pages/item.aspx?name=161114-otp-rep-PE

which Ukraine, the "LPR" and the "DPR" are parties.[37] However, this statement and its context alone do not provide grounds to assert that it is an established fact.

3. Qualification of "self-determination" of Crimea and Donbas in ECHR decisions[38]

In its decisions of 2020 and 2022, the ECHR concluded that at the time of the organization and conduct of the "referendums" as alleged acts of implementation of "self-determination" of the Autonomous Republic of Crimea, Sevastopol, and parts of Donetsk and Luhansk regions, these territories were under the effective control (de facto occupation) of Russia – which excludes any possibility of the free expression of the will of the population.

3.1. The fact of Russia's illegal control was recognized by the ECHR in its decision on the case concerning the Crimean peninsula from 27 February to 18 March 2014, – that is, from the time of the seizure of the Verkhovna Rada of Crimea by Russian military personnel (without insignia) and the decision to hold a referendum until the proclamation of Crimea's official incorporation into the Russian Federation (***judgment of 2020 in joined cases No. 20958/14 and 38334/18***).

As the Court has noted, the exercise of jurisdiction by a state beyond its recognized borders is an exception to the rule, but the Court has already established a number of such exceptional circumstances in its previous decisions. Each case of such extraterritorial exercise of jurisdiction must be determined on the basis of the specific facts. In particular, these are cases where a state extends its authority abroad through a structure acting as its representative (agent).

One case is the effective control of a state over a certain territory beyond its borders, which is the result of legal or illegal military action and regardless of "whether it is exercised directly, through the Contracting State's (to the Convention. – O.K.) own armed forces, or through a subordinate local administration".

In each case, the existence of effective control over a territory is established by proving the fact, regardless of claims or declarations. If the fact of such domination is established, in particular the significant military presence of the state or the maintenance of a subordinate local administration through military or other assistance from the state, it is not necessary to

37 International Criminal Court. Report on Preliminary Examination Activities (2019). 5 December 2019. URL: https://www.icc-cpi.int/Pages/item.aspx?name=191205-rep-otp-PE

38 Partly published in: O.V. Kresin, Рішення ЄСПЛ щодо Криму 2020 р. і щодо Донбасу 2023 р.: юридична кваліфікація незаконного контролю РФ щодо території України, "Право України", 2023, No. 3; O.V. Kresin, Щодо незаконного контролю території в міжнародному праві у контексті війни російської федерації проти України, "Актуальні питання захисту національної державності та боротьби з тероризмом: Збірник матеріалів круглого столу", Київ, 2022.

prove the existence of direct control by the latter over the actions of such administration.[39]

The evidences of Russia's effective control over the Autonomous Republic of Crimea and the city of Sevastopol from 27 February to 18 March 2014 are as follows:

- a significant, unprecedented and unmotivated (motivated by unconfirmed statements made by the Russian side) increase in the personnel of Russian armed forces units and military equipment beyond those officially declared by Russia for 2014 without prior reasonable notification to Ukraine and consent from the latter, which created a quantitative and qualitative advantage of Russian units over Ukrainian ones;
- statement by the President of the Russian Federation V. Putin at the meeting of heads of force agencies on 22-23 February 2014 regarding "to start working on the return of Crimea to the Russian Federation";
- violation by units of the Russian armed forces in Crimea of the provisions of the Ukrainian-Russian treaties (implementation of police and law enforcement activities not provided for by the treaties outside the designated locations, lack of coordination of these activities with the Government of Ukraine, their continuation despite diplomatic notes of Ukraine);
- implementation by units of the Russian armed forces in Crimea of hostile military activities (participation in the seizure of government buildings and the establishment of new illegitimate local authorities; establishment of control over entry and exit points on the Crimean Peninsula, blocking and disarming units of the Armed Forces of Ukraine, forcible detention of Ukrainian servicemen).

In view of this, the ECHR considers all actions of any authorities in the Autonomous Republic of Crimea and Sevastopol after 27 February, including the "referendum" held on 16 March 2014, to be the activities of structures-agents of the Russian Federation.[40]

Accordingly, the ECHR qualified the legal basis of the jurisdiction of the Russian Federation over the Autonomous Republic of Crimea and the city of Sevastopol after 18 March 2014: "The Court will proceed on the basis of the assumption that the jurisdiction of the respondent State over Crimea is in the form or nature of 'effective control over an area' rather than in the form or nature of territorial jurisdiction", thus not recognizing the inclusion of Crimea into the territory of the Russian Federation and the transfer to the latter of sovereign rights over it.[41]

What follows from this decision for Ukraine:

- the illegitimate authorities in the Autonomous Republic of Crimea and Sevastopol, starting from 27 February 2014, are recognized as structures-agents of the Russian Federation;

39 European Court of Human Rights. Grand Chamber. Decision. Applications nos. 20958/14 and 38334/18 Ukraine v. Russia (re Crimea). Strasbourg, 16 December 2020. European Court of Human Rights. URL: https://hudoc.echr.coe.int/fre#_Toc87954933

40 Ibidem.

41 Ibidem.

- this date is recognized as the day of establishing effective control of the Russian Federation over the Autonomous Republic of Crimea and Sevastopol;
- from this day on, the Russian Federation is responsible for the actions of not only its official representatives, but also of the regional and local subordinate administration.
- The ECHR does not recognize either the "self-determination" or "independence" of the Autonomous Republic of Crimea and Sevastopol, nor their incorporation into the Russian Federation and the establishment of Russian territorial jurisdiction there on 18 March 2014, and continues to consider them territories over which the Russian Federation exercises its effective control.

3.2. In the ***interim decision (decision on the admissibility of the case) of the ECHR of 30 November 2022 (in joined cases Nos. 8019/16, 43800/14 and 28525/20)***, it was recognized that the Russian Federation exercised control over the ORDLO from 11 May 2014 (the date of the 'referendums') and until 26 January 2022 (the date of the last hearings with the participation of the parties). Ukraine demanded recognition of such control starting from March 2014, and during the consideration of the case – at least from April 2014.

The ECHR generalized the interpretation of the ratione loci principle (argument of place) – the Court's jurisdiction extends to cases concerning the ORDLO because this territory, when under control by a certain state, is "treated as being indistinguishable from areas within the controlling State's sovereign borders".[42]

The ECHR noted the "similarities in time, space and method" of the development of events in Crimea and the ORDLO, the involvement of partly the same individuals (such as I. Girkin, O. Borodai, etc.), due to which it defined the separatist movements in both cases as 'local' in quotation marks, some of the leaders of the 'separatists' as citizens or instruments of the Russian Federation, who acted on its instructions and in its interests, and also recognized the massive presence of Russian soldiers and senior officers in command positions in armed groups, units of regular Russian troops, irregular formations (in particular, the Cossacks) and mercenaries from the Russian Federation already at the early stage of the conflict, starting in April 2014.

The Court noted the supervision of Kremlin officials (in particular, V. Surkov) over the "separatist" groups, which was carried out on behalf of the Russian leadership. At the same time, the ECHR considers the large-scale deployment of Russian military units to have been proven only since August 2014. Therefore, the Court considers that the mere military participation or presence of the Russian Federation in the events in the ORDLO until August 2014 is not sufficient to define this as effective control by the Russian Federation.[43]

42 European Court of Human Rights. Grand Chamber. Decision. Case of Ukraine and the Netherlands v. Russia. Applications nos. 8019/16, 43800/14 and 28525/20. Strasbourg, 30 November 2022. European Court of Human Rights. URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-222889%22]}

43 Ibidem.

Therefore, the ECHR analyzed other criteria for exercising this control, which it had identified in earlier cases. In particular, this is *military support for the "separatists"*, which may consist in influencing their military strategy, supplying weapons and other equipment, training members of armed groups, artillery support, and deploying troops on the border of Ukraine.

The separatist leadership was partly composed of senior Russian officers and generally received orders from high-ranking Russian officials. The organized and coordinated supply of sophisticated weapons and military equipment across the section of the border with the Russian Federation that was not controlled by Ukraine was continued for many years. Some of these supplies would have been impossible without the help of the state (Russia), and this means that the Russian Federation had been carrying out large-scale military supplies since the very beginning of the "separatist administrations". The Court also considers the provision of artillery support by Russia for the military actions of the "separatists" to be proven.

The deployment of Russian troops near the border area not controlled by Ukraine in itself is not considered by the ECHR to be a sign of control over the ORDLO, but indicates the access of the "separatist administrations" to Russian military support and preparation for their deployment in the ORDLO. At the same time, the Court considers the military training of the "separatists" to be insufficiently proven; yet, the training of Russian soldiers near the border before their dispatch to the ORDLO is additional evidence of the Russian military presence[44].

The Court considered the "decisive role played by the Russian Federation in appointing individuals to leadership posts in the 'DPR', " the supervision exercised by V. Surkov over "the entire political mechanism of the separatist entities," the recognition by the Russian Ministry of Foreign Affairs of the "referendums" of 11 May 2014 and the "elections" in November 2014, aa well as Russia's veto in the UN Security Council of the creation of an independent international tribunal to punish those responsible for the downing of flight MH17 to be convincing signs of *political support for the "separatists"*.

Economic support for the "separatists", according to the ECHR decision, consisted in V. Surkov's coordination of the provision of financial resources to the "separatist administrations" and his supervision of the use of these resources, and the sending of significant "humanitarian convoys", which in many ways made possible the "economic survival of the separatist entities".[45]

Based on its consideration of the case, the ECHR concluded that in early April 2014, "disparate separatist armed groups," "with varying degrees of independence from one another," with more or less equal support and coordination from the Russian Federation (the General Staff of the Armed Forces or the FSB) began to seize buildings and settlements in eastern Ukraine. This led to the emergence of "area under the control of separatist armed groups".

44 Ibidem.

45 Ibidem.

However, in the Court's opinion, the full direction and coordination of the "separatist" operations by the Russian Federation can only be proven starting around 11 May 2014 in connection with the "referendums", which became "a critical step in the transition of the array of irregular armed groups into a single 'separatist administration'," formally divided into two entities – the "DPR" and the "LPR," and were also linked to the decision of the Russian Federation "to exert authority over the entirety of the area under separatist control and to bring separatist groups which had, until that point, been allowed for tactical reasons to operate somewhat independently back under a centralized command" (paragraph 693).

At the same time, as the ECHR notes, for the period before 11 May 2014, the issue of effective control by the Russian Federation should be resolved by studying the activities of individual armed groups and the geography of the spread of their control, and after this date one cannot refer to hostilities "in a context of chaos" that allegedly prevented the establishment of effective control over certain territories.[46]

The ECHR declared to be proven beyond reasonable doubt that "as a result of Russia's military presence in eastern Ukraine and the decisive degree of influence and control it enjoyed over the areas under separatist control in eastern Ukraine as a result of its military, political and economic support to the separatist entities, these areas were, from 11 May 2014 and subsequently, under the effective control of the Russian Federation" at least until the date of the last hearings before the Court on 26 January 2022 (paragraph 695).

Accordingly, in line with the *ratione loci* principle, the Court considers that, starting from 11 May 2014, the Russian Federation has extended its jurisdiction to the territory of the ORDLO (as well as the airspace above it), and the so-called "DPR" and "LPR" are considered its subordinate administrations (paragraphs 696, 697, etc. in the description of the case, paragraphs 2, 4 of the resolution). The Russian Federation is responsible for all acts and actions of the "separatists".[47]

Therefore, the "Republic of Crimea" until 18 March 2014, the "DPR" and the "LPR" in 2014-2022 cannot be considered states, but were only parts of the sovereign territory of Ukraine, over which the Russian Federation established its effective control through the imitation of state formation and using its subordinate administrations. Accordingly, their creation and accession to the Russian Federation were not the implementation of self-determination, but can only be qualified as annexation or an attempt at annexation.

Regarding parts of Zaporizhia and Kherson regions, the qualification should be carried out by analogy, but the issue is even simpler: the occupation of these territories by Russia and the appointment of occupation administrations there were carried out openly; therefore, the "expression of will" and the implementation of "self-determination" in these territories were impossible.

46 Ibidem.

47 Ibidem.

4. Conclusions

The problem of legal qualification of Russia's aggressive war against Ukraine is a complicated issue taking into account the thesis about "self-determination of peoples of Ukraine" which is central to Russian official and propaganda discourses.

The problem becomes even more intricate due to the fact that Ukrainian legislation in the first years of Russian aggression did not provide an unambiguous qualification of the essence of the events. While Russia's invasion of Crimea and its annexation were clearly defined back in 2014, the Ukrainian legislator took a dual position regarding the conflict in Donbas.

In the laws of Ukraine from 2014 to 2017, the disguised occupation of the ORDLO (semi-official acronym for Ukrainian territories controlled by Russia, from Ukrainian: "certain districts of Donetsk and Luhansk regions") was defined as a "crisis", "events", "situation"; there was no mention of the Russian Federation. At the same time, the resolutions of the Verkhovna Rada of Ukraine, starting from 2015, declared that the ORDLO was occupied by Russia or was in the hands of the terrorist organizations "DPR" ("Donetsk People Republic") and "LPR" ("Luhansk People Republic") under the effective control of the Russian Federation, and the latter was waging an aggressive war against Ukraine.

Since 2018, this discrepancy in the acts of the Ukrainian parliament has disappeared, and the legal regime of occupation developed for Crimea has also been extended to Donbas. This takes into account the hidden nature of the occupation, personified by "self-proclaimed bodies controlled by Russia that have usurped the exercise of power functions".

The extended lack of a clear qualification regarding the occupation of Donbas in Ukrainian laws – to some extent a "gray zone" that allowed one to assume the non-international nature of the conflict – can be explained both by the complicated foreign policy situation and hopes for a negotiated settlement of the conflict.

Both of these factors were reflected in the 2014 Geneva Statement on Ukraine released by the USA, EU, Ukraine and Russia and the 2014–2015 Minsk Agreements. In 2014, these documents generally avoided defining the parties to the conflict (of course, Ukraine was one of them), emphasizing the need for reconciliation and amnesty, an "inclusive constitutional process," and a "nationwide dialogue."

Thanks to the Geneva and then Minsk processes, Russia managed to divert international attention from the issue of the annexation of Crimea (which looked like a fait accompli), avoid raising the question of Russia's responsibility, and posit the events in the ORDLO as a non-international conflict, the basis of which is the crisis of power in Ukraine and the realization by the "Donetsk" and "Luhansk" peoples of their right to self-determination.

In 2015, in this set of agreements, the other side of the conflict was defined as "representatives of certain districts of Donetsk and Luhansk regions", and Ukraine recognized social responsibility for the population of Donbas. The autonomous status of the ORDLO

and the contractual nature of the government's relations with the local self-government bodies of the ORDLO were envisaged. All this together undoubtedly meant that Ukraine itself actually recognized the non-international (internal) character of the conflict and the internal self-determination of the population of Donbas.

Essentially, the basic UN General Assembly Resolution "Territorial Integrity of Ukraine" of 2014 had the same meaning. The declaration of support for the territorial integrity of the state and the non-recognition of Crimea's accession to Russia in this document were combined with a search for the internal causes of the conflict, avoidance of naming its parties, and a call for "inclusive political dialogue" in Ukraine. It is clear, again, that this meant the actual recognition of the non-international nature of the conflict (at least in its initial phase) and the existence of self-determination processes or grounds for them.

Political acts such as the resolutions of the Parliamentary Assembly of the Council of Europe in 2016 and later were also inconsistent. These were the first international acts that proclaimed the international character of the conflict and at least partial responsibility of Russia for the events in the ORDLO ("support for separatists", and later the establishment of effective control). At the same time, these acts insisted on preserving Ukraine's social responsibility for the population of Donbas – which may indicate the non-international nature of the conflict.

The International Criminal Court took the same inconsistent position, which in its investigation reports indicated the primacy of the non-international conflict in eastern Ukraine (i.e. between government troops and "separatists") and only assumed that Russia later entered this conflict on the side of the "LPR" and "DPR".

It was the decisions of the European Court of Human Rights in 2020 and 2022 that for the first time provided an unambiguous qualification of the conflict in Crimea and the ORDLO as international, in fact declaring the "self-determination of the peoples of Ukraine" null and void and falsified. The decisions of the ECHR became the most detailed and impartial consideration from the standpoint of international and European law of the events of 2014-2022 in part of the occupied regions – the Autonomous Republic of Crimea, city of Sevastopol, certain areas of the Donetsk and Luhansk regions; these decisions also contain established approaches to assessing the events in parts of the Zaporizhzhia and Kherson regions.

The decisions prove that no self-determination of the population (even beyond the issue of the absence of a self-determination subject) took place in these territories in 2014 and 2022. Instead, the Russian Federation exercised illegal control over these territories and directed the actions of its subordinate occupation administrations, which were not democratically elected, nor did they reflect the will of the population. The criteria for this were: a significant presence of Russian troops along with the formation and preservation of subordinate local administrations thanks to military, political, and economic decisions and support from Russia.

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Lost cause: an attempt to establish the primacy of international law in post-Soviet Russia

Abstract

The Soviet legal system was protected from any direct influence of international law by the doctrine of transformation. Provisions of international law in the Russian Constitution of 1993 reflect the desire of the newly democratic Russia to become an open and law-abiding member of the international community. Sadly, the great achievements of the 1990s were later destroyed. Valery Zorkin, Chief Justice of the Constitutional Court, and the Constitutional Court itself, played a significant role in this process. Disruption to the primacy of international law in Russia was finalised by the constitutional amendments of 2020.

Keywords: primacy of international law, the doctrine of transformation, the European court of Human Rights, the Russian Constitutional Court, Constitution of the Russian Federation

The former Soviet Union never considered international law to be something that might be invoked before, and enforced by, its domestic courts[48]. The 1977 USSR Constitution did not allow the direct operation of international law in the domestic setting. Although the 1977 Constitution proclaimed that the relations of the USSR with other states should be based on the principle of „fulfillment in good faith of obligations arising from the generally recognized principles and rules of international law, and from international treaties signed by the USSR"[49], this broad clause was never interpreted as a general incorporation of international norms into Soviet domestic law. The application of international norms was envisaged in some exceptional cases of statutory references to international treaty law, but as a general constitutional principle the Soviet legal order remained closed to international legal norms[50].

48 G.M. Danilenko, ‚The New Russian Constitution and International Law', (1994) 88(3) American Journal of International Law, pp. 451-470

49 Art. 29 of the Constitution of the USSR (1977). Available at Constitution of the USSR 1977.

50 G.M. Danilenko, op.cit, p. 458.

The Soviet legal system was protected from any direct penetration of international law by its conception of international law and domestic law as being two completely separate systems. As a result of this dualist approach, the international obligations of the Soviet state would be applicable internally only if they were transformed by the legislature (the Supreme Soviet of the USSR) into a separate statute or administrative regulation. By relying on this **"doctrine of transformation"** the Soviet Union was able to sign numerous international treaties, including treaties on human rights, and still avoid implementing some or all of their provisions in the domestic legal order.[51]

The lack of a constitutional rule providing for direct incorporation of international law into Soviet domestic law was by no means accidental. This state of affairs reflected the longstanding isolationist tendency of Soviet society in general, and of the Soviet legal system in particular. In the early years of the Soviet state, distrust of international law was explained by the prevailing ideology, which aimed at destroying the existing world order. The 1918 Constitution of Soviet Russia reflected these attitudes by proclaiming that the goal of the Russian Socialist Federative Soviet Republic was to establish „a socialist organisation of society and the victory of socialism in all countries."[52]. The 1924 Constitution of the USSR provided that from the moment the Soviet republics were established, the states of the world would be split into two camps - the capitalist camp and the socialist camp. The 1924 Constitution also mentioned „the capitalist encirclement of the Soviet republics"[53]. The founding of the Soviet Union was considered „a new decisive step on the way to uniting the working people of all countries in a World Socialist Soviet Republic".[54]

The Soviet Union also rejected some generally accepted principles of contemporary international law and did not allow the direct incorporation of international law into its domestic legal order. The movement toward reform of the „closed" legal system only began with the advent of *perestroika*. The leaders of the Soviet Union realised that the country would have no prospects for further economic and social development unless a modern society based on the rule of law was built in the USSR. An important element of the political and legal reform was the recognition that the country would never be fully integrated into the world community if it did not ensure the observance of internationally accepted norms, in particular norms concerning human rights.[55]

In 1993, the new Constitution of post-Soviet Russia manifested the country's departure from Soviet dictatorship and, inter alia, completely transformed the role of international law. Russia's attitude towards international law underwent fundamental changes. The 1993 Constitution contains an unprecedented number of references to international law. To a

51 G.M. Danilenko, op.cit, p. 458.

52 Art. 3 of the Constitution of the RSFSR (1918). Available at Constitution of the USSR 1918.

53 Preamble to the Constitution of the USSR (1924). Available at Constitution of the USSR 1924.

54 Ibid.

55 G.M. Danilenko, op.cit, p. 459.

large extent, the constitutional provisions on international law reflect the desire of democratic Russia to become an open and law-abiding member of the international community. These provisions, as well as politico-legal developments leading to their adoption, demonstrate the expanding role of international law in the building of modern states based on the rule of law[56].

The clauses of the new Constitution that pertain to international law deal with five main topics: treaty making, the relationship between international law and domestic law, protection of human rights, participation in international institutions, and the use of armed forces. Article 15 (4) envisages the primacy of international law: „The universally-recognised norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement to which the Russian Federation is a party sets out rules other than those envisaged by law, the rules of the international agreement shall be applied."[57] Apparently, with this new Constitution and the 1995 Federal Law on International Treaties signed by the RF (which strongly relied on provisions of the 1969 Vienna Convention on the Law of Treaties, ratified by the Soviet Union in 1986), Russia had a good chance to enjoy its status as an equal member of the international community. In 1996, Russia became a member of the Council of Europe, joined a number of European Conventions and accepted the jurisdiction of the European Court of Human Rights. Sadly, however, things started to change at the turn of the millennium, when Vladimir Putin came to power. However, Putin is not the only person who can be credited with ruining the relationship between Russia and the ECtHR. A key role was played by Valery Zorkin, the Chief Justice of the Russian Constitutional Court.

On October 7, 2010 the European Court of Human Rights ruled on the case of Russian serviceman Konstantin Markin, a divorced father of three, who had been denied paternity leave in Russia. Markin started out by seeking recompense in Russia, eventually reaching the Constitutional Court. The result came in the form of decision No. 187-O-O[58] of January 15, 2009, which stated that Markin's constitutional rights had not been violated. The ECtHR disagreed with the conclusions of Russia's Constitutional Court, ruling that they contravened Articles 8 and 14 of the European Convention insofar as they constituted gender-based discrimination in the exercise of an individual's right to private and family life. The ECtHR's ruling offended Chief Justice Zorkin, and on October 29, 2010, *Rossiyskaya Gazeta* published an article by him entitled "The Limits of Compliance"[59], where

56 G.M. Danilenko, op.cit, p. 459.

57 Article 15 (4) of the Constitution of the RF (1993) „Constitution of the Russian Federation" (adopted by popular vote on December 12, 1993, with amendments approved during a nationwide referendum on July 1, 2020) \ Konsul'tantPlus

58 Text is available here Ruling of the Constitutional Court of the Russian Federation dated January 15, 2009 No. 187-O-O

59 The article went viral and now has a different title on Rossiyskaya Gazeta's website: Valeriy Zor'kin: Russia should fight with external "directing" of the legal situation in the country – Rossiyskaya Gazeta. Some sources have it with the original title Zor'kin: The Limit of Compliance

Zorkin characterised the ECtHR's decision as a turning point in the relationship between the Constitutional Court and the ECtHR, saying, "for the first time the European Court has questioned a decision by the Constitutional Court of the Russian Federation using forthright legal terms."[60] Moreover, Zorkin perceived this ruling to be an infringement upon Russia's sovereignty: "Based on Article 46 of the Convention, does the European Court have the right to recommend (and even command) that a respondent state make changes to its legislation, considering that the Court has repeatedly stressed in its own decisions that a respondent government has priority in selecting appropriate measures to address violations? Isn't such an instruction a **direct encroachment upon national sovereignty**, [bolding author's] clearly beyond the scope of the rights and powers provided for in the Convention, and in this regard clearly beyond the jurisdiction established by the Convention?"[61]

Zorkin stated that "every decision by the European Court is not only a legal but also a political act. When such decisions are made for the benefit of the rights and freedoms of citizens and the development of our country, Russia will always strictly comply with them. But when certain decisions of the Strasbourg Court seem questionable from the standpoint of the essence of the European Convention on Human Rights and, moreover, directly affect national sovereignty and fundamental constitutional principles, Russia has the right to develop a defense mechanism against such decisions."[62]

In November 2010, speaking at the XIII International Forum on Constitutional Justice, Zorkin revisited the issue and declared that "Russia recognizes the binding decisions of the European Court of Human Rights, [and] its priority in the interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms, provided that the sovereignty of the Russian Federation is protected."[63] In the same speech, he said that although Russia signed the European Convention, as well as a number of protocols, thus recognising the jurisdiction of the ECtHR, and undertaking to be bound by its decisions, *"if Russia wishes, it can withdraw from the jurisdiction of the ECtHR."* [64]

At the same time, Constitutional Court judges announced the introduction of a "mechanism to protect national sovereignty" to enable Russian authorities to ignore decisions of the ECtHR that differ from the position of the CC. In response, Zorkin emphasised that he did not favour a direct conflict with the European Court: "I would not like the CC to come into conflict with the ECtHR, which would encourage those in Russia who try to use any pretext to shut the door to Europe."

The seductive idea of selective compliance with ECtHR decisions under the guise of protecting Russia's national sovereignty captured the imagination of many high-ranking

60 Zor'kin: The Limit of Compliance

61 Ibid.

62 Ibid.

63 Ekaterina Mishina, The Kremlin's Scorn for Strasbourg- Institute of Modern Russia

64 Ibid.

officials. Politicians and constitutional law experts joined in the debate in support of Chief Justice Zorkin. In 2011, the first of two now infamous bills introduced by Senator Alexander Torshin was passed in its first reading. The bill stipulated that Russia was free to ignore its obligations under the European Convention until the Constitutional Court agreed with the decisions of the ECtHR. The second bill proposed creating a counterpart of the Strasbourg Court that would serve the Commonwealth of Independent States' countries to reduce the flow of complaints from Russian citizens to the ECtHR. These bills were never passed and were eventually removed from the Duma's agenda.

In late 2013, the question of mandatory compliance with ECtHR decisions reappeared again following the Constitutional Court's ruling on a second case, that of Konstantin Markin. Markin was left with his problems unsolved and was informed that in his case, remedial measures had not been exhausted[65]. His long-awaited judgment was announced on December 6, 2013.[66] Russian law prohibits the Constitutional Court from considering political cases for good reason, since few may compete with it in the area of politics. And the problem lies not only in the court's fantastic ability to reflect even the smallest changes in political will. The neatness of phrasing in this judgment makes it not only a masterpiece of judicial casuistry, but also a political statement. The Constitutional Court masterfully avoided addressing the question of the executive force of the ECtHR's decisions, which was the central issue of the request made by the presidium of the Leningrad district military court. Using specific procedural particularities of the RF's Law on the Constitutional Court and the RF's Civil Procedural Code, the Constitutional Court elegantly avoided all sensitive points and adopted a unique multifunctional ruling, particular provisions of which are able to satisfy supporters of different points of view. On the one hand, this judgment puts the supremacy of the Constitution first. On the other hand, the question in its essence remains open, and the court pointed out that the potential for judicial remedies has not been exhausted. The Constitutional Court also bowed to the ECtHR by citing the March 22, 2012, judgment of the ECtHR's Grand Chamber[67]. In so doing, the Constitutional Court avoided a direct confrontation with the Strasbourg Court, but made it clear who would have the final say: "The decisions by the European Court of Human Rights are the basis for revising a civil case due to changing circumstances. During the proceedings in such a case, the court can determine that enforcement of a decision by the ECtHR is not possible within the framework of existing Russian legislation. Insofar as the European Convention on Human Rights recognises essentially the same values as the Constitution of the Russian Federation, this conclusion makes it necessary to review the constitutionality of a provision

65 For details see Ekaterina Mishina, A Rubik's Cube from the Russian Constitutional Court - Institute of Modern Russia

66 See Resolution of the Constitutional Court of the Russian Federation of 06.12.2013, N 27-P, „On Verifying the Constitutionality of the Provisions of Article 11 and Paragraphs 3 and 4 of Part Four of Article 392 of the Civil Procedure Code of the Russian Federation in Connection with a Request from the Presidium... \ Consul'tantPlyus

67 RESOLUTION (Strasbourg, 22 March 2012)

affected by an ECtHR decision. Such issues can only be resolved by the Constitutional Court of the Russian Federation."[68]

In July 2014, a number of amendments were made to the Federal Constitutional Law on the Constitutional Court, including the following:

"[...] in reviewing a case in connection with the adoption, by an intergovernmental body protecting human rights and freedoms, of a resolution that states a violation of human rights and freedoms in the Russian Federation, [...] having arrived at the conclusion that the applicability of the relevant law can be determined only after it is confirmed that it conforms to the Constitution of the Russian Federation, a court shall request that the Constitutional Court of the Russian Federation review the constitutionality of this law." [69]

This provision was an attempt to create a domestic legal mechanism for non-compliance with ECtHR decisions—one that is technically based on the courts' requests with respect to specific acts of the Strasbourg Court, but is effectively driven by considerations of political expediency and the level of independence of most Russian judges, who can easily be convinced to initiate such requests.

On July 1, 2015, 93 members of the Russian federal legislature submitted a request to the Constitutional Court to review the constitutionality of provisions contained in a number of legislative acts governing enforcement of ECtHR judgments in Russia. The Constitutional Court's Resolution, No. 21-P, announced on July 14, 2015, embodied the concept of the supremacy of the Constitution. The Court's position was summarised as follows in the official press release: Russia's participation in an international treaty does not imply relinquishment of national sovereignty; thus, neither the European Convention, nor the ECtHR's legal positions based on the Convention, can override the supremacy of the Russian Constitution.

The supremacy of the Constitution in the course of enforcing the ECtHR's judgments can be ensured only by the Constitutional Court, using one of two procedures:

- Reviewing the constitutionality of legislation in which the ECtHR has found flaws. The relevant inquiry must be submitted by a court of general jurisdiction or an arbitration court, which is reviewing the case on the basis of the ECtHR's judgment.
- Interpreting the Constitution at the request of the Russian President or the Russian government, once Russian authorities have determined that a particular ruling by the ECtHR in relation to Russia cannot be enforced without contradicting the Basic Law. If the Constitutional Court comes to the conclusion that the ECtHR's judgment is incompatible with the Russian Constitution, such a judgment will be non-enforceable.

68 Currently the website pf the Constitutional Court of Russia is unavailable for IP addresses from most foreign states. Please see citation from the Court's official press-release here A Rubik's Cube from the Russian Constitutional Court- Institute of Modern Russia

69 Federal Constitutional Law of July 21, 1994, N 1-FKZ (as amended on July 31, 2023) entitled „On the Constitutional Court of the Russian Federation" \ Consul'tantPlyus

Resolution No. 21-P also authorised lawmakers to establish, on behalf of the Constitutional Court, a special legal mechanism to ensure the supremacy of the Constitution in enforcing ECtHR judgments.[70]

In December 2015, the Federal Constitutional Law on the Constitutional Court of the RF was amended again. New amendments established the long-awaited mechanism empowering the Court to establish "the possibility of enforcing a judgment of the ECHR".

Things became came to a head in early 2020. On January 20, President Putin submitted a draft law amending the Russian Constitution to the State Duma. The draft law on the constitutional amendment actually included 206 individual amendments. Two of the proposed draft amendments were directly related to the implementation of decisions adopted by "interstate bodies" on the basis of provisions contained in international treaties ratified by the Russian Federation (proposed draft amendments to Articles 79 and 125 of the Constitution). According to the Venice Commission, the most relevant changes were contained in the proposed draft amendments:

- declaring that decisions taken by interstate bodies adopted on the basis of provisions found in international treaties signed by the Russian Federation which collide with the Constitution may not be executed in the Russian Federation (proposed draft amendment to Article 79 of the Constitution);
- raising to the Constitutional level the competence of the Constitutional Court to resolve matters concerning the possibility of enforcing decisions taken by interstate bodies adopted on the basis of international treaties ratified by the Russian Federation, in the event that they contradict the Constitution of the Russian Federation (proposed draft amendment to Article 125 § 5 b))[71].

Then, on February 18, the Appellate court of the Hague delivered its decision on a case filed by YUKOS shareholders against Russia. The court had found against the RF. One of the most heatedly debated issues in the appellate proceedings was the status of provisionally applied international treaties in the Russian legal system. One of the main sources used by both parties was the Resolution of the Constitutional Court of the RF, No. 8-P of March 27, 2012. In this Resolution, the Constitutional Court had supported the constitutional principle of the supremacy of international law. The Constitutional Court of the RF ruled that „rules of provisionally applied international treaties become part of the Russian Federation's legal system and prevail, just as in-force treaties of the Russian

70 Resolution of the Constitutional Court of the Russian Federation of July 14, 2015, N 21-P, „On Verifying the Constitutionality of the Provisions of Article 1 of the Federal Law „On Ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto", Paragraphs 1 and 2 of Article 32... \ Consul'tantPlyus

71 P. 10 of the Opinion of the Venice Commission on the draft amendments to the Russian Constitution (June 18 2020) default.aspx

Federation, over domestic laws"[72]. Resolution 8-P also clearly states that "provisional application of an international treaty is generally used by the Russian Federation". On February 18, 2020, these, and many other precisely formulated legal positions from Resolution No. 8 -P, acquired a dangerous nature.

The response came quickly. On 26 February 2020, Senator Konstantin Kosachev, the chair of the Committee of Foreign Affairs of the Federation Council suggested vesting the Constitutional Court with the power to decide on the enforceability of decisions issued by foreign courts in Russia: "to extend the powers of the Constitutional Court and to add to its competence the power to establish the possibility to enforce not only the decisions of interstate organs, as it is written in your amendments, but also the judgments of foreign courts and arbitrations in case they contradict the fundamentals of public order of the RF". A new draft constitutional provision, which followed shortly, apparently was directed specifically against the Dutch Court of Appeal's Judgment of February 18, 2020, in the case of *Yukos shareholders v. Russia*. This suggestion is confirmed by the minutes of President Putin's meeting with members of the working group on drafting proposals for amendments to the Russian Constitution, which was held on February 26, 2020. The working group's minutes show that one of the amendment's drafters, Kosachev, stated:

"What do we mean by [this amendment]? Recently, we have seen a large number of such unlawful decisions made by foreign courts. We get to see them and hear about them. Let me quote just one recent highly publicised example—the recent order by the Hague Court of Appeal mandating Russia to pay 50 billion dollars to the former shareholders of Yukos. [. . .] From our point of view, we need comprehensive constitutional instruments to protect Russian national interests from such shameless political infringements"[73].

President Putin stated in response: "I fully agree with what has been said about the authority of the Constitutional Court to decide whether or not to enforce international court rulings in Russia. You are right—this is directly related to upholding our sovereignty and suppressing any attempts to interfere in our domestic affairs."[74]

On 4 March 2020, the relevant amendments were included in the draft amendment bill and on 14 March, the 2020 Constitutional Amendments were signed by President Putin[75]. They were approved by the Constitutional Court on 16 March 2020 and came into legal force on 4 July 2020. Since that time, the amended Art. 79 has established that "decisions of interstate bodies adopted on the basis of provisions of international treaties signed by the RF which contain an interpretation contradicting the Constitution shall not be

72 Resolution of the Constitutional Court of the Russian Federation of March 27, 2012, N 8-P, „On Verifying the Constitutionality of Paragraph 1 of Article 23 of the Federal Law „On International Treaties of the Russian Federation" in Connection with a Complaint Lodged by Citizen I.D. Ushakov" \ Consul'tantPlyus

73 See http://www.kremlin.ru/events/president/transcripts/deliberations/62862/print

74 Ibid.

75 Law of the Russian Federation on Amendments to the Constitution of the Russian Federation of March 14, 2020, N 1-FKZ, entitled „On Improving the Regulation of Certain Issues Relating to the Organisation and Functioning of Public Authorities" \ Consul'tantPlyus

executed in the Russian Federation".[76] New p. 5.1 (b) of Art. 125 raises to the constitutional level the competence of the Constitutional Court to *resolve matters concerning the possibility of enforcing* judgments issued by the European Court of Human Rights. The same constitutional provision empowers the Constitutional Court to decide on the possibility of enforcing judgments of foreign or international (interstate) courts and of foreign or international arbitration bodies which impose obligations on Russia, if such judgments contradict the fundamentals of the public legal order of the RF. Compliance with the fundamentals of the public legal order of Russia as a criterion of enforceability is highly problematic for the following reasons: (1) the notion of "public legal order" is not found in Russian constitutional law; (2) its ambiguity constitutes grounds for arbitrary interpretation; and (3) this vague criterion will make avoiding Russia's international obligations both legal and constitutional.

On November 09, 2020, amendments to the 1994 Federal Constitutional Law on the Constitutional Court of the RF introduced several significant changes to the procedure whereby the Constitutional Court clarifies its judgments[77]. Previously, requests for clarification were handled in a transparent manner—the requests themselves were made public, hearings were open to the public, and video recordings of their proceedings were made available online. The 2020 amendments eliminated all public disclosure and transparency. The amendments required that hearings on requests for clarification be conducted in *camera*. Only the Justices of the Constitutional Court who considered the case were allowed to participate. Not even parties to a case were able to attend. Justices were forbidden from commenting or openly disagreeing in any way with the decision of the Court on a request for clarification. After November 09, 2020, it became possible to modify legal positions of the Constitutional Court in *camera*. On November 13, the Russian Government submitted a request for clarification of landmark resolution No. 8-P. The official clarification that followed on December 24, 2020, significantly altered the most important legal positions of the Constitutional Court as stated in Resolution No. 8-P. Specifically, decision No. 2867 O-R of December 24, 2020:

- limited the scope of the provisional application of international treaties signed by the Russian Federation by prohibiting the provisional application of parts of international treaties that provide for the arbitration of disputes between the Russian Federation and foreign investors;
- deprived the Russian Government of its power to agree to the provisional application of parts of international treaties that provide for the arbitration of disputes between the Russian Federation and foreign investors[78].

76 Article 79 \ Consul'tantPlyus

77 Article 1 \ Consul'tantPlyus

78 Ruling of the Constitutional Court of the Russian Federation Dated December 24, 2020, N 2867-O-R, entitled „On Clarifying the Resolution of the Constitutional Court of the Russian Federation Dated March 27, 2012, N 8-P, Regarding Verifying the Constitutionality of Paragraph 1 of Article 23 of the Federal Law „On..." \ Consul'tantPlyus

These new legal positions are brand new. They depart dramatically from the legal positions stated in Resolution 8-P. They also significantly differ not only from the holdings of the Constitutional Court in a number of previous judgments, but also from the routine practice of the Russian Federation when agreeing to the provisional application of international treaties.

Chief Justice Zorkin's crusade was thus successful: the relationship with the ECtHR was ruined. Russia was then expelled from the Council of Europe and ceased to be a party to the European Convention on Human Rights. Now the sad reality is that the principle of the supremacy of international law is in danger in contemporary Russia. Russia created the legal possibility to avoid its international obligations and even elevated it to the constitutional level. All the achievements of the times when the Russian Constitution was adopted in 1993 now lie in tatters.

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The right to liberty and security of the person: National Regulations of the Republicof Moldova, standards, and violations[79]

Abstract

This article examines the right to liberty and security of the person as enshrined in key international and regional human rights instruments, including article 3 of the Universal Declaration of Human Rights (1948), article 9 of the International Covenant on Civil and Political Rights (1966), article 5 of the European Convention on Human Rights (1950), and article 6 of the Charter of Fundamental Rights of the European Union (2000). The analysis focuses on the national legal framework of the Republic of Moldova, particularly article 25 of the Constitution and relevant provisions of the Criminal Procedure Code, in light of these international standards. The study highlights the correspondence and discrepancies between national and international law, with special attention given to the case of Ialamov v. Republic of Moldova (2017). The article identifies a critical legislative and practical gap in Moldovan law: the lack of an effective legal remedy to challenge detention during the initial 72-hour period following a judicial warrant being executed. The findings underscore the need for reform to ensure full compliance with the guarantees of personal liberty and prompt judicial oversight, as required by the European Convention and other binding international instruments.

Keywords: right to liberty, deprivation of liberty, European Convention on Human Rights, article 5 ECHR, criminal procedure, international human rights law, preventive detention, arbitrary detention

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Introduction

Individual liberty represents a supreme value of contemporary society and the foundation for the exercise of other rights and freedoms, guaranteeing the individual's ability to act autonomously and be free from any form of excessive or repressive control. Individual freedom is the basis of any democratic society and is incompatible with totalitarian or authoritarian rule. It protects the individual from abuse and excessive control by authorities and is a characteristic feature of the rule of law in a democratic society. At the same time, individual liberty makes possible the realisation of other constitutional rights, such as the right to the free development of human personality, the right to work, the right to education, the right to rest, the right to private and family life, etc. The importance of the right to individual liberty simply cannot be overestimated.

Individual liberty is proclaimed and protected by universal and regional human rights standards, and is governed by article 3 of the Universal Declaration of Human Rights (1948)[80] (UDHR), article 9 of the International Covenant on Civil and Political Rights (1966)[81] (ICCPR), article 5 of the European Convention on Human Rights (1950)[82] (ECHR) and article 6 of the Charter of Fundamental Rights of the European Union (2000)[83]. The Constitution of the Republic of Moldova guarantees the right to individual liberty and security of the person in article 25[84].

In this article, we analyse the national regulations relating to the right to liberty and security of the person in the Republic of Moldova, establish if the national regulations correspond to international standards, and examine certain violations determined by the European Court of Human Rights.

Results and discussions

The National Constitution of the Republic of Moldova regulates the right to liberty and security in article 25. This provision guarantees the inviolability of individual freedom

80 Declaratie Universala Nr. 12 din 10-12-1948 a Drepturilor Omului * Publicat : 30-12-1998 în Tratate Internationale Nr. 1 art. 12 * Adoptată și proclamată de Adunarea generală a O.N.U. prin Rezoluția 217 A (III) din 10 decembrie 1948 Online: https://www.legis.md/cautare/getResults?doc_id=115540&lang=ro

81 Pact International Nr. 31 din 16-12-1966 cu privire la Drepturile Civile și Politice* Publicat : 30-12-1998 în Tratate Internationale Nr. 1 art. 31 *Adoptat și deschis spre semnare de Adunarea generală a Națiunilor Unite la 16 decembrie 1966. Intrat în vigoare la 23 martie 1967, cf. art.49, pentru dispozițiile cu excepția celor de la art.41; la 28 martie pentru dispozițiile de la art.41 https://www.legis.md/cautare/getResults?doc_id=115567&lang=ro

82 Convenție Nr. 342 din 04-11-1950 pentru apărarea Drepturilor Omului și a Libertăților Fundamentale* Publicat : 30-12-1998 în Tratate Internationale Nr. 1 art. 342 *Adoptată la Roma la 4 noiembrie 1950. A intrar în vigoare la 3 septembrie 1953. Roma, 4.XI. 1950 https://www.legis.md/cautare/getResults?doc_id=115582&lang=ro

83 Charter of Fundamental Rights of the European Union (2000/C 364/01) text_en.pdf

84 Constituţia Nr. 1 din 29-07-1994 Constituţia Republicii Moldova* Publicat : 13-11-2024 în Monitorul Oficial Nr. 466 art. 635 https://www.legis.md/cautare/getResults?doc_id=145723&lang=ro

and personal security. It establishes that deprivation of liberty (such as via a search, detention, or arrest) is allowed only under conditions strictly defined by law. Detention without a court decision is limited to a maximum of 72 hours. Arrests require a judge's warrant and may initially last up to 30 days, with possible extensions of up to 12 months only by judicial authority. Individuals who are detained or arrested must be promptly informed of the reasons and charges, in the presence of a lawyer. If legal grounds for detention or arrest no longer exist, the person must be released immediately[85].

The text of the article makes it clear that the liberty of the person may only be restricted by the state in cases provided for by law. Article 25 prohibits arbitrary and unlawful deprivation of liberty of the person[86]. The provisions contained in paragraphs (2)-(6) of article 25 of the Constitution present the essential conditions to be respected during criminal prosecution[87]. Therefore, this article establishes the time limits of detention without a court decision, and the time limits of arrest, regulates the procedural guarantees such as the provision of information about the reason for detention and ensures the right to be represented by a lawyer. At the same time, the article sets out the positive obligation on the state to liberate the person if the detention does not have a legal basis.

The constitutional provisions are detailed in the Criminal Procedure Code of the Republic of Moldova[88], which establishes a detailed legal framework regulating deprivation of liberty via detention, arrest, and related procedural safeguards. Temporary detention is governed primarily by articles 166 and 167, which allow law enforcement officials to detain a suspect for up to 72 hours, based on clear legal grounds such as *flagrante delicto* or risk of flight. A detention report must be drawn up immediately, stating the reasons and legal basis of detention, and the detained person must be informed of their rights and accusations, while being provided with the assistance of a lawyer.

Preventive arrest is regulated by articles 185–187. Arrest may be carried out only with a court order, based on evidence and well-founded suspicion, and justified by procedural risks (e.g. obstruction of justice or the repeated commission of offenses). The initial term of arrest may not exceed 30 days but can be extended—by judicial decision—up to a maximum of 12 months. Arrest decisions must be examined in a hearing where the presence of the accused, a lawyer, and a prosecutor is mandatory.

The Code also envisages alternative preventive measures, such as house arrest (article 179) and judicial supervision (article 178), which may be applied if they ensure the proper

85 Constituţia Nr. 1 din 29-07-1994 Constituţia Republicii Moldova* Publicat : 13-11-2024 în Monitorul Oficial Nr. 466 art. 635 https://www.legis.md/cautare/getResults?doc_id=145723&lang=ro

86 Constituția Republicii Moldova: comentariu/ coord. de proiect: Klaus Sollfrank; red.: Nina Pârțac, Lucia Țurcanu – Ch.: Arc, 2012 (Tipogr. „Europress"). Comentariu Constitutie.indd p. 118

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88 Cod Nr. 122 din 14-03-2003 Codul de Procedură Penală al Republicii Moldova* Publicat : 05-11-2013 în Monitorul Oficial Nr. 248-251 art. 699 MODIFICAT LP128 din 29.05.25, MO320/18.06.25 art.358; în vigoare 18.09.25 Online: https://www.legis.md/cautare/getResults?doc_id=149184&lang=ro#

conduct of criminal proceedings without detention.

To protect fundamental rights, the Code incorporates procedural guarantees in articles 16, 64, and 73. These include the right to legal assistance, the right to remain silent, the right to be informed promptly and in a language understood by the person, and the obligation to lift preventive measures when their legal basis ceases to exist. Article 33 expressly prohibits the use of evidence obtained in violation of the law.

Finally, articles 313–315 provide for judicial review of detention measures, including the right to appeal arrest decisions and request release. These remedies are essential to ensure that any deprivation of liberty complies with the principles of legality, necessity, and proportionality.

It is necessary to compare the national provisions to corresponding international standards. The Republic of Moldova ratified the Universal Declaration of Human Rights (1948)[89], the International Covenant on Civil and Political Rights (1966)[90], and the European Convention on Human Rights (1950)[91].

All these documents guarantee the right to liberty and security of the person, giving the important warranty that no one will be deprived of his or her liberty illegally. In this regard, the Constitution corresponds to international standards. At the same time, international acts regulate the fact that no one should be arrested or deprived of liberty illegally[92]. The Constitution of the Republic of Moldova does not regulate this aspect. Hence, this issue is not regulated in the Criminal Procedure Code of the Republic of Moldova. The national regulations do not correspond to the international standards and should be modified, to make the abusive application of the deprivation of liberty impossible.

The provisions of the ICCPR guarantee that the person should be immediately presented to a judge and has the right to be judged in a reasonable period of time or else released. National legislation states that the person can be temporarily detained for a period of 72 hours, after which her or his case must be examined by a judge, with the special function of a judge responsible for these cases being introduced. National provisions do not

89 Declaratie Universala Nr. 12 din 10-12-1948 a drepturilor omului * Publicat : 30-12-1998 în Tratate Internationale Nr. 1 art. 12 * Adoptată și proclamată de Adunarea generală a O.N.U. prin Rezoluția 217 A (III) din 10 decembrie 1948 Online: https://www.legis.md/cautare/getResults?doc_id=115540&lang=ro

90 Pact International Nr. 31 din 16-12-1966 cu privire la drepturile civile şi politice* Publicat : 30-12-1998 în Tratate Internationale Nr. 1 art. 31 *Adoptat și deschis spre semnare de Adunarea generală a Națiunilor Unite la 16 decembrie 1966. Intrat în vigoare la 23 martie 1967, cf. art.49, pentru dispozițiile cu excepția celor de la art.41; la 28 martie pentru dispozițiile de la art.41 https://www.legis.md/cautare/getResults?doc_id=115567&lang=ro

91 Convenţie Nr. 342 din 04-11-1950 pentru apărarea drepturilor omului şi a libertăţilor fundamentale* Publicat : 30-12-1998 în Tratate Internationale Nr. 1 art. 342 *Adoptată la Roma la 4 noiembrie 1950. A intrar în vigoare la 3 septembrie 1953. Roma, 4.XI. 1950 https://www.legis.md/cautare/getResults?doc_id=115582&lang=ro

92 In the legislation of the Republic of Moldova are prezent 3 different concepts: 1. the deprivation of the liberty of person in firs 72 hours after the emission mandate of arrest; 2. the arrest, which refers to the deprivation of the liberty after the emission of the mandate of arrest; 3. the deprivation of the liberty of person after the conviction of the person. In this text, we used 2 concepts to highlight the difference between them.

correspond to international ones here, however, because they do not regulate the immediate examination of the person's case by a judge, which constitutes an essential guarantee of the right of persons deprived of their liberty.

The ICCPR guarantees *habeas corpus*, giving to the person the right to contest any deprivation of liberty. The Constitution regulates the person's right to contest an arrest warrant, but this warrant is only issued after the expiration of 72 hours from the beginning of the person's detention. Thus, the Constitution does not regulate the right of the person to contest detention *before* the arrest warrant is issued. There is also no oversight over the legality of detention at each moment of detention. However, some previsions indirectly regulate this aspect. Article 174 paragraph 1 specifies that (1) the detained person shall be released in cases where: 1) there are no plausible grounds to suspect that the detained person committed the offense; 2) there are no grounds to continue to deprive the person of liberty; 3) the criminal investigation body has found a fundamental violation of the law in the detention of the person; 4) the term of detention has expired; 5) a court has not authorised the preventive arrest of the person[93]. These provisions serve as important safeguards against unlawful or arbitrary deprivation of liberty, aiming to align domestic legal procedures with fundamental rights and principles of due process. However, the article does not provide any mechanism for the detained person to challenge the legality of their preventive detention during the initial 72-hour period, prior to the issuance of a remand warrant by a judge.

Article 299(1) states that the prosecutor shall, within fifteen (15) days from the date of receipt of a complaint filed pursuant to article 298, examine the complaint and communicate the decision in writing to the person who submitted it[94]. Where the complaint alleges unlawful deprivation of liberty, the fifteen-day term may allow the issuance of an arrest warrant before the prosecutor's decision, thereby reducing the effectiveness of the complaint procedure and forcing the complainant to seek judicial review of the warrant. As drafted, the 15-day deadline creates a timing gap: a person who complains about unlawful detention may not obtain a prosecutor's decision before an arrest warrant is issued, which makes the administrative complaint route practically irrelevant for urgent relief.

Article 52 paragraph (1)(13) states that during criminal proceedings, the prosecutor, within the limits of his/her material and territorial jurisdiction, shall verify the legality of the person's detention[95]. This verification should be done ex *officio*. However, this does not imply an appeal against detention within the first 72 hours.

93 Cod Nr. 122 din 14-03-2003 Codul de Procedură Penală al Republicii Moldova* Publicat : 05-11-2013 în Monitorul Oficial Nr. 248-251 art. 699 modificat LP128 din 29.05.25, MO320/18.06.25 art.358; în vigoare 18.09.25 Online: https://www.legis.md/cautare/getResults?doc_id=149184&lang=ro#

94 Cod Nr. 122 din 14-03-2003 Codul de Procedură Penală al Republicii Moldova* Publicat : 05-11-2013 în Monitorul Oficial Nr. 248-251 art. 699 modificat LP128 din 29.05.25, MO320/18.06.25 art.358; în vigoare 18.09.25 Online: https://www.legis.md/cautare/getResults?doc_id=149184&lang=ro#

95 Cod Nr. 122 din 14-03-2003 Codul de Procedură Penală al Republicii Moldova* Publicat : 05-11-2013 în Monitorul Oficial Nr. 248-251 art. 699 modificat LP128 din 29.05.25, MO320/18.06.25 art.358; în vigoare 18.09.25 Online: https://www.legis.md/cautare/getResults?doc_id=149184&lang=ro#

The Constitution and relevant provisions of the Criminal Procedure Code contain general safeguards against unlawful detention and provide mechanisms to contest arrest warrants and detention after judicial authorisation. However, they fail to ensure the fundamental right to challenge the legality of detention during the critical initial 72-hour period prior to the issuance of a remand warrant. This legislative gap undermines the effectiveness of habeas corpus protections as guaranteed by the ICCPR and by international human rights standards. Although certain articles, such as article 174(1), article 299(1), and article 52(1)(13), offer indirect forms of oversight or verification, they do not constitute an effective or timely remedy for detainees to contest the lawfulness of their deprivation of liberty before the issuing of a warrant by a judge. To align domestic legislation with international obligations, it is essential to introduce a clear and accessible legal mechanism allowing detainees to challenge the lawfulness of their detention from the moment it begins.

The ICCPR and Constitution similarly regulate the right to be informed about the reasons for any detention and be represented by a lawyer. However, the ICCPR does guarantee the right to compensation for illegal detention. The Republic of Moldova's Constitution does not guarantee this right, it being regulated instead by the Law on the Method of Compensation for Damage Caused by Unlawful Actions of Criminal Prosecution Bodies, Prosecution and Courts, no. 1545 of 25-02-1998[96]. Article 3 paragraph 1 of this law mentions that a person is entitled to claim material and moral damage as a result of: the unlawful deprivation of their liberty, the unlawful application of preventive measures in the form of arrest, prohibition of their leaving the locality or the country, unlawful criminal liability, and so on. Despite the existence of these provisions in national law, it is important that they be included in the Constitution.

Making a comparative analysis of the provisions of the European Convention of Human Rights and the provisions of the Constitution, we observe various substantive differences. Article 5 paragraph 1 of the ECHR exhaustively lists the cases in which deprivation of liberty is permitted, such as: lawful conviction, failure to appear in court, prevention of committing a crime, detention of minors for educational purposes, etc. The Constitution, however, does not mention cases which allow for the privation of the liberty of a person. In this regard, the Constitutional provisions are too general and do not cover important circumstances mentioned in the ECHR.

Compared with article 5 of the European Convention, the provisions of paragraphs (2)-(6) indicate the need for a critical review of article 25 to bring it into full conformity with the European text. As mentioned above, the lawfulness of detention is examined in the light of compliance with all procedural requirements relating to arrest, detention, charging

96 Lege Nr. 1545 din 25-02-1998 privind modul de reparare a prejudiciului cauzat prin acţiunile ilicite ale organelor de urmărire penală, ale procuraturii şi ale instanţelor judecătoreşti Publicat : 04-06-1998 în Monitorul Oficial Nr. 50-51 art. 359 Versiune în vigoare din 05.01.18 în baza modificărilor prin LP212 din 01.12.17, MO1-6/05.01.18 art.4 Online: https://www.legis.md/cautare/getResults?doc_id=108548&lang=ro

and release. Article 25 contains the basic elements for determining the lawfulness of the act depriving an individual of their liberty.

Article 5 paragraph 3 of the Convention mentions that any person held in custody must be immediately brought to a judge. Article 25 of the Moldovan Constitution does not, however, expressly mention this obligation, only specifying that the arrest is made „on the basis of a warrant issued by a judge". The procedure for issuing a judicial warrant does not take place immediately after the person is taken into custody, but within 72 hours of their deprivation of liberty. Therefore, the provisions of the legislation differ from the provisions of the Convention and fall short of the safeguards imposed by the regional standard.

Article5 §4 of the ECHR expressly provides for the right of an arrested person to challenge the lawfulness of detention and to obtain a decision within a short time. Article 25 para. (4) of the Constitution, meanwhile, provides for the possibility to contest the arrest warrant but does not regulate the possibility of contesting the detention during the 72 hours following the deprivation of liberty after the issuing of the arrest warrant, and does not regulate the mechanism for continuous review of detention in this period of time. Article 5 §5 of the ECHR stipulates that everyone who has been the victim of detention contrary to this article has the right to reparation. Article25 of the Constitution, however, does not include any provision on the right to compensation for unlawful detention.

Article 5 §2 of the ECHR requires that every person has the right to be informed promptly, in a language which he or she understands, of the reasons for their detention and the charges against him or her. Article25 para. (5) of the Constitution provides for the obligation to be informed „forthwith", in the presence of a lawyer, but does not specify the language in which the information must be given. The Constitution does not explicitly guarantee that the information must be in a language understood by the person, which is an express requirement of Article 5 of the ECHR. However, this guarantee is regulated by article64 paragraph (2) of the Criminal Procedure Code of the Republic of Moldova[97]. This guarantee should, instead, be regulated by the Constitution.

One of the most frequent violations found by the European Curt of Human Right (ECtHR) committed by the authorities of the Republic of Moldova is the violation of article 5 of the Convention. Among the most frequent violations are: deprivation of liberty contrary to national law, the arbitrary arrest and detention of applicants for extradition, the lack of a predictable legal basis for arrest for engaging in an erotic video call, arbitrary detention for organising protests, detention without legal grounds of minors in a Temporary Placement Centre for Foreigners, arrest for non-payment of a debt, the lack of official records of a person's detention, detention and/or arrest in the absence of plausible grounds for suspecting that a person has committed the offense of which they are accused, failure to

97 Cod Nr. 122 din 14-03-2003 Codul de Procedură Penală al Republicii Moldova* Publicat : 05-11-2013 în Monitorul Oficial Nr. 248-251 art. 699 MODIFICAT LP128 din 29.05.25, MO320/18.06.25 art.358; în vigoare 18.09.25 Online: https://www.legis.md/cautare/getResults?doc_id=149184&lang=ro#

inform someone (or late notification) of all criminal charges that served as grounds for arrest, insufficient justification for arrest, refusal to hear a witness/injured party when examining an appeal against arrest, refusal to grant access in the court of appeal to materials presented in support of an arrest request, failure to grant access to materials presented by the prosecutor to justify an arrest, failure to ensure confidential meetings between the applicant and their lawyer, excessive length of time taken to examine an appeal against the arrest, unjustified examination of an arrest request in the absence of the lawyer chosen by the applicant, insufficient compensation for the violation of article 5, and the lack of an effective remedy for the violation of article 5[98].

Among the numerous forms of infringement, the arbitrary deprivation of liberty, particularly in the absence of a legal basis or in contravention of national law, emerges as the most serious and recurrent violation. Cases involving the arrest or detention of individuals without sufficient factual or legal justification, including those accused of organising protests, those involved in extradition proceedings, or even those who have engaged in legal yet socially stigmatised activities (e.g. erotic video calls), underscore a persistent disregard for the principle of legality enshrined in article 5(1).

The ECtHR has identified several systemic problems in Moldova's implementation of article 5, such as a lack of legal predictability when it comes to the application of arrest, detention without respect for procedural guarantees, and denial of effective access to justice. Arrests are frequently carried out in the absence of clear and accessible legal provisions, contravening the requirement of foreseeability under article 5(1). The Court has found that some instances of deprivation of liberty did not comply with the requirements of Moldovan national legislation, undermining the principle of legality under article 5(1)[99]. At the same time, the ECtHR found that there was a failure of authorities to properly inform individuals of the charges or reasons for their detention. In this context, the ECtHR observes the detention of a person without a prompt and fair judicial review. Also, the ECtHR mentioned inadequate reasoning by domestic courts when authorising detention[100]. Another violation was the examination of arrest requests without the presence of a chosen lawyer or without access to relevant evidence[101]. Detained people were limited regarding effective access to justice, with obstacles preventing the from reviewing the legality of their detention[102], excessive delays in examining appeals against detention orders, a lack of effective

98 Daniel GOINIC, Vladislav GRIBINCEA Sinteză violările admise de Republica Moldova și constatate de Curtea Europeană a Drepturilor Omului timp de 26 de ani, 12 septembrie 1997 - 11 septembrie 2023, septembrie 2023 Violările drepturilor omului admise de Moldova în ultimii 26 de ani

99 Case of I.E. v. the Republic of Moldova (Application no. 45422/13) judgment of 26 May 2020 final 26/08/2020 I.E. v. THE REPUBLIC OF MOLDOVA

100 Case of Mătăsaru v. the Republic of Moldova (Application no. 20253/09) judgment of 1 February 2022 MĂTĂSARU v. THE REPUBLIC OF MOLDOVA

101 Case of Gilanov v. the Republic of Moldova (Application no 44719/10) judgment of 13 September 2022 final 13/12/2022 GILANOV v. THE REPUBLIC OF MOLDOVA

102 Case of Muradu v. the Republic Of Moldova (Application no. 26947/09) judgment of 19 January 2021 MURADU v. THE REPUBLIC OF MOLDOVA

remedies,[103] and insufficient compensation for unlawful detention[104]. Where violations were established, compensation awarded domestically was often inadequate, failing to reflect the seriousness of the breach. Some violations are related to vulnerable categories of people, such as minors placed in the Temporary Placement Centre for Foreigners without a legal basis[105]. A person was arrested for civil debts, which violated the principle of *ultima ratio* in the use of detention[106].

The Court found some procedural violations of article 5, such as: absence of official records of detention; detentions made without sufficient factual basis or plausible suspicion of criminal activity; delayed or absent notification of the criminal charges justifying detention; inadequate reasoning by courts authorising arrests; refusal to hear witnesses or injured parties during appeals against detention; denial of access to evidence presented by the prosecution to justify detention; failure to ensure confidential communication between a detainee and lawyer; unjustified delays in examining appeals against arrest; and examination of arrest requests without the presence of the detainee's chosen lawyer.

One applicant was arrested on 6 April 2009 for murder, and later also charged with theft. He remained in pre-trial detention until 21 January 2011, when he was acquitted of murder but convicted of the theft and released due to time already served. During his trial, his detention was regularly extended, including a contested extension in September 2009. Despite procedural violations - e.g. the prosecutor's late application for an extension, which the court approved, - the applicant's subsequent appeal was rejected without addressing his legal objections[107].

The Court has reiterated that article 5 of the Convention is, together with articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of the individual. Its key purpose is to prevent arbitrary or unjustified deprivation of liberty[108]. These latter provisions form part of the core, non-derogable rights under the European Convention on Human Rights, as they enshrine the right to life (article 2), the prohibition of torture and inhuman or degrading treatment (article 3), and the prohibition of slavery and forced labour (article 4).

103 Cauza Veretco c. Republicii Moldova (Cererea nr. 679/13) hotărîre 7 aprilie 2015 definitivă 07/07/2015 VERETCO v. THE REPUBLIC OF MOLDOVA- [Romanian Translation] by the Ministry of Justice of the Republic of Moldova

104 Case of Muradu v. the Republic of Moldova (Application no. 26947/09) judgment of 19 January 2021 MURADU v. THE REPUBLIC OF MOLDOVA

105 Case of Minasian and others v. the Republic of Moldova (Application no. 26879/17) judgment of 17 January 2023 FINAL 17/04/2023 MINASIAN AND OTHERS v. THE REPUBLIC OF MOLDOVA

106 Case of Moldoveanu v. the Republic of Moldova (Application no. 53660/15) judgment of 14 September 2021 final 14/12/2021 MOLDOVEANU v. THE REPUBLIC OF MOLDOVA

107 Case of Ialamov v. the Republic Of Moldova (Application no. 65324/09) judgment of 12 December 2017 IALAMOV v. THE REPUBLIC OF MOLDOVA paragraph 7-9

108 Case of Ialamov v. the Republic Of Moldova (Application no. 65324/09) judgment of 12 December 2017 IALAMOV v. THE REPUBLIC OF MOLDOVA paragraph 21

Among these rights, the prohibition of torture, inhuman or degrading treatment, and slavery constitute absolute rights, meaning they can never be restricted—not even in situations threatening the life of the nation, as referred to in article 15 of the Convention. At the same time, the right to life, though not classified as absolute in the strictest sense, is a fundamental right whose protection is exceptionally rigorous. The Court applies a strict standard for any use of lethal force, requiring that any deprivation of life must meet the test of „absolute necessity". According to the Court's jurisprudence, any exception to the right to life is interpreted narrowly and is subjected to a threefold test: 1) The use of lethal force must be strictly proportionate to the legitimate aim pursued; 2) There must be the most careful scrutiny over any deprivation of liberty that may lead to loss of life; and 3) Such force is permitted only in exceptional circumstances, consistent with article 2 § 2.

Therefore, the Court aligns the importance of article 5 with that of articles 2, 3, and 4, all of which represent core fundamental rights. This alignment highlights the exceptional nature of any interference with the right to liberty under article 5 and underscores the Convention's overarching commitment to the protection of individual rights even in the most challenging contexts.

No deprivation of liberty is compatible with the Convention unless it is lawful. The expressions "lawful" and "in accordance with a procedure prescribed by law" in article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. Although it is primarily for the national authorities, notably the courts, to interpret and apply domestic law, under article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should review whether this law has been complied with[109].

The European Court of Human Rights underlines that any deprivation of liberty applied to a person must be lawful, meaning that it must conform to the procedure prescribed by national law. Authorities are under a strict obligation to comply with both substantive and procedural domestic legal provisions when applying detention measures. A breach of national law therefore leads not only to domestic irregularity but also to a violation of the Convention.

Consequently, the Court holds that it is not sufficient for national courts to assess compliance; the European Court itself is obliged to verify whether the domestic legal standards have been respected. This reinforces the principle of autonomous interpretation of legality under the Convention and ensures that formal legality under national law is a prerequisite for the compatibility of detention with article 5 § 1 of the ECHR.

Through this reasoning, the ECtHR reaffirms the dual nature of the legality test provided for in article 5 § 1 of the ECHR: formal legality, i.e. compliance with national rules on the deprivation of liberty; and conventional legality, in the sense that deprivation must

109 Case of Ialamov v. the Republic Of Moldova (Application no. 65324/09) judgment of 12 December 2017 IALAMOV v. THE REPUBLIC OF MOLDOVA paragraph 22

also be compatible with the spirit and purpose of the Convention. This approach provides a European filter for reviewing legality, which goes beyond formal domestic validity, thereby strengthening the effective protection of fundamental rights against the arbitrariness of the authorities.

Analysing the provisions of national legislation, the Court decided that accepting the prosecutor's late request and extending the applicant's detention was contrary to domestic law, and the detention thus ordered cannot be considered lawful under domestic law. Hence, the Court concluded that the provisions of the Conventions were violated[110].

The authorities violated the applicant's right to liberty guaranteed under article 5 § 1 of the European Convention on Human Rights by extending his pre-trial detention in breach of domestic procedural law. Specifically, the prosecutor failed to lodge the application for prolongation within the mandatory five-day time-limit prescribed by article 186 § 6 of the Code of Criminal Procedure. Despite this procedural defect, the court upheld the application and ordered the extension of the applicant's detention.

This conduct was contrary to national legal provisions, particularly article 230 § 2, which ban procedural acts carried out outside prescribed time-limits, and was inconsistent with the interpretation provided by the Plenary Supreme Court of Justice. As a result, the applicant's detention lacked the requisite lawfulness under domestic law, rendering it incompatible with article 5 § 1 of the Convention.

Conclusion

The right to liberty and security of the person is a cornerstone of international human rights law, enshrined in major legal instruments such as article 3 of the Universal Declaration of Human Rights (1948), article 9 of the International Covenant on Civil and Political Rights (1966), article 5 of the European Convention on Human Rights (1950), and article 6 of the Charter of Fundamental Rights of the European Union (2000). These texts collectively emphasise that no person shall be arbitrarily deprived of liberty, and that any deprivation must comply with principles of legality, necessity, proportionality, and prompt access to judicial review.

The national legal framework of the Republic of Moldova, including article 25 of the Constitution and the relevant provisions of the Criminal Procedure Code (articles 166–167, 178–179, 185–187, 313–315, among others), reflects a formal alignment with international and regional standards. However, practical implementation remains problematic, particularly regarding the initial 72-hour period of deprivation of liberty following a judicial warrant, during which the individual cannot effectively challenge the lawfulness of their detention.

110 Case of Ialamov v. the Republic Of Moldova (Application no. 65324/09) judgment of 12 December 2017 IALAMOV v. THE REPUBLIC OF MOLDOVA paragraph 23-25

The illegal deprivation of liberty was analysed by the ECtHR in the Case of Ialamov v. the Republic of Moldova (Application No. 65324/09, judgment of 12 December 2017), where the Court found a violation of Article 5 § 1 of the European Convention when his pre-trial detention was extended in disregard of the procedural safeguards established by national law. The prosecutor failed to submit the request for prolongation within the mandatory five-day time-limit set out in article 186 § 6 of the Code of Criminal Procedure. Nevertheless, the domestic court proceeded to accept the late application and ordered the continued detention of the applicant, thereby rendering the measure unlawful under domestic law and incompatible with the Convention. This case illustrates a critical failure of procedural compliance, highlighting the need for stricter adherence to legal time-limits as an essential component of the lawful deprivation of liberty.

In conclusion, while Moldova has taken steps to incorporate international standards into its domestic legislation, persistent shortcomings in legal practice—particularly concerning timely access to judicial review—continue to undermine the full implementation of the right to liberty. Reform is necessary to ensure that individuals are protected against arbitrary detention from the very outset of any restriction of liberty, corresponding to the state's international obligations.

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Copyright Concerns in Artificial Intelligence Training: A Legal Perspective

Abstract

The development and widespread application of artificial intelligence has raised significant copyright concerns in the context of artificial intelligence training. In the process of utilising vast amounts of data for training models, copyrighted materials are often used. This could lead to legal consequences for developers if specific exemptions are not provided in the legislation. The aim of this article is to examine the legal issues arising from artificial intelligence training, focusing on the legislation of Kazakhstan and neighbouring countries, and to study jurisdictions with experience in artificial intelligence regulation and related legal cases. To achieve the article's objective, a qualitative analysis was conducted, examining legislative frameworks and court decisions related to artificial intelligence and copyright. The research revealed a lack of specific regulations in many countries, leading to uncertainty for artificial intelligence developers and potential legal conflicts. Developed countries are implementing various approaches based on their policies and state needs, providing some legal clarity. The article proposes legislative reforms to balance innovation and intellectual property protection. Recommendations include adopting provisions that allow the use of copyrighted materials for artificial intelligence training under certain conditions, ensuring the advancement of technology without infringing on the rights of copyright holders.

Keywords: Copyright, artificial intelligence, machine learning, fair use, transformative use, text and data mining

Introduction

Research in the field of artificial intelligence (AI) began in the 1950s[111], with each subsequent decade being heralded as the decade of AI. However, it was not until 2022 that AI became widely accessible, when OpenAI launched ChatGPT 3.5 (chatgpt.com) with free access for users worldwide.

Today, AI technologies are applied and developed in virtually all fields, such as education, medicine, transportation, entertainment, and more. As with the advent of any new innovative technology, governments are seeking to adapt their legislative frameworks to the new realities based on their country's policies. This has previously been observed with the introduction of the first photographic cameras, computers, and the internet. The timely implementation of appropriate laws has balanced the interests of the state, the public, and innovators, thereby promoting the development of humanity for the better. During the creation of new laws, the importance of protecting intellectual property on the internet has been recognised, as well as considering digital copies of works to be illegal reproduction. Now it is time to adapt legislation to the realities of AI to ensure its development proceeds systematically and efficiently.

Creating and training AI requires vast amounts of data, and copyrighted material may be used during data processing. This raises many legal questions that need to be addressed. For instance, is it lawful to use copyrighted works to train AI if the law does not provide exceptions for this technology? Should there be provisions for the free use of data to foster innovation in a country, and if so, to what extent?

Therefore, the aim of this article is to analyse the legal issues arising from AI training, examine the current state of legislation in Kazakhstan and neighbouring countries, as well as countries with accumulated experience in this area. Based on this analysis, solutions to the identified problems will be proposed to ensure the legislation can meet new technological challenges.

Methods and Materials

To achieve the aim of this article, a qualitative research analysis method was used. The study involved a legal analysis of specific aspects of data usage in machine learning processes. A comparative analysis was also conducted of the regulatory legal acts in the field of intellectual property in Kazakhstan, neighbouring countries, as well as developed countries with experience in implementing AI solutions.

The synthesis method was also used in this article to analyse publications of regulatory acts and court decisions. This method allowed for the integration and summarising of various data used in machine learning and AI.

111 Turing, A. M. (1950). Computing machinery and intelligence. Mind, 59 (236), 433–460.

Materials used included:

1. Scientific works: research and publications on copyright and AI.
2. Court decisions: cases and precedents related to copyright and AI usage.
3. Regulatory legal acts: legislation from Kazakhstan, Uzbekistan, Kyrgyzstan, Russia, the USA, the UK, Singapore, and Japan.

Results

The process of creating AI includes multiple stages and approaches. It begins with problem identification, data collection, data preprocessing, algorithm writing, and model selection. Training is then conducted to achieve the set goal, followed by testing to verify the accuracy of the results. Parameters are then adjusted, and the processes are repeated. After achieving the desired results, the model is deployed and its use in the real world is monitored[112].

For a deep understanding of copyright issues, it is essential to consider the stages of data collection and analysis, model training, and model deployment. These stages often involve questions related to legal relations with copyrighted works.

Data collection and analysis are crucial stages in creating a good AI model. Access to extensive data is necessary to analyse and use it for model training. Without such data, the accuracy and quality of the model can suffer significantly. When collecting images, large texts, and video materials, the works are mainly stored in cloud systems or internal servers. Sometimes, data analysis and training are conducted online without prior loading, but due to the complexity of setting up functionality for this approach, most companies prefer to temporarily load materials into their systems[113].

AI technology creators, especially those using machine and deep learning, may face legal issues when transferring works to cloud technologies or their servers regarding lawful access to copyrighted material. Without appropriate access permissions, they may be accused of illegally downloading and storing intellectual property.

More complex legal issues arise during *AI training*, particularly in qualifying the very action of program processing. From a technical perspective, during training, AI does not always retain primary files but converts data into patterns and features. Thus, these technologies can function without a connection to the original data after training[114]. Based on the patterns and features, AI adjusts internal parameters to perform tasks such as analysis and prediction.

112 D. De Silva, & D. Alahakoon, (2022). An artificial intelligence life cycle: From conception to production. Patterns, 3(6)

113 S. Hambardzumyan, A. Tuli, L. Ghukasyan, F. Rahman, H. Topchyan , D. Isayan, et al. (2022). Deep Lake: a Lakehouse for Deep Learning. arXiv.

114 R. Yamashita, M. Nishio , R. K. G. Do, & K. Togashi, (2018). Convolutional neural networks: An overview and application in radiology. Insights into Imaging, 9, 611–629.

Upon completing the training, the *AI is deployed* based on a third party's request, using the program's internal settings. The deployment process can vary depending on the type of model and the algorithms used.

In practice, few create AI solutions from scratch, as it is a very complex and costly process. Programmers often use pre-trained models available publicly, which they customise and improve for their needs. These programs usually have basic parameters that help developers achieve their goals more quickly. For example, if a developer wants to create AI that answers legal queries, using pre-trained models, they do not need to start with teaching the AI to recognise letters and words, or analyse text. The developer's task begins with correctly setting up and training the model on specialised laws and materials to perform tasks related to the specific country's legislation.

Platforms providing ready-made models in the public domain enable small entrepreneurs and innovators to create AI solutions, allowing them to compete with large companies. Popular platforms include TensorFlow Hub (tensorflow.org), Google Cloud AI Platform (cloud.google.com/products/ai), and Hugging Face Model Hub (huggingface.co), where developers can find trained models for basic tasks to fulfil their own needs.

Copyright is a set of personal non-property and property rights of an author, regulated by national legislation and international agreements, promoting creativity and innovation worldwide [5]. Intellectual property legislation aims to stimulate innovations globally and ensure balanced access to creative achievements while maintaining the motivation of authors and innovators for further development. Authors and innovators are thus granted exclusive rights for a limited period, creating a monopoly on their creations but with the possibility of transferring these items to society and them being used in critical situations by the state.

When developing and implementing legislative solutions, it is important to consider these goals.

However, an analysis of the legislation of Kazakhstan, Kyrgyzstan, Uzbekistan, and Russia reveals a lack of specific provisions and regulations governing the creation of AI and copyright relations. This has led to uncertainty surrounding this issue and the absence of concrete recommendations or actions. Existing IT companies, lawyers, judges, and global companies wishing to expand their activities in these territories may face similar issues.

Nevertheless, the absence of direct regulation does not prevent consideration of cases in this area. As mentioned earlier, during the three stages of AI creation, the actions of developers can be classified differently and regulated by various types of legal relations.

Uploading and storing materials does not differ from the traditional, legal downloading of materials or downloading pirated materials from the internet. This is not a problem for global IT companies like Alphabet Inc. (youtube.com/static?template=terms), Meta Platforms, Inc. (facebook.com/terms.php), and ByteDance Ltd. (https://www.tiktok.com/legal/page/eea/terms-of-service/en), as users of these sites sign agreements regulating copyright issues, protecting the platforms' interests during registration. Users often do not realise to what extent, and for what purposes, their materials may be used.

A notable example illustrating the situation of copyright agreements without a full understanding of their consequences and the future goals of the second party is the case of Amazon. Amazon pre-emptively obtained proprietary copyrights for books from authors and then digitised these books for its at-the-time-secret invention, Kindle. Upon completion of their digitisation, Amazon announced the launch of Kindle, informing the copyright holders that their books were fully digitised and would be sold online[115]. This casual approach gives global companies with successful IT products a significant advantage and the ability to collect massive data for their own AI developments, putting competing startups in a difficult position.

The argument for downloading and storing copyrighted material without the rights holders' permission may not be sufficient to challenge the legality of the AI's work and prohibit its use. Some scholars believe that the process of training AI does not always violate copyright and represents computer and functional use for non-expressive purposes[116].

In support of this approach, it can be explained that technically, in most cases, AI does not retain the source material and does not create derivative works within the program during training but makes adjustments to its internal parameters for developers' particular goals. In this case, this legal relationship cannot be interpreted as creating a derivative work within the program[117]. This legal relationship can be compared to a book from which notes were prepared unrelated to the book's creative content. However, making a film based on a book could be interpreted as creating a derivative work, as it involves the book's creative aspect and directly infringes the author's rights.

However, courts may not agree with this argument and might deem the actions inherent in AI training as unlawful and infringing copyright. In such cases, the laws of the Republic of Kazakhstan can help avoid liability if the company's actions comply with the exceptions provided by points 1 and 3 of Article 19 or point 2 of Article 41 of the Law on Copyright and Related Rights of the Republic of Kazakhstan. Article 19 allows the use of works without consent and without payment, with the author's name indicated, if quoting for scientific, research, and informational purposes or if reproducing copyrighted material without profit by educational organisations. Article 41 permits the use of related copyrighted material without the rights holder's consent and without payment of remuneration for teaching or scientific/research purposes[118].

115 B. Stone (2013). The Everything Store: Jeff Bezos and the Age of Amazon. New York, NY: Little, Brown and Company.

116 J. Quang (2021). Does training AI violate copyright law? Berkeley Technology Law Journal, 36(4), 1407-1429.

117 A.W. Torrance, & B. Tomlinson (2023). Training is Everything: Artificial Intelligence, Copyright, and Fair Training. Dickinson Law Review, 128(1), 233-255.

118 Zakon Respubliki Kazakhstan ot 10 iiunia 1996 hoda № 6-I. (1996). Ob avtorskom prave i smezhnykh pravakh [The Law of the Republic of Kazakhstan of June 10, 1996 No. 6-I. On Copyright and Related Rights]. Retrieved from https://online.zakon.kz/Document/?doc_id=1005798

The laws of Kyrgyzstan[119] and Uzbekistan[120] contain similar provisions, but they lack the provision regarding the reproduction of copyrighted material without profit by educational organisations. Russian legislation also lacks such a provision, but it differs in that Article 1274 of the Civil Code of the Russian Federation is titled „Free Use of a Work for Information, Scientific, Educational, or Cultural Purposes" and refers to regulations that provide exceptions for the use of related rights material[121].

After training and readying the AI for work, any subsequently created items should not resemble the original materials or use original elements of copyrighted objects, as this can be deemed copyright infringement, as in the traditional understanding whereby works by other authors resemble the works of authors who previously published their works.

Discussion

Our analysis revealed several significant problems whose resolution could contribute to the development of copyright and AI legislation.

The main problem is legislative uncertainty, leading to confusion and a lack of clear understanding among companies about the permissible types and volumes of data usage. Since AI is now a key innovation, it is crucial for large companies to know that their activities do not violate laws. In the Commonwealth of Independent States, where the Anglo-Saxon precedent-based legal system is not applied, companies cannot refer to existing court decisions, and specific regulations are absent. This complicates the attraction of potential investments and the opening of new offices, as well as slowing the development of local AI companies.

The second problem is related to a legal dilemma: courts may consider AI training to be copyright infringement, while a person, a natural person recognised as a full subject of law with the possibility of acquiring property and non-property rights, does not infringe third-party rights when learning from copyrighted material. However, when creating a new creative work using knowledge which a person has gained while being trained in a specific field, they are granted the right of authorship. In the case of AI, we do not recognise the legality of the training process and the right of authorship for material created by AI since AI is not a subject of law[122].

119 Zakon Kyrgyzskoi Respubliki «Ob avtorskom prave i smezhnykh pravakh» ot 14.01.1998 № 6 [Law of the Kyrgyz Republic on Copyright and Related Rights No. 6 of January 14, 1998]. (1998, January). Retrieved from http://cbd.minjust.gov.kg/act/view/ru-ru/4/10?mode=tekst [in Russian].

120 Zakon Respubliki Uzbekistan «Ob avtorskom prave i smezhnykh pravakh» ot 14.01.1998 № 6 [Law of the Republic of Uzbekistan on Copyright and Related Rights No. 6 of January 14, 1998]. (1998, January). Retrieved from https://www.lex.uz/acts/1023494 [in Russian].

121 Grazhdanskii kodeks Rossiiskoi Federatsii (chast' chetvertaia) ot 18.12.2006 № 230-FZ [Civil Code of the Russian Federation (Part Four) No. 230-FZ of December 18, 2006]. (2006, December). Retrieved from https://www.consultant.ru/document/cons_doc_LAW_64629/0b318126c43879a845405f1fb1f4342f473a1eda/ [in Russian].

122 A. Magauiya, A.B. Omarova, A. Kasenova, Zh. Akhmetov, & M. Akhmadi (2023). The Practices of Advanced Countries in the Legal Regulation of Intellectual Property Objects Created by Artificial Intelligence. Law, State and Telecommunications Review, 15(1), 191-206.

There are also difficulties with the temporary storage of copyrighted material for AI training and the classification of the machine learning process. This process can be classified differently, adding to the uncertainty.

Useful lessons can be drawn from the experience of developed countries that have already faced cases related to AI and implemented solutions in AI training and usage.

One of the most famous cases in the field of machine learning is considered to be an American case involving Google and the Authors Guild, which began in 2005. In this case, the Authors Guild claimed that Google Books illegally scanned and digitised all their works and used the materials to create a program that allowed information to be searched simultaneously within all books, indexed them, and provided users with the option of viewing a specific extract that included the material they were looking for.

In 2013, the first court instance ruled that Google's actions fell under the principle of fair use and served the public good, thus confirming the legality of the company's actions. In 2015, the appellate court upheld this decision[123]. Thus, this case demonstrated that the transformative use of high technologies, applying copyrighted objects, can be protected by fair use legislation.

To ensure that actions fall under fair use according to the Copyright Law of the United States, four key factors outlined in Section 17 of the U.S. Code § 107 must be considered:

1. Works must be used for educational, research, or other non-commercial purposes.
2. The nature of the copyrighted work.
3. The amount and significance of the used portion of the works.
4. The end result produced by the program and other actions of AI should not impact the market and worsen the rights holder's position[124].

Currently, court cases such as New York Times v. OpenAI and Microsoft; Stability AI, MidJourney, and DeviantArt, as well as other generative AI cases continue in the USA. Since these cases are unresolved, it is difficult to say precisely how courts will interpret the use of AI products that create content similar to the rights holders' copyrighted works. These decisions could affect and change the practice concerning generative AI, as the goal of Google Books was to facilitate information search, not to enable the generation of similar content. If the AI-produced product can potentially impact the rights holders' market and worsen their position, such actions may not fall under the concept of fair use.

The European Union has issued a directive specifically addressing AI training and data analysis. The directive uses the term "Text and Data Mining", referring to an automatic analytical technique aimed at analysing text and data in digital form to generate information related to patterns, trends, and data correlations.

The EU directive states that text and data mining can be conducted for research

123 Authors Guild v. Google, Inc., 804 F.3d 202 (2d Cir. 2015)

124 U.S. Copyright Law (Title 17). (1947). Retrieved from https://www.copyright.gov/title17/title17.pdf.

purposes. One of the convenient solutions to problems in this area was that they completely allowed the reproduction and storage of copyrighted works to achieve the goals, as well as storing materials for result verification, fully covering all stages of AI usage.

However, the processed copyrighted works must be lawfully obtained, via a subscription or other legitimate access to the materials. Therefore, it can be concluded that, according to their legislation, research organisations and cultural institutions can develop AI using copyrighted works without paying rights holders[125].

The UK also introduced an exception for text and data mining, supplementing the Copyright, Designs, and Patents Act 1988. According to the law, text and data mining can be conducted but exclusively for non-commercial research purposes. Reproduction and storage of copies is allowed to achieve these goals, provided developers have lawful access to the copyrighted objects[126].

In 2022, it was proposed to allow text and data mining for commercial purposes, but this initiative was suspended by the Minister of Science[127].

It should be noted that to justify free use and the use of copyrighted works without permission, non-commercial purposes are required. In most countries, similar legal relations are regulated similarly, and there is a tendency for companies working in AI to mostly be, or create, non-profit organisations. For example, globally renowned and widely used AI like ChatGPT and Midjourney are also non-profit organisations. This approach simplifies the process of proving the use of AI for non-commercial purposes and ensures the legality of using AI for scientific and educational purposes.

Japan pioneered regulating text and data mining (TDM). In 2009, Japan introduced the first TDM exceptions and expanded them in 2018. Thus, the state allowed the use of copyrighted material in any way and to any extent to achieve the following three goals:

1. Develop or test technology.
2. Data analysis.
3. Computer data processing.

Japan did not restrict the use of copyrighted works for commercial purposes, allowing both research organisations and commercial enterprises to use copyrighted material to create AI.

However, two main limitations were set for data analysis: the goal could not be to provide others with the opportunity to enjoy the work's creativity - specifically, the thoughts

125 Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market. (2019, April). Retrieved from https://eur-lex.europa.eu/eli/dir/2019/790/oj

126 Copyright, Designs and Patents Act 1988. (1988). Retrieved from https://assets.publishing.service.gov.uk/media/60180c2b8fa8f53fc62c5897/Copyright-designs-and-patents-act-1988.pdf.

127 Montagnon, R., & Cho, S. (2023, March 1). UK withdraws plans for broader Text and Data Mining (TDM) copyright and database right exception . Intellectual Property Notes. Retrieved from https://hsfnotes.com/ip/2023/03/01/uk-withdraws-plans-for-broader-text-and-data-mining-tdm-copyright-and-database-right-exception/.

or feelings produced by the work. It is also prohibited to unreasonably harm the interests of rights holders when using works[128].

Due to such progressive approaches, Japan has become an attractive place for most IT companies to work and develop AI, providing opportunities to become a global leader in this field.

However, Japan is not the only country that has allowed text and data analysis for commercial purposes. Singapore has also adopted a similar decision, stating that the use of copyrighted works for identifying, extracting, and analysing information or data from a work or recording through the use of computer programs does not constitute copyright infringement[129].

The experience of developed countries provides an opportunity to make bold legislative decisions to improve AI and establish reasonable restrictions deemed appropriate at this stage of human development. The process of adopting new norms or amending existing ones can be challenging and lengthy, but it is a necessary step in order to stimulate innovation.

An additional, easier solution is the development of an Ethical Guide for Machine Learning or AI Training. This document can be created by IT organisations or the state. The benefit of an ethical guide is that it will help standardise the AI creation process and define clear boundaries, reducing potential future misunderstandings and disputes.

Conclusion

The competitive advantage of developed countries lies in the fact that most IT companies working in AI are registered and actively operate in these countries. These companies bring significant profits, and the likelihood of their departure from such countries is extremely low, allowing governments to establish strict rules and ensure full accountability for every action taken by these companies. As a result, lawmakers in developed countries can make decisions more oriented towards the state's interests rather than those of these organisations. They can also afford not to rush the introduction of new legislative rules or changes since they are already market leaders in AI. The policies of countries and their attitudes towards innovation determine the most convenient regulatory paths.

Japan and Singapore have provided innovators with the opportunity to develop AI in their countries, while also considering the direct interests of rights holders and the use of copyrighted material. At the same time, the USA and various European countries prefer a more cautious approach, avoiding hasty decisions in this area.

Based on the goals of intellectual property legislation (enhancing the welfare of the people, fostering technological development, motivating creators, and drawing on

128 Copyright Law of Japan (1970). Retrieved from https://www.cric.or.jp/english/clj/cl2.html#art47-5.

129 Copyright Act 2021 (2021). Retrieved from https://sso.agc.gov.sg/Act/CA2021.

international experience), it would do developing countries well to enshrine the legality of information processing at the legislative level and provide more space for innovation. Specifically, it is necessary to allow the creation of AI whose resulting work does not compete in the rights holders' market and remove all other restrictions on the use of copyrighted material. This provision will provide innovators with the opportunity to develop the field without the need to distinguish between commercial and non-commercial purposes.

The examples of Japan and Singapore show that developing countries can successfully follow their practice, and avoid contradicting global AI development policies. This successful experience can serve as a model for other countries striving to stimulate AI development and technological progress.

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Women's entrepreneurship as a form of family entrepreneurship

Abstract

This paper examines women's entrepreneurship in detail as one of the areas of family entrepreneurship. It highlights the unique features and contributions of women entrepreneurs, and analyzes the challenges they face, including limited access to financial resources, traditional gender roles, and the burden of unpaid domestic work. The study also reviews national and international practices supporting women's entrepreneurship, with a focus on Kazakhstan, and proposes recommendations for enhancing gender equality and fostering sustainable economic growth. The research demonstrates that women's active participation in family entrepreneurship not only strengthens family welfare but also contributes significantly to regional and national economic development. Special attention is paid to gender equality issues in the implementation of family entrepreneurship. The study also comprehensively analyzes the advantages and disadvantages of women's entrepreneurship. Statistical data are presented, and the directions of development of women's entrepreneurship are shown.

Keywords: Kazakhstan, family entrepreneurship, women's entrepreneurship, gender equality, women in business, principle of equality.

Introduction

Women's entrepreneurship today is not only an economic category but also a vital social phenomenon, exerting a broad impact on society. Its development is closely linked to gender equality, violence prevention, women's empowerment and self-realization, as well as fostering a new culture of relationships within families and communities.

In the current socio-economic environment, women's entrepreneurship is becoming an increasingly important factor in the sustainable development of the economy, innovation, and social stability. Across the world, there is a noticeable increase in the number of women engaged in business activities; however, gender disparities in access to financial resources, education, support, and career opportunities still persist. Women's entrepreneurship not only contributes to economic growth but also has a positive impact on employment, corporate social responsibility, and the development of local communities. Research indicates that companies founded by women tend to be oriented toward social innovation, environmental sustainability, and creating favorable working conditions.

Despite significant growth in the number of women entrepreneurs in Kazakhstan, barriers related to gender stereotypes, insufficient institutional support, and limited access to investment continue to be present. This underscores the need for further study of the conditions, trends, and prospects for the development of women's entrepreneurship as well as effective measures of governmental and public support. Thus, the relevance of this study is determined by the growing role of women in the entrepreneurial environment, the need for a gender-inclusive economy, and the identification of factors that contribute to the successful realization of women's entrepreneurial potential.

From a socio-economic perspective, family entrepreneurship still predominantly falls within the remit of men. Men hold the majority of managerial roles in business, while women often devote a significant portion of their time to household responsibilities, such as childcare and domestic duties. Therefore, combining entrepreneurship with domestic chores presents specific challenges for women. However, this does not mean that women are incapable of engaging in family entrepreneurship. On the contrary, women's natural potential and intellectual abilities are equal to those of men.

Hence, it is essential to strengthen and comprehensively study this institution, along with exploring ways to develop it further. The active involvement of women in entrepreneurial activities not only contributes to the improvement of individual families' social well-being but also opens new directions for the country's overall economic growth.

Main Part

Currently, women's entrepreneurship has emerged as a significant factor in the socio-economic development of society. The active participation of women in business contributes to the creation of new jobs, enhances family well-being, and strengthens regional economies. From this perspective, women's entrepreneurship can be regarded as a unique and effective form of family entrepreneurship.

In Kazakhstan's legislation, there is no specific definition of family entrepreneurship. According to Article 32 of the Law on Entrepreneurship of the Republic of Kazakhstan, family entrepreneurship is considered a form of joint entrepreneurship. In most cases, it is

carried out in the form of individual entrepreneurship or a peasant (farmer) household.[130]

The institution of family entrepreneurship has been a subject of research by numerous scholars in the field of legal science. For instance, Barbashin I. V., Fedotovskaya T. A., and Titov S. N. define family entrepreneurship as "a type of small business in which family members and their relatives can simultaneously act as owners and employees within their enterprise".[131]

Kirenkina E. S., a researcher, notes that "family entrepreneurship is a dynamic and active element of business, an initiative-based and independent activity carried out by associations of citizens at their own property risk and liability, involving at least two members of the same family. This activity is aimed at generating profit through the production of goods or the provision of services".[132]

As we can see, scholars defining family entrepreneurship do not specify the gender of the entrepreneur. Their definitions emphasize the function and role of the business owner, rather than focusing on gender, reflecting the principle of gender equality. Based on this principle, both men and women can be participants and inheritors of family entrepreneurship.

In studying family entrepreneurship, women's entrepreneurship can be viewed as a distinct legal category. Although both share similar objectives, women's entrepreneurship possesses unique characteristics.

Historically, women began to engage in business on a large scale in the early 20th century, a process often described as a "quiet economic revolution". It was during this period that the term women's entrepreneurship first emerged, denoting businesses managed or founded by women.[133] Today, women's entrepreneurship has become a global trend that drives economic growth. Consequently, many countries are developing policies to support and stimulate this form of business activity.

Women's entrepreneurship represents a vital sector of any national economy. In international practice, countries such as the United States, Canada, and members of the European Union actively support women's entrepreneurship through collaboration between ministries of economy, finance, and other government institutions. Due to policies aimed at improving women's status, expanding access to financial resources, and providing state

130 Code of the Republic of Kazakhstan dated 29 October, 2015 No. 375-V „Entrepreneurial Code of the Republic of Kazakhstan". [Electronic resource]- available system: https://online.zakon.kz/Document/?doc_id=38259854&doc_id2=38259854#activate_doc=2&pos=3;-98&pos2=829;-63 (Accessed: 04.10.2025).

131 Барбашин И.В., Федотовская Т.А., Титов С.Н. Социальные функции семейного предпринимательства в современной России: сущность и формы семейного предпринимательства. Корпоративная социальная ответственность в современной России: теория и практика // Аналитический вестник Совета Федерации. – Москва, 2005.- №26 (278). – 75 с.

132 Киренкина Э.С. К вопросу об определении понятия «семейное предприятие» // Таврический национальный университет им. В.И. Вернадского. – Симферополь, 2010. – С. 7-10.

133 Women's entrepreneurship. [Electronic resource] - available system: https://kaktus.media/doc/503643_jenskoe_predprinimatelstvo._pochemy_eto_ne_tolko_pro_biznes.html (Accessed: 06.10.2025).

support for entrepreneurship, the United States, New Zealand, and Canada are among the global leaders in women's business activity.[134]

In the Republic of Kazakhstan, the state has assumed responsibility for addressing issues of gender equality. Consequently, specific goals and programs have been developed annually, making women's equality a key policy agenda.

Kazakhstan has established a robust legal and institutional framework to ensure gender equality. At the legislative level, the country has introduced provisions to eliminate discrimination against women and promote equal rights between men and women.

Special attention is given to creating favorable conditions for women's participation in public life. Efforts to ensure gender equality and expand opportunities for all women and girls aim to eliminate all forms of gender-based discrimination and provide equal opportunities for all. In this context, nine key objectives and sixteen gender equality indicators have been identified. For example, women occupy 30.6% of positions in local government bodies, while women leading peasant or farming enterprises account for 27.2%.[135]

Kazakhstan is an official participant in the Action Coalition to End Gender-Based Violence, as announced at the "Generation Equality Forum" held in Paris. This coalition seeks to eliminate the most significant barriers to gender equality and aligns with the United Nations (UN) 2030 Sustainable Development Agenda principle of "leaving no one behind".

Furthermore, Kazakhstan is a member of the UN Human Rights Council for the 2022-2024 term. The Council's key priorities include advancing gender equality and expanding women's rights.[136]

Another crucial state support measure is the professional training of women, their employment, and the creation of opportunities for them to start their own businesses. In 2022, nearly 80,000 women completed courses on the fundamentals of entrepreneurship, and about 13,000 received grants. Of these, 58% used the funds to purchase technological equipment and accessories necessary for producing goods and services, while 31% invested in livestock and animal husbandry.[137]

Over the past decade, a new generation of women has emerged in Kazakhstan, characterized not only by financial and psychological independence but also by aspirations to build successful careers, achieve creative growth, and contribute to society beyond family responsibilities.

134 The family – owned businesses. The US Census Bureau. [Electronic resource] - available system: https://www.inc.com/encyclopedia/family-owned-businesses.html // Family - Owned Businesses Retrieved January 2019 (Accessed: 14.10.2025).

135 Women's entrepreneurship in Kazakhstan. [Electronic resource] - available system: https://primeminister.kz/ru/news/v-kazakhstane-dolya-zhenshchin-vladeltsev-biznesa-sostavlyaet-45-23342 (Accessed: 15.10.2025).

136 Universal Declaration of human rights. The declaration was adopted by the resolution of the General Assembly of the United Nations No. 217 a (III) on 10 December, 1948. [Electronic resource] - available system: https://adilet.zan.kz/kaz/docs/O4800000001 (Accessed: 10.10.2025).

137 The main directions of the program "women in business". [Electronic resource]- available system: https://damu.kz/ (Accessed: 10.10.2025).

Today, women play a significant role in Kazakhstan's progress and are actively involved in business development. The state has implemented comprehensive measures to support the establishment and growth of enterprises.

The "Damu" Entrepreneurship Development Fund in Kazakhstan supports small and medium-sized businesses in four main areas: subsidizing interest rates, providing loan guarantees, offering concessional financing, and conducting training under specialized programs. The Fund serves as an operator of several government initiatives, including the National Project for Entrepreneurship Development (2021-2025) and programs such as the Economy of Simple Things, as well as support for SMEs in the manufacturing sector. Within these frameworks, the Fund also provides targeted support for women entrepreneurs.

The global rise of women's entrepreneurship has become a major economic trend. This sector strengthens economies, enhances employment opportunities, and makes significant contributions to the field of social entrepreneurship.

In Kazakhstan, the proportion of women among small and medium-sized business owners is notably high. Women account for approximately 54% of individual entrepreneurs. The most common sectors for women-led businesses are education and real estate operations, where women comprise 69% and 59% of business leaders, respectively.[138]

Within the framework of international cooperation, Kazakhstan was elected to the Executive Board of the UN Women in November 2020. A year earlier, the UN Women headquarters in New York endorsed the Damu Fund's statement supporting the Women's Empowerment Principles (WEPs). This document has been signed by 2,639 global companies, including Google, Citigroup Inc., Nasdaq, PwC, Ernst & Young, and Coca-Cola. In Kazakhstan, the UN Women structure operates in partnership with the Government.[139]

Through the Damu Fund, the government supports female entrepreneurs operating primarily in trade (52%), agriculture (13%), services (8%), and manufacturing (6%). Regionally, the most active female entrepreneurship is observed in Turkestan, Zhambyl, and Almaty regions, while the most significant loan volumes are concentrated in Almaty, Astana, and East Kazakhstan.

The "Women in Business" program, implemented in cooperation with the European Bank for Reconstruction and Development (EBRD), has successfully expanded access to finance, know-how, and non-financial services for women-led businesses in Kazakhstan, supporting nearly 14,000 female entrepreneurs.[140]

138 См.там же: The main directions of the program "women in business". [Electronic resource] - available system: https://damu.kz/ (Accessed: 10.10.2025).

139 About UN Women. Europe and Central Asia. [Electronic resource] - available system:https://eca.unwomen.org/en/about-us/about-un-women-3. (Accessed: 13.10.2025).

140 Women's entrepreneurship in Kazakhstan. [Electronic resource] - available system: https://primeminister.kz/ru/news/v-kazakhstane-dolya-zhenshchin-vladeltsev-biznesa-sostavlyaet-45-23342 (Accessed: 15.10.2025).

Despite the positive developments, women's entrepreneurship continues to face several persistent challenges. Experts note several significant barriers encountered by women in business: a lack of support and unpaid domestic labor, occupational segregation, traditional gender roles leading to economic dependence, and limited access to financial resources.

The main difficulties faced by women entrepreneurs include:

- Lack of support and time constraints. Many women do not receive sufficient support from their husbands, children, or relatives. Due to household duties and time shortages, women are 1.7 times more likely than men to close their businesses.
- Unpaid domestic work and caregiving responsibilities. Household work, pregnancy, childcare, and caring for elderly relatives limit women's ability to run businesses effectively.
- Occupational stereotypes. Gender-based stereotypes often confine women to so-called "female professions" such as healthcare, education, crafts, light industry, and tourism.
- Age factor. Women aged 25-30 are often focused on marriage and raising children, whereas men in the same age group are actively engaged in economic activities. As a result, women tend to start businesses later in life.
- Limited access to finance. Women are significantly less likely to secure large-scale funding. Since property ownership is more commonly registered under men's names, women are often forced to take loans at higher interest rates, creating additional financial constraints.[141]

These factors can be considered the main barriers preventing women in Kazakhstan from fully engaging in entrepreneurship. Addressing these issues is essential for achieving genuine gender equality and fostering women's participation in business on an equal footing with men.

In contexts of widespread domestic violence, psychological pressure, economic dependence, and limited educational opportunities, entrepreneurship offers many women a pathway to restore personal dignity and independence. Owning a business provides not only a source of income but also economic, legal, and emotional security.

Thus, women's entrepreneurship should be recognized as a tool for preventing violence and social dependency, creating opportunities to enhance self-esteem, responsibility, and civic engagement. Supporting such initiatives can reduce the number of women in vulnerable positions and elevate overall legal and economic literacy within society.

141 Women's entrepreneurship. Why is it not just about business. [Electronic resource] - available system: https://kaktus.media/doc/503643_jenskoe_predprinimatelstvo._pochemy_eto_ne_tolko_pro_biznes.html (Accessed: 15.10.2025).

Conclusion

Women entrepreneurs make a substantial contribution to the growth of small and medium-sized enterprises worldwide, particularly in services and social projects, generating jobs and fostering community development. Studies indicate that women are more likely to reinvest profits into their families, children's education, and local communities, rendering their businesses both sustainable and socially responsible.

Encouraging women's entrepreneurship aligns directly with the UN Sustainable Development Goals (SDGs),[142] especially SDG 5 (Gender Equality)[143] and SDG 8 (Decent Work and Economic Growth).[144] In Kazakhstan, these objectives are reflected in the family and gender policy Concept through 2030, which promotes measures to expand women's economic opportunities, including developing entrepreneurial skills and improving access to microfinance.

Developing women's entrepreneurship requires targeted government policies, including:

- Specialized support programs for women from vulnerable groups (victims of violence, mothers with many children, rural women);
- Integration of entrepreneurial training into rehabilitation and social adaptation programs;
- Establishment of women's business incubators and mentorship platforms;
- Legal and financial literacy programs as part of women's education initiatives.
- Such policies yield both economic and humanitarian benefits, as they promote self-respect, responsibility, and leadership, thereby strengthening families and preventing violence.

Moreover, given the increasing role of women in society, it can be confidently asserted that their active engagement in entrepreneurship has a positive impact on the dynamic development of the national economy. When addressing the issue of family entrepreneurship, it is essential not to view it solely through the lens of male participation, but also to recognize the valuable contributions women can make. After all, the foundation of any society is the family, and according to Kazakhstani legislation, the family consists of the mother, father, and child, each playing an essential role in the country's social and economic stability.

A distinguishing feature of women's entrepreneurship is its value-driven orientation. Women frequently engage in fields related to care, beauty, education, psychology, and social

142 The Sustainable Development Goals. [Electronic resource]- available system: https://www.un.org/sustainabledevelopment/ (Accessed: 17.10.2025).

143 Achieve gender equality and empower all women and girls. [Electronic resource]- available system: https://www.un.org/sustainabledevelopment/gender-equality/ (Accessed: 17.10.2025).

144 Promote inclusive and sustainable economic growth, employment and decent work for all. [Electronic resource]- available system: https://www.un.org/sustainabledevelopment/economic-growth/ (Accessed: 17.10.2025).

support, areas where empathy, humanity, and social responsibility are paramount. These ventures not only create jobs but also provide educational and therapeutic benefits for society, helping to reduce aggression and emotional rigidity.

Women-led businesses often act as spaces for peacemaking, fostering dialogue, respect, and collaboration. This represents a form of societal "soft power" that contributes to harmony and trust in human relationships.

Women's entrepreneurship also has significant educational value. Successful women entrepreneurs serve as role models for children and youth, shaping perceptions of work, independence, and respect for women as active members of society. This contributes to a more humane public consciousness, shifting focus from competition to collaboration, and from violence to dialogue.

Supporting women's entrepreneurship is thus not only an investment in the economy but also in human capital, social maturity, and a culture of peace.

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The Jurisdiction of the Estonian Orthodox Church of the Moscow Patriarchate: Theological and Legal Problems or Kremlin Politics?

Abstract

The article examines the situation surrounding the Estonian Orthodox Church of the Moscow Patriarchate in the context of Russia's ongoing aggression against Ukraine and its repercussions for religious organisations in the Baltic States. Particular attention is given to the debate concerning the possibility of the EOC MP's withdrawal from the jurisdiction of the Moscow Patriarchate, the theological justifications for such a move, as well as the legislative initiatives undertaken by the Republic of Estonia.

Keywords: Estonia; Estonian Orthodox Church; Post-Soviet Orthodoxy; Moscow Patriarchate

Introduction

In the context of the increasing impact of foreign policy factors on domestic religious institutions, the question of the legal subordination of certain denominations has gained particular significance. The Baltic states provide instructive examples of differing models of how to respond to the challenges arising from the continued dependence of certain religious organisations on external centres that are engaged in military conflicts. The Latvian Orthodox Church, formerly subordinate to the Moscow Patriarchate, successfully initiated and implemented the process of withdrawing from its jurisdiction, and in 2023 was granted official recognition as an autocephalous structure. Estonia, by contrast, presents a different case: the Estonian Orthodox Church of the Moscow Patriarchate continues to maintain canonical ties with Moscow, despite considerable political and societal pressure, as well as it lacking a clear stance on Russia's aggression against Ukraine. The present study seeks not only to analyse the role of the Estonian Orthodox Church within Estonia's socio-political context, but also to examine the legal and theological dimensions of its subordination, and

to offer a comparative perspective with the Latvian experience.

According to the census conducted in Estonia in 2021–2022, approximately 29% of the country's inhabitants identify with a religious tradition[145]. At the same time, the share of those who report no religious affiliation increased from 54% in 2011 to 58% in 2021[146]. An additional 13% of respondents declined to answer. There has been a notable increase in the proportion of those explicitly declaring an absence of religious affiliation[147].

Christianity continues to be the predominant religion in Estonia, with Orthodoxy and Lutheranism constituting the leading branches. Orthodox Christians account for approximately 16% of the population, while Lutherans make up about 8%, and the aggregate share of other religious groups does not exceed 5%. A clear decline can be observed among Lutherans: from 14% in 2000, their proportion had decreased to 10% in 2011, and then to 8% by 2021. The share of Orthodox adherents has remained stable, while Catholics and Muslims have demonstrated slight growth (Catholics from 0.4% in 2011 to 0.8% in 2021; Muslims from 0.1% to 0.5% over the same period).

Religious affiliation varies by gender, age, educational attainment, and ethnicity. Women are more likely than men to report a religious identity (32% to 25%, respectively). The highest levels of religiosity are observed among individuals over the age of 65 (43%), while only 14% of young people aged 15–29 identify with a religion. Furthermore, possessing a higher education correlates with greater religious affiliation: 34% among those with a higher education, compared to 28% with just a secondary education and 21% with a basic education.

The nationality factor also exerts a significant influence. Among ethnic Estonians, only 17% identify with a religion, whereas 71% consider themselves non-religious. In contrast, the figures are substantially higher among Slavic minorities: 65% of Belarusians, 56% of Ukrainians, and 54% of Russians report religious affiliation. A majority of Russians (50%), Ukrainians (47%), and Belarusians (58%) identify as Orthodox Christians[148]. Among ethnic Estonians, the most widespread denomination remains Lutheranism (11%), while only 3% identify as Orthodox. These data indicate that Estonia's religious landscape is closely linked to the ethno-cultural composition of its population and that ethnicity/culture continues to serve as an important marker of social identity.

Christianity was introduced to Estonia in the 13th century by Teutonic knights. During the Protestant Reformation, the Estonian Evangelical Lutheran Church acquired the status of a state church. Until the outbreak of the Second World War, approximately 80% of

145 Population census. The proportion of people with a religious affiliation has remained stable, and Orthodox Christianity is still the most widespread affiliation, https://stat.ee/en/news/population-census-proportion-people-religious-affiliation-remains-stable-orthodox-christianity-still-most-widespread?, Statistics Estonia, accessed: 29.09.2025 r.

146 Ibid.

147 Ibid.

148 Ibid.

the Estonian population identified as Protestants, predominantly Lutherans, although some adhered to Calvinism and other Protestant traditions[149]. In 1925, the Lutheran Church was formally separated from the state; however, religious education was retained in schools, and the training of clergy continued at the Faculty of Theology of the University of Tartu.

Following the Soviet occupation of Estonia and the introduction of anti-religious legislation, the Estonian Lutheran Church suffered severe losses. More than two-thirds of the clergy were either executed or persecuted, while work with children and young people, publishing activities, and the teaching of theology were all prohibited, and church property was nationalised. Some priests attempted to resist Soviet state atheism by engaging in anti-government activities, including the smuggling of Bibles. During the German occupation of Estonia from 1941 to 1944, numerous churches were destroyed, and members of the clergy were deported to Siberia[150].

After the collapse of the Soviet Union, anti-religious laws were annulled. In 1989, the Estonian Council of Churches (Eesti Kirikute Nõukogu)[151] was established, bringing together various Christian churches and congregations in Estonia within an ecumenical framework. The Council became a member of the World Council of Churches, thereby contributing to a revival of religious life and the development of interconfessional dialogue in post-Soviet Estonia.

Orthodoxy occupies a special place in Estonia's confessional landscape. Its presence is rooted in several historical layers: the Christianisation of the eastern Baltic regions, Estonia's incorporation into the Russian Empire, and the wave of conversions of local peasants to Orthodoxy in the 19th century. As a result, Orthodoxy became established both among the Russian-speaking population and within sections of the Estonian community, securing its position as the country's second-largest denomination.

After the restoration of Estonia's independence in 1991, Orthodoxy became institutionally divided. Two jurisdictions currently operate in the country: the Estonian Apostolic Orthodox Church (EAOC)[152], subordinated to the Ecumenical Patriarchate of Constantinople, and the Estonian Orthodox Christian Church of the Moscow Patriarchate[153] (since 31 March 2025 officially titled the Estonian Orthodox Christian Church – the EOCC). The former continues the traditions of autonomy of the 1920s and 1930s, recognised by Constantinople, while the latter inherited the structures of the Soviet period and has retained canonical ties with the Russian Orthodox Church. The dual presence of these churches not only reflects the historical complexity of Estonian Orthodoxy but also constitutes an important cultural and political factor influencing both domestic identity and

149 Guardian: kas Eesti on tõesti maailma kõige uskmatum maa?, https://www.err.ee/383320/guardian-kas-eesti-on-toesti-maailma-koige-uskmatum-maa, access: 27.09.2025

150 A. Purs, Baltic Facades: Estonia, Latvia and Lithuania since 1945, Reaktion Books. p. 79.

151 Eesti Kirikute Nõukogu, https://ekn.ee/ekn-pohikiri/, accessed: 29.09.2025 r.

152 Eesti Apostlik-Õigeusu Kirik, https://www.eoc.ee/, accessed: 28.09.2025

153 The Estonian Orthodox Christian Church, https://ru.orthodox.ee/, accessed: 28.09.2025

the international perception of Estonia.

In September 2022, the Estonian Orthodox Church of the Moscow Patriarchate (EOC-MP) came under public scrutiny after the then Minister of the Interior of Estonia, Lauri Läänemets, called upon Metropolitan Eugene (Reshetnikov) to clarify the Church's official stance following statements made by Patriarch Kirill[154]. The Patriarch had declared that Russian soldiers who perished in the war in Ukraine were making a "sacrifice for the Fatherland," and that their sacrifice "washes away their sins." The Estonian authorities interpreted Kirill's remarks as a clear act of ideological influence and as an attempt to justify Russia's aggression against Ukraine.

Metropolitan Yevgeny, who was subsequently expelled and sent back to Russia, failed to provide explanations that satisfied Estonia's Ministry of the Interior. Consequently, the leadership of the Church in Estonia was delegated to Bishop Daniil of Tartu, while Metropolitan Yevgeny has continued to oversee the religious life of Estonian Orthodox believers from Moscow.

When it comes to matters of faith, conscience, and religion, these issues are regulated in Articles 40, 41, and 42 of the Constitution of the Republic of Estonia of 28 June 1992, and they read as follows:

§ 40. Everyone is entitled to freedom of conscience, freedom of religion and freedom of thought.

Everyone is free to belong to any church or any religious society. There is no state church.

Everyone is free to practise his or her religion, alone or in community with others, in public or in private, unless this is detrimental to public order, public health or public morality.

§ 41. Everyone has the right to abide by his or her opinions and beliefs. No one may be compelled to change his or her opinions or beliefs.

Beliefs are no defence for violating the law.

No one may be held legally liable for his or her beliefs.

§ 42. Government agencies, local authorities, and their officials may not gather or store information about the beliefs of a citizen of Estonia against the citizen's free will[155].

Ideological stance of the EOC-MP and the reaction of the clergy

As an institution, the Estonian Orthodox Church of the Moscow Patriarchate has distanced itself from fundamental religious values and has, to a considerable extent, become

154 Interior Minister Lauri Läänemets' ultimatum to Metropolitan Eugene of Tallinn and All Estonia expires on Wednesday., https://rus.err.ee/1608746899/v-sredu-istekaet-srok-ultimatuma-glavy-mvd-lauri-ljajenemetsa-mitropolitu-tallinnskomu-i-vseja-jestonii-evgeniju, access: 28.09.2025

155 The Constitution of the Republic of Estonia, Passed 28.06.1992, RT 1992, 26, 349, Entry into force 03.07.1992, https://www.riigiteataja.ee/en/eli/521052015001/consolide, accessed: 28.09.2025

an instrument of Russian state power. It has neither explicitly nor unequivocally condemned Russia's aggression against Ukraine, nor has it distanced itself from the ideology of Patriarch Kirill, who has described the war as a "metaphysical struggle" in which, according to him, Russia is defending "traditional values" against Western influence. Thus, Patriarch Kirill—on whose behalf the EOC-MP continues to offer prayers—not only justifies the war but also provides it with ideological and theological backing. The Church itself, in turn, continues to uphold positions in Estonia that closely align with those of Moscow.

It should be noted that, from the beginning of the conflict and up to the time of writing, the EOC-MP has not issued a clear and unambiguous condemnation of the Russian Federation's aggressive actions in Ukraine. Moreover, the rhetoric of the episcopate continues to demonstrate loyalty to Patriarch Kirill. Despite pressure from the Estonian government, the Church's official position remains indeterminate. Bishop Daniil refers to the absence of a decision by the Local Council as grounds for maintaining the existing jurisdiction and for not withdrawing from subordination to the Moscow Patriarchate.

In an interview with Estonian media outlet Delfi on 10 October 2024, Bishop Daniil of Tartu, responding to a question regarding the possible withdrawal of the EOC-MP from the jurisdiction of the Moscow Patriarchate, stated that "an autonomous structure cannot declare itself to be fully free and independent of its supreme ecclesiastical authority, that is, autocephalous." He further added that "representatives of the state authorities are compelling us to sever all canonical ties with the Moscow Patriarchate, thereby pushing us towards a schism—a grave canonical offence."

When asked by the Delfi journalist whether Patriarch Kirill's support for the war in Ukraine could serve as grounds for changing jurisdiction, the bishop responded: "We emphasise that the Patriarch, when he speaks, remains the Patriarch; at the same time, there is the official position of the Church, which is expressed through Synodal decisions, while the overall stance of the Church must be formulated at the level of a Local Council. Such a Council has not yet been convened to adopt a position on the ongoing war in Ukraine." Bishop Daniil did not specify by whom the war in Ukraine was being waged.

At the beginning of 2025, discussions commenced in Estonia concerning proposed amendments to legislation aimed at limiting the management of religious organisations from abroad—particularly those that directly or indirectly support Russia's armed aggression against Ukraine. These deliberations prompted a response from Abbess Philareta (Kalacheva) of the Pühtitsa Convent, who expressed concern about the the convent's threatened closure.

In February of the same year, Abbess Philareta addressed a letter to the Estonian authorities[156], stating that the proposed amendments to the Churches and Congregations Act could result in the closure of the convent, which serves as home to 96 nuns. In her

156 The abbess of Pyukhtitsa Monastery: They are essentially trying to close us down, https://rus.err.ee/1609593902/igumenja-pjuhtickogo-monastyrja-nas-faktícheski-hotjat-zakryt, accessed: 20.09.2025

letter, she wrote: "We have withdrawn from the world, we are far removed from political matters, living outside politics while serving God through prayer and labour—yet we are being literally drawn into politics and accused of refusing to engage in dialogue."

The Estonian Parliament (Riigikogu) adopted the government-initiated Churches and Congregations Act for the first time on 9 April 2025[157]. However, on 24 April of the same year, the President of Estonia, Alar Karis, refused to promulgate the law, arguing that the restrictions on freedom of religion contained in the document were disproportionate. On 14 May, the full composition of the Riigikogu decided not to pass the law a second time without amendments and referred it back for revision[158].

During the second reading of the bill, a number of amendments were introduced. In particular, a prohibition on managing a religious organisation from abroad in cases of significant external influence was removed, and the transitional period for implementing the necessary adjustments was extended from two to six months. The amended law was adopted on 18 June.

Nevertheless, on 3 July 2025, President Karis once again refused to sign the law, emphasising that the amendments did not resolve its fundamental flaws. In his view, the document continued to contravene three articles of the Constitution of the Republic of Estonia and still imposed disproportionate restrictions on freedom of religion. The President recommended that the Parliament re-examine the draft law and bring it into conformity with constitutional norms.

According to the explanatory memorandum, the primary aim of the law is to prevent religious organisations operating in Estonia from exploiting constitutional freedoms to disseminate extremist ideas, exert hostile influence, or incite violence. At the same time, it is underlined that Estonia guarantees the protection of freedom of religion, and that every individual has the right to decide independently whether to believe or not to believe. However, alongside respect for freedom of religion, belief, and association, the state is obliged to take into account potential threats to national and public security.

The law also defines who may serve in Estonia as a cleric or hold a leadership position within a religious organisation. The requirements for the statutes of such organisations have been further specified. In cases where the activities, statutes, or leadership of a church fail to meet the new criteria, a parish is granted the right to withdraw from such an organisation. To do so, it suffices to adopt a new statute, after which all necessary changes may be registered even without the consent of the previous leadership—a provision of particular importance in circumstances where obtaining such consent is difficult or impossible.

157 The Riigikogu adopted amendments to the Churches and Congregations Act, https://www.riigikogu.ee/en/press-releases/plenary-assembly/the-riigikogu-adopted-amendments-to-the-churches-and-congregations-act/, accessed: 02.10.2025

158 The Riigikogu will again take up the Churches and Congregations Act, which was not promulgated by the President, https://rus.postimees.ee/8249093/riygikogu-snova-zaymetsya-zakonom-o-cerkvyah-i-prihodah-kotoryy-ne-byl-provozglashen-prezidentom, accessed: 02.10.2025

Should the Supreme Court rule that the law is consistent with the Constitution, religious organisations in Estonia will be prohibited from subordinating themselves to foreign entities that support military aggression. This means that the law regulates only legal and administrative matters. The text of the law contains no prohibition against being Orthodox or practising one's faith; thus, it does not, in essence, constitute an infringement upon freedom of religion.

In an interview with Estonian media outlet Postimees, Abbess Philareta was asked whether the Pühtitsa Convent might withdraw from Moscow's jurisdiction. Her reply was evasive and couched in sophistry: "He who does not have the Church as his Mother cannot have God as his Father," she said, adding that "this is a painful question for us." Abbess Philareta stressed that in order for Patriarch Kirill's actions to qualify as heresy, a decision of a Local or Ecumenical Council would be required.

When the interviewer asked whether, from the perspective of Abbess Philareta and the monastery as an institution, the crimes committed by Russia in Ukraine constitute a grave sin, the abbess replied that she "cannot be a judge of these events." Notably, she refrained from referring to the war as a "war".

Despite repeated assertions that the EOC-MP does not engage in politics, Abbess Philareta was active in the media, claiming that the convent's stavropegial status prevented the Pühtitsa community from changing its jurisdiction. However, this assertion finds no confirmation in canonical law. The possibility of such a transfer exists both through a decision of the monastic community itself and at the initiative of the state, as illustrated by the example of the Kyiv Pechersk Lavra, which transferred to the jurisdiction of the Orthodox Church of Ukraine.

Abbess Philareta characterises a potential withdrawal from Moscow's jurisdiction as a "schism" and a "grave sin." Reference may be made here to the treatise On the Unity of the Church by Saint Cyprian of Carthage, written in the third century: "He cannot have God as his Father who does not have the Church as his Mother." Within Orthodox theology, schism is indeed considered a serious sin. However, schism refers to separation from the universal Orthodox communion. Withdrawal from the jurisdiction of the Moscow Patriarchate constitutes merely an administrative change within the Church and does not concern theological matters. Therefore, a change of ecclesiastical jurisdiction, while preserving Orthodox dogma, cannot be regarded as heresy or a canonical offence.

Autocephaly in itself is neither heresy nor sin, provided that it is established in accordance with canonical principles. History offers multiple examples: the Ecumenical Patriarchate of Constantinople has repeatedly granted autocephaly to various churches. The cases of the Russian Church (de facto in 1448, and formally in 1589)[159], the Polish Church

159 The Russian Orthodox Church under the governance of the Metropolitans 988 — 1589, https://www.sedmitza.ru/lib/text/436357/, accessed: 01.10.2025

(1924)[160], as well as the Churches of the Czech Lands[161] and America (in the twentieth century)[162], demonstrate that the recognition of the independence of local churches is possible when appropriate canonical grounds exist and the proper procedure is observed, even though such decisions may also carry political implications.

The assertion that withdrawal from the jurisdiction of the Moscow Patriarchate is impossible appears inaccurate, as several possible courses of action exist.

Firstly, the Moscow Patriarchate itself could, in theory, decide to transfer a monastery to another jurisdiction, although under the present circumstances such a scenario remains highly improbable.

Secondly, decisions made by state authorities may play a decisive role. In cases where a monastery is located outside the territory of the Russian Federation, it is national legislation and local politico–legal circumstances that can directly influence its canonical and legal status.

Thirdly, the initiative may come from the monastic community itself. Should the leadership and residents of a monastery express a desire to cease subordination to the Moscow Patriarchate, they are entitled to seek affiliation with another jurisdiction—for example, the Ecumenical Patriarchate of Constantinople or a local Orthodox Church.

A telling example is provided by the case of the Kyiv Pechersk Lavra, which in May 2022 announced it would sever ties with Moscow and, by 2025, had fully transferred to the jurisdiction of the Orthodox Church of Ukraine. This case demonstrated that monasteries are capable of changing jurisdiction when the will of the monastic community coincides with the support of the state.

Contemporary church history offers other examples of similar processes. On 27 May 2022, the Ukrainian Orthodox Church officially declared the termination of its ties with the Moscow Patriarchate. Likewise, the Latvian Orthodox Church also withdrew from canonical subordination to Moscow. It is important to emphasise that in these instances we are not dealing with a classic ecclesiastical schism, but rather with the severance of administrative ties prompted by political, moral, and ethical considerations. Among the latter, the key factor is the refusal to obey Patriarch Kirill, who has openly supported Russia's military actions against Ukraine.

Thus, the EOC-MP has at least three possible courses of action: to obtain autocephalous status; to transfer to the jurisdiction of the Ecumenical Patriarchate of Constantinople; or to establish an independent ecclesiastical structure with subsequent recognition, following the example of the Orthodox Church of Ukraine. Despite the existence of these alternatives, the EOC-MP continues to maintain its subordination to

160 Polish Autocephalous Orthodox Church, https://www.oikoumene.org/member-churches/polish-autocephalous-orthodox-church?, accessed: 01.10.2025

161 Orthodox Church in the Czech Lands and Slovakia, https://www.oikoumene.org/member-churches/orthodox-church-in-the-czech-lands-and-slovakia?, accessed: 01.10.2025

162

the Moscow Patriarchate, accompanying this stance with rigid and ideologically charged rhetoric, including the invocation of the concept of "a sin that cannot be washed away by blood."

Precedents in the Baltic States

The experience of the Latvian Orthodox Church (LOC) has demonstrated that a state initiative can lead to the formal withdrawal of a religious organisation from foreign control.

Consider the case of Latvia: following the outbreak of Russia's full-scale military invasion of Ukraine, the Latvian government raised a similar issue with regard to the Latvian Orthodox Church. The LOC's withdrawal from the jurisdiction of the Moscow Patriarchate occurred relatively swiftly, driven by the initiative of the Latvian authorities. As early as September 2022, the Saeima (Parliament) of Latvia adopted amendments to the Law on the Latvian Orthodox Church, explicitly stipulating that the LOC was to become "autocephalous" and no longer dependent on the Moscow Patriarchate[163]. The law entered into force on 1 January 2023. The state thereby enshrined in legislation the status of the LOC as an independent church, and its registration with state institutions was accordingly updated. In response, the Latvian Orthodox Church adopted new constitutional documents consistent with these legal changes.

Metropolitan Alexander (Kudryashov), head of the LOC, initially refrained from providing clear public comments but later announced that the Church would comply with the new national laws. In 2023, the LOC officially incorporated its new status into its statutes.

The reaction of the Moscow Patriarchate was predictable: the Russian Orthodox Church refused to recognise this development and asserted that the LOC remained canonically subordinate to Moscow. Patriarch Kirill denounced the move as "false autocephaly," describing the decision of the Latvian authorities as a "gross interference by the state in the affairs of the Church."

The decision of the Latvian authorities to legislate the separation of the LOC from the Moscow Patriarchate was met with broad public support and with the readiness of the Saeima to assume full responsibility for the decision. Importantly, Metropolitan Alexander himself played a significant role by addressing the Russian Orthodox Church with a formal request to recognise the autocephalous status of the LOC[164]. This precedent allows the Latvian model to be regarded as an example of how to dismantle external influence while preserving ecclesiastical structure and continuity.

163 The Saeima has recognised the Latvian Orthodox Church as independent from Moscow., https://rus.lsm.lv/statja/novosti/politika/seym-priznal-latviyskuyu-pravoslavnuyu-cerkov-nezavisimoy-ot-moskvi.a472866/, accessed: 01.10.2025

164 The Council of the Latvian Orthodox Church has taken place in Riga, http://www.pravoslavie.lv/index.php?newid=9700, accessed: 02.10.2025

In Estonia, however, both institutional readiness and internal ecclesiastical initiative for such a transformation are lacking. On 17 September 2025, the Riigikogu declined to introduce amendments to the Churches and Congregations Act—previously rejected by the President of Estonia—and approved it for a third time in its original form[165]. The repeated adoption of the law means that it will be referred to the Supreme Court, which will determine whether it complies with the Constitution.

Conclusion

The position of the Estonian Orthodox Church of the Moscow Patriarchate, according to which it cannot withdraw from the jurisdiction of the Moscow Patriarchate without a council or blessing, is not substantiated by either canonical law or historical precedent. At the same time, several possible scenarios exist: a transition under the jurisdiction of the Ecumenical Patriarchate of Constantinople, a proclamation of autocephaly, or the establishment of an independent structure followed by subsequent recognition.

Thus, the assertion that it is impossible to withdraw and the notion that it is a "sin" to do so are of a political and ideological nature rather than a theologicalone.

This analysis demonstrates that political will and the legal activity of the state play a decisive role in transforming ecclesiastical structures linked to Russia's foreign policy interests. Latvia has shown a determined commitment to changing jurisdiction, which has enabled it to achieve full legal separation for the local Orthodox Church from the Moscow Patriarchate.

In Estonia, despite similar political motivations, the process has proved more challenging due to the institutional inertia of the Church itself and active resistance from its hierarchy. The differences in approach highlight the importance of coordinating political will, public support, and legal mechanisms in order to implement institutional reforms related to national security and identity.

Despite the existence in Estonia of an alternative canonical structure — the Estonian Apostolic Orthodox Church (EAOC), which is under the jurisdiction of the Ecumenical Patriarchate of Constantinople — a significant number of parishes and believers remain within the orbit of the Moscow Patriarchate. This situation thus complicates the formation of a unified religious space independent of external political influence.

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The Rule of Law as the Constitutional Identity of the European Union[166]

Abstract

This article deconstructs the Rule of Law Mechanism legalized within the legal order of the European Union. The study offers a critical assessment of this construct across several political and legal dimensions. First, it analyzes the circumstances that led to the mechanism's introduction into EU law. Second, it evaluates the actions of key stakeholders during the implementation process, revealing their political objectives. Third, it considers the new legal regulation in the context of EU legal tradition and challenges. The article concludes by assessing the mechanism's ability, in its adopted form, to address major political-legal challenges facing the EU. The novelty lies in the use of a broad range of sources to reconstruct the social reality in which the mechanism emerged, introducing facts often absent from classical academic discourse. Moreover, it critically examines the deeply ideological nature of the Rule of Law construct, showing how a classical democratic legal institution can be instrumentalized for political purposes and alter its essence. Findings indicate that while the EU continues to rely on law as a tool of integration, the content and application of the Rule of Law increasingly shift from traditional legal principles toward political necessity, highlighting the ongoing erosion of law as a regulatory instrument in established legal systems.

Keywords: European Union; Rule of Law; constitutional identity; constitutionalization of the EU; judicial law-making; political instrumentalization of law; erosion of law; populism; post-ideology.

166 The paper was prepared using the earlier research of the author, which was specially recognized as the best research work in public international law in 2024 as part of the "International Law in the 21st Century" Award. See: "International Law in the 21st Century" Award. URL: https://iclrc.ru/ru/projects/award (accessed: 10.09.2025).

"…Commingled are they with that caitiff choir
Of Angels, who have not rebellious been,
Nor faithful were to God, but were for self.

The heavens expelled them, not to be less fair;
Nor them the nethermore abyss receives,
For glory none the damned would have from them."

Dante Alighieri[167]

1. Introduction

This article explores the politico-legal instruments for dispute settlement within regional integration frameworks, taking the European Union (EU or the Union) as the principal case study. Particular attention is devoted to the conflict that has arisen between the Union's institutions and, respectively, the Western and Eastern member states. Such tensions have brought to the surface the deeper structural contradictions inherent in the process of European integration. The argument advanced here is that some of these contradictions were embedded in the very design of the Union's legal architecture, while others have gradually emerged through subsequent processes of European enlargement.

The present article brings to light these contradictions, while offering an analysis both of the attempts undertaken to resolve them and, conversely, of the reasons underlying their neglect. The inquiry is framed with reference to the particular features of the modern condition.[168] It is argued that the evolution of social relations decisively shapes the formation of politico-legal spaces, as well as the operation of law and legal institutions within them.

The catalyst for the conflict examined in this article was the latest stage of deepening European integration. In 2020, the EU member states reached an agreement on a unique mechanism for economic recovery in response to the shock caused by the COVID-19 pandemic (hereinafter – the pandemic). The agreement was based on a decision to make substantial investments – exceeding EUR 800 billion – into the economies of the Union's member states under the framework of the *NextGenerationEU Fund* (the Recovery Fund).[169]

167 Alighieri D. The Divine Comedy of Dante Alighieri. Translated by Henry Wadsworth Longfellow. Boston; New York: Houghton, Mifflin and Company, 1867. p. 10.

168 The term "condition" is borrowed from J.-F. Lyotard's work The Postmodern Condition. Lyotard defines this term as the situation of contemporary culture, which has developed as a result of the transformations of the late 19th century that changed the rules of the game in science, literature and art. See: Lyotard J.-F. The Postmodern Condition: A Report on Knowledge / transl. by G. Bennington, B. Massumi. Manchester: Manchester University Press, 1984. P. XXIII.

169 European Commission: Directorate-General for Budget, The EU's 2021-2027 long-term budget and NextGenerationEU — Facts and Figures. Luxembourg: Publications Office of the European Union, 2021.

The scale of this financial instrument predictably intensified the key West–East tensions within the EU. Among the causes of the conflict were disagreements over the future development of the Union, as well as the rise of "authoritarian populism" in the Central and Eastern European (CEE) countries. By the time the common debt mechanism was established, the governments of several CEE states had undertaken a series of constitutional reforms that significantly curtailed the democratic achievements of the post-communist transition.

These reforms were justified as necessary to protect national sovereignty from "globalist Brussels". The irony of the situation lies in the fact that the economies of the CEE states are substantially dependent on funds disbursed from the EU capital – the same capital against which these countries had prominently positioned themselves. Unsurprisingly, concerns emerged in Brussels that Recovery Fund resources might effectively finance authoritarian practices.

In this context, the *rule of law conditionality* mechanism (the Rule of Law Mechanism) was developed to counteract the growing authoritarianism in the CEE states. This mechanism essentially links or "conditions" the disbursement of EU funds to the recipient country's compliance with constitutional democratic standards.

Among the principal proponents of the Rule of Law Mechanism are the Northern European states, which criticized the use of EU-wide borrowing by "autocrats" from the eastern part of the Union.[170] In turn, Hungary and Poland opposed the introduction of the mechanism. Such a stance was hardly surprising, as these countries are widely regarded as the primary violators of democratic standards within the EU, while simultaneously being among the largest recipients of EU fund allocations.[171]

The negotiation of the Rule of Law Mechanism unfolded as a veritable politico-legal thriller.[172] The legal positions adopted by the parties to the conflict, as well as the rulings of the Court of Justice of the European Union (the European Court, the Court, or CJEU) issued during the challenges brought by the CEE countries, provide valuable insights into the state of European integration. The resolution of the dispute revealed the true stance of the European elites toward a cornerstone of the integration process – the issue of transferring the sovereignty of member states to the Union level.

This above-mentioned dispute has offered a new perspective on the role of supranational law in the organization and development of integration associations. In

170 Barrett G. Coronavirus and EU Law: Driving the Next Stage of Economic and Monetary Union? // The Future of Legal Europe: Will We Trust in It? Liber Amicorum in Honour of Wolfgang Heusel / ed. by G. Barrett, J.-Ph. Rageade, D. Wallis, H. Weiz. Cham: Springer International Publishing, 2021. pp. 55-79, 74-75.

171 See: How the EU Should Turn the Tables on Hungary and Poland // Hartie School. Jacques Delors Centre. 2020. 27 November. URL: https://www.delorscentre.eu/en/publications/detail/publication/how-the-eu-should-turn-the-tables-on-hungary-and-poland (assessed 04.09.2025).

172 Kirst N. Rule of Law Conditionality: The Long-Awaited Step Towards a Solution of the Rule of Law Crisis in the European Union? // European Papers: A Journal on Law and Integration. Vol. 6. 2021. No. 1. pp. 101-110.

particular, one of the key legal innovations introduced by the European Court is the concept of the Union's legal identity, which became the core of the Rule of Law Mechanism. However, in the view of the author of this article, the construction of the European legal identity was largely limited to legitimizing the EU's perceived moral superiority in the context of this conflict.

Simultaneously, the very legal nature of the EU as an entity striving for deeper integration and the establishment of an "ever closer union"[173] creates a unique situation. This is further complicated by a fully-fledged political conflict between member states that remain sovereign. In this regard, the dispute exposes the difficulties of applying the EU's institutional and legal framework – which largely mirrors national systems – to relations between states. It also raises questions about the extent to which the ideas of Immanuel Kant[174], upon which much of the modern international relations system is founded, correspond to the realities of contemporary international law.

The structure of this article is as follows. The author first explains the essence of the negotiation of the Rule of Law Mechanism from a political perspective (Section 2), then evaluates the legal nature of the agreements reached (Sections 3 and 4) and the politico-legal measures undertaken by the European institutions with respect to the mechanism (Section 5). Particular attention is paid to the judicial dimension of the conflict, namely the arguments advanced by opponents of the mechanism (Section 6) and the position of the European Court (Section 7), as well as the significance of the case for the EU legal order and the key legal concepts introduced by the Court. The conclusion offers an assessment of the proposed method for resolving the dispute and presents practical implications regarding the substance of the conflict within the EU.

2. Towards the Rule of Law

The idea of conditioning the disbursement of EU-wide funds on the obligation of recipient states to comply with Rule of Law standards had been voiced long before the pandemic.[175] However, it was the unprecedented scale and momentum of the EU's collective debt instrument that appeared to cut the Gordian knot and create an opportunity for the formalization of the Rule of Law. The situation reached its climax in December 2020, with

173 Article 1 of Consolidated version of the Treaty on the Functioning of the European Union // Official Journal of the European Union (OJ). C 326. 26.10.2012. pp. 47–390, 50.

174 The reference here is to Kant's idea of regarding states as individual persons entering into unions. See: Kant, I. Perpetual Peace. In: Kant, I. Collected Works, Vol. 7. Moscow: Choro, 1994, pp. 5–56.

175 See: Kelemen D.R., Scheppele K.L. How to Stop Funding Autocracy in the EU // Verfassungsblog. 2018. 10 September. URL: https://verfassungsblog.de/how-to-stop-funding-autocracy-in-the-eu/ (assessed 04.09.2025).
Barrett G. Op. cit. pp. 74-75; Halmai G. The Possibility and Desirability of Economic Sanction: Rule of Law Conditionality Requirements Against Illiberal EU Member States. EUI Working Paper LAW 2018/06. 2018. URL: https://cadmus.eui.eu/bitstream/handle/1814/51644/LAW_2018_06.pdf?sequence=1&isAllowed=y (assessed 04.09.2025).

only a few days remaining to finalize the Recovery Fund and the Multiannual Financial Framework (MFF) for the upcoming period.

The intensity of the situation at that time was evident from the actions of those opposing the introduction of the Rule of Law Mechanism. The resistance from Poland and Hungary was so determined that they were prepared to block both the Multiannual Financial Framework and the Recovery Fund.[176] This overt brinkmanship was ultimately mitigated only through a special political agreement at the level of the Union's heads of government, who represented the first step toward resolving the dispute within the EU.

The agreement was based on three documents. The first of these is the Conclusions of the European Council (EUCO), adopted following the summit held on 10–11 December 2020 (EUCO 22/20), which recorded the political agreement of the heads of government of the EU.[177] The document reflects the member states' fundamental consent to the development and application of the Rule of Law Mechanism, and it details the politico-legal steps necessary for the mechanism's final implementation. In particular, it outlines additional legal acts and procedures that must precede the entry into force of the Rule of Law Mechanism. It is important to note that the Conclusions do not constitute sources of EU law.

The second document forming part of the agreement is the Regulation on a General Regime of Conditionality for the Protection of the EU Budget of 16 December 2020 (hereinafter Regulation 2020/2092).[178] Unlike the aforementioned Conclusions, the Regulation constitutes a source of EU law. The document sets out the substance of the Rule of Law Mechanism, defining breaches of the Rule of Law – such as limitations on judicial independence, failure to implement judicial decisions, and the inability to respond to the arbitrary actions of executive authorities – as well as the conditions and procedures for imposing sanctions, including restrictions or suspension of access to budgetary resources.

Finally, the third document forming part of the agreement is the EU Budget – the Multiannual Financial Framework (MFF) for 2021–2027.[179] Like Regulation 2020/2092, this document constitutes a source of law. However, unlike the other two documents adopted as part of the agreement, the MFF contains almost no provisions specifically dedicated

176 Joint Declaration of the Prime Minister of Poland and the Prime Minister of Hungary // Gov.pl. 2020. 26 November. URL: https://www.gov.pl/web/eu/joint-declaration-of-the-prime-minister-of-poland-and-the-prime-minister-of-hungary (assessed 04.09.2025); Bayer L. Viktor Orbán Rejects Rule of Law Compromise Idea // Politico. 2020. 4 December. URL: https://www.politico.eu/article/viktor-orban-rejects-rule-of-law-compromise/ (assessed 04.09.2025); Gros D., Blockmans S., Corti F. Rule of Law and the Next Generation EU Recovery // Centre for European Policy Studies. 2020. 15 October. URL: https://www.ceps.eu/rule-of-law-and-the-next-generation-eu-recovery/ (assessed 04.09.2025).

177 The European Council meeting (10 and 11 December 2020) – Conclusions. EUCO 22/20. URL: https://www.consilium.europa.eu/media/47296/1011-12-20-euco-conclusions-en.pdf (assessed 04.09.2025).

178 Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget // OJ. L 433I. 22.12.2020. pp. 1-10.

179 Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 // OJ. L 433I. 22.12.2020. pp. 11–22.

to the Rule of Law Mechanism, except for a modest reference to future "new" rules for the "protection of the Union budget" (Article 7 of the Recitals) and a cross-reference to Regulation 2020/2092 (Article 6).[180]

3. The Imperfections of the Rule of Law

Despite the apparent success of legally formalizing the Rule of Law Mechanism, the new rules were subject to substantial criticism from the expert community. The critiques were articulated on several grounds.

First and foremost, the legal construction of a "breach of the Rule of Law" was criticized. Under Regulation 2020/2092, sanctions may be imposed on a violating state only if "breaches of the principles of the Rule of Law in a Member State affect or seriously risk affecting the sound financial management of the Union budget or the protection of the Union's financial interests in a sufficiently direct manner".[181] In other words, the regulation does not target violations of the Rule of Law per se, but only those that impact the EU's budgetary interests. Moreover, the cumbersome formulation quickly gained a reputation as a *probatio diabolica* – that is, a requirement practically impossible to prove.[182]

Another line of criticism focused on the choice of protecting the EU's budgetary interests as the condition for the application of the new rules: why was a breach of the Union's financial interests singled out as the trigger for liability? This argument merits attention, since breaches of the Rule of Law in the CEE countries typically involve limitations on judicial authority or interference with the system of checks and balances. In other words, they are aimed at consolidating power, but hardly pose a threat to the EU's budgetary discipline.[183]

Under these circumstances, a rather unusual legal construction emerges, since the material nature of the offense is offset by the unconventional choice of the protected legal interest, namely, the Union's financial interests. In effect, a situation arises in which it is not the punishment that follows the wrongdoing to shape future behavior, but rather the threat of losing funding, which in turn determines the conduct of EU members, effectively curtailing the autonomy of national governments.

Thus, the EU appears to have pursued a path of disciplinary influence over its member states rather than establishing a delict-based scheme for responding to legal violations. By analogy, this is akin to comparing a monetary fine imposed on a driver for a traffic violation

180 Ibid.

181 Article 4(1) of Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. p. 6.

182 Scheppele K.L., Pech L. Compromising the Rule of Law while Compromising on the Rule of Law // Verfassungsblog. 2020. 13 December. URL: https://verfassungsblog.de/compromising-the-rule-of-law-while-compromising-on-the-rule-of-law/ (assessed 04.09.2025).

183 Gros D., Blockmans S., Corti F. Op. cit.

with the threat of parents restricting a child's allowance due to unsatisfactory performance at school.

A third line of criticism targets the inconsistency of the entire construction enshrining the Rule of Law Mechanism with EU law. As noted above, the agreement establishing the mechanism consists of three documents: the EUCO 22/20 Conclusions, Regulation 2020/2092, and the EU Multiannual Financial Framework for 2021–2027. Yet, the regulation of the Rule of Law Mechanism is confined to the first two documents. The EUCO 22/20 Conclusions set out the main conditions of the political agreement among the member states regarding the introduction of the Rule of Law Mechanism and the adoption of the budget – that is, the essence of the agreement – while Regulation 2020/2092 defines what constitutes a breach of the Rule of Law and establishes procedural rules for its enforcement.

However, unlike Regulation 2020/2092, the EUCO 22/20 Conclusions do not possess binding legal force, pursuant to Article 288 of the Treaty on the Functioning of the European Union (TFEU).[184] Moreover, Article 15(1) of the Treaty on European Union (TEU)[185] explicitly provides that the European Council "shall not exercise legislative functions", although it "shall provide the Union with the necessary impetus for its development and shall define its general political directions and priorities".

Indeed, scholarly debate continues regarding the informal role of the European Council and its Conclusions in the EU legal system.[186] Scholars, referring to the political nature of this body (composed of the heads of state of the EU), emphasize its special authority[187], while the European Council itself ambiguously notes that its Conclusions, although "not legally binding," are nevertheless binding for the EU.[188] Nonetheless, at present, a consensus can be observed regarding the non-binding legal nature of the European Council Conclusions. In particular, the European Court has developed consistent case law on this issue and has repeatedly emphasized that the European Council may not encroach upon the powers of, or challenge the independence and autonomy of other European institutions, as guaranteed under the EU treaties.[189]

The particular nuance of the situation lies in the fact that the EUCO 22/20 Conclusions set out a complex procedure for the entry into force of the Rule of Law

184 Consolidated version of the Treaty on the Functioning of the European Union.

185 Article 15(4) of Consolidated version of the Treaty on European Union // OJ. C 326. 26.10.2012. pp. 13–390, 23.

186 For example, this study attempts to trace the number of references to the rulings in EU legislative acts. See: Lonardo L. The Relative Influence of the European Council in EU External Action // Journal of Contemporary European Research. 2019. No. 15. pp. 36-56.

187 Ibid.

188 European Court of Justice (*далее* — ECJ). Slovakia and Hungary v. Council EU. Joined cases nos. C-643/15 and C-647/15. Judgment of 6 September 2017. § 141.

189 Ibid. See also: ECJ. Council of the European Union v. Commission [GC]. Case no. C-409/13. Judgment of 14 April 2015. § 64, 70; Poland v. Parliament and Council of the European Union [GC]. Case no. C-5/16. Judgment of 21 June 2018. § 83-90.

Mechanism, references to which cannot be found in Regulation 2020/2092 itself. The EUCO 22/20 Conclusions prescribe the course of action for the European Commission (the Commission), without which the mechanism will not "come into effect". In particular, the Commission is required to develop "guidelines on how the Regulation will be applied, including the methodology for its assessment".[190]

Moreover, the same provision establishes that the Regulation cannot be applied, and the development of the guidelines cannot be completed if Member States opposing the Regulation challenge it before the European Court (pursuant to Article 263 TFEU[191]) until the Court delivers a ruling on such a claim. Finally, the EUCO 22/20 Conclusions prescribe "close cooperation between the Commission and the Member States in the development of such guidelines," whereas the Regulation itself contains not a single word regarding this procedure.

It is unlikely that readers will see in such regulation a solution satisfying proponents of legal action against authoritarian leaders within the European Union. Rather, it represents the outcome of a political compromise in which each party was offered a means to save face, while the legal limits of the powers of European institutions were disregarded. This, in itself, illustrates the role that law and politics currently play in the governance of European integration and in the resolution of disputes within the EU.

4. Institutional Imbalance

It is hardly surprising that such a construction of the Rule of Law Mechanism triggered a wave of pessimism in the press[192] and among experts.[193] EU officials were criticized for disregarding the historical opportunity to firmly establish the long-awaited mechanism and for creating numerous grounds for challenging the new rules and for their non-compliance. The provision for preliminary judicial review of the mechanism was widely perceived as a deliberate means of delaying the entry into force of the new rules by at least two years, i.e. the average duration of proceedings before the European Court. Finally, experts pointed to a formal violation of institutional balance within the European Union by the EUCO 22/20 Conclusions, since the Conclusions effectively conflicted with the EU treaties that guarantee the autonomy and independence of European institutions.

190 The European Council meeting (10 and 11 December 2020) — Conclusions. EUCO 22/20. § 2(c).

191 Consolidated version of the Treaty on the Functioning of the European Union.

192 See also: Zelan E. EU Leaders Unblock Budget in Deal with Hungary and Poland // EUobserver. 2020. 11 December. URL: https://euobserver.com/eu-political/150357 (assessed 04.09.2025); Bayer L. EU Budget Plan Lets Hungary, Poland Off the Rule-of-Law Hook (for Now) // Politico. 2020. 9 December. URL: https://www.politico.eu/article/eu-budget-plan-lets-hungary-poland-off-the-rule-of-law-hook-for-now/ (assessed 04.09.2025).

193 Alemanno A., Chamon M. To Save the Rule of Law You Must Apparently Break It // Verfassungsblog. 2020. 11 December. URL: https://verfassungsblog.de/to-save-the-rule-of-law-you-must-apparently-break-it/ (assessed 04.09.2025).

Commission[194] is, in practice, unable to apply Regulation 2020/2092 until the European Court issues a ruling, should the mechanism be challenged. A hypothetical analogue would be if the president of an abstract state prohibited the government from implementing a law that had entered into force until it was reviewed by a constitutional court.[195] Simultaneously, the EUCO 22/20 Conclusions instruct the Commission to develop additional documents necessary for the functioning of the Rule of Law Mechanism.[196] Until such documents are prepared, Regulation 2020/2092 cannot enter into force.

The EU institutions offered only very limited confirmation of the legality of these suspensive conditions. The Legal Service of the Council of the EU (like the European Council, this body is not formed directly by the EU, but consists of officials from the Member States in their official capacity) prepared a special commentary, which, however, contained only a concise statement of compliance: the Conclusions "are consistent with the EU Treaties and the principle of institutional balance" of the Union.[197]

Expert opinions diverged regarding the response to these contradictions. Some agreed to the imperfections of the legal framework in the name of compromise, since the Rule of Law Mechanism had finally been legalized.[198] Conversely, another group of experts was unwilling to settle and called on the European Parliament (the Parliament) to challenge the constitutional-legal construction of the agreement as inconsistent with EU law and failing to fulfill its primary objective – the protection of the Rule of Law.[199] The political compromise itself, due to Germany's exceptional role in its preparation, was wryly dubbed by critics as "a side deal between the European Council aka Angela Merkel and the Commission aka Angela Merkel's former Minister of Defence".[200]

Therefore, it can be concluded that the method of resolving the conflict through the political compromise was far from perfect and reflected the insufficiency of the Union's existing legal instruments. Unsurprisingly, from a legal perspective, the agreement could be justified only by the "elastic" provisions regarding the powers of the European Council (Article 15 TEU): "The European Council shall provide the Union with the necessary impetus for its development and shall define its general political directions and priorities". This position clearly illustrates the limited role of law in the resolution of conflicts and disputes within the EU. It is hardly surprising that, to celebrate the concluded deal on the

194 Article 17 of Consolidated version of the Treaty on European Union. pp. 25-26.

195 Alemanno A., Chamon M. Op. cit.

196 См. подробнее: Kirst N. Op. cit.

197 Council of the European Union. Part I of the Conclusions of the European Council of 10 and 11 December 2020 – Conformity with the Treaties and with the text of the Regulation on a general regime of conditionality for the protection of the Union budget. § 4. URL: https://data.consilium.europa.eu/doc/document/ST-13961-2020-INIT/en/pdf (assessed 04.09.2025).

198 Nguyen T. Op. cit.; Kirst N. Op. cit.

199 Alemanno A., Chamon M. Op. cit.

200 Scheppele K.L., Pech L. Op. cit.

contentious Rule of Law Mechanism, the Prime Minister of Hungary, V. Orbán, chose champagne, a fact he hastened to announce to his social media followers.

5. The EU's Internal Affair

The twists and turns of regulating the Rule of Law Mechanism predictably led to contradictory actions by European institutions. The first target of challenge was the institutional imbalance within the Union, caused by deal (political compromise). The European Parliament attempted to take the lead in defending the Rule of Law.

5.1. Parliamentary Oversight

Armed with expert advice, the European Parliament, just days after the adoption of the Regulation (and even before it entered into force), issued a resolution on 17 December 2020, in which it emphasized that the European Council does not have legislative functions, and therefore its "political declaration" (i.e. EUCO Conclusions 22/20) has no legal effect. The European Parliament called on the European Commission to apply the provisions of Regulation 2020/2092 regardless of any political conditions or additional documents. Otherwise, the Parliament threatened to challenge the European Commission's inaction in the European Court of Justice.[201]

In the following resolution of 25 March 2021, the European Parliament nevertheless recognized the need to develop guidance clarifications for Regulation 2020/2092 as soon as possible, but immediately issued an ultimatum to the European Commission: either the latter would begin to apply Regulation 2020/2092 by 1 June 2021, or the Parliament would apply to the European Court of Justice to compel it to do so.[202] In its resolution of 10 June 2021, the European Parliament noted that the ultimatum had not been met and instructed its president to prepare a legal action.[203]

Meanwhile, the European Parliament's lawsuit has only earned a reputation as a "political demonstration". According to experts, the European Parliament has thus avoided more radical steps, such as challenging the substance of the political deal (i.e. EUCO 22/20 Conclusions) or even expressing a vote of no confidence in the European Commission

201 European Parliament resolution of 17 December 2020 on the Multiannual Financial Framework 2021-2027, the Interinstitutional Agreement, the EU Recovery Instrument and the Rule of Law Regulation (2020/2923(RSP) // OJ. C 445. 29.10.2021. pp. 15–17. § 9.

202 European Parliament resolution of 25 March 2021 on the application of Regulation (EU, Euratom) 2020/2092, the rule-of-law conditionality mechanism (2021/2582(RSP)) // OJ. C 494. 08.12.2021. pp. 61–63. § 13, 14.

203 European Parliament resolution of 10 June 2021 on the rule of law situation in the European Union and the application of the Conditionality Regulation (EU, Euratom) 2020/2092 (2021/2711(RSP)) // OJ. C 67. 08.02.2022. pp. 86–89. § 12.

(Article 234 TFEU).[204] It is noteworthy that the Parliament's actions speak volumes about the state of democracy in the EU, which is characterized by an avoidance of responsibility for decision-making.[205]

Apparently, the European Parliament opted for a reactive rather than a proactive stance in this conflict, that is, not independent action, but coercion of the European Commission to take such action.[206] In particular, even after the referral to the European Court, the European Parliament continued to issue resolutions on the Rule of Law Mechanism, employing the formal rhetoric characteristic of such appeals.[207]

5.2. European Red Tape

The European Commission played a particularly prominent role in the unfolding saga surrounding the Rule of Law. Deprived of a significant portion of its political legitimacy in the 2019 elections (Spitzenkandidat crisis) and repeatedly demonstrating its political subordination to the heads of European states, the Commission predictably did not act as a champion of the values of the Rule of Law or as an active moderator of the conflict. On the contrary, the Commission exhibited remarkable examples of bureaucratic and legal procrastination.

For instance, the European Commission sent letters to Poland and Hungary pointing out breaches of judicial independence and other elements of the system of checks and balances only on 19 November 2021, that is, after the European Parliament had already challenged its inaction before the European Court. The letters were not published, but their content can be inferred from press leaks[208] and the reactions of other European institutions.[209] It appears that the Commission deliberately withheld the content of the letters to create legal uncertainty, within which it sought to buy time and postpone active measures for the implementation of the Rule of Law Mechanism.

204 Chamon M. A Hollow Threat // Verfassungsblog. 2021. 16 June. URL: https://verfassungsblog.de/a-hollow-threat/ (assessed 04.09.2025).

205 See the discussion on the state of democracy and irresponsibility: Slavoj Žižek: On Violence // The LRB Podcast. 2008. 10 January. URL: https://www.lrb.co.uk/podcasts-and-videos/podcasts/the-lrb-podcast/on-violence (assessed 04.09.2025).

206 See the discussion on such behavior of the European Parliament: Buonanno L., Nugent N. Policies and Policy Processes of the European Union. London: Palgrave MacMillan, 2013. pp. 54-55.

207 European Parliament resolution of 24 November 2021 on the revision of the Financial Regulation in view of the entry into force of the 2021-2027 multiannual financial framework (2021/2162(INI)) // OJ. C 224. 08.06.2022. pp. 37–46.

208 J. Shotter, S. Fleming, M. Khan Letters to Warsaw and Budapest Are Informal Step Towards a Decision on Whether to Hold Back EU Funds // Financial Times. 2021. 20 November. URL: https://www.ft.com/content/ef1f2c45-c792-4569-88fc-a454ed2d9bb8 (assessed 04.09.2025); P. Virovacz, L. Kasek, R. Benecki. Poland and Hungary Have Much to Lose from ECJ Decision // ING Think. 2022. 23 February. URL: https://think.ing.com/articles/poland-and-hungary-have-much-to-lose-from-ecj-decision/ (assessed 04.09.2025); Zelan E. EU Commission Letters to Poland, Hungary: Too Little, Too Late? // EUobserver. 2021. 23 November. URL: https://euobserver.com/rule-of-law/153591 (assessed 04.09.2025).

209 European Parliament resolution of 10 March 2022 on the rule of law and the consequences of the ECJ ruling (2022/2535(RSP)) // OJ. C 347. 09.09.2022. pp. 168–171.

Thus, under Article 6(1) of Regulation 2020/2092, the activation of the Rule of Law Mechanism begins with the European Commission sending the alleged violator a "written notification… setting out the factual elements and specific grounds [for the breaches]". At the same time, Article 6(4) of the same Regulation provides the Commission with the right to send an inquiry to the alleged violators of the Rule of Law in order to clarify the existence of breaches prior to the formal initiation of the mechanism. Unlike the initial notification, such an inquiry does not entail any legal consequences.

In this context, it remains unclear which option the Commission actually employed and whether it was merely a "vegetative" inquiry under Article 6(4) of Regulation 2020/2092. At the same time, the Commission could formally act within the provisions of the Regulation. In practice, its actions constituted a tactical maneuver to postpone the actual initiation of the Rule of Law Mechanism through legally opaque steps until all conditions of the political compromise had been fulfilled.

Particular attention should be paid to the letter sent by the European Commission on 23 August 2021, which experts rightly recognize as a cynical delay tactic. This letter was a formal response to the call by the President of the European Parliament, D.M. Sassoli, dated 23 June 2021, to initiate the Rule of Law Mechanism. The document signed by Sassoli constituted the Parliament's final invitation to act before resorting to the European Court under Article 265 TFEU. The submission of such a document is mandatory under the aforementioned Article, and a response is due within two months (Article 265(2)). The letter itself contained a call to respond to the "most obvious cases of breaches of the Rule of Law". [210]

In its response, submitted on the very last day (sic!) of the period established by Article 265 TFEU, the Commission provided a textbook example of legal procrastination and formalism. On the one hand, the Commission assured the Parliament that Regulation 2020/2092 had been in force since its entry into effect (i.e. 1 January 2021) and that its application was not limited by any political conditions. Furthermore, the Commission stated that it would carefully examine the possibility of applying the Regulation if breaches of the Rule of Law were identified.

On the other hand, the Commission noted that the Parliament's proposal to begin responding to the "most obvious breaches" (here, it even, apparently ironically, quoted the Parliament's own request) could not be fulfilled due to the vagueness of the submitted request. The Commission reminded the Parliament that, according to case law, a request under Article 265 TFEU must include a description of the breaches of the Rule of Law, as well as instructions regarding the specific actions that need to be taken. In the absence of such details,

210 The President of the European Parliament's letter to the President of the European Commission No. D 303117 of 23 June 2021. URL: https://web.archive.org/web/20210710085026/https://the-president.europarl.europa.eu/files/live/sites/president/files/pdf/Letter%20to%20EC%20RoL%20230621/Sassoli%20Letter%20EC%20230621.pdf (assessed 04.09.2025).

the Parliament's request cannot be considered legally binding under Article 265 TFEU.[211]

Thus, the European Commission succeeded in postponing the application of the Rule of Law Mechanism while maintaining the formal legality of its actions. Even the Legal Service of the European Parliament, when assessing the legality of the Commission's actions, expressed skepticism regarding the prospects of bringing the case before the European Court (ironically noting in passing that the Service had not been involved in drafting the Parliament's initial request).[212] Such actions by the Commission demonstrate the predominance of the political component in resolving the dispute under consideration and underscore the Commission's role as an enforcer of the political will of the EU Member States rather than as an enforcer of European law.

6. Dissent and Outrage

The next stage in the development of the conflict concerns the reaction of the Central and Eastern European (CEE) leaders to the legalization of the Rule of Law Mechanism. This primarily involves the leaders of Hungary and Poland, whose behavior prompted the formal establishment of the mechanism. Although undemocratic conduct by elites is not uncommon in other CEE and Western European countries[213], nowhere have systemic constitutional transformations "with a negative sign" attracted as much attention from scholars and European institutions as in Poland and Hungary.[214]

It is no coincidence that, by this stage, the procedure provided for in Article 7(1) TEU had already been initiated with respect to Poland and Hungary in 2017–2018.[215] This is a special instrument aimed at addressing breaches by EU Member States of the Union's values (Article 2 TEU), which provides for the imposition of sanctions, including the so-called

211 The President of the European Commission's letter to the President of the European Parliament No. Ares (2021) 413 7550 of 23 August 2021.

212 See: Section II. Background to the Commission's letter of the Legal Service of the European Parliament. Note for the attention of Mr David Maria Sassoli on the Application of the Conditionality Regulation (EU, Euratom) 2020/2092 of 27 August 2021. p. 2. URL: https://www.politico.eu/wp-content/uploads/2021/10/21/Legal-Service-Opinion.pdf (assessed 04.09.2025).

213 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2020 Rule of Law Report. The rule of law situation in the European Union. Brussels, 30 September 2020. COM/2020/580 final. URL: https://www.riigikohus.ee/sites/default/files/elfinder/dokumendid/Rule%20of%20Law/Rule%20of%20Law_raport_general_EN_2020.pdf (assessed 04.09.2025).

214 See: Zagretdinov V. Konstitutsionno-pravovye reformy kak instrumenty upravleniya smyslami v publichnom prostranstve Pol'shi [Legal reforms as a tool of managing meanings in the Polish public sphere]. Sravnitel'noe konstitutsionnoe obozrenie, vol. 31, no. 1, pp. 76–107. (In Russ).

215 European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)) // OJ. C 433. 23.12.2019. pp. 66–85; European Commission Reasoned Proposal in Accordance with Article 7(1) of the Treaty on European Union Regarding the Rule of Law in Poland. Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law. Brussels, 20 December 2017. COM(2017)0835. URL: https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2017/0835/COM_COM(2017)0835_EN.pdf (assessed 04.09.2025).

"nuclear option"[216] – the suspension of a Member State's voting rights in the Council of the EU. At present, this instrument is effectively inapplicable due to procedural complexities, as well as mutual support among the "offending" states (unanimity in the European Council is required for the imposition of certain sanctions, and Hungary and Poland support each other)[217], and even due to sabotage of the procedure by European institutions themselves.[218]

At the same time, given that Poland and Hungary are among the largest beneficiaries of European budgetary funds, the imposition of restrictions on access to these resources is seen as a parallel and more effective measure than the "nuclear option". It is therefore unsurprising that, having avoided the threat of suspension of voting rights, Poland and Hungary chose to challenge the Rule of Law Mechanism itself.

After tactically waiting for the appeal period to expire, Hungary and Poland simultaneously filed two separate applications with the European Court of Justice on 11 March 2021, following the path set out in EUCO Conclusions 22/20 and challenging Regulation 2020/2092 in order to neutralize the Rule of Law Mechanism. It should be noted that the lawsuits were filed on the last possible days, and the delay can be considered an integral part of the practice of implementing procedures related to the Rule of Law mechanism by both the European Commission and the alleged violators of the Rule of Law.

Both states presented similar arguments in support of their claims; the key arguments can be divided into the following groups.

First, according to the applicants, the provisions of Regulation 2020/2092 were adopted without due legal procedure and therefore have no legal basis. Thus, the Regulation was adopted in furtherance of and on the basis of the rules for the implementation of the budget (Article 322(1)(a) TFEU). However, issues of sanctions (which is precisely how the applicants viewed the contested regulation) against EU Member States are governed exclusively by Article 7 TFEU. Thus, Poland and Hungary attempted to place the mechanism of the Rule of Law within a system of rules that requires the unattainable unanimity of all member states, a strategy that had already proved successful for the applicants.

Secondly, according to the applicants, the new regulation violates the principle of legal certainty, since considerations of budgetary discipline cannot be relevant to the assessment of compliance with the principle of the Rule of Law. The principle of the Rule

216 See: Opening remarks of First Vice-President Frans Timmermans, Readout of the European Commission discussion on the Rule of Law in Poland // European Commission. 2017. 20 December. URL: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_17_5387 (assessed 04.09.2025).

217 See, for example: Zalan E. Poland and Hungary Sanctions Procedure Back after Pandemic // EUobserver. 2021. 22 June. URL: https://euobserver.com/rule-of-law/152211 (assessed 04.09.2025); Maurice E. Protecting the Checks and Balances to Save the Rule of Law // The Robert Schuman Foundation. The Research and Studies Centre on Europe. 2021. 6 April. URL: https://www.robert-schuman.eu/en/european-issues/0590-protecting-the-checks-and-balances-to-save-the-rule-of-law (assessed 04.09.2025); Michelot M. The "Article 7" Proceedings Against Poland and Hungary: What Concrete Effects? // Institut Jacques Delors. 2019. 6 May. URL: https://institutdelors.eu/en/publications/__trashed/ (assessed 04.09.2025).

218 See: Pech L. From "Nuclear Option" to Damp Squib? // Verfassungsblog. 2019. 13 November. URL: https://verfassungsblog.de/from-nuclear-option-to-damp-squib/ (assessed 04.09.2025).

of Law is political rather than legal in nature and constitutes a guiding principle rather than a specific rule, the violation of which may result in liability. The introduction of liability measures for violating an abstract provision would create excessive discretion for European institutions. In this part of their argument, the applicants literally repeated the claims made by experts in relation to EUCO Conclusions 22/20.

Thirdly, the applicants pointed to a violation by Regulation 2020/2029 of the fundamental principles of European law (Articles 4 and 5 TEU), namely the requirements of equality and protection of "the national identities of Member States inherent in their fundamental political and constitutional structures". In this regard, the applicants apparently planned to shape the standpoint for future argumentation concerning the EU's interference in the sovereign powers of its members.

Up to now, the paper has discussed the debate surrounding formalization and the political steps taken to resolve the dispute concerning the Rule of Law Mechanism. The following section proposes an analysis of attempts to address this conflict through legal means. According to the author, the findings that follow will allow for a renewed perspective on both the prospects and the essence of European integration.

7. "Undeniable [Constitutional] Significance"

The European Court of Justice emphasized in every way the extraordinary nature of the proceedings initiated on the basis of the applications filed by Poland and Hungary. The Court's decisions repeatedly employ superlative expressions to highlight the significance of the cases. The Court recognized the dispute as being of "exceptional importance" and deserving special consideration by the full bench (Article 16 of the Statute of the Court of Justice of the European Union).[219] According to available information, Hungary requested that its application be examined by the Grand Chamber, i.e. by a non-standard panel of judges, but the European Court went even further and decided to examine the case with the largest possible panel (plenary session).

In addition, the Court granted the European Parliament's request for accelerated proceedings due to the cases' "fundamental importance" for the European legal order and "economic urgency". Finally, for the first time, the European Court delivered its rulings via live broadcast, and in the languages of the applicants.[220]

219 Consolidated version of the Treaty on the Functioning of the European Union. Protocol (No. 3) on the Statute of the Court of Justice of the European Union // OJ. C 115. 09.05.2008. pp. 210–229.

220 Court of Justice to Livestream Delivery of Judgment for the First Time // EU Law Live. 2022. 14 February. URL: https://eulawlive.com/court-of-justice-to-livestream-delivery-of-judgment-for-the-first-time/ (assessed 04.09.2025); V. Makszimov EU Top Court Quashes Hungary, Poland's Challenge to Rule of Law Tool // EURACTIV. 2022. 16 February. URL: https://www.euractiv.com/section/justice-home-affairs/news/eu-top-court-quashes-hungary-polands-challenge-to-rule-of-law-tool/ (assessed 04.09.2025).

By its judgments of 16 February 2022 in Cases C156/21 and C157/21, the claims of Hungary and Poland were dismissed.[221] Both the Advocate General and the European Court found no grounds to uphold the demands of the dissenting Member States and, in the process, established several important legal positions for the development of the European legal order, which will be examined in detail below.

7.1. Due Legal Process

The key issue in both cases was the question of the proper legal basis of Regulation 2020/2092. In this regard, it was necessary to address the first group of arguments put forward by the applicants, who claimed that the Regulation had been adopted outside the legal procedure laid down in the EU treaties. In other words, the European Court of Justice was asked to clarify whether the European institutions were entitled to impose restrictive measures on countries that violated the principle of the Rule of Law on the basis of budgetary rules (Article 322(1) (a) TFEU) or whether restrictive measures could be based solely on the rules and procedures provided for in Article 7 TEU.

It is noteworthy that the Advocate General not only identified this issue as central to these cases, but also noted its "undeniable constitutional significance" (italics added by the Advocate General[222]). Thus, at this stage of the conflict resolution process, political instruments for resolving the dispute began to give way to legal ones.

In turn, the European Court of Justice pointed out that the protection of the Rule of Law in the EU cannot be reduced to a strict procedure under Article 7 TEU. According to the Court, this article aims to protect not only the Rule of Law, but also other values of the Union, as set out in Article 2 TEU. The Court further emphasized that the exceptional nature of the sanctioning procedure established under Article 7 TEU lies in its capacity to respond to serious and persistent breaches of EU values.[223]

Therefore, unlike the tool under Article 7 TEU, the contested Regulation does not "pursue the objective of punishing non-compliance with the Rule of Law through budgetary provisions," but, on the contrary, aims at the "protection of the Union budget in the event of breaches of the Rule of Law".[224] Accordingly, the European Court placed emphasis precisely on the financial aspect of the Rule of Law Mechanism, which is intended to safeguard the lawful interests of the ultimate recipients or beneficiaries of budgetary funds rather than to punish a "Member State for violating the Rule of Law," as Hungary

221 ECJ. Hungary v. European Parliament and Council of the European Union. Case no. C-156/21. Judgment of 16 February 2022; Poland v. European Parliament and Council of the European Union. Case no. C-157/21. Judgment of 16 February 2022.

222 ECJ. Poland v. European Parliament and Council of the European Union. Opinion of Advocate General Campos Sánchez-Bordona of 2 December 2021. § 2.

223 ECJ. Hungary v. European Parliament and Council of the European Union. § 169-180.

224 Ibid. § 171, 172, 174.

and Poland contended.[225]

It is hardly likely that policymakers intended such a "modest" role for the protection of financial interests in the Rule of Law deal. The intensity of the political support for Regulation 2020/2092 clearly indicates otherwise[226], and the text of the political agreement explicitly describes the Regulation's measures as "exceptional"[227], alongside other instruments for responding to breaches of European law. Needless to say, in the context of the dependent position of the dissenting Member States visàvis European funds, any restrictions are bound to be highly sensitive.

Against this background, the subtle formalism of the European Court becomes particularly striking. Its approach can only be explained either as a necessary sophism to preserve the legal force of the mechanism or by political and legal objectives. One may assume that justifying financial restrictions for the populations of Member States heavily dependent on European funds is a delicate matter, and that the painful consequences of any sanctions could only rally voters around the leaders of the CEE countries. Therefore, shifting the focus from sanctions to breaches of budgetary rules, even through breaches of the Rule of Law, may seem like a way out of a political "zugzwang".

On the other hand, it is not without irony that the European Court effectively turned the logic of the opponents and critics of the EUCO 22/20 Conclusions against them. It should be recalled that long before the judgments dismissing the claims of Hungary and Poland, critics complained about the narrow scope of Regulation 2020/2092, since its restrictions could be applied only to breaches of the Rule of Law that could be linked to budgetary violations. The European Court apparently adopted this reasoning and concluded that the very limited scope of the Regulation's enforcement mechanism removes it from the complex procedure established under Article 7 TEU.[228]

7.2. Horizontal Conditionality

The second set of arguments put forward by Hungary and Poland revolved around the alleged violation of the principle of legal certainty by Regulation 2020/2092. The applicants contended that the Rule of Law is not a legal mechanism but a political concept. In this regard, introducing liability for violating an undefined norm would only lead to excessive discretion for law enforcement agencies.[229] The vagueness of the concept is also evident in the reports from the European institutions themselves on the overall state of the

225 Ibid. § 115.

226 See the European Parliament's press-release: Parliament Approves the "Rule of Law Conditionality" for Access to EU Funds // European Parliament. 2020. 16 December. URL: https://www.europarl.europa.eu/news/en/press-room/20201211IPR93622/parliament-approves-the-rule-of-law-conditionality-for-access-to-eu-funds (assessed 04.09.2025).

227 The European Council meeting (10 and 11 December 2020) – Conclusions. EUCO 22/20. § 2(d).

228 ECJ. Poland v. European Parliament and Council of the European Union. § 162, 163, 220, 221.

229 ECJ. Hungary v. European Parliament and Council of the European Union. § 200.

Rule of Law; they indicate that breaches occurred to varying degrees across all Member States.[230]

The applicants seemingly anticipated that the European Court would attempt to circumvent the discretion inherent in the "Rule of Law" by invoking the concept of "protection of the EU budget" and sought to preempt this reasoning. In their view, reducing the Rule of Law to budgetary protection unjustifiably narrows the understanding of the Rule of Law concept as a general EU value.[231] The applicants effectively turned the European legislator's argument on its head: if the Rule of Law is applicable solely for the protection of the budget, it ceases to be a universal value and becomes merely an instrument for safeguarding financial interests.

In addition, the applicants pointed out that the link between the Rule of Law and budgetary protection is based on the right of European institutions to establish financial rules, i.e. the procedure for implementing the EU budget (Article 322(1)(a) TFEU). However, neither these rules have been used to protect such abstract categories as the Rule of Law, nor do EU financial programs contain any reference to compliance with the Rule of Law.[232] Last but not least, the contested Regulation does not include any rules governing the implementation of the Union budget.

In fact, as the applicants pointed out, the Regulation, under the guise of legal uncertainty, pursues the objective of creating the possibility of punishing any EU Member State for violating the Rule of Law as interpreted by the European institutions, thereby circumventing the complex procedure prescribed by Article 7 TEU.[233] Broad discretion under the guise of "protecting the budget" will allow the EU to go beyond the limits of EU law, thereby interfering in the exclusive sphere of national legal systems (in particular, in the legislative process and the design of the judicial systems of EU Member States[234]).

The European Court of Justice's reasoning in response to these arguments can be summarized as follows. The provisions of Regulation 2020/2092 do not reduce the concept of the Rule of Law (Article 2 TEU) to budgetary interests. On the contrary, the Regulation was adopted in the context of the TEU, and budgetary protection constitutes a specific manifestation of the Rule of Law. According to the Court, there is no need for an explicit reference to the Rule of Law in every EU financial program, since this principle is listed among the general values of the Union (Article 2 TEU), and adherence to these values is a mandatory condition for accession to the Union (Article 49 TEU).[235]

230 ECJ. Poland v. European Parliament and Council of the European Union. Opinion of Advocate General Campos Sánchez-Bordona of 2 December 2021.

231 ECJ. Hungary v. European Parliament and Council of the European Union. § 222, 226.

232 Ibid. § 79, 141.

233 Ibid. § 79-81.

234 Baraggia A., Bonelli M. Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges // German Law Journal. Vol. 23. 2022. No. 2. pp. 131-156, 147.

235 ECJ. Hungary v. European Parliament and Council of the European Union. § 123-124.

To address the legal connection between the value of the Rule of Law (Article 2 TEU) and the Rule of Law Mechanism aimed at budgetary protection (Regulation 2020/2092), the European Court of Justice introduced the doctrine of "horizontal conditionality". Under this doctrine, interactions among EU Member States, including the system of financial obligations, are based on mutual trust. In turn, such trust is underpinned by the presumption that all participants comply with EU law.

To reinforce its position, the European Court of Justice referred to another provision from the general part of the TFEU, the principle of solidarity. The Court pointed out that the European budget is a "practical embodiment of solidarity, a fundamental principle of European law" mentioned alongside the value of "the rule of law" in Article 2 of the TFEU. The principle of solidarity is implemented through the execution of the budget and is based on mutual trust between the member states of the Union. Thus, the reasoning completes the circle, returning to the Rule of Law, whose observance is required to ensure trust, while trust constitutes a condition for solidarity and the implementation of the EU budget, meaning that the Regulation does not substitute for a sanctioning mechanism.[236] The Court's logic can be conditionally represented in the form of the following syllogism:

Solidarity in the EU (mutual trust)	=	Mutual obligations in the EU (budget)
Solidarity in the EU (mutual trust)	=	Compliance with the Rule of Law
Compliance with the Rule of Law	**=**	**Mutual obligations (budget)**

This kind of legal equilibristics by the European Court of Justice was not considered the most successful example of judicial law-making by various commentators. However, this position could be deconstructed to the result of a politico-legal compromise among the European institutions: the European Parliament advocated for the introduction of general accountability rules, while the Council of the EU insisted on a more specific approach to avoid accusations of circumventing the sanctioning procedures provided for in Article 7 TEU.[237] This gave rise to the idea of presenting the mechanism for protecting the Rule of Law as aimed at protecting the budget, rather than introducing sanctions alternative to those already in place (the European Court of Justice repeatedly emphasizes this distinction in the text of its decisions[238]).

However, the doctrine of horizontal conditionality hardly managed to draw a clear line between the restrictive measures under Regulation 2020/2092 and those envisaged in

236 See the doctrine in ECJ. Hungary v. European Parliament and Council of the European Union. § 123-133.

237 Baraggia A., Bonelli M. Op. cit. pp. 137-138.

238 ECJ. Poland v. European Parliament and Council of the European Union. § 262.

Article 7 TEU. The Rule of Law Mechanism itself seems to carry indirect indications of a sanctioning nature, and even a somewhat targeted orientation towards certain Member States. In other words, no matter how much the legislator sought to present it otherwise, it is difficult to dispel the impression that the Regulation functions as an instrument primarily aimed at the governments of Poland and Hungary.

In particular, it is hardly coincidental that, when selecting examples of Rule of Law violations, the Court of Justice primarily refers to the independence of the judiciary, which, as is well known, has come under sustained attack precisely in those Member States. Likewise, the focus of the Mechanism on the largest recipients of EU funding once again suggests the legislator's particular attention to Poland and Hungary.[239] Finally, the measures provided for by the Regulation have even been openly described as "sanctions in practice" at events organized by pro-European research centers, a phrase attributed to Stanisław Bernat, former Vice-President of the Polish Constitutional Tribunal. Moreover, the Regulation itself explicitly presents its measures as additional to the sanctioning procedures (see recital 14 of the preamble).

Although the details of how the new Mechanism will be applied are difficult to predict due to its wide discretion, both the logic of the Regulation's wording and the Court of Justice's position suggest a potentially targeted and issue-driven application. The Regulation risks remaining either a selective instrument directed against "inconvenient" autocrats, or a largely inapplicable but deterrent tool. In either case, however, the implementation of the Mechanism is likely to exacerbate tensions within the EU: between Brussels and the more authoritarian states of Eastern Europe in the first scenario, or between Brussels and the donor states that insisted on introducing the Rule of Law Mechanism in the second.

7.3 The Ideology of the Rule of Law

The third group of arguments advanced by the applicants revolved around the idea of safeguarding the distinctiveness of the legal systems of the Member States. The applicants argued that the diversity of constitutional and legal traditions among the Member States makes it impossible to establish a uniform EU-wide standard of the Rule of Law.[240] They further noted that the criteria for assessing compliance with the Rule of Law standard touch upon the core functions of the state, such as "the protection of territorial integrity, the maintenance of public order, and the safeguarding of national security".[241] In this regard, the applicants maintained that the Regulation, while formally aimed at protecting the Rule of Law, in practice allows the Union to prescribe the structure of state institutions within the Member States. Consequently, the Regulation goes beyond the limits of EU law and entails

239 Ibid. § 152.
240 ECJ. Poland v. European Parliament and Council of the European Union. § 313.
241 Ibid. § 254.

an intrusion into the sphere of the Member States' exclusive competences.[242]

The European Court of Justice fully dismissed the claims of Poland and Hungary. The Court affirmed that it "respects the national identity of the Member States" and that "the Member States enjoy a certain degree of discretion in implementing the principles of the Rule of Law".[243] At the same time, however, the Court noted that this discretion cannot extend beyond the understanding of the Rule of Law as defined by EU law[244], the Court's own case law, and the interpretations of consultative bodies (for instance, § 342 of the Venice Commission). Accession to the European Union, the Court stressed, signifies entry into a "single legal order" and entails adherence to the "values" that constitute the very identity of the Union.[245]

This interpretation should be read as an important politico-legal ideologeme. In justifying its position, the European Court of Justice chose to set up a formal opposition between the "national identity" of the Member States and the pan-European standard of the Rule of Law. What deserves particular attention is that, in the judgment under consideration, the Rule of Law is not conceived as a joint achievement of European legal orders, as a shared European identity inherent in each Member State and through which the very nature and spirit of integration emerged. On the contrary, the Rule of Law is understood as an immutable attribute of integration itself, a fixed result, a settled fact that distinguishes the Union from individual European legal orders, which, taken in isolation and apart from the Union, do not necessarily follow the logic of the Rule of Law. This legal reasoning of the Court can be summarized in the form of two premises.

The first premise is that the Rule of Law constitutes a distinctive feature of a politically constituted Europe: "...respect for [EU] values is a prerequisite for the accession to the European Union of any European state applying for membership".[246] According to observers, the hearings featured an "emotional moment" that reflected the very essence of the Union's value-based confrontation: the Polish judge at the European Court of Justice, M. Safjan, asked the representative of the Polish government whether he supported the idea of a constitutional identity of the European Union and whether he considered the Rule of Law to be a part of it.[247] As a result of the proceedings, the Court concluded that such an identity does indeed exist at the EU level, and that the Union has the right to defend it.

The Judgment emphasizes that the Rule of Law is understood not as a value belonging to the European states individually, but as a value of the European Union itself. In other words, the Union is not the outcome of solidarity among states and the commonality

242 Articles 4(1), 4(2) and 5(2) of Consolidated version of the Treaty on the Functioning of the European Union. pp. 51–52, ECJ. Poland v. European Parliament and Council of the European Union. § 253-259.
243 Ibid. § 265.
244 Ibid. § 328.
245 Ibid. § 145, 264.
246 Ibid. § 142.
247 College of Europe Bruges. Panel discussion on the Rule of Law Conditionality.

of their legal orders, realized in political integration, but rather it is political integration itself that constitutes the precondition for the subsequent solidarity of the Member States. Notably, in the text of the Judgment under consideration, the author of this article was able to identify only a single instance where the Court referred to the Rule of Law as a value inherent to the legal orders of the Member States themselves rather than to the Union as a whole.[248]

Moreover, the ruling states that the European Union's protection of the "rule of law" is nothing more than the Union's protection of its own "identity", which may be threatened by national authorities.[249] Such a threat may come from the highest authority of an EU Member State. In the struggle against backsliding from the Rule of Law, the infringer may be "a public authority which… participates in sovereign actions [of the Member State] in areas of fundamental importance for the performance of its essential functions", reads the decision.[250]

The second premise completes the legal formalization of the distinction between EU values and those of national legal systems. To substantiate its position, the European Court of Justice introduced the doctrine of the "result" of compliance with the Rule of Law, once again emphasizing the difference between the nature of the EU and that of national legal systems, as determined by adherence to Rule of Law principles. Within this framework, legal systems are divided into those "before" and "after" accession to the EU.

The Rule of Law is understood by the Court as "a result that must be achieved by the Member States". This "result" is interpreted as adherence to the values of the EU, as defined by the case-law of the Court of Justice and by the provisions of the Regulation.[251] The obligation to achieve such a "result" derives from the very nature of the treaties signed by the Member States.[252] While this obligation does not exclude a degree of variation in the implementation of the Rule of Law at the national level, the Court emphasizes that "the result to be achieved cannot vary from one Member State to another".[253]

The following points can be made regarding the substance of the Court's arguments. First, the Court of Justice reaffirmed its role as an engine of deeper integration and as a vehicle of the "constitutionalization of the EU through law".[254] This role of the Court stands out against the backdrop of the intransigence of EU leaders on the issue of the Rule of Law in the political agreement. In other words, initial steps to resolve the original intergovernmental political deadlock were taken exclusively by the heads of some EU states,

248 ECJ. Poland v. European Parliament and Council of the European Union. § 266.

249 Ibid. § 268.

250 Ibid.

251 Ibid. § 169.

252 Ibid. § 263.

253 Ibid. § 265.

254 Davies B. Resisting the European Court of Justice: West Germany's Confrontation with European Law, 1949–1979. Cambridge: Cambridge University Press, 2012. p. IX, 1-45.

and subsequently their actions were formalized through a deal. In contrast, EU institutions refrained from actively intervening in the dispute, limiting themselves to formal declarations, thereby shifting responsibility for the final resolution of the dispute to the European Court of Justice.

Secondly, attention should be drawn to the approach chosen by the Court, which consists in contrasting the values of the Union with the legal orders of the Member States. At first glance, this reasoning appears coherent, as if the EU were serving as a mechanism for consolidating the best legal traditions. Indeed, history provides ample evidence of diverse — and not always positive — politico-legal practices not only in the CEE states, but also among other Member States. Against this background, the narrative of the EU as a "successful project ensuring a high standard of legal practice" may seem particularly attractive. Yet the simplified dichotomy employed by the Court carries within it a troubling, and potentially even dangerous, dimension.

Thus, it is hardly possible to consider the Rule of Law to be an invention of contemporary political Europe, that is, of the European Union itself. Rather, it is the result of the gradual evolution of European legal systems, with the achievements of each of them forming the true foundation of the Union, a Union of states that once waged wars against each other or were far removed from today's notions of "justice and fairness".

At the same time, the opposition between allegedly "undemocratic" Member States and the "proper" approaches of the Union tends to diminish this value. It is hardly a secret that the EU itself abounds not only in practices of governance that are far from democratic, but also, at times, disregards the very values it proclaims.[255] Against this background, the fixation on the Rule of Law as an already accomplished result at the EU level appears, at the very least, a contradictory stance.

7.4. "Deniable [Constitutional] Significance"

To summarize, the ECJ sought to resolve two issues: the introduction of a European standard (a formal criterion for comparing national legal systems) and the creation of a means to influence the "area of exclusive competence" of Member States, which would have been impossible under a literal interpretation of the provisions of the European treaties.

However, this approach has tangible side effects. First, the formalism of the Rule of Law overlooks the underlying causes of undemocratic deviations in national legal systems, which the European Court of Justice interprets as predispositions toward authoritarianism rather than as indicators of flaws in the local implementation of EU law and policy. This raises the question of whether European institutions and bureaucrats remain uncritical

255 See, for instance: H. Kundnani What Does It Mean to Be "Pro-European" Today? // The New Statesman. 2021. 4 February. URL: https://www.newstatesman.com/ideas/2021/02/what-does-it-mean-be-pro-european-today (assessed 04.09.2025).

toward themselves, thus fostering a degradation of democracy within the EU, as evidenced by the authoritarian populism observed in certain Member States.

Secondly, the EU thus effectively presents itself, through the European Court of Justice, as the sole legal authority and final instance exclusively on the basis of the superior legal force of European law. Needless to say, an argument of exactly the same origin has been used by the self-described "last defenders of Christian values" in the EU, who act as the applicants in the present cases. Moreover, it is precisely this approach of formal supremacy that is used by the Union's "exemplary" legal systems to attack European law.[256]

It must be emphasized that the Courts' "supremacy argument" can easily be used by leaders of recalcitrant EU member states. However, the author of the paper does not seek to build a line of defense for national sovereignties within the EU. Apparently, the Court's logic was seeking to create a legal instrument to limit such a possibility for Member States. Meanwhile, it seems that the European Court's legitimization of antagonism only emphasizes the existence of a contradiction between the EU and the nation state and gives even more arguments to opponents of integration, since the European Court has legitimized their value-based confrontation.

According to the author of this article, such an interpretation of the Rule of Law by the European Court of Justice deserves close attention, as it effectively demonstrates the prevailing consensus among European elites regarding integration. The Court refrained from creating instruments to deepen the unity of the Member States or to treat the principle of the Rule of Law as a projection or teleology for the development of the EU and of each legal system individually. On the contrary, the Rule of Law was fixed as an achieved standard at the level of the Union, effectively denying the Member States a progressive, evolutionary role.

It is striking that in reaching its conclusion, the European Court of Justice overlooked the arguments presented by the applicant states, which effectively indicated an alternative course of action. In particular, Poland and Hungary, in presenting their positions, pointed to the existence of constitutionally significant objectives in EU law toward which the Union's members are expected to strive, and they recognized the right of international organizations to develop criteria for the implementation of these objectives within national legal systems.[257]

In other words, the capacity of the Rule of Law to project its development into the progressive evolution of unity within the Union and to help address broader challenges of the time was effectively devalued by the European Court of Justice. Scholars lament that "the use of a complex metaconcept [of the Rule of Law] for short-term gains diminishes its epistemological significance and, consequently, its ability to provide meaningful reflection

256 See: Bundesverfassungsgeright. 2 BvR 859/15. Judgment of the Second Senate of 5 May 2020. URL: http://www.bverfg.de/e/rs20200505_2bvr085915en.html (assessed 04.09.2025).

257 ECJ. Poland v. European Parliament and Council of the European Union. § 68.

on practices and phenomena".[258] Instead, the Court effectively chose to freeze the conflict between Brussels and the Member States.

It appears that this interpretation of the Rule of Law reflects the genuine attitude toward European integration among EU elites. National elites of Western European countries, who are not genuinely interested in implementing structural changes within the Union and are primarily intent on preserving their power within the framework of the nation-state, essentially adhere mentally to the concept of a "Europe of variable speeds" and are unlikely to support deeper integration, including through legal mechanisms.

In this context, the Rule of Law increasingly resembles a populist slogan, propagated by European elites who seek to use it to compel the national authorities of Central and Eastern European countries to formally comply with European law, without examining the underlying causes of rising support for authoritarianism or making substantial efforts to address them. Critics of the formalism of European politics have long highlighted this approach: "If we look to the European Union as a solution for everything, chanting 'Europe' like a mantra, waving the banner of 'Europe' in the face of recalcitrant nationalist heretics and screaming 'Abjure, abjure!' we shall one day wake up to find that, far from solving the problems of our continent, the myth of 'Europe' has become an impediment to recognizing them".[259]

Critical scholarship rightly notes that the Rule of Law, as interpreted by the EU, has, in a manner reminiscent of Antonio Gramsci's concept, acquired the characteristics of a cultural hegemon of neoliberalism, spreading alongside the accelerated Europeanization of Central and Eastern Europe. At that time, the extensive implementation of market-oriented approaches and the large body of EU legal norms left little room for their meaningful assimilation by the national legal systems of Eastern European countries.[260] This development of the social structure naturally resulted in the widespread exclusion of large segments of rural populations and residents of small towns from the beneficiaries of Europeanization.[261]

Broader discussions in contemporary European political philosophy criticize this approach as "technopopulism", that is, a situation in which Western European politicians abandon genuine value-driven confrontation with populism in favor of preserving power. This strategy was clearly demonstrated in the 2022 French presidential elections and the 2019 European Parliament elections. In both cases, the threat of "populism" was essentially taken out of the political "toolkit" to intimidate voters, attract their support, and create an

258 B. Iancu Status Quo Hegemony? // Verfassungsblog. 2020. 6 October. URL: https://verfassungsblog.de/status-quo-hegemony/ (assessed 04.09.2025).

259 T.A. Judt Grand Illusion?: An Essay on Europe. New York : New York University Press, 2011. P. 140.

260 See, for example: J. Zielonka Conclusions: Foreign Made Democracy // Democratic Consolidation in Eastern Europe. Volume 2: International and Transnational Factors / ed. by J. Zielonka, A. Pravda. Oxford: Oxford University Press, 2001. Pp. 511-532.

261 See: B. Iancu Op. cit.

artificially unified front, only to be put back afterward along with the other aspirations of economically vulnerable EU citizens. This logic has even been satirized in contemporary Russian poetry, highlighting the symbolic and performative nature of such political maneuvering: "Islamist and feminist, / Sodomite with Shiite, / Anti-globalist, Trotskyist… / All for an open world <…> // In general, In short, the villain did not pass, / Fell into marginality. / Triumph of sacred ideas, Multiculturality".[262]

Conclusion

The twists and turns on the path to formalizing the Rule of Law mechanism and the contradictory position of the European Court of Justice are all attempts to resolve a complex and deep-rooted conflict within the European Union. The parties involved have resorted to both political and legal means to find a way out of the current situation, but they have hardly come close to addressing the real causes of the conflict.

The Rule of Law mechanism itself is a rather controversial and not the most positive example of EU lawmaking. In fact, the mechanism is a measure of formal influence by European institutions on undesirable actions by autocratic political regimes. At the same time, the mechanism does not contain any traces of its developers' concern about the essence of the reasons for violating the Rule of Law.

The "half-hearted" nature of the Rule of law mechanism is striking. On the one hand, strictly speaking, it is not a sanctioning mechanism; on the other hand, it is an instrument that clearly creates leverage for targeted pressure. The anomie of the structure is evident even in the legal technique of the European Court of Justice decisions discussed in the paper. Their wordings are full of blanket norms, forcing the reader to gather legal positions bit by bit throughout the text of the decisions, and attempts to follow the Court's line of argumentation lead to going around in circles.

By choosing a strategy of opposition to national legal systems, the EU seems to confirm the idea that the latter have characteristics that contradict the nature of the Union. The European legislator may have wanted to present the EU as a union of special values, but as a result, it denies national legal systems their progressive development towards true "Europeanism". In other words, the EU is turning from a union of European peoples into a "nature reserve" surrounded by a "jungle".[263]

The avoidance of real action on the problems of populism is seen as a manifestation

262 Refers to the political campaign against Marine Le Pen in the French presidential elections. See: Emelin V. Ode to the Advancement of J.-M. Le Pen to the Second Round of the French Presidential Elections // Emelin, V. Götterdämmerung: Poems and Ballads. Moscow: Ad Marginem Press, 2012, p. 172 [V. Emelin Oda na vykhod Zh.-M. Le Penna vo 2-y tur prezidentskikh vyborov vo Frantsii // Emelin, V. Götterdämmerung: stikhi i ballady. M.: Ad Marginem Press, 2012, p. 172 [in Russ.].

263 European Diplomatic Academy: Opening remarks by High Representative Josep Borrell at the inauguration of the pilot programme. 2022. URL: https://www.eeas.europa.eu/eeas/european-diplomatic-academy-opening-remarks-high-representative-josep-borrell-inauguration-pilot_en (assessed 04.09.2025).

of the general trend in EU policy, as well as the general state of democratic development. The thesis of the Rule of Law, like the thesis of an all-pervasive and victorious "Europeanism", increasingly resembles the EU's own populism, empty concepts without any substantial value content. Instrumentalism and the search for a meaningless golden mean (something that depressed Dante[264]) reign supreme in contemporary politics.

It is not surprising that constitutional experts are making exactly the same complaints about how indifferent European discourse is to the new wave of constitutional self-determination among EU states: "fallacy of the golden mean: the tendency to map conflicts on a continuous scale and place the conflicting parties on opposite far-out ends, one extreme to the left, one extreme to the right, so the solution to the conflict seems to pretty much follow all by itself: it's in the middle, of course".[265]

The essence of European identity, the meaning of being European in the new Europe remains unclear, lamented dissertations in the early 2000s.[266] A few years later, a discussion about the "European way of life" arose in the EU and immediately died down, and the question of transformation was once again left hanging in the air.[267]

Is there a path for significant change in Europe, or are the options limited to familiar solutions that balance the opposing ideas of a union of states and a federal state? Perhaps there is an alternative option, based on a combination of the most successful achievements of social construction: an unidentified political object[268], a space of values[269], and a non-medieval empire[270], which we are only beginning to think about.[271]

Slovenian philosopher Slavoj Žižek also attempts to identify the causes of the political crisis, citing as its root cause "Europe's inability to do anything 'heroic'[272] and arguing that Europe's future lies in a return to 'genuine' rather than imitative 'politicization of public

264 See the epigraph to the article.

265 M. Steinbeis This Is Not Just Another "Judicial Reform" // Verfassungsblog. 2021. 29 October. URL: https://verfassungsblog.de/this-is-not-just-another-judicial-reform/ (assessed 04.09.2025).

266 Polyakova A. The Dark Side of European Integration. Stuttgart: ibidem Press, 2015. p. 160.

267 Promoting our European way of life. Priorities 2019-2024. URL: https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life_en (assessed 04.09.2025).

268 See: Delors J. Speech to the inaugural session of the Intergovernmental Conference. 1985. Luxembourg, 9 September. Bulletin of the European Communities. September 1985, № 9. Luxembourg: Office for official publications of the European Communities. URL: https://www.cvce.eu/content/publication/2001/10/19/423d6913-b4e2-4395-9157-fe70b3ca8521/publishable_en.pdf (assessed 04.09.2025).

269 President Jean-Claude Juncker's State of the Union Address 2017. URL: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_17_3165 (assessed 04.09.2025).

270 Zielonka J. Is the European Union a Neo-Medieval Empire? // The Cicero Foundation. Great Debate Paper. 2008. No. 1. URL: https://www.cicerofoundation.org/wp-content/uploads/Jan_Zielonka_The_EU_Neo-Medieval_Empire.pdf (assessed 04.09.2025).

271 See: Glendinning S. The European Hamlet // The Routledge Handbook of Philosophy and Europe / ed. by D. Meacham, N. de Warren. London: Routledge, 2021. pp. 155-165, 163.

272 Žižek S. Heroes of the Apocalypse // Project Syndicate. 2022. 11 May. URL: https://www.project-syndicate.org/onpoint/european-response-to-ukraine-war-test-for-climate-other-crises-by-slavoj-zizek-2022-05?fbclid=IwAR1Nv74QLzVPB4of81pQVq6HBFldO2rrNa6junFMO52xarTDG9Z7KHWZObw (assessed 04.09.2025).

life'".[273] At the same time the danger awaiting the designer of large-scale political projects lies in the itching desire to put forward a universally applicable formula. Moreover, when confronted with wounded pride, this desire leads not to the creation of a coherent recipe, but to isolation: "Everyone in each separate society wanted to 'return' to an imaginary Europe, to which embellished versions of their national history supposedly once belonged".[274]

The logical question that arises for researchers in this context can be formulated as follows: how did individual European politicians manage, at different times, to break these rules in order to create extremely effective and subtle mechanisms of integration, and how, even with the help of manipulation, overcoming the rigidity and resistance of their partners, did they manage not to destroy the entire European project, but to achieve its harmonious development? Perhaps the answer lies in the fact that circumventing the rules is only permissible to a certain extent, limited by the very values of Christian politics that still underpin the political and legal structures of political Europe. It is suggested that this should be approached in the same way, i.e. a priori: "However, one theory is as good as another. There is also one which holds that it will be given to each according to his faith.[275] Let it come true!".[276]

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273 Žižek S. Žižek po wyborach w Słowenii: Triumf technopopulizmu // KrytykaPolityczna.pl. 2022. 29 April. URL: https://krytykapolityczna.pl/swiat/ue/slowenia-triumf-techno-populizmu-zizek/ (assessed 04.09.2025).

274 Iancu B. Op. cit.

275 It will be given to each according to his faith: A common misapplication of Christ's words, "According to your faith be it done to you" (Matt. 9:29).

276 M. Bulgakov The Master and Margarita. Translated and with Notes by Richard Pevear and Larissa Volokhonsky. London: Penguin Books, 1997. P. 209.

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The Western Border Policy and its Geopolitical Relationship (Ratio) with Developing Countries[277].

Abstract

The area study of this research paper covers a very wide range, from the border studies, transition studies, ideology of common humanistic values, human-cultural development, coexistence issues, debates on globalization and its challenges, general conflictology, to Western civilization and Caucasian studies (Caucasiology), unrecognized states, etc. Since we accept the dominance of Western civilization as the basis for the demarcation of the contemporary world, we have chosen the ideological basis of the famous Fukuyama-Huntington "dichotomy", which is expressed in their famous works. On the one hand, this is the end of history, which, in a very rough representation, means that the Western civilization is the peak of human development, perfection, and the historical developments end at this point (Poynter, 2013). This research partially refers to the Nagorno-Karabakh conflict issue as well, which was the most heated and defrosted conflict worldwide during the past 3 decades.

Keywords: Armenia, Nagorno-Karabakh, Western Europe, border studies, regional conflicts, territorial disputes, cross-border interactions, border demarcation, delimitation

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CONTENT[278]

Abtract[279]
Topicality and practical significance
Targeted audience
Methodological approach
List of individuals and entities interviewed for the study
Introduction
A brief outline of the Nagorno-Karabakh issue
The Western border management policy and geopolitical challenges
European Territorial Cooperation, success stories and challenges
Cooperation attempts at the Polish-German and Polish-Slovak border
The Finnish-Russian border cooperation experience
Historical overview of the East Central Europe border state
Changes in the territories of Belarus, Lithuania, Poland and Ukraine from the 10th to the 20th centuries
Historical overview of the territorial development of East Prussia
The policy of religious tolerance in early modern Poland and Prussia
The main issues related to stereotypes in Polish and German relations and cross-border interactions
The Polish corridor vs Lachin corridor
Conclusions
International agreements, conventions and treaties on border management
Bibliography

Topicality and practical significance

It is an undeniable fact that the issue of all types of borders (national, historical, political, social, virtual, intellectual, cultural, etc.) has always been the most contested topic at all times and in all civilizations and, specifically, demonstrates relevance for the recent times due to the uprising globalization challenges and the rapidly changing world conditions and development tendencies. In this context, the history of the Karabakh war and its anticipated resolution in terms of the border issue is the most urgent topic nowadays. It represents rich study resources in the form of expert description of the current geopolitical situation and trends. On the other hand, the study of the Western (European) rich and more civilized experience of border demarcation in conflict zones can play a significant role in this tough humanitarian crisis in the sense of finding the most fair and justified

278 Disclaimer: The author is fully responsible for the content of this working paper, without any liability on the part of the Ossoliński National Institute.

279 The primary data for this research is obtained from the books and periodicals available in the collections of Ossoliński National Institute.

resolution. The resources can supplement the international border study and conflictology with facts about the Nagorno-Karabakh conflict, can contribute to the process of bringing international developments into the humanitarian scope, and will enrich the efforts in this direction with original material. This study can offer a fresh view of the situation, improve the credibility of the observations and cognitive value, as well as add new insights by fully fitting into the logic of the well-known original concepts.

Targeted audience

The current research is a critical expert analysis aimed at targeted audience composed of local and international experts on border studies, journalists, civil society actors, and all entities interested in the subject matter. This work is mainly addressed to the decision makers of the local governments and international community, who play an important role in defining dialogue, developing strategic planning documents and processes.

Methodological approach

This research consists in the comparative analysis with generalizations, content analysis in its general perception, the principles of logic, justice, truth towards historical events and facts (as opposed to falsification), as well as ideological-philosophical approach based on objectivity. In terms of perception of history, I prefer the theory of cyclical evolution rather than rectilinear or spiral evolution models. As I see it, it is the most effective method which can be more efficient in the history of the evolution of borders. In this research, I make an attempt at connecting as many specific events (manifestations) as possible, and apply these principles by submitting a credible result. I have partially applied the qualitative research method as well, by conducting interviews with several experts and specialists in the field. The information in this study is obtained from archival documents, articles, scientific materials, reports, international agreements, etc. It also contains interviews with several experts and specialists in the field. The available literature and information provided an opportunity to make a qualitative analysis of the information and to reach a number of important conclusions. Based on the examples of several countries, the analytical toolkit has been defined.

List of individuals and entities interviewed for the study

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The list of research institutions that provided useful information, experts'contacts and links in reply to my query about international as well as mostly Polish experience in border issues:

1. Maria Curie-Skłodowska University, Lublin,
2. Department of International Security, Faculty of Political Science and Journalism
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7. Research Institute of Armenian Studies (IBO), Gdansk
8. Adam Mickiewicz University, Faculty of History, Poznań,
9. Institute for Western Affairs, Poznań

Introduction

Borders are the result of the historical, ideological and practical activities of the entire humanity, comprising the capabilities and aptitudes of nations, and in many cases – the intervention of destiny. Borders are everywhere, and they encompass everything: politics, history, psychology, human destinies, borders of possibilities, ethical, moral, spatial, legal borders, etc. State borders, in some sense, are created to complete these border concepts. It can be said that the political state borders include the entirety of all other borders listed in them. As a rule, all global political and intellectual movements around the world have had their impact on borders. Today's earth map is, first and foremost, a picture of the contemporary development stage of human civilization. In this sense, the study and comparison of specific cases of state borders and never-ending border debates are the subject of not only historical, but also cultural-political research.

In this regard, the current research makes an attempt at specifying this broad perception on the basis of several special cases. In the case of Nagorno-Karabakh issue, there have been the latest border transformations in the 21st century so far. Their completion through intense warfare is generally unique for our times, after Kosovo. If the Yugoslav process was carried out in the 1990s by way of an extensive involvement of international forces and diplomacy (consequently, through the way of fairness or, at least, justice), then today in Karabakh an attempt is being made at resolving this problem at the "regional" level, where decisions are made by way of explicit compulsion and force. Today, humanity seems to be facing an insoluble alternative. Before World War I, the number of states on earth amounted to around forty. During one century the number rose to 200. Moreover, there are about 2,000 nations and nationalities on earth with their own borders (state and non-state)[280], distribution areas, and some of them with very real and justified ambitions. The independence parade of the 1950s and 1990s is over. How many new state borders have been established in the 21st century? Most likely only three, and all these at the cost of a long, brutal struggle and massacres. Unrecognized but de facto independent states are definitely prevalent in number[281]. The operating landmarks need to be changed sooner or later; the more they accumulate, the more problematic they become. Obviously, in recent years, the international community has been avoiding the issue of forming new states. The tendency to subjugate the small segments through different methods is also increasing. Similar actions by Russia have caused a stir in Europe. Democracy can no longer moderate these transformations. Many believe that the world is on the verge of an authoritarian renaissance.[282] These phenomena require serious attention and detailed analysis, because, cumulatively, they will explode some time in the future. Internal ethnic boundaries have several directions in Germany.[283] As in the whole of Europe, issues related to migrants have recently become more acute. On the contrary, a serious problem such as separatism in Spain, the United Kingdom, or even France (Corsica) is missing here. Compared with the islands of Aland in Finland, we get two different ways of solving the ethnic problem in case of border demarcation: ethnic exchanges and in-depth territorial autonomy. Both seem to be working models, although within the European environment only.

Today, some circles in Armenia are in favor of the Turkish-Armenian reconciliation policy, and the current Armenian government is taking certain steps to establish cross-border interactions with Turkey despite the dramatic historical past between the two countries. In this study, we have made an attempt to reveal the main issues related to stereotypes during cross-border interactions by making a comparison between Polish and German relations.

Of course, it is very difficult to ascertain the causes of and solutions to these global problems within the scope of one article; yet, we hope it will be a prerequisite for further research in the direction shown.

280 Field Listing-Land boundaries /The world factbook/ https://www.cia.gov/the-world-factbook/field/land-boundaries/

281 James Ker-Lindsay, De Facto States in the 21st Century, Oxford University Press, 2022

282 Paul S. Adler, Amr Adly, Authoritarianism, Populism, and the Global Retreat of Democracy: A Curated Discussion. Journal of Management Inquiry, Volume 32, Issue 1, August 2022

283 „Bevölkerung und Erwerbstätigkeit – Bevölkerung mit Migrationshintergrund – Ergebnisse des Mikrozensus 2021 – Statistisches Bundesamt: 503. 2021.

A brief outline of the Nagorno-Karabakh issue

The Caucasus has always been at a crossroads of civilizations. Today, it has become a more significant area given China's economic empowerment from the East, Turkey's resumed expansionist plans from the West, and the Russian factor from the North – it refuses to concede its traditional influence zones. If we look at the map,[284] we can clearly see that Nagorno-Karabakh, with a small southern part of Armenia, is the only wedge left in the unification of the great Turanian world, for which Turkey has never ceased fighting and today has a clear plan in that direction. The Nagorno-Karabakh issue is a territorial issue for the world, with many problems connected with it; moreover, these days it is anticipating urgent international settlement.[285] Unfortunately, today it seems to have a tragic end, with new unjustified borders drawn by forcibly imposed resolutions.

The Minsk Group of the Organization for Security and Cooperation in Europe (OSCE) was established in 1992 for the peaceful settlement of the Nagorno-Karabakh conflict, co-chaired by the United States, Russia and France (Germany is also a member).[286]

In the aftermath of Russia's mediation in Karabakh, not justice, but the outcome of the war was confirmed. The results of the official ceasefire of the First Artsakh Liberation War (1994) were not corroborated by the world and protracted over 30 years, even in the mitigated version (concession of territories in exchange for the independent status of Karabakh).[287] This is a matter of civilization. The world does not realize all the nuances of the Karabakh war. "Karabakh (or Artsakh for Armenians) is, first and foremost, a nation for Armenians, with its own material and spiritual culture and history preserved for at least 2000 years, and for Azerbaijan and Turkey – it is merely a territory." This is not our statement, this is a quote from the missive of the prominent French artists and intellectuals.[288]

A reiteration must be made at this point – "borders determine everything". One does not have to be a distinguished intellectual to realize while looking at the situation that the truly heroic rebellion of the tiny Nagorno Karabakh (4,000 sq km initially, of which merely 2,500 sq km remains today) had been doomed in the current reality since the very beginning, and due to the persistence of its struggle, it ended in a more tragic way. Because the struggle was civilized. Today, there is a great humanitarian crisis in the torn and fragmented territory of Nagorno Karabakh.[289] The activities of Russian peacekeepers are just starting, unilaterally.

284 Map of the 2020 Nagorno-Karabakh War

285 Barsegov Yu.G. Nagorno-Karabakh in international law and world politics. Volume 1-2 M.: 2008-2009.

286 Mandate for the Co-Chairs of the Minsk Process https://www.osce.org/mg/70125

287 Getting from Ceasefire to Peace in Nagorno-Karabakh, International Crisis Group, report, 10 Nov 2020 https://reliefweb.int/report/armenia/getting-ceasefire-peace-nagorno-karabakh

288 120 French artists, actors support Armenians against the Azeri aggression https://www.panarmenian.net/eng/news/287920/

289 Post-war Prospects for Nagorno-Karabakh, International Crisis Group, report N264, June 2021 https://www.crisisgroup.org/europe-central-asia/caucasus/nagorno-karabakh-conflict/264-post-war-prospects-nagorno-karabakh

The other two co-chairs of the Minsk Reconciliation Group are, virtually, isolated. The attitude of the Russian peacekeepers towards the local population has been unknown so far, whether they will maintain the rights of the Armenian population further and to what extent, or whether they will sell the rest of the territory. Even by the standards of the Soviet period, 40 percent of the territory of the Nagorno-Karabakh Autonomous Region has been annexed, and the Azeris have confiscated Armenian lands by the right of the "winners", ignoring the border maps and territorial documents preserved from the Soviet Union so far. The Christian churches and Armenian monuments of the occupied territories are being destroyed and eliminated.[290] From the very first days cases of robbery, desecration and marauding had been registered. The Armenian civilian population was given 15 days for deportation. The population is poor, has no means of transport, very little is offered to them. The situation is in disarray. The militant groups were able to confiscate whatever they wanted. The Armenians were left alone with their misfortune and grief. To be fair, it should be noted that the iniquity of the Armenian leadership is significant throughout this entire situation. Meanwhile, new developments are anticipated.

Map of the 2020 Nagorno-Karabakh War

290 European Parliament resolution of 10 March 2022 on the destruction of cultural heritage in Nagorno-Karabakh (2022/2582(RSP)) https://www.europarl.europa.eu/doceo/document/TA-9-2022-0080_EN.html

The Western border management policy and geopolitical challenges

The greatest contribution of European (Western) civilization to the human history was the creation of an industrial society, which is based on its Christian-democratic (not precisely in the partisan meaning) and liberal-democratic principles. The whole humanity adopted the values and achievements of the Western intellect and mind, starting with the jacket, ending with nuclear energy. Western civilization acknowledges no boundaries, it is open, global in nature – as opposed to local civilizations, which have taken from it mostly technical achievements in line with simple standards of utility; however, they maintain their traditions in the social and public structure. The Industrial Revolution of the 19th and 20th centuries was the ultimate achievement of the Western civilization, which was meant to destroy the social borders between civilizations and establish the unique rational system in the world. Europe has reached a high level of prosperity without an abundance of natural resources, extensive territories, and also without a population explosion. However, due to its organized prosperity, post-industrial Europe became not only an exemplary existence for humanity, but also an arena for the expression of unsatisfied ambitions by several local civilizations. In this turbulent situation, the long-term goal of the local forces became the transformation of the borders, with the ambition to take possession of natural resources or simply vital areas. After the proclamation of the Helsinki Principles[291], it seemed that the rule of resolving the issue of countries' borders by way of military methods came to an end for centuries. Is it realistic to substitute them with political methods in the 21st century? There is even a saying that it is impossible to resolve the issues via military means. This worked out in Yugoslavia; the border issues between the warring parties were resolved not via the "winner-loser" concept, but through political means. Reportedly, this was the last example. With the active participation of Russia, be it military or non-military, but by force, border transformations were made in Cyprus, Georgia, Ukraine, and war is raging in Donbas. Today, Turkey and Azerbaijan are forcing international diplomacy to adopt their new borders drawn through a brutal, unequal war in Karabakh. The recent bloody war in Karabakh (2020) reaffirmed Russia's border ambitions and dominance in the Caucasus, in parallel with Turkey. The "winners-losers" concept yet again becomes a criterion after a long-term hiatus.

Since the fall of the communist regimes, we have been witnessing in Europe two phenomena that dominate the geopolitical scene: on the one hand there is integration, with the advance of the borders of the European Union (EU) towards the east through its two enlargements, and on the other hand there is disintegration, as expressed by social crisis, and latent tensions and conflicts in the countries found beyond the said border.[292]

291 Helsinki principles of "self-determination"- Helsinki Final Act,1975 https://www.osce.org/helsinki-final-act

292 Silvia Marcu, "The Geopolitics of the Eastern Border of the European Union: The Case of Romania-Moldova-Ukraine", August 2009, pp. 409-432

One of the main challenges for Western Europe is to use its great and growing accumulation of resources in trade, investment and technical skills to knit the developing countries into the free-world pattern of economic and political cooperation. The political de-colonization of Asia and most of Africa has released a tremendous upsurge of new ambitions, which far outrun the capacity of any but a few of the new governments.[293]

The enlargement of the European Union has brought about a significant change in the shape of Europe as a geopolitical entity. The significance of the eastern enlargement process goes beyond the institutional question of the membership and constitution of the EU and suggests a major reorientation in the identity of Europe. Unlike earlier enlargements of the EU, the recent enlargement processes have wider cultural implications. The earlier expansion of the EU in the pre-Cold War period differed in that it was premised on the certainty offered by the Iron Curtain, and while the Treaty of Rome declared that any European country could join, it was evident that there were political limits to enlargement. On the one hand, the EU does not have a political or cultural identity in any meaningful sense of the term, while on the other hand, the identity of nation-states has been undermined in part as a result both of Europeanization and wider globalization processes. Europe is increasingly taking a post-Western shape. Until now, one of the striking features of the European project has been the steady development of a post-national polity whereby the sovereign national state has had to share its sovereignty with other levels of governance, which include regions and the EU itself. While this remains a feature of contemporary Europe, a more far-reaching development is apparent that goes beyond issues of governance. The reshaping of Europe since the end of communism and the enlargement of the EU, the prospect of the inclusion of much of the former Yugoslavia and possibly Turkey's eventual membership suggest a change in the identity of Europe in the direction of a multiple constellation of regions. This is more than a geopolitical shift, but it is also a shift in cultural self-understanding.[294]

Essential differences in demographic potential and the scope of influence of national cultures generate small countries' concern over their national identity in the integrating Europe.[295]

The enlargement of the European Union in 2004-2007 changed the borders of the polity, but also contributed to a crisis of the collective identity of Europeans. The inclusion of many new countries in the EU, relatively little known to the Western European public, generated questions concerning the common European framework of cultural heritage and

293 Collier, David S., Western integration and the future of Eastern Europe/ Ed. Glaser, Kurt (1914-1993). Henry Regnery Company | Chicago, 1964, p.12

294 Gerard Delanty, Peripheries and Borders in a Post-Western Europe, article, pp. 113-115, Góra M., Zielińska K., Democracy, state and society: European integration in Central and Eastern Europe. Ed. | Wydawnictwo Uniwersytetu Jagiellońskiego, 2011 | Kraków .

295 Drela, Luiza Translation, Lis, Stanisław, Culture and the development of Europe: national identity and the European integration. p. 2 / Institute of International Ralations. Tarnovian Cultural Foundation. (1955-) Ed. | Piotrowski, Rafał Translation. 2001 | Tarnów: Oficyna Wydawnicza Tarnowskiej Fundacji Kultury.

way of life. Where are the borders of Europe, who is a European, and who is "the significant other" for the Europeans – that is, in relation to whom will Europeans construct their identity? Both "old" and "new" Europeans are experiencing an identity crisis. The citizens of the old 15 EU member states were confronted with the enlargement without having been directly consulted, and without having had the chance to learn enough about the new members to accept them as "us" rather than "them" from behind the Iron Curtain. There is no clear concept of Eastern Europeans belonging to the community of Europeans, and frequent news in the media concerning the political behavior of the Eastern Europeans or the lack of acceptance of crucial European values (such as tolerance, the secular state, the rule of law) has strengthened the feeling that the east of Europe is still divided from the west by a boundary of culture. Also, the fact that the enlargement was executed without democratic procedures, such as referenda, added to the popular impression that the European decision-making process is less than completely democratic.

Among the central questions determining the future of the EU after the enlargement is the one concerning the nature of European nations. How is national identity to be seen as an ethnic entity, based on its cultural heritage, its traditional essence and common ethnic origin, closed and exclusive, or as a political, civic construction, a future-oriented program, open and inclusive.

Establishment of Central and Eastern Europe as a concept of demarcation was part of the Enlightenment project. This region was not ascribed to "barbarians", but was perceived as an ambiguous space, characterized by backwardness. "Construction of Eastern Europe was a paradox of simultaneous inclusion and exclusion: Europe, but at the same time, not Europe" (Strath 2002).[296] The role of the significant other, especially in relation to the European integration project, became of crucial importance during the Cold War. Before 1989, the Iron Curtain, a sinister symbol of the division of Europe, was also a convenient instrument of classification, a boundary which helped to construct and to express the collective identity of the integrating western half of the continent.[297]

It should be noted that modern threats concerning migration are also related, among others, to globalization, which is currently the most important determinant of asymmetrical threat. Asymmetry in the material sphere takes the forms of: armed struggle, economic war, information struggle, scientific confrontation and technical confrontation. In the spiritual sphere, on the other hand, it takes the forms of: cultural war, religious war and ethnic confrontation.[298]

296 Bo Stråth, A European Identity: To the Historical Limits of a Concept/ European Journal of Social Theory, Volume 5, Issue 4, Nov. 2002

297 Zdzisław Mach, The identity of Europeans after the EU Enlargement, pp. 107-108, Góra M., Zielińska K., Democracy, state and society: European integration in Central and Eastern Europe. Ed. | Wydawnictwo Uniwersytetu Jagiellońskiego, 2011 | Kraków .

298 Kawa D., International security and state borders, article by Zbigniew Ścibiorek, Conditions of Security, p. 25, Toruń: Wydawnictwo Adam Marszałek, 2019

European Territorial Cooperation, success stories and challenges

The EU recognizes border regions to be especially salient locations where integration is both most vigorously opposed and most obviously pursued. Through its special attention to border regions in its regional policy, the EU is actively and specifically pursuing integration in these regions. Within the Euroregions, the concepts of "New Europe" and "Old Europe" meet, and the EU's dilemma of resolving its vision for the future with the reality of the present is experienced in the daily interactions of their residents. They are also a location where the EU exercises its principle of "subsidiarity" and experiments with programs to promote "integration".[299]

European Territorial Cooperation (ETC)[300] has been a part of the cohesion policy since 1990. For the programming period 2014-2020, for the first time in the history of the European cohesion policy, a specific regulation was adopted covering European Territorial Cooperation actions supported by the European Regional Development Fund (ERDF). ETC is the goal of the cohesion policy that is designed to solve problems which transcend national borders and require a common solution, and to jointly develop the potential of diverse territories. The areas covered by transnational cooperation are to be defined by the European Commission, taking into account macro-regional and sea-basin strategies, and with the option for Member States of adding adjacent territories. Interregional cooperation will cover the entire territory of the European Union. Outermost regions may combine both cross-border and transnational cooperation actions in a single cooperation program.

Cooperation attempts at the Polish-German and Polish-Slovak border[301]

These two regions face similar political, economic and legal issues. However, in terms of cultural interlinkages across the border, the Polish-Slovak border benefits from a much more favorable context than the Polish-German border region. Thus, a comparison of these two cases makes it possible to identify the impact of different cultural and social backgrounds on the effectiveness of cooperation. Cross-border cooperation began in the 1950s and 1960s in West European regions such as the Dutch-German borderlands, the Upper Rhine valley

299 Kamocki J., Kwaśniewicz K., Spis A., Poland - Germany: cultural and ethnic border / Article by Andrew D. Asher, "In the laboratory of Europe: Governing the Europe of Regions" on the Polish/German Frontier, p. 146, Polskie Towarzystwo Ludoznawcze, Wrocław, Poznań: PTL, 2004

300 -European Territorial Cooperation (ETC) https://www.europarl.europa.eu/factsheets/en/sheet/98/european-territorial-cooperation

301 Katja Sarmiento-Mirwaldt, Urszula Roman-Kamphhaus, Cross-border Cooperation in Central Europe: A Comparison of Culture and Policy Effectiveness in the Polish-German and Polish-Slovak Border Regions. / Europe-Asia Studies, Vol. 65, No. 8, Publ. Taylor & Francis, Ltd. 2013 https://www.jstor.org/stable/24534044

and the Lake Constance region.[302] The Dutch-German "Euregio", where sub-national authorities agreed to mutually beneficial cooperation across the border, was launched in 1958 as the first initiative of this kind. There was a perception that the borderlands suffered from their peripheral position – both geographically and politically – in the Netherlands and Germany. Cooperation was seen as a means of addressing these negative effects. In institutionalizing cooperation, Dutch and German border municipalities first engaged in relations across the border and then lobbied jointly for specific goals such as improved cross-border infrastructure. The Euregio was subsequently described as model cross-border cooperation because several similar associations followed.[303] In the 1980s and 1990s, European institutions began to provide legal measures and financial means for cross-border cooperation.[304] First, a number of multilateral agreements were concluded through the Council of Europe, such as the European Outline Convention Transfrontier Cooperation[305] that was signed in 1980 and that was a commitment for the members to facilitate and foster cross-border cooperation. Second, the EU started supporting border cooperation financially in 1990, when the Community Initiative INTERREG was first introduced as the main funding instrument for territorial cooperation.[306] Following the introduction of legal and financial support instruments, cross-initiatives mushroomed all over Western Europe. According to one estimate, there were 15 cross-border regions by the end of the 1970s, 30 by the end of the 1980s and 73 by the end of the 1990s.[307] Today, there is hardly any European border that is not bound by a cross-border agreement. Cross-border cooperation takes place on the territory called "Euroregions": voluntary associations of municipalities with common borders. Examples include the original Dutch-German Euregio, but also the Transmanche region that stretches across the English Channel and the Pyrenees-Mediterranean Euroregion between French and Spanish regional authorities. After the end of the Cold War, with preparations underway to extend the European integration process eastward, Hungary, Poland and Czechoslovakia almost immediately initiated cooperation with Western Europe and subsequently with each other. The trilateral Euroregion Neisse-Nisa-Nysa between Germany, Poland and Czechoslovakia (the Czech Republic after 1993) was founded in 1991 as the first such venture. Others soon followed. Many CEE cross-border initiatives suffered from historical disadvantages that made it difficult to apply the Western model. Thus, there was only a weak regional tradition in CEE states[308], and local and especially regional authorities either did not exist or lacked the powers to conclude and implement cross-border agreements. National administrations commonly sought to control cross-border ventures, often because they viewed regional autonomy as a challenge to the integrity of the state.[309] Slovakia's Prime Minister Vladimir Meciar, for example, attempted to centralize power and obstructed cross-border cooperation until the end of his period in power in 1998. Meciar may have been an extreme example; yet, skepticism about sub-national empowerment and cross-border cooperation could also be detected in other CEE states including the Czech Republic. As a result of the top-down nature of cross-border cooperation in CEE, this cooperation was sometimes accused of being insensitive to local peculiarities. Borders were much more restrictive or "harsh" in CEE than anywhere in Western Europe. For example, in the communist bloc they were largely closed to citizen traffic. Moreover, many of these borders were historically associated with deep-seated conflict. For example, the Hungarian-Romanian border was associated with territorial losses after the world wars, the Czechoslovak-German border was associated with forced population transfers, and Poland's border with the Soviet Union was associated with both. As a result, cross-border flows were extremely limited after 1989, and CEE had no tradition of cross-border interaction comparable to most border regions in Western Europe.[310]

In terms of cross-border culture, however, the Polish-German and Slovak-German border regions could not have been more different. In the Polish-German border region, whatever cross-border networks had existed prior to World War II were destroyed as a result of the war, boundary shifts and population transfers. The border was closed to citizen exchanges for most of the communist period. Thus, when the border was opened in 1991, Polish and German citizens were almost completely estranged. In contrast, cross-border networks largely survived the communist period in the Polish-Slovak border region, even though cross-border contact and cooperation were limited during this period. The border was gradually opened after 1989, and the two sides were able to benefit from linguistic, cultural and social similarities. There is a major difference between the unpromising

302 Blatter, Joachim. (2004): "From 'Spaces of Place' to 'Spaces of Flows'? Territorial and Functional Governance in Cross-border Regions in Europe and North America." In: Journal of Borderlands Studies 28/3. https://onlinelibrary.wiley.com/doi/10.1111/j.0309-1317.2004.00534.x

303 Scott, James W. (1996): "Dutch-German Euroregions: A Model for Transboundary Cooperation?" In: IRS Regio 9, pp. 83-103.

304 Perkmann, Markus (1999): "Building governance institutions across European Borders." In: Regional Studies 33/7, pp. 657-667. https://www.tandfonline.com/doi/abs/10.1080/00343409950078693

305 European Outline Convention Transfrontier Cooperation https://rm.coe.int/1680078b0c

306 Ferry, Martin/Gross, Frederike (2005): The future of territorial cooperation in an enlarged EU, Benchmarking Regional Policy in Europe Conference, 24-26 April 2005, Riga. http://projects.mcrit.com/foresightlibrary/attachments/article/1226/Paper4_Future_of_Territorial_Cooperation.pdf

307 Perkmann, Markus (2003): "Cross-border regions in Europe: Significance and Drivers of Regional Cross-border co-operation." In: European Urban and Regional Studies 10/2, pp. 153-171. https://journals.sagepub.com/doi/10.1177/0969776403010002004

308 Batt, Judy/Wolczuk, Kataryna (2002): Region, State and Identity in Central and Eastern Europe, London: Frank Cass. https://www.routledge.com/Region-State-and-Identity-in-Central-and-Eastern-Europe/Batt-Wolczuk/p/book/9780714682259#

309 Keating, Michael/Hughes, James (eds.) (2003): The Regional Challenge in Central and Eastern Europe: Territorial Restructuring and European Integration, Brussels: Peter Lang. https://www.peterlang.com/document/1094976

310 Yoder, Jennifer A. (2003): "Bridging the European Union and Eastern Europe: Crossborder Cooperation and the Euroregions." In: Regional & Federal Studies 13/3, pp. 90-106. https://www.tandfonline.com/doi/abs/10.1080/13597560308559436

environment of the Polish-German border region and the dense interconnections across the Polish-Slovak border only in terms of culture. This suggests that the two border regions are suitable cases for a comparative analysis of a "most similar" type.

The Polish-Slovak border is slightly longer than the Polish-German border. However, the two border regions have a comparable population of just over six million inhabitants. There are four Euroregions with Polish-German participation that were created in the early 1990s: Neisse-Nisa-Nysa, Spree-Neisse/Nysa-Bobr (SNB), Pro Europa Viadrina and Pomerania, with Swedish participation. The Polish-Slovak border region consists of three Euroregions that are slightly younger than those at the Polish-German border: the large Karpacki Euroregion, which also involves Hungarian, Romanian and Ukrainian participation, Euroregion Tatry and, between Poland, Slovakia and the Czech Republic, Euroregion Beskidy. Moreover, Slovak municipalities could only commit to full membership after 1998 when the premiership of Meciar, who was hostile to all sub-national activism, ended.

The EU began funding Polish-German cross-border cooperation in 1994 through INTERREG IIA and PHARE CBC. Poland joined the EU in 2004 and thus became eligible for INTERREG, later Objective 3, funding. In the Polish-Slovak border region, PHARE CBC was introduced in 2000 to support initiatives such as infrastructure development, environmental protection or support for local entrepreneurship. The experience gained in this period contributed to the 2004-2006 INTERREG IIIA program and the 2007-2013 Objective 3 program.

In the Polish-German border region, a special challenge at the outset was that the border region differs in cultural and historical terms from many West European border regions. Citizens who live in those border regions have, over time, developed dense cross-border networks. Exchange takes place across these borders every day, facilitated by widespread language skills. Conversely, few linkages across the Polish-German border survived World War II and the Cold War. In the early 1990s, there were no shared cultural traditions, no widespread language skills and only extremely limited cross-border social networks. In many cases, citizens manifested outright hostility: on the day the agreement came into force, the first Polish coaches arriving in Frankfurt on Oder were greeted by stone-throwing neo-Nazis. This lack of cross-border networks is important, not only as a shortcoming in its own right but also because it tends to undermine regional cross-border development concepts. Thus, in the early 1990s, policymakers became aware of the need of the people from both sides of the border to get together in informal settings. This would enable them to get to know each other, and the hope was that such encounters would counter the negative stereotypes and contribute towards trust-building in the border region.

The Finnish–Russian border cooperation experience[311]

The collapse of state socialism, the Soviet Union, and the geopolitical logic of bloc confrontation in Europe have subjected the continent to a profound reconfiguration of state-society relationships and deep processes of social change. More than 20 years after the "Fall of the Wall" these processes are far from having taken their full course. Moreover, it now appears more than evident that the relative stability of the Cold War was an interlude – albeit a very important one – in European history. The current political struggles within the European Union and in many neighboring countries are a reminder that territorial relationships, the roles of borders, and the quality of interstate relations are rarely fixed: in time and space. Within this context of change, questions of identity play a central role. Group identities and ethnic-cultural tensions "frozen" during the Cold War have now resurfaced in many regions of central and Eastern Europe. Language and national identities have re-emerged as controversial and divisive elements and are thus at the center of "culture wars" both within the EU (as the Hungarian-Slovakian case reminds us) and at the external borders of the EU (for example, in the case of Estonia and Russia or Romania and Moldova). By the same token, the reassessment of common historical experiences and relationships has, in several cases, served to develop a new sense of "neighborliness": Russian-Finnish and Polish-Ukrainian relations are but two examples where this is (cautiously) taking place.

Just like many areas situated at the new frontiers of the European Union, Finnish-Russian border regions are characterized by new patterns of interaction and changes in local perceptions of borders, neighbors, and regions. These processes are partly specific to the post-Soviet context, but are also due to the increasing impact of the European Union beyond its borders. Finnish-Russian border regions are, in fact, a microcosm of the regional transformations that are occurring in central and Eastern Europe; new nation-building projects are taking place at the same time that demands for greater regional autonomy and community rights; moreover, attempts at local cross-border co-operation are increasing. Post-Soviet and New EU (Schengen) border regimes have reconditioned political and economic orientations – disrupting interaction in some cases and creating new incentives for cross-border networking in others. The Finnish-Russian border is an emblematic case of political change in post-Cold War Europe. Rather recently formed (after Finland's independence in 1917), this border is shaped as a consequence of wars, several territorial shifts, and decades of closure. Despite relatively stable relations between the Soviet Union and Finland after World War II and a number of industrial co-operation projects, very little interaction has been taking place across the border. Since 1991, the border has been open and accessible to citizens on both sides. Directly after the collapse of the Soviet

311 Vladimir Kolossov, James W. Scott, Karelia. A Finnish-Russian borderland on the edge of neighbourhood, pp. 194-210 / The EU-Russia Borderland. New contexts for regional co-operation. / Routledge series on Russian and East European studies, 2013 selection, London, New York.

Union, nostalgia, curiosity, and the search for new opportunities generated new cross-border flows of people. Despite this opening, EU-Russian and Finnish-Russian relations in particular have not promoted a radical liberalization of border and visa regimes. As a result, there has not been cross-cultural interaction here to the same degree as at other former Soviet borders; the bazaar economies, labor flows, and border trade visible in the Polish-Ukrainian, Romanian-Moldovan and Hungarian-Ukrainian cases have not materialized to a similar extent between Russia and Finland. Furthermore, with Finland's accession to the EU in 1995, bilateral relations changed, as the political (although not military) neutrality of Finland was partly suspended by community policies. The Finnish-Russian border has, in many ways, remained a hard, separating border, albeit definitely more permeable since the elimination of the Soviet-era travel restrictions. At one level, the Finnish-Russian borderlands can be understood as a product of "place-making" in the intentional sense of regional identity politics capitalizing on border locations, cross-border co-operation, and a historical notion of a cross-border region (Karelia). In spite of the weakening political status of the Republic of Karelia in the Russian federal frame and the deepening assimilation of the Karelian population to the Russian majority culture, at another level, these borderlands are characterized by more subtle and unguided processes of Finnish-Russian intercultural dialogue. It is important to emphasize that broader political and geopolitical contexts are at work here. Finnish-Russian cross-border interaction is simultaneously influenced by Russia's post-socialist modernization project, the changing nature of Finnish-Russian relations, and the increasing role of the EU as an agenda-setter of regional co-operation. Traditional geopolitical narratives of civilizational East-West divides and permanent security threats emanating from an "eternal" Russia are highly suspicious and do little to improve relations.

Historical overview of the East Central Europe border state. Changes in the territories of Belarus, Lithuania, Poland and Ukraine from the 10th to the 20th centuries[312]

By the end of the 10th century new state organisms became more powerful in the territories inhabited by west and east Slavs – the periphery of the then known world. This period saw the emergence of Kievan Rus, Czechia, Hungary and the new Polish state. The latter entered a process of internal consolidation as a result of political changes and territorial shifts and took the name of Polska (Polonia). In the west, Poland bordered the ethnic groups of Polabian Slavs. All efforts at including these areas into the Polish state ended in failure just as those made to include the northern border region of the Baltic, which was inhabited by Prussians, Lithuanians and other Baltic tribes. In the south, Poland bordered Czechia and Hungary. The Polish-Hungarian border was defined by the Carpathian mountains.

312 The borders and national state in East Central Europe, Institute of East Central Europe in Lublin, 2000

Kievan Rus – a very powerful and large state-was Poland's eastern neighbor.

The territorial disintegration of Poland, which was the result of a prolonged process of territorial divisions, reached its climax in the middle of the 13th century, when the disputes and fratricidal strife among the Piast dukes weakened the state badly. It was unable to defend itself efficiently enough against external aggression. Poland suffered permanent territorial losses in the west. In the east, the powerful state of Kievan Rus, as a result of the prolonged partitioning of its lands, turned into a conglomerate of independent state bodies, which were in constant rivalry over the lands and waged costly and devastating wars.

The Polish Crown and the Grand Duchy of Lithuania both underwent substantial territorial shifts in the previous centuries. In the middle of the 14th century Poland permanently lost Silesia to the Czechs, whereas in the 15th century it succeeded in an advantageous shift of the south-western border through the inclusion of several minor Silesian duchies. The adjustment of the Polish-Brandenburg border facilitated the establishment of strong ties between Poland and Western Pomerania.

In the middle of the 14th century, Poland took advantage of a considerable weakening of the Mongol rule over the duchies of Rus, and managed to incorporate the neighboring territories of south-western Rus, Rus-Halych-Vladimir-Rus (Red Rus) – which had for a long time remained in a close link with the western Latin civilization. This change meant a significant eastward advancement of the borders of the Polish state. It also meant that the population of the state was to include both the Catholics and Orthodox Christians.

In Western Europe, in 1918 the defeat of the Central Powers was becoming a fact; the eastern part of the Continent, formerly the main scene of military actions during the war, witnessed new international conflicts, caused by striving for power over that region. The movement of German forces eastwards (that brought about the occupation of the area stretching from the Baltic states to the Don River and Caucasia), as well as the weakening of the Bolshevik Russia allowed Lithuania to proclaim independence in December 1917.

In consequence of the German-Soviet Agreement in 1939, German-occupied territory equaled 188 thousand sq km, i.e. 48.2 per cent of the whole pre-war Polish territory. Half of the occupied area was incorporated directly into the Reich. The incorporated lands made up two new administrative bodies, i.e. the Gdańsk-West Prussia region and the Poznań region. Due to the military success of the Germans, the General Government acquired a new stretch of Western Ukraine, formerly under the Soviet occupation, until 1939 belonging to the Second Republic of Poland.

Following World War 2, significant territorial changes ensued in East Central Europe. Poland acquired a new territorial shape. In the north and west, Poland received the German territory. The ethnic factor served as a criterion for a new eastern border, which was planned to run along the Curzon line. Poland's eastern frontier with the USSR was agreed upon as a result of direct talks between the two nations. In the north, the USSR received a part of East Prussia together with Królewiec/Koenigsberg. Poland lost its lands in Polesie, Volhynia

and Podolia, as well as the Vilnius area with the city of Vilnius itself, and finally Lviv. In 1945, Poland lost 180 thousand sq km to the Soviet republics that bordered the country on the east.

In the late 16th century the Polish-Lithuanian Commonwealth, stretching over the vast expanses of East Central Europe, revealed considerable denominational diversity, combined with a deep sense of religious tolerance.

About the year 1900 the largest part of East Central Europe was shared by two countries: the Austro-Hungarian monarchy and the Russian Empire. Both countries constituted multinational states. The calculations concerning population, language and ethnic distribution are based on the statistics of 1900, though possible lack of objectivity must be taken into account.

In ethnic terms, East Central Europe was dominated by Slavs. In 1900, the population of the particular Slavic nations was as follows: Czechs, Slovaks, Poles, Lusatians – 23.5 million people; Belarusians, Russians, Ukrainians, (Ruthenians) – 34.8 million; Slovenians, Croats, Serbs, Bulgarians, Montenegrins and Macedonians – about 9 million inhabitants. The ethnic policies of the major states of the region (i.e. Austro-Hungary, Prussia (Germany) and Russia) which prevailed by the mid-19th century made use of a variety of methods, the choice of which depended on a specific nation or national group. All in all, the policies led to the retreat of the Slavic element and the decrease in the number of Slavic enclaves in various parts of East Central Europe. The 19th century expansion of the German language brought extensive Germanization of Slavic populations, e.g. of Lower Silesia (Prussian Silesia) and other western borderlands (the lower Noteć). German influences also affected the Baltic region, since the language started to spread from East Prussia towards Lithuania. Similarly, in the south the Czech language successfully exerted its domination over the north-western Czech territories and north-western Moravia. The national policy of the Russian Empire was pursued in a strict relation to the denominational policy and in the context of the ruling Orthodox denomination. Other Slavic territories (Slovak, Croatian and partially Serbian) were exposed to Magyarization. This led to the gradual disappearance of ethnic enclaves in the borderline areas as well as the interiors of many countries. The assimilation phenomena became more intensive, mostly due to economic reasons, and the migrations beyond the European continent added to the decrease in the dynamism of the spread of the Slavic element in East Central Europe.

Historical overview of the territorial development of East Prussia

Historical experience teaches that since the end of the 18th century, a tendency on the part of Prussia had become apparent to gain ascendancy over nearly all the Polish homelands. Two national and state elements were engaged in a tragic struggle for one and the same place on the globe. Prussia's success would, of necessity, be followed by the

complete annihilation of Poland. Whatever, on the other hand, might be the success attained by Poland in the East, it is hard to believe that as a nation, Poland could continue to exist after the loss of the larger part of its ethnic homelands.

The defeat of Germany in the World War influenced the reconstruction of Poland within the frontiers which, in the West, are nearly identical with those laid down in the period before the First Partition. Hence, the extent of the restitution of the frontier line to Poland was more complete than that of 1807.

A study of the Polish-German frontier as established by the Treaty of 1919 teaches that in the history of relations between the two countries it is possible today to discuss the stabilization of the Polish frontier. The permanent incorporation of Danzig Pomerania by Boleslaus III, its restoration following the decision in 1282 of Prince Mszczuj II, the Polish rule there in the times of Prince Przemysław II and King Ladislaus Łokietek (up till 1308), the frontier as established by the treaty of Toruń and its restoration in 1919 – all these events demonstrate that, through a period of close on ten centuries, the principle of a close tie between Danzig Pomerania and Poland was established. In consequence, in so far as Danzig Pomerania is concerned, Prussia for the most part retreated to the frontier line laid down before the Partitions and it retained chiefly the possessions acquired between the years 1648 and 1721. In the case of Silesia, however, Prussia was forced to move away even beyond the frontier line of the period before the Partitions, laid down by the conquest of Frederick the Great to the disadvantage of Austria. With regard to the district of Lubusz, the town of Zbąszyń remained the boundary point as it was, when that province was occupied by the March and when in 1251 an unsuccessful attempt was made by the March to occupy that frontier outpost – an incident vividly described in the Chronica Poloniae Maioris.

Regarded in this light and from a general historical perspective, the rule of the Teutonic Knights over Danzig Pomerania (1308-1466) as well as Danzig Pomerania's history during the Partitions (1772-1919) assume but a secondary place, whilst Pomerania becomes even more striking to contemporary Poland.[313]

In 1945, the historical territory of East Prussia was partitioned among three states: The People's Republic of Poland, The Russian Soviet Federative Socialist Republic and the Lithuanian Soviet Socialist Republic. While the parts soon became different in terms of the dominant ethnic population: Polish, Russian and Lithuanian, respectively, they were all subjected to the same vigorously enforced communist ideology whose goal was to lay the foundation for a new social order. This coincided with a nearly complete exchange of population, especially in towns, as a result of which the memory cultures in the whole region were discontinued quite abruptly, for both whole nations and local communities. Since 1945, the territory of former East Prussia has been undergoing complex processes of

313 - Wojciechowski, Zygmunt. The territorial development of Prussia in relation to the Polish homelands / (1900-1955) 1936 | Toruń; London: Baltic Institute

the formation of local memory cultures, where the prevailing national component has been interacting with the local, culturally alien tradition, and where the "historical policy" has been enforced, at different degrees of intensity, by the authorities. The communist rule was characterized by the institutional implementation of specific strategies for the adaptation (sometimes appropriation) to the foreign cultural heritage found in the Prussian territory, to their own national or ideological purposes. The communist falsifications and distortions of historical facts were straightened up, numerous "blank spots" in historiography were filled in. The inhabitants of the territory formerly covered by East Prussia often changed their attitude to the local past tradition, which they rediscovered and frequently treated as their own.[314]

The policy of religious tolerance in early modern Poland and Prussia

For well over a century, Europe was torn by religious conflict, for religious claims were often submitted to the judgment of military force and economic power. Amid these conflicts, Europe evolved into countries and areas where the combination of church and state influence determined religious policy. For those outside the remit of state-supported faith communities, there was little tolerance. In many instances, their options were few: flight, expulsion, loss of property, imprisonment and death. These clashes were often part of the struggle for self-determination and greater independence in the political and economic arenas. Nonetheless, throughout much of the 16th and 17th centuries, a large part of Europe found itself in a cauldron of war, uncertainty, and religious change. Especially during the second half of the 16th century governments and churches in Europe developed a process of "confessionalization" designed to form regional partnerships between governments and state churches. A notable exception to the kind of intolerance and persecution that characterized much of Europe could be found in the kingdom of Poland, known as the Commonwealth of Poland-Lithuania after 1569. Here persons from the Netherlands as well as a good number from other regions found a rare refuge. Although most of them settled in the northern part of Poland, known as Royal or Polish Prussia, tolerance extended to other parts of the realm as well. Analysis of this age of European upheaval paid scant attention to Poland, especially the Vistula Delta, despite its remarkable contributions to both the Renaissance and the Reformation. The fact that Polish Parliament, or Sejm, established a policy of tolerance while most of Europe was decidedly intolerant has not been given the attention it deserves. Often studies of the Reformation make virtually no mention of the pioneering Polish policy of religious tolerance. The cities such as Danzig, Elbing and Thorn allowed Mennonities to settle on their land. Nonetheless, the degree of acceptance accorded to Mennonities living in Royal Prussia was not always constant.

314 Between oblivion and the new order: from research on relationships among memory cultures in former East Prussia after World War Two: studies and sketches | 2014 | Olsztyn: / Preface, pp.7-8

In early modern times the Polish Commonwealth was one of a few regions in Europe that offered a large measure of religious and economic freedom. For two and a half centuries, the Polish crown as well as numerous civic and religious powers allowed Mennonites to shape their own world. Then, in the latter part of the 18th century, when Poland was divided among Austria, Prussia, and Russia, new factors began to impinge upon the traditional Mennonite way of life. Forces of militarism, acculturation, political centralization, and a perception that the Prussian government was led by devout and God-fearing persons created challenges for Mennonite belief and practice. In earlier times, Polish authorities had respected Mennonite beliefs and permitted them to be exempt from military service. The new Prussian order, however, challenged traditional Mennonite values and at the same time insisted that it did so in a manner fully compatible with Christian belief.[315]

The main issues related to stereotypes in Polish and German relations and cross-border interactions

The liberalization of the Polish communist system in the era of Edward Gierek (1970-1980) was not without influence on German-Polish relations. In the 1970s the Polish border was nearly completely opened to East Germans, and to some extent to West Germans (Rogulski 2/2001). Cross-border traffic between Poland and East Germany already in the first year (1972) rose to several million. It is commonly assumed among historians that this impressive increase in border traffic (temporary migration) between Poland and Germany was supposed to establish direct contact between people, in effect allowing them to "get to know each other better". It was assumed that as a result of personal relationships, negative stereotypes could be partially overcome, because "knowledge" is regarded as the main factor leading to a reduction in prejudice (Ruchniewicz 2009). Although it is true that there was a change in the mutual perception between Poles and Germans in the 1970s, there is no proof that direct contact was the crucial factor enabling the change. There is no doubt that the "explosion" of negative emotions between Germans and Poles during World War II, and the aftermath, dominated the mentality of both nations and also their mutual perception. However, it is not clear whether negative emotions and general hostility between Poles and Germans in this period were based on negative stereotypes. It seems in fact that stereotypes were used to prove the general image of reluctance, animosity and hostility of the other nation. In the context of the war the positive stereotype of "well-organized Germans" became associated with Germany's efficiently organized genocide and was therefore re-evaluated in a negative way. Nowadays this same stereotype exists rather in the original context. From the works of Wojciech Wrzesiński and Hubert Orłowski, who studied the Polish-German steretypes in the 18th and 19th centuries, it can be clearly inferred that Polish-German stereotypes did not change much even over a long period of time. The conclusion that direct contact does not lead to a better perception of others can also be

315 Klassen, Peter James. Mennonites in early modern Poland & Prussia / 2009 | Baltimore: The Johns Hopkins University Press.

found in the works of the Polish sociologist Ewa Nowicka, who in the early 1990s conducted research on the Polish perception of other nations (Nowicka, Nowrocki 1996). Unlike Polish-West German contacts, those between Poland and East Germany were dominated by so called "shopping tourism". In communist countries, instead of leading to economic growth, this behavior only exacerbated supply problems due to growing domestic demand. New cross-border customers were seen as competitors. Obviously, these types of contacts, are not the best way to "overcome" stereotypes and very often lead to increased prejudice. As a result, we cannot see direct contact as a main factor for the development of new, more positive perception of Poles/Germans.[316]

These general remarks can refer to Armenia's case as well, with regard to the cross-border interactions with its neighboring country Turkey.

The Polish corridor vs Lachin corridor

In this section we attempt to make a comparison between the most debated so-called "corridor" issues in the history of demarcation that happened in German-Polish borderland between World Wars I and II, and are nowadays happening in the Nagorno Karabakh region. We believe that this historical overview through the method of correlations will cast some light on the mistakes of the past and can play an instructive role in the contemporary history if studied.

The demarcation of the new German-Polish borderlands, especially the sections adjacent to the so-called Polish Corridor, was one of the most controversial provisions of the Treaty of Versailles, which ended World War I between the victorious Allied Powers and defeated Germany. Indeed, the Polish Corridor became the subject of an intense and wide-ranging public debate from 1919 until World War II.[317]

The territory of the Corridor, now one of the 16 voivodeships or provinces into which Poland is divided, extends to 16,295 sq km. It has a sea frontage of 76 km, and with the narrow Hela Peninsula, which curves round towards the harbor of Danzig, of 146 km. The population of the Corridor is now over one million. The historical and political division between Pomerelia and Posen is the line of the Netze canal. Up to 1928 there was almost solid German population in the Netze Valley and predominantly German population in the towns of Bromberg and Thorn. It was an ethnological "bridge" forming a connection between East Prussia and the rest of Germany. The Poles were numerous both farther south and farther

316 Dominik Pick, False assumption for research on the perception of other nations. Example of Poles and Germans in the 1970s. / Lutostańska, Joanna, Rzym, Anna. Cross-border interactions: Polish-German stereotype: media image and change / 2010 | Wrocław: Oficyna Wydawnicza Atut- Wrocławskie Wydawnictwo Oświatowe.

317 Joshua Hagen, Mapping the Polish Corridor: Ethnicity, Economics and Geopolitics / Imago Mundi, The International Journal for the History of Cartography, Volume 62, 2009- Issue 1

north. The Polish census of 1921 shows that the Corridor contained predominantly Polish, such as Puck county with 89% Polish population. The results of local and parliamentary elections would indicate a larger percentage of Germans – or of voters who vote in favor of Germany, which is not necessarily the same thing. Germans claim that a plebiscite of the Corridor including Danzig would show a majority in favor of Germany. There was never any question of the application of self-determination to settle the question whether Poland should or should not have access to the sea. That was a fundamental principle which could not be risked or weakened by consulting the inhabitants.

Formerly the Corridor territory was an integral part of Prussia. Communications and the flow of trade went from the East to the West and vice versa. Railways and waterways were constructed to facilitate traffic across the country, while the Vistula was used as one of the main arteries for marine traffic. The villages throughout the area are largely Polish. The influence of the German minority cannot be overlooked. They are the leading manufacturers, traders and merchants, they own the largest territories the largest sugar factories, and the richest agricultural land. The property of the Germans, however, is expropriated unless they adopt the Polish nationality, the legal right to which, under the Treaty of Versailles, was only vested in a part of the German population. In this industrialized part of the Corridor the population did not only undergo a change racially, but also in character. The incoming Poles represent a much lower standard of civilization and the two sections of the population do not live on friendly terms. In spite of their diminished numbers, the Germans elected three deputies to the Polish Sejm. The whole of the middle portion of the Corridor is predominantly Polish. The Kashubians are the key people of the Corridor. They are the remains of a very ancient tribe. The Kashubians are Roman Catholics. They escaped assimilation by the races amidst whom they lived and were not dispersed. They live in the north-western section of the Corridor, which they share with Poles and Germans. There are still over 100 000 of them. They have more natural claims to the territory which they occupy than any other race, as it has been their home for ages. The Kashubians remain a somewhat primitive community. They have no ideals. They are devoid of initiative in political action, are content to be led and are easily exploited. Their grievances in pre-war times were provoked by the short-sighted reactionary policy of Prussia. They feared that in some way, through the attempted suppression of Polish, their religion was in danger during a period when the rise of democratic feeling in Germany was thwarted and not allowed to be expressed in the representative Parliamentary Government. It was precisely during this period, beginning two decades before the war, that there was a keen revival of Polish nationalism carried out by vigorous campaigns beyond the borders of Congress Poland. This propaganda found keen adherents among the Kashubians.

German and Polish historians are in direct antagonism on the claims of their respective countries to the territory of the Corridor and the adjacent lands.[318]

318 Donald R., (1861-1933) The Polish corridor and the consequences / 1929 | London: Thornton Butterworth.

The Lachin corridor is a mountain road that links Armenia and the enclave of Nagorno-Karabakh. Being the only road between these two territories, it has been often described as a "lifeline" for the residents of Nagorno-Karabakh. The corridor is de jure in the Lachin District of Azerbaijan, but is under the control of a Russian peacekeeping force as provided for in the 2020 Nagorno-Karabakh armistice agreement. The territory of the corridor included the villages of Zabukh, Sus and the city of Lachin itself until 2022. On 26 August 2022, these settlements were transferred to Azerbaijani control. The Lachin Corridor has been blocked by Azerbaijani protesters since 12 December 2022, protesting about the issue of alleged illegal mining of natural resources in Nagorno-Karabakh. The protest, blocking the Lachin Corridor, halts the normal movement of people and goods in or out of the enclave, including food, fuel, and medical supplies, resulting in shortages of the products in the enclave. The issue gained the attention of the U.N. Security Council. During a meeting of the U.N. Security Council on 20 December 2022, Miroslav Jenča, Assistant Secretary-General for Europe, Central Asia and Americas, Departments of Political and Peacebuilding Affairs and Peace Operations, told the U.N. Security Council that "the current escalation of tension and incidents threatens to derail fragile progress and unleash a dangerous resumption of violence". According to his statement, "tensions on the Armenian-Azerbaijani border and around areas under the control of Russian Federation peacekeeping forces have not abated". The potential human toll of the resumed conflict could be considerable. "It would not only impact people of Armenia and Azerbaijan, but the wider South Caucasus region and beyond.[319] The blockade of the Lachin corridor did not happen spontaneously. Under the conditions set by Azerbaijan, it could not have taken place without the permission or the support of the government (as the areas in question cannot be entered without passes). It seems that Baku's goal is to force Yerevan to open the so-called Zangezur corridor, which links Azerbaijan's core territory with the Azerbaijani exclave of Nakhichevan, and runs on to Turkey. Armenia in principle agreed to the use of this route, and its opening was also included in the 2020 document ending the war. However, Yerevan is opposed to the corridor running along the border with Iran (so as not to cut off access to that country) and has ruled out its extraterritoriality. The blockade, which is a 'hybrid' action, should be considered an intermediate step between diplomatic methods (months of negotiations on the Nakhichevan road have so far failed to produce any binding agreements) and military measures. President Ilham Aliyev said on 10 January that the Zangezur corridor would be launched "whether Armenia wants it or not". That could be interpreted as an announcement that the corridor would be "broken through" by force; in September 2022 Azerbaijan attacked targets located on Armenian territory. The

319 Dr. Ewelina U. Ochab, With The Lachin Corridor Blockage, Nagorno-Karabakh Close To A Humanitarian Catastrophe / article, Forbes, December 2022.

Russian peacekeepers' reluctance to act shows that Russia is disregarding its commitments to its formal ally Armenia while displaying goodwill toward Azerbaijan. Moscow's motives behind this attitude are not entirely clear. It is also likely that the Russians are interested in forcing Armenians to agree to the route through southern Armenia which Baku is pushing. Indirectly, the Russian passivity may also signal the willingness to respect the interests of Baku's supporter Turkey, which, although Russia's rival in the Caucasus, is seen by Moscow as a strategic partner in the context of the war in Ukraine and the sanctions imposed on the Russian economy. In addition, if Moscow stepped forward to defend Armenia, which is demanding Russian intervention, that could – in the face of a determined response from Azerbaijan – lead to a military escalation in the Caucasus.[320]

Conclusions

One of the main objectives of this study has been to make a comparative scrutiny between the developed countries such as Germany, Poland, and newly developing countries, observe the issues of how the spatial-border differences are expressed in these countries, and what examples of their manifestation can be captivating for the developing countries in terms of comparison.

It is known that certain ethnic-territorial exchanges took place between the neighboring countries of Germany, specifically between Poland, during the demarcation of the borders of the states after World War II. These types of problems have arisen in Armenia during the Nagorno-Karabakh conflict settlement attempts as well, and in this regard, the study can be very instructive and helpful while elaborating on the concept of settlement of this issue. In this research, a comparative study on the history of Eastern Prussia is partially conducted as well, among others, around the following issues: Is there a distortion of history? What is the psychological state of the deportees, their memories, adaptation? How many natives are left in the area? What are their relations? This article also discusses the issues of religious tolerance, problems of stereotypes during the cross-border interactions etc. All these issues are topical today on the Armenian-Azerbaijani contact line, there are many parallels and distinctions, and it is instructive in the process of studying and settling the conditions of the displaced people to adapt to other borders. The issue of the aberrant and unfair principle of borders is also interesting as adopted by the Soviet Union, along with issues of settlers and immigrants, the issue of the homeland – territories and fatherland, ethnic boundaries, cultural heritage, closed borders, the compatibility and contradiction of the Helsinki principles of "self-determination" and "inviolability of borders", "exterritorial" (borderless or unrecognized) nations – their status and future, emigration and resettlement, civil mechanisms for reconciling (and grappling) with imposed, unfair borders, etc. All these

320 Wojciech Górecki, Katarzyna Chawryło, Blockade of the Lachin corridor. Article, Centre for Eastern Studies (OSW), January 2023

are issues pertaining to borders and, although the permissible scope of this article is limited, nonetheless we hope that the issues touched upon here may become a subject of further discussions through various connections.

International agreements, conventions and treaties on border management:

1. Helsinki principles of "self-determination" - Helsinki Final Act,1975 https://www.osce.org/helsinki-final-act
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3. European Outline Convention Transfrontier Cooperation https://rm.coe.int/1680078b0c
4. Geneva Refugee Convention, https://www.unhcr.org/1951-refugee-convention.html
5. The European Convention on Human Rights (ECHR), https://www.coe.int/en/web/human-rights-convention
6. Charter of Fundamental Rights of the European Union https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT
7. European Commission, Borders and Security policy https://ec.europa.eu/info/policies/borders-and-security_en
8. European Parliament Resolution of 10 March 2022 on the destruction of cultural heritage in Nagorno-Karabakh (2022/2582(RSP)) https://www.europarl.europa.eu/doceo/document/TA-9-2022-0080_EN.html
9. Mandate for the Co-Chairs of the Minsk Process https://www.osce.org/mg/70125
10. Getting from Ceasefire to Peace in Nagorno-Karabakh, International Crisis Group, report, 10 Nov 2020 https://reliefweb.int/report/armenia/getting-ceasefire-peace-nagorno-karabakh
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Reviews and Reports

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Is a Russian Political Nation Possible? The View of a Modern Russian Nationalist

(review of Sergeev S. Russian Nation, or the Story of the History of Its Absence. – Moscow, Tsentrpoligraf, 2025. – 575 p. – in Russian)

The collapse of the USSR and the following decades brought the Russian nation-building issue back into the focus of scientific polemics. Russian nationalists have become one of the significant, though not dominant, actors of the Russian domestic politics. We can remember in such a context not only the blackshirts of the Russian National Unity and skinheads of the 1990s, but also the "Russian Marches" of the 2000s, and the debates between national democrats and adherents of "Russia for Russians" in the early 2010s.

Today, we see how the Russian-Ukrainian war is motivated by the narrative of the "Russian world", which can be considered also as one of the projects of the Russian nation-building.[321]

Several attempts to understand the reality of Russian nation-building have been already made during the last decades – suffice it to recall the popular rather than academic work of T. and V. Solovey "The Failed Revolution".[322] or a number of other strictly academic texts.[323]

A new attempt has been made now by S. Sergeev, whose book "The Russian Nation or the Story of the History of Its Absence" was published by the Russian publishing house "Tsentrpoligraf".[324]

321 E.g. Tevdoy-Burmuli, A. (2023). Russkij nacionalizm segodnya: vnutrennyaya dinamika fenomena i ee vnutripoliticheskie posledstviya. The Moscow Times. (in Russian) https://moscow0x1.global.ssl.fastly.net/2023/04/08/russkii-natsionalizm-segodnyavnutrennyaya-dinamika-fenomena-i-ee-vnutripoliticheskie-posledstviya-a39485

322 Solovey T., Solovey V. Failed Revolution. Historical Meanings of Russian Nationalism. Moscow, Feoria Publ., 2009. – 440 p. (in Russian)

323 Avksentyev V., & Aksyumov B. (2024). Official discourse of nation-building in the post-Soviet space: the cases of Russia, Kazakhstan and Belarus. Policy. Political Studies. https://doi.org/10.17976/jpps/2024.04.02; Aksiumov B., & Avksentev V. (2021). Nation-Building in Contemporary Russia: Four Vectors of Political Discourse. Nationalism and Ethnic Politics, 28, 186-205. https://doi.org/10.1080/13537113.2021.2001206; Goode J. (2019). Russia's ministry of ambivalence: the failure of civic nation-building in post-Soviet Russia. Post-Soviet Affairs, 35, 140-160. https://doi.org/10.1080/1060586X.2018.1547040; Shevel O. (2011). Russian Nation-building from Yel'tsin to Medvedev: Ethnic, Civic or Purposefully Ambiguous?. Europe-Asia Studies, 63, 179-202. https://doi.org/10.1080/09668136.2011.547693;

324 Sergeev S. Russian Nation, or the Story of the History of Its Absence. Moscow, Tsentrpoligraf Publ., 2025. – 575 p. (in Russian)

As a methodological basis of the work, we can see rather popular, although not quite consistent with the modern trends of ethnopolitological science[325], primordial interpretation of ethnicity, which obtains political subjectivity in the context of modernization processes (p.11). The author traces the concept of a political nation to medieval political theology, which postulates a nation as a set of politically significant members of society. It allows him to define nationalism as an ideology of political emancipation of a society organized according to the ethnic principle – although we do not find such a clear formulation in the text, this is precisely the interpretation of nationalism that follows from the content of the work. It remains, however, unclear how the author interprets ethnicity itself. S. Sergeev avoids the question of whether an ethnic phenomenon has a social or biological character (pp. 10-11), but the author's subsequent theses suggest that he is close to the primordial or, at least, perennialist interpretation of ethnicity as the eternal and main subject of the historical process.[326]

The author's undoubtedly deep knowledge of the Russian history empirics prompts him to present not only his vision of past of Russian nation-building process, but also the desired picture of the wishful changes. Hence, he acts as a publicist rather than an analyst – a combination that is very common for the Russian tradition of social knowledge, starting from the 18th century. Thus, the text balances on the verge of academic analysis and a political (or, more precisely, ideological) pamphlet.

Like many other researchers[327], the author sees the beginning of the "special Russian path", characterized by the underdevelopment of the Russian political nation, in the events of the 13th-16th centuries. From the reluctant search of consensus/agreement with the society (first of all through "veche" institutions), the Russian rulers moved on to the exercise of power not only without taking into account the opinion of the "zemlya" (society), but also often contrary to this opinion, using the Mongol force against the dissatisfied population (pp. 61-62). This was also facilitated by the destruction under the Mongol yoke period of a significant proportion of boyar aristocratic families who had previously objectively opposed the monarchical principle of government (e.g. the story of Andrei Bogolyubsky and of Galich-Volhyn princes). Then the Moscow princes, within the framework of the autocratic tradition already formed in the era of the yoke, extended it to the newly annexed lands,

325 Brubaker R. (2006). Ethnicity Without Groups. Cambridge: Harvard University Press; Varshaver E. (2024). What exactly is studied when ethnicity is investigated? A descriptive model for constructivist studies of ethnicity in the context of the cognitive turn. Sociological Review, 23 (3), 94-126. (in Russian) doi: 10.17323/1728-192x-2024-3-94-126; Ignatow G. (2007) Theories of Embodied Knowledge: New Directions for Cultural and Cognitive Sociology? Journal for the Theory of Social Behaviour, vol. 37, no 2, pp. 115-135.

326 Larin, S. (30 November 2017). Conceptual Debates in Ethnicity, Nationalism, and Migration. Oxford Research Encyclopedia of International Studies; Conversi, D. (Ed.). (2003). Ethnonationalism in the Contemporary World: Walker Connor and the Study of Nationalism (1st ed.). Routledge. https://doi.org/10.4324/9780203166246; Grosby, S. (2003). Religion, ethnicity and nationalism: the uncertain perennialism of Adrian Hastings. Nations and Nationalism. 9., 7-13., 10.1111/1469-8219.00070.

327 See e.g. Akhiezer A., Klyamkin I., Yakovenko I. History of Russia: the End or the New Beginning? / 3rd ed., ispr. Moscow: Novoe izdatelstvo, 2013. 496 p. (in Russian)

resettling or destroying the local elite and thereby simultaneously eradicating the principle of private property, which was the basis of civil society autonomous from the state (pp. 54-77).

The postulation of the absence/unfinished formation of the Russian civil nation due to the accumulated features of the Russian historical path is, on the whole, not a new approach. Therefore, any new text made in this paradigm is interesting primarily because of the new arguments or twists of the topic that the author finds in support of the thesis he has chosen.

One of such novel ideas might be the author's thesis about the relative underdevelopment of the idea of the Russian people as an ethno-cultural entity in the Moscow period of Russian history: the author chooses to interpret the numerous references to Russianness of the period only as a sign of a religious and cultural denomination (pp. 82-87). The question is debatable: religious-cultural denomination may well be a trigger for ethnogenesis (see, for example, the ethnogenesis of the Boshnyaks, Pomaks, or Karaites). Consequently, it is somewhat risky to reject the existence of ethnic identity among Russians in the early modern period.

One can agree with the author who considers the events of the Time of Troubles of the early 17th century to be a window of opportunity for the consolidation of the Russian civil nation. Indeed, it was during this period, as never before, that the potential of horizontal self-organization of Russian society was revealed, which for the first time – albeit for a short time – became the subject of Russian politics. The organization of militias, and then the election of a new monarch "by the whole land" (p. 114) marked the transition of Russian society to the phase of civic maturity and, consequently, the possibility of forming a modern Russian nation.

The author shares, with some reservations, the interpretation of the schismatic movement in the middle – second half of the 17th century as another attempt of the Russian national civil movement (pp. 128-129). The national character of this movement is further emphasized by the author, who considers the Nikonian ecclesiastic reform to be a successful attempt to re-shape the traditional Russian liturgical canon according to the modern Greek model (pp. 126-127).

The author's excursion into the Russian church history of the 17th century is not accidental. In fact, it is in the era of the first Romanovs that the author sees the third - after the Mongol-Tatar occupation and Moscow autocratic practices - iteration of the suppression of the subjectivity of Russian society. In the 17th century, Moscow began to turn into an imperial metropolis – and from the very beginning of this process, the interests of the imperial core ethnicity (Russians) began to be ignored by the Moscow authorities in favor of external and newly incorporated ethno-cultural elements into the Russian state. S. Sergeev sees one of the earliest and most striking examples of this kind in the policy towards the Left-Bank Ukraine and Kiev which was annexed in 1667 according to the Andrussov

armistice treaty and then develops this thesis based on the empirics of Peter the Great's policy and of the imperial period as a whole. In general, the author's argumentation is clearly national-democratic: the author consistently reproaches the Russian imperial power for institutional imbalances in favor of the colonized periphery. It is no accident that the author sees one of the first examples of Russian modern nationalism – and here we can fully agree with him – in the Decembrist movement (pp. 313-337). Indeed, nationalist (and sometimes openly xenophobic) pathos permeates a significant part of the Decembrists' discourse, which in the Soviet era they preferred not to notice.

In addition to the classical examples of the Russian Kingdom of Poland and Finland in the 19th century, the author cites as arguments the status of Left-Bank Ukraine and the Bashkir lands until the end of the 18th century (p.139), the facts of resource depletion of the Russian center in the interests of the imperial periphery (Russian Turkestan and Transcaucasia in the 19th century, p.207), the conscious encouragement of the social development of the ethnic minorities' regions to the detriment of the Russian regions (here the educational policy in Transcaucasia and on the western outskirts is cited as an example), as well as the encouragement of various kinds of educational organizations in these regions, p.209). The author, however, admits only in passing later that the authorities often encouraged civic education of minorities for manipulative imperial purposes to counteract the local elites (for example, the encouragement of the Latvian and Estonian languages in the Baltic Sea provinces, p. 246).

In general, it seems that the thesis about Russia as an empire of "positive discrimination", first used by T. Martin[328] to characterize early Soviet domestic political practice, is used by the author to characterize the Russian imperial policy.

The author does not deny the well-known practices of imperial repression (the enslavement of Left-Bank Ukraine, the suppression of Polish uprisings, the Russification of the era of Alexander III, etc.), but for him this is clearly not so much an example of the imperial domination of the Russian nation as the excess of Russian authoritarianism per se. An important element of the author's argumentation of the anti-Russian policy of the Russian imperial administration is the thesis about the predominant influence of non-Russian elements in the Russian elite (p. 215 et seq.) – and the beginning of this phenomenon is attributed by the author not to Peter the Great's Westernization, but to the massive incorporation of "Western Russian" (Balkan and Ukrainian) and Greek intellectuals into the Russian church elite in the 17th century (p.240). The author considers the imperial elite to be "mercenaries" of the government, alienated from its indigenous population and considering the Russian society as a resource colony (p. 220).

Admitting the seductiveness of such an interpretation, we should not forget that most of the "inorodsy" incorporated into the Russian imperial elite for several centuries

328 Martin T. The affirmative action empire: Nations and nationalism in the Soviet Union. 1923-1939. CUP. Ithaca And London, 2001

had already identified themselves as Russians within the framework of rather political than ethno-cultural project of the Russian nation – and, accordingly, gave their loyalty to the imperial Russian project. Of course, it does not overrule the fact that this imperial project has the character of authoritarian modernization, denying the Russian society any subjectivity, suppressing the horizontal self-organization of the Russian society and, consequently, hindering the construction of a Russian modern nation. S. Sergeev proposes an explanation to this contradiction by contrasting "Peter's Russianness" with "Old Moscow Russianness" (p. 163). "Peter's Russianness" is understood in this case as formal Westernization, pursuing, in addition to the obvious great-power expansionist goals, the task of "equalizing Russian people with European states" (quote from the report of the Russian agent in England F. Saltykov, p.164).

Describing the existence of the Russian national project in the 19th century, the author places it in the context of competition with other national projects that are maturing in parallel in the Russian imperial space. In addition to the Polish national project, which retains its integrating force, the author pays special attention to the rapidly politicizing Ukrainian and Jewish identities. From the author's point of view, they presented the greatest threat to the Russian national project, either because of their cohesion and competitiveness (Jewish identity) or because of their potential separatism (Ukrainian, Polish, Finnish, and other identities of imperial minorities).

If we leave aside the stylistics which betrays the author's adherence to the pre-revolutionary tradition of Russian right-wing nationalism ("Jewry", "Ukrainianism", "Malorossy", "inorodcheskaya intelligentsia" etc.), the main questions are raised primarily by the author's research optics. On the one hand, the modernization discourse is combined here with the idea of the eternal competition of primordial ethnicities. Such a version of primordialism looks hopelessly archaic. What is "Jewishness", "Ukrainianness" or "Russianness" from the standpoint of modern ethnopolitical science? Nothing more than easily deconstructed identitarian markers in the "Other or Friend" dichotomy which may be applied to the analysis of Russian nationalistic narrative itself – that have little in common with real ethnopolitical dynamics of the late Russian empire. However, the author not only adheres to this obsolete concept, but also passionately "roots" for Russian ethnicity, either criticizing the imperial authorities for the "hopelessly belated Russification" of Finland (p. 238), or using the term (albeit put in quotation marks) "Jewish invasion" (p. 252), or calling Poland a "heavy and harmful burden" for Russia (p. 244).

Of course, such normativity and partiality significantly devalue the author's position as a researcher.

Having outlined the structure of relations between the Russian state of the (Early) Modern Age and Russian society and characterized them as de facto internal colonialism in relation to the core people of the empire, Sergeev proceeds to analyze the Russian intellectual tradition and its relationship to the problem of Russian nation-building. As

has already been mentioned above, the author dates the beginning of modern Russian nationalism from the Decembrist discourse – which is acceptable. Interesting and, perhaps, containing an element of scientific novelty is the author's interpretation of some Russian thinkers, traditionally considered Westernizers or revolutionary democrats. Thus, the author considers P. Chaadaev and S. Solovyov to be Russian nationalists – supporters of modernization of the European type, which should eventually lead the Russian people to political subjectivity and social development comparable to Europe (p. 356). The similarity with the ideology of Peter's modernization is only superficial, since Russian Westernizers are liberals, while Peter's Westernization was carried out by repressive measures in the interests not so much of society as of the state.

The author also includes such "icons" of the Russian liberation movement as V. Belinsky and A. Herzen among the adherents of Russian nationalism. And if Belinsky's pronounced skepticism about Ukrainophiles and his periodic theses about the Russian national identity and the state vocation of the Russian people really allow us to consider him involved in the Russian nationalist narrative, then interpreting Herzen's political heritage in the same way is somewhat more complicated. Does Herzen's constant declaration of love for the Russian people and hatred of its oppressors, as well as the preference for his daughter of Russian friends over foreign friends make Herzen a nationalist (p. 355)? If the answer is yes, then we should consider most of the human population to be nationalist, since preferring one's own group to someone else's is an anthropological reflex. In this sense, the author's arguments don't look strong enough. But if we understand nationalism as, in particular, a project for the political emancipation of ethnicity (and Sergeev shares this understanding), then, indeed, Herzen's struggle against the Russian government can be interpreted as a nationalist narrative.

It is quite characteristic that the Slavophile tradition is considered here a kind of nationalist deadlock, with a generally positive attitude towards it. Acknowledging the merit of the Slavophiles "putting forward the people as the main subject of history" (p. 343, here it is – the romantic nationalism of the 19th century!), the author reproaches them both for the deliberate depoliticization of their discourse and for relying on archaic social institutions ("obschina").

The closer the author's narrative is to the present, the more it is saturated with the already well-known clichés of Russian nationalist discourse, which the author seemed to be willing to objectively investigate.

Considering the above, the author comprehends the Soviet period of the history of Russian nation-building in quite a predictable manner. We see here the already traditional calculations of the percentage of Jews in the Soviet elite (pp. 521-523) – which, on the whole, continues the thesis previously expressed by the author about the "alien mercenaries" of the anti-national government, and the well-known theses about cultural (in 1920s) and institutional discrimination of the Russian people in the USSR (pp. 531-32). This part of the author's narrative, as well as the author's data on the low combat effectiveness of servicemen from the Asian regions of the USSR (pp. 538-540) can be regarded as a source for modern Russian nationalist discourse, but not as an academic text. Taken out of context and devoid of a correct comparative framework, the data do nothing to assess the general meaning and dynamics of the complex ethnopolitical processes of the Soviet era.

Despite a generally critical assessment of the influence of the Soviet era on the fate of the Russian national project, the author finds in the Soviet era an intellectual force that is partly close to him in spirit. This is the credo of the late Soviet so-called Russian Party, whose program the author naturally pays special attention to (pp. 544-550). However, it is appropriate to ask the question – how complete is the author's closeness to the pochvennik's message of the late Soviet Russian nationalists? Still, the main discourse of the book is the discourse of building a political nation, which, of course, does not quite correspond to the archaic pathos of the Soviet pochvenniks/etatists. The author reproaches the pochvenniks for ignoring the idea of political freedoms and personal rights (p. 548). This once again confirms the assumption we made earlier that Sergeev generally adheres to the national-democratic version of modern Russian nationalism – and the author's attention paid to the Decembrists was by no means accidental.

To sum up, it can be stated that the study undertaken by S. Sergeev is a historiosophical pamphlet containing several analytical theses rather than a full-fledged scientific research text. Sometimes these theses are quite innovative and academic but generally we can detect here the well-known theses of the Russian nationalist narrative. The author ends his message on a pessimistic note. "We see", writes Sergeev, "that Russian history returns to its circle over and over again, demonstrating the amazing stability of the socio-political foundations of the Russian state, among which the existence of the Russian nation as a sovereign political community does not seem to be foreseen." (p. 553).

A question needs to be asked – what is the reason for this endless series of attempts to state the aborted nature of the Russian national project? And here we return to the beginning of our text.

From our point of view, Sergeev's work is interesting not so much as a new interpretation of a long-debated and very painful problem for Russian society, but as a sign of the deep crisis that Russian nationalism is experiencing today. Again and again, nationalist discourse (and the discourse of the "Russian world" is certainly of this kind) is embedded into the paradigm of an authoritarian (if not totalitarian) state project that denies Russian society the slightest political subjectivity.

It can be assumed that in the midterm we will still see bizarre transformations of this discourse in the context of the still unpredictable dynamics that await Russian society and Russian statehood as a whole.

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Report from the 15th international scientific and practical conference on administrative law entitled "Administrative Law and Administrative Procedure Law: Current Situation and Future Challenges".

An international scientific conference on administrative law was held in Astana, the capital of Kazakhstan, on 31 October and 1 November 2024. The conference was a distinctive event and, in many respects, a symbolic one. The principal organiser of the conference was GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit), in cooperation with the Commission on Human Rights under the President of the Republic of Kazakhstan. The conference itself was organised as part of one of the programmes implemented by GIZ, that is "Promotion of the Rule of Law in Central Asia". Under this multi-year programme, which has only just concluded, several dozen conferences and other scholarly events were held with a view to modernising the legislation of the Central Asian states. Hence the symbolic nature of the conference, as many participants sought to analyse the results of their long-standing cooperation. Without doubt, one of the programme's objectives was to promote German legal thought and German legislative model. This promotion related specifically to German-language legal doctrine as such, not necessarily to Germany as a state, given the significant participation of lawyers from, inter alia, Austria and Switzerland. The very impact of this multi-year programme on the development of legislation in Central Asia could in and of itself constitute the subject of a scholarly monograph. The programme influenced not only substantive administrative law, administrative procedure, and judicial administrative proceedings, but also private law in its broadest sense. A noteworthy outcome of the multi-year programme was the integration of the academic community with legal practitioners from Kazakhstan, Uzbekistan, Tajikistan, Turkmenistan, Kyrgyzstan, and Azerbaijan. Over the years, the conferences organised by GIZ have provided a forum for the exchange of ideas between lawyers from the aforementioned countries, as well as from other states of the post-Soviet region and Europe. Representatives of Polish universities were also present at this conference (A. Krawczyk, J. Turłukowski).

The first day of the conference comprised four sessions:
Session 1 and 2: Effects of the introduction of administrative justice in Central Asia
Session 3: Trends in the development of administrative law and procedure
Session 4: Digitisation of the state and administrative justice management system

The second day of the conference comprised three sessions:
Session 1: Expansion of the scope of administrative justice in Kazakhstan
Session 2: Legal entity under public law
Session 3: Trends in the development of administrative law and procedure

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Group on the Russian Revolution (SGRR), held at Northumbria University, United Kingdom

Between 4 and 6 January 2025, the 50th Annual Conference of the Study Group on the Russian Revolution (SGRR) was held at Northumbria University, UK. The Study Group on the Russian Revolution, established in 1973, aims to promote new approaches to the study of the Russian Revolution, focusing on the period between 1880 and 1932[329]. Affiliated with the British Association for Slavonic and East European Studies (BASEES), the Study Group has an international membership, and its annual conferences attract strong representation from scholars based in the United Kingdom, Europe, North America, and Russia[330]. Today, it is one of the largest and most active scholarly networks devoted to the study of Russian history at the turn of the 19th and 20th centuries.

This year's event was a jubilee conference, which also provided an opportunity to reflect on the origins and development of the SGRR over the past five decades.

During the conference, 30 papers were presented across eight thematic panels:

1. *Localities, Nationalities and Peripheries in the Late Russian Empire and Early Soviet State;*
2. *Socialist Ideas and Activists;*
3. *International/Transnational Connections, Comparisons and Perspectives;*
4. *War and Civil War;*
5. *Revolutionary Politics and Political Culture;*
6. *Soviet Authorities and Society in the 1920s;*
7. *Religion and Culture Across Borders;*
8. *Politics, Society and the Law.*

329 BASEES Study Group On the Russian Revolution, https://basees.org/study-group-of-the-russian-revolution, access: 02.11.2025; https://www.eastcentre-uea.org/events/51st-annual-conference-of-the-study-group-on-the-russian-revolution, access: 02.11.2025

330 Ibidem.

In the final panel discussion, Dr Michał P. Sadłowski, representing the Department of the History of Administration, Faculty of Law and Administration, University of Warsaw, delivered a paper entitled "*The Political and Legal Thought of Pavel N. Milyukov during the Civil War in Russia, 1917–1920*".

The 2025 edition of the conference was hosted and organised at Northumbria University by Dr Lara Douds, Secretary of the Study Group on the Russian Revolution, together with Professor Charlotte Alston.

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Report from 10th Asian Constitutional Law Forum (ACLF) entitled "Constitutional Change in Asia in the 21st Century".

On 9th and 10th December 2024, the Asian Constitutional Law Forum was held for the tenth time. Its purpose was to analyse the profound and turbulent transformations occurring within the broadly understood constitutional law during the first decade of the 21st century. Providing a synthesis not only of individual presentations but also of the various subsections is not feasible within the confines of this brief report, owing to the exceptionally wide scope of issues addressed both substantively and geographically, encompassing multiple jurisdictions.

The Plenary Session of this two-day event focused primarily on two topics, that is "Constitutional Moments in Asia" and "The Chinese Constitution and 'One Country, Two Systems'." The individual sections, in turn, addressed either broad, cross-jurisdictional questions (for example, "Intersections of Public Law and Private Law") or selected issues pertaining to specific jurisdictions (for instance, "Constitutionalism and Rule of Law in Vietnam"). As might be expected, several subsections were also devoted to aspects of Hong Kong law.

The host of the event was the Faculty of Law at The University of Hong Kong (Dean: Professor Hualing Fu). Beginning in 2025, the Forum will be held on a rotating basis at various centres throughout Asia. In the Welcome Note from the Organizing Committee (members: Albert H.Y. Chen, Cora Chan, Stefano Osella), a significant remark was articulated one that could serve as the motto of the event: "We celebrate Asia, which is more and more a reference point in comparative law."

Indeed, the Forum cannot be regarded (despite the strong presence of scholars with European backgrounds and affiliations) as a meeting between East and West, but rather as an exchange of ideas between scholars from various Asian jurisdictions and Western specialists in those very legal systems.

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