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FLAGSHIP STUDIES

Kateřina FRUMAROVÁ*

The Concept of a Safe Country of Origin: Are Territorial and Personal Exceptions Permissibile?

ABSTRACT: *This article examines the concept of a safe country of origin within the framework of European Union asylum law and its implementation in the Czech legal order, focusing specifically on the permissibility of territorial and personal exceptions. It analyses Articles 36 and 37 of Directive 2013/32/EU (Procedures Directive) and Annex I thereto, which set out the material and procedural conditions under which Member States may designate a third country as safe. The study explores the legal consequences of such designation for applicants for international protection, including the use of accelerated procedures, the shifting of the burden of proof, and limitations on the suspensive effect of appeals. Particular attention is paid to the tension between procedural efficiency and the obligation to ensure effective judicial protection and compliance with the principle of non-refoulement. The core of the article critically assesses the practice of certain Member States, including the Czech Republic, of introducing territorial or personal exceptions when designating safe countries of origin. It evaluates whether such exceptions are compatible with EU law, especially in light of the legislative history of Directive 2013/32/EU and the case law of the Court of Justice of the European Union, notably the Grand Chamber judgment of 4 October 2024 in Case C-406/22 (CV). The article concludes that the designation of only part of a country as safe is incompatible with EU and it reflects on the implications of this finding for national asylum systems and the principle of equality of applicants.*

KEYWORDS: *Safe Country of Origin, Territorial Exceptions, Personal Exceptions, International Protection, Asylum Procedure, Directive 2013/32/EU, CJEU Case Law*

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1.
Introduction: The concept of 'Safe Countries of Origin'

One of the key institutions of Czech and European asylum law is the 'safe country of origin.' In the most general sense, the concept of 'safe country' can be defined as a legal construction under which a state does not grant a person international protection and moves him to another state that is safe for him. When applying this concept, states start from the premise that a person fleeing persecution or the threat of serious harm could already obtain protection in that state. A distinction is made between 'safe country of origin' and 'safe third country.' If possible, the refugee is primarily returned to his country of origin if it can be judged as safe. If it is not possible to proceed in this way, the state seeks to return the refugee to a so-called safe third country.[1] The return of a refugee to a safe country must not contradict the principle of *non-refoulement*.[2]

This concept is used around the world (e.g. the US and Canada consider each other a safe third country),[3] including Europe and the European Union. When the migration crisis broke out in Europe in 2015, the European Union faced an influx of large numbers of people seeking refuge in the EU at its external borders. In practice, the legal norms belonging to the so-called Common European Asylum System were applied as part of the solution to the situation. Particularly as a result of the application of Regulation of the European Parliament and the Council (EU) no. 604/2013 of 26/06/2013 (the 'Dublin Regulation'),[4] states on the periphery of the EU were overwhelmed with requests for international protection. One of the ways in which Member States attempted to cope with the sharp increase in the number of applications for international protection and the overloading of their asylum systems was the application of the concept of safe countries in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26/06/2013[5] (hereinafter referred to as 'Procedural Directive'). As already mentioned above, if a person is fleeing persecution, he should use the protection of the first state where he has the opportunity to obtain protection. European

1 Gil-Bazo, 2015, pp. 49–64.
2 Goodwin-Gill and McAdam, 2007, pp. 390–391. http://doi.org/10.62733/2025.1.5-15
3 The Canada–United States Safe Third Country Agreement (STCA) is a treaty, entered into force on 29 December 2004, between the governments of Canada and the United States to better manage the flow of refugee claimants at the shared land border.
4 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.
5 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

states are thus trying to deal indirectly with the second movement of refugees and the so-called asylum shopping.[6]

The application of the concept of safe countries is very closely dependent on whether the applicant has the possibility to find really 'effective protection' in another state. However, a universally accepted definition of 'effective protection' is missing in international law. The minimum standards that effective protection must meet are therefore defined by the doctrine. For example, S.H. Legomsky, referring to UNHCR documents, characterises them as follows:

- prior consent of the receiving state to accept the asylum seeker under its jurisdiction;
- the applicant is not at risk of refoulement in a third country;
- the third country will respect the rights of the applicant guaranteed by the European Convention and other international or regional instruments in the field of human rights;
- the third country will allow the applicant access to a fair procedure for granting refugee status, including ensuring the applicant's access to the UNHCR, taking into account the applicant's private life and potential vulnerability;
- the third country is a party to the Geneva Convention;
- copossible resolution of the refugee situation in which the applicant is in a third country in the long term.[7]

Another prerequisite necessary for the transfer of the applicant to a safe country is the existence of a link between the state and the applicant. Furthermore, the UNHCR states that it is necessary to insist that the refugee's basic economic rights are ensured and that he is enabled by the third country to provide for his own livelihood. The state must take into account any vulnerability resulting from e.g. from the age or gender of the refugee.[8]

2.
Safe Country of Origin From the Point of View of EU Law and the Czech Legal Order

The ability of Member States to designate a state as a so-called safe country of origin according to their national standards derives from Art. 37 Procedural Directive. Member States have proceeded to apply the concept of safe countries of origin as a

6 Goodwin-Gill, McAdam, 2007, p. 392.
7 Legomsky, 2003, pp. 52–81.
8 UNHCR, 2003, p. 3.

means of distinguishing between justified and unjustified requests for international protection and, as a result, speed up asylum procedures. The essence of this concept is that if a person comes from a country that does not generate a high number of refugees, it is likely that the person will not face persecution in that country either.[9] Regarding the asylum seeker, the state is the country of origin if the applicant is its national or stateless person and previously resided safely in that country (Art. 36 of the Procedural Directive).

Art. 36(1) of the Procedural Directive states that:

> *'A third country designated as a safe country of origin in accordance with this Directive may, after an individual assessment of the application, be considered a safe country of origin in relation to a particular applicant, only if [...] the applicant has not submitted no serious reasons why this country cannot be considered safe in his specific situation and he could thus be recognised as a person enjoying international protection according to Directive 2011/95/EU.'*

In other words, if the applicant comes from a country marked as safe, he still has the opportunity to present to the state serious reasons why the said country is not safe in relation to him and why the given concept thus cannot be applied.

In Art. 37(1) of the Procedural Directive, the Member States have the option, for the purpose of assessing applications for international protection, to keep in force or adopt legal regulations which, in accordance with Annex I to this Directive, allow safe countries of origin to be designated at national level. Simultaneously, however, it requires that Member States ensure a regular review of the situation in third countries designated as safe (Art. 37, Para. 2). The assessment of whether a country is a safe country of origin should be based on a number of sources of information – specifically, information from other Member States, from the Office of the United Nations High Commissioner for Refugees, the Council of Europe, and other important international organisations (Art. 37, Para. 3).

The material conditions that a third country must fulfil in order for a member state to designate it as a safe country of origin are regulated in Annex I of the Procedural Directive. According to this annex, a country is considered to be a safe country of origin if it can be demonstrated – on the basis of the legal situation there, the application of law within a democratic system, and the general political situation – that there is generally and consistently no persecution under Art. 9 of Directive 2011/95/EU (hereinafter referred to as the 'Qualifying Directive'), no torture or inhuman or degrading treatment or punishment, and no threat of arbitrary violence in the event

9 Hunt, 2014, p. 502.

of international or internal armed conflict. In assessing a country of origin as safe, a State should consider, inter alia, the extent to which it provides protection against persecution or ill-treatment through:

a) the applicable laws of the country and the manner in which they are applied;
b) compliance with the rights and freedoms stipulated in the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment – in particular the rights from which, according to Art. 15, Para. 2 of the Convention, it is not possible to deviate;
c) compliance with the principle of *non-refoulement* according to the Geneva Convention on the Legal Status of Refugees as amended by the New York Protocol;
d) a system of effective remedies against violations of these rights and freedoms.

The Czech Asylum Act also defines the concept of a safe country of origin as follows.

A safe country of origin is the state of which the foreigner is a citizen, or in the case of a stateless person, the state of last permanent residence:

1. in which persecution, torture, inhuman or degrading treatment or punishment and the threat of indiscriminate violence in the event of international or internal armed conflict do not generally and consistently occur;
2. in which its citizens or stateless persons do not leave for the reasons specified in Section 12 or 14a of the Asylum Act (persecution for the exercise of political rights and freedoms, or justified fear of persecution due to race, gender, religion, nationality, belonging to a certain social group, or for holding certain political opinions, imminent serious harm in the form of the death penalty or execution, torture, or inhuman or degrading treatment or punishment of an applicant for international protection, or a serious threat to the life of a civilian or his human dignity due to arbitrary violence in a situation of international or internal armed conflict)
3. which has ratified and complies with international treaties on human rights and fundamental freedoms, including norms relating to effective remedies, and

4. which enables the activity of legal entities that supervise the state of compliance with human rights.[10]

The Procedural Directive does not contain, mainly for political reasons,[11] a list of states that can be considered as safe countries of origin. However, as part of the implementation of the Procedural Directive into national law, some EU Member States proceeded to draw up their own, national lists of countries that they consider to be safe countries of origin. It should be noted that these national lists contain deviations, due to the application of which Member States may assess a given state's safety quite differently. Among the main differences in national systems are, for example, whether states differentiate the definition of persecution in the country of origin depending on the gender of the applicant; or which Member State authority is responsible for issuing these lists. In addition, there are EU states that do not apply this concept at all (e.g. Spain, Italy, Poland, Sweden).

The Czech Republic has also used the option provided by Art. 37 of the Procedural Directive, according to which a Member State may adopt a legal regulation that designates safe countries of origin, under the conditions set out in Annex I of this Directive. The list of safe countries of origin was issued by the Ministry of the Interior of the Czech Republic. This is Decree No. 328/2015 Coll. At least once a year, the ministry must then review the rationale for the (non) inclusion of countries on the given list.

3.
Territorial and Personal Exceptions to the Safe Country of Origin Concept

The Czech Republic lists the countries it considers safe countries of origin in the above-mentioned decree. However, for three countries, it considered only a part of the country safe until 30 September 2023 – instead of the country as a whole. Namely, Georgia (with the exception of Abkhazia and South Ossetia), Moldova (with the exception of Transnistria), and Ukraine (with the exception of the Crimea peninsula and parts of the Donetsk and Luhansk regions under the control of pro-Russian separatists; however, since the beginning of the war, all of Ukraine has no longer

10 On the difference between the criteria of a safe country of origin under the Procedural Directive versus the Czech Asylum Act, see the Judgment of the Regional Court in Brno of 20 October 2021, No. 41 Az 58/2020. In any event, all the criteria set out in Section 2(k) of the Asylum Act must be interpreted in a Euroconformist manner. See: Kosař, Molek, Honusková, Jurman, Lupačová, 2010, pp. 15–16.

11 ECRE, 2015, p. 2.

been considered safe). The Czech Republic therefore applied the so-called territorial exceptions for a very long time, and only withdrew from them at the end of 2023.

This approach is not unique. In the practice of Member States, territorial exceptions for specific geographical areas or even personal exceptions for applicants from safe countries of origin are common. For example, Denmark and Finland designate Georgia as a safe country of origin, excluding South Ossetia and Abkhazia. Similarly, Cyprus provides an exception for Ukrainian applicants from the Crimea peninsula and the Donetsk or Luhansk regions. Hungary designates the US as a safe country of origin, but only in relation to countries that do not apply the death penalty. The Czech Republic is the only country to designate Moldova as a European safe third country, with the exception of Transnistria (other countries designate all of Moldova as safe).

In addition to territorial exceptions, personal exceptions also appear. For example, Luxembourg has designated Benin and Ghana as safe countries of origin, but only for men. In the case of Russia, Denmark applies exceptions for ethnic Chechens, LGBTI applicants, Russian Jews and politically active persons who have faced abuse by the authorities. The Netherlands also has exceptions for specific groups of people in Armenia, Morocco, and Tunisia.[12]

Council Directive 2005/85/EC of 1 December 2005 on minimum standards for proceedings in Member States on the granting and withdrawal of refugee status expressly provided for the possibility of territorial and personal restrictions ('Directive 2005/85'). It was repealed by the current Directive 2013/32. Art. 30(1) of Directive 2005/85 stated:

> *'Without prejudice to Art. 29, Member States may, for the purposes of assessing asylum applications, maintain or adopt legislation which, in accordance with Annex II, allows other third countries to be designated as safe countries of origin countries other than those listed on the common minimum list. This may include the designation of a part of the country as safe if the conditions set out in Annex II are met in relation to that part.'*

Directive 2013/32, unlike Directive 2005/85, no longer explicitly regulates this option. From the preparatory work for Directive 2013/32, it is clear that the EU legislator intentionally removed the possibility of territorial or personal exceptions. The explanatory note to the proposal for Directive 2013/32 states that an optional provision is deleted, which allows Member States to apply the concept of safe country of origin to a part of the country. The material requirements for the national designation of a country as safe must therefore be met by the entire territory of the given

12 European Union Agency for Asylum, *Applying the Concept of Safe Countries in the Asylum Procedure*, 2022, pp. 7–8.

country. Expert literature in the field of international refugee law also concludes that it is impossible to designate only a part of the country as safe.[13] Only a country that meets the conditions defined in Annex I of Directive 2013/32 in relation to its entire territory can be designated as a safe country of origin. Therefore, if some territories of a specific country do not meet these conditions, it disqualifies the country as a whole from being included in the list of safe countries of origin.[14]

4.
Procedural Implications for International Protection for an Applicant From a Safe Country of Origin

If an applicant for international protection comes from a safe country of origin, the state considers the application to be unfounded within the meaning of Art. 32, Para. 2 in conjunction with Art. 31, Para. 8 letter b) of the Procedural Directive. Member states are thus not obliged to decide on the merits of an application for international protection,[15] as it is considered that the applicant could have been granted protection by his home state.[16] If the concept of safe countries of origin is applied by the Member States, such a procedure is also reflected in the procedural level – the states assess the specific request in the so-called accelerated procedure;[17] however, they are still obliged to proceed in the procedure according to the principles stated in Chapter II of the Procedural Directive. Compared to the previous adjustment, according to Art. 14 of the Procedural Directive, applicants are guaranteed the opportunity to participate in a personal interview about their application, where they can also present serious reasons why their country of origin cannot be considered safe in their case. The applicant must demonstrate that he or she is at greater risk of persecution or serious harm than others in a similar position. The designation of a certain country as safe essentially puts the burden of proof on the applicant for international protection.[18] According to the EU Court of Justice, speeding up the procedure for international

13 Goodwin-Gill, McAdam and Dunlop, 2021, p. 449.
14 Resolution of the Regional Court in Brno of 20 June 2022, No. 41 Az 14/2022.
15 Access to a 'full' substantive review is limited for applicants from safe countries, see the Judgment of the Supreme Administrative Court of the Czech Republic of 23 April 2020, No. 1 Azs 43/2020.
16 Boeles et al., 2014, p. 280.
17 Judgment of the Regional Court in Brno of 20 October 2021, No. 41 Az 58/2020: '*The safe country of origin institute is in any case a procedural institute, not a substantive one. It therefore leads only to certain procedural simplifications for the defendant.*'
18 Judgment of the Supreme Administrative Court of the Czech Republic of 30 September 2008, No. 5 Azs 66/2008, and/or the resolution of the Supreme Administrative Court of the Czech Republic of 24 March 2022, No. 5 Azs 218/2021.

protection does not discriminate against applicants depending on their country of origin, but only if they are able to fully exercise the rights granted to applicants by EU legislation as part of the due process.[19]

One of the consequences for an applicant rejected by the deciding authority on this basis is that, in contrast to a simple rejection, the Member State in which he submitted the application does not have to allow him to remain on its territory until it decides on the appeal (Art. 46, Paras. 5 and 6 of Directive 2013/32). In this context, it is up to each Member State to designate safe countries of origin. In particular, it may do so by the national legislature adopting a list of third countries in accordance with the criteria set out in Annex I, issuing further implementing rules and procedures and submitting the list of safe countries of origin to the Commission or regularly reviewing it. However, the Court of Justice of the EU recalled in this regard that – according to points 11 and 12 of the justification of Directive 2013/32, as well as according to Art. 1 of this directive – the framework for granting international protection is based on the concept of a unified asylum procedure and on minimum common rules.[20] Thus, a Member State cannot apply the rebuttable presumption regulated by the rules of Directive 2013/32, concerning procedures based on the concept of a safe country of origin, without at the same time ensuring the full implementation of those rules in terms of the laws and regulations it has to adopt (see judgment CJEU, *A. v Migrationsverket*).

It follows – in the context of the right to an effective remedy (remedy) before a court under Art. 46(1) and (3) of Directive 2013/32 and Art. 47 of the Charter – that on judicial review of a decision to reject an application based on the safe country of origin concept the court must have two options: (a) not only assess whether the applicant succeeded in rebutting the presumption of safety, but (b) first also focus on the question of whether the general inclusion of the country on the list of safe countries of origin at all took place in accordance with Directive 2013/32.[21]

A contrary conclusion would contradict Arts. 36(1) and 37(1) of Directive 2013/32. Designation of the country of origin as safe must take place in accordance with this directive, or in accordance with Annex I thereto. If it does not correspond to it, a simplified procedure based on the concept of a safe country of origin cannot take place according to § 31 Para. 8 letter b) Directive 2013/32. It completely changes the procedural obligations and roles of its participants. In particular, it is necessary to remind again of the threat that the applicant whose application the state rejects for

19 Judgment of the Second Chamber of the CJEU in *H.I.D. and B. A v. Refugee Applications Commissioner and Others* of 31 January 2013, No. C-175/11.

20 Ibid.

21 Judgment of the Supreme Administrative Court of the Czech Republic of 12 October 2022, No. 10 Azs 161/2022, or similarly the Resolution of the Supreme Administrative Court of the Czech Republic of 24 March 2022, No. 5 Azs 289/2021.

obvious lack of justification using the safe country of origin concept will face the threat of an exit order associated with the obligation to leave the Czech Republic, or another country where he is applying for protection.

5.
Exceptions: Yes or No?

M. Kopa believes that the admission of territorial exceptions distorts the decision-making body's approach to assessing applications for international protection of applicants from the same country.[22] Some applicants from the part of it marked as safe by Member States are in a completely different – and disadvantageous for them – procedural position. It must rebut the presumption of safety of the country of origin. And if they fail, they are threatened with the issuance of an exit order, regardless of their specific reasons for asylum. Meanwhile, applicants from the territory of the same country covered by the territorial exception can rely on a full review of their application and automatic suspensive effect of the subsequent action. The EU legislator seemingly wanted to prevent this difference in treatment between citizens of the same country. The use of the safe country of origin concept should therefore only be applied to countries whose overall safety cannot be doubted. If a part of a country is not safe, that country cannot be a safe country of origin. The difference in the legal advantage of persons from the 'dangerous' part of the territory covered by the territorial exception, and the disadvantage of applicants from the remaining part of the territory of the same country, can be characterised as discriminatory.

In addition, the use of territorial exceptions for safe countries of origin may lead to further marginalisation, stereotyping and prejudice against applicants from a part of the country not covered by the territorial exception, which is considered safe and is generally perceived as 'not producing refugees.' Moreover, it promotes the stereotype that applicants from parts of the country marked as safe were 'ahead of the queue' or they were 'bogus claimants' who just want to take advantage of the asylum system and its generosity.[23] This stereotype no longer applies to applicants from the same country who are from the area covered by the territorial exception.

Paradoxically, even persons from the territory affected by the territorial exception from the use of the safe country of origin concept can be affected by this concept in practice. Territorial exceptions also distort the assessment of the alternative of national protection according to Art. 8 of Directive 2011/95. According to it, Member

22 Kopa, 2022, pp. 28–30.
23 Judgment of the Supreme Administrative Court of the Czech Republic of 12 October 2022, No. 10 Azs 161/2022.

States may conclude that an applicant is not in need of international protection if, in a particular part of the country of origin (a) he/she has no well-founded reason to fear persecution or is at a real risk of serious harm, or (b) has access to protection from persecution or serious harm, as defined in Art. 7 of Directive 2011/95, if he can safely and legally travel to that part of the country of origin, can enter it and can reasonably be expected to settle there. This evaluation then works with the argument that, although the applicant comes from an area covered by the territorial exception of an otherwise safe country of origin, the rest of his country is a safe country of origin, so he will undoubtedly find an alternative to national protection there.[24] Therefore, there is no proper consideration of the overall situation prevailing in the concerned part of the country.

This raises concerns as to whether the possibility to define a safe country with territorial exceptions for the reasons described does not constitute different treatment based on the criterion of country of origin, which already contradicts Art. 3 of the Geneva Convention. In addition to the above-described differential treatment between applicants from the same country, it also leads to unfavourable differential treatment compared to applicants from countries that are not at all on the list of safe countries of origin. As a result, they enjoy higher procedural guarantees. At the same time, the non-inclusion of a country on this list can also be justified by problems only in certain parts of its territory. At the same time, it is not at all clear where the limit of admissibility of territorial exceptions lies. What if the exception already applied to the vast majority of the country's territory? Would that be permissible?[25]

The determination of whether someone is a refugee or a beneficiary of subsidiary protection should always be based on the current factual reality in the place of origin. It should not depend on the box in which the Member State places the applicant or the label it assigns to the applicant's place of origin. Even if a country is not on the list of safe countries, it can provide an individual with effective protection from persecution or serious harm. And vice versa – a person from a part of the country marked as safe can have an exceptionally strong asylum story. Nevertheless, the starting point for the assessment of his request is a certain form of prejudice about the groundlessness of his request.

The concept of safe countries of origin is intended to represent a certain procedural simplification for the assessing administrative authority. However, only if the country in question meets the relevant criteria according to Annex I of Directive 2013/32, which are intended to guarantee that the country in question properly observes basic human rights, does not persecute its own citizens and, in case of isolated excesses, is able and willing to protect individuals. However, Member States

24 Kopa, 2022, pp. 20–21, 28–29.
25 Kopa, 2022, pp. 27–29.

should only be able to use this procedural simplification in the case of 'problem-free' countries that are genuinely unlikely to produce refugees.[26] However, this is absent in countries where the state does not exercise effective control over part of the territory. This situation does not have an impact only on this territory. It can cause instability on the territory of the entire state. As an extreme example, we can cite Ukraine, which also belonged (and still formally belongs in the Czech Republic) to the countries that some Member States considered safe countries of origin (with the exception of the Crimean peninsula and the Donetsk and Luhansk regions). This changed from day to day.

The view just described is not clear-cut, which is shown by the practice of other Member States, which still designate certain countries as safe with territorial or personal exceptions (see above). The situation can also be viewed in the way that Directive 2013/32 does not absolutely exclude exceptions, unless it explicitly says so. If one were to examine this issue more generally from the point of view of the system, and not from the perspective of individual applicants for international protection, he may miss a material reason (reflected in Annex I to Directive 2013/32), from which it would clearly follow that a country such as Moldova can never be safe for the purposes of Directive 2013/32. There are Member States that have Moldova on their list of safe countries as a whole – specifically, Cyprus, Denmark and France.

6.
Conclusion

It is therefore a question whether Art. 36 and 37 of Directive 2013/32 prevent Member States from designating only parts of the territory of specific third countries as safe countries of origin, or whether they do not and exceptions can be applied. Exceptions of a territorial and personal nature are applied by some states in relation to the concept of a safe country of origin. However, as pointed out above, their establishment is associated with negative consequences, especially in relation to asylum seekers. They can also be considered to violate the principle of equality and the prohibition of discrimination. This is particularly evident in the case of territorial exceptions. In the case of personal exceptions, more consideration can be given to their reasonableness and compatibility with the will of the EU legislator.

As mentioned above, the Czech Republic has also long applied the institution of territorial exceptions. However, it is evident that the Czech state is aware of the problematic nature of this situation. In fact, the Ministry of the Interior has prepared an amendment to the Decree, which abolished most of the exemptions as of 1 October

26 Resolution of the Regional Court in Brno of 20 June 2022, No. 41 Az 14/2022.

2023. I believe that this is an appropriate step, but it will be all the more important for the state to consider carefully whether or not to designate a country as safe. After all, if there are parts of a country's territory that do not meet the requirements required to fulfil the notion of a safe country of origin, it cannot be designated as a safe country as a whole. At the same time, it should be added that the Regional Court in Brno referred a preliminary question to the CJEU on the issue:

Are Articles 36 and 37 of the Procedures Directive to be interpreted as precluding a Member State from classifying a country as a safe country of origin with certain territorial exceptions? If a Member State designates a country with such territorial exceptions as safe, can the country concerned as a whole be regarded as a safe country of origin for the purposes of that Directive?[27]

The importance of this institution and its function is emphasised, for example, by M. Kopa when he states:

> *'The preliminary ruling procedure has the charm that the opinion of the Court of Justice can already be expressed in the proceedings before the court of first instance. Whereas the European Court of Human Rights only comes into play after national remedies have been exhausted, the Court's decision-making is much more effective in this respect.'*[28]

During the publication of this article, the CJEU ruled on the matter (judgment of the Court, Grand Chamber, of October 4, 2024, CV, Case C-406/22) and stated that Article 37 of the Procedures Directive must be interpreted as precluding a third country from being classified as a safe country of origin if certain parts of its territory do not meet the material requirements for such a classification set out in Annex I to that directive. It is therefore clear that the Czech Republic's practice of 'applying exceptions' was contrary to EU law, and the legislative changes and the termination of this practice are therefore to be welcomed.

27 Ibid.
28 Kopa, 2014, pp. 27–29.

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Issues of Constitutional Identity in a Candidate State: Republic of North Macedonia

ABSTRACT: *Just as the constitutional identities of all countries represent a collection of historical facts, events, and occurrences related to the construction and development of the nation, so too does the Macedonian Constitutional Identity have its historical and contemporary content, reflecting the development of the state in a social, systemic, and institutional sense of the word. This is why it is considered that today's Macedonian Constitutional Identity is a reflection of the past and present, aimed at shaping the future of the state. Generally speaking, contemporary Macedonian Constitutional Identity refers to the set of fundamental principles and values that define the political, legal, and cultural framework of the country, as laid out in its 1991 Constitution. However, the constitutional identity of the state has its roots at the very beginnings of the constitutional development of the country, more specifically in the constitutive decisions of the First Session of ASNOM adopted on August 2nd 1944. These decisions are the inspiration and philosophy behind the first Constitution of the People's Republic of Macedonia from December 31st 1946, the second Constitution of the Socialist Republic of Macedonia from 1963, and the last Constitution of the Socialist Republic of Macedonia from 1974, when Macedonia was part of the Yugoslav federation. This means that Macedonian Constitutional Identity refers to a complex and evolving concept that balances the recognition of historical legacies with new democratic principles that are part of the independent Macedonian legal system following the adoption of the 1991 Constitution with its own nation's distinctiveness, sovereignty, and democratic governance. It reflects the country's commitment to democracy, rule of law, and human rights, as well as its unique cultural and historical legacy. The 1991 Constitution guarantees that the Macedonian legal system and governance are based on the separation of powers, ensuring the independence of the executive, legislative, and judicial branches. A key defined feature of Macedonian Constitutional Identity is the recognition of the country's ethnic and cultural diversity, acknowledging the existence of various minorities in the country, including Albanians, Turks, Roma, Serbs, and others, and providing their rights and participation in the political process. This inclusiveness is particularly reflected in the protection of the languages,*

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cultures, and traditions of the country's ethnic minorities, which make up part of the Macedonian Constitutional and National Identity.
KEYWORDS: *Identity, Constitution, History, Culture, Development, Ethnicity, Challenges.*

1.
Historical Retrospective of Macedonian Constitutional Identity Development

Macedonian Constitutional Identity[1] represents the essence of a country's sovereignty, governance system, and the relationship with its citizens, as well as the historical and cultural context in which its constitutional framework was developed. A constitutional identity is essential for maintaining the integrity and continuity of the state, ensuring that laws, policies, and actions align with the foundational principles established in the constitution. The development of the modern Macedonian state, and in this context, the national and constitutional identity of the country, is inevitably connected to the National Liberation War of Yugoslavia and to the first National Liberation Committees formed towards the end of 1941 and at the beginning of 1942. These committees, also known as the local committees, were established in cities and villages across Macedonia. Their goal was not only the liberation of Macedonian territories from fascist occupation but also the organisation of internal structures required to govern the country and define the framework of its political system. The decisions made at the First and Second sessions of AVNOJ (Anti-Fascist Council for the National Liberation of Yugoslavia), held in 1942, played a key role in defining the Macedonian people as a constituent part of the then federal community of equal peoples, with the establishment of their statehood within the Yugoslav federation.[2]

From the perspective of human rights and freedoms, these events played a key role in the adoption of the Manifesto of the Main Headquarters, which served as a temporary representative body in Macedonia through which the full equality and national freedom for the Macedonian people within the Yugoslav community was to be ensured. This Manifesto was a precursor to the decisions made by the Anti-Fascist Assembly for the National Liberation of Macedonia (ASNOM), held on August 2nd 1944, at the St. Prohor Pchinski Monastery, when the most important documents of constitutional significance for the state and its constitutional identity were adopted:

1 Dodovski, 2012, pp. 92–105.
2 See: Kambovski, 2014.

1. The Declaration of the ASNOM on the fundamental rights of the citizens of democratic Macedonia, which ensures equality and equal rights for all citizens living in the Macedonian state;
2. The decision for ASNOM to be organised as the supreme legislative and executive representative body, and the highest authority in democratic Macedonia;
3. The decision for ASNOM to introduce the Macedonian language as the official language in the Macedonian state;
4. The decision for ASNOM to declare August 2nd as the national and state holiday of the Macedonian state.
5. In addition to these key documents, the ASNOM also adopted other legal acts important for the internal organisation and governance of the state.

The first session of the ASNOM represents a pivotal turning point in the development of the Macedonian national liberation movement, summarising the results it had already achieved from the time of the liberation uprisings at the very beginning of the 20th century, the Ilinden Uprising of 1903, and the later development of that movement in Macedonia, which had been divided by the Balkan Wars and World War I. It is the culmination of the anti-fascist National Liberation War, during which the swift crystallisation of Macedonian national consciousness and distinctiveness occurred, as well as the definition of a clear national program for a Macedonian state. In such crucial moments, when revolutionary changes in society take place, as was the case with the great revolutions (the American and French) marking the dawn of a new era, the formation of ideological and political views on the future organisation of the state is always driven by progressive ideas and principles of human liberation and national freedom. For the ASNOM, these universal principles were linked to age-old aspirations concerning the distinctiveness of the Macedonian national identity, so its vision for the future of Macedonian society was composed of a synthesis of, on one hand, the ideals of liberty and, on the other, national principles for independent development. The fact that such an aspiration, during the time of the ASNOM, and due to all the international circumstances and positions of the great powers regarding the immutability of former state borders, could only be realised within a common state with the other Yugoslav peoples, reflects a comprehensible realism in making historical decisions and does not diminish their significance in the Constitution of the Macedonian state, and in proclaiming, as its foundation, human freedoms and rights and equality. The post-ASNOM period in the development of the Macedonian state shows a series of deviations in the realisation of the main idea of liberty, dictated by the general characteristics of the social, political, economic, and legal system of the Yugoslav federation. On the other hand, post-ASNOM Macedonian statehood also marks significant progress on a national-cultural and societal level, such as the codification of the Macedonian literary language, the development of Macedonian

literature, arts, education, science, and culture, the establishment of state institutions and societal activities, and more. These changes created the conditions for the realisation of the centuries-old aspiration for an independent Macedonian state and own national identity, which is why the proclamation of the independence and sovereignty of the Republic of Macedonia and the adoption of the Constitution in 1991 appear as the result of state continuity, with ASNOM being a key link in that process.[3]

The constitutional development of North Macedonia, both institutionally and in terms of the advancement of human rights and freedoms and the creation of the Macedonian Constitutional Identity from 1946 to 1991, unfolded in three periods. The first period began in 1946 with the adoption of the first of the People's Republic of Macedonia, and lasted until 1963, comprised of two intermediate stages: the adoption of the Law on Workers' Self-Management in 1950, and the Constitutional Law on the Social and Political Organisation and the Organs of Government of the People's Republic of Macedonia.

The second period began in 1963 and lasted until 1974, while the third period started in 1974 and lasted until 1991. During this latter period, the Macedonian identity gained greater recognition, particularly in terms of language, culture, and historical narrative. With the proclamation of Macedonian independence and sovereignty, the realisation was confirmed that states do not emerge or gain independence and sovereignty through a single act, but as a result of a long historical process of development, in which the state-building idea matures and breaks through, overcoming numerous internal and external obstacles – in our case, from the maturation of Macedonian national consciousness to the overcoming of the resistance and imperialistic aspirations of our neighbours. In the causal chain of historical changes, the assertion that if there had been no Ilinden in 1903, there would have been no ASNOM in 1944, and if neither of these historical events had occurred, there would have been no Third Ilinden, the independence of 1991 has gained exceptional significance. Accepting this thesis has far-reaching consequences, not only in terms of the demand for an objective approach of historical and legal science toward the development of the Macedonian nation and state but also regarding the current social conditions and processes and their relationship to evaluating the key periods of their development. The collapse of Yugoslavia in the early 1990s, amidst ethnic conflicts and rising nationalist movements, set the stage for the declaration of independence by the Republic of Macedonia on September 8th 1991. The country's first Constitution, adopted in November 1991, formally established the Republic of Macedonia as an independent and sovereign state, and was a significant step in establishing the country's new constitutional identity. It affirmed Macedonia as a secular, democratic

3 See: Karakamisheva-Jovanovska, 2019.

state, protecting the rights of its citizens and establishing a multi-ethnic society. Today, North Macedonia, in the period of pluralism, democracy, multiculturalism, and democratic rule of law, faces numerous open challenges, such as how to step into the next phase of post-transition and European integration. The perspective of the foundational liberal ideas of ASNOM, as well as those of Ilinden 1903, point to clear directions in its developmental path. A path on which it must keep pace with other Balkan and European countries, especially in the areas of unity, freedom, equality, tolerance, and dialogue.

2.
Elements of the Contemporary North Macedonia's Constitutional Identity[4]

The 1991 Constitution reflects the importance of the nation's historical legacy, including the struggle of the people for independence and sovereignty. It also acknowledges the role of Macedonian history, language, and culture in shaping the country's national identity. However, this has sometimes been a source of tension, especially in the context of regional relations and historical disputes with neighbouring countries. The historical development of Macedonian constitutional identity is closely intertwined with the complex evolution of the Balkan region. It reflects a different blend of ethnic, cultural, and geopolitical factors, which have influenced how the country's constitution has been shaped over time. It is marked by the multidimensional interplay of historical narratives, ethnic identities, geopolitical challenges, and international relations. The country's constitutional identity continues to be a work in progress, shaped by its engagement with European and international standards, while balancing its multi-ethnic society and historical legacies. In this sense, the contemporary Macedonian Constitutional Identity is shaped by several key elements that reflect the nation's legal, political, cultural, and historical context. The first decade following North Macedonia's independence was characterised by a rather unique transition, involving a scandalous process of privatisation (which created a small, but politically powerful, network of oligarchs), as well as a range of scandals dominating the country's political scene.[5] However, different evaluations tended to portray North Macedonia an "island of stability",[6] mostly because it was the only nation-state to emerge

4 National identity is a reflective attitude of the nation towards itself, and thus collective self-knowledge and the possibility of self-determination of the members of the community. It is focused on the elements that shape the culture of a given nation, i.e. language, territory, culture, economic and political life, and common historical memory. Sielska, 2021.

5 See: Karakamisheva-Jovanovska, 2024.

6 See: Gligorov, 2006.

from the former Yugoslav federation without some sort of a military conflict and/or intervention.[7] But in early 2001, the notion of an "island of stability" lost its relevance and North Macedonia became a new testing ground for power-sharing experiments. The question which seems to have remained unanswered is what really happened in Macedonia in 2001. Was the conflict imported from Kosovo, with Kosovo terrorists having illegally crossed the border in order to destabilise North Macedonia? Did the "imported" armed group wish to start "a fight for human rights"? Did North Macedonia witness a restricted civic conflict that was supposed to produce a much larger military intervention, or was it an inter-ethnic conflict between the Macedonians and the Albanians? Was it a civil conflict or a conflict that some authors[8] described as a war without a state of war being declared?[9] The 2001 conflict was resolved by the EU-US sponsored Ohrid Framework Agreement (OFA). In the background, the negotiators presented the OFA as the only possible resolution to the conflict; as the US chief negotiator James Pardew later observed, the agreement provided Macedonia with an opportunity "to avoid destructive divisions and to develop as a democracy".[10] Indeed, it is undeniable that the OFA substantially altered the country's institutional landscape in political, legislative, and social terms, having established itself as a key political and legal filter in decision-making processes.[11] Its glorification by both domestic and international actors made North Macedonia a testing ground, where members of ethnic communities began to enjoy a great portion of their rights based on statistical variables, thus making the country a rare example in constitutional theory where collective rights were recognised on the grounds of a statistical rather than civil basis.[12] Moreover, the creation and consequent elevation of the status of the OFA has developed hand in hand with Macedonia's European integration. During the 2001 crisis a lot of attention was suddenly paid to Macedonia within the context of the

7 See: Biljana, 2007.
8 See: Ragaru, 2008.
9 Pardew, 2011, pp. 21–23. "The Diplomatic History of the Ohrid Framework Agreement", in "The Ohrid Framework Agreement: Ten Years Later". Ten years from the Ohrid Framework Agreement: Is Macedonia Functioning as a multi-ethnic state?", South Eastern European University, 2011. Other authors have different views for the 2001 conflict in Macedonia. "The conflict in Macedonia in 2001 could be See:n as a further manifestation of the will to greater autonomy, self-rule and even independence by the ethnic Albanian community. What was unique about that particular moment in time was the confluence of forces that encouraged militant armed struggle. The conflict of 2001 can be seen as an extension of the process of violent breakup of Yugoslavia that began with the brief conflict between the Slovenian National Guard and the Yugoslav Army in 1990. The fighting that eventually broke out in Croatia, Bosnia and Kosovo in the ten years that followed finally spilled over into Macedonia in 2001. The exact moment of the outbreak of violent armed conflict depended upon a number of factors." See more Seraphinoff, 2012.
10 International IDEA, 2006.
11 See: Karakamisheva-Jovanovska, 2025.
12 See: European Commission, n.d.

EU foreign policy agenda, and by the end to the conflict, Skopje had officially launched its European agenda through implementation of the Stabilisation and Association Agreement with the EU.[13]

On the other side, the so-called Prespa Agreement[14] signed on 17th June 2018 between Greece and what was then the "Former Yugoslav Republic of Macedonia" made deep and complex implications for Macedonian identity both in the legal-constitutional sense and in the broader cultural, political, and emotional dimensions. The most visible change was the constitutional amendment introducing the new name of "Republic of North Macedonia." This change altered the formal state identity in all official contexts, both domestic and international. Article 1(3)(b) of the Agreement specifies that nationality (in passports and other documents) is recorded as "Macedonian/citizen of the Republic of North Macedonia". All international organisations and bilateral relations now refer to the country by its new constitutional name, effectively embedding the name change in external identity representation. Article 7 of the Agreement also explicitly states that the terms *"Macedonia"* and *"Macedonian"* refer to different historical and cultural contexts for each party. For Greece it is linked to the ancient Hellenic civilisation, while for North Macedonia it is referring to the culture, history, and heritage of the Slavic-speaking population and other communities living in its territory since the Middle Ages. This legally codified a distinction that many in North Macedonia perceived as an external imposition on their historical narrative. Provisions required the removal or contextualisation of certain monuments, symbols, and public references deemed to imply a link to ancient Hellenic heritage (e.g., renaming of airports, roads, squares, etc.). This has been viewed by many citizens in the country as a symbolic reshaping of the national narrative. The Prespa Agreement deepened internal divisions between those citizens who see it as a painful but pragmatic step towards Euro-Atlantic integration and those who view it as a capitulation affecting the core of national identity. Supporters argue the Agreement internationally safeguards the contemporary Macedonian identity by removing disputes that have undermined recognition of the Macedonian language and nationality. Critics contend it imposes a narrower, externally defined version of "Macedonian" identity, separating it from certain historical claims.

In 2017, the Friendship, Good-Neighbourliness and Cooperation Treaty was signed between Bulgaria and North Macedonia.[15] It was meant to resolve long-standing disputes and facilitate Skopje's path to the EU, but in practice it directly touches on the core of Macedonian national identity in several ways. While framed as a cooperation and friendship agreement, the Bulgarian–Macedonian treaty places

13 See: Vankovska, 2007.
14 Greek Ministry of Foreign Affairs, 2018.
15 See: United Nations, 2017.

identity-defining elements, such as history, language, and heritage under bilateral negotiation and EU-linked conditionality. This transforms identity from a sovereign matter into a negotiated, externally influenced construct, which the majority of Macedonians perceive as a direct challenge to their historical continuity and cultural autonomy. The treaty calls for the establishment of a joint multidisciplinary commission to review historical and educational issues. Bulgaria interprets periods of Macedonian history, especially the medieval period, Ottoman era revolutionary movements (e.g. Goce Delčev), and WWII events as parts of "Bulgarian history." For the majority of citizens in North Macedonia, this is seen as a challenge to the distinct Macedonian historical narrative developed after WWII, and therefore as a pressure to reframe national heroes, symbols, and the story of statehood. Bulgaria signed the treaty recognising the "official language of the Republic of North Macedonia" but avoided calling it the "Macedonian language" in a way that implies full linguistic independence from the Bulgarian language. Bulgarian officials often refer to it as a "norm of the Bulgarian language." This fuels domestic perceptions in Macedonia that the treaty undermines the linguistic pillar of identity, since language is central to nationhood. Bulgaria has since linked its interpretation of the treaty to EU negotiation progress, blocking the opening of chapters until North Macedonia commits to historical and linguistic concessions. This converts identity-related issues into political leverage, deepening the sense that sovereignty over national self-definition is compromised.

2.1. National Sovereignty and Territorial Integrity of the Country

The first element of contemporary North Macedonia's Constitutional Identity is sovereignty and the territorial integrity of the country. The country's borders are inviolable and any change to the country's territorial integrity must be carried out in accordance with the will of the people and in compliance with international law. The 1991 Constitution fully accepts the civil concept and defines the sovereignty of citizens in a detailed and systematically concluded charter of individual rights and citizens' freedoms, which begins with the rights of individuals and citizens consistent with the evolution of civil subjectivity in European political history. Sovereignty refers to the Macedonian citizens authority to govern themselves, and to hold full control over its internal and external affairs. No other state or entity can impose decisions that would violate the country's self-governance. This ensures that the country can independently determine its political, economic, social, and cultural development, making decisions without the need for approval from other countries or international organisations. Territorial integrity from the other side means the inviolability of Macedonia's borders. The country's boundaries cannot be altered,

divided, or infringed upon by external forces, and the Constitution specifically states that any changes to the territorial integrity of the country must be carried out in accordance with the will of the people and in compliance with international law. The people's consent through democratic processes is required for any changes, such as secession, annexation, or border modifications. The 1991 Constitution contains provisions to protect the country from any foreign attempts to alter its borders or undermine its sovereignty.[16]

It reinforces the principle that the state's borders are immutable unless the people express their will to change them, through referenda, and even then the process must follow international law. The will of the people is a fundamental aspect of the principle of sovereignty and territorial integrity of the state. This ensures that significant decisions are made by the citizens themselves, rather than through external pressures or the political elite alone. The emphasis on sovereignty and territorial integrity in the Macedonian Constitution reflects the country's commitment to safeguarding its independence and borders. It enshrines the notion that Macedonian citizens must have a say in any changes to the country's borders and that these changes must be in accordance with both international law and the democratic process which is a foundational aspect of the country's constitutional identity and its approach to maintaining national unity and security.[17]

Sovereignty is a fundamental part of Macedonian Constitutional Identity. The Constitution explicitly affirms the country's sovereignty, stating that the Republic is a sovereign state. This means that the Republic has the ultimate authority over its territory, people, and governance without interference from external powers. Sovereignty is enshrined in the Constitution in various aspects, including the principles of territorial integrity, political independence, and the self-determination of the people. The Constitution also recognises the Republic's commitment to international cooperation while preserving its sovereignty and independence. In this context, while the country is a member of international organisations and participates in international treaties, it ensures that its sovereignty is respected and maintained within the framework of its constitutional order. In summary, sovereignty as a core component of Macedonian Constitutional Identity, reflects the country's independence and authority to govern itself.

16 See: Rubeli, 2001.
17 See: Bahturidze and Vasilieva, 2020.

2.2. North Macedonia's Commitment to Democratic Governance as an Element of Constitutional Identity

North Macedonia's commitment to democratic governance is a key element of its constitutional identity. The 1991 Constitution establishes democratic principles as foundational to the functioning of the state. It guarantees the rule of law, political pluralism, and fundamental human rights, all of which are essential for democratic governance. The Macedonian Constitution explicitly states that the Republic is a democratic country where the people are the source of all authority. It guarantees free and fair elections, the separation of powers, and the protection of individual freedoms and rights. Furthermore, it emphasises the importance of a multi-party system, the right to participate in political life, and freedom of expression, all of which are central to a functioning democracy.[18] Through these constitutional provisions, the Macedonian state can affirm its commitment to upholding democratic values, ensuring that governance is carried out transparently, with accountability, and in a way that respects the will of the people. This commitment is a cornerstone of the country's constitutional identity, reflecting its dedication to democratic principles as the basis of its political system. The constitutional commitment to democratic governance is usually defined as a cornerstone of North Macedonia's constitutional identity. The 1991 Constitution abandoned the numerous ideological socialist determinations and values that the previous socialist government had had as its basis. These determinations were: the socialist self-governing democracy, the rule of the working class, the undisputed rule of one party, the associated labour and socialist production relations, the communal system, the delegate and assembly systems, etc. The 1991 Constitution affirms a commitment to ownership, political pluralism, and a market economy. It proclaims the principle of division of power and establishes a state with a republican form of rule based on the sovereignty that "derives from the citizens and belongs to the citizens".[19]

The 1991 Constitution established the principle of division (separation) of power. According to this principle, the Assembly, as a constitutional and legislative organ, should affirm and develop in its work all the positive aspects of the parliamentary tradition with an independent and responsible Government, and with a President of the Republic who expresses state unity in the Republic, and the competence determined by the Constitution, who is responsible for his/her work before all citizens of the Republic, by whom he/she was elected. The 1991 Constitution establishes a system of mixed system of organisation of political power with parliamentary and representative democracy, characterised by free and democratic elections, political

18 See: PRIF, 2009.
19 See: Klimovski, 2000.

pluralism, and the rule of law. The Macedonian political system combines elements of both parliamentary democracy and representative democracy. The government is primarily accountable to the Assembly, not directly to the president. The government is led by a president who is the head of government, and its ministers. The country's legislature is unicameral, consisting of the Assembly (Sobranie), which is made up of 120 deputies. These deputies are elected every four years through a proportional D'Hondt electoral model and six electoral constituencies. The role of the Assembly as a representative body of the citizens and the legislative body in the Republic can be seen in its competence. The competence of the Assembly is established by the Constitution, and it is authentic.[20]

The first competence that should be mentioned is the constituent function expressed as the right to adopt and change the Constitution. That means that the Assembly has the right not only to change and supplement the Constitution with constitutional amendments, but also has the right as a regular legislative Assembly to adopt a new Constitution. According to this, no special constituent Assembly is needed for the adoption of a new Constitution. One of the main functions of the Assembly is the legislative function and legislative power.[21] The Assembly also adopts the state Budget, makes decisions related to the Republic reserves, makes decisions concerning the primary international relations through ratifying international agreements, decides on matters of war and peace, oversees the election, selections, appointments and dismissals of the bodies of the Republic, judges at the Constitutional Court, administrative and other officers, performs political control and monitoring functions, and performs other activities determined by the Constitution. The Constitution in general establishes the incompatibility of the office of the MPs with other public offices or professions, and the cases of that incompatibility are defined by law. The Representatives to the Assembly can only be extended in an emergency during a state of war.

The Constitution has established a few bases for the termination of the mandate of Representatives. Above all, a Representative may resign. The right to resign means also the right to elaborate upon his/her resignation. MPs will submit their resignation in person, during the session of the Assembly. On that occasion, the Assembly states that the mandate is terminated with the submission of the resignation. The Constitution has established another form of termination of the mandate of the MPs. The mandate is terminated if he/she is sentenced for a criminal offence resulting in a prison term of at least five years. There is also a possibility of the revocation of the MPs mandate. The MP can have his/her mandate revoked for the committal of a criminal offence making him/her unfit to perform the office of MP, as well as for an

20 See: Daskalovski, 2006; Sandevski, 2009.
21 See: Vision Journal, 2019.

absence from the Assembly of a period longer than six months with no justifiable reason. A revocation of the mandate is determined by the Assembly by a two thirds majority vote of all MPs. In the performance of their representative function, MPs enjoy immunity. There are two types of right to immunity of MPs. The first type is the guaranteed right of the MPs not only to freedom of thought, but also to freedom of responsibility to express an opinion or vote in the Assembly.[22]

The MP cannot be held to have committed a criminal offence or be detained due to views he/she has expressed, or to the way he/she has voted in the Assembly. This means that no one can hold the MP responsible for his/her statements expressed in the Assembly, or for the vote with which he/she has supported some proposition submitted in the Assembly. The other question is his/her responsibility for the violation of the Rules of Procedure and the responsibility in accordance with the provisions of the Rules of Procedure.[23] The second type of the immunity is the protection of the MP from detention without permission of the Assembly. This right protects the MP from the procedure for the deprivation of immunity in cases when the MP does not want to avoid this responsibility. The Assembly can decide to invoke immunity for a MP without his/her request. The Assembly will do this if it is in the interest of the representative function being necessary for the performance of the MP's office. The Constitution guarantee that the MP cannot be detained without the approval of the Assembly. The Commission for mandate/immunity questions can decide to invoke immunity for a MP without his/her request. The decision of the Commission is not final. The Commission is obliged to submit its decision to the Assembly which decides whether it will confirm or repeal that decision. The Assembly is the final arbiter concerning the justification of the deprivation of freedom of the MP. The President of the Assembly presents the question to be discussed in the Assembly which will decide whether it will confirm or repeal the decision recommending detention.

The Assembly establishes permanent and temporary working bodies. Permanent working bodies are a working form of the Assembly defined by the Rules of Procedure for the whole mandate of the Assembly, whereas the temporary working bodies are established for the execution of special assignments only.

Besides the holders of legislative power, the Constitution also establishes an executive power divided between the Government and the President of the Republic. The Government is the main part of the executive power and creator of the policy for the execution of the laws and other acts. The Government is elected by the Assembly and is responsible to the Assembly. The North Macedonia's Government is a collective executive body composed of the president and ministers. The Government must have the confidence of the Assembly, and if the Government loses their confidence

22 See: Gusheva, 2009.
23 See: OSCE, 2020.

by a majority vote of all MPs, the Government is obliged to submit its resignation. The Government cannot survive politically without the confidence of the Assembly. The incumbent Government remains on duty until the election of a new Government. If the president of the Government dismisses more than one third of the initial composition of the Government, the Assembly follows the same procedure as that for the election of a new Government. These constitutional provisions, among others, present the opportunity for the temporary reconstruction of the Government, in order to enable the Government to work more competently and efficiently. The Assembly controls the work of the Government with MPs questions, interpellation, and with the instrument for confidence voting. These instruments are called instruments for parliamentary control and have a preventive effect because they stimulate the Government and other public office holders to exercise their duties carefully and conscientiously. Parliamentary control is closely connected with political and legal responsibility.[24]

On the other side, the President of the Republic is the Chief of State, representing the state within the country and abroad. The President is Commander-in-Chief of the Macedonian Armed Forces as well as the President of the Security Council of the country. The President nominates a mandator to constitute the Government, appoints and dismisses by decree ambassadors and other diplomatic representatives of the Republic abroad, accepts the credentials and letters of recall of foreign diplomatic representatives, grants pardons in accordance with the law, etc. The President concludes international agreements in the name of the state and may propose to the Assembly the declaration of a state of war and state of emergency. If the Assembly cannot meet, the decision to establish the existence of a state of emergency is made by the President of the Republic, who submits it to the Assembly for confirmation as soon as it can convene.

The President is elected in general and direct elections, by secret ballot, for a term of five years and can be re-elected for one additional mandate. The duty of the President is incompatible with the performance of any other public office, profession, or appointment in a political party. The relationship between the President, the Government, and the North Macedonia's Assembly are defined by the Constitution and its political structure. Each institution plays a distinct role, but they are interconnected through the separation of powers and a system of checks and balances. The President should maintain neutral relations with both the Government and the Assembly. While the President can influence political processes, especially through the appointment of the Prime Minister, he/she is not actively involved in day-to-day governance or in the legislative process. The President is a largely ceremonial figure, with a role in formal appointments and foreign affairs, and interacts with both the Assembly and

24 See: New York University School of Law, n.d.

Government within the constraints of the Constitution. In essence, relations between the President, Government, and Assembly are based on the principles of cooperation and oversight within a system of separation of powers.[25]

The independent judiciary is a constitutional principle in the country and is a fundamental part of the country's democratic system, responsible for ensuring justice, and upholding the rule of law. It operates independently from both the executive and legislative branches, and its structure is designed to ensure a fair and impartial judicial process. The Macedonian judiciary is constitutionally independent, meaning that judges make decisions based on the law and the facts of each case, without interference from the executive or legislative branches. The Judicial Council is tasked with safeguarding the independence of the judiciary. It is responsible for appointing, promoting, and disciplining judges, and ensuring that judicial officers perform their duties impartially. The judiciary in the country is organised into several types of courts, each with specific roles and jurisdictions. The Macedonian court system is consisted of a Supreme Court of the Republic, being the highest court, 27 basic courts, four appellation courts, and two administrative courts. The Constitution foresees also a Constitutional Court as the highest court concerning constitutional matters, responsible for ensuring that laws and other legal acts comply with the Constitution, and reviewing the constitutionality of laws, decrees, and regulations. It is composed of nine judges, who are appointed by the Assembly for a nine-year term. The Supreme Court is the highest court of appeal in the country which ensures the uniform application of laws and decisions across the country.

2.3. Fundamental Rights and Freedoms as an Element of the Constitutional Identity

Another element of North Macedonia's Constitutional Identity are the fundamental rights and freedoms belonging to all citizens, which places a strong emphasis on the protection of human dignity, equality before the law, and the prevention of discrimination. The 1991 Constitution connects basic human rights and freedoms with the concept of the individual and citizen. Human rights and freedoms are not administered and permitted, but confirmed and guaranteed by the Constitution. The National Catalogue of Human Rights in the country is an integral part of the Constitution, primarily contained in the First Chapter titled "Basic Provisions," in which, among other provisions, the fundamental values of the Macedonian Constitutional order are established. The first of these fundamental values of the constitutional order of the Republic is the recognition of the basic freedoms and rights of the individual and citizen, acknowledged by international law and established by the Constitution.

25 See: Klimovski et al., 2009.

In addition to these, other fundamental values of the constitutional order include the free expression of national identity, the appropriate and fair representation of citizens belonging to all communities, the rule of law, separation of powers, political pluralism, free direct elections, legal protection of property, humanism, social justice, and solidarity, respect for generally accepted norms of international law, and others. Furthermore, in the normative part of the Constitution, human freedoms and rights are regulated in a separate chapter entitled "Basic Freedoms and Rights of the Individual and Citizen," which includes Articles 9 to 60 of the Constitution. Considering that the total number of articles in the Constitution is 134, it can be concluded that more than one third of the total number of articles is dedicated to human freedoms and rights and their protection, which indicates that this matter occupies a central place in the Constitution. The freedoms and rights of the individual and the citizen in the Constitution are systematised according to the universally accepted division of civil and political rights (regulated by Articles 9 to 29) and economic-social rights (regulated by Articles 30 to 49). The remaining provisions of this chapter are systematised under a separate point 3. Guarantees of basic freedoms and rights, and point 4. Foundations of economic relations.[26]

Although Chapter II of the Constitution, which contains the provisions on human freedoms and rights, is titled "Basic Freedoms and Rights of the Individual and Citizen," this should not be understood to mean that the Constitution regulates only a part of the freedoms and rights, or that certain freedoms and rights are established by law. This is because the national catalogue of freedoms and rights contained in the Constitution is quite comprehensive and is regulated in accordance with international documents in the field of human freedoms and rights, i.e., in accordance with the international catalogue of freedoms and rights. Certainly, certain freedoms and rights, such as the rights of national minorities, in addition to internationally accepted guarantees, are regulated in the domestic Constitution in accordance with the specificities of North Macedonia. Considering the fact that human freedoms and rights are constitutional matters, it follows that new rights cannot be established by law, nor can constitutionally established freedoms and rights be narrowed, restricted, or revoked. The law can regulate the manner of their realisation and in certain cases, the conditions under which they can be exercised. This is confirmed by the fact that the Constitution, in several provisions, stipulates that the exercise of certain rights and freedoms should be regulated by law.

The Constitution acknowledges the existence of several ethnic groups within the country, such as Albanians, Turks, Roma, Serbs, and others, and grants them complex rights and freedoms, as well as its protection. From a legal and historical perspective, the position and protection of the rights of national minorities in the

26 See: CECC, 2018.

country originates with point 4 of the Decision for Building Up Yugoslavia on the federal principle adopted at the second meeting of the AVNOJ, according to which the national minorities in Yugoslavia were entitled to all national rights and freedoms. This decision was the basis, not only for the cultural autonomy of the minorities, but it was more specifically a framework for the future constitutional and legal regulation of the minority's rights with greater state and legal importance. The socialist Macedonian Constitutions from 1963 and 1974, which for the minorities used the term nationality/national minorities, broadened the elements for the realisation of this equality, among which the most important guarantees were: 1. The right of every national minority to freely use their own language, to express and develop their culture, and to establish institutions through which they can realise these rights; 2. The equality of the languages and the alphabets of the national minorities with the Macedonian language and the use of the alphabets in public areas where the national minorities live; 3. The obligation of the municipalities and of the Republic to ensure the development of education, the press, radio, television, and cultural activities in the languages of the national minorities; 4. The right of national minorities to use their flags, for which a special law was adopted; 5. The proclamation of the decisions and other important acts of the bodies of the municipalities in which the national minorities live, as well as the posting of inscriptions in their languages in those municipalities; 6. The right of the exercising their rights and the fulfilment of their duties, also in procedures before the state bodies and public services; and 7. The right of the members of the national minorities to an education in their language in the places where they live. The 1991 Macedonian Constitution expresses a continuity establishing the position and the rights of the national minorities within a developed political system.[27]

2.4. Secularism as an Element of North Macedonia's Constitutional Identity

North Macedonia is defined as a secular state in the Constitution, meaning that religion is separate from the state and its institutions, guaranteeing the freedom of religion for all citizens while maintaining the integrity of the state as neutral in matters

27 See: Orlović, 2015.

of faith.[28] This principle ensures that religious groups do not have a formal role in the governance and in the political institutions of the country and *vice versa*, and that all citizens, regardless of their religion, are treated equally before the law. This secular nature of the state reflects North Macedonia's diverse religious landscape, with Orthodox Christianity, Islam, Catholic, and other faiths coexisting. The 1991 Constitution separates the religious communities of the state and in addition to this it stipulates that no "state" religion may exist which would attain a privileged status. All religious communities and religious groups are equal in the constitutional and legal treatment of their activities and rituals. The expression of faith as a social reality, deeply rooted in the freedom of the determination of the individual, is realised by the religious communities with the help of their cadre for whose education they can establish religious schools, which are not included in the public educational system.

Religious groups and communities are free to establish, not only religious schools, but also other social and charitable organisations. Indeed, secularism is an important value embedded in the Macedonian Constitutional Identity. Public institutions, including the judiciary, the police, the military, and government agencies, operate in a secular manner and are prohibited from taking any religious position or discriminating based on religious beliefs. The neutrality of the state ensures that all citizens, regardless of their religious or non-religious affiliations, are treated equally before the law. By ensuring that no single religion is favoured by the state, secularism fosters a culture of tolerance and respect for diverse beliefs and practices. Individuals are free to follow any religion or none at all, creating an environment in which people can live according to their beliefs without state interference. In the national catalogue, the freedom of religion is guaranteed by Article 19 of the Constitution of the Republic of North Macedonia, which guarantees freedom of religion. It guarantees the free and public expression of faith, either individually or communally with others. The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelical-Methodist Church, the Jewish Community, and other religious communities and groups are separate from the state and are equal before the law. The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelical-Methodist

28 According to the Constitution of North Macedonia all religious communities and groups are separate from the state and equal before the law. A constitutional amendment of 2001 lists five religious communities: the Macedonian Orthodox Church (MOC), the Islamic Religious Community of Macedonia (ICM), the Catholic Church, the Evangelical Methodist Church and the Jewish community. This clearly shows that there is no state religion in Macedonia. According to the data of the Commission for Relationships with Religious Communities and Religious Groups, except for the five aforementioned churches and religious communities, there are 25 other registered religious organizations for a total of 30 registered religious organizations that operate in the country (of which 15 churches, 7 religious communities and 8 religious groups). See: Metaj-Stojanova, 2015.

Church, the Jewish Community, and other religious communities and religious groups are free to establish religious schools and social and charitable institutions in a manner provided by law. Freedom of religion, as one aspect of the freedom of belief, conscience, thought, and public expression of thought, according to Article 54 of the Constitution, cannot be limited. From the judicial practice of the Constitutional Court of North Macedonia related to this right, the Decision U. br. 202/2008 of April 15th 2009, which abolished religious education in primary schools, stands out.

2.5. National Symbols as Elements of the Constitutional Identity

The Constitution includes provisions for the protection of national symbols, such as the flag, the anthem, and the coat of arms. These symbols are an important part of the country's constitutional identity and represent the unity of the people.[29] Additionally, the Constitution places an emphasis on the protection of the country's cultural and historical heritage, which includes the recognition of significant events and figures in Macedonia's history. These symbols, events and figures are serving as representations of the state's sovereignty, unity, and national heritage. By safeguarding these symbols, the Constitution underscores their role in shaping the national consciousness and fostering a sense of pride and identity among the citizens. The state flag is an important national symbol that represents the country's sovereignty and identity. It features a red background with a golden sun, symbolising the freedom and prosperity of the nation. The Constitutional Identity is reflected in the flag's importance as a representation of the country's sovereignty and unity, and it is protected as an enduring symbol of national pride. The national anthem, "Denes nad Makedonija" ("Today over Macedonia"), is a symbol of national unity, pride, and sovereignty. It reflects the country's struggle for independence and the aspirations of its people. The Constitution recognises the anthem as a part of the national heritage and an essential symbol of the national identity. The Macedonian coat of arms represents the country's national sovereignty and is another symbol of constitutional identity. It incorporates motifs from the Macedonian national heritage, including elements that represent the country's historical past and cultural diversity reflecting the collective memory of the nation, its struggles for independence, and its cultural diversity. As such, the protection of these symbols reinforces the importance of preserving the country's historical and cultural identity. National symbols are unifying forces that foster solidarity among citizens and serve as visible expressions of the shared values and ideals of the Macedonian people. They promote a sense of belonging, pride, and patriotism.

29 See: ETH Zurich, 2004.

2.6. International Law as Part of North Macedonia's Constitutional Identity

North Macedonia's Constitutional Identity recognises the importance of international law and states that international treaties ratified by the country are a part of its legal system, thus ensuring that North Macedonia's laws are in line with international agreements on human rights, environmental protections, and other key areas. Macedonian Constitution is the supreme law of the country, and constitutional identity is tied to the supremacy of the document. It serves as the ultimate legal authority, ensuring that all laws and government actions comply with the foundational norms and principles set forth by the Constitution. The Constitutional Identity includes the mechanisms for interpreting, protecting, and enforcing the Constitution. On the other hand, the fundamental value of the Macedonian constitutional order is respecting the generally accepted norms of international law. By belonging to the international community, every state, both unitary and federal, comes under the rules or standards of behaviour established in the community. The Macedonian legal system follows a monistic approach to international law, meaning that international law and domestic law are considered as parts of a single legal system. According to this approach, once international treaties are ratified by the state institutions, they automatically become part of its national legal order and are directly applicable without the need for further domestic legislation. This principle is enshrined in the Constitution, particularly in Article 118, which states that "ratified international agreements are part of the internal legal order." As a result, these international treaties and agreements are considered binding and have legal force within the national legal framework. In cases of conflict between international law and domestic law, it is international law, particularly human rights treaties, which generally takes precedence, reflecting the country's commitment to its international obligations. North Macedonia's monistic approach allows for the seamless integration of international law into the domestic legal system, underlining the country's adherence to its international commitments and ensuring that international norms are directly applicable in national legal proceedings.

2.7. Democracy, Rule of Law and Separation of Power

Constitutional identity is directly linked to democracy, i.e. with the concept of citizen-identity for purposes of integration. In this sense, democracy is a core principle of the Macedonian Constitution, political system and identity. As a parliamentary republic, the power in the country ultimately rests with the people, exercised through elected representatives. Democracy cannot exist effectively without the rule of law and separation of powers as fundamental principles. That is why these principles are

enshrined in the Macedonian Constitution, aiming to ensure a democratic system of governance, safeguarding individual and collective rights and freedoms, and preventing the concentration of power in any one branch of government. The rule of law guarantees that all citizens, public officials, and institutions are subject to the law, are equal before the law, and that their rights and freedoms are protected. One of the most important elements of the rule of law in the Macedonian Constitutional system is the principle of judicial independence which means that the judiciary operates independently from the executive and legislative branches, ensuring that legal disputes are resolved fairly and impartially. The rule of law also emphasises the right of individuals to seek justice and have access to a fair trial. The government and its institutions are required to operate transparently, with mechanisms for accountability in place, including oversight by the parliament and independent agencies. The separation of powers ensures that power is not concentrated in one branch, but separated between the President of the Republic and the Government, as executive branches, Assembly as the legislative branch and courts as the judicial branch of governance. All these powers are exercised by a separate institution, which do not exist in a hierarchical relationship with one other. Judicial independence is an integral part of the division of power solely because it prevents the formation of inadmissible ties. Its purpose is to minimise intolerable influences on the courts' decisions of individual cases, especially by the other two power branches. All three mentioned principles and values are fundamental for a democratic and accountable system of governance. However, challenges such as political interference in the judiciary and corruption hinder the full realisation of these principles. Continued reforms and efforts to strengthen Macedonian institutions are crucial to improve the functioning of these democratic principles.

3.
Conclusion

Constitutional identity means constitutionally and nationally defined identity. While some authors believe that the Constitution is a mere reflection of a collection of beliefs, positions and values shaped throughout the history and culture of the given community, which actually means that the Constitution is a recognition of pre-existing identities, others believe that the Constitution, culture and identity all exist in a mutual correlation, i.e. influence each other as a result of the direct influence coming from different social aspects. This makes the Constitution serve as a recognition and creation of new identities. The constitutional identity of a country is, in fact composed of elements that create the political identity of the community, such as: the citizens' awareness of the need of having a distinct identity, the sense of

belonging to a particular community, identification with the values and principles of the specific political system, the sense of joint interest and common welfare, etc. Therefore, Constitutional Identity can be viewed from a formal, as well as an informal aspect. The formal aspect, by default, is linked with the citizens as direct holders of sovereignty, who are at the same time holders of constitutional identity; and the informal (cognitive and affective) aspect is explained through a set of beliefs and values embraced by the citizens of a given country, who share a specific identity.

By gaining independence after the referendum held on 8th September 1991, The Republic of North Macedonia started to build its own constitutional identity as an independent and sovereign country. The Constitution is comprised on the generally accepted principle of democratic states, according to which the Republic is based on the sovereignty of the citizens, and that sovereignty belongs to everyone, regardless of their national, religious, social or other orientation. By adopting the concept of civic sovereignty, the 1991 Constitution of the Republic of Macedonia[30] rejected the concept that existed until then from the 1974 Constitution of the ex-Socialist Republic of Macedonia as part of the ex-SFR Yugoslavia, and in which the position of the citizen was based on the concept of national state, i.e. on the realisation of civic rights as segments of national collectives and of "equal nations and nationalities."

The 1991 Constitution rejected the old concept and joined the group of modern constitutions which base a constitutional identity on their citizens' sovereignty. The 1991 Constitution put an end to the constitutional continuity of the former Yugoslav Federation and gave a completely new dimension, free from the numerous ideologies and values present in the previous Constitution (for example, socialist democracy, joint labour system, system of delegates, working class, etc).

The elements of the Macedonian Constitutional Identity are related to and reflect the country's unique history, democratisation, pluralisation, cultural diversity, and aspirations for international integration. They are defined by the Constitution, which guarantees fundamental rights, democratic governance with the rule of law and separation of powers, democratic and accountable institutions, equality among ethnic groups, secularism, the protection of sovereignty, and the territorial integrity of the country and other values. The North Macedonia's Constitutional Identity is made up of both the historical context of the state and its modern-day international commitments.

30 See: Assembly of the Republic of North Macedonia, n.d.

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Dominika MORAVCOVÁ – Marek NEKORANÍK

Succession Agreements and the Confines of Private International Law: Insights from the Slovak Legal System

ABSTRACT: *This article explores the legal nature and recognition of succession agreements within the framework of European private international law, with particular attention to the Slovak legal system. Despite ongoing convergence among the European Union Member States, notable disparities persist in succession law, especially regarding the admissibility of arrangements mortis causa. Slovak law currently does not recognise succession agreements, yet their relevance is increasing due to the cross-border application of Succession Regulation. The article examines whether a Member State that does not provide for such agreements can invoke the public policy exception when applying foreign law that does.*
KEYWORDS: *Succession Agreement, Private International Law, Public Policy*

1.
Introduction

The completion of the internal market, globalisation, migration flows, and other related factors have all directly contributed to the growing frequency of private law relationships that involve a foreign element. The field of succession law is by no means an exception. Despite continuing convergence among the legal systems of Member States of the European Union (hereinafter referred to as "the EU"), certain disparities persist, particularly in the regulation of specific areas of private law. In the field of succession law, these disparities extend to the very legal titles by which inheritance may be acquired.

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Under the current Slovak civil law, succession may take place only by will or by operation of law. The existing legislation omits the institution of a succession agreement, although its reintroduction into the Slovak legal system is expected through the long-awaited recodification of the Civil Code[1], a reform that, one might say, is already knocking on the door of Slovak legal reality. Although the Slovak Civil Code currently does not recognise succession agreements, their relevance in legal practice is steadily increasing, particularly because of cross-border succession cases.

While the EU lacks the competence to harmonise substantive succession law, it has exercised its powers in the field of judicial cooperation in civil and commercial matters, thereby achieving a degree of harmonisation in cross-border succession cases. The Succession Regulation[2] explicitly envisages the succession agreement as one of the instruments by which a person may *disponere mortis causa*.

This article aims to examine whether, under the current legal framework, a Member State that does not recognise agreements as to succession can invoke the public policy exception when applying foreign law that does. A secondary aim is to trace the historical development and context of this institution within Slovak legal tradition. The research employs standard scientific methods such as analysis, comparison, deduction, and synthesis.

2.
Succession Agreement and its Historical Development in Slovakia

The succession agreement constitutes a title to succession that was unknown to Roman law. Roman private law placed considerable emphasis on the autonomous position of the individual and, accordingly, rejected any contractual limitations on the testator's freedom of disposition.[3] The institution of the succession agreement emerged later within medieval inheritance law, which, however, had not yet developed the concept of universal succession and instead operated with distinct regimes of noble and clerical succession. Alongside the succession agreement, other recognised titles to succession included the testament, the law itself, and the codicil.[4]

1 Act No. 40/1964 Coll., the Civil Code, as amended. http://doi.org/10.62733/2025.1.5-15

2 Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201, 27.7.2012, pp. 107–134; hereinafter referred to as "the Succession Regulation" or "the Regulation").

3 Cirák and Gandžalová, 2022, p. 33.

4 Mosný and Laclavíková, 2015, p. 102.

The Czechoslovak Republic, established in October 1918 at the conclusion of the First World War, recodified and provisionally adopted the pre-existing private law systems of its predecessor states. This acceptance resulted in a period of legal dualism: while Austrian civil law remained in force in the territory of the present-day Czech Republic, the territory of present-day Slovakia continued to apply uncodified the customary private law of the Kingdom of Hungary. Consequently, succession law in Slovakia was not codified until 1950. The principal sources of the succession law of the Kingdom of Hungary that was applicable on Slovak territory were the *Planum Tabulare, Werbőczy's Tripartitum*, and the Provisional Judicial Rules (*Ideiglenes Törvénykezési Szabályok*) adopted at the Judex-Curial Conference of 1861.[5] Under this legal framework, succession could be acquired not only by virtue of law or by testament but also through a succession agreement, a donation *mortis causa*, or a legacy (*legatum*).[6]

The succession agreement constituted a bilateral juridical act, whereby one party expressed and formalised their last will in a legally binding manner towards the other contracting party, who in turn accepted such disposition. It was not required that the party making the *mortis causa* disposition provide a benefit specifically in favour of the other contracting party upon their death.[7] Only persons possessing full legal capacity were entitled to conclude a succession agreement. By virtue of its contractual and binding nature, neither party could unilaterally revoke the agreement. However, revocation was admissible in cases of ingratitude (*ex causa ingratitudinis*).[8] A valid succession agreement was to be respected and enforced according to its terms.[9] Furthermore, the parties could enter into a reciprocal succession agreement, whereby each party made a disposition in favour of the other, either for the mutual benefit of both contracting parties or for the benefit of a third person.[10]

A fundamental turning point occurred in 1950, as a result of the so-called "two-year legal reform plan" (*právnická dvojročnica*), which culminated in the adoption of the Civil Code No. 141/1950 Coll. Succession law formed Part Five of this Civil Code and represented a substantial simplification compared to the previous legal framework. Several traditional institutions, such as the lying inheritance (*hereditas iacens*) and the donation *mortis causa*, were abolished, as was the succession agreement. From

5 Cirák, 2009, p. 26.
6 Fekete, 2015, p. 3.
7 Fajnor and Záturecký, 1998, p. 521.
8 Cirák, 2009, p. 39.
9 Muránska, 2013, p. 356.
10 Fajnor and Záturecký, 1998, p. 521.

that point onward, the only titles to succession recognised under Slovak civil law were the will and the law.[11]

The rationale behind this approach lay in the transformation of the overall function of succession law, as articulated in the general explanatory report to the Civil Code of 1950. Succession law was intended to primarily serve the purpose of strengthening family ties and was to be linked to family law rather than to the law of property. At the same time, the legislator sought to prevent 'the expansion of the private owner's freedom of disposition beyond the limits of his physical life'.[12] Within such an ideological framework, the regulation of the succession agreement had no place in the legal order of the time.

In the special explanatory section related to Section 512, which enumerated the titles to succession, only a single sentence refers to the succession agreement: 'Of the existing titles to succession, the succession agreement is not adopted, as it restricts the testator's testamentary freedom for the future (author's translation)'.[13] This statement reflects a rather peculiar and internally inconsistent construction, according to which a testator who had already entered into a binding succession agreement with a future heir would thereby limit his own ability to dispose of his (personal) property *mortis causa* under another title of succession (such as a will or testament). This reasoning appears to stem from a fundamental characteristic of the succession agreement, namely its binding nature and the irrevocability of the testator's declaration of will, except in cases of ingratitude (*ex causa ingratitudinis*) on the part of the prospective heir. However, in light of the broader ideological and systemic context, which sought to restrict freedom of disposition *mortis causa* in favour of statutory succession and to limit the portion of the estate qualifying as the testator's personal property, it may be argued that the justification offered in the explanatory memorandum is conceptually inconsistent and legally unconvincing.

In 1964, the Civil Code No. 40/1964 Coll. was enacted. This Civil Code retained the regulation of titles to succession in nearly the same form as that introduced by the Civil Code of 1950. The 1964 Civil Code remains in force to this day, albeit with substantial amendments adopted in the 1990s and further revisions associated with Slovakia's accession to the EU. Under the current legislation, inheritance may still take place solely by will or by operation of law, or simultaneously on the basis of both titles to succession. Neither is the succession agreement recognised as a title to inheritance nor the donation *mortis causa* permitted under the existing civil law framework. This

11 According to Section 512: 'Inheritance takes place by operation of law, by will, or on the basis of both.' (author's translation)

12 General section of the Explanatory Report to Act No. 141/1950 Coll. (Civil Code of 1950).

13 Special section of the Explanatory Report to Section 512 of Act No. 141/1950 Coll. (Civil Code of 1950).

legal instrument, commonplace in the private law systems of continental Europe, has thus been absent from Slovak legislation for over seventy-five years.

At present, a comprehensive recodification of the Slovak Civil Code is being prepared, envisaging a fundamental conceptual reform of the Code as a whole, including its individual subfields, among which succession law figures prominently. According to the current draft, succession law is to be systematically incorporated into Part Six of the Civil Code, following property law, which will form Part Five. The Explanatory Report accompanying the draft indicates an intention to expand the grounds of delation by introducing the succession agreement as an additional title to inheritance. Furthermore, the proposed text provides that while different titles to succession may coexist, the succession agreement is to take precedence over the other delation grounds.[14] It should also be possible to appoint a third person as an heir, and the appointment of an heir may be made in return for certain consideration, for example in the form of a maintenance annuity or the provision of care and support. According to the draft, the succession agreement must be executed in the form of a notarial deed, and full legal capacity shall be required for its valid conclusion.

According to the special explanatory section of the draft Civil Code, the essence of the succession agreement lies in the testator's intention to relinquish – in whole or in part – his testamentary freedom, since, unlike in the case of a will, the testator is bound by his contractual declaration of will until the moment of death, unless the succession agreement is terminated prior to his death.[15] The draft also addresses the situation wherein several succession agreements are concluded concerning the same property, providing that priority shall be given to the agreement concluded earlier.[16]

Although the forthcoming recodification of the Civil Code is expected to reintroduce the succession agreement as a title to inheritance, this article seeks to examine how the institution operates within the current Slovak legal environment, wherein the existing Civil Code does not recognise or regulate this legal instrument.

14 According to the proposed Section 1962 of the Civil Code: 'If inheritance does not take place under a succession agreement, the inheritance shall pass to the heir appointed by will. If inheritance does not take place under a will either, the inheritance shall pass to the heir by operation of law.'(author's translation)

15 Special Section of the Explanatory Report to the Draft Civil Code, § 1964. The memorandum also notes the possibility for the parties to stipulate a right to withdraw from the succession agreement without cause, provided such right is expressly included in the agreement.

16 The above operates in the exact opposite manner to a will, where the more recent testament revokes the earlier one.

3. Relevance of Succession Agreements in Cross-Border Contexts

Although the current Slovak civil law does not recognise succession agreements, their practical relevance within the Slovak legal environment has become increasingly evident in the context of cross-border successions. The completion of the internal market has greatly enhanced the mobility of EU citizens, resulting in situations wherein national courts are frequently confronted with legal institutions unfamiliar to their domestic legal order. Such instances may arise not only in the field of family law, but also, for example, within succession law, where courts of Member States that do not provide for succession agreements may nonetheless encounter this instrument in the context of inheritance relationships involving a foreign, cross-border element. For instance, this may occur where the deceased was a foreign national, had his habitual residence abroad at the time of death, left property located in another State, or executed a will or other *mortis causa* disposition in a foreign country. The law applicable to succession – often referred to as the succession statute – determines the governing law in cross-border inheritance relations. It encompasses a broad range of issues, including the existence and validity of the cause of succession, the extent and composition of the estate, and the (in)capacity to inherit. A distinction is made between a unitary succession statute, wherein all aspects of succession are governed by a single connecting factor under the relevant conflict-of-laws rule, and a fragmented succession statute, wherein different assets or aspects of the estate may be governed by different legal systems.[17]

The question of which law is applicable to succession matters is governed by several sources, each of which is binding upon Slovak courts adjudicating such cases, and whose scopes of application may, in certain instances, operate concurrently. At the domestic level, the issue is regulated by the Act on International Private and Procedural Law,[18] which establishes the conflict-of-laws framework applicable to succession relations within the Slovak legal order. In addition to the provisions contained in the Act on PIL, conflict-of-laws rules can also be found in certain bilateral treaties on legal assistance. Pursuant to Section 2 of the Act on PIL,[19] as well as under

17 Lysina et al., 2023, p. 339.

18 Act No. 97/1963 Coll, on International Private and Procedural Law (hereinafter referred to as the "Act on PIL").

19 Section 2 of the Act on PIL: 'The provisions of this Act shall apply only insofar as a treaty binding upon the Slovak Republic or an Act adopted for the implementation of such a treaty does not provide otherwise'. (author's translation)

the Constitution of the Slovak Republic[20] and the Vienna Convention on the Law of Treaties,[21] such treaties enjoy precedence over domestic legislation in application. However, these treaties will not be examined in detail in the present paper, since the most relevant ones are those concluded by the Slovak Republic with other Member States of the EU, and in such cases, the EU Succession Regulation takes precedence in application.[22] In this respect, primary attention will be devoted to the EU Succession Regulation, both because it takes precedence in application over the Act on PIL,[23] and because it explicitly recognises the institution of the succession agreement within the scope of matters governed by the Regulation. This confers upon the institution a (perhaps not entirely) new dimension within the Slovak legal order.

The Act on PIL is based on the concept of a unitary succession statute.[24] Despite the precedence of the Succession Regulation in application, the provisions of the Act continue to retain their significance in cases where the scope of the Regulation, particularly its material or temporal scope – is not fulfilled.[25] This concerns, for example, oral agreements or other matters falling outside the Regulation's material scope and legal acts performed prior to its entry into force,[26] which must still be assessed under the national conflict-of-laws framework.

Section 17 of the Act on PIL establishes the basic conflict-of-laws rule governing succession relations, linking them to the connecting factor of the deceased's nationality at the time of death. Section 18 then addresses ancillary questions related to succession. According to Section 18(1):

> *'The capacity to make or revoke a will, as well as the effects of defects in the will or its declaration, shall be governed by the law of the State of which the deceased was a national at the time of making the declaration. The same law shall determine which other types of mortis causa dispositions are admissible (author's translation).'*[27]

20 Art. 7(5) of the Act No. 460/1992 Coll. – The Constitution of the Slovak Republic: 'International treaties on human rights and fundamental freedoms and international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law shall have precedence over laws'.

21 Art. 27 of the Vienna Convention on the Law of Treaties: 'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty…'

22 Art. 75(2) of the Succession Regulation.

23 Judgment of 15 July 1964, Costa/E.N.E.L., C-6/64, ECLI:EU:C:1964:66.

24 Succession relations are regulated in Sections 17 and 18 of the Act on PIL.

25 Art. 1(2)(f) of the Regulation excludes from its material scope 'the formal validity of dispositions of property upon death made orally'.

26 Art. 83(3) of the Succession Regulation.

27 Section 18(1) of the Act on PIL.

The cited provision clarifies that, in view of the classificatory challenges posed by the diversity of *mortis causa* instruments across legal systems, the legislator anticipated the existence of other forms of *mortis causa* dispositions besides the will. As noted by the commentators on this provision, the determination of permissible forms of *mortis causa* dispositions depends on the respective national legal orders. The conflict-of-laws rule, thus formulated, prevents a court from being unable to deal with an institution unknown to its domestic legal system – a situation exemplified by the succession agreement, which remains unregulated under Slovak law.[28] The question that remains to be addressed is whether a restriction on the testator's testamentary freedom for the future, as suggested by the historical connotations discussed above, could trigger the protective mechanism of the public policy exception. This issue will be subjected to a more detailed analysis in the following section of this article.

A pivotal moment in the development and introduction of new institutions into the field of international private and procedural law of succession was the adoption of the EU Succession Regulation. Since the EU lacks competence to harmonise the substantive law of succession, the Regulation is limited to cross-border succession matters within the Union. The Succession Regulation introduced several significant innovations to the practice of authorities in the Member States. In addition to explicitly addressing the concept of a succession agreement in cross-border contexts, it also permits choice in the applicable law to govern succession relationships – an option not recognised under the Slovak Act on PIL.

The Regulation enjoys primacy of application not only over bilateral treaty arrangements concluded exclusively between Member States[29] but also, by virtue of the general principle of supremacy of EU law, over national legislation, including the Slovak Act on PIL. Before presenting the substantive content of the Regulation itself, it is essential to delineate its scope of application, as the analysis of mutual interaction between two or more legal sources is relevant only when their respective scopes are cumulatively fulfilled. In other words, if the Regulation does not apply, it would be pointless to examine its relationship to either an international treaty or national law.

From the perspective of its territorial scope, the Regulation applies in all Member States of the EU, with the exception of Denmark, the United Kingdom and Ireland,[30] which exercised their right to an opt-out and, therefore, do not participate in its application. The United Kingdom subsequently withdrew from the Union altogether. As regards its temporal scope, the Regulation applies to the succession of persons

28 Lysina et al., 2012, pp. 104–105.
29 Art. 75(2) of the Succession Regulation.
30 Recitals 82 and 83 of the Preamble to the Succession Regulation.

who died on or after 17 August 2015.[31] For the purposes of the present analysis, Article 83(3) of the Regulation is also of particular relevance. It provides that:

> *'A disposition of property upon death made prior to 17 August 2015 shall be admissible and valid in substantive terms and as regards form if it meets the conditions laid down in Chapter III or if it is admissible and valid in substantive terms and as regards form in application of the rules of private international law which were in force, at the time the disposition was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed or in the Member State of the authority dealing with the succession.'*[32]

In light of the subsidiary jurisdiction laid down in Article 10 of the Regulation, the personal scope is not necessarily of primary relevance. The *ratione materiae*, by contrast, is framed in the broadest possible terms and defined both positively and negatively. The Regulation applies to succession to the estate of deceased persons with a cross-border element. Moreover, it expressly excludes several matters from its material scope, *inter alia*, the formal validity of oral dispositions of property upon death, as previously mentioned.[33] The courts and other competent authorities of the Member States, including those of the Slovak Republic, apply the Regulation *ex officio*. Regarding the basic criteria for determining jurisdiction and the applicable law, it may be generally observed that the objective of the Regulation, subject to a few exceptions, is to ensure that courts adjudicate in accordance with the *lex fori*.[34] Recital 27 of the preamble, although not legally binding,[35] confirms this understanding: 'The rules of this Regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law...'[36]

The objective of the Regulation itself is clarified in Recital 7 of the Preamble:

> *'The proper functioning of the internal market should be facilitated by removing the obstacles to the free movement of persons who currently face difficulties in asserting their rights in the context of a succession having cross-border implications. In the European area of justice, citizens must be able to organise their succession in advance. The rights of heirs*

31 Art. 83(1) of the Succession Regulation.
32 Art. 83(3) of the Succession Regulation.
33 See:: Art. 1(2)(f) of the Succession Regulation and consider also the other matters expressly excluded from the material scope of the Regulation.
34 This principle is clearly reflected in Arts. 4 and 5 to 9 of the Regulation.
35 Judgment of 19 November 1998, Nilsson and Others, C-162/97, ECLI:EU:C:1998:554, Para. 54.
36 Recital 27 of the preamble to the Succession Regulation.

> *and legatees, of other persons close to the deceased and of creditors of the succession must be effectively guaranteed.'*[37]

This is inherently linked to the question of guaranteeing equal access to inheritances within the Union. The Regulation adopts the concept of a unitary succession statute, as it provides that:

> *'For reasons of legal certainty and in order to avoid the fragmentation of the succession, that law should govern the succession as a whole, that is to say, all of the property forming part of the estate, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State.'*[38]

Under the principle of unity, the authorities of a single Member State may adjudicate upon immovable property located abroad – a previously unthinkable concept.[39]

The succession agreement (*pactum successorium*), a disposition of property upon death, is defined in the Regulation as a contract, 'including an agreement resulting from mutual wills, which, with or without consideration, creates, modifies or terminates rights to the future estate or estates of one or more persons party to the agreement'.[40] In its judgment in *UM*, the Court of Justice favoured a substantive interpretation over a formalist one, stating that 'a contract under which a person provides for the future transfer, on death, of ownership of immovable property belonging to him or her to other parties to the contract is an agreement as to succession within the meaning of that provision'.[41]

The key provision governing succession agreements is Article 25(1) of the Regulation, which provides that

> *'...an agreement as to succession regarding the succession of one person shall be governed, as regards its admissibility, its substantive validity and its binding effects between the parties, including the conditions for its dissolution, by the law which, under this Regulation, would have been applicable to the succession of that person if he had died on the day on which the agreement was concluded.'*[42]

37 Recital 7 of the preamble to the Succession Regulation.
38 Recital 37 of the preamble to the Succession Regulation.
39 With the exception of Art. 10(2) and Art. 12(1) of the Succession Regulation.
40 Art. 3(1)(b) of the Succession Regulation.
41 Judgment of 9 September 2021, UM (Contrat translatif de propriété mortis causa), C-277/20, ECLI:EU:C:2021:708.
42 Art. 25(1) of the Succession Regulation.

The following Para. further addresses the issue of agreements concerning the succession of several persons, while the third Para. supplements this by extending the possibility of a choice of applicable law to succession agreements, subject to the conditions laid down in Article 22. The Regulation itself establishes a set of elements that determine the substantive validity of *mortis causa* dispositions, including succession agreements, thereby ensuring the uniform application of these specific rules across Member States.[43] Article 27 sets out the rules governing written dispositions of property upon death, providing that such a disposition is formally valid if it complies with the law applicable to its form.[44]

In practical terms, wherein the deceased was a Slovak national with habitual residence in Slovakia, the general connecting factor under Article 21 of the Succession Regulation would render Slovak law applicable to the succession. Consequently, under Article 25(1), any succession agreement concluded by such a person would likewise be assessed, in terms of its admissibility, substantive validity, and binding effects, in accordance with Slovak law, which, however, does not currently recognise or regulate this legal instrument. A potential avenue of deviation is provided by Article 22 of the Regulation, which introduces the possibility of a choice of law in matters of succession, though this is strictly limited to the law of the State of the deceased's nationality (*lex patriae*). Thus, wherein the deceased was, for instance, a Czech national or a bipolitan, it would be possible to choose as the applicable law that of the State of nationality. Such a choice would subsequently extend to Article 25, thereby linking the law of the chosen State to the succession agreement itself. In such circumstances, a Slovak court, if deemed competent under the Regulation, would be required to examine the succession agreement through the lens of a foreign legal system that may, unlike Slovak law, recognise this institution. This raises the critical question of whether there exists scope for the Slovak court to invoke the protective mechanism of the public policy exception in such a scenario.

4.
Correction of the Effects of Applying Foreign Law to Succession Agreements through the Public Policy Exception

Across global legal systems, significant disparities persist. This has rendered it necessary within private international law to establish the possibility of derogating from the provisions of the otherwise applicable foreign law, provided that specific conditions are met. Although the EU has progressively harmonised several areas

43 Art. 26 of the Succession Regulation.
44 Aras Kramar and Vučko, 2020.

of law, considerable divergences remain between the legal systems of the Member States. Consequently, even at the Union level, it is essential to preserve mechanisms that allow the forum's legal order to protect its fundamental principles. One of the most important defensive instruments available in this regard is the public policy exception. The public policy exception serves a protective function, safeguarding the essential interests of the legal order of the forum. From this perspective, one of its core purposes lies in preserving the sovereignty of the State in matters falling within its exclusive competence. Every legal system is founded upon a set of values intrinsic to that society's social, cultural, and moral fabric. Therefore, the public policy exception's function is to ensure that the application of foreign law in a given case does not undermine these fundamental values of the lex fori.[45]

Public policy is also enshrined in national legal frameworks, and the Slovak Act on PIL is no exception. Section 36 of the Act provides that: 'A legal provision of a foreign State shall not be applied if the effects of such application would be contrary to the principles of the social and state system of the Slovak Republic and to its legal order, adherence to which must be unconditional'.[46] Thus, the Act expressly provides a definition of public policy, although, for the logical reasons discussed above, a specific catalogue of such norms is absent. Nevertheless, an instructive example may be found in the case law of the Supreme Court of the Slovak Republic,[47] notably in a decision concerning the adoption of an adult. The judgment addressed the non-recognition of a decision of the District Court of Donaustadt on the grounds that the adoption of an adult is not permitted under Slovak legislation. In this case, the Supreme Court held that the public policy exception operates as a protective mechanism aimed at preventing the effects of applying foreign law where such application would potentially contradict the fundamental principles of the social and state system of the Slovak Republic and its legal order. According to the Court, these principles may derive either from constitutional provisions designed to meet fundamental societal needs, or from core rules of other legislative acts. In any event, the Court emphasised that adherence to such provisions must be unconditional, while also noting that not every mandatory norm automatically possesses these characteristics or is necessarily capable of triggering the application of the public policy exception. Of particular interest is the Court's comparative observation that several other Member States permit the institution of adult adoption, thereby highlighting the relativity of public policy considerations in a cross-border context.[48] The same conclusion may be drawn in relation to the institution of the succession agreement, although, on the opposite side of the scale, one must consider the principle of testamentary freedom.

45 Moravcová, 2023.
46 Section 36 of the Act on PIL.
47 Judgment of the Supreme Court of the Slovak Republic, Case No. R 54/2000.
48 Ibid., See also Moravcová, 2023.

The public policy exception is also introduced by the Regulation itself in Article 35: '*The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum*'.[49] In the absence of a closed catalogue of circumstances wherein a court may invoke the public policy exception, the matter must invariably be assessed on an *ad hoc*, *in concreto* basis, taking into account all the relevant circumstances of the individual case.[50] Some authors emphasise that the judicial practice concerning the invocation of the public policy exception should remain consistent with the overarching objectives of private international law, while also promoting the spirit of international cooperation.[51] There is no doubt that, at the Union level, the public policy exception should be invoked only in truly exceptional circumstances, at least in relations between the Member States.[52] This assertion may likewise be supported by the fact that the Regulation itself expressly contemplates the existence of succession agreements, recognising that they constitute a succession title widely established within the legal systems of the Member States.

As noted by Gianluca Contaldi and Cristina Grieco, the very purpose of the public policy exception is to limit the extent to which provisions of foreign law that the forum's legal system considers wholly unacceptable may be applied. The requirement of a manifest incompatibility, as set out in the Regulation, may thus be interpreted to mean that the public policy exception cannot be invoked merely on the basis of a divergence in the substantive rules governing the matter at issue.[53] The mere absence of a particular legal institution in the domestic legal order should not, in itself, constitute sufficient grounds for the activation of the public policy exception.

Indeed, public policy represents an open-ended legal concept, the content of which is determined by national legal systems on a case-by-case basis. It ensures legal certainty within the domestic context, yet lacks any universally accepted or uniform definition at either the Union or Member State level.[54] Some scholars propose an analytically nuanced distinction between two dimensions of the public policy exception – the outer and the inner limit. The outer limit encompasses the fundamental principles of the State, such as human dignity and other constitutionally protected rights, representing the core axiological foundations of the legal order. The inner limit, by contrast, pertains to the social and normative structure of the

49 Art. 35 of the Succession Regulation.
50 Csach, Gregová Širicová and Júdová, 2018, pp. 59–60.
51 Rozehnalová et al., 2017, p. 178.
52 Moravcová, 2023.
53 Contaldi and Grieco, 2016.
54 Akkermans, 2019.

legal system, encompassing, *inter alia*, rules of procedural law, property law, and succession law.[55]

It is our view that, in the application of the Regulation, due regard must be given to the degree of cooperation achieved among the Member States, while also recognising the necessity to consider the objectives pursued by the Succession Regulation itself. Therefore, a careful balance must be sought between supranational objectives and national procedural autonomy. This implies that national law must, in certain instances, give way to European law; yet, at the same time, the application of domestic law should, where feasible, be adapted in such a manner as to better serve the attainment of the common objective.[56]

Under what circumstances, then, may the public policy exception be invoked? Based on the French approach and comparative analysis, it may apply in cases where foreign law grants a privilege of primogeniture, affords advantages to male heirs, or conditions the capacity to inherit on belonging to a particular religion. More broadly, the exception may be activated whenever a foreign law introduces discriminatory conditions based on illegitimate grounds, such as race, religion, or similar criteria.[57] Such situations directly engage fundamental human rights guarantees – particularly the prohibition of discrimination – that follow from numerous international human rights instruments as well as from the Charter of Fundamental Rights of the European Union – a part of the EU's primary law standing at the apex of the Union's legal order.

In the context of the present discussion, Professor Etienne Pataut notes that the public policy exception is frequently invoked in several Member States in relation to succession agreements and the protection of the reserved portion of an estate, yet it is rarely applied against legal systems that do not recognise these institutions. With regard to the reserved portion, the absence of a conflict with public policy has been explicitly confirmed in Germany, Greece, and Portugal. In France, only a few judicial decisions address this matter; however, the Cour de cassation appears never to have considered a foreign law that disregards the reserved portion as contrary to public policy, even when such a law operated to the detriment of a French heir.[58] A comprehensive analysis of French case law further led one scholar to conclude that a foreign legal system that does not recognise the reserved portion of the estate cannot be deemed incompatible with French public policy.[59]

However, the Regulation itself, in its preambular part, explicitly states that:

55 Asser-Vonken, pp. 404–405, cited in Ibid.
56 Akkermans, 2019.
57 Pataut, 2010.
58 Ibid.
59 Billarant, 2004, cited in Ibid.

> *'The law which, under this Regulation, will govern the admissibility and substantive validity of a disposition of property upon death and, as regards agreements as to succession, the binding effects of such an agreement as between the parties, should be without prejudice to the rights of any person who, under the law applicable to the succession, has a right to a reserved share or another right of which he cannot be deprived by the person whose estate is involved.'*[60]

Pataut points out that the public policy exception has also been invoked in connection with succession agreements; however, in France, such agreements are no longer regarded as incompatible with international public policy.[61] He further observes that the very wording of the Regulation governing succession agreements excludes, in principle, the possibility of activating the public policy exception solely on the basis of their existence or validity.[62] From our perspective, it is clear that any reliance on protective mechanisms such as *ordre public* must be interpreted strictly and applied only in exceptional circumstances. Consequently, within the intra-Union framework governed by the Regulation, the mere absence of the institution of a succession agreement in the domestic legal order should not, *per se*, constitute grounds for invoking public policy. Activation of this mechanism would require the presence of an additional element that genuinely infringes the fundamental principles of the forum, for instance, a violation of the Charter of Fundamental Rights of the European Union or of the core constitutional values of the Member State.

This leads to the conclusion that the sole remaining context wherein the public policy exception may plausibly come into play in succession matters concerns the protection of the reserved portion of an estate, and only in situations where the application of foreign law would result in a manifest breach of fundamental rights or principles of justice recognised within the European legal order.[63]

5.
Concluding Remarks

This article has addressed agreements as to succession from the standpoint of the Slovak legal order, which, under its current civil law framework, does not recognise the category of *mortis causa* disposition. The introductory part of the paper traced the historical evolution of the institution within Slovak succession law, from its

60 Recital 50 of the preamble to the Succession Regulation.
61 Revillard, cited in Pataut, 2010.
62 Pataut, 2010.
63 Ibid.

early codified manifestations to the present state, which, while firmly upholding the principle of testamentary freedom, excludes contractual arrangements concerning future inheritance. The forthcoming recodification of the Slovak Civil Code, long in preparation, is expected to reintroduce this legal instrument into the national system.

Notwithstanding its absence in domestic legislation, the practical significance of succession agreements is increasing, particularly in view of cross-border successions governed by the Succession Regulation. Therefore, Slovak judicial and administrative authorities may be called upon to adjudicate upon such instruments concluded under a foreign law that permits them, thereby engaging issues of recognition and compatibility with domestic public policy. The omission of succession agreements in Slovak law reflects the traditional doctrinal adherence to testamentary freedom, ensuring the testator's unrestricted power to dispose of their property until death. Nevertheless, private international law provides mechanisms for correcting or limiting the effects of foreign law, among which the public policy exception, *ordre public*, occupies a central place.

The analysis presented herein leads to the conclusion that, although the scope of the public policy clause is not expressly circumscribed, the mere absence of a national legislative framework governing succession agreements cannot, *per se*, justify its invocation. Given that the Succession Regulation expressly envisages such instruments, and that comparable mechanisms exist in the legal systems of neighbouring Member States, Slovak authorities appear to have only a very limited basis for relying on public policy in this regard.

It remains to be seen how the Court of Justice of the European Union will progressively delineate the contours of the public policy exception under the Succession Regulation. Ultimately, the anticipated recodification of the Slovak Civil Code and the inclusion of succession agreements into its substantive provisions would not only align Slovak succession law with that of other European jurisdictions but would also render the debate on *ordre public* and the absence of domestic regulation in this field largely obsolete.

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Marcin RAU*

Criminological Aspects of Urban Migration: Exploring Migrant Influence on City Crime Patterns

ABSTRACT: *This article examines the relationship between migration and urban crime in Europe through a comparative analysis of selected cities and national prison systems. Using quantitative correlation methods, the study explores whether higher proportions of foreign-born residents are associated with increased crime rates, measured by the Crime Index and Safety Index, and whether foreign nationals are disproportionately represented in prison populations. Drawing on data from Eurostat, Numbeo, and European prison statistics, the article challenges the widespread assumption that immigration directly leads to higher levels of urban crime. The comparative analysis reveals substantial cross-country variation: cities such as Vienna, Amsterdam, and The Hague combine high levels of migrant diversity with low crime rates, while others with lower shares of foreign-born residents display higher crime indices. Further comparison between Germany, Switzerland, and Poland demonstrates that differences in incarceration rates of foreigners are closely linked to integration models, socio-economic inclusion, and legal frameworks rather than migration volume itself. The findings suggest that urban crime patterns are shaped primarily by governance quality, social cohesion, and integration policies. The article contributes to criminological and migration studies by highlighting the limits of simplistic migration–crime narratives and emphasizing the importance of comparative, context-sensitive analysis for evidence-based public policy.*
KEYWORDS: *Migration, Urban Crime, Comparative Criminology, Foreign Prisoners, Integration Policy.*

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1.
Introduction: Migration and Urban Dynamics in Europe

In the dynamic urban landscape of Europe, cities are increasingly shaped by the intricate patterns of migration that bring both cultural richness and economic growth. However, these shifts also strain urban infrastructures and test the resilience of social cohesion. The allure of European cities as hubs of opportunity attracts global migrants, yet the anticipated prospects are often shadowed by stark realities. Many migrants encounter formidable barriers to employment and public services, conditions that may steer some towards alternative, and at times illicit, means of survival.[1]

This dissonance between expectation and reality not only impedes integration but also influences social dynamics within these urban settings. This paper adopts a quantitative approach, employing statistical correlation analysis to investigate the relationships between various urban dynamics, such as crime rates, measured through indices including the Crime Index and Safety Index, and the demographic profiles of cities, specifically the proportion of foreign-born citizens and their representation in European prisons. Such a methodological choice allows for a nuanced exploration of how migration influences urban crime and safety. The study seeks to illuminate the factors contributing to urban crime, outline the typical profiles of those involved, and challenge the oversimplification of statistical data. It critically examines the mainstream media narrative that directly links immigrant numbers to urban crime rates, questioning whether this correlation holds or whether other underlying factors exert a greater influence. Integrating these analyses, the article is structured to build progressively upon each component of the study. It begins by detailing the specific characteristics and criminogenic factors of European cities and how these contribute to crime patterns. It then proceeds to a rigorous data analysis to identify or refute correlations between immigrant presence and crime rates across cities. A comparative overview of the situation in Poland provides further contextual depth, followed by a synthesis of findings into actionable recommendations aimed at enhancing public safety and social integration. Through this comprehensive approach, the study not only addresses immediate associations between migration and urban crime but also contributes to a broader understanding of the socio-economic and policy implications necessary for fostering cohesive and secure urban environments.

1 See: Dustmann and Frattini, 2011. http://doi.org/10.62733/2025.1.5-15

2.
Urban Specificity and Criminogenic Factors

Before we embark on an examination of the statistical landscape and its interpretations in the next section, it is crucial to consider the underlying motivations and determinants that the article's title already implies: why do cities become hubs for migrants, and what intricate dynamics shape crime rates within these urban confines? Such an inquiry not only deepens our understanding but also prepares the reader for a more nuanced engagement with the data that follows.

2.1. Aspects that Impact Migration in European Cities

In the diverse tapestry of Europe, the distribution of foreigners and immigrants is far from uniform across nations and cities. By January 2023, the European Union was home to approximately 27.3 million non-EU citizens, comprising about 6.1% of the overall EU population.[2] Germany, Spain, France, and Italy emerged as the principal host states, accounting for a substantial proportion of this demographic.[3] Within major urban landscapes, however, the proportion of foreign residents often starkly overshadows the national averages. For instance, Brussels in 2023 counted 37.5% of its population as non-European–dramatically surpassing the Belgian average.[4] Similarly, metropolitan centres such as Frankfurt, Munich, and Stuttgart reported foreign population percentages of 29%, 26% and 25% respectively, notably higher than the overall German figures.[5]

Why, one might ask, do these urban areas attract diverse populations? The answer often lies in the confluence of job opportunities, educational prospects, and vibrant social networks predominantly found in larger cities. These cities function not merely as geographical locations but as pulsating hubs of higher wages and opportunities that attract both skilled and unskilled workers, promising not just jobs but a pathway to improved standards of living and expanded economic horizons. Turning our gaze to the economic underpinnings that drive migration, particularly from non-European origins like Syria, Afghanistan and Venezuela, a common thread of economic instability becomes evident.[6] Significantly lower GDP per capita afflicts these nations, frequently made worse by prolonged conflicts, serious economic mismanagement,

2 See: European Union, 2024.
3 Ibid.
4 StatBel, 2023.
5 See: Mayors of Europe, no date.
6 See: European Commission, 2023.

and hyperinflation. High unemployment looms large, reflecting a dearth of domestic opportunities propelling especially young and educated individuals to seek fortunes beyond their borders. Moreover, the high cost of living and inflation, particularly acute in Venezuela, erodes purchasing power, rendering even basic essentials unaffordable.[7] This economic distress, coupled with sanctions and instability, paints a stark picture of the challenging conditions that drive populations towards the perceived stability and prosperity of European cities.

2.2. Analysis of General Criminological Factors Contributing to Crime in Urban Settings

However, we do not inhabit an ideal realm where every citizen receives appropriate education, engages in honest labour and remains untouched by the specter of crime. Cities, with their vibrant life and myriad opportunities, also provide fertile ground for those inclined towards illicit endeavors, drawn by the allure of rapid, albeit unlawful, gains. But what propels an individual towards such a path? Urban crime emerges from a complex tapestry of social, economic, and personal factors. Below are ten criminological factors widely recognised as directly influencing the incidence of criminal activity in urban areas:

1. **Economic disparity:** Income disparities within metropolitan regions can result in elevated crime rates, as economically disadvantaged persons may resort to stealing, burglary, and other criminal activities to meet their needs or express their frustrations.[8]
2. **Unemployment:** There is a clear correlation between high rates of unemployment, particularly among young people and minority groups, and increased crime rates, as illegal activities may substitute for earning money through legal means.[9]
3. **Urban anonymity:** Urban areas offer a level of anonymity absent in smaller towns, facilitating individuals to commit crimes with reduced fear of recognition or social repercussions.[10]
4. **Population density:** Increased population density can result in a higher likelihood of crime due to the presence of more potential targets (individuals and property) and offenders in close proximity.[11]

7 Ibid.
8 McCarthy, 2000, pp. 391–410.
9 Kujala, Kallio and Niemelä, 2018, pp. 163–185.
10 Edwards and Hughes, 2013, pp. 257–259.
11 Blau and Blau, 1982, p. 114.

5. **Social disintegration:** In urban areas where there is a weak sense of community, social controls diminish. In communities lacking strong bonds, crime rates rise because individuals feel less accountable toward their neighbors or social consequences.[12]
6. **Drug and alcohol abuse:** Urban regions experience elevated levels of substance misuse correlating with a rise in criminal activity, as drugs and alcohol may serve as both incentives for engaging in unlawful behavior and hindering rational decision-making by lowering inhibitions and impairing cognitive abilities.[13]
7. **Lack of educational opportunities:** Inadequate educational resources are a contributing factor to the prevalence of criminal activity in urban areas. Individuals who do not complete their education face less employment opportunities, which may lead to engagement in unlawful behaviour.[14]
8. **Family structure:** There is a correlation between broken houses and dysfunctional family ties and criminal behavior. Children lacking adequate access to strong role models or parental supervision may have a higher likelihood of engagement with criminal activities growing up.[15]
9. **Mental health issues:** In the absence of appropriate management and treatment, mental health illnesses can play a role in the development of criminal conduct. Urban areas with insufficient mental health care resources may experience higher rates of crime linked to untreated mental health conditions.[16]
10. **Cultural and ethnic tensions:** Racial and ethnic tensions may lead to criminal behaviours since marginalised groups who experience discrimination or oppression as a result of these tensions. As a kind of social and economic support, these conflicts contribute to the development of gangs and the commission of crimes connected to gangs in some instances.

To sum up, within the complex interplay of urban dynamics, foreigners often find themselves at a distinct disadvantage compared to local residents. Lacking established social networks, these newcomers may struggle to integrate swiftly into the local community, leaving them vulnerable to various criminogenic pressures. Depending on personal characteristics and resilience, individuals may be more or less susceptible to influences that could lead them towards criminal behaviour. This raises a pivotal question: does an increase in immigration necessarily correlate with

12 Ibid.
13 Durrant, 2018, p. 254.
14 Ibid., p. 43.
15 Ibid., p. 45.
16 Ibid., p. 77.

a rise in crime rates? The next section will explore this issue, seeking to unravel whether the presence of foreigners in a city truly amplifies its crime rates or whether this is merely a common misconception.

3.
Methodological Framework: Navigating the Data

In the intricate weave of social research, exploring the interplay between phenomena such as immigration and crime rates is a time-intensive and complex process that often requires the collaborative efforts of numerous research teams. Each team contributes perspectives that can significantly enrich understanding of the relationships at hand. This iterative, multifaceted approach is well-documented in academic literature, with seminal works such as Bell & Machin's studies on crime-immigration nexus,[17] and more recent, analyses by Kujala, Kallio & Niemelä on income inequality, poverty, and fear of crime in Europe, illustrating the depth and diversity of methodological approaches.[18]

In this study, our methodological framework is designed to navigate these complexities by focusing on two specific relationships. First, we examine the correlation between the percentage of foreigners in selected European cities, using Eurostat data, and the Crime Index, drawing on data from Numbeo.com. Second, we consider the proportion of foreigners within national prison populations, using insights from the study "Prisons and Prisoners in Europe 2022" by Marcelo F. Aebi, Edoardo Cocco, and Lorena Molnar. Although somewhat unconventional, this comparative approach is academically pertinent. It allows us to address both perceptions and misperceptions regarding the impact of immigration on crime, grounding the discussion in empirical data. By juxtaposing these datasets, we gain a multifaceted perspective that may reveal patterns obscured when each data source is considered in isolation. This, in turn, enables deeper exploration of how migrant populations interact with urban crime dynamics and the broader criminal justice system in Europe. Moreover, the scope of this study is carefully delineated to include a manageable yet representative selection of European cities, ensuring that our findings provide both relevance and specificity. This strategic limitation allows for a focused analysis, crucial when working with social phenomena as inherently complex as migration and urban crime.

17 Bell and Machin, 2012, pp. 48–54.
18 Kujala, Kallio and Niemelä, 2018, pp. 163–185.

3.1. Methodology and Limitations

Before turning to the statistical findings, the reader deserves clarification regarding the chosen data sources. The Crime Index provided by Numbeo, persuasive in the author's view, leverages user-contributed survey data, harnessing the perceptions of engaged respondents. This method estimates the overall crime level in a city or country through voluntary survey responses, submitted on the Numbeo website, where participants assess crime and safety on a scale from -2, (very negative experiences) to +2 (very positive perceptions).[19] To ensure the credibility and reliability of the data, a filtering process is implemented to exclude spam and unreliable inputs. Following this, the Crime Index is calculated, with scores spanning from 0 to 100. Interpretation of these scores are follows:

- a score below 20 signifies a very low level of crime,
- 20 to 40 indicates low crime,
- 40 to 60 moderate crime,
- 60 to 80 high crime,
- above 80 points to a very high crime rate.

The index incorporates broad perceptions of crime levels; safety during the day and at night; concerns over crime such as mugging, robbery, and car theft; as well as personal experiences of property and violent crimes. Importantly, the index is dynamically updated: it incorporates data up to 36 months old and undergoes recalibration every six months.[20] This dynamic updating mechanism ensures that the index remains reflective of the current crime situation, and thus serves as a valuable tool for analysing crime patterns in urban environments.

3.2. Analysis of Crime Index and Foreign-Born Citizen Percentage

This analysis examines the correlation between the Crime Index and the percentage of foreign-born citizens across several European cities. The data suggests complex interrelations influenced by multiple socio-economic factors:

I. High Crime Index with Varied Foreign-Born Percentages

- **Marseille (12%; 65.7):** High Crime Index despite a relatively low percentage of foreign-born citizens, indicating that local socio-economic factors significantly influence crime rates.

19 See: Numbeo, no date.
20 Ibid.

- **Birmingham (25.6%; 63.8):** Shows a high Crime Index with a moderate percentage of foreign-born citizens.
- **Paris (20.4%; 57.7):** Moderate percentage of foreign-born residents correlates with a high Crime Index.
- **Malmoe (34.4%; 56.8):** High foreign-born population and high Crime Index, potentially indicating challenges in social integration and economic disparities.

II. Moderate Crime Index with Higher Foreign-Born Percentages

- **Lyon (14%; 55.8):** Lower percentage of foreign-born citizens with a moderate Crime Index.
- **Manchester (31.4%; 55.2):** High foreign-born population with moderate Crime Index.
- **London (40.6%; 54.6):** Very high foreign-born population but only moderate Crime Index, indicating effective urban management despite diversity.
- **Barcelona (22.4%; 51.5)**: Balanced foreign-born percentage with a moderate Crime Index.
- **Milan (10.7%; 51.5)**: Lower foreign-born population with a moderate Crime Index.

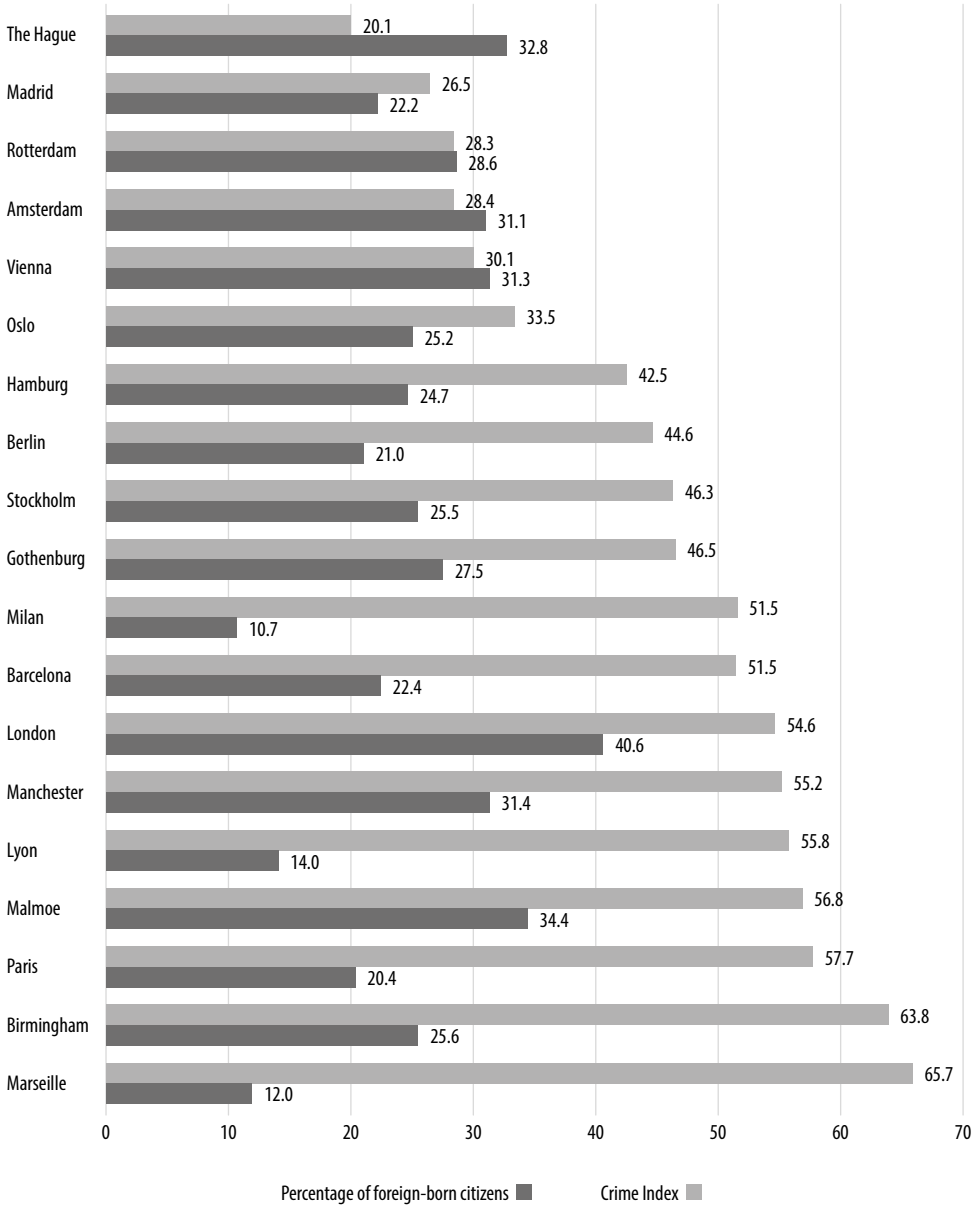
III. Lower Crime Index with Significant Foreign-Born Percentages

- **Gothenburg (27.5%; 46.5)**: Moderate foreign-born population with a lower Crime Index.
- **Stockholm (25.5%; 46.3)**: Similar to Gothenburg, indicating effective urban policies.
- **Berlin (21%; 44.6):** Lower Crime Index with a moderate foreign-born population.
- **Hamburg (24.7%; 42.5):** Moderate foreign-born population correlates with a lower Crime Index.

IV. Low Crime Index with High Foreign-Born Percentages

- **Oslo (25.2%; 33.5):** Lower Crime Index despite a moderate foreign-born population.
- **Vienna (31.3%; 30.1):** High foreign-born percentage with a low Crime Index, indicating strong social integration policies.
- **Amsterdam (31.1%; 28.4):** High foreign-born population with a low Crime Index.
- **Rotterdam (28.6%; 28.3):** Similar trend as Amsterdam.
- **Madrid (22.2%; 26.5):** Moderate foreign-born population with a low Crime Index.
- **The Hague (32.8%; 20.1):** High foreign-born population with the lowest Crime Index, suggesting highly effective integration and social policies.

The relationship between foreigners and crime in selected cities (2023)



Source: Own elaboration based on available Eurostat data (2023) and Current Crime Index by City from Numbeo.com

The observation results reveal a nuanced and non-linear relationship between the proportion of foreign-born citizens and crime rates in European cities. Cities with high Crime Indices such as Marseille, Birmingham, and Paris do not necessarily have the highest shares of foreign-born residents. Marseille, for example, shows a Crime Index of 65.7 with only 12% foreign-born citizens. This suggests that factors beyond the foreign-born population significantly influence crime rates, such as local socio-economic conditions, historical patterns, and urban-management challenges.

Conversely, cities such as Vienna, Amsterdam, and The Hague demonstrate that high percentages of foreign-born residents do not inherently correlate with elevated crime rates. Vienna, with 31.3% foreign-born citizens, maintains a low Crime Index of 30.1. The Hague, despite 32.8% foreign-born residents, records the lowest Crime Index at 20.1. These cases illustrate the critical role of effective integration policies, robust social services, and inclusive economic opportunities.

Effective governance and proactive social policies can create environments where high diversity does not equate to higher crime rates. Further insights are drawn from cities like Malmoe and Gothenburg, which show moderately high percentages of foreign-born populations (34.4% and 27.5%, respectively) and relatively high Crime Indices. These cities highlight potential challenges in social cohesion and integration, possibly exacerbated by socio-economic disparities and limited access to employment for foreign-born communities. The data suggests that the failure to integrate migrants into the socio-economic fabric of the city can contribute to elevated crime levels. Moreover, the moderate Crime Indices in cities like London and Manchester, despite their high percentages of foreign-born citizens (40.6% and 31.4%, respectively), underscore the importance of comprehensive urban policies. These cities benefit from established frameworks for migrant integration, public-safety measures, and community-engagement strategies that help mitigate potential crime risks.

In conclusion, the correlation between foreign-born populations and urban crime rates is far from straightforward. While high diversity can present integration challenges, the key determinant of crime rates appears to be the effectiveness of socio-economic policies, integration efforts, and urban governance. Cities that successfully address these aspects demonstrate lower crime rates, underscoring the importance of inclusive and proactive governance in fostering safe and cohesive urban environments. This analysis highlights the need for targeted policies that support social inclusion, economic participation, and community cohesion to effectively manage urban crime in diverse settings.

3.3. Analysis of Foreigners in European Prisons

When analysing penitentiary statistics regarding the percentage of foreigners in Europe's prisons, it is crucial to approach such data with caution for several reasons. First and foremost, the matter of statistical representation is essential. Research conducted in Italy, for instance, has revealed that while foreign nationals may represent a small proportion of the overall population, they constitute a far higher percentage within the penal system.[21] This can foster distorted interpretations that amplify the perception of crime among immigrant groups.[22] Secondly, cultural and legal differences across countries significantly influence judicial outcomes for foreigners. In France, for example, targeted enforcement strategies often disproportionately affect non-citizens, as illustrated by L. Wacquant in his examination of criminal policies and their consequences on marginalised individuals.[23] Because legal systems differ, drawing direct parallels is challenging, making it difficult to discern genuine, uniform patterns in crime. Finally, socio-economic variables play a vital role. Foreigners in several regions encounter significant economic disadvantages, which may heighten their likelihood of engaging in criminal behaviour. Sampson, Morenoff, and Gannon-Rowley's study investigates how economic and social marginalisation in urban areas correlates with higher crime rates.[24]

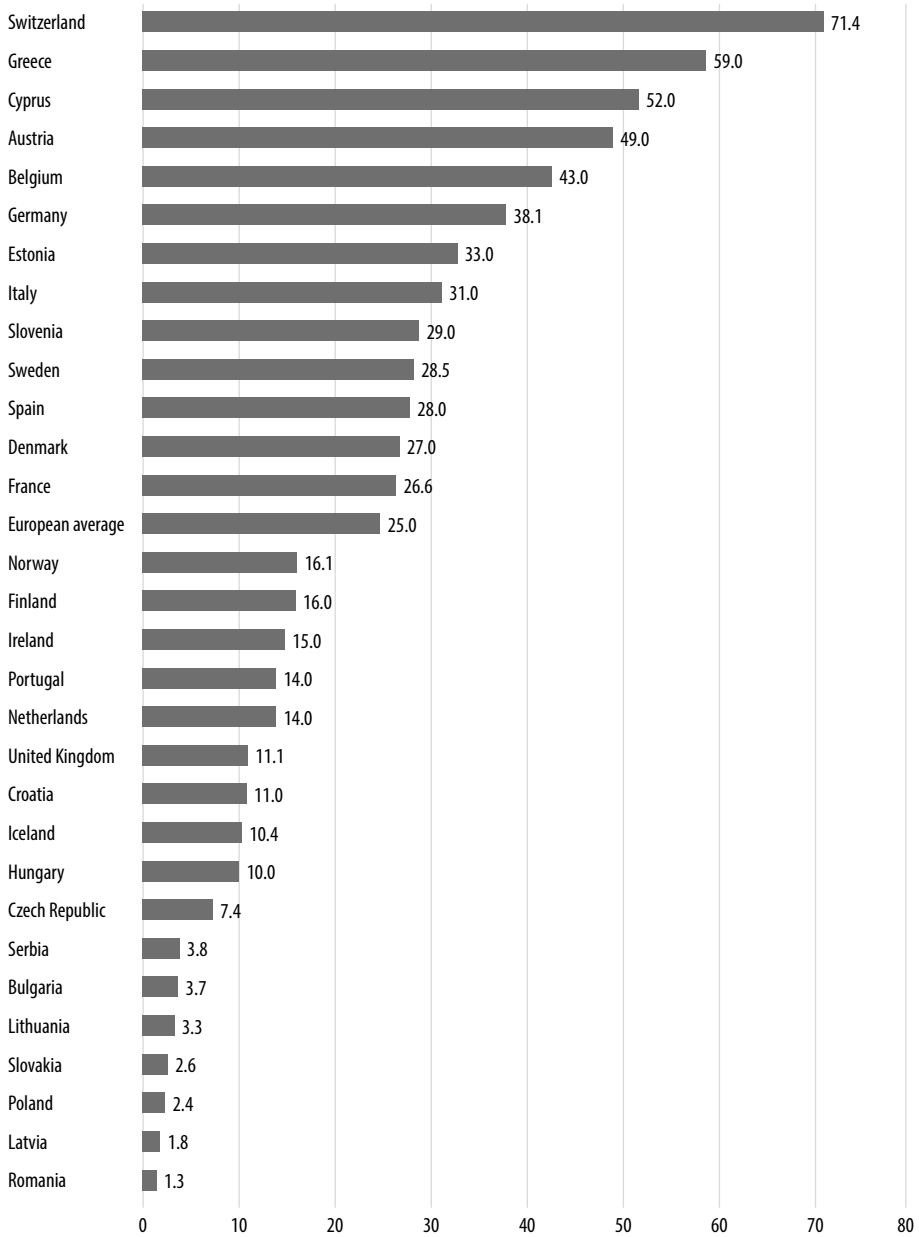
From this criminological standpoint, we may now turn to the analysis of 2023 data. These statistics reveal significant disparities in the proportion of foreign nationals incarcerated across different European nations. This variety is a result of differing socio-economic circumstances, migration patterns and legal frameworks that merit explanation:

I. Low Percentages (1.3% - 10.4%)
Countries like Romania (1.3%), Latvia (1.8%), and Poland (2.4%) exhibit very low percentages of foreign prisoners. These figures may be attributed to lower levels of immigration and predominantly homogenous populations. Additionally, stringent immigration and integration policies might may contribute to these outcomes.
II. Moderate Percentages (10.0% - 16.1%)
Countries such as Hungary (10.0%), Iceland (10.4%), and the United Kingdom (11.1%) show moderate levels of foreign-born inmates. These countries have experienced significant immigration but maintain robust legal systems that may influence incarceration rates. The UK, for example, has a long history of diverse immigration, contributing to its moderately high percentage.

21 See: Aebi and Tiago, 2020.
22 Ibid.
23 Wacquant, 2001, pp. 95–133.
24 Sampson, Morenoff and Gannon-Rowley, 2002, pp. 443–478.

III. Above Average Percentages (26.6% - 38.1%)
France (26.6%), Denmark (27.0%), and Germany (38.1%) exceed the European average of 25.0%. High levels of immigration, particularly from countries with different socio-economic backgrounds, may contribute to these figures. Germany, with its significant influx of refugees and migrants since 2015, showcases how socio-political dynamics can influence incarceration statistics.
IV. High Percentages (43.0% - 71.4%)
Belgium (43.0%), Austria (49.0%), and Switzerland (71.4%) show notably high percentages of foreign prisoners. These countries are major immigration hubs with high standards of living, attracting migrants from various backgrounds. However, the significant presence of foreign inmates may indicate challenges in integration and socio-economic disparities. Switzerland's exceptionally high figure may reflect its high proportion of foreign residents overall, along with strict legal enforcement policies.

Percentage of foreigners in Europe's prisons (2022)



Source: Own elaboration based on available Eurostat data (2023)

The incarceration rates of foreigners in nations with significant immigrant populations (such as Germany, Belgium and Austria) reveal a compelling narrative. Could it be that the integration policies and socio-economic opportunities for migrants in these countries are lacking? High imprisonment rates among foreigners seem to point in this direction. Indeed, socio-economic disparities, scant employment opportunities, and widespread marginalisation can precipitate higher crime rates within these communities. Nevertheless, as noted earlier, generalisation is the weakest element of statistical interpretation.

Therefore, it would be appropriate to investigate two countries, Switzerland and Germany, in more detail, as their high levels of foreign incarceration may be attributed to several trends. Switzerland's exceptionally high rate of foreign prisoners (71.4%) results from a combination of interrelated factors. Despite its reputation for safety and order, Switzerland's wealth and central Europe location make it an attractive destination for international criminals and organised crime syndicates. These groups are frequently involved in serious offences such as drug trafficking, property crimes, and violent acts.[25] Switzerland's stringent legal framework and effective law enforcement agencies ensure that individuals involved in these activities are apprehended and prosecuted, leading to a high incarceration rate among foreigners.[26]

The demographic composition of the Swiss prison population reveals significant presence of individuals from African and Balkan countries, as well as other European, American, and Middle Eastern countries.[27] Many of these individuals are undocumented migrants or cross-border workers without fixed residence in Switzerland.[28] The absence of a fixed residence generally classifies them as a flight risk, leading to confinement in secure facilities until their legal proceedings are completed. Furthermore, Switzerland's strong economy and high standard of living make it a desirable location for criminals enterprises seeking to exploit its affluence. It is a desirable market for criminal operations, especially drug trafficking and property crimes, due to the high spending power of its citizens. Consequently, Switzerland experiences a high influx of foreign criminals who deliberately visit the country to engage in illegal activities, contributing to the growing population of foreign nationals in the prison system.

This is further influenced by the Swiss judicial approach: when foreigners commit crimes in Switzerland, they are frequently deported after serving their sentences, meaning they must finish their prison time there before they may leave.[29] This approach guarantees that foreign criminals are held responsible for their conduct

25 See: *World Prison Brief 2024*, no date.
26 See: Islas, 2019.
27 Ibid.
28 Ibid.
29 Ibid.

under the legal authority of Switzerland. However, it also results in a notable proportion of the prison population being comprised of foreign nationals who are awaiting deportation.

Table 1: Crime Among Foreigners in Germany (2015-2023)

Year	Number of Suspected Foreigners	Percentage of All Suspects	Main Crimes
2015	616,230	27.6%	Thefts, drug-related crimes, violent crimes
2016	619,300	30.5%	Thefts, crimes related to illegal stay, property crimes
2017	618,000	33.0%	Thefts, violent crimes
2018	684,000	35.0%	Drug-related crimes, violent crimes
2019	700,000	36.5%	Drug-related crimes, violent crimes
2020	800,000	38.5%	Violent crimes, crimes against personal freedom
2021	850,000	40.0%	Thefts, violent crimes
2022	923,000	41.0%	Violent crimes, thefts
2023	923,000	41.0%	Violent crimes, thefts, drug-related crimes

Source: Polizeiliche Kriminalstatistik (PKS) 202330

In Germany, the incarceration rate for foreigners is nearly half that of Switzerland (38%); however, unlike Switzerland, this predominantly involves individuals who are permanent residents of Germany as a result of the unsuccessful integration policy. Most foreign prisoners in Germany belong to established migrant communities,[31] highlighting integration difficulties and socioeconomic factors that raise immigrant crime rates. Germany has large immigrant populations from Turkey and Syria, whose long-term residency has not always translated into effective socio-economic integration.[32]

Secondly, the nature of crimes committed by foreign nationals differs significantly between the two countries. In Germany, foreign prisoners are often involved in a wide range of crimes, including property crimes, violent crimes, and drug-related offenses. These crimes often have a strong correlation with socio-economic marginalisation and the complexities of assimilation.[33] In Switzerland, by contrast, the crimes committed by foreign inmates are more frequently related to organised transnational crime. Finally, Germany and Switzerland have different demographics and socioeconomic backgrounds for foreign inmates. Many foreign prisoners in Germany come from immigrant countries that have been present for decades and still

30 See: Bundeskriminalamt, 2023.
31 Ibid.
32 Ibid.
33 Ibid.

struggle to integrate. Swiss foreign inmates come from a wider range of countries, particularly African and Balkan regions,[34] with many lacking stable employment or legal residency, which leads to criminal activity.

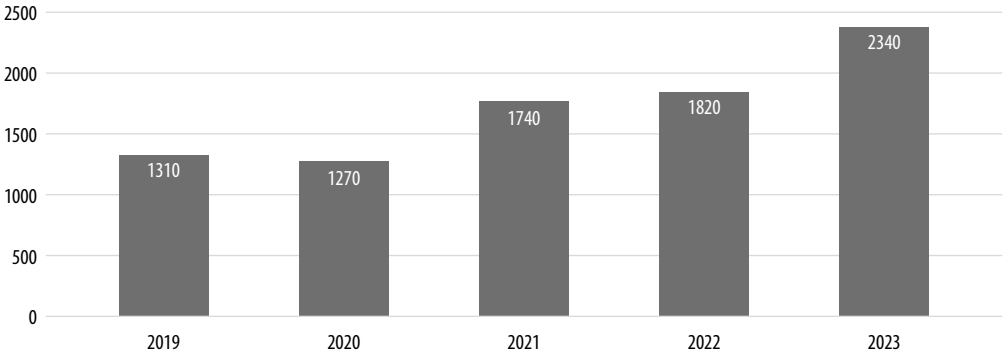
In conclusion, this analysis reveals the intricate interplay among migration, socio-economic factors, legal frameworks, and integration policies that shape the incarceration rates of foreign-born individuals across Europe. The data suggests that more effective integration strategies and equitable socio-economic opportunities are essential to mitigate the disparities reflected in these statistics. To fully grasp their meaning, further research must consider not only raw figures but also the broader socio-economic and political landscapes of each country. Only through such a holistic approach, can we understand and address the complex issues underpinning disparities in prison populations across Europe.

4.
Comparative Urban Analysis: Poland and Beyond

The incarceration of foreign nationals in Polish prisons remains a relatively marginal phenomenon despite a recent (2023) increase. While this indicates a growing pattern, the overall figures remain small in comparison with the total incarcerated population in Poland. In 2022, more than 12,000 individuals from other countries were formally accused of committing criminal offences, with Ukrainian citizens comprising more than half of this group.[35] By 2023, 17,000 foreign nationals had already faced charges, suggesting a growing trend.[36] Nevertheless, it is important to note that being charged with a crime does not necessarily mean being found guilty, and the current count of imprisoned individuals from other countries remains relatively low. The nationalities most commonly implicated in crime statistics, Ukrainians, Belarusians, and Georgians, reflect their substantial presence in Poland. One significant concern is the offence of driving vehicle under the influence of alcohol, specifically among individuals from Ukraine.[37] Although the number of criminal charges has increased, foreign nationals still exert relatively little influence on Poland's overall crime rate.

34 Ibid.
35 See: Zawadka, 2024.
36 Ibid.
37 Ibid.

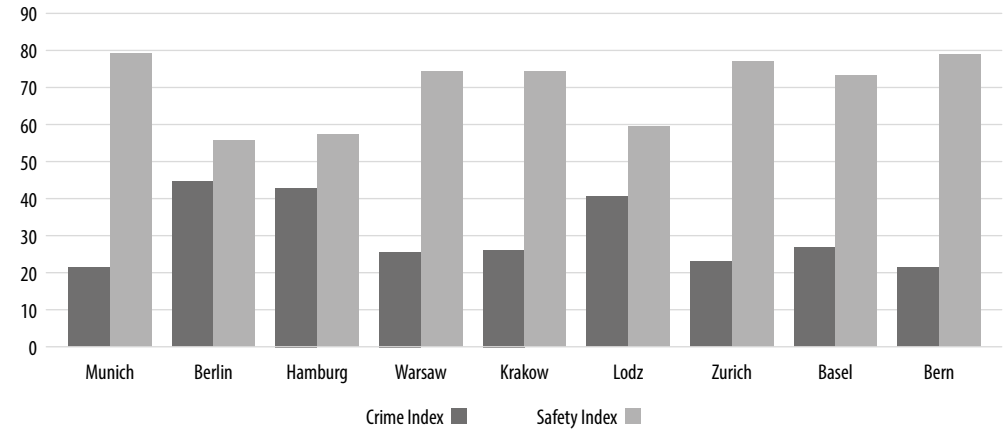
Foreign nationals incarcerated in Polish prisons (2019–2023)



Source: Statista 2024.[38]

Despite previous concerns regarding the criminal activities of foreign nationals, European cities, particularly those in Poland, Germany, and Switzerland, are characterised by high levels of safety. A comparative analysis of Numbeo data from the three largest cities in each of these countries demonstrates no direct correlation between the number of immigrants and either crime or safety indices.

Crime and Safety Index in Germany, Poland and Switzerland (2023)



Source: Own elaboration based on Current Crime and Safety Index by City from Numbeo.com

38 See: Sas, 2023.

For instance, Munich, with a crime index of 20.8 and a safety index of 79.2, is among the safest cities despite being a significant center for immigrants. Similarly, Zurich (crime index 23.0, safety index 77.0) and Bern (crime index 21.3, safety index 78.7) in Switzerland maintain high safety levels. Polish cities such as Warsaw (crime index 25.5, safety index 74.5) and Krakow (crime index 25.9, safety index 74.1) also exhibit robust safety metrics. By contrast, Berlin and Hamburg in Germany, with higher crime indices of 44.6 and 42.5 respectively, still maintain moderate safety indices of 55.5 and 57.5. This suggests that while crime exists, the overall safety perception remains stable. Similarly, Lodz in Poland has a higher crime index of 40.5 but maintains a safety index of 59.5. These statistics indicate that the influx of immigrants does not necessarily equate to higher crime rates or decreased safety. Instead, factors such as socio-economic conditions, effective law enforcement, and integration policies play a more significant role in shaping urban safety.

5.
Conclusion: Future Directions and Recommendations

The analysis of crime data and foreign nationals in European cities reveals no straightforward correlation between the number of immigrants and rising crime rates. High numbers of foreigners do not inherently render a city more or less secure, as demonstrated by the Crime Index data from various European cities, particularly in Poland, Germany, and Switzerland. The critical factor is not the quantity of immigrants but the quality and effectiveness of a country's integration strategies and social initiatives.

Effective education and thoughtful urban planning are essential to prevent the development of ghettos and marginalised areas. In areas where crime involving foreigners appears to be increasing, such as Germany and Sweden, this often stems from ineffective immigration policies, poorly conceived strategies, and ignoring social issues that drive immigrants to criminal activities. By contrast, Switzerland illustrates that a high percentage of foreign inmates can be attributed to a well-functioning state that actively fights international organised crime and prefers to detain dangerous individuals rather than deport them. The safety indices of European cities demonstrate that these cities maintain high safety standards, regardless of the proportion of immigrants. Looking ahead, strengthening integration initiatives is essential. Governments should prioritise comprehensive integration programmes, including language education, job assistance, and cultural orientation. These programmes can assist immigrants in adjusting to their new surroundings, thereby reducing the risk of social exclusion and criminal behaviour. Moreover, investing in education and social services is also paramount. Allocating resources to education

and social services for both immigrants and native populations can alleviate the socio-economic factors that often lead to criminal behaviour. To sup up, this paper only scratches the surface of a multifaceted issue that demands further, more comprehensive analysis. Nevertheless, the author hopes to have partially convinced the reader that the world is not as black and white as the mainstream media often portrays it.

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Lea FEUERBACH*

Perspectives on Recidivism Challenges: An Overview of Croatian Justice

ABSTRACT: *This article explores the complex issue of recidivism within the Croatian criminal justice system. It begins by examining how recidivism is defined and understood, addressing conceptual challenges, comparative difficulties, normative definitions, and penological perspectives. Emphasis is placed on the methodological choices involved in measuring recidivism, which shape research outcomes and determine the extent to which findings can be compared across contexts. The analysis then turns to the Croatian setting, outlining the limitations of the domestic criminological research community and reviewing current trends. Special attention is given to the role of prosecutors, judges, and the Diagnostic Centre in shaping responses to repeat offending. The article also considers the importance of evidence-based crime policy in preventing recidivism. While international examples demonstrate that targeted reintegration measures, particularly in the field of employment, can effectively reduce reoffending, Croatia continues to face challenges linked to penal populism, insufficient evaluation, and weak institutional cooperation. The conclusion argues that progress depends on introducing a clear statutory definition of recidivism, ensuring transparent and reliable data collection, systematically evaluating interventions, and strengthening collaboration between justice institutions and researchers. These steps could lay the foundation for fairer sentencing and more effective strategies to reduce crime and instances of reoffending.*

KEYWORDS: *Recidivism, Reoffending, Evidence-Based Policy, Penology, Prison System.*

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1.
Introduction

Recidivism remains one of the central challenges in criminology and criminal justice; however, it is far from straightforward. While it is often described as a relapse into criminal behaviour, its meaning and measurement depend on legal frameworks, institutional practices, data availability, and the aims of researchers. These choices have direct consequences for how criminal justice policies are designed, how sanctions are imposed, and how the performance of the system is evaluated.

This article begins by examining how recidivism is defined, outlining different perspectives in criminology, penology, and law, and discussing the contested distinction between recidivism and reoffending. It then turns to methodological considerations, analysing how data sources, follow up periods, and indicators such as rearrests, reconvictions, or returns to custody influence research outcomes and their comparability. The discussion then narrows to the Croatian context, reviewing current trends, the limitations of available data, and the roles of prosecutors, judges, and the prison system, with a particular focus on the Diagnostic Centre. Building on this analysis, the article highlights the significance of evidence-based policy, drawing on international examples to demonstrate effective practices while pointing to the lack of systematic evaluation in Croatia.

The overarching argument is that progress in addressing recidivism requires clearer definitions, transparent and reliable data collection, and stronger institutional cooperation. The aim is to show that although Croatia faces notable challenges, there is scope for developing fairer sentencing practices and more effective, evidence-informed strategies for preventing crimes and recidivism.

2.
Insights Into recidivism: Conceptualisation and Challenges

2.1. Understanding Recidivism: Concepts and Perspectives

Recidivism is one of the most significant criminological phenomena. Therefore, the question to begin with is what is recidivism? The historical occurrence of recidivism can be traced parallel to the occurrence of punishable behaviours. Various forms of measurements and reports have appeared in criminological literature since the 19th century.[1] To comprehend any area of phenomena of recidivism, it is essential

1 Andersen and Skardhamar, 2017, p. 615.

first to consider how it was constructed and what distinctions led to its development.[2] The breadth of the concept of recidivism, its wide distribution, and different measurement methods make it challenging to have a unified approach and definition.

The term "recidivism" or "return" is derived from the Latin word "*recidere*," which means "to fall back."[3] Although recidivism may appear to be a simple and generic term, commonly understood as the continuation of criminal behaviour after punishment,[4] the literature lacks a unified definition that would enable a deeper understanding and consistent measurement. This common understanding most closely aligns with the criminological definition, which describes recidivism as a relapse into prior criminal habits, particularly following punishment, sanction, or another form of intervention.[5] There is frequently a consensus about such a general definition, but differences of opinion arise in efforts to define recidivism and its constitutive elements more precisely.[6] In seeking to determine what constitutes a crime and what qualifies as a repetition of crime, legislation plays a significant role.

Recidivism and reoffending in criminal law are sometimes used as synonyms,[7] but they diverge significantly in their essence, and the act of reoffending is operationally defined differently.[8] A substantial distinction between the concept of recidivism and reoffending is that recidivism encompasses the re-commission of any socially unacceptable behaviour.[9] The concept of reoffending has a narrower scope and includes the re-commitment of criminal offenses. Reoffending can lead to the rearrest, reconviction, and re-sentencing of the offender to imprisonment.[10] Furthermore, reoffending only includes criminal behaviour that has been officially recorded.[11] However, it is important to emphasise that this distinction between recidivism and reoffending, while common, is not universally accepted. Some authors support this differentiation,[12] while others contend that reoffending is a broader concept than recidivism,[13] and still others treat the two terms as synonymous.[14]

In the literature, recidivism is often expressed through three situations: rearrest, the return of the perpetrator to prison or supervision, and re-sentencing of

2 Keeney, 1983, p. 21.
3 Derenčinović, 2004, p. 164.
4 Cambridge Dictionary, 2005.
5 Blumstein and Larson, 1971, pp. 124–125; Ruggero et al., 2015, p. 1.
6 Mckean and Ransford, 2004, p. 11.
7 Schoeman, 2010, pp. 80–82.
8 Miller, 2009, p. 6.
9 Falshaw et al., 2003, pp. 207–210.
10 Langan and Levin, 2002, pp. 1–3.
11 Falshaw et al., 2003, pp. 207–210.
12 For more details see: Getoš Kalac and Feuerbach, 2023, p. 7.
13 Nagin et al., 2009, p. 120.
14 Kuriakose, 2019, p. 416.

the perpetrator for a new crime.[15] The possibilities of interpretation of recidivism are left to the individual's choice in each specific case and depend on the goals and needs of the study. To be able to compare the findings of different studies, each study should clearly describe the definition of recidivism and the indicators used to arrive at that definition.

The penological approach narrows the concept and considers recidivism as a condition in which a person continues with unacceptable or criminal behaviour after experiencing the negative effects of that behaviour and after being treated to avoid such future behaviour.[16] The data collected and interpreted to understand the concept of recidivism will depend on what behaviours are defined as criminal or undesirable and how are defined the consequence or treatment of such individuals.

The literature commonly contrasts the "realist" and "institutionalist" perspectives.[17] The institutionalist, or "constructionist," approach emphasises organised and lawful social responses, viewing crime as a socially constructed phenomenon shaped by societal norms, laws, and institutions.[18] It highlights the importance of understanding how society defines and responds to criminal behaviour, while the realist approach focuses on collecting comprehensive data, including unreported or hidden crimes, aiming for a more accurate portrayal of crime as it exists in reality.[19] Realists strive to uncover the so-called "dark figure of crime", which refers to criminal incidents that go unreported or undetected.[20] While realists attempt to shed light on unreported crimes, achieving a complete picture of crime is challenging, if not impossible.[21] They seek to bridge the gap between official crime statistics and the actual occurrence of criminal behaviour.[22] Nevertheless, both approaches have their disadvantages.[23] The choice of approach depends on the research goals and objectives. It is important to note that any collection of crime statistics, regardless of the approach used, involves some institutional processing to evaluate the information.[24]

15 Rihtarić et al., 2017, pp. 541–542; Prentky et al., 1997, p. 635.
16 Musa and Ahmad, 2015, pp. 28–34.
17 Getoš Kalac and Pribisalić, 2020, p. 655.
18 Ibid.
19 Ibid.
20 Biderman and Reiss, 1967, pp. 1–2.
21 Ibid.
22 Ibid.
23 Both the institutionalist and realist approaches to crime face challenges in fully capturing the extent of criminal behaviour. The institutionalist focus on the social construction of crime may lack a comprehensive understanding of crime prevalence and be susceptible to subjectivity and bias in interpreting statistics. Similarly, the realist approach encounters difficulties in collecting complete and accurate data, particularly with unreported crimes, leading to data gaps and requiring substantial investments in time, funding, and personnel for comprehensive crime data collection. See more Ibid., pp. 3–7.
24 Ibid.

The connection between these approaches and recidivism lies in their different perspectives on understanding and measuring crime, which can influence the assessment and interpretation of recidivism rates.

From the standpoint of analysing crimes and criminal behaviour, including their repetition, the broadest possible knowledge of an individual's criminal activity throughout life would provide the most comprehensive basis for analysis. Ideally, this would involve not only crimes that are recorded or sanctioned, but also those that were never detected. However, regardless of methodology, such as victimological surveys or self-report studies, it is impossible to reach the true number of crimes committed. Researchers are therefore dependent on available sources of data, which can include court records, police statistics, prison data, or other official national figures. The scope and quality of such data are shaped by the legislative framework and the efficiency of the justice system. These sources cannot fully reflect social reality, but they nevertheless serve as a basis for research, helping to identify weaknesses within the system and pointing towards possible improvements. Consequently, the question of how to define the scope of recidivism is not merely theoretical. While ideally it would encompass all criminal activity, in practice it is constrained by methodological limitations, meaning that operationalisation and definitions of recidivism often depend on the data available and the feasibility of a given research project.

2.2. Challenges in Comparative Analysis

The terminological confusion on and around the meaning of recidivism comes to the fore in attempts to compare data at the international and national levels. When recidivism is not normatively defined at the state level, the possibility of its broad interpretation opens. This leads to distinctions in the concept of recidivism, depending on whether the data are interpreted by prisons, other penal institutions, probation services, politicians, policymakers, scholars, or others.[25] The question of the definition of recidivism is not only a national issue. To be able to compare data on recidivism and characterise it as "good" or "bad," we need to ensure that these data are comparable. This requires that recidivism is covered to an equal extent and that the data are collected using the same or similar methods. Disagreement about the constitutive elements of recidivism and large deviations from the rates are obstacles to quality of comparative international analysis.[26] Attempts to compare data on recidivism rates usually end with the conclusion that international comparisons

25 Schoeman, 2010, pp. 85–86.

26 In the criminological literature, we can find descriptions in which recidivism is described as a "fruit salad". See more Ibid., p. 88.

are still not valid enough.[27] The lack of comparability in analysing recidivism rates across countries is justified by the variations in methodologies employed to measure recidivism.[28] The inconsistency is most often caused by different samples of offenders, measurements of recidivism, the length of the follow-up period, as well as the cultural and legal practices of a certain area.[29] In practice, we have an example where the application of the definition to the same extent in the countries of the United States of America led to significant differences.[30] The main cause of such divergence was the harsher application of the judicial system in terms of punishment. To illustrate the differences in the judicial systems and their impact on recidivism rates, it is informative to examine the variation between California and New York. The contrasting recidivism rates between these states can be attributed to the disparities in their parole systems and practices.[31] In California, a more stringent approach is taken toward parole enforcement, with even minor violations leading to arrests and subsequent incarceration.[32] Otherwise, New York adopts a more lenient approach, and this difference in approach contributes to the higher recidivism rates observed in California, while New York exhibits a comparatively lower rate.[33] It should not be assumed that utilising the same measure of recidivism across different programs or jurisdictions will automatically yield comparable findings. Variations in laws, policies and procedures between jurisdictions can make comparisons difficult. For instance, if one state has limited implementation of probation while another heavily relies on it, cohorts of released prisoners from these states will likely differ in terms of the proportion of low-risk individuals, consequently leading to disparate recidivism rates.[34] Only by using the definition of recidivism in the same scope, measuring over identical time periods, controlling the characteristics of the sampled offenders, and taking into account the specific factors of a particular area we will be able to compare the results and draw valuable conclusions about "what works" for whom in what circumstances and why.[35]

In this regard, the question is whether it is possible and beneficial to reveal data that would be comparable and relevant in the meaning of the broadest concept of recidivism which includes the dark crime figure. Focusing on penological or normative recidivism, which narrows the concept of recidivism, the analysis of comparable data would highlight successful resocialisation practices. The idea is to use a narrower

27 Fazel and Wolf, 2015, p. 6.
28 Aebi, 2021, p. 284.
29 Ibid.
30 See: Goldstein, 2014.
31 Aebi, 2021, p. 284.
32 Ibid.
33 Ibid.
34 Ibid.
35 Fischer, 2005, p. 4.

approach to get an answer to the question of why treatment and consequences have a positive outcome for some offenders in the sense of not repeating socially undesirable behaviours and not for others. All of this shows that broad international comparisons are often unreliable, but more focused approaches can still provide useful insights. To move forward, it is important to look at how recidivism is defined in law and practice, since these definitions shape the way we study and interpret it. The following section therefore turns to normative definitions and categories of recidivism, highlighting how they frame our understanding of repeat offending.

2.3. Normative Definitions and Comprehensive Categories

A definition of normative recidivism, commonly described as the recommitment of a criminal act by an individual with a previous conviction, emphasises that an individual is considered a recidivist until their conviction is expunged or rehabilitation occurs.[36] Although the normative concept of recidivism can be defined like this, this is not a generally accepted legal definition. The main reason for the divergence in attempts to normatively define recidivism lies in the institutional detention of unacceptable or punishable behaviour. Recidivism is normatively defined through a range of distinct categories that capture various aspects of an individual's criminal behaviour.[37] These categories include arrest, reconviction, incarceration, parole violation, parole suspension, parole revocation, offense, absconding, and probation.[38] Within the arrest category, recidivism is determined by factors such as the number of arrests, recorded police contact, court appearances, time elapsed before the first arrest, and whether a conviction resulted.[39] Reconviction focuses on whether individuals received a jail or prison sentence, the severity of the offense, and the imposed sentence, while incarceration varies depending on the type of facility and the seriousness of the offense.[40] Parole violation takes into account the nature and seriousness of the violation, as well as whether it was police-initiated, whereas parole suspension encompasses new offenses and the number of suspensions. Furthermore, parole revocation involves new offenses, the seriousness of the offense, and the average number of good days on parole.[41] The offense category includes factors such as seriousness, number, and whether it is a new offense.[42] Absconding is

36 Getoš Kalac and Feuerbach, 2023, p. 9.
37 Maltz, 1984, p. 62.
38 Ibid.
39 Ibid.
40 Ibid.
41 Ibid.
42 Ibid.

determined by the issuance of an absconder warrant.[43] Lastly, probation assesses the proportion retained, length of time detained, number of violations, and the presence of a violation warrant.[44] Together, these categories provide a comprehensive framework for defining and understanding recidivism within research and evaluation contexts.

2.4. Penological Perspectives on Recidivism

Penology is the science of punishment, which, with its multidisciplinary approach, concentrates scientific and practical activity on the execution of prison sentences but also includes other types of criminal legal sanctions and substitutes for punishment.[45] Therefore, from the penological point of view, the focus is on the sentence that followed after the perpetrator was caught committing punishable behaviours. From a penological perspective, the main question that arises in the context of recidivism is why punishment fails to effectively prevent and rehabilitate offenders, prompting an examination of the factors that differentiate recidivist individuals who persist in violating the law despite punishment from those who are successfully deterred by punitive measures.

What is the purpose of punishment, and why is important to understand the purpose of punishment in the context of recidivism? Can recidivism be reduced through harsher punishment of perpetrators, and is such an approach rightful and justified? Traditionally purposes of punishment can be divided into two categories, utilitarian and non-utilitarian.[46] Utilitarian purposes seek to achieve beneficial effects (e.g., lower frequency or seriousness of future criminal acts by this offender or others). In contrast, non-utilitarian punishment purposes embody principles of justice and fairness.[47] The most frequently accepted non-utilitarian sentencing principle is retribution, which states that offenders should be punished in proportion to their fault in committing the offense.[48] In its approach, penology tries to find a balance between utilitarian purposes, such as crime prevention through deterrence, incapacitation, rehabilitation, and moral education, and non-utilitarian purposes, which are often in conflict.[49] The purpose of punishment, to promote public safety, aims to address recidivism by either reducing the likelihood of repeat offenses through

43 Ibid.
44 Ibid.
45 Derenčinović and Getoš, 2008, p. 24.
46 Frase, 2015, p. 67.
47 Ibid.
48 Ibid.
49 Tonry, 2006, p. 17.

strategies such as incapacitation, deterrence, or rehabilitation for the offender or by deterring potential offenders from engaging in criminal behaviour in the future.[50]

Recidivists have been a subject of interest for lawmakers for centuries, and legislative bodies worldwide persist in enacting increasingly severe sanctions for repeat offenders.[51] In addition, more recent statutory provisions urge judges to consider an offender's prior convictions when determining the appropriate sentence.[52] Such legal requirements are justified by the fact that recidivists have a greater chance of repeating the crime and by the fact that such perpetrators have a severe degree of culpability because they persist in committing criminal offenses even after the previous reaction by society.[53] Although harsher punishment for recidivists can be justified, there is still no valid empirical evidence that harsher penalties induced by judges reduce recidivism.[54] On the contrary, there are theories that harsh punishments such as long prison terms can have the opposite effect and lead to an even higher recidivism rate.[55]

Punishment is expected to fulfil several purposes, including protecting society, preventing future offences, rehabilitating offenders, and expressing justice through retribution.[56] In order to accomplish these goals, punishment must be applied in a way that is both proportionate to the offence and fair towards the offender. Proportionality ensures that the severity of the sentence corresponds to the gravity of the crime, while fairness requires that similar cases be treated consistently and without bias.[57] Balancing these principles is essential for maintaining the legitimacy of the penal system and public trust in justice. Yet the question of how fairness and proportionality should be operationalised in sentencing, particularly in the context of recidivism, is a complex matter that extends beyond the scope of this article.

50 Warren, 2007, p. 1308.
51 Roberts, 2008, pp. 468–469.
52 Ibid.
53 Ibid.
54 Estelle and Phillips, 2018, p. 271.
55 Cullen et al., 2011, p. 51; Gendreau et al., 1999, p. 16.
56 See: Beccaria, 1964; Weinhofen, 1929; Shuman, 1970; Bagarić, 2001; Brooks, 2012; Roth, 2014; Frase, 2015; Carvalho and Chamberlen, 2024.
57 See: Weinhofen, 1929; Frase et al., 2019.

3.
On Measuring and Assessing Recidivism

3.1. Methodological Considerations in Recidivism Research

Recidivism research can be classified into one of three broad categories depending on the purpose.[58] The first category, known as prevalence studies, attempts to calculate the number of recidivists and the percentage of all offenses that may be attributable to them.[59] The second category of research is exploratory. Instead of attempting to assess the prevalence of recidivism, they strive to identify personal, socioeconomic, and psychological factors associated with recidivism.[60] In the third category, recidivism is used as an outcome measure in the evaluation, and researchers try to figure out the extent to which a particular program or intervention reduces the likelihood of recidivism.[61] The study's purpose aids in defining the essential criteria, elements influencing the research, and methodological approach.

Various approaches are used to investigate and comprehend recidivism. Some of them are 1) longitudinal studies,[62] which involve following a group of people over time to see their patterns of reoffending; 2) comparative studies,[63] which compare recidivism rates among different groups of people or jurisdictions to see the impact of specific interventions or policies; 3) meta-analyses,[64] which can provide a comprehensive overview of the existing research and can assist in identifying patterns and trends across multiple studies; 4) risk assessment tools,[65] which are used to determine the possibility of an individual's reoffending; and 5) the qualitative research methodology approach,[66] which can be used to acquire a greater understanding of the experiences and views of those involved in the criminal justice system. Furthermore, methods such as victimisation[67] and offender surveys[68] are often used in attempts to discover institutionally unrecorded data on recidivism. There is no "correct" way to measure recidivism. Instead, we should think of recidivism as a series of various performance indicators that must be carefully tuned to the goal they are meant to

58 Payne, 2007, p. 6.
59 Ibid.
60 Ibid.
61 Ibid., p. 7.
62 See: Marques et al., 1994.
63 See: Bales et al., 2012.
64 See: Latimer, 2001.
65 See: Tully et al., 2013.
66 See: Breese et al., 2000.
67 See: Kiškis, 2016.
68 See: Scurich and John, 2019.

evaluate.[69] What are the constitutive elements of recidivism, and which questions should the researcher answer before collecting relevant data? The first important question is who will be regarded as a (previous) offender.[70] Admitting or omitting more or less crime-prone individuals can significantly affect the sample's risk structure and hence the research outcomes. The second important question is what constitutes a (new) offense, i.e., the quantity and type of recorded occurrences that are thought to be indicative of recidivism.[71] Common approaches include everyone arrested, convicted, or released from prison.[72] When measures are implemented that are more stringent or have more of a backend component, the recidivism rate tends to decrease. The third question is for how long the sample should be monitored.[73] One person may take many years to reoffend, whilst another may only take a few days. Specification and measurement of time are crucial in recidivism analysis because of the uncertainty and unpredictability of criminal behaviour. A follow-up period directly impacts the results in a way that longer observation times yield higher recidivism rates than shorter ones.[74] The common recommendation and practice are to apply a follow-up period of two years, which could start on the day of release from prison or return to custody, but the optimal observation period (whether it be six months, a year, two years, or longer) depends on a number of variables, including the purposes of the research.[75]

The goal here is not to advocate for one particular method of measuring recidivism, since each approach serves its own purpose depending on the specific aims of the research. A prevalence study, for instance, is useful for identifying the scale of the problem, whereas an evaluative study is more appropriate for measuring the effectiveness of programmes or interventions. Exploratory studies, on the other hand, may shed light on the social, personal, and psychological mechanisms behind reoffending. Each of these approaches has value in its own right, but their coexistence also creates a lack of uniformity in definitions, criteria, and methodological choices. This inconsistency makes it difficult to compare findings across different studies, jurisdictions, and time periods. As a result, the accumulated knowledge on recidivism often remains fragmented, limiting both theoretical development and the formulation of evidence-based policies. Recognising these differences and their implications

69 King and Elderbroom, 2014, p. 2.
70 Andersen and Skardhamar, 2017, pp. 617–619.
71 Ibid.
72 Ibid.
73 Payne, 2007, p. 105.
74 According to Wartna et al., the proportion of reoffenders in Dutch sample of prior convicts is 43% after one year, 56% after two years, and 62% after three years. 74% had been reconvicted of a new offence after 8 years. These findings show that the intensity of reoffending is highest shortly after the follow-up period begins. See more Andersen and Skardhamar, 2017, p. 619.
75 Farrington and Davies, 2007, p. 22.

is therefore essential, not to propose a single measurement standard, but to critically reflect on how diverse methodological approaches shape our understanding of recidivism.

3.2. Overview of Recidivism in Croatia

In Croatia, quantitative methods predominated in empirical criminological studies, and there doesn't seem to be much domestic discussion about criminological theory and research.[76] The criminological research community in Croatia is relatively small, and most criminological studies are still dependent on single actors rather than research institutes.[77] Furthermore, victimisation studies are one of the most important topics, given that the vast majority of criminological research still depends solely on official crime statistics, with all its weaknesses.[78] Police records or information from the annual statistical reports of the Croatian Bureau of Statistics (CBS) are typically the two sources of information utilised for crime analysis in Croatia. Therewithal, the Ministry of Justice's prison statistics are also frequently used for analyses. The Croatian Bureau of Statistics is unquestionably the primary source of information on crimes that are officially reported in Croatia.[79] Perpetrators are the CBS's primary counting unit. Every year, CBS issues comprehensive "statistical reports" and "first releases" about adults, adolescents, and legal entities that have been reported, accused, and found guilty of crimes and misdemeanours.[80] The data are completely free and detailed online in both Croatian and English. Furthermore, the most recent police statistics are published online quite frequently but are only available in Croatian language. A further challenge is that the data tables, which utilise the number of cases as the counting unit, do not include any methodological justification.

The latest research on the trend of recidivism in Croatia showed a relatively stable situation, and the share of recidivism ranged between 23% and 29% in in the period from 2011 to 2021.[81] Data from the Croatian Bureau of Statistics and data from report on the condition and operation of penitentiaries, prisons, and educational institutions were used for the research. Besides, recidivism was determined through three situations that include rearrest, return of the offender to prison or under supervision, and

76 Getoš Kalac and Bezić, 2017, p. 245.
77 Ibid.
78 Ibid., p. 246.
79 Getoš Kalac, Albrecht, and Kilchling, 2014, p. 158.
80 Ibid.
81 Feuerbach, 2024, p. 225.

reconviction of the offender for new criminal offense.[82] Oscillations in the numbers shown by the data are partially due to legal changes and the transition of one sphere of drug-related criminal offenses into the sphere of misdemeanours.[83] Drug-related crimes are significant for the criminological analysis of recidivism because their use increases the risk of criminal recidivism; hence, drug-related crimes are considered a significant predictor of recidivism.[84] These legal changes are partly responsible for making it difficult to conclude whether recidivism in Croatia is increasing or decreasing.

In Croatia, we have a continuous trend of natural population aging.[85] Considering the fact that aging leads to a decrease in strength, energy, isolation, and thus a reduction in delinquent opportunities, we can expect lower rates of crime and recidivism in the future.[86] Such predictions are not the result of implementing crime prevention policies based on empirical data but the result of demographic conditions[87] such as natural aging and migration of the working-age population.[88]

Although, according to the 2021 census, the elderly population in Croatia predominates (with the most represented age group being 50–69 years), in the total number of convicted criminals in 2022 they account for only 22% (2,737 offenders).[89] In contrast, the largest share of convicted offenders are younger and middle-aged adults aged 18–50, who represent 78% (9,618 offenders) of all convictions. The total number of inhabitants over the age of 50 is 1,698,128, which makes up 43% of the total Croatian population of 3,878,981 in 2021.[90] These figures confirm that, despite demographic aging, the younger able-bodied population continues to dominate the phenomenology of criminal offences, consistent with broader criminological findings that crime is most prevalent among younger age groups.

3.2.1. Prosecutors' Impact on Recidivism

The fundamental right and obligation of the state attorney is to prosecute the perpetrators of criminal offenses for crimes that are prosecuted ex officio.[91] His duties are prescribed by Article 38 of the Criminal Procedure Act and include: taking

82 Ibid.
83 Ibid., p. 227.
84 Derenčinović and Getoš, 2008, p. 177; Håkansson and Berglund, 2012, p. 4.
85 See: Croatian Bureau of Statistics, 2022.
86 Derenčinović and Getoš, 2008, p. 170.
87 Feuerbach, 2022, p. 12.
88 See: Croatian Bureau of Statistics, 2022a.
89 See: Croatian Bureau of Statistics, 2022b.
90 See: Croatian Bureau of Statistics, 2022.
91 Pavić and Gluščić, 2017, p. 486.

necessary action to detect criminal offenses and find the perpetrators; undertaking an investigation of criminal offenses to collect data needed for the initiation of the investigation; issuing orders and conducting investigations and other evidentiary actions; proposing temporary measures to ensure confiscation of property; deciding on the postponement of criminal prosecution; negotiating and agreeing with the defendant on the admission of guilt and the sanction; filing an indictment, issuing a criminal order; filing appeals against invalid court decisions and extraordinary legal remedies against final court decisions; and taking other measures provided for by law.[92] Regarding the prosecutors' approach to recidivism, two obligations stand out in particular: the first is that he can propose a sentence in the indictment for criminal offenses for which a fine or a prison sentence of up to 5 years is prohibited,[93] and the second is the authority to file appeals against court decisions if he believes that the sentence is not appropriate.[94] Suggesting a sentence in the indictment is possible only in abbreviated proceedings, and if the defendant agrees with the proposed sentence, the main hearing does not occur.[95] By recommending punishments that focus on addressing the root causes of criminal behaviour, prosecutors want to contribute to reducing the risk of recidivism. Cooperation between prosecutors and probation services is important for determining the type and measure of punishment. In the preliminary procedure, the prosecutor can ask the probation service for help when deciding on the type and extent of the criminal sanction. For this purpose, the probation office will examine and verify the specific information that the prosecutor needs, for example, information about the condition of the defendant's family, community circumstances, the victim's relationship to the committed criminal act, etc.[96] The probation office will prepare and submit a report to the prosecutor on the determined information. After considering individual circumstances, risk factors, and available support systems, prosecutors can recommend punishments or measures to mitigate the likelihood of reoffending. [97]

One of the goals of punishment is to deter individuals from engaging in criminal behaviour. If sentences are perceived as overly lenient, they may fail to effectively deter potential offenders from committing crimes.[98] With appeals against court decisions, the prosecutor tries to draw attention to the perpetrators of criminal acts who continuously violate the regulations and for whom too light sentences are imposed.

92 See: Croatian Criminal Procedure Act, 2022.
93 Croatian Criminal Procedure Act, 2022 Art. 540.
94 Croatian Criminal Procedure Act, 2022 Art. 463.
95 Pavičić and Bonačić, 2011, pp. 512–513.
96 Croatian Ministry of Justice and Public Administration, n.d.
97 Croatian Criminal Procedure Act, 2022 Art. 540.
98 Brooks, 2012, p. 36.

The European Court of Human Rights also warned against such practice.[99] By filing an appeal, the prosecutor can express dissatisfaction with a specific court decision. In prosecutorial practice, decisions on whether to appeal a court's sentencing judgment are predominantly influenced by the mitigating and aggravating circumstances of the specific case.[100] These individualised factors tend to be decisive, reflecting a focus on the particularities of the offender and the offence. By contrast, considerations such as the abstract severity of the crime and the broader objectives of punishment, including the expression of the social harmfulness of criminal acts and the reinforcement of public confidence in the fairness of sanctions, receive comparatively less attention in the decision-making process.[101]

3.2.2. Judicial Perspectives – Recidivism's Influence on Adjudication and Sentencing

When the most serious crimes (aggravated murder, murder, etc.) are excluded from the criminal policy of the courts, it is still noticeable that the courts, on average, impose sanctions in the lower third of the sentences prescribed by law for an individual criminal offense.[102] In addition, applying the institute of judicial mitigation of punishment is common.[103] According to the prosecutor's report on using conditional sentences in municipal courts and bearing in mind the number of recidivism and the general trend of reported crimes, this sort of criminal policy appears to be generally improper. To achieve not only special but also general prevention, it is important, in circumstances where a suspended sentence is insufficient, to sentence the perpetrator to prison for a suitable period of time as a reminder to everyone not to do criminal activities. In such cases, the state attorney's offices try to influence the criminal policy of the courts by filing appeals.

The current legal system in Croatia determines recidivism only in terms of sentencing, according to Article 47 of the Croatian Criminal Code.[104] This article states that when deciding on the type and measure of punishment, the court will consider all the conditions that impact the harshness of the sentence. The court is required to consider the offender's prior life, in which case the legislature leaves it up to the courts to freely determine whether a previous conviction is a mitigating or aggravating circumstance. Although a past conviction is not strictly defined as an

99 State Attorney's Office of the Republic of Croatia, 2021.
100 Novosel, 2004, p. 745.
101 Ibid.
102 State Attorney's Office of the Republic of Croatia, 2021.
103 Ibid.
104 See: Croatian Criminal Code, 2024.

aggravating circumstance, it is more frequently utilised in court to justify harsher punishments.[105]

The notion of imposing harsher punishments on recidivists has been debated for decades and continues to raise fundamental questions. Is it justifiable to subject individuals who repeatedly breach societal rules to more severe sanctions as a form of retribution? Does the imposition of harsher penalties genuinely deter future offending? And does such an approach align with the principle of proportionality, which requires that punishment correspond to the seriousness of the offence? These questions illustrate that discussions on stricter sanctions cannot remain confined to theoretical or normative considerations but must also be informed by empirical evidence. Without a sound understanding of why individuals reoffend and how legal, social, and institutional factors influence this process, harsher sanctions risk becoming merely symbolic rather than effective instruments of crime prevention. Although providing definitive answers lies beyond the scope of this chapter, the issues raised underscore the need for further research into the complexities of recidivism and the true impact of punitive measures. In this context, the use of the convict criminology approach is particularly valuable, as it highlights the lived experiences of offenders and the insights they can provide into the causes of reoffending and the barriers to reintegration. Despite its importance, this perspective remains underdeveloped in Croatia, which underscores the necessity of giving greater attention to offenders' voices in both research and practice.

3.2.3. Recidivism Within the Prison System – The Role of the Diagnostic Centre

The Diagnostic Centre is essential in treating recidivism in Croatia's prison system. It processes prisoners (medical, psychological, social, and criminological) to implement the principle of individualisation of punishment. The main goal is to create a prison sentence execution program with a proposal for a specific penitentiary or prison where the prisoner will serve his sentence.[106] According to the Act on Execution of Prison Sentences, the competent county courts refer all men and women who have been sentenced to a prison sentence of more than six months to the Diagnostic Centre.[107] All adult persons who have been ordered to undergo mandatory psychiatric treatment as a security measure, as well as persons whose sentence has been taken over for execution according to an international agreement or a special law, are also referred. If the prison sentence is shorter than six months, and if the remaining part

105 Grozdanić et al., 2004, pp. 570, 572, 580.
106 Croatian Minister of Justice and Public Administration, n.d.
107 See: Croatian Execution of Prison Sentence Act, 2021.

of the sentence is less than six months, the execution judge will direct the convicted person to serve the prison sentence in the nearest prison according to the place of residence.[108]

Perpetrators are held at the Diagnostic Centre for 30 days to assess the offender and to make individual proposals.[109] A multiple risk assessment is carried out in the Diagnostic Centre, which includes three categories: the first includes species assessment and the level of risk that exists during the execution of the sentence for the prisoner himself and for other prisoners in his environment, the second refers to the risk of criminal recidivism, and the third refers to the risks that may occur due to the misuse of the facilities made available to the prisoner in the form of more frequent contacts with the society.[110]

In the process of dealing with recidivism, the Diagnostic Centre looks at it from three perspectives: criminological, penological, and legal. The legal method comprises a codified and restrictive point of view in which a recidivist is solely defined as someone who has a prior conviction that has not been expunged from their criminal record by the expiration of the statute of limitations. The criminological approach tries to reveal the true situation; therefore, in addition to data from criminal records, data collected from prisoners, data from court expert reports, and data available on the internet or obtained from other persons are also used. The penological approach considers data from the temporary archive, such as own criminal records, data from a juvenile prison, or data on a remand prison stay.[111]

Recidivist prisoners and primary offenders are separated to avoid criminal infections. After the prisoner is sent to serve his sentence in the penitentiary or prison that is thought to best respond to his needs, the prison administrator must review the success of the program's execution every six months.[112] The purpose of such a check is not to evaluate the success of the treatment but to check the extent to which the individual prison sentence execution program[113] was successfully carried out. Unfortunately, other forms of inspection of the evaluation of the treatment do not exist.[114]

108 Croatian Execution of Prison Sentence Act, 2021 Art. 54.
109 Feuerbach, 2022, pp. 22–24.
110 Ibid.
111 Feuerbach, 2024, p. 232.
112 Ibid.
113 An individual execution program of a prison sentence consists of pedagogical, work-related, healthcare, psychological, social, and security procedures tailored to the characteristics and needs of inmates, as well as to the capabilities and types of the correctional facility or prison. In a broader sense, treatment encompasses all actions directed toward inmates with the purpose of their rehabilitation and social reintegration. On the official website of the courts of the Republic of Croatia, *Information on the execution of prison sentences*. In: Official website of the courts of the Republic of Croatia, n.d.
114 See: Official website of the courts of the Republic of Croatia, n.d.

4.
The Importance of Evidence-Based Crime Policy in Recidivism Prevention

The strategy of developing and executing policies and decision-making processes based on a comprehensive study, data, and scientific evidence is referred to as evidence-based policy.[115] It emphasises using empirical evidence to inform policy decisions and assess the effectiveness of policies and programs.[116] Policymakers should use research findings, data analysis, and expert opinion to make informed decisions. Besides, they should use evidence to understand the potential repercussions of various policy alternatives, select the most successful actions, and avoid or reduce unexpected consequences. The importance of evidence-based policy is unquestionable, and the idea of evidence-based policies was recognised yet during ancient Greece. Even then, Aristotle proposed that different kinds of knowledge should inform rulemaking.[117] But still, to this day, in many areas of social policy, such as education, poverty reduction, and crime prevention, government programs are often implemented with little regard to evidence.[118] Nonetheless, it is possible to find representative examples of evidence-based policy to curb crime by preventing recidivism, which can serve as a model for future policies. One such example is a Pager's study on evidence-based policy for successful prisoner re-entry, which examines the challenges offenders encounter during reintegration and emphasises the crucial role of employment in reducing reoffending.[119] The author applies a rigorous academic methodology by using statistical evidence, research studies by reputable academics, empirical modelling, policy analysis, and a historical perspective. Supporting ex-offenders throughout this initial transition is presented as an essential policy objective, as it enables them to achieve stability and become indistinguishable from individuals who have remained arrest-free.[120] Moreover, by providing inmates support services, the aim is to enhance employability and reduce the risk of recidivism.[121] This study demonstrates how evidence-based approaches can provide valuable guidance for developing more effective crime prevention policies.

115 See: Pager, 2006; Warren, 2007; Hinkkanen and Lappi-Seppälä, 2011.
116 Parkhurst, 2017, p. 14.
117 Ibid.
118 Goddard and Myers, 2017, p. 152.
119 Pager, 2006.
120 Ibid.
121 Ibid, p. 512.

In Croatia, scientists systematically warn about the lack of evidence-based policy and the dangers of policies based on penal populism.[122] One of the main issues is the lack of evaluation studies in which resocialisation efforts of any level would be monitored.[123] The lack of such studies makes reviewing the policies and improving such systems difficult. The preventive criminal legal policy should base its strategic action on scientific data, expert analyses, and in-depth knowledge of the phenomenological determinants of recidivism. Recidivism research contributes to creating the evidence basis required for effective and efficient crime prevention methods.

5.
Conclusion

Recidivism remains one of the central challenges of criminology and criminal justice, both in terms of its conceptualisation and its measurement. Despite its seemingly straightforward definition as a relapse into criminal behaviour, the absence of a unified understanding across criminological, penological, and legal perspectives complicates its analysis. The distinction between recidivism and reoffending, although frequently employed, is not consistently recognised, which further undermines the comparability of research findings. Differences in definitions, follow-up periods, and data sources create substantial obstacles for international and national comparisons, leaving the accumulated knowledge fragmented and often inconclusive.

Turning to the specific context of Croatia, empirical criminological studies rely predominantly on quantitative methods. Challenges in the criminological research community, dependence on official crime statistics, and limited domestic discourse on theory underscore the need for a more nuanced approach. Recidivism trends in Croatia, analysed through rearrest, return to prison, and reconviction, show a relatively stable situation, with recidivism ranging between 23% and 29% from 2011 to 2021. Legal changes, particularly in drug-related offenses, contribute to oscillations in the reported data, making it challenging to assess the overall direction of recidivism in the country. Within the justice system, prosecutors and judges both influence recidivism outcomes. Prosecutors shape sentences through proposals, plea agreements, and appeals, with decisions driven mainly by the aggravating and mitigating factors of the individual case. Courts, meanwhile, tend to impose sanctions in the lower range of statutory limits and often apply suspended sentences or judicial mitigation. Prior convictions are not formally defined as aggravating, but they are

122 Getoš Kalac and Feuerbach, 2023, p. 16; Kalac and Bezić, 2017, pp. 245–246; Šprem, 2023, p. 33.
123 Mikšaj-Todorović and Buđanovac, 1998, pp. 91–92.

often treated as such in practice. Both prosecutorial and judicial approaches highlight the difficulty of balancing deterrence, fairness, and proportionality in sentencing. In the prison system, the Diagnostic Centre plays a central role by conducting medical, psychological, social, and criminological assessments to individualise punishment and manage risk. It approaches recidivism from legal, criminological, and penological perspectives. Although this structure helps separate primary offenders from recidivists and tailor sentence plans, the lack of systematic evaluation of treatment outcomes remains a weakness, limiting the ability to learn from practice.

Moreover, evidence-based policy represents a crucial but underdeveloped area in Croatian crime prevention. International examples, such as studies on prisoner re-entry, highlight how targeted support, particularly employment, can reduce reoffending and promote successful reintegration. In Croatia, scholars warn of the risks of penal populism and the absence of evaluation studies, which hinders the improvement of resocialisation programmes. Developing a culture of evidence-based policymaking, grounded in systematic research and evaluation, is essential for creating effective preventive strategies.

Considering the persistent challenges surrounding recidivism in the Croatian justice system, several recommendations can be made to strengthen both research and practice. First, it is necessary to introduce a clear statutory definition of recidivism in legislation, so that legal, administrative, and research practices are aligned, and the concept is applied consistently. Second, data collection and reporting should become more transparent, with clearer explanations of the methodologies used, including details on sources, sampling, and follow up periods, which would improve the reliability of information and allow for more meaningful comparisons. Third, future research should include the voices of prisoners and draw on the experiences of prison and probation staff who are in daily contact with offenders, as these perspectives offer valuable insights into the barriers to reintegration and the effectiveness of interventions. Fourth, systematic evaluation studies are needed to identify which programmes and sanctions genuinely work in reducing reoffending. Finally, stronger collaboration between institutions, such as the police, courts, prisons, probation services, and research bodies, is essential for improving data quality, supporting evidence-based policymaking, and creating a more coherent response to recidivism.

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Artificial Intelligence – A Legal Perspective with Special Regard to Contract Law and Smart Contracts**

ABSTRACT: *The rapid evolution of information technology in the past century has led to the emergence of increasingly complex contractual relationships, prompting legal scholars to explore the intersection of automation and contracts. With the emergence of Artificial Intelligence (AI), the legal landscape faces new challenges and opportunities, particularly regarding smart contracts. This paper outlines the legal framework governing AI in the European Union and delves into the implications of technological developments for contract law, focusing on smart contracts in Hungarian and Serbian law. The European Union has taken proactive steps in regulating AI in alignment with societal welfare, fundamental rights, and ethical considerations. In Hungary and Serbia, the legal recognition of electronic contracts lays the foundation for integrating advanced technologies like smart contracts. Serbian legislation has made significant strides in explicitly permitting and regulating smart contracts through the Act on Digital Property. The emergence of smart contracts presents novel challenges to traditional contract law, including issues of code interpretation, accountability for coding errors, and the need for regulatory frameworks to oversee implementation. Despite these challenges, the adoption of smart contracts offers streamlined execution, transparency, and increased efficiency in contractual processes, paving the way for a more digitally driven legal landscape.*

KEYWORDS: *Artificial Intelligence, Smart Contracts, Blockchain, E-contracts, IT in Contract Law, Contractual Relationships, Legal Framework.*

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1.
Introduction

Rapid changes in information technology and in society as a whole over the past century have given rise to more intricate contractual relationships, prompting interpreters to explore the connection between automation and contracts, as well as new legal categorisations of contracts, resulting in proposals for new types of juridical acts.[1]

Although Artificial Intelligence[2] has gained a significant importance only in recent years, its genesis traces back to the 1950s, most notably to the seminal contributions of Alan Turing, who laid the foundations of machine learning through the Turing-test, published in his study "Computing Machinery and Intelligence".[3]

In the contemporary landscape, the burgeoning potential of AI and its data-processing capabilities has generated substantial interest and investment from large enterprises and research institutions, driving further advancements and investment in the field.[4] AI now integrates seamlessly into the digitalised economy of the globalised era, with effects increasingly evident across numerous domains, from financial markets to innovative healthcare solutions, and software capable of generating artistic and literary content.[5]

Moreover, as the emergence of the Internet revolutionised numerous aspects of society and science, including contract law, the widespread adoption of electronic contracts became possible through established and detailed legal regulations.[6] At the same time, there is a growing trend towards integrating advanced technologies such as AI and blockchain into contract formation, leading to the development and increasing use of so-called smart contracts across various contractual relationships.[7]

Artificial Intelligence represents a complex realm, encompassing a broad spectrum of theories and applications, which makes its comprehension challenging even as it increasingly shapes legal frameworks and systems.[8] As technology progresses rapidly, there is an ever growing need to comprehend its potential, particularly in legal contexts.[9]

1 Stazi, 2021, pp. 9–10.
2 Hereinafter referred to as: AI.
3 Netz, 2022, p. 98. http://doi.org/10.62733/2025.1.5-15
4 Ibid., p. 96.
5 Ibid.
6 Juhász, 2021a, pp. 48–49.
7 Ibid.
8 Magnusson Sjöberg, 2019, p. 177.
9 Ibid.

Furthermore, legal theory has ventured into examining whether AI systems can participate in contractual relationships as individuals, i.e. whether they possess the cognitive capabilities to do so.[10] Two different assessments arise: the first approach considers AI an 'agent in contract law'; the second approach involves AI as a party to a contractual relationship.[11]

In the first case, AI functions as a tool used by contracting parties to expedite the conclusion of contracts, enhance security, and improve overall contractual outcomes.[12] For instance, AI may analyse human behaviour in detail, providing sellers with information based to estimate customers' willingness to pay the price for specific products.[13] AI may also automatically execute obligations deriving from contractual relationships, an increasingly common use in connection with smart contracts.[14]

Exploring the alternative approach, which entails the independent role of AI in contractual relationships, requires intricate philosophical assessment of human cognitive functions and the concept of a conscious 'artificial mind'.[15]

Given the complexity and highly theoretical nature of such questions, this paper shifts focus. The following sections explore the impact of technological development on contract law, with particular attention to the emergence of smart contracts.

The aim of this paper is to outline the various effects of technological advancements, particularly regarding smart contracts. As technological evolution accelerates, comprehending and staying abreast of these advancements becomes increasingly vital. By concluding this assessment, the paper endeavours to enrich the comprehension of the intersection between technology and contract law, elucidating its implications for legal practices and frameworks.

By analysing the legal frameworks of Hungary and Serbia concerning smart contracts, the paper attempts to shed light on the evolving regulatory framework of contract practices in the digital age and legal responses to technological innovation. After presenting an overview of the legal framework regarding AI in the European Union, smart contracts in general, and their implementation in Hungarian and Serbian law, a brief comparative summary will follow.

10 See: more Linarelli, 2019, p. 340; Malinowska, 2022, p. 90.
11 Ebers, Poncibò and Zou, 2022, p. 7.
12 Ebers, 2022a, p. 21.
13 Ibid., p. 22.
14 Ibid., p. 23.
15 Linarelli, 2022, p. 72.

2.
Short Overview of the Legal Framework Governing AI in the European Union

To ensure that AI serves the welfare of humanity, it is imperative to instil trust in it by grounding AI development in core values, fundamental rights, human dignity, and privacy protection.[16] In this regard, legal regulation plays a pivotal in establishing the necessary framework for responsible AI deployment.[17]

The regulation of Artificial Intelligence can occur at various legislative levels, with states remaining the primary regulators, while international norms are likely to remain exceptions due to limited regulatory capabilities.[18] Nonetheless, international regulatory frameworks can facilitate coordination among states and guide policymaking.[19]

Numerous countries are now formulating of national plans to facilitate and utilise AI systems. Some have delineated comprehensive strategies, incorporated AI technologies into broader national technology agendas, or crafted respective national strategies for AI research.[20]

Despite these attempts at the national level, it is important to emphasise the intensive activity of international organisations aiming to establish a global legal framework. Among these organisations, the European Union stands out as the most proactive regulator, incrementally advancing towards comprehensive regulatory measures.[21]

Amidst these attempts, the European Commission's Communication 'Artificial Intelligence for Europe'[22], the High-Level Expert Group on AI's 'Ethics Guidelines for Trustworthy AI,'[23] and the 'Policy and Investment Recommendations for Trustworthy AI'.[24] These documents served as a basis for further regulatory development.[25] Notably, the European Commission released a *White Paper on Artificial Intelligence*[26] in 2020, aiming to balance the encouragement investment in the AI industry with

16 Tóth, 2020, p. 4.
17 Ibid.
18 Hárs, 2023, p. 126.
19 Ibid.
20 Ebers, 2022b, pp. 323–324.
21 Hárs, 2023, p. 131.
22 COM/2018/237 final.
23 Ethics guidelines for trustworthy AI, 2019.
24 Policy and investment recommendations for trustworthy AI, 2019; Ebers, 2022b, p. 325.
25 Ibid.
26 White Paper, 2020.

the creation of a secure environment for its application.[27] This was succeeded by a Commission report on the safety and liability implications of Artificial Intelligence, the Internet of Things, and robotics.[28]

The most significant advancement came in 2021, when the Commission published its proposal for the so-called Artificial Intelligence Act.[29] Despite critical opinions[30] expressed by some scholars, the European Parliament approved the Artificial Intelligence Act on 13 March 2024.[31] This Regulation aims to enhance the internal market by establishing a consistent legal framework for the development, market entry, deployment, and utilisation of AI systems within the European Union. It encourages the adoption of human-centric and trustworthy AI while safeguarding health, safety and fundamental rights.[32] It also seeks to foster innovation and facilitate the unrestricted movement of AI-based goods and services across borders, preventing Member States from imposing limitations on the development, commercialisation, or use of AI systems unless explicitly authorised by the Act.[33]

Regulating AI is crucial due to its diverse impact and potential risks: AI technologies, spanning robotics to intelligent algorithms, require clear legal frameworks to address security, privacy, and ethical concerns.[34]

A further dimension concerns the ethical and liability aspects of AI and smart contracts in contractual contexts. While this paper has so far focused primarily on AI as a tool, questions surrounding responsibility for damage caused by autonomous AI decisions cannot be overlooked. These issues cut across tort law, product liability, and consumer protection, and raise broader ethical issues regarding transparency, accountability, and fairness.

27 Auer, 2021, p. 109.
28 COM/2020/64 final; Monot-Fouletier, 2022, pp. 164–165.
29 Mezei, 2023, p. 56.
30 For example, members of the Robotics and AI Law Society (RAILS) expressed concerns about the clarity and scope of the proposed AI regulation. They questioned, for example, whether Member States can deviate from its requirements and whether the legislative basis used is appropriate. Additionally, they highlighted the broad definition of 'AI systems and the lack of clarity regarding the treatment of AI components, academic research and open-source software. (For more see: Ebers et al, 2021.) Similarly, without raising objections against the Commission's attempts to develop a comprehensive AI regulatory framework and acknowledging the positive aspects, such as its commitment to addressing AI risks and protecting fundamental rights, a group of researchers responded to the European Commission's Proposal for an Artificial Intelligence Act, pointing out several deficiencies. These included unclear scope and inadequate safeguards against AI-related harms, recommendations for refining definitions and strengthening protection against AI manipulation and biometric identification. (For more see: Smuha et al, 2021.)
31 EP Resolution, 2024.
32 Artificial Intelligence Act, 2024, Para. (1).
33 Ibid.
34 de Almeide, dos Santos ad Farias, 2021, p. 506.

A central challenge arises from the so-called black-box phenomenon. Unlike traditional software, where rules and decision pathways are explicitly coded, machine-learning algorithms can generate solutions that are neither anticipated nor fully explicable *ex ante* or *ex post*.[35] This lack of transparency undermines two foundational pillars of liability law: intent and causation.[36] Doctrines relying on foreseeability of harm or purposeful design become difficult to apply when even a system's creators cannot trace why or how an outcome was reached.[37] In such circumstances, tests of intent (whether an actor aimed to bring about a certain effect) and causation (whether the harm was a foreseeable result of the conduct) risk collapsing, as the AI's reasoning cannot be reconstructed in a manner courts can evaluate.[38]

This analysis reinforces the argument that negligence-based liability may prove insufficient for AI-related harms. When the chain of decision-making is inaccessible, strict or alternative liability regimes may be necessary to ensure compensation and accountability, while still maintaining incentives for innovation. In this context, several liability models have been proposed in legal scholarship and policy debates, each with distinct advantages and drawbacks.

Strict liability, i.e. holding the operator or deployer of an AI system liable regardless of fault, borrowing principles from dangerous activity doctrines, ensures compensation for victims but risks deterring innovation by assigning excessive responsibility.[39]

Product liability, which treats AI as a product and places responsibility on manufacturers for defects in design, coding, or deployment. This perspective is reflected in European Commission proposals to amend the Product Liability Directive to cover digital technologies.[40]

Taken together, these approaches underline that liability solutions alone are not sufficient. To complement them, proactive regulation is essential to mitigate biases, discrimination, and cybersecurity threats associated with AI, while ensuring consumer protection and fostering innovation.[41] Overall, effective regulation is therefore vital for navigating the evolving landscape of AI and safeguarding societal values and interests.

With regard to smart contracts, there is growing interest in establishing uniform legislation to address the challenges posed by blockchain and smart contracts, which

35 Bathaee, 2018, p. 907.
36 Ibid., pp. 906, 922.
37 Ibid., pp. 902–903.
38 Ibid., pp. 906–908.
39 Ibid., p. 931.
40 Proposal for a Directive of the European Parliament and the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive), 2022.
41 Bathaee, 2018, p. 931.

resulted in various initiatives launched to study these issues and promote cross-border cooperation.[42] The European Parliament has stated that where challenges arise in the digital single market with the use of smart contracts, appropriate measures should be implemented, including potential legal coordination or mutual recognition among Member States.[43] In this regard, Malta has been notably proactive in enacting legislation defining smart contracts and providing for their legal enforceability.[44]

In the subsequent sections, an in-depth assessment will be conducted to elucidate the multifaceted impacts of technological advancements, particularly focusing on the emergence and implications of smart contracts within contemporary contract law frameworks.

3.
Impacts of Technological Development on Contract Law

The adoption of digital technologies has significantly influenced the evolution of contract practices and has affected the progression of contract law by transforming the methods and tools involved in contractual relationships through AI technology.[45] However, AI remains only partially regulated, primarily within specific institutes and legal frameworks concerning areas such as copyright and personal data protection etc.[46]

One of the cornerstones of technological development is the emergence of so-called smart contracts. They autonomously fulfil contractual obligations as agreed by the involved parties, with execution[47] governed exclusively by the uploaded code into the blockchain.[48] Smart contracts are particularly useful when trust between contracting parties is limited or where they are geographically distant, an increasingly relevant consideration for international agreements.[49]

With regard to their definition, emphasis should be placed on the work of Nick Szabo, a computer scientist and legal scholar who "defined smart contracts as "machine-readable transaction protocols which create a contract with pre-determined terms".[50]

42 Stazi, 2021, pp. 92–93.
43 Ibid., p. 93.
44 Ibid.
45 Schulze and Zoll, 2021, p. 35.
46 Andonović, 2020, p. 114.
47 The program being the code of the smart contract itself, integrated into a blockchain. See: Cvetković, 2020, p. 82.
48 Cvetković, 2020, p. 82.
49 Stazi, 2021, p. 76.
50 Lauslahti, Mattila and Seppala, 2017, p. 3.

However, Szabo's original formulation differs from its current broader usage, which relies on complex technology of blockchain, requiring deep technical understanding.[51] Smart contracts, described as "self-executing or self-enforcing contracts that can be stored and duplicated in a blockchain"[52], leverage direct representation of their terms in code. They enable automatic execution of predefined rules encoded in software,[53] transcending conventional contract types, facilitating online conclusion and performance, entirely in virtual space with blockchain-based security.[54] Importantly, smart contracts do not entail the involvement of conscious AI in contractual relationships, as blockchain merely provides the platform for preserving and protecting the contractual content.[55]

Taking into account their distinctive characteristics, the legal relevance of smart contracts has been extensively examined in legal literature.[56] Some scholars argue that smart contracts lack legal significance strictly in technical terms, particularly when viewed merely as computer code.[57] They are not universally perceived as a legal matter, especially within the context of blockchain technology.[58] Nonetheless, smart contracts are not isolated from legal implications: once they involve legally significant actions, the relevant legal regulations apply.[59]

A comparison between legal regulation and computer code reveals significant differences. Law and computer code operate as autonomous systems regulating distinct spheres, where law regulates social behaviour, whereas code governs IT processes. Their interaction can introduce complexities and potential legal issues.[60] In this context, Professor William J. Mitchell emphasises the role of code as the "law"[61] governing cyberspace, highlighting the interplay between legal norms and computational systems.[62] Recognising the legal significance of computer code underscores the need to establish connections between both systems to ensure compliance and resolve legal ambiguities.[63]

Understanding the distinction between "smart contract" and "smart legal contract" is crucial, as it illustrates how software-based agreements can bridge the gap

51 Juhász, 2021b, pp. 43–44.
52 Essebir and Wyss, 2017, p. 8.
53 Ibid.
54 Juhász, 2021b, p. 46.
55 Poncibò, 2022, p. 202.
56 In this regard see: Juhász, 2021b, pp. 41–53; Woebbeking, 2019, pp. 106–113; Jaccard, 2018; Linarelli, 2019, pp. 330–347.
57 Woebbeking, 2019, p. 109.
58 Ibid.
59 Ibid.
60 Jaccard, 2018, p. 8.
61 Mitchell, 1995, cited in Lessig, 1999, p. 6.
62 Jaccard, 2018, p. 9.
63 Ibid, p. 8.

between legal regulation and computational systems, facilitating smother interaction and mitigating legal complexities.[64] Thus, a smart legal contract, embedded within a software, signifies legal obligations among parties, with the computer ensuring automated execution upon activation of the agreement.[65] On the other hand, smart contracts as mere computer codes do not inherently establish legal obligations or possess enforceability.[66] They are commonly utilised for executing transactions on decentralised cryptocurrency platforms or facilitating online gambling.[67] This conceptual distinction is not merely theoretical; it increasingly appears in judicial settings.

Although judicial practice in this area is still developing**,** existing cases already emphasise their legal consequences and risks. In *Van Loon v Department of the Treasury*[68] (2024), the United States Court of Appeals for the Fifth Circuit addressed the sanctioning of Tornado Cash, a decentralised crypto-mixing protocol based on unchangeable smart contracts, under United States law of sanctions. The Court held that immutable smart contracts cannot be considered "property" of a foreign national or entity under the International Emergency Economic Powers Act,[69] and thus cannot be prohibited through administrative means. This ruling illustrates both the novelty of blockchain-based contractual mechanisms and the challenges of fitting them into prevailing statutory concepts of property and enforcement.

Another instructive case is *Nguyen v Barnes & Noble, Inc*.[70] (2014), regarding the enforceability of an online "browsewrap" agreement. The Ninth Circuit ruled that placing a hyperlink to Terms of Use on the bottom of the webpage was insufficient to establish constructive notice, rendering the arbitration clause unenforceable. This ruling underscores a fundamental principle: mutual assent remains essential for smart contracts, where consent may be automated or implied, raising questions about whether traditional doctrines of notice and assent can adequately safeguard parties.

Both regulatory and academic interest continue to increase. *The Tornado Cash* case and *Nguyen* ruling have received wide analysis, underlining conflicts between technical innovation, consumer protection, and regulatory compliance. In particular, industry analysis focuses on how Tornado Cash illustrates the challenge of reconciling privacy with anti-money-laundering risks in decentralised infrastructure.

64 Sokolov, 2018, p. 14.
65 Ibid.
66 Juhász, 2021b, p. 48.
67 The Law Commission, 2021, p. 1.
68 *Van Loon v Department of the Treasury*, 2024.
69 Casey et.al., 2025.
70 Nguyen v Barnes & Noble, Inc., No. 12-56628 United States Court of Appeals for the Ninth Circuit, 2014.

Collectively, these cases demonstrate that, even in jurisdictions without explicit statutory provisions governing smart contracts, regulators, and courts are actively grappling with questions of validity, enforceability, and potential misuse of electronic contracts.

In the following section of this paper, the legal frameworks of Hungary and Serbia concerning smart contracts shall be analysed.

3.1. Hungary

Understanding how technological innovations align with existing legal structures and regulatory frameworks is essential for ensuring clarity and consistency in legal practices within the Hungary.

Legal literature identifies a precursor to smart contracts: the so-called Ricardian contract, which enabled parties to register documents and securely connect them to other systems, such as accounting.[71] Its primary aim was to codify the elements of a legal agreement in a format that could be elaborated and executed by software before the execution of the contract.[72] This means that parties could therefore express their intentions digitally, although execution only occurred once specified conditions were met.[73]

One of the initial steps towards technological advancement of contract law was the introduction of contracting by electronic means, marking a technical shift in how contracts are concluded.[74]

Following the enactment of the Directive on electronic commerce[75], Hungary adopted Act No. CVII of 2001[76] to ensure compliance and address consumer protection in electronic contracts.[77] The Act mandates service providers to disclose terms and provide specific information before online contract conclusion, with greater flexibility afforded to non-consumer contracts.[78]

Further regulation is provided by the Hungarian Civil Code,[79] which incorporates similar provisions governing e-contracts, with exceptions for individual electronic

71 Stazi, 2021, p. 90.
72 Ibid.
73 Ibid.
74 Juhász, 2020, p. 64.
75 Directive 2000/31/EC
76 Act No. CVII of 2001
77 Juhász, 2020, p. 65.
78 Ibid.
79 Hereinafter referred to as: HunCC.

communications, while are generally non-mandatory, deviations are prohibited in consumer contracts.[80]

When considering the integration of smart contracts into Hungarian contract law, it is important to distinguish between smart contracts and smart legal contracts. As previously noted, smart contracts are "computer programs which run automatically, in whole or in part, without the need for human intervention"[81]. Within their various applications, they may execute legally enforceable contracts, forming a specific category known as "smart legal contracts".[82]

This distinction is of particularly importance in Hungarian legislation, where the right to claim performance is indispensable for contract formation.[83] Under the Hungarian Civil Code, a contract constitutes the mutual and unanimous declaration of intent by the parties, resulting in obligations and the corresponding right to claim performance.[84] Where legal enforceability is absent, smart contracts (being computer codes, do not inherently establish legal obligations) may therefore be considered as *naturalis obligatio*.[85] At the same time, the lack of enforceability stems from their automated nature, which theoretically minimises enforcement issues or disputes.[86]

Different considerations arise when analysing smart legal contracts. According to the Commissioners of the Law Commission for England and Wales, a smart legal contract has three key attributes:[87] First, the automatic execution of some or all contractual obligations via computer program;[88] Second, it holds legal enforceability; and third, the computer program powering the contract operates on a distributed ledger.[89]

In this regard, a further issue concerns the form in which the smart legal contract appears: in the form of code, as the encrypted version of a natural-language contract;[90] or in hybrid form that encompasses both[91].

For instance, parties participating in algorithmic trading, may draft the foundational terms of their agreement in a natural-language "master agreement",[92] while the specific terms for individual trades are encoded in software, with the master

80 Juhász, 2020, pp. 65–66.
81 The Law Commission, 2021, p. 1.
82 Ibid.
83 Vékás, 2016, cited in Juhász, 2020, p. 74.
84 § 6:58 of the HunCC.
85 Juhász, 2021b, p. 48.
86 Juhász, 2020, p. 74.
87 The Law Commission, 2021, p. 11.
88 Ibid.
89 Ibid.
90 Juhász, 2020, p. 73.
91 Cieplak–Leefatt, 2017, cited in Juhász, 2020, p. 73.
92 The Law Commission, 2021, p. 28.

agreement clarifying that these transactions form part of the overarching legal relationship.[93]

Scholarly views diverge on the issue of "lack of legal enforceability",[94] which in smart legal contracts stems from their automated execution, rendering enforcement unnecessary since contract terms are designed to executed themselves.[95] Others contend that element of enforceability remains a core characteristic[96] of smart legal contracts[97], and that parties retain access to judicial remedies to enforce their claims.[98]

At present, the issue of whether smart contracts are legally enforceable in Hungary remains unresolved.[99] It would be premature to definitively ascertain the enforceability or non-enforceability, given the lack of legislative measures of the topic.[100] Although smart contracts and blockchain technology are widely discussed in legal theory, and distributed ledger technology is used in practice, dedicated legislation or established judicial precedents addressing their legal implications are yet to be established.[101]

From a *de lege ferenda* perspective, Hungary may draw inspiration from the developing regulatory framework of the European Union, and from the regulatory solutions adopted in neighbouring jurisdictions. Several Central and Eastern European jurisdictions have introduced provisions or guidelines regarding the recognition and enforceability of smart contracts, thereby offering models for adaptation to the Hungarian context. By examining these regional approaches – whether statutory definitions, validity requirements, or supervisory mechanisms – Hungary could develop a coherent regulatory framework aligned with European standards and regional best practices.

Some potential legislative actions may include: introducing a clear statutory definition of smart contracts and explaining their relationship to electronic contracts under the Civil Code; recognising smart contracts as a legitimate contractual form within specific domains (i.e., pledge agreements, transactions involving digital assets); establishing mandatory disclosure and consent rules for smart contract-using service providers, making things transparent to users; designating a supervising authority responsible for overseeing the deployment of smart contracts in financial and commercial activities.

93 Ibid.
94 Juhász, 2020, p. 74.
95 Ibid.
96 Labancz, 2018, p. 155.
97 For more see: Stefán, 2021, p. 306.
98 Ibid.
99 Juhász, 2021b, p. 48.
100 Stec et al., 2022, p. 51.
101 Ibid.

Such steps would close existing legal loopholes and align Hungarian law with broader European trends.

3.2. Serbia

Similar to Hungarian law, the Serbian legislation and legal theory enshrine the possibility of concluding contracts by electronic means. In this regard, the Act on Electronic Commerce is of particular importance. It delineates electronic contracts as contracts, concluded between a provider of information society services and a service user by electronic means.[102]

However, the Act on Electronic Commerce excludes various types of contracts from electronic conclusion.[103] These primarily include contracts in which the prescribed form is deemed essential for their valid conclusion, as the legislator has determined that significant legal consequences may arise for one or both contracting parties, or even for public interests.[104]

Another significant legal act governing electronic contracts is the Act on Electronic Document, Electronic Identification and Trust Services in Electronic Business,[105] which regulates, among other matters, the electronic signature – an essential requirement for concluding contracts in electronic form.[106]

It is noteworthy to consider the Obligations Act[107], which, through its provisions on the written form of contracts, allows for electronic conclusion by stipulating that written form is observed if the parties exchange letters or agree by teleprinter or other means.[108]

In contrast with Hungary, where smart contracts lack specific norms, Serbia has embarked on the initial steps toward regulating this domain. A notable development is the recognition of smart contracts in the Act on Digital Property[109]. The *travaux préparatoires* reveal that the key motivations for adopting this Act were the regulation and growth of the digital-asset market, the prevention of criminal abuse, the facilitation of token-based financing, the advancement of the capital market through digital technologies, and strengthening measures against abuse, including money laundering and terrorism financing.[110] This legislative also aims to

102 Art. 3, Para. 1, subpara. (5) of Act on Electronic Commerce, 2019.
103 Art. 10 of Act on Electronic Commerce, 2019.
104 Radovanović and Miščević, 2018, p. 1652.
105 Act on Electronic Document, 2021.
106 Radovanović and Miščević, 2018, p. 1654.
107 Art. 72, Para. (3) of Obligations Act, 2020.
108 Ibid., p. 1656.
109 Act on Digital Property, 2020.
110 Proposal of the Act on Digital Property, 2020, p. 72.

enhance the business environment, propel digitalisation, and align Serbia with global digital business trends, while promoting IT entrepreneurship.[111]

According to the Act on Digital Property, a smart contract is defined as a computer program or protocol, based on distributed database technology or similar technologies, which entirely or preponderantly automatically executes, controls, or documents legally relevant events and actions in accordance with an already concluded contract, and whereby that contract may itself be concluded electronically through that program or protocol.[112]

Following the same analogy used in the Hungarian legislation concerning the distinction between smart contracts and smart legal contracts, it could be concluded that although the Serbian legislator uses the term 'smart contract' *[pametan ugovor],*[113] the legal provision in fact refers to smart legal contracts, as it regulates situations connected to the execution of previously concluded contracts.

In addition to the definition, the Act on Digital Property also features a distinct article[114] on smart contracts. It stipulates that the use of smart contracts in the secondary trading of digital assets is permitted.[115] However, where a digital-asset service provider offers services involving smart contracts, it must obtain the consent of its users for their use.[116]

Moreover, the Act on Digital Property explicitly permits the conclusion of a contract of pledge[117] through a smart contract. Such a contract may be concluded in paper or electronic form, or on a durable medium capable of storing and reproducing the original data in an unchanged format.[118] The supervisory authority may prescribe additional requirements to be incorporated in pledge agreements involving digital assets facilitated through a smart contract.[119]

Considering that Serbian legislation regulates smart contracts in connection with pledge agreements, the question logically arises regarding the feasibility of legal enforcement. In this context, legal enforcement may be unnecessary[120] due to the self-executing nature of smart contracts.[121] A pledgee may include in the contract of pledge the right to retain the pledged asset; thus, if the pledger fails to meet their

111 Ibid.
112 Art. 2, Para. 1, subpara. (39) of Act on Digital Property, 2020.
113 Ibid.
114 Art. 37 of Act on Digital Property, 2020.
115 Art. 37 Para. 1 of Act on Digital Property, 2020.
116 Art. 37 Para. 2 of Act on Digital Property, 2020.
117 Wherein the object of the pledge is a digital asset according to art. 98. Para. 1 of Act on Digital Property.
118 Art. 98. Para. 4 and 5 of Act on Digital Property, 2020.
119 Art. 98. Para. 6 of Act on Digital Property, 2020.
120 Tešić, 2023, p. 1167.
121 Ibid.

commitment within a given time limit, the contractual mechanism is triggered automatically, transferring control of the encumbered asset[122] to the pledgee and rendering judicial enforcement unnecessary.[123]

At the time of writing this paper, Serbian legislator has thus far exclusively addressed smart contracts within the framework of contracts on pledge. Consequently, comprehensive evaluation of other categories of smart contracts remain largely theoretical.

4.
Concluding Remarks

Nick Szabo's characterisation of smart contracts as transaction protocols encoded for machine interpretation has become a cornerstone for comprehending their capabilities. Smart contracts, defined as self-executing agreements encoded on a blockchain, offer several advantages. Firstly, they enhance efficiency by automating contractual performance, eliminating intermediaries, and reducing administrative costs. Moreover, they ensure accuracy and transparency through their immutable nature, fostering trust among parties and mitigating fraud risks.

However, the adoption of smart contracts also presents notable challenges. Their development and implementation require technical expertise in coding and blockchain systems, posing difficulties for individuals and organisations that lack such proficiency. Furthermore, the irrevocable nature of smart contracts raises concerns about error correction and dispute resolution, highlighting the need for comprehensive legal frameworks.

Given the often-international character of smart contracts, applicable law and jurisdiction may pose additional challenges. Parties may mitigate these by specifying the applicable law in advance or by including arbitration clauses and mechanisms for performance recovery or automatic interruption.[124] Such safeguards help minimise reliance on judicial authorities and facilitate the execution of arbitration or judicial decisions.[125]

The legal status of smart contracts remains uncertain, with varying interpretations across jurisdictions. Although blockchain technology provides robust security features, smart contracts, and the presence of AI within contract law, are not immune to vulnerabilities or coding defects that may expose parties to financial or confidentiality risks.

122 Which in this case would be a digital asset of the pledger.
123 Tešić, 2023, p. 1167.
124 Stazi, 2021, p. 97.
125 Ibid.

For example, concerns have been raised about the use of Artificial Intelligence in the insurance sector for risk assessment. Insurers' fidelity and transparency have been questioned in circumstances where AI autonomously gathers data from external sources unbeknownst to the insured, thereby challenging the principle of good faith.[126] The complexity of establishing breaches of obligations by the insured further escalates when AI is involved, as establishing causality between erroneous data and risk assessment becomes more challenging.[127]

Ensuring that AI aligns with societal welfare, fundamental rights, and ethical standards is therefore paramount. Grounding AI development in values such as human dignity and privacy protection is crucial for fostering trust. Legal regulation plays a pivotal role in establishing the framework for responsible AI deployment, addressing security, privacy, and ethical concerns.

At different regulatory levels, efforts are present at different levels, but the proactive approach of the European Union deserves special emphasis. Notably, the recent enactment of the Artificial Intelligence Act by the European Parliament marks a significant milestone in regulating AI within the EU.

Considering the national legislation of Hungary and Serbia, several conclusions emerge. Both countries recognise the validity of contracts concluded by electronic means, albeit with some distinctions. Both also provide legal rules governing electronic signatures, an essential element for electronic contracting, ensuring their legal recognition.

Furthermore, both jurisdictions acknowledge the importance of aligning technological innovation with existing legal structures, recognising the need to adapt their legal frameworks to accommodate advancements such as smart contracts.

While Serbia, like Hungary, acknowledges electronic contracts, it has taken additional steps to regulate emerging technologies such as smart contracts. The Act on Digital Property constitutes a significant milestone in this regard, explicitly permitting the use of smart contracts and outlining their legal parameters, whereas Hungary currently lacks regulatory landscape for smart contracts.

Serbia's regulation of smart contracts appears to be more comprehensive, encompassing matters such as secondary trading of digital assets and the use of smart contracts in pledge agreements. The Act emphasises the importance of user consent when smart contracts are used for digital-asset transactions, underscoring a commitment to transparency and user protection. These initiatives aim to support Serbia's digitalisation, foster a conducive environment for digital commerce, and safeguard against potential risks. By contrast, Hungary's emphasis remains on

126 Malinowska, 2022, p. 89.
127 Ibid.

electronic contracting more broadly, without providing a dedicated regulatory framework for smart contracts.

Serbia explicitly regulates the enforceability of smart contracts in the context of pledge agreements, whereas in Hungary this issue remains unresolved and subject to continued debate.

Thus, both Hungary and Serbia recognise the importance of integrating technology into contract law; Serbia appears to have made more progress in specifically regulating smart contracts; Hungary's approach has primarily focused on electronic contracting, with less emphasis on the regulatory aspects of smart contracts.

Comparative insights from other jurisdictions highlight similar challenges. For instance, a recent judgment of the German Federal Court of Justice[128] addressed a lease agreement for electric car batteries, where the lessor had inserted a clause allowing remote blocking of the battery's charging function upon termination. Although the Court did not explicitly label the mechanism as a smart contract, it acknowledged that digital or automated interventions are legally equivalent to manual ones. The clause was ultimately held invalid because it unfairly prejudiced the lessee and violated principles of German property law, particularly the prohibition of unlawful interference.

This case illustrates that technologically advanced contractual mechanisms cannot override fundamental doctrines of property protection and fairness. For jurisdictions like Hungary and Serbia – approaching smart contracts differently – the German example underscores the importance of ensuring that technological innovation remains consistent with foundational legal principles.

Overall, these developments highlight the transformative impact of technological innovation on traditional legal frameworks.[129] This convergence of technology and contract law necessitates ongoing scrutiny and adaptation to ensure legal certainty and safeguard the interests of all stakeholders.[130]

128 Smart Contracts work – but do they hold up in court?, 2022.
129 Tajti, 2019, p. 418.
130 Ibid.

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The Role of the Croatian Parliament (Hrvatski Sabor) During Negotiations and After Full Membership in the EU

ABSTRACT: *When joining the EU, a relatively large number of reforms and adjustments are required from the candidate country, with the national parliaments bearing significant responsibility. Since various sections of European legislation had previously been one chapter spread into multiple chapters, the Acquis was broken into 35 chapters for the negotiations with Croatia rather than the standard 31. The choice to divide some chapters was made in light of the difficult and large-scale prior experiences. At first, Croatia had intended to finish the negotiations in time to join the EU in 2007 together with Bulgaria and Romania. However, on several issues, the negotiations proved to be more difficult than anticipated. National parliaments, in cooperation with their governments, are expected to deal with the process of harmonisation with the EU acquis, as well as the harmonisation of Constitutional provisions with EU law. One of the first steps in the process of preparation for EU membership on the part of the Sabor was the establishment of the new parliamentary European Affairs Committee, as a special body of the Sabor whose main function will be the assessment of all regulations and laws that require harmonisation with European legislation. A key step in the aforementioned procedure was the adaptation or amendment of the Constitutional provisions, primarily those that determined the valid constitutional and legal basis for the accession of the Republic of Croatia to the EU. This paper examines how the EU accession process influenced the role of the Sabor, particularly in strengthening democratic legitimacy and its capacity for European affairs. It explores how accession reshaped the Sabor's legislative and oversight functions, proposing that the process served as a catalyst for its modernisation and enhanced democratic accountability, making Croatia's experience a valuable reference for future EU candidates.*

KEYWORDS: *The Croatian Parliament, Access to the EU, Constitutional Changes, Working Bodies, Reasoned Opinions, EU Acquis.*

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1.
Introduction

The Croatian Parliament was first recorded in the 13th century when it was merely a body of representatives for the aristocracy, and it remained this way until the middle of the 19th century. The first democratic multi-party elections in the Republic of Croatia resulted in the need to introduce fundamental changes in the constitutional and political structure, whereby the Croatian Parliament acquired a new role and meaning, as mentioned explicitly in the Decision of the Parliament of 5 July 1990.[1]

For Croatia, joining the EU had multiple meanings – primarily the recognition of political and normative-institutional achievements in the form of the establishment of a nation-state and democracy in the political sense; but also a symbolic meaning for Croatian citizens in the context of moving away from the painful past of the struggle for independence, accompanied by a sense of belonging European culture and a strong pro-European orientation. Unlike all other countries, the path to full membership in the EU was long and arduous for Croatia, precisely because of the specific conditions of the process of establishing the Croatian state and democratic order. However, the structure and actions of authoritarian political actors after the establishment of independence made the path to the EU much more challenging, in addition to the difficult process of creating the Croatian state and the independence struggle. Croatia is unique for the reasons listed above, as well as the fact that it was the first nation to join the EU following the Lisbon Treaty's ratification. All of these contributed to the fact that Croatia had the longest and most involved accession negotiations, which contributed to the rise in Croatian voters' mistrust of Europe, criticism, and comparatively muted reaction to the accession referendum.

Nevertheless, Croatia gradually started to take advantages offered by the EU upon its membership, particularly the open market defined by the unrestricted flow of capital, people, commodities, and services, as well as the improved utilisation of European structural and investment funds. The EU's influence over Croatia's continued enhancement of its normative institutional framework is another indication of the membership's significant impact.

Furthermore, the Croatian Parliament started to participate in the EU's decision-making process by monitoring its government's actions and verifying that proposals for EU legislative acts adhered to the principle of subsidiarity. These changes were brought about by Croatia's membership in the EU, which also had a significant impact on the nature and extent of the parliament's execution of European affairs. Through this, the Parliament actively contributes to bolstering Croatia's democratic legitimacy

1 Od narodnih zborovanja do građanskog Sabora 1948. godine, 2023.

and does this through the European Affairs Committee as its principal body. The participation of the Croatian Parliament in EU affairs is based on the Constitution of the Republic of Croatia, the Law on the Cooperation of the Croatian Parliament, the Government of the Republic of Croatia in European Affairs, and the Parliament Standing Orders.

This article analyses the process of Croatia's accession to the EU, more precisely, the development and functioning of the Croatian Parliament during the accession process and after gaining full membership. Based on the latter, the article aims to explore how the process of European integration influenced the institutional transformation and redefinition of the functional role of the national parliament within the contemporary Croatian political system. In other words, the paper examines how the Croatian Parliament, as the main body of representative democracy, has responded to the requirements of the European legal framework (acquis communautaire), adapted its legislative and oversight mechanisms, and developed institutional capacities for active participation in European affairs. Additionally, the paper aims to provide potential guidelines for future candidate countries, particularly those in the Western Balkans, considering they share similar political and historical circumstances and institutional challenges with Croatia, with special emphasis on the role of national parliaments in the process of European integration. Thus, the main research question is: in what way has Croatia's EU accession process influenced the institutional transformation and functional role of the Parliament in the context of strengthening democratic standards and participation in European affairs?

Finally, the article hypothesises that the EU accession process spurred the institutional and procedural modernisation of the Croatian Parliament, making it a key actor in consolidating democratic practices. Furthermore, through alignment with European standards, the Parliament has strengthened its oversight of the executive branch and contributed to the legitimacy of decision-making at both the national and European levels. Ultimately, the Croatian experience can serve as a model for the parliaments of the Western Balkans, which still strive to achieve an optimal balance between national sovereignty and European integration.

2.
Short Historical Overview of the Croatian Parliament

The first parliament known to have had its minutes and decisions recorded took place in Zagreb on 19 April 1273. It was called "the Parliament of the Kingdom of Croatia, Dalmatia and Slavonia" (lat. *Congregatio Regni tocius Sclavonie generalis)*, and its decisions were referred to *as "statuta et constitutions,"* which refers to provisions with legal effect. These all were Latin names, considering that the official language at that

period was Latin. But the Croatian language has been the official language of the Croatian Parliament since 1847, in accordance with a clause in the Standing Orders of the Parliament. Croatian was only established as the language of official public use a little later. Furthermore, with his seal, the Ban of Croatia approved the Parliament's decisions. Provisions regarding the trial, a general revolt or "*insurrection*" in defence of the nation, taxes, and other public benefits were made at the Parliament. Conclusions of the Ban represent the first known and complete set of Parliamentary conclusions. Only the Aristocracy could join the Parliament until the middle of the nineteenth century; thus, it was only in 1848 that it began to resemble a representative body. The first Parliament of Croatian citizens was elected and convened on 5 June 1948 and later validated during a session of the Croatian Parliament. All able-bodied members of the previous aristocratic Parliament continued to serve in it, at the ban's invitation, and 192 more representatives of the people were also elected without regard to their social standing, though they were still subject to property and educational constraints.[2]

After this time, it began to reflect society more generally by granting the ability to vote. The only time the Parliament was absent was from 1919 until 1941, during the first Yugoslav state. Officially, the Independent State of Croatia had a representative body during the Second World War, but it had no authority, only met three times annually, and was not elected by the populace. Later, in 1943, when the antifascist movement established the Federal State of Croatia, the State had a parliament called ZAVNOH – the communist-dominated National Anti-Fascist Council of the People's Liberation of Croatia.[3]

The constitutions passed in 1947, 1963, and 1974 altered the organisation of the Parliament at a time when the Republic of Croatia was one of the federal subdivisions of the Socialist Federal Republic of Yugoslavia. However, the Parliament was established as the supreme body of governmental authority under each of these constitutional arrangements.[4]

Following the first democratic multi-party elections on May 30, 1990, Croatia eventually established the first multi-party Parliament based on a new electoral law that was based on the French model.[5]

2 Croatian Parliament continuity over the centuries, 2023.
3 Boban, 2016, p. 33.
4 Croatian Parliament continuity over the centuries, 2023.
5 The French model meant the next: a single-member District with two rounds of voting. All candidates who received more than 7% of the vote in the first round advanced to the second round even if no one received a majority of the vote. Elections were held for all three of the parliament's councils, albeit each person could only vote in one or two of the councils if they had a working status or were university students.

According to the new Constitution's provisions, there were two new chambers in the Parliament: the House of Representatives, which has legislative authority whose members were chosen by equal voting among citizens, and the County House, which serves as an advisory body and has the so-called suspending veto power. In the first ten years of post-communism, there were two more rounds of general elections for the entire parliament or for its first chamber after the 1990 elections – in 1992 and 1995. There were only two elections for the second parliament in 1993 and 1997, until it was eliminated in the 2001 constitutional reform. Therefore, Croatia had a presidential-parliamentary semi-presidential system of government in the 1990s. As a leader of the HDZ (*Hrvatska Demokratska Zajednica*: Croatian Democratic Union), President Franjo Tuđman was elected twice in the first round by direct vote. Despite holding the majority of members in both chambers, the parliament was a less powerful institution than the administration and the president. This placed Croatia in the same league as post-Soviet nations with so-called super-presidential systems, in which the president controls the other branches of government.[6]

3.
Period Before Accession to the EU

To join the European Union, the candidate country has to meet several criteria, such as political (such as stability of institutions that guarantee democracy, human rights including respect and protection of minorities, and the rule of law) and economic criteria (the ability to cope with competitive pressures and market forces within the Union, as well as a functioning market economy). It also must develop the ability to take on the necessary obligations of membership, which includes adherence to the aims of political, economic and monetary union.[7] Accession to the Union is a two-way process, which means that not only does a candidate country have to implement EU rules, the acquis, and policies, but the EU must also be ready to receive new members. This means that the EU's financial perspective enables the implementation of its policies if new member states are included, and that the EU's institutions can admit representatives of the new members into their work. Progress in negotiations is conditional upon meeting membership criteria. The necessary reforms must be done in the pre-accession period, which is why transition arrangements are limited in scope and duration.[8]

6 Boban, 2016, pp. 33–34.
7 Access to European Union Law, Accession criteria (Copenhagen criteria), 1995.
8 Kühnhardt, 2008, pp. 38–41.

At the beginning of 2000, after the opposition's victory in the parliamentary and presidential elections, the Republic of Croatia reflected on the opening towards parliamentarism and a new phase in the development of Croatian constitutionalism. The goal of the new coalition winners was primarily to both remove the excessively used presidential elements of the 1990 Constitution and mitigate the catastrophic economic consequences of the earlier system. The direction of the movement was the search for the best version of Croatian parliamentarism; therefore, the newly elected President of the Republic, Stjepan Mesić, and Prime Minister Ivica Račan had to find a new way to regulate the relationship between the legislature and the executive – which, compared to a mere pre-election promise, turned out to be a big undertaking.[9] Briefly, as a result, the subsequent constitutional amendments made under the new administration's direction strengthened the role of the parliament and gave the executive branch more weight. In the end, the political system's transformation and the previously described factors made way for a political and institutional framework that was noticeably more democratic. Ultimately, this signalled the advancement of the democratisation process.[10]

Nonetheless, critics and certain scholars, such as Boban D., highlight the issues with the functioning of the parliament that existed in Croatia during that period. They note that the calibre of the relevant parties' actions has emerged as one of the primary issues with the role and operation of the parliament. Since the development of multi-party systems, common party functions – like the assembling and articulation of interests, the representation of society, the establishment of ties between the state and society, and the training of their ranks for public functions – have been absent. The second issue pertained to the parliament's involvement in making decisions. It became apparent when the new ruling coalition altered the government structure but retained the executive as the main branch of government and the parliament as a body with a subordinate role. The heads of the parties create electoral lists and choose the candidates in order prior to each legislative election (Croatia had closed and barred lists until 2015). As a result, the party in power has a strong influence over the party in the legislature, greatly diminishing the parliament's ability to exercise control. The third issue was found in the 1990s and is connected to the parliament's ability to function after 2000. In the pertinent literature, it is almost taken for granted that having a powerful parliament and an executive president with limited authority is the ideal balance of power for a nation to democratise successfully.[11]

The resurgence of the democratic process coincided with Croatia opening up to the outside world and the resumption of the EU accession process. In response,

9 Bačić and Bačić, 2007, pp. 24–25.
10 Ibid., p. 26.
11 Boban, 2016, pp. 35–36.

the EU vigorously backed the new administration's reformist and democratisation initiatives, as well as its much-expanded foreign political, economic, and cultural cooperation. In this sense, starting accession talks with the EU, becoming a candidate state for the EU, and joining NATO are very significant. Therefore, the EU Stabilisation and Association Process aims were supported by five Southeast European nations in addition to the leaders of the EU member states at the Zagreb summit in 2000, which marked the start of the accession process. Negotiations on the Stabilisation and Association Agreement (SAA) between Croatia and the European Union, which was signed in 2001, started at the summit.[12]

Along with the stabilisation and resolution of war-related issues, procedures for harmonising national laws and regulations with the *acquis communautaire* were initiated. In 2002, the parliament changed its Standing Orders so that all legislative proposals that were to be harmonised must be specially marked 'P.Z.E.' (Art. 136). As a rule, such proposals were not adopted under the ordinary legislative procedure but under a summary procedure, which allowed only one reading in parliament and shorter deadlines for member parliaments to review the text. The 13-member European Integration Committee, established in 2001, monitored whether the 'P.Z.E.' legislative proposals had really been harmonised with the acquis. It did not usually assess the merits of these laws, as this was done by the relevant sectoral committees.[13]

Additionally, significant state sector reforms were implemented, including changes to the public debt and the pension and social welfare systems, as well as the school and higher education systems, health care, and taxation. These reforms were not only at the level of political campaigns but also yielded some results, notwithstanding their inconsistencies and incompleteness.[14]

Accordingly, on April 4, 2002, the first European Community report regarding Croatia's stabilisation and association process was released. This can be used as the starting point for estimating and comparing Croatia's progress to other nations. The study clarifies how crucial it is to meet the political requirements, because doing so completes the assessment of the process's execution. The primary political prerequisites concern regional collaboration, respect for human rights, minority protection, and upholding democracy and the rule of law. According to the report, Croatia's democratic institutions operate fairly effectively overall. The judiciary, which "suffers from serious problems of organisation, procedural inefficiency, lack of expertise and the excessive length of procedures,"[15] is one issue in particular. No significant

12 Thorp, 2011, p. 3.
13 Butković, 2015, p. 463.
14 Maldini, 2019, p. 9.
15 Rodin, 2003, p. 230.

progress has been made, and radical adjustments are required. This flaw has a direct impact on the rule of law's continued uneven and complex implementation.[16]

Therefore, the period before EU accession, in accordance with the research question and hypothesis, points to the conclusion that the requirement for a clear EU-standard democracy had a direct impact on the transformation of the Parliament towards greater legislative efficiency, professionalism, and transparency, thus representing the starting point of institutional modernisation confirmed by the hypothesis.

4.
Constitutional Provisions Relevant to the Croatian Parliament and EU Integration

The Croatian Parliament is part of a group of smaller parliaments and one of the so-called debating parliaments, meaning everyone interested in politics can watch its plenary sessions via electronic media. Representatives operating in this manner are also compelled to run an ongoing campaign for office; the only variable being the intensity, which is determined by the approaching (frequent) elections. Similarly, there is a great deal of party discipline, which contributes to the high predictability of voting results even in the face of occasionally discordant conversational tones. This inevitably impacts the representatives' legitimacy as the people's representatives, as well as the calibre of their work.[17]

The Parliament became unicameral once the County House was abolished in 2001 due to constitutional reforms passed at that time, and it has stayed that way ever since. As previously indicated, the Parliament assumed a new and more significant role in Croatian politics in 2000 when the semi-presidential system was replaced with a parliamentary one. So, the Constitution governs the role of the parliament as well as the responsibilities and rights of lawmakers. The Parliament's Standing Orders regulate its internal structure and mode of operation. The Act of Cooperation between Parliament and the Government on EU Affairs also contains questions about EU matters.[18]

The first part of Croatia's Constitution is dedicated to the historical foundations of the Croatian nation, including its minorities. After introductory provisions, there

16 Ibid.
17 Ilišin, 2001, p. 46.
18 See: Standing Orders of the Croatian Parliament, Official Gazette No. 81/2013 and the Act on the Co-operation between Parliament and the Government on EU Affairs, Official Gazette No. 81/2013

are basic provisions that include a description of the Republic of Croatia as a state and the source of its powers. Art. 1, Para. 1 prescribes the following:

> *'The Republic of Croatia is a unitary and indivisible democratic welfare state. Power in the Republic of Croatia derives from the people and rests with the people as a community of free and equal citizens.'*
> *(2) 'The people exercise this power through the election of representatives and direct decision-making.'*

Art. 2 of the Constitution stipulates that:

> *'The Croatian Parliament and people shall directly, independently, and in compliance with the Constitution and law, decide upon: 1. the regulation of economic, legal, and political matters in the Republic of Croatia; 2. the preservation of natural and cultural wealth and use of the same; 3. association in alliances with other states.'*

In Para. 2. it is written that: '*The Republic of Croatia may conclude alliances with other states, retaining its sovereign right to decide upon the powers to be so delegated and the right to freely withdraw therefrom.*'[19]

In connection with the Constitution's provisions regarding the Parliament's role, Art. 8 prescribes that the borders of the Republic of Croatia may be altered solely by the decision of the Croatian Parliament. The parliament's role in Constitutional provisions is also mentioned in the part that deals with the organisation of the Government in Art. 71: '*The Croatian Parliament shall be a representative body of people and shall be vested with legislative power in the Republic of Croatia.*' Art. 72 prescribes a number of deputies in the parliaments, therefore it stipulates: '*The Croatian Parliament shall have no less than 100 and no more than 160 deputies elected based on direct, universal, and equal suffrage by secret ballot.*' Art. 73 states: '*Deputies in the Croatian Parliament shall be elected for a term of four years.*' Art. 81 of the Constitution enumerates the powers and duties of the Croatian Parliament, while Art. 82 stipulates that the Croatian Parliament shall adopt decisions by a majority vote, provided that a majority of its deputies are present at the session.[20]

In addition to regular financial compensation, deputies are granted additional legal powers. Deputies are immune from criminal prosecution, allowing them to carry out their responsibilities free from executive intervention. The Parliament makes the immunity decision; while it is not in session, the Parliament's Credentials

19 The Constitution of the Republic of Croatia (consolidated text), 2023.
20 Ibid.

and Immunity Committee carries this responsibility. The Parliament meets twice a year with regular sessions – from 15 September to 15 December and from 15 January to 15 July. At the request of the President of the Republic, the Government, or a majority of MPs, the Croatian Parliament holds an emergency session. An emergency meeting may be called by the Croatian Parliament President after first consulting with the parliamentary groups. In matters of dissolution of the parliament, and for the purpose of holding early elections, the majority of representatives has the authority to dissolve the Croatian Parliament, which is provided for in the Constitution. In cases where the Parliament has voted no confidence in the government (upon a call for a vote of no confidence), and if the Parliament has not approved the state budget within 120 days (from its proposal), the President of the Republic has the authority to dissolve the Parliament and upon an earlier proposal of the government, with the co-signature of the prime minister and after consultation with the representatives of the clubs of representatives. However, according to Art. 105 of the Constitution, in situations where the Government proposes to dissolve the Parliament, the President of the Republic cannot do so until impeachment proceedings are initiated against him due to a violation of the Constitution.[21]

Art. 144, Para. 2 of the Constitution of June 2010, which is significant, stipulates that the Croatian Parliament shall participate in the European legislative process in conformity with the Founding Treaties, thereby confirming the European role of national parliaments as established by the Treaty of Lisbon. The Law on the Cooperation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs *(Official Gazette 81/13)* and the Standing Orders of the Croatian Parliament further govern the Parliament's direct participation in the European decision-making process. These regulations cover oversight of the principle of subsidiarity's observance, involvement in amending funding agreements, political oversight of Europol's operations, and assessment of Eurojust's undertakings.[22]

Additionally, in 2010, a constitutional amendment was made to add a new chapter (VIII) named "European Union" in relation to the topic of constitutional adjustments made in anticipation of EU accession. A draft was produced by a specialised group of experts and presented for political decision-making. It had four articles, as well as a specific clause on when the term of validity would begin, that is, when Croatia would join the EU. The content of the above-mentioned four articles included important issues regarding EU accession. Thus the first article stated the constitutional basis for membership (essential in terms of future amendments to the Treaty establishing the EU), while the second article addressed the roles of Croatian institutions at the EU level (and provided a constitutional basis for the adoption of laws to regulate relations

21 Smerdel, 2014, p. 213 ff.
22 Briški and Špiljak, 2014, p. 16.

in EU affairs). The third article focused on the relationship between national and EU law, while the fourth article established civil rights based on the EU.[23]

5.
The Accession Process

The Croatian Parliament (Hrvatski Sabor) passed the Resolution on the Republic of Croatia's Accession to the European Union on 18 December 2002. A year later, on 21 February 2003, Croatia applied to join the EU in Athens. Subsequently, on 18 June 2004, the European Council granted the Republic of Croatia the status of a candidate for European Union membership at the Brussels summit. The Pre-Accession Strategy for Croatia was published by the European Commission on 6 October 2004, providing more details, following the meeting's conclusions, steps, and prerequisites for becoming a full member. Furthermore, findings accepting the Negotiating Framework for the Republic of Croatia were agreed upon during the European Union's Council of Ministers session in Brussels on 16 March 2005. Accession negotiations for Croatia's entrance into the EU were formally launched on 3 October 2005, with the EU-Croatia Bilateral Intergovernmental Conference.[24] The first round of the negotiations was the so-called screening, which lasted for a year (until 18 October 2006) and involved analysing whether the applicant country's laws complied with European standards. Following this was the primary phase of discussions, during which Croatia, as a candidate, would have to agree to terms under which it would implement the acquis communautaire. Despite their name, these are not negotiations, as the candidate country can only agree on the deadline for assuming the commitments, not the substance. To be more precise, this entails specifying the terms of the acquis communautaire that a candidate country must adopt, carry out, and uphold throughout the discussions. The acquis was structured into 31 chapters during negotiations with the fifth round of candidate nations for EU admission (10 members joined in 2004, with Bulgaria and Romania joining in 2007). Nonetheless, the acquis was expanded to 35 chapters for the purpose of EU membership negotiations involving Croatia. Thus, of all the preceding nations involved in the EU accession process, the Republic of Croatia had the most stringent requirements and the broadest range of standards to be enacted. In the meantime, Croatia joined NATO in 2009.[25]

The most challenging part about adopting the acquis by a negotiating country, which was also the case with Croatia, is that it never stops growing and changing.

23 Ćapeta, 2020, p. 8.
24 Barić and Ružić, 2008, p. 819.
25 Maldini, 2019, p. 11.

Rather, it is continuously updated and expanded from the start of the negotiations with a candidate nation until the country joins. This is particularly problematic when a negotiation country's legislation is required to be harmonised with the acquis in that subject area following a specific deadline for the transposition of a legal instrument – typically, a directive – into national legislation of the MS. In this scenario, a candidate country would have a clear objective but no guidance or resources to achieve it if it were asked to incorporate a directive into its laws before the other Member States were required to do the same.[26]

The EU used a new negotiating process based on significant use of institutional, legal, and track record criteria, which Croatia had to achieve before the opening and closing of particular chapters, making the negotiations more difficult than they had been in the past. The Commission developed guidelines outlining how Croatia should meet approximately 400 benchmarks and sub-benchmarks based on an empirical analysis. Unfortunately, the benchmarks weren't always precise, impartial, and well-explained, occasionally making it challenging to determine whether the criterion was reached. The introduction of benchmarks led to the front-loading of conditionality, even if they were frequently helpful in easing reform implementation. This resulted from the inability to fully open and work on numerous chapters before member states accredited the opening benchmarks. Thus, Croatia had to negotiate not only with more member states but also with more legislation. Because a protracted bargaining process involving member states and EU institutions had to be completed before a joint EU negotiating stance on any chapter could be reached, negotiations became more difficult and took longer. Furthermore, some states occasionally simulated new requests that had to be met during European Council discussions, undermining the Commission's position in the accession process.[27]

During the long accession process, which lasted from 2005 to 2011, the Parliament played a key role as a defender of the political consensus. Namely, the period of Croatia's accession to the EU was marked by a period of suspension caused by Slovenian unilateral obstruction, as well as inadequate cooperation with the International Criminal Tribunal for the Former Yugoslavia (hereinafter: ICTY). At the same time, the entire adjustment process has often been reduced to a voting machine on extremely complicated, supposedly technical issues, with little opportunity for strategic policy discussions and substantive government oversight.[28] The Parliament's activity in this part of the process partially confirms the hypothesis, given that there is limited functional participation but also visible institutional modernisation.

26 Emmert and Petrović, 2014, pp. 1392–1393.
27 Butković and Samardžija, 2014, p. 98.
28 Škrabalo, 2012, p. 45.

6.
Working Bodies Established by the Parliament

From the beginning of Croatia's accession process, concerning the overall engagement in EU affairs, the Croatian Parliament and its three working bodies played a significant role. At the beginning of 2000, the parliament established its first working body related to EU affairs.

This was the European Integration Committee, whose primary responsibility was to oversee the processes and programs for general cooperation, as well as the harmonisation of the Croatian legal system with the *acquis communitaire*. This committee, in the process of harmonising legislation, was discussing proposals for laws that bore the designation P.Z.E. Furthermore, the committee acted as an interested working body since it did not enter into the content of the proposed law but instead considered the attached Statement of Compliance and Comparative View of the individual legal proposal to determine whether and to what extent the legal proposal was harmonised with the EU acquis. Therefore, contractual relations between Croatia and the EU, as it previously was mentioned, began with the signing of the Stabilisation and Association Agreement (SAA) in October 2001, ratified in the Croatian Parliament in December of the same year. (The SAA entered into force on 1 February 2005, upon its ratification in the EU Parliament and in all EU Member States' parliaments).[29] This working body has also been an observer at COSAC meetings since 2004, when Croatia was given candidate country status. It also kept an eye on how the Republic of Croatia was exercising its rights and obligations resulting from international treaties related to the Council of Europe, tracked aid and cooperation initiatives by the EU, and collaborated and shared experiences with organisations involved in the integration processes. The committee was active until Croatia joined the EU (on 1 July 2013).[30]

Two further working bodies of the parliament were constituted in addition to the previously stated one, and each had a distinct role in the accession process.

The second body, the Joint Parliamentary Committee of the Croatian Parliament, and the European Parliament communicated and represented the integration process to the Croatian and European public. It was established within the framework of the Stabilisation and Association Agreement (in 2004) and consisted of Members of the European Parliament and Croatian parliamentarians. This new form of cooperation was based on the decision of the European Parliament in March 2004, which elected members of the special delegation for relations with the Republic of Croatia, and the decision of the Croatian Parliament on 15 October 2004. The delegation of the

29 Bačić and Bačić, 2007, pp. 97–99.
30 7. saziv Hrvatskoga sabora (22.12.2011. - 28.12.2015.) Odbor za europske integracije, 2023.

European Parliament had 15 members and 15 deputies, whose political representation reflected the image of their groups in the new convocation of the EP; while the Delegation of the Croatian Parliament had 15 members and 13 deputies. This committee was formed as a forum for cooperation and political dialogue that discussed the issues regarding Croatia's accession to the EU, as well as various issues concerning effective operation and the development of the EU, such as common views on security and stability in Europe, including cooperation in areas covered by the common foreign and security policy. The committee met twice a year and consequently adopted joint declarations and recommendations.[31]

The third working body was the National Committee, established in 2005 and tasked with monitoring and evaluating the political dynamics of conversations and acting as a forum for consultations between the parliamentary parties and the government. Because the National Committee was mainly tasked with monitoring the discussions, it continued to function until the end of the talks in June 2011. The establishment of this committee resulted from the agreement of all parliamentary parties that the Republic of Croatia's full EU membership was a strategic national goal and that guaranteeing a transparent process for accession negotiations would need the cooperation of the executive and legislative branches.[32] The National Committee, in compliance with the founding decision, oversaw and assessed the negotiation process, provided guidelines and opinions on behalf of the Croatian Parliament regarding the prepared negotiating positions, took into consideration information about the negotiation process, evaluated the individual members of the negotiating team and the negotiation process, and, when required, provided opinions on harmonising Croatian legislation with EU regulations. Additionally, it held regular information-sharing and consultation meetings with the President of the Republic, the Prime Minister, and the President of the Parliament through its president. It also held regular meetings with the chief negotiator, the head of delegations, and other representatives regarding the status of the negotiations, outstanding issues, and potential methods to close specific negotiation chapters.

Besides these three committees, the Croatian parliament had many other committees that helped during the process of joining the EU, which still operate today. However, one of the most important committees was – and still is – the European Affairs Committee (EAC). EAC was founded on 1 July 2013, following Croatia's entry into the EU, as a specific working body with the responsibility of exercising powers in the field of European affairs on behalf of the Parliament.[33]

31 Bačić, 2016, p. 64.
32 Sabor in the EU Accession Process, 2023.
33 On 1 July 2023 was the 10th anniversary of this committee, as well as the 10th anniversary of Croatia joining the EU; Odbor za Europske poslove obilježio 10 godina rada, 2023.

The Chair and two Deputy Chairs are among the 17 committee members that make up the EAC. It is the only parliamentary committee with two deputy chairs: one chosen from the opposition and one from the ranks of the parliamentary majority. The President of the Committee comes from the ranks of the parliamentary majority. One of the most important functions of the committee is the implementation of EU documents within parliamentary procedures – the committee coordinates and examines Croatia's position with the competent parliamentary committees.[34] The composition and functions of EAC are regulated by the Standing Orders of the Croatian Parliament (Art. 64–66). As the main body for coordination in matters of European affairs, the EAC carries out many tasks in that domain. Some of the primary duties of the committee, prescribed in the Standing Orders, are to monitor the activities of Parliament in European affairs; participate in the process of nominating candidates of the Republic of Croatia for EU institutions and bodies; adopt the Work Programme for the Consideration of the Positions of the Republic of Croatia; examine EU documents and the Republic of Croatia's positions in terms of those documents, with the possibility of adopting conclusions thereon; examine government reports on EU Council meetings; monitor adherence to the subsidiarity principle; and adopt a conclusion offering the relevant authority to execute a regulatory impact assessment procedure in compliance with the law and many other duties specified by the Standing Orders and law.[35]

In conclusion, the European Affairs Committee's primary duty is to assist in adopting the new European acquis; in contrast to the Committee for European Integration, whose job was to harmonise Croatian legislation with the EU acquis. As the national parliament of an EU member state, the Croatian Parliament has evolved from being a passive transmitter of the European acquis to an active player in the development of new European legislation, as can be seen from the aforementioned.

However, Croatia, at the time of concluding the negotiation on 30 June 2011, did not entirely fulfil the condition of 'stability of the institutions that guarantee democratisation, the rule of law and respecting and protection of the minorities', a political criteria for membership. The biggest reason, in this case, was Croatia's inability to fulfil all the duties due to the incomplete implementation of the assumed obligations from the acquis, which resulted in the inharmonious functioning of the country. As a final consequence of the mentioned, at the end of the negotiations, the EU decided to monitor Croatia regarding the fulfilment of its obligations set out in the negotiations till it entered membership. In addition, Croatia was required by the EU to provide indications of the outcomes of fulfilling the commitments made during the discussions, even after the Accession Treaty was signed, until its membership in the EU. Furthermore, Art. 36 of the Act on Accession introduced surveillance of

34 Bačić, 2016, pp. 65–66.
35 10th term of Croatian Parliament, 2023.

Croatia even after the discussions ended, principally as a protective measure. The responsibilities related to Chapter 23, which deals with the judiciary and fundamental rights, were the main subjects of monitoring. In connection with Chapter 23 and the mentioned process of democratisation, the most important was the sixth convocation of the Croatian Parliament, which opened and closed Chapter 23, but also the convocation at which final negotiations with the EU were concluded.

7.
Post-Accession Developments in the Republic of Croatia

The Treaty of Lisbon (2009), which allowed national parliaments of member states to engage directly in the European legislative process, was one of the most significant developments in strengthening the role of national parliaments in EU matters. In addition, in the Lisbon Treaty, two relevant protocols were added regarding the role of national parliaments; these were: *Protocol (No. 1) on 'the Role of National Parliaments in the European Union' and Protocol (No. 2) on 'the Application of the Principle of Subsidiarity and Proportionality.'* Following the provisions of the Treaty of Lisbon and related Protocols, direct participation in the performance of European affairs was based on the obligation of the EU institutions to deliver EU documents directly to national parliaments. According to the mentioned protocols, the national parliaments had a deadline of eight (8) weeks to deliver a reasoned opinion if they believed that draft legislation did not comply with the subsidiarity principle; in other words, if they thought that a certain legislative act violated the principle of subsidiarity. The final result depended not only on the timely adoption of the opinion but also on the quality of the argumentation. From the above, it is clear how necessary it is that national parliaments have directly delivered proposals for legislative acts.[36]

As a result, one of the Lisbon Treaty's objectives was to overcome the democratic deficit, given that before the Lisbon Treaty, national parliaments could only plau an indirect role in European matters by closely observing the policies of EU institutions. The analysis of the Croatian Parliament's work at the Union level provides an opportunity to test the effects of the Lisbon Treaty on national arrangements for managing European affairs and the expected priorities of action, given that the Republic

36 Since 2009, national parliaments (hereinafter: NPs) have shared two votes within the framework of the EWM; in bicameral systems, each chamber has one vote. A "yellow card" is activated when one-third of the total votes, and one-fourth of the votes in the Area of Freedom, Security, and Justice, are accounted for by reasoned opinions submitted by NPs to the European Commission within the eight weeks following the transmission of an EU legislative proposal. If this amount is equal to half of the total votes cast, it is the "orange card." The Commission has not yet received an orange card.

of Croatia is the first country that joined the EU following its adoption, against the background of the persistent democratic deficit at the EU level. The status of national parliaments within the EU is determined by the delegation of legislative authority to Union institutions and expansion of the scope of Council votes requiring a qualified majority. The Croatian Parliament's performance in European matters is centred on observing the actions of the Republic of Croatia's government within EU institutions; this is in line with the national parliament's conclusions regarding its priorities in European affairs. The fact that this focus has remained on monitoring government operations even after direct participation became possible in these nations could be attributed to the circumstances surrounding the Lisbon Treaty's ratification and implementation, which did not apply to Croatia.[37]

Thus, the Lisbon Treaty foresees the direct participation of national parliaments in cases of amendments to the Founding Treaties, in the application of the bridging clause, and in the process of checking compliance with the principle of subsidiarity within the so-called early-warning mechanism. Parliamentary oversight and subsidiarity inspections are carried out in Croatia by the Committee for European Affairs of the Croatian Parliament. However, any member of parliament, a parliamentary committee, a club of parliamentary parties, or the government may start the process.[38]

The Committee concluded, in its reasoned opinion released on 6 October 2014, that the following proposals violated the principle of subsidiarity: *2006/66/EC on batteries and accumulators and waste batteries and accumulators; 2012/19/EU on waste electrical and electronic equipment; 1999/31/EC on landfill waste; 2000/53/EC on waste vehicles;* and *Proposal for a Directive amending Directive 2008/98/EC on waste.* According to the Committee on European Affairs and the Committee on Environmental Protection, the proposal failed to recognise the disparities between current national waste management systems and threatened the equitable development of European areas. The reasoned opinion was released within the allotted eight weeks following the proposal's publication date. Nevertheless, as only the parliaments of Austria, Croatia, and the Czech Republic provided reasoned comments, the Commission decided not to proceed with the *"yellow card"* procedure and withdrew the proposal.[39]

In addition, in 2014, the Croatian Parliament sent three opinions to the Commission as a part of the "political dialogue" (so-called *Barroso initiative*) pertaining to the regulation of the establishment of *the European Public Prosecutor's office*; the application of the subsidiarity principle in the legislative procedure; and the proposal

37 Briški and Špiljak, 2014, pp. 7–9.

38 The EAC is required to adopt a reasoned opinion and submit it to the Speaker of Parliament if it determines that the concept of subsidiarity has been violated. Therefore, the Presidents of the European Parliament and the European Commission, as well as the EU Council Presidency, obtain reasoned opinions from the Speaker of Parliament.

39 Goldner Lang, Đurđević and Mataija, 2019, pp. 1148–1149.

for a regulation amending two Regulations from 2013 regarding the support program for food supply in educational institutions.[40]

Nevertheless, the Croatian Parliament has been involved for the first time since its accession to the EU when *the third yellow card procedure* was triggered or the so-called *early warning mechanism/system*. The issued procedure was connected to *the Directive of the European Parliament and of the Council* amending *Directive 96/71/EC of the EP and the Council of 16 December 1996* concerning *the posting of workers* in the framework of the provision of services.[41] A third yellow card was issued by 14 chambers in 11 Member States, including Croatia.

The Croatian Parliament, i.e. the European Affairs Committee, found in its reasoned opinion that the proposal for a specific directive on the posting of workers within the framework of the provision of benefits does not contain a detailed statement that would enable an assessment of compliance with the principles of subsidiarity and proportionality. The committee concluded that the European Commission, as the proposer of the act, did not justify the need to adopt a legislative act at the EU level. In the same way, the Committee stated that the proposed directive limited the freedom to provide services within the EU and emphasised that the price of labour is a legitimate element of the competitiveness of companies in the EU internal market. The committee finally concluded that the Directive mentioned above created an environment of legal uncertainty for workers and companies, given the fact that parallel to the proposed amendments to *Directive 96/71/EC*, the deadline for the transposition of *Directive 2014/67/EU* on the implementation of *Directive 96/71/EU* regarding the posting of workers was also approaching. This was within the framework of the provision of services and an amendment of Regulation (EU) No. 1024/2012 on administrative cooperation through the internal market information system.[42]

Ultimately, the European Commission again decided to maintain its proposal, stating that it did not violate the principle of subsidiarity and concluding that posting workers was a transnational issue by its definition. In connection with the third yellow card, some scholars argue that national parliaments have provided a method for Central and Eastern Europe member states to express resistance beyond simple subsidiarity concerns, particularly regarding the early warning mechanism issue and their ability to provide reasoned opinions. Taking into account the countries that submitted reasoned opinions – 13 of which were from Central and Eastern Europe (out of a total of 14 countries) – and comparing the third yellow card with the previous two, particularly in the number of submitted reasoned opinions (i.e. the activities of national parliaments), it becomes clear that the "regional block" is

40 Ibid., p. 1149.
41 European Affairs Committee on 5 May 2016, 2016.
42 Ibid., European Affairs Committee on 5 May 2016, 2016.

the key difference.[43] In other words, this indicates that closer coordination around a particular topic, based on shared preferences, was established by a "regional block" of national parliaments.

From the databases of the Organisation for Economic Co-operation and Development (OECD), with regard to the question of the number of laws passed by the Croatian Parliament under regular and urgent procedures, there is a considerable variation in the number of adopted laws. For example, a high of 308 laws was passed in 2013, whereas only 72 laws were passed in 2016 due to the EU membership process. This indicates a significant difference in the total number of laws enacted.[44] Since the accession of the Republic of Croatia to the EU, the Croatian Parliament has been publishing a monthly overview of all activities of the Croatian Parliament in the so-called *"Bilten Europski poslovi u Hrvatskom Saboru"* (Eng: *European Affairs Bulletin*). This publication gives the reader access to EU documents sent to national parliaments and an outline of parliamentary activity related to EU affairs and inter-parliamentary cooperation.[45]

In the past few years, Croatia has faced particularly demanding circumstances that required swift reactions from the governing authorities. In addition to the COVID-19 pandemic, Croatia was also hit by the earthquake in Zagreb in 2020. In the same year, it also presided over the Council of Europe for the first time. The Presidency of the Council alternates among the member states every six months, and Croatia had this opportunity for the first time in the period from 1 January to 30 June 2020. Therefore, the member state that presides over the Council presides over the composition of the Council, except for the Council for Foreign Affairs, and represents the Council in relations with other EU institutions. The order of presidency of the member states of the Council is predetermined when there are groups of three chairperson countries that closely cooperate in the preparation and implementation of individual presidencies, whereby the trio determines common goals and identifiable issues to be resolved by the Council in a period of 18 months. Thus, on the basis of this program, each state in the trio is preparing its detailed six-month program for the presidency. During its presidency, Croatia was the final member of the trio, followed by Romania, which presided over the first half of 2019, and Finland, which presided over the second half of 2019.[46] During the aforementioned presidency, Croatia's focus was on four main goals: a Europe that connects, develops, protects, and is influential. Changes coming from the EU included a new institutional and legislative mandate for European institutions, as well as the challenges that followed the exit of the United Kingdom from the EU and, finally, the Multi-annual Financial Framework (MFF, from

43 Fromage and Kreilinger, 2017, p. 146.
44 The development of new regulations in Croatia, Trends in new regulations, 2023.
45 European Affairs Bulletin, 2023.
46 Parliamentary Dimension of the Council Presidency, 2023.

2021–2027). Additional issues Croatia faces, including in the matter of the presidency, are related to new global challenges, which include not only climate change but also issues of increased migration, especially on the border between Turkey and Greece during February 2020.[47]

Besides these challenges, there were also some additional changes that Croatia made in 2023. At the session held on 10 November 2022, the European Parliament supported Croatia's entry into Schengen before the end of the year. Therefore, on 1 January 2023, Croatia officially entered Schengen – the zone of free movement within the borders of the European Union – and simultaneously introduced the euro as its official currency.

8.
Conclusion

The role of the Croatian Parliament in the process of accession negotiations and the process of joining the EU significantly contributed to the democratisation of the Republic of Croatia, as well as to fulfilling other conditions that were necessary during the reforms in the pre-accession period. The Croatian Parliament was operating in line with its duties prescribed by the Constitution of the Republic of Croatia, Standing orders of the Croatian Parliament, and other important legal acts, acting in cooperation with the Croatian Government. Standing Orders of the Croatian Parliament from the 2000s, including later amendments that were followed by Constitutional changes, had introduced new parliamentary structures and procedures to support the European process, also establishing the European Integrations Committee and introducing an urgent procedure for the adoption harmonisation laws.

Initially, the National Committee, in dialogue with the government, defined and agreed on the necessary normative measures and gave its political consent for their creation. Then, the Committee for the European Integration was the legal control of the level of compliance with the acquis of the legal proposals that reached the Parliament. Therefore, the Government was competent to negotiate with the EU based on the mandate given to it by the Parliament, while the National Committee was in charge of monitoring the course of negotiations proposed by the Government and of consensually confirming each negotiating position of Croatia proposed by the Government before it was referred to Brussels.

It can be concluded that the Croatian Parliament provided legitimacy to the overall process of accession in the way that the Constitution authorises or obliges it to do, and, at the same time, supervised the course of negotiations and fulfilled its task

47 Bandov, 2020, pp. 188–189.

as a legislative body in terms of harmonising national legislation with the European acquis. At the same time, the Parliament approved the beginning of the integration process by ratifying the Stabilisation and Association Agreement in December 2001, thus authorising the government to proceed with the integration process.

All important documents for negotiation and accessing the Republic of Croatia in the EU, Croatian Parliament had been consensual, starting with the Resolution of Parliament declaring accessing the EU as a strategic national goal. The parliament, as a legislator, during the negotiation process, adopted 523 laws with the goal of harmonising national law with EU law and, with that, achieved its role as a legislator. Accordingly, the institutional structure of Parliament was adjusted to support the negotiation process, with each parliamentary body fulfilling its constitutionally defined role.

The European Integration Committee was thus mostly working on legislation, while the National Committee was primarily responsible for the supervision of the process of negotiations. The third body, the Common Parliamentary Committee, led the political dialogue between the Croatian Parliament and the European Parliament. This was an inter-parliamentary communication channel that represented accession negotiations to the Croatian and European public.

Finally, an analysis of the entire integration process of Croatia into the EU and the role of the Croatian Parliament during and after the process itself confirms the research hypothesis of the article. Namely, the EU accession process has indeed stimulated the institutional and procedural modernisation of the Croatian Parliament, and simultaneously, led to the redefinition of its functional role in the contemporary political system of Croatia. Finally, Croatia's experience can indeed serve as a model for the countries of the Western Balkans because it indicates that the successful transformation of the national parliament does indeed constitute one of the key prerequisites for a stable democracy and effective membership in the European Union.

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Vera PALIALEXI* – Dafni-Konstantina POLITIKOU**

Greece: Nurturing a Sustainable and Collaborative Legal and Institutional Framework in Space

ABSTRACT: *Space exploration has evolved into a genuinely global endeavour, transcending national boundaries and inspiring a renewed vision for humanity's presence beyond Earth. In the New Space era, establishing comprehensive national legal and institutional frameworks is pivotal for regulating a country's space activities, ensuring responsible conduct, fostering international cooperation, and promoting the long-term sustainability of space exploration. In this context, Greece–though a nation with a longstanding tradition in science and astronomy–has only recently entered the modern space arena. The country's growing involvement, marked by the adoption of its National Space Law (Law 4508/2017) and the establishment of the Hellenic Space Center, constitutes one of its most promising developments in technological governance and international collaboration. This paper explores Greece's evolving participation in the space domain through adherence to international space law, engagement within the European Union framework, and involvement in multilateral and bilateral initiatives, such as the Artemis Accords. Ultimately, it argues that Greece's emerging legal and institutional system demonstrates both progress and potential in advancing a sustainable and collaborative approach to space exploration, while identifying areas for further development and reform.*

KEYWORDS: *Greece, National Space Law, Outer Space, Hellenic Space Center.*

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1.
Introduction

The exploration and use of outer space have become defining elements of contemporary reality, with significant implications for the future of humankind. In this context, the need for space law is critical, as it provides the necessary framework to foster responsible behaviour in outer space, ensure peaceful cooperation among States, and protect the environment beyond terrestrial boundaries.

Greece, though a very recent entrant into modern space activities, has a legacy deeply intertwined with the human quest to understand the cosmos. The ancient Greeks laid the foundations of astronomy and mathematics, which have significantly influenced modern space exploration.[1]

The purpose of this study is to examine how Greece has begun to nurture a sustainable and collaborative framework for space exploration within the broader international and European legal orders. It explores how international obligations, regional commitments, and national legislation intersect to define Greece's evolving role in global space governance.

Methodologically, the paper adopts a qualitative, analytical approach, drawing on international treaties, European Union (EU) instruments, national legislation, and scholarly literature to provide a holistic understanding of Greece's space law and policy. Comparative insights from other European jurisdictions, such as Luxembourg and the United Kingdom, are included to highlight similarities, divergences, and opportunities for further alignment.

The study proceeds from the international to the national level. It first analyses the international legal framework governing space activities, Greece's engagement in multilateral and bilateral initiatives, most notably the Artemis Accords, and the country's affiliations with international and regional organisations, with particular emphasis on the EU **(Section 1)**. It then offers a concise analysis of Greece's national law **(Section 2)**, an overview of the Hellenic Space Center (HSC) **(Section 3)**, and concludes with *de lege ferenda* proposals to advance both public and private endeavours.

1 Huffman, 2024. http://doi.org/10.62733/2025.1.5-15

2.
Greece on the International Terrain: Legal Framework and Affiliations with International Organisations

As an emerging space nation, Greece is in the early stages of its space journey, slowly but steadily beyond Earth's atmosphere. Greece's engagement in space activities is primarily governed by its adherence to international treaties and agreements about outer space, alongside its involvement in relevant international organisations.

2.1. Corpus Juris Spatialis Internationalis

Greece is a State Party to four space treaties adopted under the auspices of the United Nations and is therefore bound by their articulated norms. This section briefly outlines the international rights and obligations that delineate the State's behaviour in outer space at the international level.

To begin with, Greece has ratified the *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies*.[2] Often referred to as the *'Magna Carta'* of space law, the Outer Space Treaty (OST) has acquired, many argue, 'a constitutional' value, establishing the fundamental principles governing human activity in outer space.[3] First and foremost, the OST, as the first hard-law instrument governing outer space, preserves in its Preamble,[4] the exploration and use of outer space *for peaceful purposes*. Proclaiming outer space as *the province of all mankind*, Article I confers upon State Parties a set of freedoms to be exercised *for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development*. These freedoms include exploration, access, use, and scientific investigation in outer space.

However, these freedoms are not unfettered. Article II of the OST establishes that *'[o]uter space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means'*. Therefore, the provision serves as a threshold, establishing the

2 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, *entered into force* Oct. 10, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205 (Hereinafter: Outer Space Treaty).

3 Blount, 2019.

4 Even though the Preamble is not legally binding, the "peaceful purposes" clause is to be used to interpret the Treaty, as per the general rule of interpretation of Article 31 of the Vienna Convention on the Law of Treaties, see: Vienna Convention on the Law of Treaties, *entered into force* Jan. 27, 1980, 1155 U.N.T.S. 331.

non-appropriation principle which excludes outer space from any forms of national appropriation.[5] Furthermore, under Article III, space activities must be carried out '*in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding*.'

What remains rather idiosyncratic to this day about the OST regime is the responsibility mechanism enshrined in Article VI. Under this provision, States bear international responsibility for national activities in outer space, whether carried out by governmental or non-governmental entities.[6] States shall also comply with the obligation to authorise and continuously supervise non-governmental space activities. Article VII further articulates the basic rule of liability:[7] the Launching State[8] of a space object "*is internationally liable for damage caused to another State Party to the Treaty*". Moreover, domestically, Article VIII implies the international obligation to maintain a national register and affirms jurisdiction *ratione instrumenti*[9] over registered space objects.[10] Finally, the OST binds States to conduct their activities based on *cooperation* and *mutual assistance*,[11] taking *due regard of the corresponding interests of all other State Parties to the Treaty*, to avoid interference in the safety of space operations of other States.[12]

Secondly, Greece has signed the *Agreement on the Rescue of Astronauts, the Return of Astronauts and Return of Objects Launched into Outer Space,*[13] which elaborates on Articles V and VIII of the OST,[14] by detailing the rights and obligations regarding rescue, assistance, and the return of astronauts in distress to the *launching authority*.[15]

Thirdly, Greece has ratified the *Convention on International Liability for Damage Caused by Space Objects*.[16] The Liability Convention supplements Article VII of the

5 Lyall and Larsen, 2018.
6 Kerrest, 1997.
7 Kerrest and Smith, 2009.
8 That is, the State that launches or procures the launch of a space object, as well as the State from whose territory or facility an object is launched, as per article VII of the Outer Space Treaty, also Article I (c) of the Liability Convention.
9 Oduntan, 2012.
10 Csabafi, 1971.
11 Mineiro, 2010.
12 Marchisio, 2009.
13 Agreement on the Rescue of Astronauts, the Return of Astronauts and Return of Objects Launched into Outer Space, *entered into force* Dec. 03, 1968, 19 U.S.D. 7570, 672 U.N.T.S. 119. (Hereinafter: Rescue and Return Agreement).
14 Riccio Jr., 1970.
15 Gorove, 1969.
16 Convention on International Liability for Damage Caused by Space Objects, *entered into force* Oct. 9, 1973, 24 U.S.T. 2389, 961 U.N.T.S. 187 (Hereinafter: Liability Convention).

OST[17] by providing a victim-oriented regime,[18] and eventually creating specialised liability rules depending on the place of damage, establishing an absolute liability[19] regime for damage on the Earth's surface or to aircraft in flight (Article II), and a fault-based regime for damage occurring elsewhere than on the surface of the Earth (Article III).[20]

Lastly, Greece has signed the *Convention on Registration of Objects Launched into Outer Space,*[21] which obliges the registration of space objects by the Launching State in an appropriate Register (Article II (1)).

Despite Greece's firm commitment to the multilateral UN Treaty Law, as demonstrated by its adherence to the aforementioned space treaties, Greece has not ratified the *Agreement Governing the Activities of States on the Moon and Other Celestial Bodies*.[22] The Moon Agreement constitutes an instrument of notably limited acceptance and applicability on the international terrain.[23] Its primary obstacle is found in Article 11,[24] which designates that '*[t]he moon and its natural resources are the common heritage of mankind*', essentially necessitating the creation of an international regime whereby all States collectively manage resources and share their benefits derived from their exploitation, even by States not participating in extraction activities.[25] As stipulated in Article 11 (5) and (7), the establishment of *'an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the moon as such exploitation is about to become feasible'*. Greece's position on the non-ratification of the Moon Agreement is further clarified by its strategic shift towards the Artemis Accords, signed in February 2024, which provides a clear, industry-friendly alternative to the Moon Agreement.

2.2. Greece and the Artemis Accords

On 9 February 2024, Greece became the 35th State to sign the *Artemis Accords*,[26] which are a set of 'Principles for Cooperation in the Civil Exploration and Use of the

17 Von der Dunk, 1992.
18 Cheng, 1997.
19 Kerrest and Smith, 2009.
20 Kayser, 2004.
21 Convention on Registration of Objects Launched into Outer Space, *entered into force* Sept. 15, 1976, 28 U.S.T. 695, 1023 U.N.T.S. 15 (Hereinafter: Registration Convention).
22 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, *entered into force* July 11, 1984, 1363 U.N.T.S. 3 (Hereinafter Moon Agreement).
23 Isnardi, 2020.
24 Tronchetti, 2009.
25 Noyes, 2011.
26 Greece signs the Artemis Accords, 2022.

Moon, Mars, Comets, and Asteroids for Peaceful Purposes'.[27] Initiated by NASA in 2020 as part of the broader 'Artemis Program',[28] the Accords articulate guiding norms for responsible behaviour in lunar and deep-space activities, emphasising transparency, interoperability, peaceful exploration, and the protection of heritage sites.[29] Although non-binding, they aim to operationalise key commitments of the 1967 OST in a new era of international collaboration beyond low-Earth orbit.

For Greece, accession to the Accords represents a diplomatic and strategic milestone. As noted by the President of the HSC,[30] Greece seeks to contribute its scientific expertise in space physics, remote sensing, robotics, and software engineering to the collective Artemis mission. From a legal perspective, the Accords have sparked debate over their compatibility with the OST, particularly concerning the principles of non-appropriation (Article II) and international responsibility (Article VI).[31] Greece's decision to join may therefore be seen as a reaffirmation of its commitment to pluralism, strategic alliances (particularly with the United States and European partners), and to the peaceful use of outer space, while signalling its intention to participate actively in humanity's return to the Moon.

2.3. Affiliations with International Organisations

While the international law framework establishes the normative foundations of State Responsibility, international organisations – especially those with specialised space mandates in space – illustrate how these obligations are operationalised through cooperative mechanisms. Indeed, Greece's engagement in the space domain is shaped and implemented through its integration into key multilateral institutions that provide the essential infrastructure to support its national space ambitions. As a committed member of the EU and the European Space Agency (ESA), Greece participates in flagship space programmes. At the same time, its continuous engagement with the International Telecommunications Union (ITU) ensures the coordination of spectrum management.

27 The Artemis Accords: Principles for Cooperation in the Civil Exploration and Use of the Moon, Mars, Comets, and Asteroids for Peaceful Purposes, 2020.
28 Artemis: Humanity's Return to the Moon, no date.
29 NASA, "Artemis Accords", 2020.
30 HSC, 'Greece signs the Artemis Accords'.
31 Von der Dunk, 2021, pp. 145–157.

2.3.1. Greece's Engagement with the European Union in the Space Sector

The EU has long functioned as a catalyst for transnational cooperation, and this spirit has naturally extended to outer space activities. The Lisbon Treaty of 2009 marked a decisive moment in this evolution.[32] Particularly, Article 189 of the Treaty on the Functioning of the European Union provides the legal basis for a common European space policy, empowering the Union to promote scientific and technical progress and enhance industrial competitiveness through coordinated action.[33]

On this basis, the EU established the European Union Space Programme and its implementing agency, the 'European Union Agency for the Space Programme' (EUSPA), which manages key initiatives such as *Galileo, Copernicus,* and *EGNOS*.[34] Together, these programmes strengthen the EU's technological sovereignty and ensure the strategic, peaceful, and sustainable use of space.[35] Building on this framework, the European Commission published in June 2025 a proposal for an 'EU Space Act', aiming to establish a regulatory framework for the safety, resilience, and sustainability of space activities and to create a single market for space activities across the Union.[36]

As a Member State, Greece has gradually integrated into this European framework.[37] Through its financial contributions to the EU budget and ESA, Greece participates in flagship programmes such as Galileo, EGNOS, and Copernicus, and has invested over the past two decades in advancing its scientific and technological capacities.[38] Beyond the financial dimension, Greece's participation fosters the exchange of expertise and access to advanced infrastructure, enhancing national competence in satellite navigation, Earth observation, and environmental monitoring.[39] Finally, Greece's engagement with the European Union Governmental Satellite Communications (GOVSATCOM) underscores its strategic commitment to enhancing security and resilience through space technology. Under Commission Implementing Decision 2024/3195,[40] Greece constitutes one of the two States that will host a

32 Consolidated Version of the Treaty on the Functioning of the European Union (2012) OJ C326/47.
33 Article 189 (1) TFEU, "To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space".
34 About EUSPA, 2023.
35 EU Space Programme, no date.
36 See: Evroux, 2025.
37 Von der Dunk, 2015, p. 281.
38 Papadopoulos, 2024, pp. 1–20.
39 The EU's Space Assets: Strengthening Resilience and Security, Special Report, No 10, 2023.
40 Commission Implementing Decision (EU) 2024/3195 of 18 December 2024 laying down rules for the application of Regulation (EU) 2021/696 of the European Parliament and of the Council as regards the location of the GOVSATCOM Hub (2024), OJ L, 3195/1.

GOVSATCOM Hub, thereby playing a pivotal role in the EU's programme to equip the Union and its Member States with secure, resilient, and cost-efficient satellite communication capabilities.[41]

From a legal perspective, the interaction between EU and national space law illustrates how EU law functions as a bridge between international principles and national implementation. EU regulatory frameworks require Member States to align their national legislation with sustainability, safety, and liability standards.[42] Greece's Law 4508/2017 reflects this alignment, particularly in licensing, debris mitigation, and environmental reporting. However, gaps remain in fully operationalising these norms, especially regarding private-sector participation and data-sharing governance.

Comparatively, smaller EU Member States such as Portugal[43] and the Czech Republic[44] have followed similar trajectories by establishing dedicated agencies and leveraging EU funding to strengthen their domestic space law programmes. Greece shares these characteristics but could further benefit from structured mechanisms to attract private investment, promote public-private partnerships, and support start-ups through European innovation programmes.

2.3.2. The European Space Agency (ESA)

The European cooperation introduced Europe as a considerable actor in the 'space race' peak in the midst of 1970s, at the time the European Space Agency (ESA) was founded. Greece signed the Convention for the establishment of ESA[45] in March 2005, becoming the 16th Member State of the Organisation.[46]

Greece's participation in ESA entails active involvement in formulating legal frameworks, standards, guidelines, and best practices pertaining to space activities. Greek national law requires adherence to established national, European, and international standards, as well as relevant good practices, until the adoption of the Joint Ministerial Decision specifying environmental impact reporting for space

41 Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU (2021) OJ L 170/69.

42 Case 6/64 *Flaminio Costa v. ENEL* (1964) ECR 585, ECLI:EU:C:1964:66.

43 Portugal Space, Portugal Space 2030 Strategy: Current Implementation Status and a Guide for the Future, 2020.

44 Czech Space Office 'National Space Plan 2020- 2025', no date.

45 Convention for the Establishment of a European Space Agency, 1975.

46 Greece becomes 16th ESA member state ESA, 2025.

activities.[47] Furthermore, national law affirms that, for approving space activities, the Minister of Digital Governance may request technical assistance from third parties, Greek, European and International Organisations, agencies, experts, or specialists and scientists, to establish conditions related to the location of the space activity, the operator's main establishment, or the provision of insurance for space and space objects.[48]

2.3.3. The International Telecommunications Union (ITU)

Being a founding member of the International Telecommunication Union (ITU), Greece has ratified the ITU Constitution and Convention.[49] Since then, it has actively participated in ITU initiatives and conferences, including hosting major ITU events and conferences, and contributing to the Organisation's objectives and the safeguarding of Member States' interests.[50] Greece has shown dedicated support for ITU's initiatives in 'Smart Sustainable Cities' and has been pivotal in strengthening the Organisation's regional presence. Moreover, it contributes to ITU Study Groups and aligns with ITU-R initiatives aimed at optimising the efficient utilisation of radio spectrum for broadcasting and mobile communications. Greece also consistently adheres to ITU-R satellite coordination procedures to ensure interference-free satellite operations and the effective use of radio spectrum.

Regarding national legislation, it is important to note that, under the current legal framework, radio frequencies are recognised as part of the public domain and are subject to distinct regulatory regimes administered by multiple authorities.[51] The management of radio frequencies falls under the jurisdiction of the Ministry of Transport and Communications, in cooperation with the Hellenic Telecommunications and Post Commission,[52] which acts as the National Regulatory Authority responsible for managing bandwidths allocated to non-State actors. Frequencies allocated for State networks remain under direct governmental management. In addition, the National Council of Radio and Television governs the granting and modification of radio spectrum rights for broadcasting services.[53]

47 Greece's National Framework for Space Activities, 2021.
48 Ibid.
49 Constitution and Convention of the International Telecommunication Union, 1992.
50 See: Greece in ITU, no date; See: The Permanent Mission - Permanent Mission of Greece in Geneva, no date
51 See: Greece – ITU, no date
52 General information, Hellenic Telecommunications & Post Commission, no date.
53 The National Council for Radio and Television [Εθνικό Συμβούλιο Ραδιοτηλεόρασης], no date.

Overall, Greece's active involvement in the ITU Protocols highlights its commitment to fostering cooperation in the telecommunications domain and contributes significantly to the realisation of the ITU's overarching goals. Nevertheless, the delineation of responsibilities among several authorities demonstrates the complex regulatory landscape of radio frequency management. It is, however, true that this multifaceted framework ensures careful oversight and regulation by the designated authorities.

The preceding analysis demonstrates that Greece's space activities are not defined solely by an autonomous national programme, but are instead functionally implemented through its participation in three essential multilateral frameworks: the EU, the ESA, and the ITU. Hence, Greece has strategically positioned itself within the institutional ecosystem that shapes governance. Accordingly, Greece's national space law consolidates its regional and international obligations and cooperative engagements into a coherent national governance for space activities.

3.
National Space Law

The establishment of a national space legislation constitutes a defining milestone in Greece's alignment with international space law. The codification of international commitments into domestic legislation marks a significant shift from participation to regulation. This section first provides a brief analysis of the building blocks that define the legislative foundation of national space regimes and, second, an analysis of Greece's national law, delving into the legal parameters for authorisation, supervision, and liability for outer space activities.

3.1. Introduction: Key Elements of International Space Law as Constructive Concepts of National Space Legislations

The *ad hoc* international space law regime (1.1.), as previously outlined, would undoubtedly be characterised as 'State-centred',[54] since, at the time of its creation, exploration and access to outer space were monopolised by State actors,[55] possessing the requisite financial and technological power.[56] However, States that were not formerly considered space-faring are now increasingly vocal in the international

54 See: Von der Dunk, 2015.
55 See: Walter, 2011.
56 See: Marboe, 2017.

debate, with the enactment of national space legislation. Even more so, almost sixty years after the adoption of the OST, the 'New Space' era has been defined by the rise of private actors, who have identified unprecedented commercial opportunities in outer space.

On those grounds, international space law, enunciating fundamental principles, essentially serves as Ariadne's thread to unravel the conundrum posed by fragmented systems of individual national space legislations. States must fulfil their national obligations by complying with international norms and rules through domestic legislation, while facilitating private incentives in space. National laws must also contribute to reparation for damages, including liability considerations, concerning a State's qualification as the Launching State of a space object.[57] Furthermore, the proliferation of national frameworks strengthens emerging concepts that have not yet acquired legally binding status.[58] Therefore, national laws shall display a certain degree of uniformity and be capable of regulating activities with multinational dimensions.[59] This promotes *consistency and predictability*[60] in the conduct of space activities and provides *a particular regulatory framework for the involvement of non-governmental entities*.[61]

National legal frameworks, therefore, rely on the established 'building blocks': authorisation of space activities, supervision of space activities, liability, registration of space objects, and other topical issues.[62] Under Article VI of the OST, States *shall bear international responsibility for national activities in outer space*. This broadly worded call for national interpretation: first, which activities qualify as 'activities in outer space', primarily dealing with space delimitation issues, and second, what activities qualify as 'national' activities *ratione personae*.[63] Consequently, comprehensive national space legislation must address authorisation and continuous supervision of space activities conducted by non-governmental entities.[64] Authorisation represents the formal governmental approval of space activities, as an administrative procedure[65] constituting a *conditio sine qua non*, through a governmental licensing procedure.[66] In parallel, the 'continuous supervision' remit of Article VI OST shall

57 See: Kerrest, 2010.
58 See: Jakhu and Pelton, 2017.
59 Marchisio, 2010, p. 7.
60 Report of the Working Group on National Legislation Relevant to the Peaceful Exploration and Use of Outer Space, UN Doc A/AC.105/C.2/101, 3 April 2012.
61 UNGA Resolution on "Recommendations on national legislation relevant to the peaceful exploration of outer space", UNGA Res 68/74 of 11 December 2013, UN Doc. A/68/74.
62 See: Von der Dunk, 2006.
63 See: Von der Dunk, 2017.
64 See: Soucek and Tapio, 2018.
65 See: Gerhard, 2009.
66 See: Fabio Tronchetti, 2013.

be addressed in national legislation, ensuring both before the commencement of an activity, as well as during its operation, ensuring compliance with international norms. Many national legislations also include sanctions for violation of the law on the non-governmental entity's end.[67]

Another essential element that should be a matter of domestic discipline is a liability regime reflecting the commercialisation of space activities. *Corpus iuris spatialis internationalis* attributes international liability to the Launching State of a space object. Accordingly, a private company may only incur liability for any damages caused, only indirectly via the Launching State of the object that caused such damage.[68] At the same time, a non-governmental entity can only indirectly raise compensatory claims against a Launching State, in the case of damage.[69] Therefore, national legislation must provide comprehensive insurance[70] and third-party liability coverage, facilitating the settlement of claims with private companies[71] and allocating the financial burden accordingly.

Finally, registration of space objects is a duty under Article II(1) of the Registration Convention. States must establish and maintain a National Registry and develop mechanisms for furnishing information to the United Nations Register, pursuant to Article IV of the Register Agreement (Article III (1)). Respectively, the Launching State of an object is internationally bound to the duty of registration.[72]

3.2. Greece's National Space Law Act

Law 4508/2017, *Licensing of space activities – Registration in the National Register of Space Objects – Establishment of the Hellenic Space Agency and other provisions*',[73] represents Greece's first attempt to address the legislative gap concerning the authorisation of space activities and the registration of space objects. This initiative translates Greece's international obligations, derived primarily from the 1967 Outer Space Treaty and the 1975 Registration Convention, into domestic law, thereby ensuring compliance with Article IV OST on authorisation and continuous supervision.

For this paper, attention is directed to the most significant provisions of the law. Article 1 establishes the object and scope of the legislation, regulating the conditions

67 See: Masson-Zwaan and Hofmann, 2019.
68 See: Gorove, 1983.
69 See: Hermida, 2004.
70 See: Sundahl, 2010.
71 See: Pedrazzi, 2008.
72 See: Chatzipanagiotis, 2019.
73 Government Gazette, Law 4508/2017, 2017.

and procedures for obtaining a licence for space activities, while addressing liability[74] for damage caused by space objects and establishing mechanisms for supervision. It also mandates the creation and maintenance of a National Registry of space objects (Article 17).

The scope of these provisions extends to space activities conducted within Greek territory or abroad when involving Greek facilities, personnel, or property under Greek jurisdiction. They also apply to activities conducted by Greek nationals or legal entities when required by an international agreement or treaty. Consequently, Greece bears international responsibility for any activity meeting these criteria, in line with its obligations as a 'Launching State' under international law.

Article 2 sets forth definitions fundamental to the application of the law, such as *space object, operator,* and *effective control.* These definitions closely align with EU and UN instruments, ensuring conceptual harmony with both regional and international standards. Article 3 introduces the principle of prior authorisation, making licensing a prerequisite for conducting space activities. Article 4 outlines the licensing conditions, requiring that activities pose no threat to national security, public order, or environmental protection, and that they comply with Greece's international commitments. Debris mitigation and environmental protection measures are also mandated.

In addition, the Minister of Digital Governance may impose supplementary conditions to safeguard public safety, national interests, and environmental integrity, and may also rely on technical expertise from national or international bodies. Article 11 establishes the operator's obligation to obtain insurance covering liability for damages up to €60 million, adjustable according to mission characteristics. The Minister may reduce or waive insurance for public-interest missions, and the State itself is exempt when acting as operator. Articles 12 and 15 introduce mechanisms for reporting malfunctions and for imposing sanctions on unlicensed activities, ensuring accountability.

Comparatively, Greece's approach aligns with broader European jurisdictions, though on a smaller administrative scale. For example, Luxembourg's 2017 space law focuses on commercial exploitation and space resources, while providing fiscal incentives to attract investment.[75] The UK Space Industry Act 2018 adopts a safety- and risk-based licensing framework.[76] France, through its 2008 law on Space Operations, integrates strong oversight by the Centre national d'études spatiales (CNES)

74 It is noteworthy that the Greek language does not distinguish between the terms "*responsibility*" and "*liability*", both of which are rendered as "ευθύνη". Accordingly, the interpretation of this Article indicates that the reference to "liability for damages" pertains to legal or civil liability, rather than to international responsibility under public international law.

75 Luxembourg, Law on the Exploration and Use of Space Resources, 2017.

76 United Kingdom Space Industry Act (c5), 2018.

and clear liability thresholds.[77] Greece's Law 4508/2017, while more concise, captures the essential components of authorisation and supervision, but remains descriptive rather than strategic in stimulating industrial growth.

Overall, the purpose of the law is twofold: to establish a framework of rules, terms, and conditions for licensing space activities and for the registration of space objects in the National Registry; and to establish a Greek Space Agency, as discussed in **Section 3**. The adoption of this legislation strengthens Greece's presence at both European and international levels, marking a significant step toward the effective utilisation of research and scientific applications emerging from space policies. Such applications include civil protection, Earth observation, wildfire and natural disaster prevention and management, illegal building, and enhanced border surveillance.

3.3. Law 4506/2017: The Hellas Sat Special Concession Agreement

Law 4506/2017[78] serves as a legal instrument through which the Greek Parliament renews and ratifies the Special Concession Agreement between the Hellenic Republic and the private entity, Hellas Sat S.A. Unlike Law 4508/2017, which provides the general framework for space activities, Law 4506/2017 is an *ad hoc* legislative act granting authorisation to a private operator, transforming it from a standard administrative licence to national law.

The core function of the law is to regulate Greece's exclusive right to access to, and use of, the 39° East geostationary orbital slot and the associated satellite radio frequencies registered to Greece within the ITU. This right is exercised through a satellite telecommunications system with nationwide and cross-border coverage. Secondly, by virtue of the law, Greece grants a detailed Special Operating Licence to Hellas Sat for the use and commercial exploitation of the State's orbital slot in geostationary orbit, including the construction, launch, and operation of the satellite system, and the establishment of two Telemetry, Tracking and Command of Earth Control Stations (T.T. & C.). The law provides a mechanism for continuous supervision throughout the duration of the Agreement, mandating *inter alia*, specific terms of authorisation and supervision to fulfil its obligations under international law.

As a result, the law guarantees the longevity and stability of Greece's exploitation rights, an essential precondition for attracting the substantial private investment required for space infrastructure projects. Hellas Sat assumes the capital and technological cost of operating the satellite system, while the State retains legal and political control over the orbital resource. Accordingly, Law 4506/2017 constitutes

77 France, French Space Operations Act No 2008-518, 2008,
78 Government Gazette, Law 4506/2017, 2017.

a critical piece of the Greek national space law puzzle, translating international obligations into a concrete, executable commercial framework and underpinning Greece's position as a responsible and forward-looking actor within the increasingly privatised global space sector.

Taken together, Greece's national space legislation reveals a robust legislative initiative rooted firmly in the foundations of international space law. The foundational concepts of international space law have shaped the formulation of the national framework, ensuring consistency with Greece's international rights and obligations. The general regime established by national space law provides the institutional and procedural architecture for the authorisation and supervision of non-governmental space activities and the registration of space objects. The Hellas Sat Special Concession Agreement operationalises these norms, balancing private participation with essential public oversight.

4.
The Hellenic Space Center (HSC)

Article 18 of Law 4508/2017 established the *Hellenic Space Agency* as the central body for Greece's space activities.[79] Later, under Law 4623/2019,[80] the *Hellenic Space Center* (HSC) was created as the agency's legal successor, assuming all its responsibilities, rights, obligations, and legal relations.[81] The HSC operates under the supervision of the Minister of Digital Governance, who retains the authority over its operational regulation and strategic direction.

According to Article 60 of its founding law, the HSC's primary purposes include formulating strategic proposals for the national space sector and developing a dynamic action plan for Greece's space strategy. This involves collaboration with universities and research institutions, fostering coordination between the public and private sectors, and representing Greece in international organisations to promote, disseminate, and leverage national space policy. These functions reflect the centre's dual role as both a policy coordinator and an innovation facilitator, ensuring alignment with principles of international cooperation and sustainable development embedded in contemporary space governance.

The HSC is also responsible for advancing space technology, applications, services, and ground infrastructure for the benefit of domestic industry and research. This encompasses support for the design and development of satellites, satellite systems,

79 See: Hellenic Space Agency, no date
80 Government Gazette, Law 4623/2019.
81 Ibid.

and related equipment, while strengthening Greece's national space capabilities, alongside its participation in international space organisations and programmes. In this regard, Greece's commitment to climate change mitigation and environmental protection is underscored in the recent launch of the "*National Microsatellite Programme*", aimed at establishing Earth-observation capabilities by 2026.[82] In this respect, the HSC's organisational model bears similarities to other European counterparts, such as the CNES in France and the UK Space Agency, which combine governmental oversight with operational flexibility and strong international engagement.[83] While differing in scale and resources, all three institutions share the aim of aligning national initiatives with broader European and international objectives for space governance.[84]

Overall, the HSC represents further affirmation of Greece's efforts to consolidate and amplify its presence in the global space arena. Having inherited its predecessor's responsibilities and expanded its current mandate, it aims to advance both national interests and the collective goals of the global space community.

5.
Conclusion

Greece's ambition to deepen its involvement in the space sector underscores a resolute commitment to sustainable space exploration and utilisation. The overall legal and policy standing of Greece in the international terrain demonstrates a coherent synthesis of international legal principles, regional and multilateral cooperation, and national implementation. In particular, the enactment of national space legislation and the establishment of the Hellenic Space Center constitute pivotal milestones in solidifying Greece's presence within the space domain. Moreover, the country's dual emphasis on a robust public space sector, as illustrated by the National Microsatellite Programme, and on private-sector activity and technological development reflects a balanced national strategy.

Nevertheless, there is much work to be accomplished. In the authors' view, the rapid evolution of the commercial space sector demands continuous refinement of the national regulatory ecosystem. *De lege ferenda*, Greece would benefit from a more integrated and future-oriented legislative approach capable of anticipating new challenges and risks. Such measures might include secondary legislation, in the form of Ministerial Decisions, as well as technical regulations that offer guidance to private

82 Greece acquires 7 Earth Observation Microsatellites within 2026, no date.
83 Centre National d' Études Spatiales (CNES), 2022; UK Space Agency, 2022.
84 Ibid.

entities seeking authorisation for novel activities, such as small-satellite missions and in-orbit services. Moreover, issues surrounding low-Earth orbit mega-constellations, including non-interference standards, satellite capacity, debris mitigation, and end-of-life disposal, merit further regulatory attention to ensure Greece is positioned at the cutting-edge of the space future.

Finally, the creation of legal incentives that foster private investment and innovation constitutes a turning point in building the competitiveness of the Greek space market. The core objectives of such initiatives aim to strengthen national security interests and maximise the socioeconomic benefits derived from advanced space technologies across public and private spheres. By reinforcing these dimensions, Greece can establish its role as a forward-looking space actor with a dynamic and competitive domestic ecosystem.

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Restitution of Church Property in Latvia after the Restoration of Independence in 1990

ABSTRACT: *The adoption of the Declaration of 4 May 1990 "On the Restoration of the Independence of the Republic of Latvia" initiated not only the process of restoring Latvian statehood, but also the restitution of property rights, including those of religious organisations, carried out within the framework of the principle of continuity. This meant that the State's task was to restore, as far as possible, the legal situation that existed before June/July 1940, i.e. before the occupation of the Republic of Latvia by the Soviet Union. The Republic of Latvia was proclaimed on 18 November 1918. One of the main tasks of the state in ensuring social peace was the implementation of land reform, under which the churches, and above all the Evangelical Lutheran Church, lost their share of rural property, which was legally equivalent to manor property. At the same time, the land reform did not affect the rights of the churches to religious buildings and other properties, including immovables, which were not nationalised within the reform. However, the occupation of the Republic of Latvia by the Soviet Union in June 1940 began a rapid process of nationalisation. Against this background, the first part of this article provides an overview of church property rights after the establishment of the Republic of Latvia in 1918; the second part examines the nationalisation of church property during the Soviet occupation; and the third part outlines the property restitution procedure after the restoration of the independence of the Republic of Latvia.*
KEYWORDS: *Restitution, Church Property, Soviet Occupation, Restoration of Independence, Land Reform*

1. Introduction

The article, based on an analysis of normative regulation and historical facts, seeks to provide insight into the restitution of church property rights following the restoration of the Latvian independence enacted by the Declaration of 4 May 1990 "On the

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Restoration of the Independence of the Republic of Latvia".[1] Since this process took place within the framework of the principle of continuity of the state,[2] restoring, as far as possible, the legal situation that existed before July 1940,[3] it cannot be understood without an analysis of the legal framework and historical events that shaped the situation requiring restoration.[4]

On 18 November 1918, the Republic of Latvia was proclaimed. One of the main tasks of the newly established state in ensuring social peace was the implementation of land reform, through which the churches, and above all the Evangelical Lutheran Church, lost their share of rural property, which was legally equal to manor property. At the same time, the land reform did not affect church rights to religious buildings and other properties, including immovables, which were not nationalised. This is relevant because the land reform initiated in 1919/1920 and the resulting real estate relations in the summer of 1940, on the eve of the Soviet occupation, formed the basis for the denationalisation of state property initiated in 1990-1991.[5]

The Soviet occupation in June 1940 began a rapid process of nationalisation. Article 1(2) of the Law on Land of 29 July 1940 stipulated that all land belonging to churches, parishes, and monasteries, irrespective of area, was to be transferred to the State Land Fund.[6] However, in 1941, the churches' ownership of buildings was also withdrawn.

1 Declaration of the Supreme Council of the Latvian Soviet Socialist Republic "On the Restoration of the Independence of the Republic of Latvia". Official Gazette "Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs", no. 20, 17 May 1990.
2 Pleps, 2017, p. 68.
3 Lazdiņš, 2017, p. 361. http://doi.org/10.62733/2025.1.5-15
4 According to the Preamble of the Declaration of 4 May 1990 "On the Restoration of the Independence of the Republic of Latvia" "the inclusion of the Republic of Latvia in the Soviet Union is not in force from the point of view of international law, and the Republic of Latvia still exists de jure as the subject of international law which is acknowledged by more than 50 countries of the world".
5 Lazdiņš, 2005, p. 172.
6 Hronoloģiskais likumkrājums, 1960, p. 9.

2.
The Proclamation of the Latvian State and the Land Reform

Article 597 of the Baltic Private Law Code[7] divided the manors of Livonia[8] into: 1) Crown or domain manors; 2) manors of nobles or knights; 3) manors of nobility, towns, corporations, and institutions; 4) pastoral and ecclesiastical manors (hereinafter pastorates); 5) manor plots. Article 608 defined pastoral estates as "parcels of land, fields, and other uses established for the maintenance of the local pastor during his office". Under Article 945, pastoral lands were in the pastor's proprietary use (*dominium utile*); the right of surface ownership belonged to the parish church. An identical regulation also existed in Courland pursuant to Article 613.[9]

Articles 890, 893 provided that pastorates possessed all the rights and benefits of corporate manors. Pastors and church ministers were allowed to lease the land set aside for their upkeep, although the consent of the church superior was required. If the land was to be granted under an emphyteutic lease or for a term longer than twelve years, permission of the Minister of the Interior of the Russian Empire was required. Many pastorates in Livonia and Courland had the usual structure of knightly manors, consisting of a manor, quota and peasant land, and thus also had their own tenants (pastor's people) and distinct territorial parishes.[10] The main purpose of the pastorates was to maintain pastors, their families, other church ministers, and to ensure a degree of independence.

One of the main tasks of the newly established Latvian state was to ensure social peace, including the prevention of communist influence, through a land reform aimed at granting land to the landless.[11] The first steps towards this goal were taken even before the reform's formal launch, with the establishment of the Latvian State Land Fund, which included mainly the Crown or State manors. These lands were at the State's disposal, and preparations for their division began as early as 1919.[12] Before the land reform, only 39.32% (2,583,647 ha) of all land in Latvia was owned by

7 Provincialrecht der Ostseegouvernements. Dritter Theil. Privatrecht. Liv-, Est- und Curlaendisches Privatrecht. Zusammengestellt auf Befehl des Herrn und Kaisers Alexander II. St. Petersburg: In der Buchdruckerei der Zweiten Abtheilung Seiner Kaiserlichen Majestät Eigener Kanzlei, 1864.

8 The province of Livonia comprised the southern part of present-day Estonia and the northern part of present-day Latvia (Vidzeme).

9 The province of Courland (Kurzeme and Zemgale) comprised the southern and western part of present-day Latvia.

10 Švābe, 1930, pp. 170–171.

11 Alberings and Appiņš, 1930, pp. 177–179.

12 Ertels, 1930, p. 339.

peasants. The remaining 60.68%, belonged to: 1) manors of nobles or knights (owned by about 1250 noblemen) – 48.10% (3,160,000 ha); 2) pastorates – 1.09% (71,364 ha); 3) Crown manors – 10.06% (661,311 ha) and 4) others 1.43% (93,781 ha).[13]

The Constituent Assembly, the first elected Parliament of the Republic of Latvia after proclamation of independence, convened on 1 May 1920.[14] On 16 September 1920, it adopted the Land Reform Law,[15] Article 1 of which re-established the State Land Fund. Article 2(1) defined the Fund as consisting of State lands, manors and forests, while Article 2(2) included the lands and manors listed in Articles 597 and 613 of the Baltic Private Law Act, and Articles 411 and 413 of the Part One of Volume Ten of the Digest of Laws of the Russian Empire, the corresponding manors in Latgale,[16] and thus also the pastorates.

However, Article 3 granted an exception. Para. "a" provided, inter alia for pastorates, that land subject to alienation under Article 2(2) should not be alienated such that the former owner was left with less than the area of an average holding not subject to alienation (approximately 50 ha). Under the land reform, all manors were alienated *ipso jure*. Their further exploitation was interrupted, and the former owners of the alienated manors were legally and economically treated as simple candidates for land distribution, entitled to approximately 50 hectares of the former manor.[17]

Para. "b" specified that cemeteries and lands on which churches and monasteries were built, together with yards, buildings and gardens, as well as the lands of the Aglona Monastery,[18] could not be alienated. This exception was clarified by the Law of 31 January 1924, by adding note 2 to Article 3, stipulating that "the land to be left to churches shall consist of the area of the inalienable average farms together with the buildings belonging to the church or parish". To ensure the economic existence of pastorates and relative independence of pastorates, Article 6(b) provided that inventory belonging to users of pastorates and church lands should not be alienated.

Under the Land reform, 171 pastorates were transferred to the State Land Fund, representing 1.75% of the total area of land transferred.[19] However, 216 pastorates with a total area of 11,710 ha remained, meaning that the average pastorate owned

13 Ibid., pp. 342–343.
14 Alberings and Appiņš, 1930, pp. 179–180.
15 See the consolidated edition of the Land Reform Law, published in attachment to the Latvian Land Reform, 1930, pp. 1–9.
16 Latgale is the easternmost part of present-day Latvia, which under the Russian Empire was not incorporated into the Baltic Provinces which in turn implies that the general laws of the Russian Empire, rather than the Baltic Private Law Code, were applicable there.
17 Materiali, 1929, p. 21.
18 This exception can be seen as a part of a compromise with the Roman Catholic Church, with which the newly established state, the majority of the population of the eastern part of which belonged to the Roman Catholic Church, had to establish amicable relations.
19 Lazdiņš, 2005, p. 173.

approximately 54.21 ha.[20] Thus, pastorates, given their relatively modest share of total land, lost 59,654 ha or around 83.6% of their pre-reform area.

Before the Soviet occupation in 1940, there were 1,169 parishes in Latvia: 324 Lutheran, 226 Catholic, 164 Orthodox, 90 Old Believers, 112 Baptists, 32 Seventh-day Adventists and 221 Jewish parishes. Virtually all parishes had their own churches or more broadly, places of worship.[21]

3.
The Period of Soviet Occupation

The Soviet occupation of Latvia began on 17 June 1940, when Soviet troops crossed the border of the Republic of Latvia and seized all strategically important points. The first days of the occupation were accompanied by rapid changes to the existing authoritarian system of government, and by the announcement of parliamentary elections, in which only one list was allowed to participate. The newly elected parliament, the so-called People's Saeima, held its first sitting on 21 July 1940, declaring Latvia a Soviet Socialist Republic and adopting a petition for the admission of the Latvian Soviet Socialist Republic into the Soviet Union.[22] Already on 22 July 1940 the People's Saeima adopted a declaration "On the Proclamation of the People's Ownership of Land". In line with Marxist-Leninist ideology, the declaration established that land, together with its riches, forests, lakes, and rivers was the property of all people, i.e. of the state.[23] This declaration ushered in a policy of nationalisation.[24]

On 29 July 1940, the People's Saeima adopted the Law on Land, which in Article 1(2) stipulated that "the following lands shall be transferred to the State Land Fund established by the Saeima's Declaration of 22 July 1940 declaring land to be the property of the people: [...] all lands of churches, parishes and monasteries, regardless of their area".25 The ownership of land by the people as a whole, or by the state, was likewise enshrined in Article 6 of the Constitution (Basic Law) of the Latvian Soviet Socialist Republic adopted by the People's Saeima on 25 August 1940.26 The implementation of these provisions resulted in the nationalisation of parish properties, including pastorates.

20 Maciņš, 1930, p. 296.
21 Grūtups and Krastiņš, 1995, p. 43.
22 Baldunčiks, 2020, p. 43.
23 Hronoloģiskais likumkrājums, 1960, p. 7.
24 Lazdiņš, 2005, p. 174.
25 Hronoloģiskais likumkrājums, 1960, p. 9.
26 Ibid., p. 11.

In March 1941, the Council of People's Commissars of the Latvian Soviet Socialist Republic adopted Decision No. 420s "On the Inventory and Valuation of Buildings for Worship in the Territory of the Latvian SSR". This decision obliged the executive committees of districts and towns to inventory, by 1 May 1941, as national property, places of worship and the most valuable objects of worship, after which they were to be transferred to parishes for use on the basis of a mutual contract.[27] This meant that churches or parishes, as former owners, were entitled to the use of nationalised church buildings as tenants.

On 20 February 1946, the Council of People's Commissars of the Latvian SSR adopted a decree on the use of places of worship. The decree attempted to provide precise instructions for the use of church buildings and other buildings for religious activities. It prohibited the arbitrary closure of religious buildings or their use for non-religious purposes without the permission of the Council for Religious Worship. The construction of new churches or other buildings for religious use was permitted only in exceptional cases, with the approval of the USSR Council for Religious Worship, and only if believers themselves bore material responsibility for the construction,[28] practically rendering such construction impossible.

At the same time, the existence of such a decree did not mean that churches or believers were immune from the arbitrariness of state authorities, especially if the decision originated from higher political bodies. The transfer of certain places of worship and church buildings to public institutions, organisations or enterprises was formalised by government decisions lacking any legal basis. For example, Decision No. 288 of the Council of Ministers of the Latvian SSR of 20 May 1959 dissolved of two Catholic and two Orthodox monasteries, transferring their property without compensation to the respective town and district Workers' Deputies' Councils.[29] At the Lutheran Riga Cathedral, the last religious service was held on 9 May 1959, and in 1962, after dismantling of the altar and other objects, a concert hall was established in the church.[30] On 24 January 1961, the Riga City Executive Committee, despite protests from believers, adopted a decision "On the closure of the Orthodox Church worship building at 23 Lenina Street for public use", which the Council of Ministers of the Latvian SSR approved on 26 January 1961. On this basis, the Nativity of Christ Cathedral was closed and subsequently converted into a planetarium with a cafeteria.[31] St. Peter's Church, the dominant architectural feature of Riga's Old Town, was severely damaged during the Second World War on 29 June 1941; although restored

27 Grūtups and Krastiņš, 1995, p. 42.
28 Talonens, 2009, p. 93.
29 Grūtups and Krastiņš, 1995, p. 42.
30 Mašnovskis, 2007, p. 262.
31 Sedova, 2019, pp. 221–224.

after the war, it was not opened to believers, and the first services took place only after the restoration of independence.[32]

Even without such restrictions, parishes faced significant challenges. Although church buildings were transferred to them without remuneration and for perpetual use, parishes themselves were responsible for maintaining the buildings in good technical condition. If a parish was unable to maintain its church, the village or town council of workers' deputies could initiate its closure, usually in two situations: 1) where the building was a designated national architectural monument, but not maintained according to this status, or 2) where the building's condition posed a danger to parishioners or residents. Given that the responsibility for maintaining churches rested entirely with parish members, together with frequent acts of hooliganism (poorly investigated) causing damage to church property and the dwindling number of parishioners due to various social restrictions (mostly illegal yet effective), this responsibility was often impossible to fulfil.[33]

The financial position of parishes was further undermined by the obligation to pay insurance premiums for the churches in their use.[34] Parishes were also subjected to higher taxation so that, in the event of non-payment, they would be compelled to relinquish their property; for example, electricity charges were five times higher for parishes than for individual users.[35] In practice, the church's survival in parish hands depended directly on how much believers were willing and able to pay for their faith.[36] As *Gustavs Tūrs* (1890-1973), Archbishop of the Evangelical Lutheran Church observed in 1965:

> *'..although in the last two years several parishes have been forced to leave their churches because of excessive state payments, and there are some economic and other difficulties in the parishes, their main 'capital' – faith – has survived and in some cases even multiplied.'*[37]

As a result, while in 1940 there were 1,169 parishes in Latvia, including 324 Lutheran, 226 Catholic, 164 Orthodox, 90 Old Believer, 112 Baptist, 32 Seventh-day Adventist and 221 Jewish, and practically all had their own churches or places of worship, shortly after the restoration of independence in 1991 there were 716 religious organisations (parishes), including 253 Lutheran, 184 Catholic, 88 Orthodox, 65 Old Believer, 60 Baptist, 28 Seventh-day Adventist, 4 Jewish, 7 Pentecostal, and 27 other religious

32 Mašnovskis, 2007, p. 340.
33 Mankusa-Ohff, 2009, pp. 156–157.
34 Ibid., p. 159.
35 Grūtups and Krastiņš, 1995, p. 43.
36 Mankusa-Ohff, 2009, p. 159.
37 Ibid., pp. 159–160.

organisations. As of 1991, 599 churches and houses of worship were used by parishes, 43 parishes used other adapted buildings, and 51 parishes lacked premises of their own. Meanwhile, 128 churches and houses of worship were not used for ecclesiastical purposes because they were held by other organisations. Approximately 360 to 400 residential and other buildings formerly owned by religious organisations were used by other organisations.[38]

4.
The Restoration of Independence

With the adoption of the Declaration of 4 May 1990 "On the Restoration of the Independence of the Republic of Latvia", a gradual process of restoring independence began. According to this Declaration, the Soviet authorities, led by Marxist-Leninist ideology, ignored not only the right of the Latvian State to exist, but also one of the fundamental human rights, the right to property.[39] Therefore, with the restoration of independence, one of the first tasks of the Latvian State was to denationalise property, i.e. to restore ownership rights to the former owners who had been deprived of them by the Soviet authorities.[40]

The Decision of the Supreme Council of the Republic of Latvia (hereinafter – the Supreme Council) "On Land Reform in the Republic of Latvia" of 13 June 1990 became the turning point in the denationalisation process.[41] Para. 9 of the Decision instructed the Council of Ministers to prepare and submit to the Supreme Council, by 1 September 1990, the draft laws and decisions necessary to ensure the land reform. The Decision was followed by a series of laws and other normative acts that ensured denationalisation (prior to the privatisation of State-owned property within the framework of the transition from a planned to a market economy), privatisation and the transfer of land to local authorities. Natural persons who owned land on 21 July 1940, i.e. before nationalisation by the Soviet authorities, and their heirs were recognised as former owners. Persons who had acquired property rights by way of transactions concluded between 22 July 1940 and 8 May 1945 had to apply to the courts to establish that the relevant transaction complied with the requirements of the Civil Law,[42] including verification of the acquirer's good faith. Religious organisations were likewise entitled to recover property nationalised by the Soviet authorities.[43]

38 Grūtups and Krastiņš, 1995, p. 43.
39 Lazdiņš, 2015, p. 429.
40 Lazdiņš, 2005, p. 175.
41 Lazdiņš, 2017, p. 361.
42 Civil Law. Official Gazette "Valdības Vēstnesis", No. 41, 20.02.1937.
43 Lazdiņš, 2005, pp. 175–176.

With the entry into force of the land reform laws, all acts adopted since 21 July 1940 on the nationalisation, alienation and allocation of land for use by natural and legal persons were formally repealed (Article 2 of the Law "On Privatisation of Land in Rural Areas";[44] Article 4 of the Law "On Land Reform in Cities of the Republic of Latvia"[45]). However, to avoid legal uncertainty, the right of temporary use of land was maintained for a certain period until the establishment of ownership rights.[46]

On 11 September 1990, the Supreme Council adopted the Law "On Religious Organisations".[47] Article 5(3) of this Law granted legal personality to religious organisations.[48] Article 7 provided a general declaration recognising the property rights of religious organisations over immovable and movable property, which was of fundamental importance because, during the Soviet period, religious organisations had not been legal persons and therefore possessed neither legal title to their formerly confiscated property, nor the right to acquire new property or dispose of it. Article 7 also contained a general reference the right of religious organisations to claim their formerly confiscated property, subject to a specific law yet to be adopted. The adoption of this law took one and a half years.

On 18 March 1992, the first reading of the draft law "On the Restitution of Properties to Religious Organisations" began. The draft was largely modelled on the already adopted law "On the Denationalisation of Building Properties in the Republic of Latvia".[49] At the same time, it had its own specificities, as for the first time in the practice of the Supreme Council it provided for the restitution of property, including land, to legal entities, and also for the restitution of movable property. This was particularly challenging, as it was the first occasion on which the Latvian legislator, after the restoration of statehood, was confronted with questions of the inheritance of rights relating to legal entities. Some deputies argued that only those parishes in which a certain percentage of pre-occupation parish members remained could inherit; to this, for example, it was replied that had the process taken place ten years later, none of the former legal entities would naturally have remained. In addressing the question of legal succession, the problem of the identity of the former and existing

44 Law "On Land Privatisation in Rural Areas". Official Gazette "Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs", No. 32/33/34, 20.08.1992.

45 Law "On Land Reform in Cities of the Republic of Latvia". Official Gazette "Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs", No. 49/50, 19.12.1991.

46 Lazdiņš, 2005, p. 176.

47 Law "On Religious Organisations". Official Gazette "Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs", No. 40, 04.10.1990.

48 For the purposes of the Law, according to Article 4(1) "religious organisations are voluntary associations of permanent residents of the Republic of Latvia which are established on the basis of religious belief in order to satisfy and provide for the religious interests and needs of their members."

49 Law "On the Denationalisation of Building Properties in the Republic of Latvia". Official Gazette "Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs", No. 46, 21.11.1991.

organisation had to be resolved, and was successfully resolved in the Law.[50] It should also be noted that restitution of church property was not without opponents: for example, one of the deputies of the Supreme Council asked whether it was necessary to return "everything, every last properties that once belonged to churches", including pastors' houses, formerly known as pastoral manors.[51]

On 12 May 1992, the Supreme Council adopted the Law "On the Restitution of Properties to Religious Organisations",[52] based on the following principles. First, religious organisations were to have their property rights restored, both immovable and movable, with the exception of deposits and certain other categories.[53] Second, the property rights of *bona fide* acquirers, who had acquired property on the basis of notarially certified contracts were to be protected.[54] Third, compensation was to be provided if restoration of the specific property was impossible, with exceptions, for example, where the property had been destroyed during the Second World War.[55] Fourth, if a parish or other religious organisation ceased to exist, its property was to be taken over by the religious centre[56] concerned.[57] Fifth, the law regulated the identification of the successor in title, both administratively and through the courts.[58] Sixth, property rights were to be restored by a decision of the relevant local authority, on the basis of which a certificate of title was to be issued.[59] The property rights of foreign religious organisations were to be decided on a case-by-case basis by the

50 Grūtups and Krastiņš, 1995, pp. 43–45.
51 Lazdiņš, 2017, pp. 379–380.
52 Law "On the Restitution of Properties to Religious Organisations". Official Gazette "Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs", No. 22/23, 04.06.1992.
53 Ibid., Para. 2 of the Preamble and Article 2.
54 Ibid., Art. 2.
55 Ibid., Art. 4.
56 For the purposes of the Law, a religious centre means the Roman Curia, consistory, eparchy, union and council (Para. 1 of the Preamble of the Law).
57 Art. 6(1) of the Law stipulated: "The right to recover illegally alienated property objects in accordance with their statutes (constitution, by-laws) is vested in religious organisations which were registered with the Department of Churches and Denominations of the Ministry of the Interior of the Republic of Latvia and which have restored their legal personality rights in accordance with the procedure established by the Law of the Republic of Latvia "On Religious Organisations", or religious organisations - their successors in title. If a parish or other religious organisation ceases to exist, its property shall be taken over by the relevant religious centre in Latvia."
58 Art. 6(2) of the Law stipulated: "Renewed religious organisations belonging to the same denomination as the former religious organisation may be recognised as successors to the property rights if their aims, objectives, basic doctrine, legal status, name and territory of activity are the same as those formulated in their statutes (constitution, by-laws). The inheritance of property rights shall be confirmed by the court upon the opinion of the religious centre concerned, but if there is no centre, the court shall request the opinion of the Advisory Council for Religious Affairs of the Supreme Council of the Republic of Latvia and the Department for Religious Affairs."
59 Ibid., Art. 8.

government.[60] Seventh, all claims between the current holder of the property and the church were extinguished: churches were not entitled to claim fees for the use of the property to be restored until restoration of property rights, and current holders were not entitled to claim compensation for maintenance, repair or reconstruction.[61] Eighth, restitution was to occur within the time limits laid down in the Law.[62] Ninth, tenants' rights were to be protected.[63,64]

It should be noted that when all German Lutheran parishes were dissolved in 1939-1940,[65] their properties were transferred to the Lutheran Church Superintendency; accordingly, the Latvian Evangelical Lutheran Church Consistory, as the relevant religious centre under the Law "On the Restitution of Properties to Religious Organisations" was entitled to claim properties of former German parishes.[66] At the same time, the decision of the Supreme Council of 12 May 1992 on the procedure for the entry into force of the Law provided that the legal status of the Lutheran Riga Cathedral and St. Peter's Church was to be determined by special laws, because these buildings had no legal heirs: the parishes had emigrated during the Second World War and had not been re-established thereafter, and the Latvian Evangelical Lutheran Church had not inherit their rights, as these parishes had not been under the authority of the Supreme Board of the Latvian Evangelical Lutheran Church.[67] Moreover, even in 1995, not all deputies supported the restitution of the Riga Cathedral to the Latvian Evangelical Lutheran Church, including on the grounds that the state and taxpayers had invested significant resources in the maintenance.[68]

Only with the adoption of the Law "On the Riga Cathedral and Monastery Ensemble"[69] on 9 June 2005 was ownership of the Riga Cathedral restored to the Latvian Evangelical Lutheran Church. The fate of St. Peter's Church in Riga was decided only very recently – by the Riga St. Peter's Church Law[70] of 24 March 2022, the

60 Ibid., Art. 6(3).
61 Ibid., Art. 9.
62 Ibid., Art. 12.
63 Ibid., Art. 13.
64 Grūtups and Krastiņš, 1995, pp. 48–49.
65 This has taken place in the context of the emigration of the historic Baltic German (*Baltdeutschen*) minority, which took place in accordance with the German-Latvian Treaty of 30 October 1939. "On the Relocation of Latvian Citizens of German Nationality to Germany", within the framework of which the Baltic Germans were in fact forced to leave Latvia. Those who had not done so emigrated already on the basis of the German-Soviet Treaty of 10 January 1941. See in Lazdiņš, 2017, p. 381.
66 Grūtups and Krastiņš, 1995, p. 49.
67 See: Initial Impact Assessment Report on the draft law "Riga St. Peter's Church Law" (annotation), 2018.
68 Skujeniekam, 1995, p. 3.
69 Law "On the Riga Cathedral and Monastery Ensemble". Official Gazette "Latvijas Vēstnesis", No. 98, 22.06.2005.
70 Riga St. Peter's Church Law. Official Gazette "Latvijas Vēstnesis", No. 69, 07.04.2022.

building was transferred to the St. Peter's Church of Riga Foundation, jointly owned by the Latvian Evangelical Lutheran Church and the German parish of the St. Peter's Church[71]. Thus, historical justice was restored.

5.
Conclusion

After the restoration of the independence of the Republic of Latvia, initiated by the adoption of the Declaration of the Supreme Council "On the Restoration of the Independence of the Republic of Latvia" on 4 May 1990, the State, within the framework of the principle of continuity, had not only the right but also the legal duty to restore, as far as possible, the legal and factual situation that existed before the Soviet occupation of the Republic of Latvia in the summer of 1940. This restoration included the restitution and denationalisation of property nationalised during the Soviet occupation to the previous owners or their heirs.

Among the owners entitled to receive what was illegally seized were churches or religious organisations, which during the Soviet occupation were deprived of ownership of land, buildings (with cult buildings transferred merely for parish use) and even objects of religious rites. Given that the volume of property held by churches in the pre-occupation period, although significant compared with other private individuals, was not of national importance, the decision to include religious organisations among those entitled to restitution did not place a substantial burden on the state. This is partly because the churches had already lost a large share of their property during the land reform carried out by the Republic of Latvia after its establishment in 1918. Nevertheless, the restitution of certain properties, namely the Lutheran Riga Cathedral and St. Peter's Church, proved problematic and caused turbulent discussions, although they were based not on financial but on emotional or even ideological considerations. As a result, the restitution process concluded only in 2022, with the transfer of St. Peter's Church to the foundation jointly established by the Latvian Evangelical Lutheran Church and the German parish of the St. Peter's Church.

Given that religious organisations/churches were granted legal personality only with the restoration of independence, the legislator faced the complex task of determining the eligible recipient to whom property rights were to be restored. This challenge arose because religious organisations were the first legal entities for which the legislator envisaged restoring ownership of property nationalised during the Soviet occupation, while many parishes that had held such property before 1940 had ceased to exist. Consequently, the legislator created a solution whereby property

71 Ibid., Art. 4(1).

rights were to be restored first to parishes and, where these no longer existed, to religious centres. However, where restitution in kind was not possible, the legislator provided for compensation, while simultaneously imposing restrictions to safeguard the rights and interests of others, most notably through social legislation protecting tenants, because the previous situation was to be restored only insofar as this was realistically achievable.

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Miljan SAVOVIĆ*

Benefits and Challenges of Legalising Euthanasia – Example of Serbia

ABSTRACT: *We are all familiar with the fact that the legal practice of euthanasia is causing great misunderstandings between law scholars on international level. There are a lot of open questions to discuss about, especially those with ethical and moral backgrounds. Mutual consensus is nowhere to be found. Euthanasia questions the right to life at its fundamentals; that is undeniable. Some of the legal systems are acknowledging its existence, while some are advocating against it. Both sides have their positive and negative arguments, there is not yet adequate middle ground. There is a lot of room for finding mutual consensus in the future. Regarding my home country, Serbia, the legal practice of euthanasia, is not officially part of its Criminal Code. Some authors and legal scholars propose that it needs to become part of our positive legal system. The right to life is one of the cornerstones of human rights, and one of the main pro euthanasia arguments is that every individual should have the possibility to choose whether or not he/she will exercise that right. There are a lot of countries that are successfully practicing this practice for years (the Kingdom of the Netherlands and Switzerland e.g.). The facts and hypotheses quoted in the Para. above are going to be main focus of this article. During the writing of this article, I will primarily use the following scientific methods: analytical, critical and parallelism. The article is going to show the positive and negative sides of legalising euthanasia in Serbia. Its main focus is going to revolve around comparison and analysis with countries that have accepted the legal practice of euthanasia as a part of their legal systems. Additionally, this article is going to examine if the decision to legally exercise the right to life should be in the hands of its bearer, especially when there are some excusing circumstances (fatal illness e.g.), and whether Serbia needs to work on legalising it.*

KEYWORDS: *Euthanasia, Legalisation, Positive Law, Right to Life, Comparative Law.*

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1.
Introduction

The right to life is one of the most important rights that an individual can exercise. The European Convention on Human Rights (ECHR), in Article 2, prescribes right to life in the following manner:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.[1] Furthermore, regarding this topic, we can also quote Article 2 of the Convention on Human Rights and Biomedicine (Oviedo convention): The interests and welfare of the human being shall prevail over the sole interest of society or science.[2] The right to life stands as one of the fundamental and most important pillars of the entire category of law. In addition, it is a precondition for enjoying a vast array of other rights.[3] However, in modern legal systems, there are many institutes that are bringing the right to life into question. Abortion, death sentence and euthanasia are some of the most flagrant examples of it. Even in question, the right to life maintains its status as one of the most valuable human rights. One of the most famous international cases where the right to life was questioned was *Evans versus the United Kingdom (UK).*[4] Natalie Evans and her partner, underwent IVF because of her ovarian cancer. Six embryos were frozen, but after their separation, her partner withdrew his consent for the embryos to be used, as he no longer wished to be a father. Evans argued that the UK law violated her rights under the ECHR, particularly Article 2 (right to life of the embryo). The Grand Chamber of the ECHR unanimously found no breach of Article 2. The Court affirmed the UK's legislation, emphasizing that the right to private life includes the right not to become a parent. The decision reinforced the State's margin of appreciation in regulating reproductive technologies, and upheld the principle of mutual consent in IVF treatment, recognizing the competing interests of both parties. This case still causes disputes between experts around the world, even after nearly twenty years later.

1 Convention for the Protection of Human Rights and Fundamental Freedoms.
2 Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine.
3 Opsahl, 1993, pp. 203–227.
4 *Evans v. the United Kingdom*, 2007.

Numerous institutes are questioning the right to life to its core. Among them is the institute and practice of euthanasia (assisted suicide, as critics like to label it). Today, euthanasia is one of the most debated and criticised legal concepts that is causing great differences in opinions between legal scholars and legal systems around the world. It remains a highly controversial moral issue, with ethical, political, religious and ethical considerations playing an important role.[5] Mutual consensus is nowhere to be found, and it appears that it is going to stay like that for a long time. Only a few countries (around 10) have legalised it, which confirms the disagreements and disputes that exist worldwide. The Kingdom of Netherlands, Belgium and Luxembourg are some of the examples. However, regardless of evidence on the high level of criticism and drawbacks, the legal practice of euthanasia has showed a large number of positive side effects after legalisation. For example, some of the surveys showed that in some countries the legalisation of euthanasia contributed to a decrease in the number of suicides. Psychologically speaking, for an individual, it is a lot easier and comforting for him/her to know that his/her decision for exercising/not exercising the right to life is fully legalised and accepted by society. Not to mention the elimination of public shame of the deceased's family and other side effects that legalising euthanasia brings.

Right to life stands as one of the most important human rights of every individual. Some of the authors would argue that the legalisation of euthanasia is jeopardising the right to life itself, while some other authors have a slightly different approach. Differences in their stances will be fully elaborated in the chapters that follow.

2.
Historical Aspect and Development of Euthanasia

In one way or another, euthanasia has made its presence since the early times, but in different forms and manifestations. Debates about the moral dilemmas of euthanasia date back to ancient times. Many of the historical arguments used for and against the practice of euthanasia remain vivid even today,[6] while the first traces of forms of euthanasia date to ancient Greek and Rome. Some of the ancient philosophers referred to euthanasia as a "good death" and explored the various motives behind it. However, it is debatable if death can be "good"?! Sure, some ways of dying are far more elegant, sophisticated and less painful to endure, but, as the end awaits all of us, "good" is a strongly debatable term, with a question mark. Moreover, as self-suicide and euthanasia were common acts in classical antiquity, they did not conflict with

5 Fontalis, Prousali and Kulkarni, 2008, pp. 407–413.
6 Harris, 2001, pp. 367–370.

the moral beliefs of that era. Ancient authors treated it in a permissive manner, while they looked on human life as having inherent value. Some authors like Plato even considered it as a heroic act. Suicide was predominantly legally permitted, and was even perceived as a triumph over fate.[7]

During the Middle Ages, public stance regarding euthanasia drastically changed. Suicide was perceived as a serious sin and a major crime. Most theologists advocated that executing euthanasia/suicide were in no case religiously permissible as it defied the duty to live and love ourselves, and an offence against God. Literature was far more than hostile.[8]

Sixteenth and seventeenth centuries brought years of revolution, romanticism and the rapid progress of science, but public opinion regarding euthanasia practically stayed the same, more or less. Theologists and scientists saw no justifiable cause for euthanasia. Some of the most renowned authors, who discussed these topics were Thomas More, Francis Bacon, John Bunyan.[9]

The period of enlightenment brought different approaches. Many philosophers were dissatisfied with the religious, political and social status quo. They respected science because they believed it was a more reliable means for determining truth, rather than theological speculation. To authors like Voltaire and Montesquieu, suicide was a question of individual liberty. They were optimistic and believed that every individual with proper education could make rational choices. Baron d'Holbach deemed euthanasia/suicide to be determined by biological or psychological facts, and thus were purely natural acts.[10]

The nineteenth and twentieth centuries brought higher levels of concern and tolerance among authors. They were not against practicing euthanasia, but they expressed their concerns, especially from an ethical and moral standpoint.[11]

In today's modern time, the legal practice of euthanasia is causing great debates among authors, law makers and doctors. There is no mutual ground between authors: some of them are criticising it, while others are advocating for it. Both sides have valid argumentation. The fact that out of approximately 190 countries, only around 10 have fully legalised it, speaks more than enough. There is considerable room for more constructive dialogues and solutions in the coming times.

7 See: Dowbiggin, 2007.
8 Ibid.
9 Ibid.
10 Ibid.
11 Ibid.

3.
Definition and Types of Euthanasia – Active and Passive Euthanasia

Even though the practice of euthanasia has numerous manifestations and classifications, the distinction between active and passive euthanasia stands out as the most prominent classification.

In its essence, death by euthanasia must be defined as death that results from the intention of one person to kill another, using the most gentle and painless means possible, that is solely motivated by the best interests of the person who dies. Consequently, it is reasonable to infer that any method for including death, other than the most gentle and effortless, is not true euthanasia. Euthanasia is generally defined as being motivated by the best interests of the person who dies. While this motivation is a necessary part of the definition, it is not sufficient on its own. If euthanasia is meant to serve a person's best interests, then the gentler available option should always be used. This is because the "best" choice is, by definition, is the one that cannot be improved upon. Therefore, intentional killing, that does not use the gentlest and easiest possible means, cannot be euthanasia.[12] Additionally, H.J.J. Leenen gives a definition of euthanasia that consists of three main components:[13]

1. An act which has resulted in death
2. The act itself has to be performed by someone other than the person who has died
3. The act must have been performed at the deceased's request
   While definitions of euthanasia vary in their approaches on this topic, their fundamental concepts remain more or less the same.

Given the main classification of types of euthanasia, we define active euthanasia as intentional ending of one person's life by another, motivated solely by the best interest of the person who dies, through the deliberate administration of a life-ending substance or procedure.[14] One of the most prominent representatives of legalising active euthanasia was Daniel Karsai, who got famous in the Karsai versus Hungary case.[15] Dr Karsai campaigned to legalise active euthanasia, in which, a physician gives the patient a lethal drug. In June 2024, the European Court of Human Rights – Karsai's former workplace – ruled in favour of the Hungarian government's argument that the denial of euthanasia was not an infringement of his fundamental rights as a

12 Brassington, 2020, pp. 1–13.
13 Leenen, 1984, p. 333.
14 Ibid.
15 *Dániel Karsai v. Hungary*, 2024.

Hungarian citizen. In September, the European Court of Justice also ruled against him. While he lost both cases, he won significant popular support. He died shortly thereafter, yet his efforts have left a great contribution to the international legal community. Conversely, we define passive euthanasia as the intentional ending of one person's life by another, motivated solely by the best interest of the person who dies, through the deliberate withholding of a life-preserving substance or procedure.[16]

Basically, the main difference between active and passive euthanasia revolves around executing the act of ending someone's life (active euthanasia), and being passive by letting someone die (passive euthanasia). To kill or let someone die are two different dimensions. Both of them raise a lot of open and debatable questions, especially from ethical and moral viewpoints, but there is a major difference between ending someone's life, and simply being passive and letting an individual die, while refraining and doing nothing.[17]

Moreover, there is a lot of controversy regarding permissibility of both active and passive forms of euthanasia. While the active form of euthanasia is unanimously criticised and tends to be prohibited by law makers and authors, the passive form tends to be more subject to discussion and open mindedness. Once again, moral and ethical components raise its manifestations, while opinions about passive euthanasia are divided. Some authors think that the passive form can be permissible in some situations, while others are rather sceptical. However, both sides agree that the active form of euthanasia should be forbidden.[18] It is evident that the active form of euthanasia leaves equally devastating consequences for the deceased as well as the assistant. For the deceased, it is the termination of the right to life. For the assistant (executioner) it is the emotional and psychological burden that he/she has to carry and endure for the rest of his/her life.

Opinions regarding passive euthanasia differ, though it generally has a higher dose of elasticity than its active counterpart. Some authors even consider passive euthanasia as non-existent, presumably because passiveness cannot be legally charged, and contend that passive euthanasia cannot really be euthanasia if it does not cause death.[19]

Despite drastic differences in opinions and approaches, the distinction between active and passive euthanasia remains the most prominent. It is clear that only an adequate symbiosis between the two is the only possible way to achieve the full potential and eventual worldwide legalisation of euthanasia, assuming that lawmakers decide to give the legal institute of euthanasia a chance, globally speaking.

16 Leenen, 1984, p. 333.
17 McLachlan, 2008, pp. 636–638.
18 See: Rachels, 2019.
19 Garrard and Wilkinson, 2005, pp. 64–68.

4.
Positive Examples of Implementation of the Legal Institute of Euthanasia in the Netherlands and Belgium

Even though the institute of euthanasia has been fully legalised in only a few countries (Spain, Luxembourg, six states of Australia...), for the purpose of this article, I shall use only the Netherlands and Belgium as examples, and for comparative analysis.

Kingdom of Netherlands: the legal institute of euthanasia was first formally legalised in the Netherlands when the Termination of Life on Request and Assisted Suicide (Review Procedures) Act came into force in April 2002. This Act, which also serves as an umbrella law for the practical procedure of euthanasia consists of 24 articles. The main governing bodies responsible for its rightful exercise are the Ministries of Justice, Health, Welfare and Sport.[20]

Under this Act, the requirements for lawful execution of the legal institute of euthanasia include: the patient's request was voluntary and well considered, patient's suffering was lasting and unbearable, patient was well informed about all the consequences, and the act itself could be performed only by an authorised physician.[21] It also prescribes the formation of regional committees, appointed by ministers. This is further elaboration in articles 3 to 18.[22] Later Acts provide additional explanations about potential penalties regarding unlawful execution of this institute. The maximum punishment for unlawful conduct of euthanasia is 12 years.[23]

While the initial introduction caused great disturbances, most of the surveys reveal that Dutch voters/citizens have fully embraced euthanasia as a part of everyday life, with some of the recent polls indicating that over 70% of the population support it.[24] Additionally, from 2000 to 2022, the number of executed legal euthanasia cases rose from around 2000 to nearly 9000.[25] That speaks volumes of how the Netherlands has fully recognised the full potential of legalising euthanasia.

Belgium: a few months after the Netherlands introduced its euthanasia laws, Belgium introduced its own legal instrument for euthanasia to the international legal theatre under the name of the Belgian Act on Euthanasia. It consists of around 16 articles, and its provisions lean heavily on its Dutch counterpart.[26] The differences

20 Termination of Life on Request and Assisted Suicide (Review Procedures) Act (2002) Netherlands.
21 Ibid., Art. 2.
22 Ibid., Arts. 3–18.
23 Ibid., Art. 20.
24 CARE (2024) 80% of Dutch voters support allowing euthanasia for those who feel their life is "complete".
25 Statista (no date) Netherlands Euthanasia.
26 The Belgian Act on Euthanasia, 2002.

are minimal. Some of the provisions that are slightly different are the ones regarding committees. Belgian legislative rules are more precise in the matter of the exact number of individuals that the committee needs to have (16 members) and their qualifications.[27] However, the differences are minor. While surveys in the Netherlands showed a significantly higher evolutional and exponential growth in the number of lawfully performed euthanasia cases (increasing from around 300 in 2003 to over 3500 in 2023),[28] the nature of exponential dynamics stays practically the same as in the Netherlands. Nevertheless, Belgium stands as one of the most flagrant examples of a positive legal system with successful implementation of euthanasia.

While the Netherlands and Belgium represent positive examples, they are still only exceptions, rather than a pattern because a sample size of approximately 10 out of over 190 countries across the world, is not statistically substantial enough for a valid comparative legal analysis. More legalisation trends need to be executed for the surveys and comparative analysis samples to become more relevant.

5.
Ethical and Moral Complexities of Legalising Euthanasia in the Republic of Serbia and Globally

Even though the terms "ethics" and "morality" hold a lot of similarities, there is a fine line of distinction between them. While ethics stands as one of the branches of philosophy, morality is more centred around norms and acceptable patterns of behaviour in society.[29]

Despite being somewhat different, these two constructs form one unbreakable symbiotic bond. One cannot discuss about ethics without mentioning morality, and vice versa.[30] The legal institute of euthanasia and its legalisation certainly raises a lot of questions that are questioning ethical and moral views to their core.

Debates about the moral dilemmas of euthanasia date back to ancient times, and stand as one of the most controversial open questions of modern law. It provokes emotional reactions and responses from experts and the general public.[31]

Some authors would say that the potential legalisation of the legal practice of euthanasia questions an individual's ability to exercise his/her right to life to its full potential, while simultaneously raising doubts about the possible unlawful

27 Ibid., Art. 6.
28 Statista (no date) Number of registered euthanasia instances in Belgium from 2002 to 2023.
29 Annas, 1992, pp. 119–136.
30 Mattingly and Throop, 2018, pp. 475–492.
31 Harris, 2001, pp. 367–370.

termination of someone's life, previously quoted. Right to life is seen by many as an absolute moral value.[32]

Additionally, it is morally harder to justify letting somebody die a slow and ugly death, dehumanised, than it is to justify helping him/her to escape from such misery. This is the case at least in any humanistic or personalistic code of ethics, one with a value system that puts humanness and personal integrity above biological life and function.

It makes no difference whether such an ethics system is grounded in a theistic or naturalistic philosophy. We may believe that God wills human happiness, or that human happiness is, as Protagoras thought, a self-validating standard of the good and the right. However, what counts ethically is whether human needs come first, not whether the ultimate sanction is transcendental or secular. What follows is a moral defence of active or positive euthanasia, which helps the patient to die, over the passive or negative form of euthanasia – which "lets the patient go" by simply withholding life-sustaining treatments. The plain fact is that negative euthanasia is already a fait accompli in modern medicine,[33] and that is something to question and think about.

Further, we can analyse the term euthanasia from the perspective of eudaimonia,[34] the ancient Greek conception of happiness across one's whole life. It is argued that one cannot be said to have fully flourished or had a truly happy life if one's death is preceded by a period of unbearable pain or suffering that one cannot avoid without assistance in ending one's life. While death is to be accepted as a part of life, it should not be left to nature to dictate the way we die, and it is fundamentally unjust to grant people a liberal latitude in how they live their lives, while granting them little control over the conclusion of their life narratives.[35]

It is hard to adequately dispute the facts mentioned in the Para. above. We can argue that every person is a master of his/her own life and fate, especially when there are excusing circumstances like insufferable diseases. The question of ethics and morality are highly debatable, and at the same time, they are crossing some fine lines and entering the legal areas of grey zones (colloquially speaking). Furthermore, potential legalisation shakes the principles of ethics and morality and their universal definitions.

It is highly questionable whether the potential legalisation of the legal practice of euthanasia in Serbian positive legal system will bring more positive than negative effects. The passage of time will be the best indicator and judge.

32 See: Keown, 2018.
33 Fletcher, 1977, pp. 348–360.
34 Deci and Ryan, 2008 pp. 1–11.
35 Shaw, 2009, pp. 530–533.

6.
Benefits of Legalising Euthanasia within the Positive Law of the Republic of Serbia

As Serbia's positive legal system does not recognise the legal practice of euthanasia in its criminal code or via any individual/separate legal acts, there is significant room for legal variations regarding its hypothetical implementation.

Secondly, euthanasia/assisted suicide are not ends in themselves with intrinsic value, but are means to realise the end of a good death, or to be more precise, a quality dying experience. The current debates revolve around whether euthanasia is appropriate for some individuals, whether passive euthanasia is the same as active euthanasia,[36] and whether providing morphine for pain relief – with the risk of respiratory depression and premature death, is the same as euthanasia. Besides ethical and moral considerations, there is also a lot of debate on topics relating to the social acceptance and clinical practice of euthanasia. Will terminally ill patients be helped or harmed by having euthanasia available to them? There is not definitive or consensus answer on this topic yet.

When speaking about trademarks and characteristics of the Serbian population and society, we are looking at a mix of people holding traditional values, who are slowly opening themselves to new and liberal virtues. In this context and social climate, it is going to be more of a challenge to fully legalise the practice of euthanasia. Still, that process is a long way from being impossible. Maybe, but just maybe, the Serbian legislature needs to evolve, and the implementation of legal practice of euthanasia is one of the hypothetical ways to achieve that goal.

Secondly, by implementing legalisation, Serbian lawmakers could demonstrate to the international community that Serbia is ready to join a select group of countries, who are playing a pivotal role in revolutionising modern law. Most countries have chosen to prohibit this practice completely, with the exception, not surprisingly, of Belgium, Canada, Colombia, Switzerland, Kingdom of Netherlands and a few American states.

By becoming a part of this group of countries, around 10 countries worldwide, that have legalised euthanasia, Serbia can possibly show international legal systems that it is not afraid to take initiatives, especially when it comes to upgrading and modifying its legal acts.

Moreover, by legalising euthanasia, Serbian legislation could add a new layer of humane virtue to the right to life and its ability to be exercised, even if it seems contradictory. Legalising euthanasia/assisted suicide can be seen as a necessary

36 Ibid., See more in Chapter 3.

"insurance policy" that will ensure that no one dies in painful agony or unremitting suffering. Legalised euthanasia would protect the vulnerable from wrongful death, and enable peaceful death with dignity. Furthermore, proposers of euthanasia and physician assisted suicide identify three main benefits to legalisation: realizing individual autonomy, reducing needless pain and suffering, and providing psychological reassurance to dying patients.[37] It is indisputable that the most important reasons for euthanasia include medical arguments, such as great suffering and pain caused by incurable diseases in the terminal phase, persistent vegetative state, possibility of organ transplantation in special cases, and conditionally, the equitable distribution of healthcare costs.

Furthermore, we cannot forget arguments for supporting euthanasia, like ending suffering, freedom of choice to decide how and when one dies, and being able to die with dignity. A terminally ill patient can have terrible pain. Such patients can also have difficulty with sleeping. Medications used in the treatment of pain have the potential to alter consciousness, change the state of mind, and even cause death. It should be noted that without physician assistance, patients may commit suicide in a messy, horrifying, and traumatic way, and that type of action and reaction can leave devastating consequences, especially for the family of the deceased. It is debatable whether the dying process can be avoided or become more elegant and sophisticated through the legalisation of the institute of euthanasia.

Besides, when a patient is unable to speak, the decision regarding treatment becomes even more complicated. The instruction to the physician must be as close as possible to what the patient, if able, would give. In such cases, the physician must find out any wishes the patient had expressed previously. If patients are unable to communicate on their own, the physician is obligated to communicate with their families.[38] Thereafter, the physician must try to obtain consent from a proxy. Almost always, the patient has a close family tie with a spouse, partner or adult child. Pertinent information from relatives and close friends is extremely helpful at these times.[39] By the hypothetical implementation of the legal practice of euthanasia, maybe the psychological burden for families of potential practitioners, becomes less heavy, and an easier burden to endure. Probably, one of the most crucial aspects of this whole process is that the family should be protected as much as possible, both legally and morally.

However, should Serbia decide to legalise the practice of euthanasia/physician-assisted death, it should be practiced only as a last resort, applicable only when all medical treatments have failed, and there are no options left for potential

37 Emanuel, 1999, pp. 629–642.
38 Teno et al., 2004, pp. 88–93.
39 Steinhauser et al., 2001, pp. 727–737.

practitioners to recover. Given the facts and premises quoted in the Para. above, we can see that there are a lot of positive arguments regarding the legalisation of euthanasia in Serbia. If our lawmakers decide to take that step, I propose that during that process, we should use Belgian and Dutch legislation as our primary source of inspiration and comparison.

7.
Challenges to Legalising Euthanasia within the Positive Law of the Republic of Serbia

Euthanasia is categorically prohibited in almost all countries throughout the world,[40] and that fact alone speaks volumes about how much of a challenge the legalisation of euthanasia would present to the Serbian legislature, if Serbia decides to legalise the practice.

As discussed in previous chapters, perhaps the most significant obstacles and challenges to legalising the practice of euthanasia, stem from its ethical and moral viewpoints.[41] While ethics and morality are fundamental obstacles, legalising euthanasia also brings another set of challenges and impediments.

Firstly, as mentioned several times in the Para. above, not many countries have fully legalised euthanasia (only around 10). Therefore, there are only a few example-states to use as a sample for implementation. At the same time, the number of countries available for a comparative-law approach and eventual execution, also remain at low levels. Serbian lawmakers are going to be extremely limited during the process of legalising and implementing the practice of euthanasia Given the historical, geopolitical and cultural background, I would say that my country can only rely on a few countries as a model, specifically the European ones (Netherlands, Belgium, Luxembourg).

Secondly, there are many opponents of euthanasia and physician-assisted suicide among law researchers and practitioners globally.[42] One of the reasons for their advocating that some societies should never legalise euthanasia is that the doctor-patient relationship will be seriously weakened. When the physician becomes involved in euthanasia, the relationship between the patient and doctor is radically undermined. The nature of the patient–doctor relationship is extremely confidential, private and personal. It is debatable whether a dying patient is able to make a rational decision. The potential legalisation of euthanasia questions and jeopardises the essence and

40 Bollen et al., 2019, pp. 111–113.
41 See more in Chapter 5.
42 See: Callahan, 2019.

fundamentals of that relationship. Many people recover after being "written off" by doctors. Patients may have said that they wanted euthanasia when they were nowhere near death. However, when actually faced with death, they may change their mind, but be incapable of telling anyone. Additionally, opponents of legalised euthanasia typically argue that pain and suffering at the end of life can be controlled in almost all cases to a level that is satisfactory to the patient, and that the few patients whose pain cannot be adequately controlled do not justify the legalisation of euthanasia. They claim that complete sedation can be used to alleviate a patient's pain when it can no longer be controlled. Further, opponents generally argue that public funds should be spent on making sure that all patients who are dying have access to palliative care, rather than on setting up the legislative and procedural framework necessary for the safe provision of euthanasia. Additionally, opponents of the autonomy argument contend that terminal patients cannot force a physician to take an immoral action, such as voluntary active euthanasia. They believe that actively ending a life is murder. Therefore, physicians cannot end a patient's life even if the patient has given his/her consent.[43]

Moreover, there is a lot to discuss from a religious point of view. Most religions around the world explicitly prohibit any form of taking someone's life (killing), even if the person whose life is going to be hypothetically taken has given consent and permission. Not to mention that suicide is classified as one of the gravest sins, and perceived as a one-way ticket to hell. For Serbian society and culture, which is traditionally orthodox Christian and part of the Eastern Orthodox Church family, persuading the public, media and citizens of the benefits and positive attributes of legalising euthanasia is going to be an extremely challenging task. Not impossible, but definitely difficult.

There is also an argument that giving physicians/medical staff too much power to kill patients, or assist in their suicide, under the cloak of confidentiality is to run a considerable risk, one that is hard to spot as well as hard to act upon. There is just no way, in the end, for outsiders to know exactly what doctors do behind the veil of confidentiality, which in itself is a threat. Besides, the tradition of medicine has, for centuries, opposed the use of medical knowledge and skill to end life. Every important Western medical code of ethics has rejected euthanasia – and rejected it even in eras when there were far fewer ways of relieving pain than are now available.[44] It would be an extremely difficult task to harmonise medical and criminal legislative acts in the Serbian case.

It is undeniable that the obstacles and challenges presented in section 7 of this article have valid argumentation, and that if Serbian law makers decide to legalise

43 See: Battin, 2005.
44 Callahan, 2005, pp. 179–190.

euthanasia, it is going to be a nearly impossible task to find a way to bypass these problems.

8.
Possible Legal Provisions/Solutions within the Positive Law of the Republic of Serbia

As there are currently no adequate legal solutions regarding the legal practice of euthanasia, there are two possible solutions for potential future implementation: regulation via the Criminal Code or through a separate legal act.

In my humble personal opinion, keeping in mind that the process of legalising euthanasia is an extremely delicate matter, the best solution for Serbian lawmakers, should they decide to legalise it, is to introduce a unique legal act to regulate this topic. My proposed title is "The Serbian Act on Euthanasia",[45] similar to the Belgian model.

That hypothetical future act would be heavily inspired by the Dutch Termination of Life on Request and Assisted Suicide (Review Procedures) Act, but the act itself would be adapted to Serbian circumstances and conditions.

In the following sections, I will propose possible changes and adaptations that can be made, from my standpoint, and I will use the Dutch Act as a point of comparison:[46]

1. In the opening sequence of the Act, given that Serbia is not a monarchy in comparison to the Netherlands, I would quote that the act is brought by and for Serbian people and its citizens as bearers of sovereignty (to learn more about the Serbian perspective on sovereignty, you can refer to the textbook "Constitutional Law" by our distinguished professor Ratko Markovic, where he clearly elaborates on three manifestations of sovereignty: internal, external and synthetic elements).
2. In Article 1 of the Dutch Act, the ministers, who are key to the execution of this Act are Health, Welfare, Sports and Justice. Further, there is a room for adding the Ministry of Finance, because I predict that there will be two situations: when euthanasia is financed by the state and when it is financed privately. Therefore, I think that including the Ministry of Finance is of great importance for better execution, if it gets an opportunity to be a part of the positive legal system.
3. In Article 2, I propose that within the potential Serbian case, the legal age limit for a person who is giving his/her consent for euthanasia should be at least 21

45 See more in Chapter 4.
46 Termination of Life on Request and Assisted Suicide (Review Procedures) Act, 2002, Netherlands.

years at the moment of giving consent. It is perhaps debatable whether that age limit should be lower than 21 years.

4. In Article 3, the Dutch Act refers to an uneven number of committee members. I think that the number of five members is fairly adequate, and that it is more than enough for high quality voting making decisions.
5. Articles 4 through 12 are more than satisfying, so Serbian lawmakers can implement them verbatim.
6. In Article 13, the Dutch Act addresses the consultation dynamics between the chairman and representatives on an annual basis. I believe that these consultations should be held at least quarterly, four times a year. Given that, we are dealing with an extremely delicate and sensitive topic, consistency is crucial; therefore, consultations should be frequent, as much as possible.
7. Articles 14 through 19 are also extremely appropriate, so direct implementation would be the best solution.
8. In Article 20, the Dutch Act addresses wrongful execution and potential legal consequences. I would argue that the punishment for the unlawful execution of euthanasia should be more rigorous, and that the sentence should be a minimum of 20 years of imprisonment. Other forms of wrongful execution should also be punished more drastically. We are talking about snuffing out someone's right to life; after all, people need to be aware and afraid of the consequences. Drastic punishment and public awareness of it bring effective results.
9. Articles 21 and 22 are also good, and should be implemented identically.
10. Articles 23 and 24 (final provisions) need to be adapted by Serbian lawmakers. *Vacatio legis* for legal acts in Serbia is typically 8-15 days from the time of its publication in the Official Gazette of the Republic of Serbia, though this can be prolonged to 30 days in special circumstances, for example when a new Code of Criminal procedure becomes a part of the legal system, as owing to the delicate nature of the Act itself, the public and experts need more time to adapt. Consequently, the Act needs to take effect within that time span. Furthermore, the Serbian parliament is unicameral and does not have a lower and upper house, in comparison to the Dutch parliament, which is bicameral. In the Serbian case, there is no possibility for a lower house to bring this Act (because it is non-existent).

From this short comparative analysis, we can see how Dutch legislation can inspire Serbian lawmakers in the process of implementing the legal institute of euthanasia. The Dutch example is perhaps the best one to look upon, because the Dutch Act stands as a flagship of international regulatory law regarding euthanasia. If and when Serbia

decides to legalise euthanasia, I suppose that the Dutch solution should become one of the primary sources of inspiration.

9.
Conclusion

Based on the topics elaborated in this article, we get an insight of what would be the benefits and challenges of legalising the practice of euthanasia within the positive legal system of Serbia, as outlined in the headline.

Even though there are several arguments/challenges for and against legalising euthanasia, there is a possibility that the hypothetical legalisation of euthanasia could become extremely beneficial in the times to come. Evidently, there is substantial room for discussion and consideration. It is indisputable that ethical and moral complexities constitute perhaps the greatest obstacles on the road to full implementation and legalisation of euthanasia, not only in the Republic of Serbia, but also in all other countries that are considering it.

However, even with the given obstacles/challenges, there is global tendency towards the decriminalisation and simultaneous legalisation of the legal practice of euthanasia. Legal scholars and law makers are becoming increasingly aware of the potential implications of legalising euthanasia. Furthermore, an increasing number of voices from other fields of expertise, including philosophy and medicine, are advocating for it. Experts from various branches are examining the core essence and meaning of the right to life as one of the most fundamental human rights. Some critics argue, and propose that if we give every individual the full legal capacity to end his/her life on his/her own terms, are we jeopardizing and breaching that same law, or are we giving them the opportunity to fully exercise and execute that same right, in legal form and shape? Some would argue to the contrary, but can we really talk about practising a right when we are limiting it from the start? It is a great dilemma to be pondered.

The right to life is a personal and exclusive right of every individual. How and on which terms someone plans to use it, should be discretional and in the hands of that person, especially when that individual is in severe pain, endures suffering and no longer finds meaning in his/her own life. A question about a hypothetical possibility arises: Who are we to object and deny that?

Today, everybody is talking about human rights; the media is full of it on a daily basis. Some would argue: Can we genuinely talk about human rights, while simultaneously limiting their potential? Some believe that if Serbia decides to legalise euthanasia, there is a possibility that it could provide the Serbian legislature with a whole new dimension for upgrading and improving its categories of human rights.

This would simultaneously send a message to the international community that Serbia is fully ready not just to implement and follow modern legal trends, but also to be a pioneer of revolutionary legal reforms.

Furthermore, by legalising euthanasia, Serbia could further improve the legal position of its citizens and voters. Serbian citizens might feel safer and more confident in their own legal system if euthanasia were to become a part of it. It is indisputable that the Republic of Serbia is, and will strive to remain, a civilised, modern and innovative full time member of the international legal community. There is a hypothetical possibility that by legalising the practice of euthanasia, we can further consolidate and strengthen our position in the international community.

This paper contributes to the debate on the legalisation of euthanasia in Serbia by examining its benefits and challenges. Future studies should explore and thoroughly analyse arguments pro and contra, to contribute to the debate on whether the legalisation of euthanasia and physician-assisted suicide should be implemented in the times to come. Regardless, it is of crucial importance to foster public dialogue between experts and citizens. Furthermore, experts need to engage with government officials and the public to discuss about possible vital interests – or the lack thereof – and the challenges of legalising euthanasia within the positive law system of the Republic of Serbia.

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Legal Framework of Environmental Protection in Republic of Serbia – Challenges and Perspective

ABSTRACT: *In Serbia, the legal framework for environmental protection has undergone significant evolution, reflecting the country's commitment to aligning its legislation with international standards while addressing local environmental challenges. The legal landscape encompasses a comprehensive array of laws, regulations, and policies aimed at safeguarding the environment, promoting sustainable development, and mitigating pollution. The foundation of Serbia's environmental legal framework lies in its Constitution, which recognises the right to a healthy environment as a fundamental human right. Building upon this, Serbia has enacted numerous laws addressing various aspects of environmental protection. The Law on Environmental Protection serves as a cornerstone, outlining principles, standards, and mechanisms for preserving nature, regulating waste management, and controlling air, water, and soil quality. Additionally, specific legislation targets biodiversity conservation, industrial emissions, and environmental impact assessments for proposed projects.*

Serbia's alignment with the European Union (EU) accession process has driven the adoption of legislation that harmonises environmental standards with EU directives. This integration aims to enhance environmental governance, strengthen institutions, and improve compliance monitoring and enforcement mechanisms. However, challenges persist in effectively implementing and enforcing these regulations. Issues such as inadequate resources, insufficient institutional capacity, and gaps in enforcement hinder the full realisation of environmental protection goals. Moreover, the complexity of environmental issues requires continuous adaptation and refinement of legal frameworks to address emerging challenges, such as climate change impacts and the transition to renewable energy sources. Therefore, this paper analyses the general status and legal framework of environmental protection in Serbia, the challenges faced, and future perspectives.

KEYWORDS: *Environmental Protection, Legislation, Serbia, Constitutional Court, Law on Environmental Protection*

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1.
Environmental Protection and Human Rights

The subject of this paper concerns the existing legal and practical challenges relating to environmental protection in the Republic of Serbia. Environmental protection has emerged as a crucial area within the framework of human rights law, reflecting the growing recognition of the intrinsic connection between a healthy environment and the enjoyment of fundamental human rights. Since the 1972 Stockholm Conference, the first United Nations environmental conference, which proclaimed that "both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself",[1] the relationship between environmental protection and human rights law has evolved significantly.

In general, the right to a healthy environment is closely intertwined with other rights, such as the right to life, health, and privacy, that is, with first- and second-generation human rights. Historically, the third generation of human rights emerged in the 1970s, known as "solidarity rights",[2] amongst which the right to a healthy environment was particularly recognised following the Stockholm Declaration.

Although environmental rights are frequently categorised as third-generation of human rights, it should be emphasised that they manifest across all three generations of human rights.[3] As part of the first group of civil and political rights, they provide groups and individuals with the right to information, legal intervention, and participation in political processes. In this sense, they strive to ensure minimum standards sufficient to protect the right to life and property in the event of environmental harm. Furthermore, a healthy and sustainable environment may be understood as an economic and social right, ensuring certain standards and quality in environmental protection. Finally, the right to a healthy environment also appears as a core component of solidarity rights.[4]

Consequently, on 28 July 2022, marking the fiftieth anniversary of the Stockholm Declaration, the United Nations Assembly adopted a resolution confirming the views of the UN Human Rights Council and declaring access to a clean, healthy and sustainable environment as universal human right.[5] The main conclusion drawn from this development is that the Resolution represents a significant milestone in advancing environmental protection and enables a coordinated response to the *triple planetary*

1 UN Conference on the Human Environment, 1972, A/CONF.48/14/Rev.1.
2 Zieck, 1992, p. 322.
3 Kolednjak and Šantalab, 2013, p. 327.
4 Ibid.
5 UN General Assembly, 2022, A/RES/76/300.

crisis, caused by: climate change, environmental pollution and loss of biological diversity.[6]

At present, more than ninety countries,[7] or even more than 150[8] by some accounts, have adopted a constitutional right to a healthy environment. This demonstrates that environmental protection is increasingly embedded within national legal frameworks, rather than remaining solely within the domain of international law.

Based on the historical development and on the inherent structure of the right to a healthy environment, it may be observed that this right functions as an interdisciplinary right, which enables the fulfilment of other, related human rights. It represents a right that connects and integrates other rights within the same corpus.[9] According to several relevant UN resolutions, the right to a healthy environment is among the basic human rights, which are "universal, indivisible, interdependent, and interconnected"[10].

In Serbia, the intersection between environmental protection and human rights poses specific challenges. Balancing competing interests, such as economic development and environmental preservation, is often complex for policymakers and judicial authorities. Therefore, this paper explores the challenges faced in implementing environmental protection measures within Serbian law, examining the interplay between environmental concerns and human rights.

2.
Status of Environmental Protection in Serbia

Serbia, as an EU candidate country, faces various challenges in effectively integrating environmental protection into its legal framework. As mentioned in the 2015 EU Commission Screening Report on Chapter 27 – Environment, the legal framework in this area shows a satisfactory level of alignment with the a*cquis communautaire*. However, the Commission underlined that there was "a substantial amount of work to be undertaken as regards the implementation of legislation and the establishment of the necessary administrative and enforcement and control capacities required by the *acquis*"[11]. Additionally, the Commission notified that Serbia has a comprehensive strategy for the environment and climate change sectors and that the institutions

6 Nikolić, 2023, p. 74.
7 Knox, 2015, p. 519.
8 Nikolić, 2023, p. 72.
9 Ibid., p. 74.
10 UN General Assembly, 2022, A/RES/76/300.
11 European Commission, 2016, p. 17.

responsible for policy development, implementation, and enforcement are in place, but require considerable strengthening.[12]

The current status of environmental protection in Serbia is presented in the 2022 EU Commission Report, which states that Serbia has achieved some level of preparation in the area of environment and climate change.[13] Overall, Serbia has made limited progress in implementing the EU's earlier recommendations, especially with respect to increasing environmental funding and investment, improving trans-boundary cooperation, and developing its national energy and climate plan.

The adoption of important legislation and strategic documents is still pending, particularly in view of EU recommendations that Serbia should considerably step up ambitions toward a green transition. This mainly refers to:[14]

- Adopting and starting the implementation of an ambitious national energy and climate plan, through transparent consultative procedures, consistent with the European Green Deal's zero emission target for 2050 and the Green Agenda for the Western Balkans;
- Intensifying implementation and enforcement, including ensuring strict adherence to environmental impact assessment rules, closing non-compliant landfills, increasing investing in waste reduction, separation, and recycling, improving air and water quality, including through phasing out coal, further intensifying trans-boundary cooperation, improving enforcement by inspectorates and the judiciary, adopting Serbia's river basin management plan 2021-2027, and continuing preparations for Natura 2000;
- Enhancing administrative and financial capacity of central and local authorities, particularly the Serbian Environmental Protection Agency and environmental inspectorates, by improving inter-institutional coordination, raising staff levels, raising environmental investments, and improving strategic investment planning and management, including transparency of procedures, while ensuring a coordinated institutional structure capable of delivering the size and quality of investments needed in Serbia.

From a different point of view, although Serbian legislation, particularly the Constitution of the Republic of Serbia, proclaims certain environmental rights, including the right to a healthy and ecologically balanced environment, obstacles remain in their practical realisation, particularly regarding the protection of the right to a trial within a reasonable time. Also, limited enforcement mechanisms, inadequate

12 Ibid.
13 European Commission, 2022, p. 122.
14 Ibid.

implementation of legislation, and insufficient access to justice pose significant barriers to environmental protection.

In addition, the lack of coherent policies contributes to inconsistencies in the implementation and enforcement of existing legislation. This presents challenges in addressing issues such as air and water pollution, waste management, and environmental degradation.

3.
Constitutional and Legislative Framework

From a historical and legislation perspective, the issue of environmental protection was first recognised in the Serbian Constitution known as the 'Sretenjski', enacted in 1835. Its art. 129 stipulated that forests, mountains, and other natural resources were people`s property, and the entire nation had the right to use it. The government, local authorities, merchants, and peasants were prohibited from fencing or preventing people from other areas from using common goods.

During the era of the Kingdom of Serbs, Croats, and Slovenes (and afterwards Kingdom of Yugoslavia), environmental protection was acknowledged as a matter requiring legislative regulation, although no systematic law dealt specifically with the topic. Several laws indirectly addressed environmental protection, such as Law on Forestry (1929) and Construction Law (1931). Only in the 1970s and 1980s did a more detailed approach emerge. During this period, several sectoral laws were introduced as initial attempt to give more comprehensive, but sectoral response for environmental protection, including the Law on Air Protection from Pollution, the Law on the Protection of the Population from Noise, the Law on the Implementation of Protection Measures Against Ionising Radiation, and the Law on Nature Protection.

The first systemic law comprehensively regulating environmental protection and establishing basic standards in Serbia was adopted in 1991.[15] The law was modelled on the 1969 Swedish Environmental Protection Act. With its entry into force, previously adopted special laws ceased to apply.

When it comes to constitutional framework, the norm on environmental protection was first included in the Constitution of the Socialist Federal Republic of Yugoslavia (SFRY) through an amendment to the 1963 Constitution. This amendment provided that the federation, through federal bodies and organisations, regulated the protection of the human environment from threats to life and health affecting the entire country; the transport of flammable liquids, gases, explosives, and radioactive and other dangerous substances when of national interest; and the trade in poisons

15 Drenovak-Ivanović, 2015, p. 10.

and the production of narcotic drugs. This amendment formed one of the bases and inspiration for the regulation of environmental protection and the right to a healthy environment in the 1974 SFRY Constitution.

The Constitution of 1974 stipulated in its basic principles that:

> *'For the sake of protection and improving the human environment, working class and citizens, organisations of joint work, other self-governing organisations and communities, socialist society provides conditions for the preservation and improvement of natural and other values of the human environment which are of interest for the healthy, safe and effective life and work of the present and future generation.'*

The Constitution precisely determined the subjects responsible for environmental protection and improvement. A healthy environment was described as one suitable for healthy, safe, and effective living, significantly affecting people's quality of life and work ability. In that period, the SFRY Constitution was the only constitution in the world to provide for the right to a healthy environment.[16]

Subsequent constitutions also included the provisions guaranteeing the right to a healthy environment. The 1990 Constitution of the Republic of Serbia contained a general provision which recommended the lower-tier legislative levels the competence to protect and improve the environment. The 1992 Constitution of the FRY stipulated that individuals had the right to a healthy environment and to timely information about its condition. It imposed an obligation on everyone to protect and purposefully use the environment. The state was required to take care of a healthy environment and determine the conditions and manner for performing economic and other activities accordingly. Unlike the 1974 Constitution, the 1992 Constitution replaced the term 'human environment' with 'healthy living environment' and emphasised access to information about the state of the environment.

The current constitutional framework recognises the environmental protection under art. 74 of the Serbian Constitution of 2006, which states:

> *'Everyone shall have the right to a healthy environment and the right to timely and full information about the state of the environment. Everyone, especially the Republic of Serbia and autonomous provinces, shall be accountable for the protection of the environment. Everyone shall be obliged to preserve and improve the environment.'*

16 Popović, 1976, p. 27.

It is important to notify that this environmental protection was recognised as a constitutional category within the Constitution of Serbia as an independent state in 2006.

On the level of the laws, the Law on Environmental Protection represents an integral regulation[17], containing general provisions regulating the environmental protection framework in Serbia. In addition to this law, Serbian legislators have adopted a large number of special legal regulations addressing various environmental sectors. These are the following:

- The Law on Environmental Impact Assessment;
- The Law on Strategic Environmental Impact Assessment;
- The Law on Integrated Prevention and Control of Environmental Pollution.

The aforementioned laws represent a catalogue of regulations forming a comprehensive system of environmental legislation in Serbia. From a structural point of view, it may be concluded that the legal writers attempted to create a systematic framework encompassing different fields and sectors associated with environmental protection. However, from another perspective, this approach resulted in insufficient alignment among the laws and in problems concerning their horizontal and vertical interrelationship, leading to factual problems in practical application of relevant provisions.[18]

In addition, a series of environmental laws aimed at harmonising domestic regulation with European standards has been adopted. These include laws regulating protection against non-ionising radiation, air protection, nature protection, noise protection, chemicals, biocidal products, and other related matters.[19]

The Law on Environmental Protection, as the most comprehensive statute regulating matters of environmental protection, prescribes eleven basic principles on which environmental protection is founded for the prevention and elimination of harmful consequences. Among the most important are the principles of prevention and precaution, the 'pollutant pays' principle, the 'user pays' principle, the responsibility of the polluter and its legal successor, and the subsidiary responsibility of state authorities.[20] These principles form the pillars of the Law and subsequent rules derived from them. Their purpose is to provide adequate measures for environmental protection, preventing that the damage does not occur, and if it does, it is remedied in an efficient and safe manner.[21]

17 Joksić, Milojević and Đuričić, 2019, p. 138.
18 Tadić, 2017, p. 13.
19 Lilić and Drenovak-Ivanović, 2014, p. 117.
20 Cvetić, 2013, p. 126.
21 Ibid., p. 128.

A particularly significant principle, amongst the abovementioned ones, is the 'pollutant pays' principle. It derives from the general principle regulating the responsibility to compensate the damage, following the ancient Roman law rule *neminem laedere*. According to art. 9 (1) (6) of the Law on Environmental Protection:

> *'The polluter shall pay a fee for environmental pollution for the actual or potential environmental burden caused through their activities, i.e. if they produce, use or trade in a raw material, semi-finished product or a product that contains substances that are noxious to the environment. The polluter shall, in compliance with the regulations, bear the total costs of the measures for the prevention and reduction of pollution, which shall include the costs of any environmental risks and the costs of removing the damage caused to the environment.'*

Such responsibility is based on objective responsibility principle, meaning that the polluter is liable for any potential damage irrespective of intention or fault. Under the Law on Environmental Protection, the legislator regulates liability for damage stipulating that the polluter is responsible for environmental damage and bears the costs of damage assessment and its removal, particularly:

- The costs of emergency interventions undertaken at the time of the damage, and necessary to limit and prevent the effects of damage on the environment, space, and health of the population;
- The direct and indirect costs of remediation, the establishment of a new state or restoration of the previous state of the environment and space, as well as monitoring of the effects of remediation and the effects of damage to the environment;
- The costs of preventing the occurrence of similar damage to the environment and space;
- The costs of compensation to persons directly endangered by damage to the environment and space.[22]

Additionally, the Law stipulates that:

> *'the polluter is obliged to provide financial or other types of guarantees to ensure the payment of compensation for the mentioned costs during and after the performance of activities. The type of guarantees, the amount of funds, and the duration of the guarantee provided by the polluters shall be prescribed by the Government of the Republic of Serbia.'*

22 Drašković and Perović, 2021, p. 165.

In circumstances involving a high degree of risk or danger due to the possibility of a hazardous event posing a significant threat to human health and the environment, the Law introduces the obligation to insure against liability for damage caused to third parties by accident. In events when certain damage has occurred due to the polluter's activity, the Law stipulates that "everyone who suffers damage has the right to compensation, whereby a claim for compensation can be submitted directly to the polluter or insurer, or to the financial guarantor of the polluter if such an insurer or financial guarantor exists".

Furthermore, the Law stipulates that in the event of the existence of "several pollutants who are responsible for the damage caused to the environment, and the share of individual pollutants cannot be determined, the costs shall be borne jointly and severally"[23]. In this part, it should be emphasised that:

> *'civil sanctions are determined against the debtor as a mechanism of coercion over the damaged, to bring property or personal non-property goods in a state in which they would be if there was no threat or violation of these values'*

Additionally, another pillar of environmental legislation in the Republic of Serbia is criminal law. Environmental protection is implemented through incriminations contained both in the Criminal Code[24] and in secondary legislation.

Such crimes against the environment can be classified into three categories: real environmental crimes, found in the provisions of the Criminal Code of the Republic of Serbia (art. 260-277), protecting the environment as a whole; illegal environmental crimes, found in other sections of the Criminal Code; and secondary environmental criminal acts, regulated outside the Criminal Code and found in the provisions of the so-called secondary legislation.[25]

An analysis of legislative development reveals a shift in focus from the initial protection of humans as the main protected category, to the protection of the environment itself. Early environmental protection was based on the so-called 'anthropocentric approach', grounded in the attitude that every individual possesses the right to live in a healthy environment.[26] Such a concept was introduced in the era of early development of human rights, but was soon put under criticism, because the technological and economic development showed that the humans themselves pose the greatest harm to the environment rather than acting as its protectors.

23 Ibid.
24 Criminal Code of the Republic of Serbia, 2005.
25 Jovašević, 2011, p. 234.
26 Ćirić, 2020, p. 7.

Therefore, the modern environmental law is based on an ecocentric approach, with environment protection as the primary objective of protection.[27] In this context, it is significant to recall a shift in an original approach from the 1970s, known as the time of the emergence of different environmental protection movements.[28] Recognising the limitations of indirect environmental protection through the rights of legal entities, that is treatment as a protective object itself, American legal literature proposed the recognition of the environment as a potential subject of law.[29]

4.
Protection Mechanism and Practical Issues

Historically, the Republic of Serbia first encountered the concept of environmental protection as a constitutional category through the constitutional amendments to the 1963 Constitution of the SFRY. These amendments established the protection of the environment in relation to threats to the life and health of people across the entire territory, exercised through state bodies and organisations. Although adopted a year before the Stockholm Declaration, which, despite its anthropocentric approach to defining the right to a healthy lifestyle, still used the term 'human environment' in its title. The Constitution of SFRY continued to employ this term until the adoption of the Constitution of Serbia (2006).

The adoption of the Stockholm Resolution strengthened the position of the right to a healthy environment in states which incorporated it into their constitution. At the same time, it opened the possibility of employing other legal instruments, most notably the constitutional appeal.

Generally, constitutional appeals enable courts to decide disputes arising from the violation of human rights. It is a legal instrument enabling direct constitutional judicial protection. In the Republic of Serbia, such an appeal may be filed against individual acts or actions of state bodies or organisations entrusted with public powers, where those acts violate or deny human or minority rights guaranteed by the Constitution, provided that all other legal means have been exhausted or are not provided for.

In this context, it should be emphasised that the Constitutional Court of Serbia has held that the constitutional appeal protects all human rights guaranteed by the Constitution, regardless of their placement within the hierarchy of legal acts, and even where the rights are not directly covered by the Constitution.[30]

27 Nikolić, 2023, p. 63.
28 Cvetić, 2013, p. 121.
29 Stone, 1972, p. 457.
30 Nikolić, 2023, p. 80.

When it comes to the judicial practice, it has a modest scope in general, with relatively few decisions. *Exempli causa,* in the period between 2007 and 2017, only ten procedures before the Constitutional Court concerned the constitutionality or lawfulness of legislation relating to environmental protection.[31]

The most significant decision of the Constitutional Court on this subject is the ruling concerning the constitutionality of the Law on the Prohibition of the Construction of Nuclear Power Plants in the Federal Republic of Yugoslavia. In this case, an initiative was submitted for the evaluation of the constitutionality of the Law on the grounds that the disputed Law was inconsistent with the provisions of art. 83 of the Constitution of the Republic of Serbia, for the reason that it restricted free entrepreneurship, specifically by prohibiting "one of the three predominant sources of energy is outlawed". In addition, it argued that the Law restricted free competition in the energy sector and contributed to monopolistic behavior, violating the provisions of art. 84.

As a preliminary matter, the Constitutional Court established that the Law was enacted by the Federal Republic of Yugoslavia, passed by the Federal Assembly. According to the provisions of art. 64 of the Constitutional Charter of the State Union of Serbia and Montenegro[32], the laws of the Federal Republic of Yugoslavia continued to apply as laws of the member states, until the adoption of new regulations, except for laws for which the assembly of the member state decides not to apply.

Art. 20 (5) of the Law on the Implementation of the Constitutional Charter of the State Union of Serbia and Montenegro confirmed this continuity unless competent authorities repealed them.

The Law on the Prohibition of the Construction of Nuclear Power Plants in the Federal Republic of Yugoslavia stipulates that:

- The construction of nuclear power plants, production of nuclear fuel, and facilities for the processing of nuclear fuel for nuclear power plants is prohibited, and that this prohibition extends to investment decisions, investment plans, programmes and technical documentation for such facilities, including facilities for the processing of spent nuclear fuel[33];
- The provisions of art. 1 do not apply to scientific research and research-development work, mining-geological research work, geological-seismic research and personnel training[34];
- Whoever prepares, approves, or approaches the construction of nuclear power plants, facilities for the production of nuclear fuel or facilities for the processing of spent nuclear fuel, will be punished for a criminal offense with

31 Ćirić, 2020, p. 48.
32 Constitutional Charter of the State Union of Serbia and Montenegro, 2003, art. 64.
33 Law on the Prohibition of the Construction of Nuclear Power Plants in the FRY, 1995, Art. 1.
34 Ibid., Art. 2.

a prison sentence of six months to five years, ceased to be valid on the basis of art. 431 of the Criminal Code.[35]

- Other constitutional provisions of the Republic of Serbia that are important for the evaluation of the challenged Law's constitutionality include:
- Everyone has the right to a healthy environment and to timely and complete information on its condition, as well as that everyone, especially the Republic of Serbia and the autonomous province, is responsible for environmental protection and is obliged to preserve and improve the environment (art. 74);
- Entrepreneurship is free, but can be limited by law, for the sake of protecting people's health, the environment, natural resources, and for the security of the Republic of Serbia (art. 83);
- Republic of Serbia arranges and provides a system of environmental protection and improvement, production, trade and transportation of weapons, poisonous, flammable, explosive, radioactive, and other dangerous substances (art. 97, para. 9);
- All laws and general acts adopted in the Republic of Serbia must be in accordance with the Constitution (art. 194, para. 3).
- On the basis of these provisions, particularly art. 74, the Constitutional Court assessed that the disputed Law had been adopted to protect the environment from nuclear risks and the harmful effects of ionising radiation that might occur during the operation of nuclear power plants, or during the production, use, or disposal of radioactive nuclear material. At the same time, the legislator did not prohibit scientific research in the field of nuclear sciences, nor the monitoring of development technologies or the training of highly skilled personnel.

According to the Constitutional Court, the petitioner's argument that the Law violated the constitutional principle of freedom of entrepreneurship from art. 83 of the Constitution, are unfounded, given that the Constitution authorises the legislator to limit the freedom of entrepreneurship where deemed necessary to protect people's health, environment, and the safety of the Republic of Serbia.

According to the Court, the Law also does not violate free competition or create a monopoly or dominant position on the market, as the petitioner argued. Rather, it limits the use of nuclear energy solely for the purpose of protecting the environment from possible nuclear incidents, which is a constitutional obligation of the Republic of Serbia.

35 Ibid., Art. 3.

From another perspective, 'constitutional appeal' represents an important mechanism intended to provide the legal aid for protection of the rights on the healthy environment.

A noteworthy decision of the Serbian Constitutional Court on the matter of environmental protection is Uz-7702/2013, adopted on 7 December 2017. In this case, the complainants alleged violations of art. 32, 58, 68 and 74 of the Constitution. The contested legal act was a judgment of the Appellate Court in Novi Sad (Ms. 3677/12 of June 20, 2013). The complainants argued that their right under art. 74 had been violated by the way in which the court evaluated expert findings from the Institute of Nuclear Sciences.

The appellate court rejected their request, considering the expert's opinion and recommendations non-binding, although they expressed an opinion on the existence and harmfulness of electromagnetic radiation emitted by a transmission pole near the installation. The complainant argued that, by rejecting their claim, the court exposed them to decades of health risk and an increased possibility of developing malignant diseases. They requested the Constitutional Court to determine the violation of their constitutional rights, cancel the contested verdict, and order the Court of Appeal in Novi Sad to re-decide the appeals.

Analysing the factual situation, we can notice a prolonged procedural exchange between the Municipal Court in Bačka Palanka and the District Court in Novi Sad. On 21 March 2003, the prosecutors filed a lawsuit against the Public Enterprise 'Elektromreža Srbije', whose legal predecessor, against their will, had installed the pole in question. The municipal court issued an interim verdict, establishing a legal basis for compensation of non-material damage due to the fear suffered and for the removal of the pole.

The District and Appellate Court in Novi Sad overturned this part of the verdict on three occasions. The final judgment of the Appellate Court in Novi Sad (Mrs. 3677/12) was passed on 20 June 2013. Therefore, the proceedings before the first-instance and second-instance courts lasted a little more than ten years.

The Constitutional Court upheld the constitutional appeal and found that para. 2 of the Appellate Court's judgment violated the right of the complainants to a fair trial, guaranteed by art. 32 (1), in connection with their right to a healthy environment under art. 74. The Constitutional Court annulled the contested para. of the verdict and ordered the Appellate Court to make a new decision on the appeals of the plaintiff and the defendant filed against the verdict of the Basic Court in Novi Sad - Judicial Unit in Bačka Palanka (P. 54464/10, 3 April 2012).

This decision is of particular significance; it is the first time that the Constitutional Court upheld an appeal, specifically on the basis of a violation of the right to a healthy environment from art. 74 of the Constitution.

5.
Upcoming Perspectives – Conclusion

Alongside the 'traditional' environmental protection legislation, an increasingly important part of the contemporary legal framework comprises innovative, sustainability-oriented regulations. One of the most important current developments are related to the ESG (Environmental, Social, Governance) regulations, which has gained significant traction globally as a framework for evaluating sustainability and the societal impact of investments.

Broadly, ESG represents a set of environmental, social and management issues that companies take into account when managing their business, and that investors assess when evaluating risks, impacts, and opportunities. ESG therefore functions as a multidimensional lens through which company's operations and their impacts on the environment, society, and governance practices are critically examined. The perspective on ESG regulation is dynamic, encompassing both its benefits and challenges.

In Serbia, the influence of the 'European Green Deal's' has spurred emphasis on renewable energy sources, waste reduction, and carbon neutrality, pushing Serbia towards stricter environmental regulations. However, Serbia's journey towards a comprehensive ESG regulation faces hurdles due to the lack of robust regulatory frameworks. While efforts are in place, implementing and enforcing these regulations uniformly across industries remains a challenge.

In this respect, it may be expected that the ESG regulations, particularly those dealing with environmental protection, will be highly influenced by Serbia's aspirations for EU membership. This process may act as a catalyst for aligning with EU directives and regulations, including those related to ESG. Harmonising policies with EU standards presents an opportunity for accelerated ESG adoption.

Therefore, the trajectory of ESG regulation in Serbia appears promising, albeit with challenges to overcome. Continued alignment with EU directives, concerted efforts to enhance regulatory frameworks, and a stronger focus on data transparency and reporting will be pivotal. Additionally, fostering a culture of corporate responsibility and sustainability through education and awareness campaigns can further support ESG integration.

ESG regulation in Serbia is at an evolving stage, with growing understanding of its importance for sustainable development and responsible business conduct. Overcoming challenges through collaborative efforts, regulatory enhancements, and strong commitment from business and government will be essential to realising Serbia's ESG goals and contributing to a more sustainable future.

Looking at Serbia`s environmental protection legislation in a broader sense, the main conclusion is that despite the existence of comprehensive laws, challenges persist in the effective implementation and enforcement of these regulations. Inadequate resources, technical capacities, and enforcement mechanisms hinder full realisation of environmental protection goals. The legislative framework also requires further enhancements to address challenges posed by climate change. Strategies for adaptation and mitigation, including resilient infrastructure and sustainable land-use practices, require more specific regulations and clearer implementation plans.

Finally, Serbia's environmental legislation demonstrates a commitment to protecting natural resources and fostering sustainable development. While significant progress has been achieved, challenges persist in implementation, enforcement, and responding to emerging environmental issues. Strengthening enforcement mechanisms, improving waste-management practices, conserving biodiversity, and addressing climate change concerns will be pivotal for Serbia to achieve its environmental protection objectives in the coming years. Collaboration among stakeholders and continued legislative advancements will be essential in overcoming these challenges and ensuring a more sustainable future for Serbia's environment.

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