

LAW,
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LAW, IDENTITY AND VALUES

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TABLE OF CONTENTS

ARTICLES

PETAR BAČIĆ

Human Rights Issues at the Negotiations on EU Accession – the Croatian Experience	9
--	---

OLGA DORUL

Human Rights Issues in EU Accession Negotiations with Candidate States: Republic of Moldova.	29
---	----

RODOLJUB ETINSKI

National Human Rights System in Montenegro.	47
---	----

BENJAMIN FLANDER

From Norms to Practice: The Implementation of United Nations Human Rights Standards in Slovenia	77
--	----

DIMITRY GEGENAVA

Human Rights Issues in EU Accession Negotiations With Candidate States: Georgia. .	111
--	-----

ANNA GŁOGOWSKA-BALCERZAK – MAGDALENA NAZIMEK

Refugee Protection in Poland After 2022: Between Humanitarian Response and Legal Obligation.	139
---	-----

IGOR MILINKOVIĆ

Human Rights Issues in the EU Accession Negotiations: The Case of Bosnia and Herzegovina	165
---	-----

ANDREI NASTAS

The Moldovan Situation of People Fleeing From the Russo–Ukrainian War	185
---	-----

JASNA OMEJEC

National Human Rights Institutions in Croatia	203
---	-----

MICHAL ŘÍHA

Equality of the Member States Before the EU Institutions	221
--	-----

MARTIN ŠKUREK

Institutional Protection of Fundamental Rights in the Czech Republic by the Constitutional Court and the National Human Rights Institution.	243
--	-----

ALEKSANDAR SPASENOVSKI	
Between Commitments and Compliance: Human Rights Dynamics in North Macedonia's EU Accession Process	265
HAJNALKA SZINEK CSÜTÖRTÖKI	
The Slovakian Situation of People Fleeing from the Russian-Ukrainian War	293
ANNA TARWACKA	
Expansion in Roman Times: Subjugation or Integration?	313
ÁGNES TÖTTÖS	
Issues Caused by the Russian-Ukrainian War and the Regional Refugee Crisis in Particular Countries: Focusing on Hungary	331
NEBOJŠA B. VUČINIĆ – SANJA GRBOVIĆ	
Human Rights Issues at the Negotiations on EU Accession with Candidate States: Montenegro.	357

ARTICLES

HUMAN RIGHTS ISSUES AT THE NEGOTIATIONS ON EU ACCESSION – THE CROATIAN EXPERIENCE

Petar Bačić¹

ABSTRACT

As the first country of the so-called Western Balkans region and the second country from ex-Yugoslavia (after Slovenia), Croatia joined the European Union (EU) in 2013, remaining the last country to be accepted into the Union's membership. In this article, we shed light on Croatia's path to joining the EU, which was marked by important novelties concerning previous negotiations and accessions in the form of demands placed on Croatia by the Union. Introduction of the new Chapter 23 'Judiciary and Fundamental Rights' was the most important novelty, which also turned out to be the last major hurdle in Croatia's path towards the EU. Thus, negotiations on Chapter 23 and its content are the central interest of this article. Furthermore, the emergence of this new approach to enlargement and negotiating framework practically coincided with the formation of the EU Agency for Fundamental Rights (FRA), an institution created with the aim of strengthening EU's arsenal in the field of human rights. Croatia started to participate in the work of the FRA only in 2010/2011, that is during the final stage of accession when negotiations were almost closed. Taking the latter into consideration, we refer to the role of the first EU human rights agency in the Croatian negotiating process.

KEY WORDS

accession negotiations
human rights
Croatia
Fundamental Rights Agency
European Union

1. Introduction

In the Presidency Conclusions adopted by the European Council (EUCO) at the Madrid summit held in December 1995, the EUCO stated that enlargement was:

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Both a political necessity and a historic opportunity for Europe. It will ensure the stability and security of the continent and will thus offer both the applicant States and the current members of the Union new prospects for economic growth and general well-being. Enlargement must serve to strengthen the building of Europe in observance of the *acquis communautaire* which includes the common policies.²

To readily meet the moment of the expansion of its membership, which in a certain way became obvious since the political changes of 1989-1990, that is, the end of the Cold War and collapse of the communist/socialist regimes in Europe, the European Union (EU) member states had to determine the conditions that a country must meet to be allowed to join the Union.³ Thus, at the 1993 EUCO summit held in Copenhagen, Denmark, the following criteria were adopted:

1. Political criteria: Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities
2. Economic criterion: A functioning market economy and the ability to cope with competitive pressure and market forces within the Union
3. Acquis criterion: The ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (*acquis*), and adherence to the aims of political, economic and monetary union.

The Madrid EUCO added another criterion – expansion of administrative structures for effective adoption of the *acquis*.⁴

On the wave of optimism regarding further enlargement, numerous European countries, with the former socialist countries forming the largest group, embarked on the path of integration into the EU. Thus, in 2004, 10 new countries – Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia – were admitted to the membership of the EU. After the aforementioned, largest enlargement so far, two more countries from Eastern Europe – Bulgaria and Romania – joined the EU in 2007.

Finally, in 2013, as the first country of the Western Balkans region and the second state from ex-Yugoslavia (after Slovenia), Croatia joined the EU, remaining the last country to be accepted in the EU. Croatia's path to joining the EU was marked by certain national specificities related primarily to the circumstances that preceded or succeeded the accession process. Furthermore, some important novelties in relation to previous

2 | See Madrid EUCO 15 and 16 December 1995, Presidency Conclusions, Part A, Chapter III, section A, [Online]. Available at: https://www.europarl.europa.eu/summits/mad1_en.htm#enlarge (Accessed: 2 April 2026).

3 | It is worth noting that the so-called European Agreements between the EU and former socialist states were signed in the early 1990s, establishing a legal basis for their mutual relationship. For example, such agreements were signed in 1991 with Czechoslovakia, Hungary and Poland. All three agreements had an identical structure. They, for the first time, in addition to the aspects concerning commercial and economic cooperation, accounted for the political dialogue dimension and a cultural cooperation component. See EC, European Agreements with Czechoslovakia, Hungary and Poland, IP/91/1033, 22 November 1991 [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_91_1033 (Accessed: 2 April 2026).

4 | See more Marktler, 2006, pp. 343–363.

negotiations and accessions in the form of demands were placed on Croatia by the EU. This article will first shed light on some of the latter, while focusing on human rights issues.

2. On the Road to the EU

Croatia's path towards full EU membership took well over 10 years. It began in May 2001, with the signing of the Stabilisation and Association Agreement (SAA),⁵ as a part of the Stabilisation and Association Process (SAP). SAP was launched by the EU in 1999 with the aim of achieving overall stabilisation of transition countries of South-Eastern Europe, including Croatia.⁶ The agreements established a free trade area between the EU and the countries, identified common political and economic objectives and encouraged regional cooperation. In the context of accession to the EU, the agreement served as the basis for implementation of the accession process.⁷

Croatia requested to start the formal accession process, that is, applied for full EU membership on 21 February 2003 in Athens. According to the procedure, the request was submitted to the Council of the European Union (the Council), that is, to the EU member state that presided over the Council at the time – Greece. Shortly after the application was lodged, in fact already in April 2003, the Council instructed the European Commission (EC) to prepare an opinion on the Croatian request. At the Thessaloniki EUCO held in June same year it was also decided that the countries of the Western Balkans may become EU members once they fulfil the Copenhagen criteria (strengthened with the Madrid criterium) and the SAP conditions.⁸ Furthermore, the accession criteria were subsequently specified in details through the EU Treaties signed in Amsterdam (1997) and Lisbon (2007).

In July 2003, the EC sent Croatia the so-called questionnaire with 4,560 questions from various areas concerning the functioning of the state, institutions, economy, etc.

5 | The Croatian Parliament ratified the SAA on 5 December 2001, and the European Parliament confirmed it on 12 December of the same year. See full text of the Agreement: Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, Official Journal L 026, 28/01/2005.

6 | In May 1999, the EC proposed the creation of a SAP for Albania, Bosnia and Herzegovina, Croatia, Macedonia and FR Yugoslavia. In June of the same year, the Stability Pact was agreed upon. It is a political document whose strategic goal is stabilisation in Southeast Europe by bringing the countries of the region closer to Euro-Atlantic structures and strengthening mutual cooperation.

7 | Regarding Croatia, on 15 February 2000, the Croatia-EU Joint Consultative Working Group was established. In May of the same year, the EC published a positive Feasibility Report on the start of negotiations for the SAA. The turning point was the Zagreb summit held on 24 November 2000, called by France and co-hosted with Croatia. It included all EU member states and all republics of the former Yugoslav Federation. Albania, as the only state that was never part of the socialist Yugoslavia, was also present at the meeting. The purpose of the summit was for the EU to encourage integration between the Balkan countries. The Zagreb summit marked the beginning of negotiations between Croatia and the EU on the conclusion of the SAA.

8 | See Thessaloniki European Council, Presidency Conclusions, D/03/3, 19 and 20 June 2003 [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/doc_03_3 (Accessed: 2 April 2026).

Answering the questionnaire was an extensive job that was nevertheless completed within the given deadline of three months. The answers were submitted to the EC on 9 October 2003. In December 2003 and January 2004, the EC sent additional 184 questions to which the Government of the Republic of Croatia answered. Based on the answers to the questionnaire,⁹ and relying on other sources (member states, international organisations and non-governmental organisations), on 20 April 2004, the EC issued a positive opinion (*avis*) on the request of the Republic of Croatia for EU membership and recommended that the EUCO open negotiations with Croatia for full membership. On 18 June 2004, the Republic of Croatia received the status of a candidate state for membership in the EU.

The negotiating structure for the accession of Croatia to the EU was established by the Decision of the Government of the Republic of Croatia on 7 April 2005.¹⁰ This Decision set down the composition and competences of the bodies that formed the structure for the negotiations and were entitled to sign the Accession Treaty of the Republic of Croatia to the EU. The Decision also assigned the role of competent and co-competent bodies of individual negotiating chapters to state administrative bodies and other bodies or institutions.¹¹ Hence, the following bodies were established:

1. State Delegation of the Republic of Croatia for Negotiations on the Accession of the Republic of Croatia to the European Union
2. Coordinating Committee for the Accession of the Republic of Croatia to the European Union
3. Negotiating Team for the Accession of the Republic of Croatia to the European Union
4. Working Groups for the Preparation of Negotiations on Individual Chapters of the *acquis communautaire*
5. Office of the Chief Negotiator
6. Secretariat of the Negotiating Team

The members of the bodies of the negotiating structure were appointed by the Decision. The working groups were formed in correspondence with 35 negotiating chapters and tasked to participate in the analytical review and evaluation of the compliance of the legislation of the Republic of Croatia with the EU *acquis* (screening) and in drafting proposals for negotiating positions.¹²

9 | See, for example, Hrvatske, Vlada Republike, 2004, pp. 193–220.

10 | Decision of the Government of the Republic of Croatia of 7 April 2005, Official Gazette Narodne novine No 49/05.

11 | Republic of Croatia [Online]. Available at: <https://mvep.gov.hr/en> (Accessed: 2 April 2026).

12 | Decisions of the Government of the Republic of Croatia of 15 April 2005 and of 12 October 2005 regarding the Appointment of Members of the State Delegation of the Republic of Croatia for Negotiations on the Accession of the Republic of Croatia to the European Union, Members of the Negotiating Team for the Accession of the Republic of Croatia to the European Union, Heads of the Working Groups for the Preparation of Negotiations on Individual Chapters of the *acquis communautaire*, Members of the Office of the Chief Negotiator, and Members of the Secretariat of the Negotiating Team, Official Gazette Narodne novine No 49/05 and 120/05.

Accession negotiations between Croatia and the EU were formally opened on 3 October 2005, after which the screening process began.¹³ As the first step in accession talks, the screening process analytically examined the EU acquis carried out by the EC and the candidate country. It evaluated the degree of preparedness of the candidate country, allowing it to familiarise itself with the EU acquis while indicating issues that would most likely come up during the negotiations. Institutions, internal market, external relations, economic and monetary policy and criteria, resources, agriculture and cohesion were a few of the areas being reviewed.¹⁴

2.1. On the Negotiating Framework for Croatia in brevis

It is important to point out that the negotiating framework agreed for Croatia was significantly strengthened in comparison with the one used for the accession of Central and Eastern Europe (CEE). While CEE countries had to negotiate 31 chapters of the acquis,¹⁵ Croatia had 35 chapters. In other words, in comparison with the CEE enlargement, four new chapters were added, out of which the new Chapter 23 - Judiciary and Fundamental Rights was the most important novelty. Although, in the previous enlargements, its content was partially covered by the chapter dealing with justice, freedom and security (kept in Croatian negotiations as well), it became very important for Croatian accession as a newly introduced chapter. Together with the previously existing and now renumbered Chapter 24 'Justice, Freedom and Security', it significantly determined the final stages of the negotiations. Finally, the increased number of chapters and the stronger focus on the rule of law and political criteria, as we shall demonstrate later, together with suspension clause, safeguard clause and the more intensive use of benchmarks, turned Croatia's negotiations into a more demanding negotiating process than all previous cases.¹⁶

Focus on the rule of law issues, particularly the reform of the judiciary and the fight against organised crime and corruption, was the result of the new enlargement approach agreed upon in 2006 after the accession negotiations with Bulgaria and Romania revealed obvious shortcomings in those key areas.¹⁷ One of the key elements in new negotiations

13 | European Commission, Croatia: 2005 Progress Report, COM (2005) 561 final, 9 November 2005 [Online]. Available at: https://enlargement.ec.europa.eu/croatia-progress-report-2005_en (Accessed: 20 September 2024).

14 | On 31 January and 1 February 2006, an explanatory screening was held in Brussels for the chapter 'Customs Union' (Chapter 29). The explanatory screening, carried out by the EC, marked the initial phase of accession negotiations and was followed by bilateral meetings, resulting in a screening report. Notably, the acquis was presented at a joint screening to representatives of the Republic of Croatia and the Republic of Turkey.

15 | Previously, the following were the negotiating chapters of the acquis: 1) free movement of goods, 2) free movement for persons, 3) freedom to provide services, 4) free movement of capital, 5) company law, 6) competition policy, 7) agriculture, 8) fisheries, 9) transport policy, 10) taxation, 11) economic and monetary union, 12) statistics, 13) employment and social policy, 14) energy, 15) industrial policy, 16) small and medium sized enterprises, 17) science and research, 18) education and training, 19) telecom and information technologies, 20) culture and audiovisual policy, 21) regional policy and co-ordination of structural elements, 22) environment, 23) consumers and health protection, 24) justice and home affairs, 25) customs union, 26) external relations, 27) common foreign and security policy, 28) financial control, 29) finance and budgetary provisions, 30) institutions, 31) other.

16 | Butković and Samardžija, 2014, pp. 91–108.

17 | See Nozar, 2012, pp. 87–90.

approach and methodology was extensive and more systematic use of benchmarks, providing concrete criteria for opening and closing individual chapters. Benchmarks are in fact measurable targets, linked to key elements of the *acquis* chapter, that must be fulfilled by the candidate states. Closing benchmarks primarily concern legislative measures, administrative or judicial bodies and a track record of implementation of the *acquis*. For chapters in the economic field, they include the criterion of being a functioning market economy.¹⁸

Furthermore, since human rights issues in the negotiations for EU accession are the focus of this work, it is important to point out that the emergence of this new enlargement strategy, adopted by the EC and supported by the EUCO, practically coincided with the formation of the new EU body, which was supposed to strengthen its arsenal in the field of human rights, that is, in the fundamental rights dimension. It is the EU Agency for Fundamental Rights (FRA), which starting from 1 March 2007, succeeded the European Monitoring Centre for Racism and Xenophobia. We will further analyze in more detail the issue of human rights as a new chapter of accession negotiations, and we will also refer to the role of the FRA and human rights in general in negotiations process, focusing on the Croatian experience.

3. Human Rights as a New Chapter of Accession Negotiations – the Case of Croatia

While respect for human rights has in fact always been a condition for the accession to the EU, since 1993 and with the introduction of the Copenhagen criteria, this conditionality has strengthened in three steps:

1. Human rights are eligibility condition subject to EU monitoring, as membership requires that the candidate country demonstrates 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' (political criteria)
2. Human rights were introduced as a specific chapter in the negotiation process (starting with Croatia's accession)
3. Based on Croatia's experience, the Commission suggested the new approach introducing various adjustments to the negotiations of human rights chapter.¹⁹

It took Croatia six years to successfully conclude the negotiation process during which it was asked not only to adopt new laws and regulations to comply with EU standards, but also to implement them. Furthermore, in some areas, particularly regarding Chapter 23, besides the 'hard *acquis*', Croatia had to follow the best practices of the EU

18 | See Communication from the Commission to the European Parliament and the Council - Enlargement Strategy and Main Challenges 2006 – 2007, COM (2006) 649 final, par. 3.1.

19 | Hillion, 2013, pp. 1–13. According to Marktler, it is obvious that 'political criteria in particular have existed for a long time...The Copenhagen innovation consists only in the fact that membership obliges compliance with those conditions explicitly set forth by the European Council'. Ibid., p. 346.

member states.²⁰ The first Intergovernmental Conference of the deputy heads of delegations/chief negotiators was held on 28 October 2005. Here, the principles and procedural arrangements for conducting accession negotiations were agreed upon, and the initial work program based on the screening program of individual chapters of the negotiations was discussed. A total of 13 meetings of the Intergovernmental Conference regarding the accession of Croatia to the EU were held at the ministerial level, and the negotiations formally concluded in 2011, with the closing of all negotiation chapters. These chapters, clustered into six groups, corresponded to the different areas of the *acquis* that were reviewed during its screening.

On 30 June 2011, EU member states decided to close the accession negotiations, which allowed the signature of the Accession Treaty, preceded by the ratification procedure. During his celebratory speech, EU Commissioner for Enlargement and European Neighbourhood Policy Stefan Füle recognised ‘the impressive progress’ made by Croatia towards meeting the EU membership criteria and praised the EC’s work which consistently supported Croatia on its path to accession.²¹ It was agreed by the member states that the EC would closely monitor Croatia’s fulfilment of the commitments undertaken in the negotiations. Finally, solutions were found to 33 negotiating chapters, covering a range of EU policies and rules, for Croatia to smoothly integrate in the EU. Why 33 and not 35 chapters as mentioned earlier? Namely, although the European legal *acquis* was divided into 35 chapters,²² negotiations were conducted in 33 chapters because in two chapters (Institutions and Other issues) there were no legislation for the candidate country to take over.

20 | See Turkalj, 2022, pp. 55–81.

21 | ‘We are celebrating this historic event with our Croatian friends: within 20 years as an independent republic, Croatia has changed tremendously. It has made impressive progress towards meeting the EU membership criteria. This is being rewarded today...The European Commission has consistently supported Croatia on this reform path’, said Stefan Füle, EU Commissioner for Enlargement and European Neighbourhood Policy. ‘...The Commission will continue this strict, transparent approach to monitor how Croatia delivers on the commitments so that it will be able to fully assume the responsibilities of membership from the first day of accession...What a great contribution to the credibility of enlargement process!’ he added. European Commission, EU closes accession negotiations with Croatia, Press Release, 30 June 2011 [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_11_824 (Accessed: 21 October 2024).

22 | Negotiations for the accession of the Republic of Croatia into the EU comprised of the following 35 negotiating chapters: 1) free movement of goods, 2) freedom of movement for workers, 3) right of establishment and freedom to provide services, 4) free movement of capital, 5) public procurement, 6) company law, 7) intellectual property law, 8) competition policy, 9) financial services, 10) information society and media, 11) agriculture and rural development, 12) food safety, veterinary and phytosanitary policy, 13) fisheries, 14) transport policy, 15) energy, 16) taxation, 17) economic and monetary policy, 18) statistics, 19) social policy and employment, 20) enterprise and industrial policy, 21) trans-European networks, 22) regional policy and coordination of structural instruments, 23) judiciary and fundamental rights, 24) justice, freedom and security, 25) science and research, 26) education and culture, 27) environment, 28) consumer and health protection, 29) customs union, 30) external relations, 31) foreign, security and defence policy, 32) financial control, 33) financial and budgetary provisions, 34) institutions and 35) other issues.

However, following the final accession conference in Brussels, the EC stressed that EU member states agreed to close the remaining policy chapters under negotiations, including two key areas: judiciary and fundamental rights, and competition policy:

In the chapter on judiciary and fundamental rights, Croatia has launched reforms in critical areas, strengthening the independence and efficiency of the judiciary, in fight against corruption and protection of fundamental rights. These are essential to bringing results in the near future in support of the rule of law for the benefit of all citizens.²³

In other words, one might rightfully conclude that the new chapter 23, introduced after the accession of Bulgaria and Romania, was the last major hurdle for Croatia towards the EU, at least as it regards the negotiation process.²⁴ However, it is also true that although Croatia is the first country to have met new requirements and that it obviously completed the tasks successfully, there remain concerns regarding those issues as well as need for their further improvement, as witnessed in the 2011 EC's Interim Report and Progress Report. The concerns in particular included the following areas: judicial reform, the appointment of judges and state prosecutors, impunity for domestic war crimes, the fight against corruption (especially high-level one) and organised crime.

| 3.1. Negotiating Chapter 23

Negotiations on Chapter 23 – Judiciary and fundamental rights opened in June 2010, i.e. at the end of the process, once the EUCO concluded that Croatia met the opening benchmarks. It was also agreed that provisional closure of negotiations could be envisaged when several closing benchmarks were met. The latter included areas concerning judiciary, fight against corruption and organised crime, fundamental rights and cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). The screening meetings for the Chapter were held in September and October 2006, while the screening report was completed in June 2007. In the latter, Croatia indicated that it could accept the acquis in judiciary and human rights, and it did not expect any difficulties in the implementation.

In the Chapter 23 screening report published on 27 June 2007, the four main sectors were covered – judiciary, anti-corruption, fundamental rights and EU citizens' rights.²⁵ In fact, the EC, already in its 2004 Opinion on Croatia's application for membership, concluded that Croatia was a functioning democracy, with stable institutions guaranteeing the rule of law. Furthermore, although there were no major problems regarding respect for human rights, there were certain issues that required special attention and additional efforts for improvement – protection of the rights of minorities, particularly the Serb

23 | European Commission, EU closes accession negotiations with Croatia, Press Release, 30 June 2011 [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_11_824 (Accessed: 23 October 2024).

24 | Thorp, 2011, p. 3.

25 | Screening report Croatia, Chapter 23 – Judiciary and fundamental rights, 27 June 2007 [Online]. Available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/ba39613b-1486-42f1-b411-f526ddd277cd_en?filename=screening_report_23_hr_internet_en.pdf (Accessed: 2 April 2026).

minority and refugee returns, the fight against corruption and reform of the judicial system.²⁶

More precisely, in the 2007 report's assessment of the degree of alignment and implementing capacity (Report), concerning the judiciary, the EC concluded that judicial reform was at an early stage and severe shortcomings had to be tackled, such as corruption within judiciary, lack of transparency in the judges' appointment procedures and the excessive length of court proceedings. Regarding the fight against corruption, which was considered a serious problem that affected various aspects of society, especially high-profile corruption, it was rated as a matter of crucial importance. Regarding EU citizens' rights, different legislative measures were discussed, which Croatia would have to adopt upon accession.

Finally, the sector devoted to fundamental rights was divided into the following sections:

1. General: Broadly covering the legislative and institutional framework for the protection of human rights
2. Human rights: Presenting a short overview of constitutionally guaranteed human rights and fundamental freedoms
3. Procedural safeguards: Regarding the right to liberty and security and the right to a fair trial
4. Minority rights and cultural rights: Concerning constitutional and legislative framework and the international agreements ratified by Croatia, with detailed indications of the problematic aspects in this field
5. Measures against racism and xenophobia: Pointing out certain challenges, such as the need for full adoption of the anti-discrimination strategy
6. Protection of personal data: Pointing out the need for completion of full alignment with the respective EU and Council of Europe (CoE) legislation

At the end of this part of the Report, there is a short reference to the FRA. The FRA was established as the first EU human rights agency, a few months before the Report was adopted. Hence, the Report only stated that the 'nature, extent, and manner of Croatia's participation in the Agency's work will be decided by the EU-Croatia Association Council'.

4. FRA and Croatia Through the Accession Period

On 15 February 2007, the Council adopted a regulation by which the FRA was established.²⁷ According to its founding act, the FRA's main objective was to provide the relevant

26 | Another important element of Croatia's accession requirements regarding political criteria was cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). After the ICTY's Chief Prosecutor stated that Croatia started to fully cooperate with the Tribunal, the EC underlined that Croatia needs to maintain full cooperation and take all necessary steps to ensure that the remaining indictee was located and transferred to the ICTY.

27 | Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53, 22.2.2007, pp. 1–14. The founding Regulation (EC) was revised and amended in April 2022.

institutions, bodies, offices and agencies of the EU, and of its member states when implementing EU law, with assistance and expertise relating to fundamental rights to support them in taking measures or formulating courses of action within their respective spheres of competence to fully respect fundamental rights (Art. 2). The FRA carried out its tasks for the purpose of meeting the aforementioned objective within the competencies of the Community as laid down in the Treaty establishing the European Community (Art. 3.1).

The FRA is tasked with collecting and analysing data on fundamental rights with reference to all rights listed in the EU Charter of Fundamental Rights, focusing particularly on the thematic areas within the scope of EU law. The thematic areas include access to justice, victims of crime, information society, Roma integration, judicial cooperation, rights of the child, discrimination, immigration and integration of migrants, racism and xenophobia. Besides publishing analysis and research-based thematic reports, in line with Art. 4. of the Regulation, its tasks include publishing an annual report on fundamental rights issues covered by its activities, collecting and analysing relevant law and data, highlighting examples of good practice, carrying out and encouraging scientific research and surveys, developing a communication strategy and promoting dialogue with civil society to raise public awareness of fundamental rights.²⁸

The FRA's establishment actually ended a long-term debate regarding the formation of a special EU body whose main task would be to collect and analyse data regarding the state of human rights.²⁹ This discussion took place in the EU institutions since 1999, when the EUCO, at its meeting in Cologne, presented the idea of establishing an 'Agency for human rights and democracy', as it was then called. However, this proposal was officially introduced a year earlier in the document called Human Rights Agenda for the European Union in 2000, whose authors, members of the Comité des Sages, proposed the creation of the Human Rights Monitoring Centre.³⁰ This proposal in fact followed the ideas of P. Alston and J.H.H. Weiler, who advocated a new institutional model for the EU's human rights dimension that would also include the development of a monitoring function, as follows:

To be achieved through the creation of a new agency or through a substantial expansion in the scope and power of the existing European Monitoring Centre on Racism and Xenophobia in Vienna; the latter should be transformed into a veritable Monitoring Agency, with monitoring jurisdiction over all human rights in the field of application of Community Law.³¹

The establishment of the FRA was successively advocated by other EU institutions and bodies, especially the European Parliament and the Network of Independent Experts of the European Union for Fundamental Rights. However, the FRA was not established as a true, strong human rights monitoring body, since it had not been granted with the authority to analyse complaints, decide on its own initiatives regarding the areas of its

28 | Ibid.

29 | See more in Bačić, 2006, pp. 105–122.

30 | Leading by Example: A Human Rights Agenda for the European Union for the Year 2000, European university Institute, Florence, 1998. This document was the result of work done by the Comité des Sages, which consisted of four human rights experts – Antonio Cassese, Mary Robinson, Catherine Lalumiere and Peter Leuprecht.

31 | Alston and Weiler, 1998, pp. 676–677.

activities outside the Multiannual Framework adopted by the EUCO based on a proposal from the EC and with the consent of the Parliament or take part in the legislative process if not so requested by the EU institutions.³² Instead, its room for action, as defined with the 2007 Regulation, was limited by the legislator.³³

Acting primarily as an information providing and advisory agency, thus only indirectly influencing legislative process and policy making, the FRA achieved its objectives through collecting and analysing information and data relevant to developing and implementing fundamental rights' policies, providing advice to policymakers, raising fundamental rights' awareness and helping better law-making and implementation process, etc. In doing so, it works in close relation with EU institutions and other bodies, EU member states, the CoE, UN and other international organisations. It is also important to point out that the FRA closely cooperates with civil society organisations active in the field of human rights from across the EU and in states having observer status with FRA, especially via the Fundamental Rights Platform as the main cooperation channel.³⁴

4.1. *The Croatian Experience on the Cooperation with the FRA Between 2010–2013*

The possibility opened by the 2007 Regulation regarding the participation of the so-called third countries in the work of the FRA was of particular interest to this article. As mentioned earlier, this issue was emphasised already in the discussions that preceded the adoption of the Proposal for a Council Regulation establishing the FRA.³⁵ The aforementioned group of states consisted of three candidate countries for EU membership – Croatia, Macedonia and Turkey – and four Western Balkans countries – Albania, Bosnia and Herzegovina, Montenegro and Serbia – that would conclude the SAAs with the EU. The fundamental meaning of their participation is highlighted in the preamble of the Regulation (para. 28). It stipulates that the FRA should be open to the participation of candidate countries and countries with which a SAA has been concluded. This would enable the EU to support their efforts towards European integration by facilitating a gradual alignment of their legislation with EU law and the transfer of know-how and good practice, particularly in those areas of the *acquis* that would serve as a central reference point for the reform process in those countries.

Art. 28 of the Regulation further prescribes modalities of participation. Regarding candidate countries, the FRA is open to their participation in the capacity of observers,

32 | Sokhi-Bulley, 2011, pp. 683–706. According to Sokhi-Bulley, the FRA's 'governance-related role actually reveals a type of monitoring best understood as 'surveillance', which means that tactics of discipline and governmentality operate within the space of the FRA'.

33 | On limits, potentials and early expectations of the FRA, see more in Lazowski, 2009, p. 1388. See also De Schutter, 2009, pp. 93–136. Notably, the FRA's mandate was significantly enhanced in 2022 by adopting Council regulation (EU) 2022/555 of 5 April 2022 amending Regulation 168/2007. The FRA is now competent to undertake its own-initiative work on police and judicial cooperation in criminal matters. Furthermore, the Multiannual Framework programme defining the FRA's activities was replaced with a more operational annual and multiannual programme. Nevertheless, that period falls outside our scope of interest, as this study covers the period of Croatian accession to the EU, that is until 2013.

34 | See Fundamental Rights Platform – Terms of Reference, FRA, Decision of the Director, INST/001/2020; see also: FRA: Civil society and the Fundamental Rights Platform [Online]. Available at: <https://fra.europa.eu/en/cooperation/civil-society> (Accessed: 2 April 2026).

35 | Proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights COM(2005)280 final of 30 June 2005.

with the participation and the respective modalities being determined by a decision of the relevant Association Council, taking into account the specific status of each country. Such decision shall also provide that the participating country may appoint an independent person as observer to the Management Board, though without the right to vote. Countries with which a SAA has been concluded, on the other hand, may be invited to participate in the FRA as an observer, following the decision of the EUCO, acting unanimously on a proposal by the EC.³⁶

It was already in November of 2007 the same year, the Croatian mission in Brussels received an informal invitation from the EC to express interest in participating in the FRA's work as an observer. Hence, in February 2008, Croatia sent a letter of intent to achieve observer status, which was prepared in 2009.³⁷ On 25 May 2010, the EU-Croatia Stabilisation and Association Council adopted the Decision on Croatia's participation as an observer in the FRA's work and respective modalities thereof. After receiving the Parliament's consent, the Croatian government adopted the Decision on accepting the position of an observer in the FRA's work and other activities. It was expected that, once the Parliament confirmed the Decision, Croatia would receive support for further harmonisation of legislation in the area of fundamental rights with the EU *acquis* through the FRA's activities.

However, Croatia was in fact approaching the very end of the negotiation process when it gained the possibility to participate in the FRA. Namely, on 1 July 2010 the Decision on participation of Croatia as an observer in the Agency's work entered into force.³⁸

36 | Council Regulation (EC) No. 168/2007, Art. 28 Participation and scope in respect of candidate countries and countries with which a Stabilisation and Association Agreement has been concluded: 1. The Agency shall be open to the participation of candidate countries as observers. 2. The participation and the respective modalities shall be determined by a decision of the relevant Association Council, considering the specific status of each country. The decision shall indicate in particular the nature, extent and manner in which these countries will participate in the Agency's work, within the framework set in Arts. 4 and 5, including provisions relating to participation in initiatives undertaken by the Agency, to the financial contribution and to staff. The decision shall be in line with this Regulation and with the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities. The decision shall provide that the participating country may appoint an independent person fulfilling the qualifications for persons referred to in Art. 12(1) (a) as observer to the Management Board without the right to vote. Upon the decision of the Association Council, the Agency may deal with fundamental rights issues within the scope of Art. 3(1) in the respective country, to the extent necessary for the gradual alignment to Community law of the country concerned. 3. The Council, acting unanimously on a proposal by the Commission, may decide to invite a country with which a Stabilisation and Association Agreement has been concluded by the European Community to participate in the Agency as an observer. In that case, para. 2 shall apply accordingly.

37 | See Proposal for a Council Decision on a Community position in the EC-Croatia Stabilisation and Association Council on the participation of Croatia as an observer in the European Union Agency for Fundamental Rights' work and the respective modalities, within the framework set in Arts. 4 and 5 of Council Regulation (EC) No. 168/2007, including provisions relating to participation in initiatives undertaken by the Agency, to the financial contribution and to staff, COM(2008) 571 final, Brussels, 19 September 2008.

38 | See Zakon o potvrđivanju Odluke br. 1/2010 Vijeća za stabilizaciju i pridruživanje između EU i Hrvatske o sudjelovanju Hrvatske kao promatrača u radu i drugim aktivnostima Agencije Europske unije za temeljna prava of 15 June 2011, Official Gazette Narodne novine – Međunarodni ugovori, no. 10/2011.

It enabled the FRA to deal with Croatia's fundamental rights issues within the scope of the 2007 Regulation Art. 3.1. This was to the extent necessary for the gradual alignment to EU law and enable it to carry out the tasks. Croatia has undertaken the obligation to contribute financially to the FRA's activities, had to appoint persons who may participate as observer and alternate observer in the FRA Management Board (without a right to vote) and had to nominate a government official as a National Liaison Officer, all within four months of the Decision's entry into force.

Furthermore, there was still considerable misunderstanding regarding the position, role and powers of the new EU agency.³⁹ This was evident from the reaction of some parliamentarians in the debate held in the Croatian Parliament on 8 June 2011 regarding the adoption of the Law on the Confirmation of the Decision of the Stabilisation and Association Council. The then State Secretary in the Ministry of Foreign Affairs and European Integration, A. Plenković, emphasised that the FRA did not make binding decisions, therefore, it would not be involved in monitoring Croatia's obligations towards the EU. However, there were opinions that the actions and decisions of the Agency would threaten the sovereignty of the Croatian judiciary.⁴⁰

Available information about the meeting of the then director of the FRA with high-ranking representatives of the Ministry of the Interior, held at the beginning of July 2011, supports the claim, at least based on the data available to us, that the FRA did not have a prominent role in Croatia's accession to the EU. Furthermore, the Croatian institutions and state administration were yet to become fully familiar with their role.⁴¹ Nevertheless, the FRA started to include data concerning Croatia in its reports published already in 2012. Thus, the 2011 Annual Report 'covers developments that took place in the EU and in its 27 EU member states and the acceding country Croatia'. Croatia's case is explicitly referred to in several parts of the 2011 Annual Report. These included, for example, the rights of migrants (Aliens Act, Asylum Act and detention), equality and non-discrimination (access to social assistance, transgender persons and sex change), rights of crime victims (Criminal Procedure Act), actions of the Ombudsman concerning treatment of older persons and rights of children, then also in the part dealing with officially recorded racist crimes, especially the situation of Roma populations, and voting rights (the right to vote of persons with disabilities, Act on Voter Registers), etc.⁴²

39 | See *Sabor: Hrvatska kao promatrač u Agenciji za temeljna prava* (2011) *Ius Info*, 9 June [Online]. Available at: <https://www.iusinfo.hr/aktualno/dnevne-novosti/sabor-hrvatska-kao-promatrac-u-agenciji-eu-za-temeljna-prava-9992> (Accessed: 2 April 2026).

40 | Ibid. Speaking about the benefits that Croatia would have from the FRA's membership, State Secretary A. Plenković said that it was primarily the harmonisation of regulations with the EU acquis and the confirmation of Croatia's continuity in preserving and improving human rights standards.

41 | See *Posjet ravnatelja Agencije EU za temeljna prava* (2011) *Ministarstvo unutarnjih poslova*, 8 June [Online]. Available at: <https://mup.gov.hr/vijesti/posjet-ravnatelja-agencije-eu-za-temeljna-ljudska-prava/96351?big=1> (Accessed: 2 April 2026); see also *Furio Radin održao sastanak s ravnateljem Agencije za temeljna prava EU Mortenom Kjaerumom* (2011) *Hrvatski Sabor*, 7 July [Online]. Available at: <https://sabor.hr/hr/press/priopcenja/furio-radin-odrzao-sastanak-s-ravnateljem-agencije-eu-za-temeljna-prava-mortenom> (Accessed: 2 April 2026).

42 | European Union Agency for Fundamental Rights (2011) 'Annual Report 2011. Fundamental rights: challenges and achievements in 2011' *FRA*, June 2012. [Online]. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/2211-FRA-2012_Annual-Report-2011_EN.pdf (Accessed: 2 April 2026).

Hence, the Report mainly provided broad, general remarks related to the changes to existing or adoption of new legislation in the aforementioned areas. It is also evident from the Report that the FRA had already begun cooperating with national civil society organisations in Croatia. For example, based on the findings of the Mental Disability Advocacy Centre, a concern was raised regarding the living conditions of patients with intellectual and psycho-social disabilities in psychiatric institutions and social care homes, highlighting the need for urgent reforms in the field.⁴³ Further, the Report noted that the FRA started to collect and analyse data provided by the Croatian institutions. Thus, the Ombudsman of the Republic of Croatia signalled the involuntary placement of older persons in retirement homes at the national level, suggesting that further monitoring of the system of legal capacity restrictions was required.⁴⁴ We also noted a prominent example of good practice from Croatia. The part of the Report that discussed racism and ethnic discrimination, under the title Promising Practice – Teaching About the Holocaust and Preventing Crimes Against Humanity, based on the report of the Croatian Agency for Education published on its official website, highlighted that since 2003, the Agency for Education had been developing the school curriculum to include a teacher training programme to assist teachers in incorporating Holocaust education and the prevention of crimes against humanity.⁴⁵ Finally, there were thematic parts of the Report that did not provide any specific national data, which should be attributed to the fact that this was the first FRA report to include Croatia.

Further, as it regards the accession period, Croatia was also included in the thematic report on hate crime published in 2012⁴⁶ and in two reports published in 2013, which analysed the situation in the 2012 EU LGBT Survey⁴⁷ and the 2012 Annual Report.⁴⁸ Notably, the 2012 Report on hate crime explicitly referred to one case that concerned racist violence by non-state actors. Thus, in the Šečić case (ECtHR, Šečić v. Croatia, no. 41106/02), the applicant, who was of Roma origin, alleged that the Croatian authorities had failed to undertake a thorough investigation of a skinhead attack on his person. Although it was undisputed that skinhead ideology was extremist and racist, the authorities mounted no effective investigation to establish whether ethnic hatred had motivated the attack, as stated by the European Court of Human Rights in its judgment of 31 May 2007.⁴⁹

The 2012 Annual Report already presented a more detailed analysis of the situation in Croatia and had more specific national references compared to the 2011 Annual Report, covering different areas: asylum, immigration and integration, the rights of the child and

43 | Ibid., p. 141.

44 | Ibid., p. 143.

45 | Ibid., p. 160.

46 | European Union Agency for Fundamental Rights (2012) 'Making hate crime visible in the European Union: acknowledging victims' rights' FRA, 2012. [Online]. Available at: https://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf (Accessed: 2 April 2026).

47 | European Union Agency for Fundamental Rights (2013) 'EU LGBT Survey – European Union lesbian, gay, bisexual and transgender survey, Results at a glance' FRA, 2013. [Online]. Available at: https://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf (Accessed: 2 April 2026).

48 | European Union Agency for Fundamental Rights (2013) 'Annual Report 2012, Fundamental rights: challenges and achievements in 2012' FRA, 2013. [Online]. Available at: https://fra.europa.eu/sites/default/files/annual-report-2012_en.pdf (Accessed: 2 April 2026).

49 | European Union Agency for Fundamental Rights (2012) 'Making hate crime visible in the European Union: acknowledging victims' rights' FRA, 2012. [Online]. Available at: https://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf (Accessed: 2 April 2026) p. 17.

protection of children, equality and non-discrimination, participation of EU citizens in the EU's democratic functioning and rights of crime victims. As it regards the analysis of the situation in Croatia, the 2012 Annual Report referred to different examples of legislative reforms and good practice. For example, it highlighted that Croatia harmonised its provisions of the Aliens Act regarding the eligibility of entry and residence of third-country citizens for the purposes of employment of highly qualified labour force with the EU *acquis*, which entered into force on the day Croatia acceded to the EU.

Concerning migrant rights, the Report evidenced several alternatives to detention, which were included in the 2012 national legislation, namely the duty to surrender documents, deposit sureties, designated residence and regular reporting. Regarding the integration of migrants, an example of good practice is particularly highlighted - namely, in September 2012, Croatia adopted a special programme – Croatian language curricula for asylum seekers, refugees and persons under subsidiary protection who are older than 15 years. The curriculum aimed at providing migrants with sufficient language competence to enable them to enrol in secondary schools and adult education programmes. The learning programme also included Croatian culture and history.⁵⁰

5. Closing of Negotiations

On 30 June 2011, the EU member states decided to close the negotiations, following the closure of the remaining chapters, and decided that Croatia would join the EU on 1 July 2013. However, it did not mean that the entire work regarding harmonisation and fulfilment of assumed obligations was complete. To ensure the supervision of the remaining obligations and further implementation of reforms, monitoring by the EU was introduced. Simultaneously, it is necessary to account for the fact that the *acquis* of Chapter 23 was, for the most part, not uniformly regulated by the EU legislative, as pointed out by one of the Croatian negotiators. It consisted of various international documents, such as the United Nations (UN) conventions and the CoE, and best practices, therefore of binding, but in large part also of the so-called soft *acquis*.⁵¹

Ten closing benchmarks for Croatia in Chapter 23, many of which were divided into sub-benchmarks focusing on the implementation of measures and establishment of track records, were grouped around the four main areas, i.e. thematic units we have mentioned earlier (reform of judiciary, fight against corruption, fundamental rights, and EU citizens' rights). Thus, the judiciary area had four benchmarks:

1. Updating Judicial Reform Strategy and Action Plan and ensuring effective implementation
2. Strengthening the independence, accountability, impartiality and professionalism of the judiciary
3. Improving the efficiency of the judiciary
4. Improving the handling of domestic war crimes cases

50 | European Union Agency for Fundamental Rights (2013) 'Annual Report 2012, Fundamental rights: challenges and achievements in 2012' *FRA*, 2013. [Online]. Available at: https://fra.europa.eu/sites/default/files/annual-report-2012_en.pdf (Accessed: 2 April 2026) pp. 47–61.

51 | See Turkalj, 2022.

Regarding the fight against corruption, there were two benchmarks:

1. Establishing a track record of substantial results based on efficient, effective and unbiased investigation, prosecution and court rulings in organised crime and corruption cases at all levels, including high level corruption, and in vulnerable sectors, such as public procurement
2. Establishing a track record of strengthened prevention measures in the fight against corruption and conflict of interest

Regarding fundamental rights, there were three benchmarks:

1. Strengthening the protection of minorities, including through effective implementation of the Constitutional Act on the Rights of National Minorities
2. Settling outstanding refugee return issues
3. Improving the protection of human rights

Finally, regarding cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), there was one benchmark:

Full cooperation with the Tribunal:⁵² after the negotiations were formally closed, and before Croatia's accession to the EU, the EC adopted several Monitoring Reports.⁵³ Its final report on Croatia's preparations for joining the EU was adopted on 26 March 2013. The assessment was based on the information gathered and analysed by the EC, including inputs provided by Croatia, as well as information provided by member states and international and civil society organisations. Ten priority actions were identified in the report as requiring particular attention and their assessment was provided in separate thematic sections, out of which majority belonged to judiciary and fundamental rights.⁵⁴

However, the report stated that Croatia had completed all priority actions, it generally met the commitments and requirements arising from the accession negotiations in all chapters and had demonstrated its ability to fulfil all other commitments before accession. Furthermore, it stated that the EU membership was an additional incentive to carry on with reforms and Croatia was expected to continue developing its track record in the field of the rule of law, notably in the fight against corruption.⁵⁵

52 | European Commission, Interim report from the Commission to the Council and the European Parliament – On reforms in Croatia in the field of judiciary and fundamental rights (negotiation chapter 23), COM (2011) 110 final, Brussels 2 March 2011 [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52011DC0110> (Accessed: 2 April 2026).

53 | As an integral part of regular monitoring, in the period following the closure of the negotiations, the EC issued six-monthly assessments on the implementation of Croatia's commitments, focusing on the judiciary and fundamental rights, competition policy and justice, freedom and security.

54 | European Commission, Communication from the Commission to the European Parliament and the Council - Monitoring Report on Croatia's accession preparations, COM (2013) 171 final, Brussels, 26 March 2013 [Online]. Available at: https://ec.europa.eu/archives/commission_2010-2014/fule/docs/news/20130326_report_final.pdf (Accessed: 2 April 2026).

55 | Ibid.

6. Concluding Remarks

‘We have been fair but strict: no discount has been accorded, no shortcuts taken, no corners rounded’, the Commissioner for Enlargement and European Neighbourhood Policy Stefan Füle stated at the end of the negotiation process.⁵⁶ Although the accession negotiations with Croatia were specific in many respects compared to all previous negotiations, perhaps the most important fact is that they were the first to include a specific chapter on judiciary and fundamental rights. Regarding the respect for fundamental rights as a condition for accession, it is true that it is not new. However, Croatian negotiations demonstrated that its function in the enlargement process ‘evolved significantly, both as a result of the changing role of fundamental rights in the EU constitutional order, and also in view of the inherent needs of each wave of accession’.⁵⁷

In case of Croatia, this area had a broad coverage indeed, in the sense that the legal *acquis* included not only the EU Charter of Fundamental Rights, but also the human rights treaties adopted in the UN and the CoE.⁵⁸ Initially, the negotiations covered all issues related to human rights protection. However, as the negotiations progressed, focus was shifted to areas where the EU was not satisfied with Croatia’s progress, such as anti-discrimination, sanctioning of hate crimes, protection of national minorities, convalidation, strengthening the role of the people’s ombudsman, free legal aid and administrative proceedings. Furthermore, the EU did not accord rule of law and human rights issues the same attention before as it did during the negotiations with Croatia.

The FRA, as the first EU human rights agency, became involved in the process only in its final stage. Croatia in fact started to participate in the FRA’s work in 2010/2011, while its path towards full membership in the EU took well over 10 years, with negotiations being finally closed in June 2011. Although the latter did not mean that the entire work regarding harmonisation of national legislation with the *acquis communautaire* was complete, the FRA simply did not play a particularly significant role in the whole accession process. Nevertheless, we are of the opinion that even this limited engagement, evidenced by only a few reports that included Croatia in the accession period, indicated the FRA’s potential role in the accession process of new member states, particularly regarding the harmonisation of legislation with the EU *acquis* and the improvement of human rights standards at all levels.

The respect for human rights and for other values on which the EU is founded as stipulated in Art. 2 of the Treaty on European Union (TEU),⁵⁹ is, according to Art. 49 TEU, a

56 | European Commission (2011) ‘EU closes accession negotiations with Croatia’ *European Commission – Press Release*, 30 June. [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_11_824 (Accessed: 2 April 2026).

57 | Ackermann et al., 2012, pp. 481–482.

58 | See more in Turkalj, 2022.

59 | Treaty on European Union, Art. 49(1): ‘Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into Account’.

prerequisite for starting accession negotiations.⁶⁰ However, after Croatia's accession, the respect for human rights also became an integral part of the EU acquis, which hopefully presents clear standards for all negotiating countries to fulfil in order to meet the accession criteria and become full EU members.

60 | Treaty on European Union, Art. 2: 'The Union is founded on the values of respect for human dignity, the rule of law and respect for human rights, including the rights of persons who belong to minorities. These values are common to the Member States in a society in which pluralism, anti-discrimination, tolerance, justice, solidarity and equality between women and men prevail'.

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Turkalj, K. (2022) 'Poglavlje 23 'Reforma pravosuđa i temeljna prava' – utjecaj pristupnih pregovora na jačanje vladavine prava u Hrvatskoj' in Šimonović, I. (ed.) *Poznavanje i vrijednosno prihvaćanje europskog i međunarodnog prava u Republici Hrvatskoj*. Zagreb: Pravni fakultet, pp. 55–81.

HUMAN RIGHTS ISSUES IN EU ACCESSION NEGOTIATIONS WITH CANDIDATE STATES: REPUBLIC OF MOLDOVA

Olga Dorul¹

ABSTRACT

Since its emergence as an independent state on the political map of Europe, the Republic of Moldova has firmly proclaimed its intention to integrate into the European community. Assistance provided over the years by the European Union has enabled the implementation of structural reforms in various areas of cooperation and has contributed to the reconceptualisation of legal institutions in the field of fundamental human rights and freedoms, culminating in the evaluation of the institutional framework, particularly in the area of justice.

In this article, we analyse the development of the instruments that have formed the basis of Moldova's cooperation, initially with the European Communities and, subsequently, with the European Union. We focus specifically on the evaluation of cooperation in the field of fundamental human rights and freedoms. At the time of writing, the screening procedure for Moldova's accession to the European Union is ongoing. The status of the Republic of Moldova concerning Chapters 23 and 24 of the EU acquis is reflected in the 2023 European Commission Report and, subsequently, in the 2025 Republic of Moldova Country Report, part of the EU Enlargement Package.

Analysis of the documents underpinning negotiations with the Republic of Moldova reveals that certain areas remain insufficiently addressed. Consequently, this article aims to highlight additional domains within Chapters 23 and 24 of the EU acquis that could have a significant impact on Moldova's accession process to the European Union.

KEYWORDS

*accession negotiation
acquis
European Union
human rights
Republic of Moldova*

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1. Introduction

The emergence of the Republic of Moldova on the political map of the world took place during a period of profound geopolitical upheaval. The dissolution of the Union of Soviet Socialist Republics, the fall of the Berlin Wall, the end of the Cold War, and the outbreak of the Yugoslav conflict were key developments that shaped the aspirations of this young state in Southeastern Europe to pursue integration into the European Union.

From the earliest stages of its existence, the Republic of Moldova has taken clear steps towards accession to the European Union. Throughout this time, the state has demonstrated a commitment to European values and has upheld the obligations assumed in the context of cooperation in various forms with the European Union.

The text of the Declaration of Independence of the Republic of Moldova, adopted on 27 August 1991, expressly contains provisions guaranteeing: the exercise of social, economic, cultural and political rights for all citizens of the Republic of Moldova, including those of national, ethnic, religious and linguistic groups, in conformity with the provisions of the Helsinki Final Act and documents adopted afterwards, as well as the Paris Charta for a new Europe.²

Upon proclaiming its independence, the Republic of Moldova requested international recognition and explicitly expressed its desire to establish political, economic, and social relations with European states and countries around the world. In the period that followed, the young state consistently expressed clear intentions to join the European Union, and these aspirations have laid the foundation for the systemic reforms initiated since the establishment of the state and still ongoing today.

An extraordinary ministerial meeting of European Political Cooperation was convened in Brussels on December 16, 1991, to assess the transformations taking place in Eastern Europe and the USSR, including to draft a declaration concerning the European Community's relations with the newly independent states. In this context, the EC expressed its readiness to recognize, subject to the normal standards of international practice and political realities, those new states which, following the historical changes in the region, were established on a democratic basis, accepted the corresponding international obligations, and committed in good faith to respect peace and engage through diplomatic negotiations. The common position of the European Political Cooperation regarding the recognition of new states, adopted on December 16, 1991, emphasized the requirement for these newly independent states to adhere to the provisions of the UN Charter, the Helsinki Final Act, and the Paris Charter, particularly with respect to the rule of law, democracy, and human rights; to provide guarantees to ethnic, national, and minority groups in accordance with the obligations undertaken within the CSCE framework; to respect the inviolability of all borders, which may only be altered through peaceful means and mutual agreement; to accept all relevant commitments concerning disarmament and nuclear non-proliferation, as well as regional security and stability;

2 | Declaration of Independence of the Republic of Moldova, 1991.

and to undertake the obligation to resolve, through agreement – including arbitration – all matters relating to state succession and regional disputes.³

2. The Regulatory Framework of EU-Republic of Moldova Cooperation: A Human Rights Perspective

In broad terms, the evolution of the Republic of Moldova's relations with the European Union, as reflected in the texts of bilateral agreements and national legislation, through which the state aligns itself with European values – particularly in the area of human rights – appears as a succession of measures that have enabled the progressive development of this field.

The political dialogue between the Republic of Moldova and the European Union was officially established with the signing of the Partnership and Cooperation Agreement on 28 November 1994, and the initiation of the dialogue after the entry into force of the Partnership and Cooperation Agreement on 1 July 1998.⁴

The Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Moldova, of the other part,⁵ was concluded with the parties' conviction of the paramount importance of the rule of law and respect for human rights, particularly those of minorities, the establishment of a multiparty system with free and democratic elections, and economic liberalisation aimed at setting up a market economy. In this field, the signing of this agreement granted recognition to the efforts of the Republic of Moldova to create political and economic systems that respect the rule of law and human rights, including the rights of persons belonging to minorities, as well as to the fact that the Republic of Moldova operates a multiparty system with free and democratic elections and provides for economic liberalisation. Respect for democracy, principles of international law, and human rights are established as general principles of the agreement (Article 2), and minority rights have been expressly included in the political dialogue initiated under the Agreement (Article 6).

On 8 February 1995, the Parliament approved the Concept of the foreign policy of the Republic of Moldova⁶ (which remains in force to this day, the text having not been amended) establishing that the Republic of Moldova will expand and deepen its relations with the countries of Central and Western Europe. This is highly important due to their geographical position, economic potential, international prestige, and role in maintaining and strengthening peace, stability, and security on the continent, as well as due to the support provided by these countries to the Republic of Moldova in promoting socio-economic reforms, strengthening its independence, and integrating into European and

3 | Gavriluța, 2023, p. 50.

4 | Osmochescu, 2021, p. 163.

5 | Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, 1998.

6 | Decision of the Parliament of the Republic of Moldova on the Approval of the Concept of Foreign Policy of the Republic of Moldova, 1995.

global structures. The text of the Concept, in the section referring to regional and sub-regional cooperation, explicitly states that a major and long-term objective of the Republic of Moldova's foreign policy is gradual integration into the European Union.

On 28 June 2001, the Republic of Moldova became a member of the Stability Pact for South Eastern Europe. One of the main objectives of this Pact is to prepare the countries of the Balkan region for accession to the European Union. In the case of the Central and Eastern European countries obtaining the status of associated members of the EU, political considerations were primarily taken into account, as well as their geographical belonging to the European continent. In other words, the eastward enlargement of the EU was carried out in accordance with the decisions of the Madrid Conference (December 1995), according to which 'EU enlargement stems both from a political necessity and from the need to ensure stability and security across the continent.'⁷

Following the European Union's enlargement on 1 May 2004 – which marked a historic transformation for the EU and provided an opportunity for the Republic of Moldova to further strengthen its rapprochement with the Union – the EU–Moldova Action Plan was adopted on 22 February 2005. On 24 March 2005, the Parliament of the Republic of Moldova, by general consensus, adopted the Declaration on the European Integration of the Republic of Moldova, which identified as key reference points the need to ensure, in accordance with democratic principles, the independence of the judiciary, the fight against corruption, the protection of minorities, and the resolution of the Transnistrian conflict.

An analysis of the content of the Action Plan reveals that the requirements regarding the protection of human rights are addressed in the chapters concerning the strengthening of the judiciary, the fight against terrorism, and efforts to resolve the Transnistrian conflict. In the section specifically dedicated to fundamental human rights and freedoms and the measures to be undertaken to ensure their protection in line with EU standards, the Action Plan makes explicit reference to the protection of national minorities, prevention and combatting of human trafficking, eradication of ill-treatment and torture, safeguarding of children's rights, continuation of efforts to ensure equal opportunities for men and women, guarantee of freedom of expression, protection of freedom of association, and support for civil society development, as well as respect for trade union rights and core labour standards. Furthermore, within the same section, on the protection of fundamental human rights and freedoms, the need for the ratification of the Rome Statute of the International Criminal Court is expressly mentioned; the Statute was signed by the Republic of Moldova on 8 September 2000.

It is worth mentioning, in connection with the latter objective, that in order to implement the provisions of the Action Plan, the Government of the Republic of Moldova, prior to ratifying the Statute of the International Criminal Court, submitted a request to the Constitutional Court of the Republic of Moldova to assess its compatibility with the Constitution of the Republic of Moldova. In the opinion of the author of the referral, it was specifically the provisions concerning the Court's jurisdiction, the irrelevance of official capacity, and the surrender of individuals to the International Criminal Court that required constitutional review. On 2 October 2007, the Constitutional Court declared that the aforementioned provisions of the Rome Statute of the International Criminal Court were compatible with the Constitution of the Republic of Moldova. Subsequently,

7 | Moldovan, 2004, pp. 6–9.

on 9 September 2010, the Parliament of the Republic of Moldova adopted the Law on the ratification of the Rome Statute of the International Criminal Court.

The EU-Moldova Action Plan was established for the period from February 2005 to January 2008, and was later extended until 2009. Nevertheless, Moldova failed to fully implement it even by 2009. The fact that the implementation of the EU-Moldova Action Plan (EUMAP) was extended for an additional year demonstrates that the EU perceived the process as incomplete – particularly in key areas such as respect for human rights, freedom of the press, judicial independence, fight against corruption, and the business climate. According to both local and European experts, to make the European integration process genuinely effective, concrete changes are required. At the same time, the reasons behind the failure to meet these objectives include: the authorities' approach to the EUMAP as a checklist of tasks to be formally completed; the inadequate allocation of financial resources for implementing reforms; the deplorable state of the domestic political class; insufficient administrative capacity; and poor coordination of implementation efforts.⁸

The overall process of European integration has experienced a more dynamic momentum since 2009. The quality of European integration in the Republic of Moldova is assessed through the lens of the progress achieved as a result of implementing reforms in areas such as human rights, justice, technical or economic standards, and legislative harmonisation.⁹

The subsequent stage in the deepening of the Republic of Moldova's cooperative relationship with the European Union was marked by the negotiation of the Association Agreement between 2010 and 2014, which entered into force on 1 July 2016.

The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, having as its aim *inter alia* 'to promote and strengthen cooperation in the area of freedom, security, and justice, with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms,' devotes a separate chapter to the matter of Freedom, Security, and Justice. In this regard, it is expressly stated that 'Respect for human rights and fundamental freedoms will guide all cooperation on freedom, security, and justice' (Article 12, paragraph 3). Similarly, in this chapter, we find provisions regarding the protection of human rights in the context of the Protection of personal data, Cooperation on migration, asylum and border management, Movement of persons, and Combating terrorism.

Citizens of Moldova have benefited from visa-free travel to the Schengen area since April 2014.

In 2017, the European Parliament voted in favour of granting macro-financial assistance to the Republic of Moldova, aimed at supporting the sound management of public finances, the fight against corruption and money laundering, an independent judiciary, the depoliticisation of public administration, and freedom of the press. The preconditions for receiving this assistance related to the observance of effective democratic mechanisms, such as a multi-party system, the rule of law, and human rights. The European

8 | Solomon, 2023, pp. 87–97.

9 | Gavriluța, 2023.

Commission was granted the right to suspend or temporarily cancel any payment in cases where these conditions were not met.¹⁰

For the implementation of the Association Agreement, on 22 August 2022, Recommendation No 1/2022 of the EU – Republic of Moldova Association Council on the EU – Republic of Moldova Association Agenda was adopted, establishing that

the implementation of the new National Human Rights Action Plan, with a focus on the most vulnerable groups, will be a priority. The Republic of Moldova will ensure the effective execution of judgments made by the European Court of Human Rights (ECtHR) and create an efficient mechanism of Parliamentary control over such execution.

The Recommendation establishes clear actions that the Republic of Moldova is to undertake in this regard:

For the first 3–4 years, the state is expected to ensure that the human rights based approach will be effectively integrated in future governmental policy documents, to ensure the functioning and full independence of the National Preventive Mechanism against Torture, in accordance with Article 18, paragraph 3) of the Optional Protocol of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment; significantly improve the track record in the execution of decisions of the European Court of Human Rights; ratify Protocol no 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms on anti-discrimination etc. Referring similarly to the field of human rights and fundamental freedoms, the Republic of Moldova, within seven years of adopting the Recommendation, will ensure the effective implementation of the Council of Europe's Framework Convention for the Protection of National Minorities; will enhance the implementation of the legislation on accessibility for persons with disabilities. Increase and improve accessibility to public buildings, transport and information for persons with disabilities; will ensure compliance with and the implementation of international commitments regarding the freedom of religion or belief etc.¹¹

On 3 March 2022, the Republic of Moldova presented its application for membership of the European Union. On 17 June 2022, the European Commission presented the Opinion on the Republic of Moldova's application for membership of the European Union. In substance, the Commission advocated granting the Republic of Moldova candidate status, with the understanding that the state would implement the nine recommendations outlined at the conclusion of its position statement. These recommendations directly or indirectly affect the manner in which European standards for the protection of fundamental human rights and freedoms are transposed into national legal order and effectively enforced. The recommendations referred to the full implementation of justice sector reform, the continuation of efforts to eradicate corruption at all levels, the fight against organised crime, and, notably, the European Commission explicitly emphasised the need to strengthen the protection of human rights – particularly of vulnerable groups – promote gender equality, and combat violence against women.

10 | Juc and Beniuc, 2019.

11 | Recommendation of the EU-Republic of Moldova Association Council on the EU-Republic of Moldova Association Agenda, 2022.

The first Intergovernmental Conference, which formally launched the accession negotiations, took place on 25 June 2024. Moldova has continued to advance on its path towards EU accession. The constitutional referendum held in October 2024 enshrined EU integration in the Constitution of the Republic of Moldova. The bilateral screening meetings, which began in July 2024, were completed in September 2025. On 4 November 2025, the Commission adopted the Republic of Moldova 2025 Report.¹²

3. Evaluation of the National Normative System and the Main Challenges in Ensuring Compliance With the Standards Arising From the European Union's Aquis in the Field of Human Rights

At the European Council held in Helsinki in December 1999, it was decided that the political criterion – namely the existence of stable democratic institutions, respect for human rights, and the protection of minority rights – would be considered the decisive requirement to be fulfilled prior to the opening of accession negotiations. This circumstance is, to some extent, favourable for the Republic of Moldova, as it is currently closer to meeting the political criteria than the economic ones.¹³

As a result of implementing the provisions of the agreements that have governed the relations between the Republic of Moldova and the European Union since 1994, as well as the Action Plans adopted by the national authorities, both the normative and institutional frameworks have been fundamentally reformed. Thus, each time bilateral cooperation deepened, comprehensive assessments were conducted to identify systemic issues, followed by actions aimed at strengthening the capacity of national actors to identify risks to the association and accession process to the European Union. Regarding the constitutional framework in the field of human rights, it is worth mentioning that general approaches to the supremacy of international treaties (which, in the future, will include the treaties of the European Union) were analysed by the Constitutional Court of the Republic of Moldova in 1999, when it had the opportunity to express its general view on their implementation.¹⁴ This was done in accordance with Article 4 of the Constitution of the Republic of Moldova, adopted on 29 July 1994, which provides:

- (1) Constitutional provisions on human rights and freedoms shall be interpreted and are enforced in accordance with the Universal Declaration of Human Rights, with the conventions and other treaties to which the Republic of Moldova is a party.
- (2) Wherever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations.

12 | Republic of Moldova 2025 Report, 2025.

13 | Moldovan, 2004, p. 8.

14 | Judgment of the Constitutional Court of the on the Interpretation of Certain Provisions of Article 4 of the Constitution of the Republic of Moldova, 1999.

The Constitutional Court of the Republic of Moldova was addressed with the following questions:

What do the terms ‘covenants’ and ‘other treaties’ mean? Which international acts, from a constitutional point of view, fall under the category of covenants and which fall under treaties? What is the distinction between these acts?

Since when is the Republic of Moldova a party to covenants and international treaties: from the date of signing or from the date of ratification?

Which public authority is empowered to determine whether a specific law of the Republic of Moldova is not in accordance with the provisions of covenants and international treaties?

Ruling on the aforementioned questions, the Constitutional Court of the Republic of Moldova found the following:

Article 4 of the Constitution guarantees not only the fundamental human rights and freedoms enshrined in the Constitution but also the universally recognised principles and norms of international law.

The term ‘other treaties to which the Republic of Moldova is a party’, as stated in Article 4 (1) of the Constitution, refers to international treaties ratified by the Republic of Moldova, including international treaties to which it has acceded, which are enforceable for the Republic of Moldova.

The universally recognised principles and norms of international law, the ratified international treaties, and those to which the Republic of Moldova has acceded are an integral part of its legal framework and become norms of its domestic law.

If there are discrepancies between international covenants and treaties on fundamental human rights and the domestic laws of the Republic of Moldova, according to the provisions of Article 4 (2) of the Constitution, legal authorities are obliged to apply the international regulations.

From this, we can conclude that, at present, the Constitution of the Republic of Moldova explicitly recognises the primacy of international law over domestic law in the field of fundamental human rights and freedoms. Therefore, it will be capable of fulfilling its commitments, including those based on the Charter of Fundamental Rights of the European Union.

The regulation and constitutional interpretation in the spirit of the primacy of international treaties in the field of human rights, as well as the implementation of reforms based on the Joint Programmes of the Council of Europe and the European Union, grounded in an approach based on the principles of democracy, human rights, and the rule of law, have undoubtedly enhanced the quality of the judicial process. At the same time, certain challenges to the security of the Republic of Moldova, with imminent implications for fundamental rights and freedoms, are regarded by scholars and practitioners as circumstances that could severely affect the speed and quality of the country’s accession process to the European Union. This particularly refers to the increased number of applications relative to the population of the Republic of Moldova, where the ECtHR has found that the national authorities have failed to fulfil their positive and negative obligations regarding the rights enshrined in the European Convention on Human Rights (ECHR).

Another issue that has sparked endless and, unfortunately, sterile discussions regarding human rights protection is the existence, since 1992, of a secessionist region within the territory of the Republic of Moldova – specifically Transnistria, where constitutional authorities have no access. In its practice, the ECtHR has established, whenever

necessary, that in this part of the Republic of Moldova, the Russian Federation exercises effective control. Consequently, the Russian Federation is held responsible under the ECHR. The exclusion of the Russian Federation from the Council of Europe on 16 March 2022, raises an essential issue in achieving international justice under the ECHR, as this has sometimes been the only hope for litigants from the left bank of the Dniester to have their cases judged by an independent and impartial court, which, based on the 'law', ensures that they benefit from all guarantees of a fair trial.

Other human rights issues that remain central to discussions in the context of the Republic of Moldova's rapprochement with the European Union include freedom of the press and media pluralism, protection of minorities, gender equality, and treatment of individuals held in state custody.

| 3.1. Findings of the European Court of Human Rights in Cases Against the Republic of Moldova: A Benchmark in Assessing Compliance With the European Union Accession Criteria

Both in the RM-EU Action Plans and their implementation strategies, as well as in the official documents of the European institutions responsible for evaluating candidate states for accession, references are consistently made – whenever arguments are formulated or initiatives justified – to statistics and high-profile cases that reveal systemic issues highlighted by the ECtHR. The trends recorded in the statistical data of the Strasbourg jurisdictional body raise serious concerns.

Between 1998 and 2024, approximately 17,700 applications were submitted to the Court, in which applicants alleged violations by the Republic of Moldova of their fundamental rights and freedoms. During this period, more than 600 judgments were delivered in which the Court found violations of the Convention.

As of the end of 2024, out of a total of 60,530 pending applications before the ECtHR, 1.9% (1,150) concern cases against the Republic of Moldova. These figures place the Republic of Moldova in 9th place among the Member States of the Council of Europe. For a country with a population of approximately 2,400,000 people, this statistic reflects a disproportionately high rate of cases brought before the ECtHR, indicating the persistence of systemic issues in ensuring and effectively protecting fundamental rights and freedoms at the national level.

In total, in 2024, the ECtHR issued 17 judgments in cases against the Republic of Moldova. In 15 of these cases, it found violations by the authorities of rights and freedoms guaranteed by the ECHR. The majority of these rulings concerned the right to a fair trial (5 judgments), prohibition of discrimination (5 judgments), and protection of property (5 judgments). Additionally, by the end of 2024, 163 cases were pending before the Committee of Ministers for supervision of execution.

| 3.2. The Transnistrian Conflict and the Republic of Moldova's Accession to the European Union

The dissolution of the USSR triggered the emergence of secessionist movements with aggressive messages and actions in several former socialist republics, leading to armed conflicts. One of these was the armed conflict of a non-international character – which later became internationalised – in 1992 in the Republic of Moldova (the Transnistrian conflict). As a result, the central authorities are unable to exercise effective control over the western bank of the Dniester River.

At the time of its accession in 1997 to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Republic of Moldova made several reservations,¹⁵ one of which specifically addressed the applicability of the treaty to a particular part of the state's territory—namely, the region of Transnistria (the left bank of the Dniester River), where, as a result of the armed conflict in 1992, the Government no longer exercises effective control.

The Republic of Moldova declared that it would not be able to ensure compliance with the provisions of the Convention regarding omissions and acts committed by the authorities of the self-proclaimed Transnistrian Republic on the territory effectively controlled by them until a definitive resolution of the dispute in that area is achieved.

It is important to note that, in examining the 'jurisdiction' of the Republic of Moldova under Article 1 of the ECHR during the admissibility stage of the *case of Ilie Ilașcu and Others vs. Moldova and the Russian Federation*,¹⁶ the ECtHR had the opportunity to rule on the effect of the reservation made by the Republic of Moldova. It stated that it would not be able to ensure compliance with the provisions of the Convention regarding omissions and acts committed by the authorities of the self-proclaimed Transnistrian Republic on the territory effectively controlled by them until a definitive resolution of the conflict in that area. The Court clearly established: ... firstly, Moldova's declaration does not refer to any particular provision of the Convention. [...] Secondly, the Court notes that the declaration does not refer to a specific law in force in Moldova. The words used by the Moldovan Government – 'omissions and acts committed ... within the territory actually controlled by such organs, until the conflict in the region is finally definitively resolved' – Instead indicate that the declaration in question is of general scope, unlimited as to the provisions of the Convention but limited in space and time, whose effect would be that persons on that 'territory' would be wholly deprived of the protection of the Convention for an indefinite period.

In view of the foregoing, the Court considered that the aforementioned declaration cannot be equated with a reservation within the meaning of the Convention, so that it must be deemed invalid. The Court consequently dismissed the Moldovan Government's preliminary objection based on the existence of the declaration.

Nevertheless, we observe how the High Court in Strasbourg admits the applications submitted against the governments of the Russian Federation and the Republic of Moldova, declaring them admissible, as they concern violations of the rights guaranteed by the Convention. At the same time, in establishing the jurisdiction of the Republic of Moldova under Article 1 of the Convention, the reasoning established in the case of *Ilașcu and Others v. Moldova and Russia*¹⁷ is repeated, namely:

the Court considers that the Moldovan Government, the only legitimate government of the Republic of Moldova under international law, does not exercise authority over part of its territory, namely that part which is under the effective control of the 'Moldavian Republic of Transnistria'.

15 | Decision on the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as of Certain Additional Protocols thereto, 1997.

16 | *Ilașcu and Others v. Moldova and Russia* (GC), 2001.

17 | *Ilașcu and Others v. Moldova and Russia* (GC), 2004.

Specifically, in the spirit of this finding, the Russian Federation was held responsible both in the case of *Ilaşcu and Others* and in the cases subsequently submitted to the jurisdiction of the ECtHR, where the applicants invoked violations of the right to education,¹⁸ illegal detention, and inhuman and degrading treatment in coercive contexts within detention facilities in Transnistria,¹⁹ the right to life,²⁰ protection of property,²¹ etc on the left bank of the Dniester River.

Given that an international judicial body has repeatedly established that the Government of the Republic of Moldova does not exercise effective control over the secessionist region, considering the military presence of foreign armed forces in that territory, and based on the unclear and sometimes contradictory political statements made by representatives of both the Republic of Moldova and the European Union, it remains entirely unclear to what extent, in the event of Moldova's accession to the European Union, the state will be able to fulfil the obligations arising from the EU acquis, particularly in the area of ensuring fundamental rights and freedoms.

4. Assessment of the Compatibility of the Normative Framework of the Republic of Moldova in the Field of Human Rights With the Provisions of Chapters 23 and 24 of the EU Acquis

| 4.1. *Functioning of the Judiciary and Prosecution Service*

To align national legislation with European Union standards concerning impartiality, anti-corruption efforts, and integrity within the legal order of the Republic of Moldova, a series of reforms were undertaken targeting the judiciary and the prosecution service. Specifically, new evaluation mechanisms for magistrates were developed, aimed at ensuring their integrity and enhancing public confidence in the justice system as a whole.

A first step in this direction was the introduction of the pre-vetting procedure through the Law on Certain Measures Related to the Selection of Candidates for Membership in the Self-Governing Bodies of Judges and Prosecutors, adopted on 10 March 2022. This law applies to the integrity assessment of candidates for membership in the following bodies: the Superior Council of Magistracy; the Board for the Selection and Career of Judges; the Judicial Performance Evaluation Board; the Disciplinary Board of Judges; the Superior Council of Prosecutors; the Board for the Selection and Career of Prosecutors; the Prosecutorial Performance Evaluation Board; and the Disciplinary and Ethics Board under the Superior Council of Prosecutors. Following the enforcement of this law, new compositions of the Superior Council of Magistracy and the Superior Council of Prosecutors, as well as of their subordinate boards, were established.

18 | *Catan and Others v. Moldova and Russia* (GC), 2012.

19 | *Mozer v. Moldova and Russia*, 2016.

20 | *Pisari v. Moldova and Russia*, 2015.

21 | *Turturica and Casian v. Moldova and Russia*, 2017. *Pădureţ v. Moldova and Russia*, 2017.

In the context of the measures taken by the Government of the Republic of Moldova as an EU candidate country, and in order to fulfil the justice sector conditionalities – particularly those concerning judicial reform and the cleansing of the judiciary – on 30 March 2023, the Law on the External Evaluation of Judges and Candidates for the Position of Judge at the Supreme Court of Justice was adopted. This law established a procedure for the external evaluation of the ethical and financial integrity of sitting Supreme Court judges and candidates for that position. The evaluation is conducted by an Evaluation Commission whose members are appointed by the Parliament of the Republic of Moldova. Following the evaluation, the Commission issues a reasoned report containing a recommendation for passing or failing the evaluation. The report is submitted to the Superior Council of Magistracy, which may, in general terms, accept or reject the Commission's findings. A decision by the Council not to confirm the evaluation results in the dismissal of the judge concerned. However, such a decision may be challenged before the Supreme Court of Justice.

In a related development, on 17 August 2023, the Parliament of the Republic of Moldova adopted the Law on the External Evaluation of Judges and Prosecutors and the Amendment of Certain Normative Acts. In the explanatory note to the bill, the Ministry of Justice explicitly stated that the external evaluation of judges and prosecutors constitutes a national and international commitment of the Republic of Moldova. This reform is one of the key conditionalities stemming from the Republic of Moldova–European Union Association Agreement.

Under the new law, the subjects of the evaluation procedures include: presidents and vice-presidents of courts; judges of the courts of appeal; the Prosecutor General and Deputy Prosecutors General; heads of divisions within the General Prosecutor's Office; prosecutors holding the position of chief prosecutor or deputy chief prosecutor of a territorial prosecution office; and prosecutors within specialised prosecution offices. As with the earlier procedure, the members of the Evaluation Commission are appointed by the Parliament of the Republic of Moldova. The resulting reports – whether recommending the passing or failing of the evaluation – are submitted to the Superior Council of Magistracy or, as applicable, the Superior Council of Prosecutors, with the possibility of appealing the self-governing bodies' decisions to the Supreme Court of Justice.

The implementation of the above-mentioned legal framework has had unforeseen consequences. In 2024 alone, more than 50 judges from the courts of appeal and the Supreme Court of Justice chose to resign in order to avoid undergoing the evaluation process. As a result, the judiciary entered an unprecedented crisis, as the caseload of the departing judges was redistributed to the remaining ones, while the procedures for appointing new judges have been delayed.

Regarding the organisation and functioning of the Public Prosecution Service of the Republic of Moldova, it should be noted that, starting from 2019, the legal framework in this area has undergone substantial amendments aimed at meeting the requirements of improved management, transparency, and accountability.

In the report published on 4 November 2025, the European Commission found, with regard to the functioning of the judiciary, that while the implementation of strategic documents is satisfactory, independence and impartiality are improving, including through the continued vetting of judges and prosecutors, and the framework for regulating accountability is also satisfactory, the quality and efficiency of justice still need to improve.

In this context, the most recent amendments to the national regulatory framework and the reforms carried out within the National Institute of Justice and the Constitutional Court were reviewed, as well as the establishment of the Agency for Digitalization in Justice and Judicial Administration.

The Commission issued several recommendations, noting that in the coming year, Moldova should focus in particular on introducing a randomised system for the allocation of cases to prosecutors based on clear and objective criteria, as well as significantly improving court clearance rates and disposition time in courts.

| 4.2. *Fundamental Rights*

In the 2025 Republic of Moldova Report, the European Commission noted that the implementation of the national human rights action programme is ongoing. Detention conditions remain a concern, as does the treatment of persons with disabilities in specialised institutions. In the period ahead, Moldova should, in particular:

- Improve interinstitutional cooperation, especially with the Equality Council and the People's Advocate Office, and ensure that adequate resources are available.
- Improve detention conditions to implement judgments of the ECtHR and address all the recommendations of the 2023 report of the Committee on the Prevention of Torture, including by improving medical treatment of persons deprived of their liberty.
- Adopt the National Social Inclusion Programme of People with Disabilities, step up safe deinstitutionalisation of adults and children with disabilities through community-based solutions.

As part of the harmonisation of national legislation with European Union standards in the field of equality and non-discrimination, and in order to promote and ensure gender equality, Moldovan authorities have undertaken a series of positive actions. Among these is an amendment, on 15 August 2024, of the Law on Preventing and Combating Violence Against Women and Domestic Violence,²² which introduced, inter alia, the concept of femicide. Femicide is defined as an act of violence against women, including girls, resulting in the victim's death, as a consequence of intentional homicide, serious bodily injury, or domestic violence, or suicide of the victim caused or facilitated by domestic abuse, or committed based on gender-based prejudice.

This legislative initiative was based on several European instruments, including: Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence; the European Parliament Resolution of 11 October 2007 on the murders of women (femicide) in Mexico and Central America and the role of the European Union in combating this phenomenon; and the 2007 report by the European Parliament's Committee on Women's Rights and Gender Equality regarding femicide in Mexico and Central America and the EU's role in addressing it.

As it is a fundamental obligation of the state, the protection of victims of domestic violence must be ensured through timely and effective measures, aimed both at preventing such violence and at bringing perpetrators to justice.²³ Furthermore, the November 2025

22 | Law No. 45 of 01 March 2007 on Preventing and Combating Violence against Women and Domestic Violence. Published: 18-03-2008 în Monitorul Oficial Nr. 55-56 Article 178.

23 | Nastas, 2025, p. 9.

Report on the Republic of Moldova contains the recommendation addressed to the Moldovan authorities to strengthen the institutional capacities, data management, funding, and implementation of the national programmes on gender equality and gender-based violence.

In addition, regarding equality and non-discrimination, the Commission recommends that the Republic of Moldova proceed with the ratification of Protocol No. 12 to the ECHR, which provides for a general prohibition of discrimination.

In the area of freedom of expression, although notable progress has been recorded, including the adoption of new legislation on access to information and the protection of journalists, significant challenges remain. In particular, media ownership concentration and political influence persist, while intimidation of journalists by private actors has increased. In the coming year, Moldova should, in particular:

- Review the mechanism allowing for the withdrawal of TV and radio broadcasting licences under the Law on Strategic Investments to bring it into line with the EU acquis and international standards, as well as extend media ownership transparency requirements to online and print media.
- Adopt a new Law on Mass Media to strengthen the regulatory framework for freedom of expression, including enhanced transparency provisions for print and online media.
- Ensure adequate protection of journalists against intimidation and attacks, including through thorough and impartial law enforcement investigations.

Regarding property rights, the European Commission noted in 2025 that the legal and institutional framework for the protection and enforcement of property rights is largely established. However, procedures for the restitution and reinstatement of property rights remain complex and time-consuming. In addition, Moldova needs to strengthen the enforcement of court rulings related to property rights.

| **4.3. Human Rights Issues in the Area of Justice, Freedom, and Security**

With reference to the latest findings under Chapter 24: Justice, Freedom, and Security, as outlined by the European Commission in its November 2025 Report on the Republic of Moldova, a number of key human rights concerns remain relevant.

The protection of children's rights remains a major concern. The criminalisation of all forms of child sexual abuse has not yet been fully completed, and relevant legislation is still being aligned with the EU acquis. While specialised structures and services for victims have been established, investigative and protection capacities require further strengthening.

Trafficking in human beings continues to pose a serious human rights challenge. Although a national strategy and coordination mechanisms are in place, the legal framework remains only partially aligned with EU standards. Stronger measures are needed to ensure early identification of victims, effective protection, and the prosecution of new forms of exploitation, including online exploitation and cases involving minors.

The rights of migrants, refugees and asylum seekers represent a particularly sensitive issue in light of the significant increase in persons displaced by the war in Ukraine. While the legal framework is partially aligned with the EU acquis and temporary protection has been granted, national authorities face persistent resource constraints. Access

to information, legal assistance, and safeguards against refoulement need to be further improved, particularly at border crossing points.

Protection of the right to asylum and of persons with special needs requires stronger referral mechanisms and enhanced institutional capacity of the authorities responsible for asylum and migration management.

Security and counter-terrorism measures raise potential concerns for fundamental rights, notably in relation to entry refusals and expulsions on national security grounds. The absence of a comprehensive framework for preventing radicalisation highlights the need to ensure an appropriate balance between security objectives and the protection of human rights.

5. Conclusions

The Republic of Moldova has come a long way in establishing sufficient credibility in the eyes of the European Union and each EU member state in order to obtain candidate status. Since its emergence as an independent state on the political map of the world, the country has 'tried on' multiple roles in its cooperation with the European Communities – now the European Union – always pursuing the goal of European integration by obtaining EU membership.

The successful development and implementation of reforms impacting the field of fundamental human rights and freedoms – currently closely monitored by European Union institutions – will logically lead to increased public awareness in the Republic of Moldova of the internal processes of the European Union. This will contribute to the cultivation of European values and, ultimately, to the effective enhancement of legal culture within the national society.

At the time of writing this article, the degree of compliance of Moldova, a candidate country, with the provisions of the EU *acquis* had already been assessed. Overall, the European Commission's reports highly appreciate the measures undertaken to implement the Association Agreement and to align the legislation of the Republic of Moldova with the EU *acquis*. However, persistent challenges remain, particularly under Chapters 23 and 24 of the *acquis*. These include ongoing concerns related to the protection of minorities, children and persons with disabilities, as well as gender-based violence, the protection of victims of trafficking in human beings, and the rights of refugees, displaced persons, and asylum seekers.

In the context of this research, we found it appropriate to refer to the situation in Transnistria, part of the territory of the state where the Government of the Republic of Moldova has not exercised effective control since 1992.

The actual situation in this part of the territory of the Republic of Moldova reveals a significant threat to regional security and a tangible inability of the Republic of Moldova to exercise its sovereignty over the areas controlled by the secessionist regime. Since 2004, the ECtHR has issued a series of rulings establishing the Russian Federation's responsibility for violations of fundamental rights and freedoms, as guaranteed by the ECHR, occurring in Transnistria. While the Russian authorities broadly rejected these judgments as politically motivated during the time the Russian Federation was a party to the Convention, the mechanism nonetheless offered a measure of hope to individuals

residing on the left bank of the Dniester that their cases would be heard and their rights restored. Following the expulsion of the Russian Federation from the Council of Europe, even this last remaining hope has been extinguished, and the region on the left bank of the Dniester has effectively become a true shadow zone of human rights protection. In the context of the present study, a logical question arises as to whether the Moldovan authorities will be able to ensure the implementation of the provisions of the European Union *acquis* in the secessionist region, where even the mechanisms of the ECHR cannot be applied due to the lack of 'jurisdiction' of the Republic of Moldova, as defined under Article 1 of the Convention.

The success of the Republic of Moldova's pre-accession negotiations with the European Union depends on the continuation and efficiency of measures aimed at resolving the Transnistrian conflict through the unconditional reintegration of the country, on efforts to prevent and combat the scourge of corruption, on ensuring freedom of the press, the integration of minorities, and other key reforms.

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NATIONAL HUMAN RIGHTS SYSTEM IN MONTENEGRO¹

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ABSTRACT

The text is structured into three sections. The first section examines the protection of human rights under the Constitution of Montenegro, the second section focuses on the adjudication of fundamental rights in Montenegro, and the third section is dedicated to the Protector of Human Rights.

The first section on the protection of human rights in the Constitution provides an analytical overview of human rights safeguards, discussing topics such as the guiding constitutional principles regarding the status of individuals, significance of certain rights and freedoms, and whether the current regulation of rights and freedoms adequately addresses contemporary societal needs. The key areas of analysis include terminological issues, cataloguing of human rights in the Constitution, and the relationship between the Constitution and international law. This section also examines constitutional limitations on human rights.

*The second section examines the judicial protection of human rights in Montenegro, with a focus on the Constitutional Court. It analyses the powers and functions of the Court, including its two primary roles: reviewing the constitutionality of laws and addressing constitutional complaints. This section also explores the impact of the Constitutional Court decisions and factors that influence the judicial protection of human rights. The Court's norm control powers are defined as *ex post norm control*. A constitutional complaint is a mechanism to assess the compatibility of an individual act by a state authority or other entity performing public functions, with human rights protected by the Constitution and international treaties.*

The third section focuses on national human rights institutions in Montenegro, with emphasis on the Protector of Human Rights and Freedoms. The Protector fulfils duties typically associated with other national human rights institutions. Compliant with the

1 | This text has been prepared as educational material for the 'Human Rights and Rule of Law' LL.M. course established by the Central European Academy. Similar materials have been prepared for Albania, Bosnia and Herzegovina, Georgia, Moldova, North Macedonia, Serbia, and Ukraine. These texts serve as resources for comparative studies. To ensure comparability, the editor has provided a standardised questionnaire that authors of national reports are required to follow. The questionnaire comprises three parts; accordingly, this text is divided into three corresponding sections. In each section, the editor's questions – rephrased as subheadings – are answered below. For certain questions, concise answers are explicitly required.

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Paris Principles, this section analyses six key pillars of the Protector's institution: independence, pluralism, cooperation, accessibility, funding, and a broad mandate.

KEYWORDS

Constitution
human rights
Constitutional Court
Ombudsman

1. Introduction

Information for this report was primarily drawn from relevant sources, including the Constitution, statutory laws, subordinate legal instruments, decisions of the Constitutional Court, and reports from the Constitutional Court and the Protector of Human Rights and Freedoms. The list of statutory laws used in the text is attached at the end of the article. It is relevant to mention here that Montenegro has entered into all universal human rights treaties through succession or accession, except the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Montenegro is a Contracting Party to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and other regional human rights treaties. As Montenegro is a multi-ethnic State, and the 1994 Framework Convention for the Protection of National Minorities is important for Montenegro.

Montenegro has a population of approximately 650,000 people living in 25 municipalities, spread over 14,000 km.² This demographic and geographic information is essential for understanding the organisation of the country's judicial system and national human rights institutions, as both are based on the country's territorial size and number of population.

2. Protection of Human Rights in the Constitution of Montenegro

This section provides analytical insights into various aspects of protection of human rights in the Constitution of Montenegro. It addresses topics such as the guiding constitutional principles regarding the status of individuals, the significance of certain rights and freedoms, and whether the current regulation of rights and freedoms adequately meets contemporary social needs. This analysis includes considerations of the vertical and horizontal dimensions of human rights, and the duties associated with those rights. Another key area of focus is terminological issues, cataloguing of human rights in the Constitution, relationship between the Constitution and international law, and identification of constitutional holders of human rights and those responsible for their protection. Additionally, this section examines the constitutional limitations on human rights, and the provisions related to the right of access to justice and the right to an effective remedy.

| **2.1. *There Is No Remarkable Distinction Between the Terms ‘Human Rights’, ‘Fundamental Rights’, and ‘Constitutional Rights’ in the National Legal System***

The Constitution of Montenegro predominantly uses the terms ‘human rights and freedoms’ or simply ‘rights and freedoms.’ These terms are also commonly used in legislation. Notably, the Criminal Code uses the term ‘fundamental human rights and freedoms’, while the Code on Criminal Procedure and the Law on Civil Procedure refer to ‘human rights and fundamental freedoms’. In addition to ‘human rights and freedoms’, the Law on Minority Rights and Freedoms and the Law on Non-Governmental Organizations also use the term ‘minority rights and freedoms’. Similarly, the Law on the Prohibition of Discrimination employs the term ‘human and minority rights’. In judicial practice, the terms ‘human rights and freedoms’ and occasionally ‘constitutional rights’³ are used. The academic doctrine mainly uses the terms ‘human rights and freedoms’,³ although ‘human and minority rights’⁴ are also referenced. All these terms are employed as synonyms, with no distinct legal meanings attached to them. No legal distinction exists between ‘human rights’, ‘constitutional rights’, or ‘fundamental human rights’. They are understood as encompassing the rights laid down in the Constitution and international treaties.

| **2.2. *The Regulation of Human Rights Is Organised in a Separate Part of the Constitution***

The Constitution of Montenegro organises human rights and freedoms in its second part, titled ‘Human Rights and Freedoms’.

| **2.3. *The Relationship Between the Constitution and International Law in Montenegro, Specifically in the Context of International Human Rights Treaties***

The relationship between international human rights treaties and national law in Montenegro is primarily governed by Arts. 17 and 9 of the Constitution. Art. 17(1) stipulates that rights and freedoms shall be exercised based on the Constitution and ratified international conventions. This provision must be read alongside Art. 9, which states that ratified and published international treaties, and generally accepted rules of international law: form an integral part of the domestic legal order, have supremacy over national legislation, and are directly applicable when they regulate matters differently from domestic law. The prevailing interpretation of Art. 9 extends this direct applicability to cases where domestic law does not regulate the relevant matter at all. The Constitutional Court has adopted this approach, applying provisions of the European Convention on Human Rights (ECHR), as interpreted by the European Court of Human Rights (ECtHR), in cases where the Constitution and laws do not provide regulation. The Constitution does not explicitly address the relationship between itself and international treaties. However, based on the practice of the ECtHR, it is anticipated that priority will be extended to international human rights treaties in cases of conflict.

3 | Vučinić, 2001; Vučinić, 2008; Vukčević and Čupić, 2024.

4 | Jelić, 2004, pp. 136–145; Džankić, 2012, pp. 40–59.

| 2.4. *The State Bodies Responsible for Protecting Freedoms and Rights According to the Constitution; Vertical and Horizontal Conception of the Functioning of Human Rights*

The Constitutional Court has the primary responsibility of protecting freedoms and rights. The Protector of Human Rights and Freedoms plays an important role in this regard. Likewise, all courts and state bodies are obliged to ensure respect for human rights in their application of laws and implementation of policies. The Constitution explicitly adopts both vertical and horizontal conceptions of the functioning of human rights, requiring respect for these rights not only in the relationship between the State and individuals but also in relationships among private persons.

| 2.5. *Persons and Particular Groups Protected by the Montenegrin Constitution in Terms of Human Rights*

The Montenegrin Constitution provides human rights protection to every natural and legal person, and to organisations, settlements, groups of persons, and other forms of organisation that lack legal personality. All these entities are authorised to lodge a constitutional complaint, thereby enjoying constitutional protection of human rights. The Constitution affords special protection to certain groups, including children, youth, and elderly persons, women, particularly pregnant women, and mothers, persons with disabilities, and ethnic minorities.

| 2.6. *The Guiding Principles Concerning the Status of the Individual in Montenegro Under the Constitution, and Their Axiological Inspirations*

The guiding principles of the status of the individual in Montenegro are enshrined in Arts. 1(2) and 10 of the Constitution. Art. 1(2) declares: 'Montenegro is a civil, democratic, ecological state of social justice, based on the rule of law'. This provision frequently serves as part of the legal framework referenced by the Constitutional Court in proceedings concerning constitutionality and legality.⁵ Art. 10 states: 'Everything that is not prohibited by the Constitution and the law is free in Montenegro. Everyone is obliged to comply with the Constitution and the law.' Although this Art. is less frequently cited in court decisions, it remains a fundamental determinant of the individual's status, emphasizing freedom constrained by the non-arbitrary application of the law. In the *ZIPI* case, which involved a constitutional complaint, the Constitutional Court emphasised that arbitrariness in legal reasoning is incompatible with the rule of law and human rights. The Court stated:

A legal order in a society based on the rule of law cannot be built, and the protection of constitutional rights of individuals cannot be based on reasons that lack valid arguments and basic principles of law. Otherwise, unforeseeable consequences may arise in the realization and protection of individual rights.⁶

5 | Decision of the Constitutional Court U-I no. 5/13, 26 February 2018, para. 5; Decision of the Constitutional Court U-I no. 11/16, 12/17 and 13/17, 27 March 2018, para. 5; Decision of the Constitutional Court U-I no. 64/12, 27 March 2018, para. 5; Decision of the Constitutional Court U-I no. 1/16, 26 June 2018, para. 5; Decision of the Constitutional Court U-I no. 29/17, 26 June 2018, para. 5.

6 | Decision of the Constitutional Court U-III no. 552/24, 18 July 2024, para. 21.

The preamble of the Constitution enumerates the following basic values: freedom, peace, tolerance, respect for human rights and freedoms, multiculturalism, democracy, and the rule of law. Among these, the rule of law has been designated in some decisions of the Constitutional Court as the highest value of the constitutional order.⁷ Nonetheless, freedom and the rule of law can be regarded as the key axiological determinants of an individual's status in Montenegro. The Constitution and laws do not establish distinctions among human rights based on their values. No official hierarchy exists among human rights, and they are treated as having equal force.

| 2.7. The Freedoms and Rights Enshrined in the Constitution Are Organised Into Six Sections

The Constitution of Montenegro organises freedoms and rights into six sections, presented in the second part of the Constitution. They include rights from the three generations of human rights. Rights from the first generation-civil and political rights-are addressed in the second and third sections. Rights from the second generation-economic and social rights-are laid down in the fourth section. Some rights from the third generation, such as the right to a healthy environment or the right to protection of natural and cultural heritage are presented in various sections. The first section under the title 'Common Provisions' includes the following rights and principles: equality before the law, gender equality, equal protection of human rights, right to legal remedy, right to legal assistance, right to local self-government, right to a healthy environment, limitation of human rights and freedoms, and temporary limitation of human rights and freedoms. The second section, entitled 'Individual Rights and Freedoms' includes the following rights and principles: prohibition of death penalty, rights related to biomedicine, dignity and inviolability of personality, guarantees regarding deprivation of liberty, guarantees regarding detention, right to respect for human personality in criminal or other proceedings, right to a fair and public trial, principle of legality in criminal matters, and presumption of innocence, *Non bis in idem*, right to defence, freedom of movement, settlement, and the right to leave Montenegro, right to respect for private and family life, inviolability of the home, inviolability of communication, protection of personal data, and right to asylum. The third section entitled 'Political Rights and Freedoms' includes the following rights and principles: right to vote, freedom of thought, conscience, and religion, freedom of expression, conscientious objection, freedom of the press, prohibition of censorship, right of access to information, freedom of assembly, freedom of association, prohibition of organisation in State institutions, prohibition of activities or organisations aimed at forcibly overthrowing the constitutional order, right to petition international organisations, and right to petition state bodies. The fourth section entitled 'Economic, Social, and Cultural Rights' includes the following rights and principles: right to property, freedom of entrepreneurship, right to inheritance, rights of foreigners, right to work, prohibition of forced labour, employee rights, right to strike, social security, rights of persons with disabilities, health insurance, consumer protection, marriage and family rights, protection of mothers and children, child rights, right to education, freedom of scientific, cultural, and artistic creativity, and protection of natural and cultural heritage. Importance that

7 | Decision of the Constitutional Court U-I no. 13/16, 29 January 2019, para. 7.1. Decision of the Constitutional Court U-I no. 12/15, 28 February 2019, para. 7.2.1. Decision of the Constitutional Court U-I br. 28/18 no 27 February 2020, para. 8.1.

Montenegro attributes to the rights from the second generation is manifested in the fact that Montenegro ratified the 2008 Optional Protocol to the Covenant on Economic, Social, and Cultural Rights, thus accepting competence of the Committee on Economic, Social and Cultural Rights to consider individual communications from Montenegro. The fifth section is dedicated to the protection of minority rights and provides for the protection of identity and prohibition of assimilation. Art. 79 of the Constitution enumerates the rights that protect the identity of persons belonging to minorities. Wishing to equalise the status of persons belonging to minorities and persons belonging to majority people, instead of the term 'minorities' the Art. uses terms 'minority nations' and 'minority national communities'. These rights include: right to publicly express national, ethnic, cultural and religious particularities and to protect and develop them, right to publicly post national symbols and to celebrate national holidays, right to use their own language and alphabet in private, public and official use, right to education in their own language and alphabet in public institutions, and the right to the history and culture of persons belonging to minority nations and other minority national communities is included in the curricula, right to local self-government when certain conditions are met, and other rights. The sixth section entitled 'The Protector of Human Rights and Freedoms' focuses on the institution responsible for overseeing the protection of rights and freedoms.

| 2.8. Freedoms and Rights Enshrined in the Constitution Particularly Important in the Political, Social, and Economic System of Montenegro

Several freedoms and rights hold particular significance in Montenegro's current political and social context, including dignity and inviolability of personality, guarantees regarding deprivation of liberty, guarantees regarding detention, the right to respect for human personality in criminal or other proceedings, and the right to a fair and public trial. These rights are critical given Montenegro's ongoing fight against organised crime, a critical issue in the country.⁸ In recent years, some police officers, allegedly connected to criminal gangs, have been implicated in acts of torture against imprisoned members of rival gangs. In the past, inhumane treatment of detained individuals was a widespread practice.⁹ There are credible suspicions and judicial proceedings regarding alleged connections between high-ranking state officials and certain criminal groups.¹⁰ In this context, protection of these fundamental rights is vital to uphold the rule of law and address systemic issues within the justice and law enforcement systems.

| 2.9. The Constitution's General Clauses Limiting the Exercise of Constitutional Freedoms and Rights, Clauses Limiting Specific Freedoms and Rights and the Proportionality Test

The Constitution of Montenegro addresses restrictions on the exercise of rights and freedoms through both general and specific provisions. Arts. 24 and 25 of the Constitution provide the general framework for limiting rights and freedoms: Art. 24 states:

Guaranteed human rights and freedoms can be restricted only by law, to the extent permitted by the Constitution and to the extent necessary to satisfy the purpose for which the restriction

8 | Montenegro Report, 2023, pp. 5, 52, 54, 55.

9 | Gorjanc Prelević and Malović, 2022.

10 | Montenegro Report, 2023, pp. 5, 27, 54, 55.

is allowed in an open and free democratic society. Restrictions may not be introduced for purposes other than those for which they are prescribed.

Art. 25(1) allows the restriction of certain human rights and freedoms during a declared state of war or emergency if deemed necessary. However, Art. 25(3) explicitly excludes certain rights from such restrictions, including the right to life, right to legal remedy and legal aid, right to dignity and respect for the person, right to a fair and public trial and the principle of legality, the presumption of innocence, right to defence, compensation for illegal or unjustified deprivation of liberty and wrongful conviction, freedom of thought, conscience, and religion, and the right to conclude a marriage. The purpose and conditions for restrictions are detailed in specific provisions of the Constitution. For example: Art. 39 states that freedom of movement, and settlement, and the right to leave Montenegro may be restricted for specific reasons such as conducting criminal proceedings, preventing the spread of infectious diseases, or ensuring national security. Art. 41(4) allows officials to enter a private residence without a court order and without witnesses if it is necessary to prevent a criminal offense, apprehend the perpetrator, or save lives and property. Art. 42(2) permits departure from the principle of inviolability of communication only by court order for reasons such as conducting criminal proceedings or national security. The Constitutional Court applies the proportionality test in accordance with the jurisprudence of the ECtHR. The test involves evaluating whether: the restrictive measure is suitable for achieving its intended purpose, the measure is not harsher than necessary to achieve the purpose, a balance is struck between individuals' constitutional rights and community interests.¹¹ The Court further specifies that when restricting a right, State authorities must consider the essence of the right being restricted, importance of the purpose of the restriction, nature and scope of the restriction, relationship between the restriction and its purpose, and whether there is a less restrictive way to achieve the same purpose.¹²

2.10. *Appropriateness of the Current Regulation of Freedoms and Rights in Montenegro's Constitution to the Challenges of Modern Times*

The current regulation of freedoms and rights in Montenegro's Constitution suffers from insufficient implementation to effectively address the contemporary challenges. In particular, the ongoing combat against organised crime and corruption requires further constitutional reforms to strengthen the judiciary's independence and efficiency and enhance the implementation of the rule of law. Improvements in these areas would better align Montenegro's constitutional framework with modern challenges and international standards.

2.11. *The Right of Access to Justice and the Right to an Effective Remedy as They Are Provided by the Constitution*

The Constitution of Montenegro explicitly guarantees both the right of access to justice and the right to an effective remedy: Art. 32 ensures the right to a fair and public

11 | Decision of the Constitutional Court U-II no. 64/12, 27 March 2018, para. 2.4.1.

12 | Ibid. Decision of the Constitutional Court U-I no. 29/17, 26 June 2018, para. 7.2.1. Decision of the Constitutional Court U-I no. 10/14, 30 October 2018, para. 8.2.1.

trial, interpreted by the Constitutional Court to include the right of access to a court.¹³ The Court has emphasised that this right is among the most fundamental constitutional guarantees.¹⁴ Art. 32 states: 'Everyone has the right to a fair and public trial within a reasonable time before an independent, impartial court established by law'. Art. 20 guarantees the right to a legal remedy, specifying: 'Everyone has the right to a legal remedy against a decision that determines his right or interest based on law.' These provisions reflect Montenegro's commitment to safeguarding access to justice and effective remedies, consistent with international human rights standards. The right of access to justice is further elaborated in Arts. 118–128 related to the judicial system composed of basic and higher courts, Appellate Court, Supreme Court, and the Judicial Council. The system of courts includes also Commercial Court and Administrative Court. Arts. 118–128 secure independence and impartiality of courts, a public hearing, and other components of the right to a fair trial.

| **2.12. Montenegro's Constitution Impose Some Duties on Individuals**

The Constitution of Montenegro imposes several duties on individuals, which include the general duty to respect human rights and specific duties. The general duty is stated in Art. 6(3): 'Everyone is obliged to respect the rights and freedoms of others.' Another general duty is expressed in Art. 10(2): 'Everyone is obliged to comply with the Constitution and the law.' Specific duties are outlined in Arts. 23(3) and 78(1). Art. 23(3) declares: 'Everyone, especially the state, is obliged to protect and improve the environment.' Art. 78(1) provides: 'Everyone is obliged to preserve the natural and cultural heritage of general interest.'

3. Fundamental Rights Adjudication in Montenegro

This section explores the judicial protection of human rights in Montenegro, with a focus on the Constitutional Court as the primary judicial body responsible for safeguarding these rights. Other state bodies, including ordinary courts, are also considered for their role and functions in upholding human rights. The key areas of analysis include the powers and functions of the Constitutional Court, and the Court's two main functions are: reviewing the constitutionality of laws and addressing constitutional complaints, statistical data regarding the Court's activities, the roles of the President of the Constitutional Court, rapporteur judges, and advisory staff, and the effect of Constitutional Court decisions and circumstances impacting judicial protection of human rights.

| **3.1. The Fundamental Rights Protection Bodies in Montenegro, the Functions of These Bodies, and the Division of Functions and Powers Between Them**

There are several fundamental rights protection bodies in Montenegro, each with specific functions and responsibilities. The Constitutional Court ensures respect for and application of the Constitution, including the protection of human rights and freedoms

13 | Decision of the Constitutional Court U-I no. 2/19 od 18 July 2019, para. 7.2.1.1. Order of the Constitutional Court U-I no. 31/18, 30 May 2019, para. 8.3.

14 | Decision of the Constitutional Court U-I no. 31/18, 30 May 2019, para. 8.3.

guaranteed by the Constitution and international treaties. The Protector of Human Rights and Freedoms undertakes measures to protect and promote human rights and freedoms. The Supreme Court ensures uniform application of the law by courts, acts as a court of third instance, resolves conflicts of jurisdiction between courts and transfers territorial jurisdiction in certain cases, and adopts general legal opinions and informs the Assembly of Montenegro about court-related issues. The Administrative Court decides on administrative disputes across Montenegro. The Commercial Court handles disputes between commercial entities and other issues outlined in the Law on the Courts for the entire territory of Montenegro. Basic Courts act as first-instance courts for criminal, civil, and labour matters. Higher Courts handle certain first-instance criminal offenses and act as appellate courts for decisions from basic courts. The Court of Appeal handles appeals against first-instance decisions from higher courts and the Commercial Court and resolves jurisdictional conflicts between basic and higher courts. Misdemeanour Courts decide on requests for initiating misdemeanour proceedings and judicial decision-making, and the Higher Misdemeanour Court decides on appeals against the decisions of misdemeanour courts and resolves conflicts of jurisdiction among them. All courts are bound by the Constitution, laws, and ratified international treaties. The realisation of human rights and freedoms is regulated by various laws, and all courts are obliged to uphold these rights while applying the law.

| 3.2. Montenegro Has a Constitutional Court, Whose Powers Are Established by the Constitution

Montenegro has a Constitutional Court with significant powers, as outlined in Art. 149 of the Constitution. These powers include:

1. Reviewing the compatibility of laws with the Constitution and ratified international treaties.
2. Ensuring compliance of other regulations and general acts with the Constitution and the law.
3. Addressing constitutional complaints regarding human rights violations, after the exhaustion of effective legal remedies.
4. Determining whether the President of Montenegro has violated the Constitution. Resolving conflicts of jurisdiction between: courts and other state bodies; state bodies and local self-government units; bodies of local self-government units
5. Banning the activities of political parties or non-governmental organisations.
6. Handling election disputes and referendum-related disputes that do not come under the jurisdiction of other courts.
7. Assessing the constitutionality of measures and actions undertaken by state authorities during a state of war or emergency.

The Court does not review the consistency between legal acts of the same legal force. The Law on the Constitutional Court further regulates the functions and powers of the Constitutional Court. Art. 23 of this Law empowers the Court to adopt its Rules of Procedure, which govern its work and decision-making processes.

| 3.3. The Two Main Roles of the Constitutional Court in Protecting Fundamental Rights

The Constitutional Court of Montenegro has two principal roles in protecting fundamental rights:

1. The judicial review (norm control) function represents the collective protection of fundamental rights by ensuring the constitutionality of laws and legality of general legal acts.
2. The constitutional complaint function provides individual protection of fundamental rights by addressing specific violations.

3.3.1. *Judicial Review (Norm Control) Function*

The Constitutional Court's norm control powers are established as *ex post* norm control. A proposal or initiative for reviewing the constitutionality of laws and legality of or other regulations can be submitted while the legal act remains in force. If the provision ceased to be in force during the review process, but its application has caused unresolved consequences, the Constitutional Court assesses its compatibility with the Constitution or law during the time it was in effect. Norm control powers do not include individual legal acts, such as executive decisions or judicial judgments. They extend to abstract norm control, examining the constitutionality of laws and legality of regulations, or their specific provisions. The Court can initiate proceedings independently, and it also examines conflicts between laws and international treaties.

Norm control ensures the hierarchical harmony of international treaties, the Constitution, statutory laws, and other general legal acts. It is essential for upholding the rule of law. Anyone (natural persons, legal entities, organisations, settlements, or groups) may submit an initiative, regardless of having a legal interest. Courts, State authorities, local self-government bodies, and five deputies may submit a formal proposal. Courts may propose a review when a question of constitutionality arises regarding a law or regulation to be applied in their proceedings. In such cases, the judge adjourns the proceedings and notifies the president of the court, who informs the President of the Supreme Court. The Constitutional Court must resolve these cases within 45 days. Art. 39(2) of the Law on the Constitutional Court provided that in all other events, the time-limit for deciding the case was 18 months, but the Constitutional Court terminated this provision as unconstitutional.¹⁵ Other state bodies may propose a review regarding laws or regulations applicable in their work. Local self-government bodies may propose proceedings for laws or regulations affecting local governance. No specific conditions are required for proposals submitted by five deputies.

The Law on the Constitutional Court differentiates between two types of submissions: a) initiative to start the procedure (*inicijativa za pokretanje postupka*), which is available to anyone; and b) proposal for review (*predlog za ocenu*), which is available only to courts, state authorities, local self-government bodies, and five deputies. Their effects and procedural treatment differ. By order, the Court may open the proceedings, reject submissions as inadmissible, dismiss initiatives as unfounded, and suspend proceedings (in accordance with Arts. 37, 38, and 64 of the Law). By decision, the Court may declare a law or regulation incompatible with the Constitution, international treaties, or a statutory law, and dismiss a proposal as unfounded.

Arts. 58(1) and 58(2) of the Law on the Constitutional Court outline the necessary content for proposals and initiatives as follows: identification of the law or a regulation in question, specification of the disputed provisions, reference to the Official Journal of Montenegro where the act was published, reasons supporting the proposal or initiative,

15 | Decision of the Constitutional Court U-I no. 2/19 od 18 July 2019.

and additional relevant information. If the contested regulation has not been published in the Official Journal, a copy must be attached. Submissions do not limit the Constitutional Court's scope of review. Art. 151 of the Constitution specifies the key characteristics of Constitutional Court decisions: decisions are adopted by a majority vote of all judges; decisions are binding, enforceable, and published; and enforcement, where necessary, is secured by the Government. The judicial review function is fundamental to maintaining the legal order and safeguarding human rights through a consistent interpretation and application of constitutional norms.

3.3.2. Constitutional Complaint Function

A constitutional complaint allows a litigant to challenge an individual act or failure to act by a state authority, state administration body, local self-government authority, legal person, or other entity performing public functions, if such acts or omissions violate the litigant's constitutionally guaranteed rights or freedoms. The primary issue in these proceedings is whether a human right has been violated by an act of the State or bodies performing public functions. A constitutional complaint can be submitted by natural and legal persons, organisations, settlements, groups of persons, and other forms of organisation without a legal personality. The term 'State authority' includes all courts, enabling litigants to challenge judicial decisions. Litigants may argue that the application of substantive or procedural law by a court resulted in a human rights violation. The admissibility of a constitutional complaint is conditioned upon the prior exhaustion of all legal remedies.

| 3.4. The Role of Other Courts in Reviewing Norms or Constitutional Complaints

Apart from the Constitutional Court, no other court in Montenegro is empowered to review the constitutionality or legality of norms, and rule on constitutional complaints. All courts are authorised to submit a proposal to the Constitutional Court for a review of constitutionality or legality of laws or regulations. A court can file such a proposal if a question of constitutionality or legality arises regarding a law or regulation to be applied in a pending case. In addition to this role, ordinary courts are obliged to ensure respect for human rights while applying the law in their proceedings.

| 3.5. Frequency and Caseload of the Constitutional Court

The annual caseload of the Constitutional Court reflects a significant disparity between its judicial review and constitutional complaint functions:

Table 1: Caseload statistics (2021–2023)¹⁶

Year	Total resolved	Constitutional complaints	Reviewing constitutionality and legality
2023	1641	1549 (94%)	30 (1.8%)
2022	1651	1613 (97%)	36 (2.1%)
2021	1498	1433 (95%)	59 (3.9%)

Constitutional complaints constitute an overwhelming majority of the Court's caseload (94%–97% of cases in the period 2021–2023). Cases involving review of constitutionality and legality represent a small percentage of the Court's docket, ranging from 1.8% to 3.9%. While constitutional complaints dominate numerically, statistical data does not fully reflect the actual workload distribution. Cases involving a review of constitutionality and legality are generally more complex and require more working time. The plenary Court decides these cases. Constitutional complaints are often resolved more quickly because decisions are made by chambers of three judges when they are unanimous. The contrast between these two functions illustrates the procedural and substantive differences in the Constitutional Court's work and the significant weight constitutional complaints carry in its operations.

3.6. Success of Different Types of Submissions: Statistics on Submissions Rejected Without Examination on Merits, Dismissed After Examination on Merits, and Upheld

The Constitutional Court rejected 11% submissions for reviewing the constitutionality of laws without examination on merits in 2023, 50% in 2022, and 50% in 2021. It dismissed, after examination on merits, 22% such submissions in 2023, 25% in 2022, and 19% in 2021. The Court found that a provision was unconstitutional but did not terminate the provision, as it had ceased to be in force during the proceedings, in 11% cases in 2023, 0% in 2022, and 6% in 2021. The Court terminated a provision as unconstitutional in 56% cases in 2023, 25% in 2022, and 25% in 2021.

Regarding constitutional complaints, the Constitutional Court rejected 33% complaints in 2023, 17% in 2022, and 22% in 2021. During each of the three years, the Court suspended proceedings on constitutional complaints in 1% of all cases. It dismissed complaints after consideration on merits in 54% cases in 2023, 74% in 2022, and 68% in 2021. The Court upheld the complaints in 12% cases in 2023, 8% in 2022, and 9% in 2021. Thus, success in proceedings regarding the review of constitutionality is significantly higher than in proceedings on constitutional complaints.

3.7. The Role of the President of the Constitutional Court in the Exercise of Powers of the Constitutional Court

The judges of the Constitutional Court elect the President of the Court from among themselves. The President's mandate is for three years and is not renewable. The President represents the Constitutional Court before State bodies and institutions in Montenegro

16 | All statistical data used in the text are from the website of the Constitutional Court [Online]. Available at: <https://www.ustavnisud.me/ustavnisud/objava/blog/2/objava/27-statistika> (Accessed: 25 February 2026).

and before international bodies, organisations, and institutions in the country and abroad. He or she ensures the independent position of the Constitutional Court and organises the work of the Court.

The Court's electronic information system selects a judge rapporteur, but the President can change the selected candidate for reasons not precisely defined in the Rules of the Constitutional Court. The President of the Constitutional Court convenes and presides over sessions of the Constitutional Court and professional meetings and coordinates the work of the Constitutional Court. The President nominates the presidents and members of chambers for constitutional complaints through the annual work schedule. A request for the disqualification of a judge of the Constitutional Court due to the reasons referred to in Art. 43 of the Law on the Constitutional Court may be submitted by the President of the Constitutional Court, a judge, or a participant in the procedure.

The President of the Constitutional Court signs decisions and orders adopted at a session of the plenary Court. He or she signs other general or individual acts of the Court. The president of a chamber signs decisions and orders adopted by the chamber. The President of the Constitutional Court has the right to participate in the work of the Assembly session where the budget proposal of the Constitutional Court is discussed. The President of the Constitutional Court orders payments from the Court's budget. He or she considers complaints about the work of the Constitutional Court. The President decides on the rights and duties of officials employed in the Court.

The President of the Court does not have the right to decide in the event of a tie vote. He or she does not have a dominant role, but some authorities, such as nominating members and presidents of chambers for constitutional complaints or changing a rapporteur judge, elevate the President slightly above other judges.

| 3.8. The Role of the Rapporteur Judge and the Role of the Advisory Staff

A rapporteur judge is responsible for the legal analysis of a case, preparing a proposal for a decision, and drafting the text to be sent to the Editorial Commission of the Court. The rapporteur judge investigates a submission with the assistance of an advisor. If deemed necessary, the rapporteur judge can explain their proposal during a Court session. In proceedings on the constitutionality of a law or the legality of other regulations, the rapporteur judge is authorised to propose adjourning the proceedings and setting a time limit within which the author of the act can correct the unconstitutionality or illegality. After the discussion, the President of the Court or the president of a chamber invites the rapporteur judge to comment on proposals made during the discussion. The rapporteur judge may then reformulate their proposal. The plenary Court or a chamber vote on the final proposal of the rapporteur judge. If the proposal is adopted, the rapporteur judge and the advisor prepare the adopted proposal for the Editorial Commission, which finalises the text for publication. If the rapporteur judge's proposal is rejected, the President of the Court invites the judges to vote on other proposals made during deliberation. If another proposal is adopted, the rapporteur judge may accept the task of preparing a new text of the decision in accordance with the adopted proposal. Otherwise, the President of the Court will nominate another judge to draft the new text.

The advisor prepares the text of the proposed decision in accordance with the instructions of the rapporteur judge and is responsible for the legal and technical aspects of handling the case. While working on the case, the advisor considers the practice and general legal opinions of the Constitutional Court and the jurisprudence of the ECtHR.

The advisor signs the proposal of the decision they helped prepare and is accountable for its content and correctness. He or she may also be present during the Court session.

| **3.9. The Relationship Between Ordinary Courts and the Constitutional Court**

As stated above, ordinary courts can propose that the Constitutional Court review the constitutionality of laws or the legality of other legislations. Any court is empowered to refer a matter to the Constitutional Court for a review of constitutionality or legality if a question arises regarding the law or other regulations that must be applied in proceedings before it. Ordinary courts are expected to consider and respect the Constitutional Court's interpretations of human rights constitutional provisions when applying the law.

| **3.10. The Circumstances in Montenegro Influencing Effective Protection of Fundamental Rights**

The effective protection of human rights in Montenegro is impacted by issues related to the organisation and functioning of the judicial system. An institutional blockade in the election of Constitutional Court judges, owing to the lack of cross-party consensus in Parliament, rendered the Court unable to function between September 2022 and February 2023. This paralysis resulted in a backlog of approximately 3,000 constitutional complaints and over 250 initiatives for reviewing the constitutionality of laws and the legality of other regulations.¹⁷ Although the Constitutional Court resumed its functions in February 2023, the backlog of cases continued to grow that year. There were 288 such cases at the beginning of the year and 318 by the end. The number of cases related to constitutional complaints decreased from 2,569 at the beginning of 2023 to 2,181 at the end of the year. In 2025, new differences appeared among the judges of the Constitutional Court regarding their retirement and replacement that threatened to blockade the Constitutional Court again.

The functioning of the Judicial Council was similarly affected by difficulties at the same time. The Assembly failed to elect three members from the rank of eminent lawyers, leaving the Judicial Council in an incomplete composition for two years. This undermined its decision-making, as two-thirds majority is required in several instances, such as the appointment of the Supreme Court President.¹⁸ The problem was resolved in December 2023 when the Assembly elected the missing members, and a new Council was constituted. A similar issue arose regarding the appointment of the Supreme State Prosecutor.¹⁹ Further reforms of judicial laws are pending. However, a positive report on the fulfilment of interim benchmarks (IBAR) in Chapters 23 and 24, related to the rule of law and human rights, issued by the EU Commission on 26 June 2024, indicates that the reforms are progressing in the right direction.

17 | Montenegro Report, 2023, p. 22.

18 | Ibid., p. 23.

19 | National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21-Montenegro, Human Rights Council, A/HRC/WG.6/43/MNE/1, 8 February 2023, para. 66.

3.11. The Legal Consequences of the Constitutional Court's Decisions That Declare the Unconstitutionality of the Challenged Norm or Individual Act/Decision and in Particular the Consequences in the Ordinary Court System of Annulment of a Judicial Decision

Art. 152 of the Constitution governs the consequences of finding a law unconstitutional or a regulation illegal. Such laws and regulations cease to be valid on the day the Constitutional Court's decision is published. Laws, regulations, or specific provisions deemed unconstitutional or illegal by the Constitutional Court cannot be applied to cases that arose before the publication of the decision if such cases have not been completed by that date. Similarly, Art. 66 of the Law on the Constitutional Court states that the execution of final individual acts adopted on the basis of unconstitutional laws or illegal regulations cannot be implemented. If execution has already commenced, it will be suspended. A holder of a right violated by a final or binding individual act based on an unconstitutional law or illegal regulation has the right to request the competent authority to amend that individual act, provided the amendment does not affect the rights of conscientious third parties. The request must be submitted within six months of the publication of the decision in the Official Journal.

By a decision finding the unconstitutionality of a law or illegality of a regulation, the Constitutional Court may determine a method for compensating damages for individuals whose rights have been violated by an individual act passed under the unconstitutional law or illegal regulation, regardless of whether they submitted an initiative for reviewing the constitutionality or legality. During the review of constitutionality or legality, the Constitutional Court may, as a preliminary measure, order the suspension of an individual act adopted under the disputed law or regulation until a final decision is made. This can be done at the applicant's request if the applicant demonstrates that irreversible harmful consequences are likely to occur.

If the rapporteur judge finds a law unconstitutional or a regulation illegal, they must explore whether its termination would result in a legal lacuna before proposing the termination to the President of the Constitutional Court. If a legal lacuna is anticipated, Art. 65 of the Law on the Constitutional Court allows the Court to set a publication date for the decision in the Official Journal, postponing its publication for a maximum of three months. During this time, the Court will inform the competent State authorities and the public through its website and deliver the decision to the participants in the procedure. If the unconstitutionality or illegality and its consequences are remedied by the specified date, the Court will suspend the procedure and not publish the decision. However, if the consequences remain, the Court will publish the decision in the Official Journal.

A constitutional complaint does not delay the execution of the individual act against which it is filed. Exceptionally, during the proceedings, the Constitutional Court may suspend the execution of an individual act until a final decision is made, upon the complainant's request, if irreversible harmful consequences are demonstrated. When the Constitutional Court finds that the disputed individual act violated human rights, it will repeal the act, either in whole or in part, and return the case for retrial to the authority that issued the repealed act. If, during the decision-making process on a constitutional complaint, the legal effect of the impugned individual act ceases, and the Constitutional Court finds that the act violated a human right, the Court will adopt a decision upholding the constitutional complaint and determine a method for fair satisfaction of the applicant. However, in practice, satisfaction is missing in some cases. If the violation was committed

by an act of a State body, State administration body, local self-government body, legal entity, or other entity exercising public powers, the Constitutional Court will prohibit further actions, order the adoption of an act, or require other appropriate measures to correct the damage already caused or to eliminate future harmful consequences of the established violation of human rights or freedoms. When the Constitutional Court annuls an individual act and returns the case for retrial, the competent authority is required to take up the case immediately, and no later than 30 days from the date of receiving the Court's decision. In the repeated procedure, the competent authority must respect the legal reasoning of the Constitutional Court and decide within a reasonable time.

A civil procedure concluded by a final court decision may be reopened at the request of a party if the Constitutional Court determines that human rights or basic freedoms have been violated during the proceedings and the judgment was based on such a violation. The violation must be correctable through the repetition of the procedure. The provisions of the Code on Criminal Procedure related to the repetition of criminal proceedings apply when a request is made to amend a final court decision based on a law or regulation annulled by the Constitutional Court. The Supreme State Prosecutor's Office may file a request for the protection of legality against final court decisions and the court proceedings that preceded them if the decisions are based on a law or regulation annulled by the Constitutional Court. This applies if the court did not permit the repetition of the criminal proceedings or if the violation can be remedied by cancelling or amending the decision without repeating the procedure.

If an authority required by the Constitutional Court to fulfil its decision fails to do so within the specified time frame or manner, the Court will issue an order declaring the decision unfulfilled. This order will be sent to the Government, published in the Official Journal, and posted on the Court's website.

4. National human rights institutions in Montenegro

The third section of the article is dedicated to the national human rights institutions in Montenegro, with a particular focus on the Protector of Human Rights and Freedoms. For reasons outlined in the Introduction, the Protector assumes duties that would typically fall under the purview of other national human rights institutions. Consistent with the Paris Principles, this section examines six key pillars of the Protector's institution: independence, pluralism, cooperation, access, funding, and a broad mandate.

| 4.1. Human Rights Ombudsman of Montenegro

The national human rights institution in Montenegro is the Protector of Human Rights and Freedoms of Montenegro (Protector). In addition to fulfilling its core functions, as defined by the Constitution and the Law on the Protector of Human Rights and Freedoms of Montenegro (Law on the Protector), the Protector also performs the roles of other national human rights institutions. Under Art. 25 of the Law on the Protector, the Protector acts as the National Preventive Mechanism for the Protection of Persons Deprived of Liberty from Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (National Preventive Mechanism), as mandated by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment

or Punishment. Additionally, Art. 27 of the Law on the Protector entrusts the Protector with the responsibility of a national mechanism for protection against discrimination, as outlined in Art. 21 of the Law on the Prohibition of Discrimination. In early 2023, with technical support from the UN service in Montenegro, the Protector established the Independent Monitoring Mechanism for the Promotion, Protection, and Monitoring of the Implementation of the UN Convention on the Rights of Persons with Disabilities (Independent Monitoring Mechanism for the UNCPRD), as required by Art. 33 of the UNCPRD. This mechanism comprises representatives from the Protector's Office and ten non-governmental organisations, including organisations of persons with disabilities. The six key pillars of the Protector's institution—*independence, pluralism, cooperation, access, funding, and a broad mandate*—are analysed in the following sections.

| 4.2. Independence

4.2.1. *Independence As Guaranteed by the Constitution and the Law on the Protector*

Art. 81(1) of the Constitution establishes the Protector as an 'independent and autonomous authority that takes measures to protect human rights and liberties.' Para. 2 of the same Art. states that the Protector functions in accordance with the Constitution, laws, and ratified international treaties, while upholding the principles of justice and fairness. Under para. 3, the Protector is appointed for a six-year term and can only be dismissed under conditions specified by law. Art. 54 of the Constitution further stipulates that the Protector cannot be a member of any political party.

Art. 11 of the Law on the Protector requires the incoming Protector to take oath before the Assembly prior to assuming office. Art. 12 grants the Protector, Deputy Protectors, and advisors immunity for opinions and recommendations made in the performance of their duties, and for actions undertaken in accordance with the powers prescribed by law during their term of office. Art. 13 prohibits the Protector from holding any other public office, engaging in professional activities unrelated to their role, or being a member of a political organisation or participating in political activities. However, these restrictions do not apply to scientific, educational, or artistic activities, or activities protected by copyright. Finally, Art. 15 of the Law on the Protector exhaustively enumerates the circumstances under which the Protector's term may end prematurely.

4.2.2. *Selection and Appointment of the Protector and Members of the Office*

Under Art. 82 of the Constitution, the Assembly is responsible for appointing and dismissing the Protector of Human Rights and Freedoms. Pursuant to Art. 95 of the Constitution, the President of Montenegro proposes a candidate for this position. Before submitting a proposal to the Assembly, the President, consistent with Art. 7(2) of the Law on the Protector, consults scientific and professional institutions as well as non-governmental organisations whose primary focus is human rights. Art. 7(3) specifies that the process of appointing the Protector must commence no later than 60 days before the incumbent's mandate expires. According to Art. 8(1) of the Law on the Protector, candidates must meet the following criteria: Montenegrin citizenship, a high level of education, at least 15 years of work experience (including a minimum of seven years in the field of human rights), and an impeccable personal and professional reputation.

The Assembly also appoints the Deputy Protector based on the Protector's proposal. The Deputy serves a six-year term and is eligible for reappointment. The qualifications

required are similar to those for the Protector, except for a shorter work experience requirement: at least 10 years of work experience, including a minimum of five years in the field of human rights and freedoms. The General Secretary is selected by the Protector through a public call for a five-year term. The General Secretary reports directly to the Protector and is responsible for organizing and coordinating the work of the Office of the Protector. Advisors, including a chief advisor, perform professional tasks. Art. 51b (2) of the Law on the Protector mandates that the chief advisor hold a high level of education and possess at least 10 years of work experience, including a minimum of three years in the field of human rights. Other advisors must have a high level of education and at least five years of work experience, including one year in the field of human rights.

The Protector adopts the Act on Internal Organization and Systematization of the Office, considering the prior opinion of the Assembly's competent working body. Decisions on the employment of advisors, as well as their rights and duties, are made by the Protector in accordance with the available budget. As of 2023, the Office of the Protector included 35 employees, including the Protector and three Deputy Protectors.²⁰

The representatives of non-governmental organisations in the Independent Monitoring Mechanism for the UNCRPD were selected through a public call issued to eligible organisations. The call outlined clear and objective selection criteria.

4.2.3. Independence in Operations

The Protector operates independently and autonomously, determining its own priorities, programs, projects, and activities without external interference. These are outlined annually in its reports. For instance, in its 2023 report, the Protector announced plans to promote the functioning of the Independent Monitoring Mechanism for the UNCRPD, compile a special report on deaths in prisons, monitor all extraditions and removal procedures for foreigners, and recruit new advisors.

4.2.4. Independence in Policy

Art. 2 of the Law on the Protector explicitly guarantees the Protector's autonomy and independence, enabling it to act based on principles of justice and fairness in protecting human rights and freedoms. Several instances affirm this independence. For example, Art. 28 of the Law empowers the Protector to initiate investigations into human rights violations either independently or based on complaints. In 2023, the Protector initiated 52 such cases. Similarly, of the 111 discrimination cases resolved in 2022, the Protector found evidence of discrimination or rights violations in 77 cases.

4.2.5. Financial Independence

Art. 53 of the Law on the Protector governs the institution's financial independence. Under Art. 53(1), financial resources are allocated to the Protector in a distinct section of the national budget. The working body of the Assembly responsible for human rights submits the Protector's budget request, as stipulated in Art. 53(2). Art. 53(3) permits the Protector to participate in Assembly sessions and working body meetings where the budget proposal is discussed. Art. 53(4) grants the Protector full discretion over the utilisation of allocated funds, in accordance with the Budget Law. In recent years, budget

allocations have increased for the Protector's Office, reflecting the policy of strengthening the institution and expanding its functions.

| **4.3. Social Pluralism As Reflected in the Office of the Protector**

Although the legislation does not mandate criteria for appointing the Protector, Deputy Protectors, and advisors for ensuring gender or ethnic representation, these appointments are often made with attention to inclusivity. Members of different genders and ethnic backgrounds are typically represented in these roles. The spirit of pluralism is evident in the President's Office operations. The Protector collaborates with minority councils, national minority communities, and non-governmental organisations, including those representing sexual minorities.

| **4.4. Cooperation**

4.4.1. Cooperation With the Parliament

The Protector maintains a productive relationship with the Assembly, particularly through the Committee for Human Rights and Freedoms and the Committee for Gender Equality. In 2022, the Protector initiated amendments to the Law on Civil Procedure, the Law on Internal Affairs, and the Code on Criminal Procedure, and contributed to drafting changes to the Law on Legal Aid. Additionally, the Protector provided views on the proposed amendments to legislation affecting the rights of persons with disabilities, minority rights, and election laws. The Protector's legislative competences are defined in Art. 18 of the Law on the Protector. This provision authorises the Protector to propose the adoption or amendment of laws, regulations, and general acts to align Montenegro's legal framework with internationally recognised human rights standards. The recipient of such proposals is obligated to respond. Art. 18(3) further empowers the Protector to deliver opinions on draft laws or regulations, whenever necessary, for the protection and advancement of human rights.

Under Art. 47 of the Law on the Protector, the annual report submitted to the Assembly outlines the Protector's work, including statistical data by subject area, an assessment of the state of human rights in Montenegro, and recommendations for improvement. A specific section addresses discrimination cases, analysing the legislative and institutional frameworks, observed shortcomings, and proposed remedies. The Assembly may request comments from the Government regarding the report, which must be made publicly accessible. Additionally, Art. 48 authorises the submission of special reports when deemed necessary for protecting human rights. In addition to annual reports, the Protector submits annual reports on the work of the National Mechanism for the Prevention of Torture and semi-annual reports on anti-discrimination activities.

4.4.2. Cooperation With the Government

The Protector plays a pivotal role in advising State institutions in amending their regulations and practices to align with human rights standards. For example, in 2022, the Protector initiated the creation of an independent monitoring mechanism, as required by Art. 33 of the UN Convention on the Rights of Persons with Disabilities. With technical support from the UN service in Montenegro, this mechanism was formally established in early 2023. The Protector has participated in various government-led initiatives, including the Coordination Body for the third National Anti-Human Trafficking Strategy

(2019–2024). The Protector also contributed to the preparation of national reports submitted to international human rights bodies.

4.4.3. Cooperation With Civil Society

Art. 21 of the Law on the Protector emphasises cooperation with organisations and institutions focused on human rights. A notable example of this collaboration is the inclusion of representatives from ten NGOs in the Independent Monitoring Mechanism for the UNCRPD. The Protector actively engages with civil society through initiatives such as the Parliament of Roma and the Parliament of Youth. For instance, during the Parliament of Roma, the Protector presented findings from a project examining the status of Roma and Egyptians in Montenegro. The Protector also participates in international networks, such as the European Network of Ombudsmen for Children and the Network of Golden Advisors. In 2023, the Protector collaborated with several NGOs, including the Sociological Center of Montenegro, the Center for Education and Social Emancipation of Youth, the Montenegrin Women's Lobby, Kvir Montenegro, and Action for Human Rights. These partnerships aim to enhance public awareness of human rights and foster democratic processes within society.

4.4.4. Cooperation With the Judiciary

Art. 17 of the Law on the Protector empowers the Protector to act on complaints concerning court operations, specifically in cases of procedural delays, abuse of procedural powers, or failure to execute court decisions. However, Art. 22(2) stipulates that the Protector cannot represent parties in legal proceedings or make claims on their behalf, except as outlined in Art. 27(2). Art. 27 establishes the Protector as an institutional mechanism for protection against discrimination. With the consent of the discriminated person, the Protector may undertake appropriate measures for protection against discrimination, in accordance with the Law on the Protector and the specific legislation governing anti-discrimination. Under Art. 21(4) of the Law on the Prohibition of Discrimination, the Protector may initiate or intervene in court proceedings for protection against discrimination under prescribed conditions. Moreover, Art. 19 of the Law on the Protector authorises the Protector to initiate proceedings before the Constitutional Court to assess the compliance of laws with the Constitution and ratified international agreements, as well as the compatibility of other regulations with constitutional and legal provisions.

4.4.5. Cooperation With International Human Rights Mechanisms

As the National Preventive Mechanism (NPM) for the Protection of Persons Deprived of Liberty from Torture, the Protector directly collaborates with the UN Subcommittee on the Prevention of Torture in accordance with Art. 26 of the Law on the Protector. The Independent Monitoring Mechanism for the UN Convention on the Rights of Persons with Disabilities, established in 2023 within the framework of the Protector's Office, is expected to adopt an alternative reporting model to the UN Committee on the Rights of Persons with Disabilities, thus enhancing Montenegro's engagement with international human rights monitoring.

4.4.6. Cooperation With Other Human Rights Bodies Regarding Vulnerable Groups

Art. 21 of the Law on the Protector obligates the institution to cooperate with organisations and institutions focused on human rights. In recent years, the Protector's role in promoting

and protecting the rights of vulnerable groups – particularly children, migrants, and asylum seekers – has been strengthened through partnerships with international and local actors.²¹ A key initiative was the signing of the Protocol on the Treatment of Children Living and Working on the Streets by relevant authorities, institutions, and organisations in Montenegro.²² In 2023, the Protector conducted field visits to Roma settlements, collected data directly from communities, and maintained continuous dialogue with community representatives, local authorities, and civil society organisations. These efforts culminated in the publication of a report titled 'Position of the Roma and Egyptians in Montenegro through the Prism of the Work of the Protector of Human Rights and Freedoms of Montenegro and the Situation with Field Visits', which is publicly available on the Protector's website.²³

4.4.7. Partnerships With GANHRI and Journalists

The Protector's Office was accredited with 'B' status by the Global Alliance of National Human Rights Institutions (GANHRI) in 2016. Achieving 'A' status requires additional reforms to fully align the Protector's structure and functioning with the Paris Principles. The GANHRI Subcommittee has recommended several improvements, including strengthening the Protector's mandate, refining the selection and appointment processes, securing adequate resources and financial autonomy, clarifying staff positions and employment autonomy, and enhancing interaction with the international human rights system. To address these recommendations, the preparation of a new Law on the Protector is included in Montenegro's EU Accession Program for the period 2024–2027.

The Protector's work has consistently attracted media attention. According to an EU report from November 2023, the media frequently quotes the Protector's opinions, reflecting substantial public interest. The Protector maintains daily communication with the media, enabling citizens to familiarise with the institution's work through practical examples. Media coverage has encouraged many citizens to approach the Protector, often recognizing their own situations through reported cases and seeking corresponding action.

| 4.5. Access

4.5.1. Access to the Protector Without Costs

Under Art. 3 of the Law on the Protector, any individual who believes their rights have been violated by an act of a State authority has the right to address the Protector. Additionally, the Protector is authorised to act on own initiative. Art. 3(3) guarantees that all procedures before the Protector are free of charge. In its 2023 report, the Protector noted a sustained trend of citizens utilizing its services, primarily due to their flexibility, simplicity, and cost-free nature. This trend, observed over a prolonged period, has been further confirmed through numerous direct interactions between citizens and officials from the Protector's Office. In response to citizen complaints, the Protector provided advisory legal assistance, often directing complainants to the relevant authorities or

21 | National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21-Montenegro, Human Rights Council, A/HRC/WG.6/43/MNE/1, 8 February 2023, para. 11.

22 | Ibid., para. 59.

23 | Položaj Roma I Egipćana U Crnoj Gori Kroz Prizmu Rada Zaštitnika Ljudskih Prava I Sloboda Crne Gore I Stanje Sa Terenskih Posjeta, 2023.

advising them on legal remedies to safeguard their rights. In certain instances, case files were forwarded to the appropriate authorities for action. When citizens requested interpretations of specific legal provisions, the Protector sought the views of the relevant ministry on the application of the regulations and conveyed these interpretations to the concerned individuals.

4.5.2. Physical and Geographical Access to the Protector

The Protector engages directly with citizens in their local communities through 'Protector's Days.' These events involve visits to local communities, where the Protector meets citizens to receive complaints and raise awareness about their rights, freedoms, and mechanisms for their protection. These visits also allow the Protector to identify community-specific challenges, understand issues faced by local authorities, and address the concerns of national minorities. As part of this outreach, the Protector and staff visit several municipalities each year.

4.5.3. Access Through Various Communication Channels

Citizens can communicate with the Protector personally or through representatives. Available communication channels include postal mail, fax, email, and social media platforms such as Instagram. The 2023 Report highlights a growing trend in digital communication, particularly through email and social media (Instagram and Facebook). The Protector's website serves as an additional platform for disseminating general information.

| 4.6. Funding

4.6.1. Adequate Funding, Autonomy, and Accountability

The Protector's annual budget is proposed by the Assembly's Committee for Human Rights and Freedoms, following a request submitted to the Ministry of Finance. Budget allocations have increased annually, strengthening the Protector's personnel and administrative capacities. These funds are designed to sustain ongoing activities and fulfil obligations emerging from recommendations by the European Commission, United Nations bodies, and the Council of Europe, particularly those regarding torture prevention, anti-discrimination measures, and child rights protection.

To support new mechanisms, additional workspaces were secured through public procurement procedures, ensuring compliance with standards such as providing a physically separate workspace for the National Torture Prevention Mechanism. Under Art. 53(4) of the Law on the Protector, the institution independently manages its allocated financial resources in accordance with the dynamics established under the Budget Law. Financial management and control are governed by the Law on Management and Internal Controls in the Public Sector. The Protector has adopted a Financial Management and Control Plan, alongside a Risk Management Strategy, which serve as the foundation for its financial operations. These operations are guided by internal procedures outlined in the 'Book of Internal Procedures'. The Protector's annual reports include detailed financial statements, ensuring that all expenditures are publicly accessible and transparent.

4.6.2. *Staffing and Recruitment*

The annual increase in budgetary allocations has been partially aimed at expanding the staff and enhancing professional capacities within the Office of the Protector. By 2023, the Office employed 35 staff members, with a request submitted to accommodate an increase to 43 employees during the 2025 budget.

| 4.7. **Broad Mandate**

4.7.1. *Mandate of the Protector*

Art. 81(1) of the Constitution, which empowers the institution to take ‘measures to protect human rights and liberties’ defines the mandate of the Protector. Art. 2 of the Law on the Protector further elaborates on this mandate, granting the Protector authority to act when human rights and freedoms are violated by acts, actions, or omissions of State bodies, local self-government units, public services, and other holders of public authority. The same Art. also mandates the Protector to take measures aimed at preventing torture, inhuman or degrading treatment, and discrimination.

The Regulation of Work of the Protector organises this mandate into four key areas:

1. **Judiciary, Public Administration, and General Jurisdiction**
This area covers the protection of human rights and freedoms within the judiciary, state administration, local governments, public institutions, and other public authorities. It extends to areas such as employment, pension and disability insurance, education, science, culture, health, environmental protection, housing, tourism, and other sectors not included in the other groups.
2. **National Preventive Mechanism and Related Tasks**
The Protector operates as the National Preventive Mechanism for the protection of persons deprived of liberty and those whose freedom of movement is restricted. This includes individuals detained, convicted, placed in institutions, or forcibly removed. The tasks involve addressing issues related to the execution of criminal sanctions, defence, national security, and the functioning of institutions housing such individuals.
3. **Children’s Rights, Youth, and Social Protection**
This group focuses on the promotion, protection, and improvement of children’s rights, particularly vulnerable groups, such as children without parental care, children with disabilities, minority children, displaced children, and unaccompanied minors. It also encompasses broader social protection rights for children, adults, and the elderly, especially those in vulnerable situations.
4. **Protection Against Discrimination and Promotion of Equality**
The Protector addresses issues of discrimination and promotes gender equality, focusing on combating racism, xenophobia, and intolerance while safeguarding the rights of vulnerable groups, including minority communities, persons with disabilities, and victims of domestic violence. This area includes initiating or intervening in court proceedings related to discrimination, public advocacy against severe discrimination, and providing guidance to individuals seeking protection from discriminatory acts.

Additionally, the establishment of the Independent Monitoring Mechanism for the UN Convention on the Rights of Persons with Disabilities in 2023 expanded the Protector's mandate to include monitoring the implementation of the UNCRPD.

4.7.2. The Protector's Activities Associated With Raising Public Awareness on Human Rights Issues and Education and Training Programmes

In its annual reports, the Protector draws public attention to the acute human rights issues in society. Thus, in its 2023 report, the Protector informed that cases related to administration and judiciary continued to be the most numerous in its docket. Issues of administration include silence, lack of response in breach of a right guaranteed by the Constitution, multiple cancellations and retrials in cases, length of administrative proceedings (with special emphasis on restitution cases), lack of transparency in procedures where this principle is an integral part of the legislative framework, non-execution of orders contained in court decisions, and, finally, issues of general interest, such as environmental and health protection.

As the national mechanism for protection against discrimination, in accordance with Art. 21(5) of the Law on the Prohibition of Discrimination, the Protector warns the public about emerging serious forms of discrimination. In 2023, the Protector published the report entitled 'The position of Roma and Egyptians in Montenegro through the prism of the work of the Protector of Human Rights and Freedoms of Montenegro and the situation from the field visits'. In its special 'Report on Protection against Discrimination from the Standpoint of the Institution of the Protector of Human Rights and Freedoms', covering the first part of 2023, the Protector informed that it would continue to raise public awareness about the constitutive elements of discrimination, various legal avenues for protection, and the harmful effects of this phenomenon on all segments of life. The report emphasised the importance of education for achieving systematic protection. The Protector is continuously improving the training system in all areas of human rights protection, with special emphasis on prevention and protection against torture, as well as protection against discrimination.

4.7.3. Protector's Activities on Monitoring and Reporting on the Human Rights Situation in the Country and Making Recommendations to Public Authorities

Art. 21 of the Law on the Protector states that the Protector also addresses general issues of importance for the protection and improvement of human rights and freedoms. In its annual reports, the Protector presents a general overview of the human rights situation in Montenegro. The Protector uses these reports to inform the public about recommendations issued during the year. Thus, in 2023, after completing the investigation procedure in 190 cases, the Protector sent 455 recommendations to the competent authorities and institutions. In the 2023 Report, the Protector listed all recommendations that were not fulfilled or partially fulfilled.²⁴ About 140 recommendations were enumerated from these two groups. The Committee for Human Rights and Freedoms of the Assembly of Montenegro has considered periodically to implement the recommendations.

24 | Report, 2023, pp. 54–68.

4.7.4. Powers of the Protector To Address the Acts and Omissions of Both the Public and Private Sectors

Addressing acts and omissions of the public sector is at the core of the Protector's mandate. The Protector also addresses the private sector in certain cases. In its capacity as a national mechanism for protection against discrimination, in accordance with Art. 21(1) of the Law on the Prohibition of Discrimination, the Protector is authorised to act on complaints of discriminatory behaviour by authorities, companies, other legal entities, entrepreneurs, and natural persons. It undertakes measures and actions to eliminate discrimination and protect the rights of the discriminated person if no court proceedings have been initiated. Semi-annual reports of the Protector on his/her actions against discrimination enable evaluation of effectiveness of the actions. Thus, during the period between 1 January 2023 and 31 July 2023, the Protector found discrimination in 39 cases from 110 resolved cases and made appropriate recommendations.²⁵ In its report for the first part of 2023, the Protector enumerated 10 cases in which recommendations were not fulfilled.²⁶ Beyond this, in pursuing a general mandate, the Protector addresses the private sector in various cases. Recommendations were issued to the private sector, particularly regarding the provision of information to journalists. The Protector is not authorised to act against private media, except in cases of discrimination, but it monitors how children's rights are respected in these media. It has also noted that the best interests of a child, as an international standard, are equally applicable in private and public institutions of social protection.

4.7.5. Powers of the Protector To Conduct Unannounced Inspections of Any Public Premises, and Examine Any Documents, Equipment, or Assets Without Prior Written Notice

In its capacity as the National Preventive Mechanism for the Protection of Persons Deprived of Liberty from Torture, under Art. 24 of the Law on the Protector, the Protector has the right to perform unannounced inspections of premises in bodies, organisations, institutions, and other places where a person deprived of liberty is or may be. On the same legal basis, the Protector has the right, without prior notice or approval, to visit a person deprived of liberty and verify compliance with relevant standards. Additionally, without the presence of an official or other persons, the Protector can, in person or through an interpreter, conduct confidential interviews with a person deprived of liberty, as well as with any other person who may provide necessary information. Furthermore, under Art. 25(c) of the Law, the Protector has access to data on bodies, institutions, and organisations where persons deprived of liberty are located, as well as information on the number of such persons and how they are treated. The Protector has regularly used these powers and reported on using them in yearly reports of the National Preventive Mechanism for the Protection of Persons Deprived from Liberty from Torture.

25 | Report of the Protector of Human Rights and Freedoms on the protection against discrimination for the period from 1 January 2023 to 31 July 2023, p. 10 [Online]. Available at: https://www.ombudsman.co.me/docs/1707806232_polugodisnji%20izvjestaj%202023_29122023.pdf (Accessed: 26 February 2026).

26 | *Ibid.*, pp. 16, 17.

4.7.6. Powers of the Protector To Undertake Full Investigations Into All Alleged Human Rights Violations, Including Those Relating to Military, Police, and Security Officials

The Protector is empowered to undertake full investigation into all alleged human rights violations, including those involving military, police, and security officials. The annual reports of the Protector indicate that investigations have been conducted into human rights violations by the Army of Montenegro. As a result, in the period 2020-2023 the Protector issued recommendations to the Ministry of Defence to address certain practices and improve relevant legal regulations.

The reports also highlight actions taken by the Protector in relation to the Ministry of Internal Affairs, the Central Police Department, and local police departments. Likewise, the Agency for National Security has been advised by the Protector.

5. Conclusions

Human rights are enshrined in the second part of the Constitution of Montenegro. They are organised into six sections based on their subject matter. The legislation and courts use different terminology, such as constitutional rights or fundamental rights and freedoms, to refer to human rights and freedoms. Every natural and legal person, organisation, settlement, group of persons, and other forms of organisation that do not have legal personality enjoy constitutional protection of human rights. All legal entities in Montenegro are obliged to respect the human rights of others, but the Constitutional Court and the Protector of Human Rights and Freedoms bear the primary responsibility for their protection. The rule of law has been designated in some decisions of the Constitutional Court as the highest value of the constitutional order.

The Constitutional Court is the chief judicial defender of human rights in Montenegro. It protects human rights by performing two main functions: reviewing the constitutionality of laws and the legality of other regulations and resolving constitutional complaints. All entities that enjoy constitutional protection, can initiate the review of constitutionality or legality without demonstrating legal interest. Under conditions established by the Law on the Constitutional Court, courts, state bodies, including the Protector and organs of self-governance can propose the review. Five members of the Assembly may also propose the review. The Court can reject the initiative or proposal as inadmissible, dismiss it as unfounded, or uphold it. If upheld, the impugned law, regulation, or provision ceases to be valid. The execution of final individual acts adopted based on unconstitutional laws or other illegal regulations cannot be implemented. A holder of a right violated by a final or binding individual act based on an unconstitutional law or other illegal regulation has the right to request the competent authority to amend that individual act, provided the amendment does not affect the rights of conscientious third parties.

By a decision finding unconstitutionality of a law or illegality of another regulation, the Constitutional Court can determine the method of compensation for damages for all persons whose rights have been violated by an individual act passed on the basis of that unconstitutional law or illegal regulation, regardless of whether they submitted an initiative for reviewing constitutionality or legality. All entities enjoying constitutional protection are authorised to submit constitutional complaints against acts of a State authority, State administration authority, local self-government authority, legal person,

or any other entity performing public powers, provided they are affected by the act and have exhausted all national legal remedies. Most of the Court's workload comprises constitutional complaints, which are resolved in three-judge chambers. When the Constitutional Court finds that the disputed individual act violated human rights, it repeals the act, either in whole or in part, and returns the case for retrial to the authority that issued the repealed act. Judicial retrials are governed by laws on civil and criminal procedures.

In addition to performing its primary functions, as established by the Constitution and the Law on the Protector of Human Rights and Freedoms, the Protector is entrusted with the functions of other national human rights institutions. The Protector performs the duties of the National Preventive Mechanism for the Protection of Persons Deprived of Liberty from Torture, the national mechanism for protection against discrimination, and the Independent Monitoring Mechanism for the Promotion, Protection, and Monitoring of the Implementation of the UN Convention on the Rights of Persons with Disabilities.

The Constitution establishes the Protector as an 'independent and autonomous authority that takes measures to protect human rights and freedoms.' The Protector's mandate is broad. He or she is authorised to act against all acts of state bodies or entities performing public functions that violate human rights and freedoms, either upon the initiative of affected persons or *proprio motu*. Acting as a national mechanism for protection against discrimination, the Protector can address acts of discrimination in the private sector. In cases of discrimination, the Protector can represent victims before the courts and participate in judicial proceedings. In other cases, the Protector assists victims by providing information and advice. Being informed of human rights problems in this way and gathering information from independent research on human rights practices, the Protector informs the public about issues and sends recommendations to all state bodies to improve their practices.

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FROM NORMS TO PRACTICE: THE IMPLEMENTATION OF UNITED NATIONS HUMAN RIGHTS STANDARDS IN SLOVENIA

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ABSTRACT

The United Nations (UN) plays a central role in promoting and protecting human rights worldwide through institutions, treaties, and monitoring mechanisms, thereby establishing a comprehensive framework for safeguarding rights and addressing violations. This article analyses the implementation of the universal human rights protection system in Slovenia. It begins by tracing the historical development of human rights in the country, situated within its broader Central European cultural and historical context. It then examines Slovenia's engagement with the UN, including its membership, succession to, and ratification of UN human rights instruments, and participation in related reporting processes. The article concludes with considering the perspectives of independent human rights institutions and academic scholars on the domestic application of universal human rights standards in Slovenia.

KEYWORDS

United Nations
universal system for protection of human rights
UN treaty bodies
constitutional human rights obligations
Slovenia

1. Introduction

The United Nations (UN) was founded in 1945 with the promotion and protection of human rights as its core objective. Since its creation, human rights have featured prominently in the UN's work. Over the decades, the organisation has developed a

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comprehensive system of legal frameworks, monitoring mechanisms, and diplomatic initiatives to safeguard these rights.²

Today, the UN system, often referred to as the universal international system for the protection of human rights, comprises a range of human rights bodies, including the Office of the High Commissioner for Human Rights (OHCHR),³ the Human Rights Council (HRC),⁴ and the International Court of Justice (ICJ).⁵ It is underpinned by a set of foundational instruments, most notably the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Collectively, these are known as the International Bill of Rights.

In addition to these cornerstone instruments, the UN has adopted several specialised treaties addressing specific human rights concerns. These include the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Elimination of All Forms of Racial Discrimination (CERD); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Convention on the Rights of the Child (CRC); Convention on the Rights of Persons with Disabilities (CRPD); Convention Relating to the Status of Refugees; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW); and International Convention for the Protection of All Persons from Enforced Disappearance (CPED). Together, these treaties address a wide spectrum of human rights issues

- 2 | Henkin, 1965, p. 504. See also Buergeththal, 2006, pp. 785–786. Buergeththal contends that modern international human rights law originates with the Charter of the United Nations. Article 1(3) of the Charter identifies among the UN’s purposes the promotion of ‘international co-operation in... promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.’
- 3 | The OHCHR, established in 1993, is the principal human rights entity within the UN system. It leads global efforts to promote and protect human rights by monitoring compliance with international standards, supporting the work of human rights bodies, and providing technical assistance to states. The OHCHR is paramount in investigating allegations of human rights violations and in coordinating international responses. See United Nations, 2025a. See also Gaer, 2015, p. 281. Gaer maintains that ‘the UN High Commissioner for Human Rights stands at the pinnacle of the United Nations human rights machinery.’
- 4 | The HRC was established in 2006, replacing the former Commission on Human Rights. As an intergovernmental body composed of 47 Member States, it is mandated to promote and protect human rights, address violations, and make recommendations to improve global human rights conditions. In addition to conducting the Universal Periodic Review (UPR), the HRC appoints Special Procedures – including Special Rapporteurs, independent experts, and working groups – tasked with addressing thematic and country-specific human rights issues. It also oversees the Advisory Committee, which functions as the Council’s ‘think tank,’ providing expertise and advice, as well as the Complaint Procedure, which enables individuals and organizations to bring alleged human rights violations to the Council’s attention. During its regular sessions, the HRC adopts resolutions and decisions that articulate the position of the international community on specific human rights situations and issues. See United Nations, 2025b. The UN HRC’s effectiveness is discussed by Lagon and Kaminski, 2017.
- 5 | Although not exclusively a human rights body, the International Court of Justice (ICJ) plays a significant role in upholding human rights principles, particularly through its adjudication of disputes involving international law. The Court hears cases related to alleged violations of international human rights law and may issue advisory opinions on legal questions referred by the General Assembly, the Security Council, or other UN organs and specialized agencies. See International Court of Justice, 2025.

and serve as legally binding instruments designed to promote and protect human rights worldwide.

Each of the core international human rights treaties is overseen by a dedicated treaty body (committee) that monitors its implementation. This is primarily done through a review of periodic reports submitted by state parties, in which they detail the measures taken to fulfil their treaty obligations. This reporting process is mandatory under each treaty, and every state party must submit such reports at regular intervals.

Simultaneously, non-governmental organisations (NGOs) and other civil society actors may submit counter-reports (often referred to as shadow reports) to provide alternative or supplementary information. The submitted materials are examined in a public dialogue between the State and the treaty body. Following this dialogue, the treaty body issues concluding observations – essentially a ‘report card’ – highlighting positive developments, identifying shortcomings, and making recommendations for improvement.⁶

In addition to treaty-specific monitoring, the Universal Periodic Review (UPR) conducted by the Human Rights Council (HRC) reviews the human rights records of all UN Member States on a regular cycle, currently every 4.5 years.

Under certain treaties, some treaty bodies, such as the Human Rights Committee, Committee on the Elimination of Discrimination against Women, and Committee against Torture, may also receive individual complaints (communications) regarding alleged human rights violations. These bodies can issue quasi-judicial decisions based on the merits of a complaint and recommend remedies to states. This procedure is optional, meaning that a state must formally recognise the committee’s competence to allow individuals under its jurisdiction to submit complaints.⁷

This article provides a comprehensive overview of the implementation of a universal international human rights protection system in the Republic of Slovenia. It begins by tracing the historical development of human rights in ‘the country on the sunny side of the Alps’, noting that, while rooted in a Central European historical and cultural context, human rights protection in Slovenia gained significant momentum following the country’s independence in 1991. This period saw the adoption of a new Constitution and the ratification, or accession, of key universal and regional human rights instruments. Exploring the relationship between Slovenia and the UN from a human rights perspective, Section 3 discusses Slovenia’s membership and participation in the United Nations, reviews Slovenia’s succession to and ratification of UN human rights instruments, and assesses the reporting processes under these instruments. Sections 4 and 5 address the perspective of independent human rights institutions and scholarly discussions on implementing the universal protection of human rights in Slovenia. The article concludes with summarising its main points and making final conclusions.

6 | See Gomez del Prado, 1999, pp. 45–48.

7 | Ibid., pp. 49–52.

2. The Historical Context: An Outline of the Development of Human Rights in Slovenia

The development of human rights in Slovenia occurred within the Central European historical and cultural contexts. Until 1918, the modern territory of Slovenia was a part of the Austrian Empire, and after 1867, it became the Austrian portion of the dualist Austro-Hungarian Empire.⁸ Legally influenced by Prussia, the Austrian part (known as Cisleithania) had a relatively modern constitutional order compared to other Great Powers in Europe at the time.⁹

The December Constitution, adopted on 21 December 1867, consisted of six fundamental laws. Among these was the Fundamental Law on the General Rights of Citizens, which codified many of the rights considered standard in Europe at the time.¹⁰ However, during the last 50 years of the Habsburg monarchy, constitutional traditions and practices were weak. As a result, the Emperor's executive power (Franz Joseph I for nearly the entire period until 1916) often overrode the laws, enabling him to rule almost as an absolute monarch.¹¹

Moreover, the Fundamental Law could be suspended under Article 20 in cases of war or internal unrest. These suspensions, which became particularly severe during the First World War, led to widespread dissatisfaction and a complete loss of legitimacy for the Habsburg rule, especially among the Slavic people of the Empire.¹² This discontent likely contributed to the eventual dissolution of Austria-Hungary, which occurred in 1918.

During the interwar period, the State of Slovenes, Croats, and Serbs, established in 1918 as a newly formed political entity for South Slavs, was renamed the Kingdom of Serbs, Croats, and Slovenes after only three months. In 1929, the Kingdom of Yugoslavia (commonly referred to as 'the First Yugoslavia') was proclaimed and lasted until the Second World War. The Kingdom's first Constitution, the St. Vitus Day Constitution (Serb. *Vidovdanski ustav*),¹³ was adopted by the Constitutional Assembly on 28 June 1921. Chapter II of the Constitution, titled 'Fundamental Rights and Duties of Citizens', broadly

8 | The exception is the north-east region of Prekmurje which belonged to the Kingdom of Hungary and later to the Hungarian part of the Empire.

9 | More generally, see Cvirn, 2015.

10 | Vilfan, 1996, p. 436. In the original document (*Državna osnovna postava*, 1867), freedoms were stipulated such as freedom of religion (for officially permitted religions), worship, science and knowledge, profession and choice of work, and ethnic equality of 'tribes' which constitute the Empire (they are allowed to use their own language, culture and customs). See Žontar, 2009, p. 498. According to Vilfan, some other rights and freedoms were regulated by special laws: deprivation of liberty and inviolability of dwellings were already protected in 1862, protection of writings and privacy of correspondence much later, only in 1870 and 1879 respectively (Vilfan). See also legal source: Constitutional Law of 21 December 1867 on General Rights of Citizens of Kingdoms and Lands, Represented in the State Assembly - Translation of State Code of 1867 for the Duchy of Carniola [*Prevod iz Državnega zakonika leta 1867 za Vojvodino Kranjsko*], RGBI, 1867, pp. 217–219.

11 | See Vilfan, 1996.

12 | Žontar, 2009, p. 506.

13 | St. Vitus Day Constitution [*Ustav Kraljevine Srba, Hrvata i Slovenca – Vidovdanski ustav*], adopted on June 28, 1921.

recognised numerous human rights and freedoms. Significantly, these articles appeared at the very beginning of the Constitution (starting with Article 4), giving rights and freedoms highly symbolic prominence.

Influenced by the Weimar and Belgian Constitutions, the St. Vitus Day Constitution proclaimed both first- and second-generation human rights.¹⁴ However, the Kingdom faced inherent contradictions and paradoxes since its inception. While it formally declared itself a parliamentary monarchy, the rule of the Karađorđević dynasty resembled the Habsburg and Ottoman absolutisms of the past far more than the parliamentary monarchies of its time. This authoritarian reality sharply contrasted with the Constitution's provisions on the fundamental rights of citizens.

Chapters II and III of the St. Vitus Day Constitution enumerated many human rights and freedoms recognisable in modern constitutions. However, critics have argued that most of these rights were merely 'empty words on paper,' rarely applied in practice.¹⁵ These provisions served as a 'democratic façade for the outside world', as many subsequent laws effectively rendered constitutional guarantees of fundamental rights and freedoms meaningless.¹⁶

Moreover, extremely low educational levels hindered the development of legal awareness among the population. Most people were unaware of their rights under the Constitution. In addition, the Kingdom's police were notorious for their brutality, with many political dissidents – predominantly communists – being severely beaten and tortured in prison.

Nevertheless, the St. Vitus Day Constitution at least initially prevented absolutism and dictatorship in the early Kingdom of Serbs, Croats, and Slovenes (Kingdom SHS). However, this situation did not prevail. Following a violent clash between Serbian and Croatian deputies in the National Assembly, King Alexander I dissolved the entire parliament and, on 6 January 1929, instituted the 6 January Dictatorship (Slov. *Šestojanuarska diktatura*), also known as the 6 January Regime.¹⁷

14 | Notable first-generation rights and freedoms included: equality before the law; abolition of noble privileges; prohibition of arbitrary deprivation of liberty and the guarantee of due process in cases of such deprivation; the right to a fair hearing; prohibition of retroactive punishment; prohibition of the death penalty for political crimes (except in cases of assassination); prohibition of exile and forced settlement; inviolability of the home; freedom of religion and conscience; freedom of the press and prohibition of censorship (except in times of war and mobilization); freedom of association and assembly; the right to petition; freedom of science, art, and universities; privacy of communications; the right to sue the state and its agencies; eligibility for civil service for all citizens, as well as for non-citizens residing in the Kingdom for at least ten years; and prohibition of extradition of citizens. Considered even more progressive for its time, Chapter III of the St. Vitus Day Constitution, titled Social and Economic Rules, contained 23 articles. These provisions established state protection of the labour force and special protection for women and children against work deemed harmful to health; the right to intellectual property protection; public health safeguards, especially for women and children; free healthcare for poor citizens; protection of marriage; state insurance for agriculture; workers' insurance in cases of accidents, illness, unemployment, disability, old age, and death; special protection for persons with disabilities, war widows, war orphans, and parents of children killed in war; the right of workers to unionize; and the prohibition of usury and economic exploitation. See St. Vitus Day Constitution, 1921.

15 | Strobl, Kristan and Ribičič, 1981, pp. 33–34. See also Ribičič, 1978, pp. 241–268.

16 | Vilfan, 1996, p. 466.

17 | Ibid., p. 467.

In 1931, the King unilaterally imposed the September Constitution, which reintroduced monarchical absolutism. Although this Constitution retained the rights and freedoms of the St. Vitus Day Constitution, they were significantly weakened by provisions that allowed laws to limit them. Social and economic rights were particularly affected; the number of relevant articles was reduced from 23 to just four, likely reflecting the Kingdom's lack of financial resources to ensure such rights in practice.¹⁸

Even the remaining fundamental rights and freedoms were rendered nearly meaningless by the notorious Article 116. This article allowed the King to declare or prolong a state of emergency, effectively granting him absolute power. It authorised the King to adopt extraordinary measures across the entire territory of the Kingdom, paving the way for bureaucratic autocracy and unchecked arbitrariness.¹⁹

In the historical context of the First Yugoslavia, it is important to emphasise that, according to the Treaty of Rapallo signed on 12 November 1920, one-third of the Slovenian ethnic territory was ceded to the Kingdom of Italy. Beginning in 1923 and progressively worsening to intolerable levels, the Slovenians in Italy endured severe persecution and widespread human rights violations under Mussolini's fascist regime, which persisted until its collapse in 1943.

Additionally, a portion of the Slovenian ethnic territory in Carinthia (Slov. *Koroška*) became part of the newly formed Austria following a plebiscite in 1921. Shortly thereafter, the position of the Slovenians as a minority deteriorated significantly. Slovenians became victims of political terror, which the Austrian authorities not only failed to prevent but also often ignored, allowing such injustices to continue unchecked.²⁰

In the postwar 'Second Yugoslavia', a socialist federal and multi-ethnic state, human rights were legally and formally guaranteed by its three consecutive constitutions at both the federal and republican levels. The Constitution of the Federal People's Republic of Yugoslavia of 1946²¹ and the Constitution of the People's Republic of Slovenia of 1947²² contained identical human rights provisions. In both documents, these rights were listed in Chapter V, the following section on General Provisions, State Power, and the Socio-economic Order. This structure effectively subordinated individual rights to the state's interests.

18 | Ibid.

19 | Ibid. For its broad authorization of emergency powers, Article 116 was nicknamed 'the Little Constitution', as it effectively replaced the constitution in its entirety. The king frequently used these powers, prompting criticism even from his most trusted advisors that the Kingdom had lost any semblance of the rule of law and had degenerated into a police state. See Krkljuš, 2009, p. 324.

20 | See Vilfan, 1996, pp. 477–478.

21 | Constitution of the Federal People's Republic of Yugoslavia [*Ustav Federativne Narodne Republike Jugoslavije*], adopted on 31 January 1946, Official Journal of the Federal people's Republic of Yugoslavia, year -{II}-, No.10, Beograd, Friday, 1 February 1946. [Online]. Available at: [https://bs.wikisource.org/wiki/Ustav_Federativne_Narodne_Republike_Jugoslavije_\(1946\)](https://bs.wikisource.org/wiki/Ustav_Federativne_Narodne_Republike_Jugoslavije_(1946)) (Accessed: 2 January 2026).

22 | Constitution of the People's Republic of Slovenia [*Ustava Ljudske Republike Slovenije*], adopted on 16 January 1947, Official Gazette of the People's Republic of Slovenia, year 4, No. 42, 11 October 1947. [Online]. Available at: https://www.sistory.si/cdn/publikacije/38001-39000/38564/ustava_ljudske_republike_slovenije.pdf (Accessed: 2 January 2026). [Online]. Available at: https://www.sistory.si/cdn/publikacije/38001-39000/38564/ustava_ljudske_republike_slovenije.pdf (Accessed: 2 January 2026).

Human rights provisions were further undermined by a notably authoritarian Article 42, which granted the state broad powers to protect the ‘freedoms and democratic order of the People’s Republic and the federation’. Until 1952, these vague and expensive powers facilitated routine violations of human rights. Political opponents, dissidents, and non-conformists were frequently subjected to imprisonment and forced labour, often for minor offences.²³

Throughout its existence, the Second Yugoslavia retained the death penalty for the most severe crimes and used it extensively. However, in contrast to the federal judiciary and other federal units, the Slovenian judiciary was less inclined to apply the death penalty. By the 1960s, Slovenia had largely moved away from its use, with the final execution in the region taking place in 1959.²⁴

Notably, Yugoslavia was one of the 48 founding members of the UN. However, on 10 December 1948, it abstained from voting on the adoption of the Universal Declaration of Human Rights. Nonetheless, both the federal and Slovenian constitutions included progressive provisions, particularly regarding gender equality. They established universal suffrage, granting both active and passive voting rights to all citizens aged 18 years and older, and granted women full equality with men in all spheres of life, including the right to equal pay and special workplace protections. This was the first time Slovenian women were granted the right to vote. However, elections were largely a formality, offering little genuine choice, as only state-approved candidates were permitted to run.²⁵

Human rights gained greater constitutional prominence in the 1963 Constitution of the Socialist Federal Republic of Yugoslavia²⁶ and the Constitution of the Socialist Republic of Slovenia.²⁷ They were enumerated in Chapter III, following the Introductory Provisions and Social-Economic Order, but preceding the Social-Political System. The chapter’s title, Freedoms, Rights, and Duties of Man and Citizen, reflected a shift towards a more liberal tone, aligning more closely with Western constitutional traditions.

The Constitution expanded the catalogue of rights and introduced several significant innovations. For instance, it guaranteed that constitutional freedoms and rights could not be taken away or restricted. These rights were to be exercised directly on the basis of the Constitution, or their exercise could be regulated by law, but only when necessary.

23 | A special penal colony, similar to Soviet gulag, opened on Goli otok, a remote desolate island by the Croatian Coast. In entire Yugoslavia, around 55.000 people were persecuted in relation to *Informbiro Resolution* and 16.288 were punished. Only 3,4 % of them were Slovenian, more than 65% were Serbian or Montenegrin. See Režek, 2002, p. 83.

24 | In Slovenia, the death penalty was formally abolished in 1989, representing a symbolic milestone that came three decades after its last application in practice.

25 | See Bardutzky, 2022, p. 190.

26 | Constitution of the Socialist Federal Republic of Yugoslavia [*Ustav Socialističke federativne republike Jugoslavije*], adopted on April 7, 1963, Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 14, year XIX, April 10, 1963. [Online]. Available at: <https://www.pfsa.unsa.ba/pf/wp-content/uploads/2019/05/Ustav-SFRJ-iz-1963.pdf> (Accessed: 2 January 2026).

27 | Constitution of the Socialist Republic of Slovenia [*Ustava Socialistične republike Slovenije*], adopted on 9 April 1963, Official Gazette of the Socialist Republic of Slovenia, No. 10/1963. [Online]. Available at: <https://www.iusinfo.si/zakonodajna-knjiznica/zakon/86305AAC/clen/1> (Accessed: 2 January 2026).

In keeping with the norms of a socialist state, the catalogue of rights began with labour and social rights.²⁸ Some rights were ideologically driven, such as the right to social self-governance, solidarity, and the right to elect representatives within labour organisations. However, many other rights were genuinely universal and would not have been incongruous in Western democracies.

Notably, the Constitution introduced rights such as the freedom of thought and opinion, which were absent in the 1947 Constitution. However, these freedoms were not absolute – they were restricted to prevent any ‘abuse’ that could undermine the socialist constitutional order.

Freedoms and rights were protected by the judiciary, including constitutional courts established at both the federal and republican levels.

Unlike the 1947 Constitution, the freedoms and rights enshrined in the 1963 Constitution were not merely declaratory. They were implemented in practice, most notably in criminal law. The new Criminal Code of 1959 retained the death penalty for only a few severe offences, prohibited execution by hanging, abolished life imprisonment, and replaced it with a maximum sentence of 20 years. These changes immediately made Yugoslavia one of the most progressive countries worldwide in terms of criminal justice policy. The Code also significantly reduced the number of criminal offences.

Despite serious crime issues and rising crime rates, the state’s extensive powers enabled the implementation of these progressive reforms. The new Criminal Procedure Code of 1953 further advanced the legal system by granting defendants certain rights, introducing investigative judges to limit the power of prosecutors, and enhancing the role of defence attorneys, who had previously played a largely symbolic role.

The 1974 constitutions of the Socialist Federal Republic of Yugoslavia²⁹ and the Socialist Republic of Slovenia³⁰ dedicated 56 articles to human rights and freedoms, accounting for 12% of all articles, slightly less than nearly 15% in the 1963 Constitution. Despite the longer constitutional texts devoted to human rights, there were relatively few innovations compared to the 1963 Constitution.

The most ground-breaking addition was Article 233, which established the right to free choice regarding childbirth, effectively enshrining the constitutional right to abortion. Another significant novelty was the right to a healthy environment, introduced in Article 240. Together with Article 241, these provisions marked the first ecological protections in Slovenian constitutional history. Article 241 further stipulated the obligation to use land, water, and natural resources in a manner that ensured conditions for

28 | Article 37 limited working time to maximum 42 hours per week. Exceptions could only be temporary in some professions if this was absolutely necessary. Rights to daily and weekly rest were constitutional rights. Also was the right to yearly vacation which could not be shorter than 14 working days. There was also the right to minimal salary. Article 38 guaranteed extensive social security for not only workers, but also for their family members.

29 | Constitution of the Socialist Federal Republic of Yugoslavia [*Ustav Socialističke federativne republike Jugoslavije*], adopted on 21 February 1974, Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 9/74 [Online]. Available at: https://www.yuhistorija.com/serbian/doc/Ustav_SFRJ_iz_1974.pdf (Accessed: 2 January 2026).

30 | Constitution of the Socialist Republic of Slovenia [*Ustava Socialistične republike Slovenije*], adopted on 20 February 1974, Official Gazette of the Socialist Republic of Slovenia, No. 6-44/74. [Online]. Available at: http://stres.a.gape.org/VTA/ustavna_pobuda_23_1_15/gradivo/18_1_ustava_SRS_1974.pdf (Accessed: 2 January 2026).

individuals to work and live in a healthy environment. It also imposed a duty on everyone to protect nature, natural resources, natural landmarks, rare natural phenomena, and cultural monuments.³¹

While the 1947 Constitution primarily provided a façade of formal rights that the state neither prioritised nor had the resources to protect amidst widespread postwar devastation and tense geopolitical threats, the 1963 Constitution marked a shift toward a more liberal and Western approach. It transformed human rights into tangible benefits, reflecting the period's rapid economic and legal development. In contrast, the 1974 Constitution sought to establish human rights as a cornerstone of the new 'self-governing socialist order'. However, in practice and within the structure of the 1974 Constitution, human rights were relegated to a secondary position, taking a 'back seat' to the newly emphasised ideology of self-governance.

In the 1980s, during the independence movements in Slovenia, human rights were considered paramount to realising the inalienable right to self-determination and achieving independence from the Federation. In the Preamble to the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (Slov. *Temeljna ustavna listina o samostojnosti in neodvisnosti Republike Slovenije*), adopted on 25 June 1991 (the day of the declaration of Slovenian independence), the Assembly declared that 'in the Socialist Federal Republic of Yugoslavia, human rights, national rights, and the rights of republics and autonomous regions are seriously violated, and it does not function as a legally regulated state.'

Paragraph III of the Charter's main text expressly stated that the Republic of Slovenia guarantees the protection of human rights and fundamental freedoms to all individuals within its territory, regardless of their ethnic affiliation, and without any form of discrimination.

Human rights regained their prominent and foundational position in the new Constitution of the Republic of Slovenia (Slov. *Ustava Republike Slovenije*), adopted on 26 December 1991, six months after Slovenia declared independence. Human rights and

31 | Among other new rights included were: the right to file applications and give recommendations to state agencies, to receive replies to such recommendations and to launch initiatives (Article 199); the right to basic material guarantees (a sort of basic income) during temporary unemployment (Article 201 par. 4); right to decent working conditions which guarantee bodily and moral integrity and safety (Article 203); expanded right to yearly vacation, now 18 working days (Article 204, par. 4); right to live in a community apartment for every worker (Article 206); expanded freedom of thought to also include freedom of belief, not only opinion (Article 208); right to be informed about local and world events, important for life and work for citizens, and about all issues of importance to the community (Article 209, par. 4); inviolability of personal integrity, of personal and family life and of other rights of personality, combined with any extortion of confessions or statements being prohibited and illegal (Article 216); mandatory respect for human dignity in all phases of criminal procedure, including the duration of imprisonment (Article 219); right to creation of culture and to enjoy cultural achievements (Article 230); right to maternity social security, i.e., a sort of basic income for pregnant women and young mothers (Article 235); rights of disabled persons (Article 236), war veterans (Article 237) and special social protection of persons, disabled by war or work, disabled children, soldiers of national liberation, victims of fascist violence, civilian victims of war, volunteers of Spanish Civil War and pre-war revolutionaries, fighters for Slovenian northern border and other Slovenian war volunteers (Article 238).

fundamental freedoms are outlined in Part II, beginning with Article 14 and ending with Article 65, encompassing 32 articles (Article 62a added later).

Despite the complete transformation of the political and economic system – from socialism and self-governance to capitalism and parliamentary democracy – many of the human rights stipulated in the new Constitution were already present in previous constitutions, with some tracing their origins back to the Austro-Hungarian Empire.

In this context, the development of human rights and fundamental freedoms in Slovenia should be viewed as a process of progressive legal evolution and continuity, rather than a revolutionary break from an ‘unfree dark past’.

3. Slovenia and the United Nations’ Human Rights Mechanisms

| 3.1. *Slovenia’s Membership of and Participation in the United Nations*

Slovenia became a Member State of the United Nations (UN) on 22 May 1992 following its admission to the General Assembly. This milestone marked the culmination of the country’s path to independence, formally establishing it as a sovereign, internationally recognised state. Almost concurrently with its UN admission, Slovenia joined the United Nations Educational, Scientific and Cultural Organisation (UNESCO). Even before its official entry into the UN, Slovenia had become a member of the World Health Organisation (WHO), a specialised agency within the UN system. On 1 January 2024, Slovenia commenced its second term as a non-permanent member of the United Nations Security Council.

Slovenia engages with the UN through its permanent missions at the organisation’s headquarters in New York, Geneva, and Vienna. Membership entails significant responsibilities but also offers valuable opportunities for Slovenia to strengthen its presence in international affairs. Through the UN framework, Slovenia contributes to global efforts to maintain international peace and security, uphold international law, address climate change, promote sustainable development, and promote human rights.

Representatives of the Republic of Slovenia participate in the work of the Third Committee of the United Nations General Assembly (Committee on Social, Humanitarian and Cultural Issues), which deals primarily with human rights matters. The Committee’s human rights work includes reviewing reports from the special procedures of the Human Rights Council (HRC) and engaging in dialogue with special rapporteurs, independent experts, and chairs of treaty bodies and working groups mandated by the HRC and General Assembly.

Slovenia served as a member of the HRC from 19 June 2007 to 19 June 2010 and again from 1 January 2016 to 31 December 2018, chairing the Council in 2018. The country is currently a candidate for reelection in the 2026–2028 term. It remains committed to ensuring that the HRC operates effectively, addresses the full spectrum of human rights issues, and implements decisions.

Like other Member States, Slovenia participates in the Universal Periodic Review (UPR) process, under which its human rights record is periodically examined by other

states, and likewise participates in reviewing the human rights performance of other Member States.

Finally, Slovenia is a party to the UN human rights instruments listed below, and participates in the reporting procedures established under these treaties. It submits periodic reports to the relevant committees detailing the implementation of its treaty obligations, engages in public dialogues with these bodies, and participates in the examination and discussion of reports submitted by other state parties. Slovenia has also opted for several UN instruments that provide for an individual complaint mechanism, thereby allowing individuals to file complaints regarding alleged violations of their rights under the respective treaties.

| 3.2. Overview of Slovenia's Succession to and Ratification of UN Human Rights Instruments

Six of the nine core UN human rights instruments – namely, the Convention Relating to the Status of Refugees; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Rights of the Child – were signed and ratified by Slovenia's predecessor state, the Socialist Federal Republic of Yugoslavia. (The Convention Relating to the Status of Refugees was adopted when Yugoslavia became officially known as the Federal People's Republic of Yugoslavia.) Slovenia succeeded to these six treaties on 1 July 1992 through the Act of Succession.³²

Slovenia's independence on 25 June 1991 occurred after Yugoslavia had signed, but before it had ratified, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. As succession to an unratified treaty was not possible, Slovenia proceeded to ratify the Convention independently on 14 April 1993.

A more recent instrument, the Convention on the Rights of Persons with Disabilities (2006), was ratified by Slovenia before it entered into force. In contrast, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) remains neither signed nor ratified.

The following subsections examine Slovenia's processes of accession to or ratification of major UN human rights conventions and covenants in detail.

3.2.1. The 1951 Convention Relating to the Status of Refugees

The Convention Relating to the Status of Refugees was adopted at the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons held in Geneva from 2 July to 25, 1951. The Socialist Federal Republic of Yugoslavia signed the Convention on 28 July 1951 and ratified it on 15 December 1959, declaring itself bound by

32 | Act on Notification of Succession to the Conventions of the United Nations and Conventions Adopted by the International Atomic Energy Agency [Akt o notifikaciji nasledstva glede konvencij Organizacije združenih narodov in konvencij, sprejetih v Mednarodni agenciji za atomsko energijo], Official Gazette of the Republic of Slovenia – International Treaties, Nos. 35/92, 28/93, 20/99, 35/08, 87/11, 42/13, 28/17. [Online]. Available at: https://pisrs.si/pregledPredpisa?id=AKT_53 (Accessed: 2 January 2026). The Act was adopted by the National Assembly on 1 July 1992 and entered into force on 17 July 1992.

alternative (b) of Section B(1). Following Slovenia's independence, the Convention entered into force on 17 July 1992 under the Act of Succession.³³

The Protocol Relating to the Status of Refugees, adopted by General Assembly Resolution 2198 (XXI) on 16 December 1966 and enacted on 4 October 1967, was acceded to by the former Yugoslavia on 15 January 1968. For Slovenia, the Protocol was enacted on 17 July 1992 under the Act of Succession.³⁴

3.2.2. *The 1966 International Covenant on Civil and Political Rights*

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976. Yugoslavia signed the Covenant on 8 August 1967 and ratified it on 2 June 1971, with the Covenant entering into force for Yugoslavia on 23 March 1976. In Slovenia, the ICCPR has been in force since 17 July 1992 under the Act of Succession.³⁵

The Optional Protocol to the International Covenant on Civil and Political Rights, adopted by General Assembly Resolution 2200A (XXI) on 16 December 1966 and entering into force on 23 March 1976, empowers the UN Human Rights Committee to receive and consider communications from individuals alleging violations of rights set forth in the Covenant, provided that all available domestic remedies have been exhausted. Slovenia ratified the Optional Protocol on 19 June 1993,³⁶ following the adoption of the ratifying Act by the National Assembly on the proposal of the Ministry of Foreign Affairs on 18 May 1993.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty, was adopted by General Assembly Resolution 44/128 on 15 December 1989 and entered into force on 11 July 1991. By ratifying this instrument, state parties undertake a binding commitment to abolish the death penalty within their jurisdiction. Slovenia ratified the Second Optional Protocol on 15 January 1994³⁷ after the National Assembly adopted the ratifying Act on the joint proposal of the Ministry of Justice and the Ministry of Foreign Affairs, dated 17 December 1993.

3.2.3. *The 1966 International Covenant on Economic, Social and Cultural Rights*

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the United Nations General Assembly resolution 2200A (XXI) on 16 December 1966 and entered into force on 3 January 1976. Yugoslavia signed the Covenant on 8

33 | Ibid.

34 | Ibid.

35 | Ibid.

36 | Act on the Ratification of the Optional Protocol to the International Covenant on Civil and Political Rights (MMPDPPFP) [*Zakon o ratifikaciji Fakultativnega protokola k Mednarodnemu paktu o državljanskih in političnih pravicah* (MMPDPPFP)], Official Gazette of the Republic of Slovenia – International Treaties, No. 28/93. [Online]. Available at: <https://pisrs.si/pregledPredpisa?id=ZAKO646> (Accessed: 2 January 2026).

37 | Act on the Ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (MPDPPDFP) [*Zakon o ratifikaciji drugega fakultativnega protokola k Mednarodnem paktu o državljanskih in političnih pravicah, katerega cilj je odprava smrtne kazni* (MPDPPDFP)], Official Gazette of the Republic of Slovenia – International Treaties, No. 2/94. [Online]. Available at: <https://pisrs.si/pregledPredpisa?id=ZAKO716> (Accessed: 2 January 2026).

August 1967 and ratified it on 2 June 1971. Following its independence, Slovenia succeeded to the ICESCR on 17 July 1992 under the Act on Succession.³⁸

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly Resolution A/RES/63/117 on 10 December 2008 (International Human Rights Day), entered into force on 5 May 2013. The Protocol establishes a communication procedure that enables individuals or groups to bring complaints before the UN Committee on Economic, Social, and Cultural Rights once domestic remedies are exhausted. Slovenia was among the first UN Member States to sign the Protocol on 24 September 2009; however, it has not yet proceeded to ratification.

3.2.4. *The 1965 International Convention on the Elimination of All Forms of Racial Discrimination*

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted by the UN General Assembly Resolution 2106 (XX) on 7 March 1966 and entered into force on 4 January 1969. Yugoslavia signed the Convention on 15 April 1966 and ratified it on 2 October 1967. Slovenia succeeded in the Convention on 17 July 1992 under the Act on Succession.³⁹

In 2001, Slovenia submitted a declaration under Article 14 of the Convention, recognising the competence of the UN Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups under its jurisdiction, alleging violations of rights enshrined in the Convention.⁴⁰ The Committee may consider such communications only if the matter is not being examined under another international procedure. Adopted on 21 August 2001 by the National Assembly, the declaration came into force on 1 September 2001.

3.2.5. *The 1979 Convention on the Elimination of All Forms of Discrimination Against Women*

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the UN General Assembly on 18 December 1979 and entered into force on 3 September 1981. Yugoslavia signed the Convention on 17 July 1980 and ratified it on 26 February 1982. Slovenia succeeded to the Convention on 17 July 1992 under the Act on Succession.

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the UN General Assembly Resolution A/RES/54/4 on 6 October 1999 and entered into force on 22 December 2000. Slovenia signed the Optional Protocol⁴¹ on 10 December 1999. It ratified it on 15 May 2004, following the

38 | See supra, footnote 31.

39 | Ibid.

40 | The declaration under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination [*Izjava po 14. členu Mednarodne konvencije o odpravi vseh oblik rasne diskriminacije*], Official Gazette of the Republic of Slovenia, No. 70/01. [Online]. Available at: <https://pisrs.si/pregledPredpisa?id=NEZN191> (Accessed: 2 January 2026).

41 | Act on the ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (MOPDŽ) [*Zakon o ratifikaciji Opcijskega protokola h Konvenciji o odpravi vseh oblik diskriminacije žensk* (MOPDŽ)], Official Gazette of the Republic of Slovenia – International Treaties, No. 48/04. [Online]. Available at: <https://pisrs.si/pregledPredpisa?id=ZAKO4047> (Accessed: 2 January 2026).

National Assembly's adoption of the Ratification Act on 21 April 2004 based on a joint proposal by the Ministry of Justice and the Ministry of Foreign Affairs.

3.2.6. The 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted by the UN General Assembly Resolution 39/46 on 10 December 1984 and entered into force on 26 June 1987. Yugoslavia signed the Convention on 18 April 1989 and ratified it on 10 September 1991. Following independence, Slovenia ratified the Convention on 15 January 1994⁴² after the National Assembly adopted the Ratification Act on 17 December 1993, based on a joint proposal from the Ministry of Justice and the Ministry of Foreign Affairs.

In 1995, Slovenia made a declaration under Articles 21 and 22 of the Convention, recognising the competence of the UN Committee against Torture to (1) receive and consider inter-state communications regarding non-compliance with the Convention and (2) receive and consider individual complaints alleging violations of its provisions.

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by the UN General Assembly Resolution A/RES/57/199 on 18 December 2002 and entered into force on 22 June 2006. Slovenia ratified the Optional Protocol on 23 January 2007, designating the Human Rights Ombudsman as the national preventive mechanism (NPM) under Article 17. In agreement with the Ombudsman, the NPM mandate may also be implemented by registered non-governmental organisations and recognised humanitarian organisations in Slovenia.

3.2.7. The 1989 Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) was adopted by the UN General Assembly Resolution 44/25 on 20 November 1989 and entered into force on 2 September 1990. This was one of the most widely ratified human-rights treaties. Yugoslavia signed the Convention on 26 January 1990 and ratified it on 3 January 1991 with a reservation.⁴³ Slovenia succeeded to the Convention on 17 July 1992 under the Act on Succession.⁴⁴

The Optional Protocol to the CRC on the Involvement of Children in Armed Conflict was adopted by General Assembly Resolution A/RES/54/263 on 25 May 2000 and entered into force on 12 February 2002. Slovenia signed it on 8 September 2000 and ratified it on

42 | Act on the ratification of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (MEKPM) [*Zakon o ratifikaciji Evropske konvencije o preprečevanju mučenja in nečloveškega ali ponižujočega ravnanja ali kaznovanja* (MEKPM)], Official Gazette of the Republic of Slovenia – International Treaties, No. 2/94. [Online]. Available at: <https://pisrs.si/pregledPredpisa?id=ZAKO733> (Accessed: 2 January 2026).

43 | Reservation is the following: The competent authorities (ward authorities) of the Socialist Federal Republic of Yugoslavia may, under Article 9, paragraph 1 of the Convention, make decisions to deprive parents of their right to raise their children and give them an upbringing without prior judicial determination in accordance with the internal legislation of the SFR of Yugoslavia.

44 | Supra, footnote 31.

17 August 2004, following National Assembly approval on 15 July 2004⁴⁵ based on a joint proposal from the Ministry of Defence, Ministry of Labour, Family and Social Affairs, Ministry of Justice, and Ministry of Foreign Affairs.

The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography was also adopted on 25 May 2000 and entered into force on 18 January 2002. Slovenia signed it on 8 September 2000 and ratified it on 17 August 2004, following the same legislative process and institutional proposals as the armed conflict protocol.⁴⁶

The Optional Protocol to the CRC on a communications procedure was adopted on 28 February 2012 and entered into force on 14 April 2014. The national implementation process involved the following steps: Slovenia ratified it on 18 April 2018 after the National Assembly's approval on 20 March 2018,⁴⁷ based on a proposal by the Ministry of Justice and the Ministry of Foreign Affairs.

3.2.8. *The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*

Slovenia has neither signed nor ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This stance is consistent with that of other European Union member states and most countries in the wider European region, where, as of 2024, only Albania, Bosnia, and Herzegovina are parties to the Convention.

3.2.9. *The 2006 Convention on the Rights of Persons With Disabilities*

The Convention on the Rights of Persons with Disabilities (CRPD) was adopted by the United Nations General Assembly Resolution A/RES/61/106 on 13 December 2006 and entered into force on 3 May 2008. Slovenia signed the Convention on 30 March 2007 and ratified it on 16 April 2008. The Act of Ratification entered into force following its adoption

45 | Act on the ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (MIPKOPO) [*Zakon o ratifikaciji Izbirnega protokola h Konvenciji o otrokovih pravicah glede udeležbe otrok v oboroženih spopadih* (MIPKOPO)], Official Gazette of the Republic of Slovenia – International Treaties, No. 85/04. [Online]. Available at: <https://pisrs.si/pregledPredpisa?id=ZAKO4041> (Accessed: 2 January 2026).

46 | Act on the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (MIPKOP) [*Zakon o ratifikaciji Izbirnega protokola h Konvenciji o otrokovih pravicah glede prodaje otrok, otroške prostitucije in otroške pornografije* (MIPKOP)], Official Gazette of the Republic of Slovenia – International Treaties, No. 85/04. [Online]. Available at: <https://pisrs.si/pregledPredpisa?id=ZAKO4048> (Accessed: 2 January 2026).

47 | Act on the Ratification of the Optional Protocol to the Convention on the Rights of the Child on a Reporting Procedure (MIPKOPSK) [*Zakon o ratifikaciji Izbirnega protokola h Konvenciji o otrokovih pravicah glede postopka sporočanja kršitev* (MIPKOPSK)], Official Gazette of the Republic of Slovenia – International Treaties. [Online]. Available at: No. 24/18, <https://pisrs.si/pregledPredpisa?id=ZAKO7241> (Accessed: 2 January 2026).

by the National Assembly on 2 April 2008,⁴⁸ based on a proposal by the Ministry of Labour, Family, and Social Affairs and the Ministry of Foreign Affairs.

The Optional Protocol to the Convention on the Rights of Persons with Disabilities was adopted by General Assembly Resolution A/RES/61/106 on 13 December 2006 and entered into force on 3 May 2008. The Optional Protocol establishes an individual complaints mechanism for citizens of states parties who allege that their rights under the Convention have been violated. The national implementation process involved the following steps: Slovenia signed the Optional Protocol on 30 March 2007 and ratified it on 16 April 2008. The Act ratifying the Optional Protocol⁴⁹ entered into force following its adoption by the National Assembly on 2 April 2008, based on a proposal by the Ministry of Labour, Family, and Social Affairs and the Ministry of Foreign Affairs.

3.3. Overview and Assessment of Reporting Processes Under UN Human Rights Instruments

The Republic of Slovenia has prepared the Presentation Document of Slovenia for the UN Human Rights Council Reports,⁵⁰ which serves as an overarching reference and an integral component of all periodic reports submitted by the country. This document provides general information on Slovenia, including an overview of its constitutional, political, and legal systems. It also sets out the general legal framework for implementing and protecting human rights at the national level and under international treaties, and includes details of the corresponding reporting processes.

The central body responsible for coordinating Slovenia's reporting of human rights monitoring mechanisms is the Inter-Ministerial Commission for Human Rights (Slov. *Medresorska komisija za človekove pravice*). Established in April 2013 by the Government of the Republic of Slovenia, it succeeded the Inter-Ministerial Working Commission for Human Rights, which functioned from 1993 to 2012. The Commission's core mandate is to coordinate reporting to United Nations treaty bodies, the UN Human Rights Council (UNHRC), and relevant regional organisations, and to monitor the implementation of recommendations issued by these bodies.⁵¹

The Inter-Ministerial Commission works in cooperation with representatives from other institutions and civil society. Its membership includes representatives from the Prime Minister's Office, all ministries, the Office of the Government of the Republic of Slovenia for Nationalities, and the Statistical Office of the Republic of Slovenia. In April 2014, the Government expanded the Commission to include two additional members,

48 | Act on the ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (MKPI) [*Zakon o ratifikaciji Konvencije o pravicah invalidov in Izbirnega protokola h Konvenciji o pravicah invalidov* (MKPI)], Official Gazette of the Republic of Slovenia – International Treaties, No. 37/08. [Online]. Available at: <https://pisrs.si/pregledPredpisa?id=ZAKO5314> (Accessed: 2 January 2026).

49 | Ibid.

50 | Government of the Republic of Slovenia, 2025. The Presentation Document (Slov. *Predstavitveni dokument*), in Word format and in the Slovene language, is available via a link on the official website of the Government of the Republic of Slovenia. [Online]. Available at: <https://www.gov.si teme/mednarodnopravni-dokumenti-s-podrocja-clovekovih-pravic-in-porocanja-slovenije/> (Accessed: 2 January 2026).

51 | Ibid.

representing academia and civil society organisations. The academic representative was appointed by the Rectors' Conference of the Republic of Slovenia, while the civil society representative was appointed by the Slovenian Non-Governmental Organisations Centre (CNVOS). The Human Rights Ombudsman and the Advocate of the Principle of Equality hold standing invitations to participate in the Commission's sessions.⁵²

To prepare reports under specific international legal instruments, a designated body of appointed members of the Inter-Ministerial Commission assumes the lead role. This body oversees the entire drafting process in cooperation with competent bodies within the state administration, ensuring public participation and the dissemination of information. Before a report is submitted to the Government of the Republic of Slovenia for final approval, the designated body (acting as a coordinator) must present it to the Inter-Ministerial Commission for Human Rights for review and endorsement.⁵³

Given the breadth of the available material and the limited scope of this article, the outline and assessment of reporting processes focus on the third and fourth cycles of the Universal Periodic Review (UPR), omitting a detailed examination of reporting under individual conventions.

3.3.1. *The Universal Periodic Review (UPR) – Third Cycle*

Slovenia submitted four universal periodic reports in 2009, 2014, 2019, and 2024.⁵⁴ It has also submitted interim reports on implementing recommendations from the first three UPR cycles. For the second and third cycles, it provided formal responses to the recommendations received, voluntary interim reports on their implementation, and several addenda. In the third cycle, a report by the UN Human Rights Council Working Group on UPR concerning Slovenia was released in December 2019. In the fourth cycle, the report of the UN Human Rights Council Working Group on the UPR concerning Slovenia was released in March 2025. Slovenia has not yet submitted either a formal response to the recommendations received or a voluntary interim report on its implementation.

The third national report for the UPR⁵⁵ noted that Slovenia received 162 recommendations during its second review cycle. In June 2017, the country submitted a voluntary interim report to the Office of the UN High Commissioner for Human Rights regarding the implementation of its accepted recommendations. In preparing the third national report, the Inter-Ministerial Commission for Human Rights engaged in consultations with non-governmental organisations, the Human Rights Ombudsman and the Advocate of the Principle of Equality as part of Slovenia's preparations for national review.

Driven by recommendations received during the second UPR cycle, Slovenia undertook several significant measures. These included the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence on 19 December 2014 and the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure on 20 March 2018. Slovenia also established

52 | Ibid.

53 | Ibid.

54 | See United Nations, 2025c. [Online]. Available at: <https://www.ohchr.org/en/hr-bodies/upr/si-index> (Accessed: 2 January 2026).

55 | National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Slovenia, Human Rights Council Working Group on the Universal Periodic Review, Thirty-fourth session, 4–15 November 2019. [Online]. Available at: <https://docs.un.org/en/A/HRC/WG.6/34/SVN/1> (Accessed: 2 January 2026).

a national human rights institution with 'A' status under the Paris Principles, created the Office of the Advocate of the Principle of Equality, and strengthened policies aimed at combating discrimination and promoting public awareness.⁵⁶

In 2016, the country adopted the Civil Partnership Act, granting same-sex couples in civil partnerships the same rights as heterosexual married couples in all areas except for in vitro fertilisation and the joint adoption of children. In its report, the Government reaffirmed its commitment to a policy of zero tolerance for hate speech, emphasising raising societal awareness and addressing all forms of intolerance.⁵⁷

With respect to recommendations for safeguarding political and civil rights, the government noted in its report that these rights are guaranteed by the Constitution, further regulated through relevant legislation, and supported by various measures to ensure their effective implementation. The establishment and functioning of trade unions are governed by the Trade Union Representation Act, which provides protection against interference in their formation, operation, or management.⁵⁸

Freedom of religion is guaranteed in Slovenia under international agreements, its Constitution, and the Freedom of Religion Act. Since 2015, the Government Council for Religious Freedom has operated within the Office for Religious Communities under the Ministry of Culture, providing a specialised and institutionalised platform for open and transparent dialogue between the state and religious communities.⁵⁹

In its report, the Government highlighted that the judicial resolution of cases within a reasonable timeframe is ensured in most instances and is no longer considered a systemic issue. In 2015, the Judicial Council and State Prosecutorial Council adopted codes of ethics and established ethics and integrity commissions.⁶⁰

To strengthen the implementation of economic, social, and cultural rights, Slovenia adopted a range of measures between its second and third periodic reviews, aimed at enhancing the social inclusion of the most vulnerable groups. The at-risk-of-poverty and social exclusion rates declined annually during this period, reaching 13.3% in 2017. Particular attention was paid to improving the situation of the elderly, especially single-person households, which face a disproportionately high risk of poverty.⁶¹

To protect the rights of national and minority communities, Slovenia has implemented a range of measures aimed at preventing discrimination against the Roma, improving their living conditions, and promoting social inclusion. In May 2017, the government adopted the National Programme of Government Measures for Roma for the period 2017 to 2021. In March 2018, it approved a draft Act on the Roma Community and submitted it to the National Assembly for consideration. However, the draft was not addressed before the end of the 2014–2018 mandate. The current government has resumed a revised amendment to the Act, which remains under consideration and has not yet been adopted.⁶²

With respect to the Italian and Hungarian national communities, the government adopted three annual reports covering 2015, 2016, and 2017 on the implementation of the

56 | Ibid.

57 | Ibid.

58 | Ibid.

59 | Ibid.

60 | Ibid.

61 | Ibid. See also Statistical Office of the Republic of Slovenia, 2025.

62 | Ibid.

Plan of Measures for the Implementation of Regulations on Bilingualism. The National Assembly Commission for National Communities reviewed all three reports. In September 2018, the amended Act on the Special Rights of the Italian and Hungarian National Communities in the Field of Education entered into force. Both national communities have acknowledged the progress achieved through these measures.⁶³

Slovenia received recommendations concerning the situation of foreigners and residents who were unjustly removed from the register of permanent residents in 1991 (the so-called 'erased residents'), as well as in the areas of promoting gender equality, protecting and realising children's rights, and preventing and prosecuting trafficking in human beings. In response, measures were implemented across these areas and, in some cases, corresponding legislative amendments were also adopted.⁶⁴

Since the last UPR, the Government has identified controlling irregular migration and preventing and prosecuting hate speech as key challenges to ensuring human rights and fundamental freedoms. It also highlights several notable achievements, including the social integration of individuals granted refugee status, improvements in the situation and rights of the elderly, and the adoption of a National Action Plan for Respecting Human Rights in the Economy.⁶⁵

During the interactive dialogue in the third cycle of the UPR on 12 November 2019, Slovenia received 157 recommendations from other countries. Some recommendations urged Slovenia to ratify or accede to certain international instruments that it had not yet adopted. Among other suggestions, countries recommended that Slovenia: (a) complete the ratification process of the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights; (b) ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; (c) consider ratifying the 1961 Convention on the Reduction of Statelessness; (d) recognise the competence of the Committee on Enforced Disappearances to receive and consider applications from individuals or other States Parties; (e) introduce an open, merit-based selection process for national candidates for elections to UN treaty bodies; (f) provide the Advocate of the Principle of Equality with additional resources to enable comprehensive and effective operations; and so on. Additionally, countries have recommended that Slovenia adopt measures to combat all forms of human rights violations against the elderly and young people. It also urged Slovenia to implement the Constitutional Court's decisions that remain outstanding, including those related to the adoption of mental health measures.⁶⁶

Immediately following the dialogue on 13 November 2019, Slovenia adopted 58 measures for which activities had already been underway or planned, noting that several recommendations had already been fulfilled. For example, in response to Denmark's recommendation to ensure the full autonomy of the Human Rights Ombudsman and independence from the government by amending public finance legislation, Slovenia indicated that this had already been implemented. Pursuant to Article 55 of the Ombudsman Act, funds for the Ombudsman's operations are allocated from the national budget, with the amount determined by the National Assembly, based on the Ombudsman's

63 | Ibid.

64 | Ibid.

65 | Ibid.

66 | Ibid.

proposal. The Human Rights Ombudsman is a direct budget user within the state sector and is subject to all public finance regulations, including independent oversight by the Court of Audits. Two other recommendations that have already been implemented include the establishment of a national human rights institution and a dedicated national institution to protect children's rights.⁶⁷

3.3.2. *The Universal Periodic Review (UPR) – Fourth Cycle*

Following the submission of a voluntary midterm report on the implementation of the UPR 3rd cycle recommendations in March 2022, the Slovenian Government adopted the report in the fourth cycle of the UPR⁶⁸ in July 2024.

In the report, the Slovenian Government stated that it had fully or partially implemented 180 of the 182 recommendations from the third cycle. According to the Government, Slovenia's human rights framework remains strong, anchored by independent institutions such as the Human Rights Ombudsman, accredited with A-status under the Paris Principles since 2021, and the Advocate of the Principle of Equality. Efforts to combat hate speech have intensified, including the establishment of the Strategic Council for the Prevention of Hate Speech (2023), amendments to the Criminal Code that introduce hate crime provisions, public awareness campaigns, and planned Media Act reforms.

Social policies have advanced through the Long-Term Care Act (2023), housing reforms to expand affordable rentals, and a homelessness prevention strategy set for 2025. Gender equality measures have increased women's representation in parliament by nearly 40 percent, strengthened protections under the National Programme for Equal Opportunities for Women and Men and the National Programme for the Prevention of Domestic Violence and Violence against Women, and amended the Criminal Code (2021) to adopt an affirmative consent definition of rape.

Disability inclusion has progressed with constitutional recognition of Slovenian Sign Language and tactile sign language (2021) and the abolition of voting restrictions for persons under guardianship (2023). Child protection was reinforced by the opening of the first Barnahus (2022). Support for the Italian and Hungarian national communities and Roma continues through targeted education, social inclusion, and improved living conditions.

Migration policy reforms include the Integration Strategy (2023), Immigration Strategy (2024), expanded asylum-seeker accommodation, and new permanent centres for

67 | For example, in response to Denmark's recommendation to guarantee the Ombudsman's full autonomy and independence from the government by amending public finance legislation, Slovenia explained that this safeguard was already in place. Under Article 55 of the Ombudsman Act, funding for the Ombudsman's work is secured through the state budget, with the amount determined by the National Assembly upon the Ombudsman's proposal. As a direct budget user within the state sector, the Ombudsman is subject to all public finance regulations, including independent oversight by the Court of Audit. Furthermore, recommendations to establish a national human rights institution and a specialized national body for children's rights have likewise been implemented.

68 | National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21 – Slovenia, Human Rights Council Working Group on the Universal Periodic Review, Forty-eighth session, Geneva, 20–31 January 2025. [Online]. Available at: <https://docs.un.org/en/A/HRC/WG.6/48/SVN/1> (Accessed: 2 January 2026).

unaccompanied minors (2024). In 2024, the Constitutional Court upheld compensation legislation for ‘erased persons,’ with pending cases continuing to be resolved.

The Government also highlighted that Slovenia maintains one of the lowest rates of unimplemented ECtHR judgments and has strengthened international engagement, ratifying the Convention on Enforced Disappearance (2021) and adopting an anti-Semitism strategy (2023). It is currently in the process of ratifying the ILO Violence and Harassment Convention (No. 190), reviewing the Optional Protocol for the ICESCR, and has submitted draft legislation to ratify the Convention on the Reduction of Statelessness (2024).

In its fourth-cycle report on the UPR for Slovenia,⁶⁹ released in March 2025, the Human Rights Council Working Group on the UPR summarised the statements of 94 Member State delegations made during the interactive dialogue and issued 254 recommendations, including *inter alia*:

1. Ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights and aligning national legislation with their provisions.
2. Acceding to the 1961 Convention on the Reduction of Statelessness, in line with the pledge announced in 2023.
3. Taking measures aimed at strengthening the capacity of national human rights mechanisms, especially in protecting victims of gender-based violence.
4. Strengthening cooperation with civil society organisations to raise awareness of human rights at the local level through awareness campaigns and educational programmes.
5. Adopting and implementing a comprehensive anti-discrimination strategy that considers all grounds of discrimination, including hate speech (in the online domain) against migrants, Muslims, Jews, and other minority groups.
6. Adopting temporary special measures to accelerate women’s equal participation in all areas covered by the Convention on the Elimination of All Forms of Discrimination against Women, and at all levels where women are underrepresented or disadvantaged, including politics.
7. Adopting targeted measures for the economic empowerment of women and mainstream gender into social inclusion strategies and enforcing the principle of equal pay for work of equal value to reduce and ultimately close the gender pay gap.
8. Adopt a comprehensive strategy to combat all forms of gender-based violence against women, including domestic violence.
9. Strengthening measures to address violence and discrimination against LGBTIQ+ people, encouraged by the decision to develop a national strategy for the equality of lesbian, gay, bisexual, transgender, and intersex persons.
10. Continuing efforts to combat discrimination on the grounds of disability.
11. Continuing efforts to enhance the scope of long-term care and custom-designed services for the elderly to improve their daily lives and promote their inclusion.
12. Lifting restrictions on dual nationality for naturalised Slovene citizens.

69 | Report of the Working Group on the Universal Periodic Review – Slovenia, Human Rights Council Working Group on the Universal Periodic Review, Fifty-ninth session, 16 June–11 July 2025, [Online]. Available at: <https://docs.un.org/en/A/HRC/59/15> (Accessed: 2 January 2026).

13. Continuing efforts to reduce overcrowding and improve unsatisfactory conditions in prisons and detention centres.
14. Continuing efforts to uphold its responsibilities as a third State Party in preventing genocide, demonstrated by joining South Africa's case at the International Court of Justice.
15. Continuing to consolidate the principles of integrity in the public sector to further promote transparency in public administration.
16. Increasing the resources allocated to the commission in charge of corruption prevention for administrative investigation missions.
17. Adopting the juvenile justice act, as foreseen in the 2008 Criminal Code.
18. Strengthening legal and institutional protections for journalists.
19. Continually fostering the political independence of public media in its various forms and promoting a safe and independent media environment, including ensuring accountability for harassment and abuse against female journalists.
20. Decriminalisation of defamation and placing it within a Civil Code in accordance with international human rights standards.
21. Adopting new measures to facilitate the restoration of legal status and constitutional rights of the remaining 'erased' persons.
22. Removing all exceptions to the legal minimum age of marriage of 18 years for both women and men.
23. Strengthening efforts to prevent and combat trafficking in persons, in particular, by strengthening the procedure for early detection of victims among people in vulnerable circumstances, such as asylum seekers and migrants, including unaccompanied minors.
24. Improving the social security system to protect the rights of vulnerable groups, such as women, children, and persons with disabilities; continuing to take concrete and targeted actions to reduce poverty and inequalities within society; and continuing to cater to the housing needs of vulnerable groups.
25. Providing adequate and timely access to primary healthcare for all (including disadvantaged groups and people with disabilities), and taking necessary measures to address the shortage of health professionals.
26. Increasing efforts to promote an environmental culture, encourage sustainable policies that contribute to environmental protection, and mitigate the effects of climate change.
27. Increasing efforts to establish a dedicated office of a child rights ombudsman.
28. Ensuring the application of the principle of non-refoulement; continuing to strengthen support for refugees and migrants; and ensuring that they are provided with adequate protection, social integration programmes, and access to essential services such as healthcare, education, and employment.
29. Establishing a specific procedure for determining stateless status and adopting concrete measures to improve the registration of stateless individuals.

Taken together, these recommendations reflect a broad agenda for strengthening Slovenia's compliance with international human rights obligations and addressing the identified gaps in protection. They cover both legislative and policy reforms, with a notable focus on institutional strengthening, equality and non-discrimination, the protection of vulnerable populations, and compliance with international norms.

3.3.3. *Conclusions*

Considering Slovenia's reports in the third and fourth UPR cycles, the UN Human Rights Council Working Group's reports on and recommendations for Slovenia, the country's responses to recommendations, and the measures undertaken following the interactive dialogue with other states, it can be concluded that Slovenia remains firmly committed to the UPR process. On several occasions, recommendations, such as ensuring the independence and financial autonomy of the Human Rights Ombudsman; establishing a national mechanism for implementation, reporting, and follow-up of human rights recommendations; and guaranteeing that all minors facing criminal charges were represented by legal counsel, had already been fulfilled at the time they were issued.

Slovenia continues to constructively engage with the UN mechanism, both in its own reviews and those of other states, with the aim of introducing all international standards and strengthening human rights. Nonetheless, the UPR process has underscored that the country still faces significant challenges, particularly in fully harmonising its legislative framework with the requirements of ratified UN human rights conventions and ensuring consistent implementation of recommendations from UN monitoring bodies.

4. Independent Human Rights Institutions' Perspective on Implementing the Universal Protection of Human Rights in Slovenia

An illustrative case of how the implementation of the universal protection of human rights is perceived and evaluated by Slovenia's independent national human rights institution can be found in the Human Rights Ombudsman's submission to the fourth cycle of the Universal Periodic Review (UPR), issued in July 2024. This submission presents a structured overview of current human rights concerns in Slovenia, encompassing both long-standing issues previously addressed through UPR recommendations and new challenges that have emerged since the last review cycle:

a) Implementation gaps regarding UPR recommendations

In assessing the follow-up to the third cycle of UPR recommendations, the Ombudsman noted that Slovenia had yet to establish an independent mechanism to promote, protect, and monitor the implementation of the Convention on the Rights of Persons with Disabilities (CRPD), as required by Article 33(2) of the Convention. Slovenia lacks a designated national rapporteur for human trafficking. The Ombudsman proposes that such a role be created within the Office of the Human Rights Ombudsman, with dedicated human and financial resources. The absence of these mechanisms is viewed as a persistent shortcoming in Slovenia's compliance with UN Treaty Body obligations.⁷⁰

70 | Report of the Working Group on the Universal Periodic Review – Slovenia, Human Rights Council Working Group on the Universal Periodic Review, Fifty-ninth session, 16 June – 11 July 2025, [Online]. Available at: <https://docs.un.org/en/A/HRC/59/15> (Accessed: 2 January 2026), p. 2.

- b) Anti-discrimination and hate speech
The Ombudsman observes that Slovenia has not adopted a comprehensive anti-discrimination strategy. It recommends that authorities establish an appropriate legal framework for the effective prevention of hate speech, particularly in online and social media contexts. This reflects a continuing gap in implementing recommendations from both the UPR and UN treaty bodies that address equality and non-discrimination.⁷¹
- c) Environmental governance and administrative procedures
For several years, the Ombudsman has highlighted the excessive length of inspections and administrative procedures in the fields of environment and spatial planning, noting negative implications for rights protections and public trust.⁷²
- d) Penal system and alternatives to detention
Prison overcrowding remains a pressing issue for penal enforcement. The Ombudsman described the situation as alarming, pointing to insufficient measures to expand or strengthen the use of alternatives to detention, despite repeated recommendations from UN human rights mechanisms.⁷³
- e) Care for older persons and healthcare system challenges
Ombudsmen reported a marked increase in complaints regarding violence against care home residents, calling for targeted investments in safety measures, staff training, and professional education. It also identified the absence of systemic provision for persons under 65 years of age who require institutional care after hospital treatment. Long-standing deficiencies in the healthcare sector persist, including excessive waiting times in various medical and dental services and inadequate systemic responses to the needs of children with severe mental health disorders.⁷⁴
- f) Rights of persons with disabilities
Barriers to the accessibility of public facilities remain widespread. The Ombudsman has repeatedly drawn attention to the inaccessibility of schools, municipal buildings, courts, and administrative offices to persons with disabilities, which is inconsistent with Slovenia's obligations under the CRPD.⁷⁵
- g) Legal recognition of gender
Current procedures require individuals seeking to change the gender marker on their identity documents to obtain a medical certificate, effectively necessitating the diagnosis of a mental disorder. The Ombudsman has recommended the adoption of legislation on legal gender recognition, which is in line with international human rights standards.⁷⁶
- h) Situation of the Roma community
Social exclusion among the Roma, particularly in southeastern Slovenia, remains severe. Many Roma live in segregated settlements without secure tenure, and

71 | Ibid.

72 | Ibid., p. 3.

73 | Ibid.

74 | Ibid., p. 4.

75 | Ibid., p. 5.

76 | Ibid., p. 6.

some lack basic services, such as safe drinking water, sanitation, and electricity. The Ombudsman has consistently called for measures to ensure adequate housing and essential infrastructure.⁷⁷

i) Violence against women

The Ombudsman notes that women experience repeated violence more frequently than men, and often suffer more severe consequences. Three-quarters of victims of intimate partner violence are women. The absence of a specialised crisis referral centre for victims of rape or sexual violence is highlighted as a serious gap in compliance with Article 25 of the Istanbul Convention.⁷⁸

j) Migration, asylum, and treatment of third-country nationals

The Ombudsman reports that persistent delays in processing residence permit applications for third-country nationals negatively affect both existing residents and prospective migrants, including those seeking work or family reunification. Overcrowding at the Ljubljana asylum-seeker reception centre has led to violations of personal dignity, privacy, and security. Furthermore, migrants apprehended at the border are returned to neighbouring countries without written decisions, depriving them of access to legal remedies. The recommendation to provide suitable alternative accommodations for families with children and use the detention of minors only as a last resort remains unimplemented.⁷⁹

Overall, the Ombudsman's submission to the fourth cycle of the UPR (as well as its annual and thematic reports) offers a nuanced mirror to Slovenia's implementation of UN human rights recommendations. While it acknowledges progress in certain areas, it underscores persistent gaps, particularly in establishing key institutional mechanisms, protecting vulnerable groups, and providing adequate resources for effective rights protection. These findings suggest that Slovenia's engagement with the UN human rights mechanisms is substantive but uneven, with systemic reforms and stronger implementation measures required to meet its international obligations.

5. The Scholarly Discussion on Implementing the Universal Protection of Human Rights in Slovenia

Slovenian scholars have made important contributions to the study and discussion of the UN human rights protection instruments. Their research addresses a wide spectrum of issues, including the universal system of human rights protection, the role of UN institutions, and the domestic implementation of international human rights instruments and standards. A search of the National Library Information System (Cobiss) yielded several hundred publications. These include books and scientific monographs, peer-reviewed

77 | Report of the Working Group on the Universal Periodic Review – Slovenia, Human Rights Council Working Group on the Universal Periodic Review, Fifty-ninth session, 16 June–11 July 2025, [Online]. Available at: <https://docs.un.org/en/A/HRC/59/15> (Accessed: 2 January 2026).

78 | Ibid.

79 | Ibid., p. 7.

and professional journal articles, diplomas and master's theses, doctoral dissertations, and other academic works. In addition, various practical publications, such as manuals, brochures, reports, and commentaries, are dedicated to specific UN covenants, conventions, and other human rights instruments, to the functioning of UN institutions and monitoring bodies, and to the implementation of particular rights or groups of rights in Slovenia. These include the prohibition of genocide, the elimination of discrimination against women, or the universal protection of children's rights. Given the large volume of scientific and scholarly work, we did not aim to provide a comprehensive systematic review. Instead, this section briefly refers to the selected publications which were considered by the author of this article to be the most relevant.

Among various books and monographs, one particularly noteworthy publication is Human Rights Documents with Introductory Explanations [Slov. *Dokumenti o človekovih pravicah z uvodnimi pojasnili*], edited by Professor Miro Cerar and colleagues.⁸⁰ This book was published in 2002 by Amnesty International Slovenia and the Peace Institute.

The chapter on the universal protection of human rights explores the origins and historical evolution of human rights protection within the framework of the United Nations (UN) and its principal legal instruments. It also examines the inherent challenges in implementing universal international legal norms related to human rights. The authors underscore widespread pessimism among both the general public and experts regarding the effectiveness of international organisations in safeguarding global peace and enforcing human rights. They draw attention to persistent problems such as institutional overlap within the UN's human rights framework and the limited or absent enforcement of human rights in many member states. According to these authors, these issues demand far greater global recognition and urgency from policymakers.⁸¹

One of the authors' most critical observations is the United States' refusal to sign the Rome Statute, which they regarded as a major setback for the international community. Simultaneously, they argued that the fundamental value of human rights was becoming increasingly uncontested. Although the belief that power remains a decisive factor in international relations is still deeply rooted, they note that the global order is evolving. To illustrate, they point to historical examples: in the eighteenth century, slavery was widely accepted, yet today it is universally condemned as a crime. Similarly, only a few decades ago, it was almost unthinkable that a head of state could be prosecuted for serious human rights violations in another country or before an international court – yet today, such prosecutions are possible. The authors contend that the UN has played a central role in advancing human rights globally and has made vital contributions to its primary mission: the maintenance of international peace and security.⁸²

The foreword for this publication was written by Professor Danilo Türk, former President of the Republic of Slovenia and former UN Deputy Secretary-General.

Danilo Türk is also the author of the monograph *Fundamentals of International Law*,⁸³ in which he explores the development of the fundamental principles of international law. He examined key topics such as states as subjects of international law, international legal transactions, state responsibility under international law, the peaceful settlement of

80 | Cerar et al., 2002.

81 | Šabič and Roter, 2002, pp. 47–48.

82 | Ibid.

83 | Türk, 2007.

disputes, collective security, the law of armed conflict, and the international protection of human rights. In addition, the author delves into the universal protection of human rights in international law and the concept of individual criminal responsibility. This work has been reprinted multiple times and serves as a primary study resource for the law and other faculties in Slovenia.

In 2003, Slovenian human rights law expert Jasna Murgel published an article examining UN mechanisms for the protection of human rights.⁸⁴ Her article focuses on proceedings before so-called treaty bodies, which, under some of the most important international human rights treaties adopted within the UN framework, allow individuals or groups of individuals to initiate cases if they believe their rights under these treaties have been violated. The author's analysis includes the following monitoring bodies: the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee for the Prevention of Torture, the Committee on the Elimination of Discrimination against Women, and the Committee on the Rights of All Migrant Workers.

The author notes that the treaty bodies have not dealt with as many cases as international judicial bodies, particularly the European Court of Human Rights. This may be due to the general belief that their work was ineffective. In the author's opinion, the most important reason for this is the non-binding nature of the recommendations adopted by treaty bodies.⁸⁵

The author further points out that only the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women obliges the parties to send a written notification of the measures taken in relation to the opinion of the Committee on the Elimination of Discrimination against Women if the committee requests it. Due to the non-binding nature of the recommendations of treaty bodies, political pressure is the only means they can use to achieve their implementation. They can accomplish this by publishing annual reports that they send to the UN General Assembly.⁸⁶

According to the author, Slovenia is a party to most UN instruments for the protection of human rights, which it inherited from former Yugoslavia. By ratifying the protocols, Slovenia also recognised the competence of most committees to consider communication from individuals. Murgel concluded by highlighting that although, in principle, anyone, not only a Slovenian citizen, could address communication against Slovenia to the committees, no communication had been filed against Slovenia with the UN treaty bodies by June 2003.⁸⁷

In an article published in the January 2001 issue of *Journal of Legal Practice* (Slov. *Pravna praksa*), Murgel examined the implications of implementing the Optional Protocol for the Convention on the Elimination of All Forms of Discrimination against Women. The author emphasised that this Optional Protocol represents a significant advancement in the development of procedures for monitoring the implementation of the convention. Additionally, it expands the range of international treaties whose enforcement can be subject to international oversight, even at the initiative of an individual. Previously, this

84 | Murgel, 2003, pp. I-III.

85 | Ibid.

86 | Ibid.

87 | Ibid.

possibility had only been provided by three universal international treaties and a few regional agreements.⁸⁸

The author is critical of the fact that State Parties to the Protocol are only required to report to the Committee on the measures they have taken to address violations of the Convention. The Protocol does not obligate them to implement the Committee's recommendations, nor does it impose sanctions for non-compliance. Consequently, states cannot be compelled to rectify established violations.⁸⁹

Murgel explained that the Committee is not an international judicial body, such as the European Court of Human Rights, whose decisions are legally binding to the parties to the Convention and Protocol. Instead, it serves as a political oversight body that can only highlight instances in which a State violates the treaty's provisions. Nonetheless, the author argues that the recommendations of treaty bodies, and even more so those of UN bodies, carry significant political weight despite not being legally binding.⁹⁰

In today's international community, governments are increasingly influenced by public opinion, which is shaped in part by the activities of international bodies and institutions that advocate for stronger human rights protection. The author concludes that such recommendations serve as powerful tools in the political fight against human rights violations, including discrimination against women.⁹¹

In his article entitled *Challenge for Universal Protection of Human Rights* (published in 2003), Dean Zagorac maintains that today, global and local challenges for universal human rights protection appear to be 'how to close a gap between normative guarantees and human rights protection in practice' and 'how to counterbalance well developed normative framework in the field of civil and political rights with the framework of economic, social, and cultural rights which lags behind'. The author observes that thematic mechanisms are of particular interest in the development of international human rights norms because of their relative effectiveness in promoting and protecting human rights. In 2003, 24 such mechanisms were in operation. Their experts conducted country visits and fieldwork, but only at the express invitation of the concerned state. A state may also issue a standing invitation applicable to all current and future mechanisms, a step taken by 40 countries, including Slovenia.⁹²

The scientific article by Bajt and Kogovšek Šalamon examines statelessness in Slovenia and constitutes one of the first in-depth empirical studies on this subject. It highlights significant data gaps and identifies groups at particular risk – most notably the Roma and the so-called erased residents – linking these vulnerabilities to shortcomings in Slovenia's compliance with international obligations, especially those under UN human rights mechanisms. The authors argue that these groups are disproportionately affected by gaps in nationality policy, illustrating Slovenia's lag in meeting the UN human rights standards on citizenship and non-discrimination.⁹³

A more specific aspect of the problem of statelessness is explored by Vučko and Kogovšek Šalamon in their working paper, *Ending Childhood Statelessness: A Study*

88 | Murgel, 2001, pp. 31–32.

89 | Ibid.

90 | Ibid.

91 | Ibid.

92 | Zagorac, 2003, pp. 77–85.

93 | Bajt and Šalamon, 2014.

on Slovenia. The survey maps Slovenia's implementation of UN obligations relevant to children's nationality according to the 1954 Convention on the Rights of the Child, identifies legal and administrative gaps (e.g. lack of a dedicated statelessness determination procedure), and offers practice-oriented recommendations for aligning national law with UN standards. According to these authors, Slovenia lacks a dedicated statelessness-determination process. Cases of childhood statelessness are rarely identified because of the reliance on ad hoc administrative processes. Despite the ratification of the 1954 UN Convention relating to the Status of Stateless Persons, implementation on the ground has been insufficient, leaving many vulnerable individuals without proper rights or protection.⁹⁴

In her book *Migration Law in Slovenia*, Neža Kogovšek Šalamon synthesises Slovenia's migration regime and its reception of the European Union and international (Council of Europe and UN) human-rights commitments in domestic law and practice, with attention to anti-discrimination and status-rights implementation. The author observed numerous shortcomings in the Slovenian legal regulations and practices, especially in relation to legal status and ensuring the right to asylum. According to Kogovšek Šalamon, many recent amendments to domestic legislation reflect a drive for maximum effectiveness across all sectors, including law enforcement, often at the expense of constitutional, procedural, and fundamental rights. This emphasis on efficiency has led to expedited Refugee Status Determination Procedures (RSDPs); the introduction of extensive lists of grounds for detaining asylum seekers; the conditional protection of trafficking victims, who may obtain a residence permit only if they cooperate in criminal proceedings and if their testimony is deemed sufficiently important; and the establishment of broad grounds for refusing entry at the external border, in some cases relying on data drawn from modern 'interoperable' information systems.⁹⁵

In a monograph chapter entitled *Erased: Citizenship, Residence Rights and the Constitution in Slovenia*,⁹⁶ the same author analyses the case of 'erased residents' through constitutional and international-law lenses (including UN standards), tracking how international obligations informed domestic redress and policymaking. This case illustrates how the UN human rights principles can serve as catalysts for domestic legal change when implementation gaps are addressed.

The United Nations Guiding Principles (UNGPs) on Business and Human Rights are explored by Til Rozman in *Business and Human Rights – Implementing the UNGPs in Slovenia*. The author claims that Slovenia is among the few countries with a National Action Plan (NAP) on Business and Human Rights (adopted in 2018) and emphasises the role of state-owned enterprises in human rights due diligence. While having a NAP in place suggests policy alignment with the UNGPs, implementation in practice, especially within commercial and state-linked sectors, remains an ongoing challenge.⁹⁷

The UNGPs on Business and Human Rights are also addressed by Jernej Letnar Čer nič, a Slovenian expert in human rights law, in his non-peer-reviewed blog on *Business and Human Rights in Slovenia*. Letnar Čer nič situates Slovenia's NAP on Business and Human Rights within the UNGPs framework and assesses progress/challenges in putting UN

94 | Vučko and Šalamon, 2015, p. 20.

95 | Šalamon, 2018, p. 16.

96 | Šalamon, 2016.

97 | Rozman, 2020, pp. 51–74.

standards into practice. Letnar Čerňič asserts that, divided into seven chapters and two annexes, the NAP partially follows the structure of the UNGPs on Business and Human Rights, particularly as concerns state obligations to protect human rights against the adverse corporate conduct. However, according to the author, like many national action plans, the NAP of Slovenia does not include any commitment to the second pillar of the UNGPs on corporate responsibility to respect human rights.⁹⁸

In her article, UN Security Council Membership as a Litmus Test for Slovenia's Responsibility to Protect, Vasilka Sancin, a renowned expert in international law and newly elected Slovenian judge at the European Court of Human Rights, discusses Slovenia's relationship with UN norms, particularly the Responsibility to Protect (R2P), during its non-permanent UN Security Council (UNSC) tenure. Contextualising Slovenia's human-rights diplomacy within international commitments, the author argues that political engagement with UN human rights mechanisms can influence domestic awareness and alignment, though concrete implementation outcomes vary. According to her, Slovenia's strongest potential, generally, particularly during its UNSC membership, lies not in its monolithic contributions towards operationalising R2P, but rather in its role as a global R2P convener.⁹⁹

Dane Katalinič contributed an article to the Journal of Family and Social Education on the implementation of the Convention on the Rights of the Child, titled The Rights of the Child in Kindergartens.¹⁰⁰

The role and significance of United Nations treaty bodies in the implementation of international human rights law are examined in the doctoral dissertation of Urša Pavčič.¹⁰¹

Overall, these and many other publications demonstrate the active involvement of Slovenian scholars in analysing and contributing to the discourse on universal human rights protection mechanisms. However, as is evident, scholarly studies on the implementation of the universal protection of human rights in Slovenia do not examine it in its entirety but instead focus on specific aspects. Consequently, most academic contributions offer only partial insights, addressing areas such as statelessness, migration, and business, rather than providing a comprehensive assessment of Slovenia's overall success and effectiveness in implementing international (UN) human rights standards.

6. Conclusions

This article has examined the implementation of the United Nations' universal human rights protection system in Slovenia through a combined historical, institutional, and practical lens. The analysis demonstrates that Slovenia has developed a relatively robust framework for the protection of human rights, grounded in both its constitutional order and its extensive engagement with international legal instruments.

98 | Letnar Čerňič, 2019.

99 | Sancin, 2024, pp. 546–562.

100 | Katalinič, 1991, p. 18.

101 | Pavčič, 2019.

From a historical perspective, the development of human rights in Slovenia reflects a process of gradual evolution rather than abrupt transformation. While the country's modern constitutional framework emerged following independence in 1991, many of its core human rights principles have deeper roots in earlier legal traditions and constitutional arrangements. This continuity has contributed to a relatively stable and receptive environment for the incorporation of international human rights standards into domestic law.

At the institutional level, Slovenia demonstrates a strong formal commitment to the United Nations human rights system. It is a party to most core UN human rights treaties, participates actively in reporting procedures, and engages constructively with monitoring mechanisms such as treaty bodies and the Universal Periodic Review. The establishment of coordinating structures, such as the Inter-Ministerial Commission for Human Rights, further illustrates a systematic approach to fulfilling international obligations.

However, the analysis also reveals that the effectiveness of this framework is uneven. While Slovenia has made notable progress in aligning its legislation with international standards and has implemented a significant number of recommendations issued by UN bodies, persistent challenges remain. These include gaps in the practical implementation of rights, delays in administrative and judicial procedures, insufficient institutional capacities in certain areas, and ongoing difficulties in protecting vulnerable groups. Reports by independent institutions, particularly the Human Rights Ombudsman, highlight recurring issues such as discrimination, prison overcrowding, barriers faced by persons with disabilities, and shortcomings in migration and asylum procedures.

The Universal Periodic Review cycles further confirm this mixed picture. On the one hand, Slovenia is recognised as a state that engages seriously with international monitoring processes and has achieved measurable progress in several areas. On the other hand, the growing number and breadth of recommendations indicate that full compliance with international human rights obligations has not yet been achieved. The gap between normative commitments and their effective realisation in practice remains a central challenge.

Scholarly discussions largely support this assessment, emphasising that Slovenia's approach to implementing universal human rights standards is fragmented and often sector-specific. While certain areas – such as gender equality or child protection – have seen significant advancements, others, including statelessness, migration, and business and human rights, continue to reveal structural deficiencies. This confirms that, despite a comprehensive legal and institutional framework, implementation is neither uniform nor complete.

In conclusion, Slovenia can be characterised as a state with a high level of formal commitment to the universal human rights system and a generally positive record of engagement with United Nations mechanisms. Nevertheless, the effectiveness of this commitment ultimately depends on the consistent and coherent implementation of international standards at the domestic level. Addressing the identified gaps will require not only legislative adjustments but also strengthened institutional capacities, improved coordination among stakeholders, and sustained political will. Only through such measures can Slovenia fully realise the potential of the universal human rights protection system and ensure that internationally guaranteed rights are effectively enjoyed in practice.

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HUMAN RIGHTS ISSUES IN EU ACCESSION NEGOTIATIONS WITH CANDIDATE STATES: GEORGIA

Dimitry Gegenava¹

ABSTRACT

This article examines the role of fundamental rights, access to justice, and the rule of law in Georgia's EU accession process, focusing on the challenges identified in the European Commission's 2023 assessment and related reform priorities. Using doctrinal legal analysis and a policy-oriented approach, the study evaluates Georgian constitutional and legislative frameworks, judicial and prosecutorial practices, and the findings of European and international monitoring bodies. It analyses key problem areas affecting compliance with EU standards, including delays in judicial proceedings, inadequate reasoning in court decisions, restrictions on freedom of expression, assembly, and association, shortcomings in anti-discrimination and personal data protection, ineffective execution of European Court of Human Rights judgments, and broader institutional deficiencies in judicial governance, prosecutorial independence, migration policy, and anti-corruption mechanisms. The article demonstrates that, despite the formal adoption of certain reforms within the European integration process, many changes remain fragmented and do not adequately address systemic governance issues. It concludes that Georgia's genuine progress towards EU membership depends not only on formal legislative alignment but also on substantive institutional reforms capable of ensuring effective human rights protection, judicial independence, and accountable democratic governance.

KEYWORDS

Georgia
Human Rights
judicial system
EU
candidate state

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1. Introduction

Georgia is part of the Continental European (Civil Law) legal family; this is not merely a matter of legal geography, but the whole nation's historical choice. This affiliation is based on values, history, national principles, and an understanding of law. Considering this, it is entirely logical for Georgia to aspire to be not only a member of the European legal dimension but also part of the larger political system – the European Union. To this end, the Association Agreement between Georgia and the European Union was signed in 2014, which substantively elevated Georgia – EU relations to a new level, necessitating the planning of appropriate measures, structuring of approximation–harmonisation processes, and consistent work.

Georgia applied for EU membership in 2022.² The European Commission established 12 recommendations for obtaining candidate status and ultimately recommended granting candidate status to Georgia in the same year.³ Among these recommendations, particular importance was placed on judicial reform, the rule of law, and human rights protection. A small portion of the recommendations has been successfully implemented, such as reaching an agreement on the Public Defender candidate and electing him based on consensus. Although a large part of the opposition did not participate in the vote, the Public Defender was eventually elected through an agreement between the ruling party and part of the opposition.⁴ Work on a large portion of the recommendations is proceeding with delays and with limited success. Some of these are well-known problems that remain perennial challenges for the Georgian legal and political system. Corporatism and informal influences; the extensive power of the High Council of Justice; the lack and ineffectiveness of guarantees for judges' personal independence; and the lack of transparency in the court system along with very low accountability are significant problems of Georgian judiciary.⁵

The basis for granting candidate status was the relevant report by the European Commission, in which Chapters 23 and 24 addressed fundamental human rights, justice, and rule of law issues. Both from legal and socio-political perspectives, these are of utmost importance, as they are systemic issues and directly impact everyday reality. This paper reviews and describes the challenges related to fundamental human rights in Georgia, with particular focus on freedom of assembly and association, freedom of expression, as well as procedural rights, elimination of discrimination, and protection of minority rights and freedoms. Particular attention is paid to the justice and prosecution systems and their challenges, analysing the problems and shortcomings of the Georgian constitutional and common court systems that affect the effectiveness of rights protection and justice in general. The fight against organised crime, anti-corruption policy, and migration issues mentioned in the article are reviewed only in the context of human rights and

2 | OSCE/ODIHR, Opinion No. JUD-GEO/457/2023 [NR], Note on Several Issues Relating to Judicial Reform, Warsaw, 26 June 2023, para. 17.

3 | European Commission, Opinion on the EU Membership Application by Georgia, Brussels, 17 June 2022.

4 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 30.

5 | See Papuashvili et al., 2023, p. 9.

the rule of law, within the framework of the information cited in the European Commission's report.

2. The State of Fundamental Human Rights in Georgia

Given its Soviet past, it is natural that Georgia faces numerous challenges in protecting fundamental human rights. A large part of these is shaped by the heavy historical legacy that the country inherited at both governmental and societal levels as a result of totalitarianism and hybrid democracy, established after regaining independence. Various reforms related to human rights have been carried out in different periods, and the constitutional amendments of 2017-2018 also affected the second chapter of the Constitution of Georgia, which unites the constitutional norms on basic rights.⁶

Both at the legislative level and at the stage of law enforcement, human rights face many challenges in the country, so it was entirely logical that this issue would receive special attention in the European Commission's report. The Commission highlighted several key issues: 1. Completion of the Action Plan for the Human Rights Strategy and consideration of the recommendations of the Public Defender and relevant local and international organisations; 2. Strengthening anti-discrimination legislation, prevention of hate speech and hate-motivated crime; 3. Eliminating discrimination, ensuring the protection of ethnic and religious minorities; 4. Ensuring freedom of assembly and expression, investigation of actions against freedom of expression, including violence against demonstrators at mass protest actions, reform of the Code of Administrative Offenses with the participation of interested parties; 5. Refining personal data protection legislation and strengthening the Personal Data Protection Service, taking into account the recommendations of the Venice Commission.⁷

In 2023, the Parliament of Georgia approved the National Strategy for the Protection of Human Rights (2022-2030) as a framework document for necessary measures to achieve the common national strategic goal.⁸ The strategy addresses the challenges of human rights, but it has problems both in content and in formal terms, as it simply does not include certain directions, including accents and information on the protection of the rights of vulnerable groups.

| 2.1. Court Case Review Timeframes and the Right to a Reasoned Decision

The Georgian judicial system is overloaded, leading to delayed case reviews⁹ and, consequently, undermining the right to a fair trial. This issue is on the agenda for both common courts and the Constitutional Court, although the underlying causes differ. In the case of common courts, the main reasons for delayed case reviews are: the objective multitude of disputes, the small number of judges, abuse of procedural mechanisms by

6 | See Gegenava, 2019, p. 112.

7 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 28.

8 | See Resolution N2663-XI06-X03 of the Parliament of Georgia, 23 March 2023.

9 | See European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 25.

parties, ambiguity of legislative regulations, etc.¹⁰ The situation is significantly different for the Constitutional Court. Here, the delay in making and announcing decisions is mainly related to the political nature of the issues. As a result, the Constitutional Court tries to formally adhere to the case review timeframe but delays the announcement of the final decision as much as possible (often this process continues for years). Currently, several important issues have been appealed to the Constitutional Court, but the timeframes for review and case resolution are very stretched out. For some cases, despite years-long processes, decisions have not yet been announced.¹¹

Judges in administrative positions enjoy an advantage in case distribution, receiving significantly fewer cases to review compared to other judges.¹² It further overloads and weighs down an already overloaded system. Moreover, although an electronic case distribution system is in place, court case distribution is used to appoint desired judges to specific cases and to influence final decisions. The opaque system and exceptions to the rule reduce trust in the judiciary.¹³ The legislation is ambiguous regarding the intervention of court chairpersons in the case distribution process; they are not required to justify their intervention decisions.¹⁴

Reasoning decisions is a challenge for Georgian courts. This issue is problematic for both common courts and the Constitutional Court, albeit to varying degrees. The legislative amendments of 2022 assign a special role to the use of case-law of the European Court of Human Rights (ECtHR) in justifying judicial acts for Georgian common courts. Moreover, special departments were created within the judicial system to analyse relevant ECtHR practices.¹⁵ Despite this, it can be said that ECtHR practice is cited thoughtlessly, formally, and without any analysis, which in many cases even leads to comical situations¹⁶ (when it is unclear why a particular judgement was used in the reasoning, both thematically and considering time and context).

The decisions of the Constitutional Court of Georgia and common courts have undergone a very interesting evolutionary path in terms of legal technique – and progress is indeed noticeable. However, this is more related to the formal side, while the substantive coherence and reasoning still barely meet the minimum standard, and even that does not always happen. Several main systemic and substantive challenges of court decisions can be identified: 1. Decisions should focus more on content, properly analysing its functional significance as a judicial act, as well as the purpose and role of structural parts; 2. The content and volume of the descriptive part of the decision should be determined considering the specifics of the case under review; 3. Decisions should become more analytical, based on evaluative reasoning and argumentation, changing the descriptive style; 4. Acts should be enriched with sociological and legal sources; 5. Judicial acts should cite relevant national or international court practices to substantiate legal positions; 6.

10 | Bakradze and Tsikarishvili, 2023, pp. 13–144.

11 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 23.

12 | Papuashvili et al., 2023, p. 42.

13 | Gobronidze, Gerliani and Papuashvili, 2021, p. 123.

14 | Papuashvili et al., 2023, p. 44.

15 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 30.

16 | See Tsimakuridze and Japaridze, 2021, pp. 71–72, pp. 105–106.

Decisions should not be template-based and should not repeat the substantive or formal parts of other acts.

| **2.2. Freedom of Expression, Hate Speech, and Hate-Motivated Crime**

The European Commission has highlighted several priority areas regarding freedom of expression: ensuring the safety of journalists, including prevention of attacks against them and investigation of incidents; strengthening the independence of the Communications Commission; and developing and refining an appropriate legislative framework for hate speech and expressions inciting racism and xenophobia in relation to freedom of expression.¹⁷

Several court proceedings are ongoing concerning critical media, and attacks on media independence are noticeable.¹⁸ Criminal proceedings and investigations against media corporations and their chief executives are particularly dangerous, as such mechanisms damage these media themselves, while also having a certain chilling effect on other critical organisations. In the context of media independence, the role of the Communications Commission is particularly important, as according to Georgian legislation, the Commission is the watchdog¹⁹ and its impartial, transparent operation is a necessary prerequisite for media pluralism. The Commission's activities require more transparency, impartiality, and functional independence; the same applies to the process of selecting and appointing Commission members.²⁰

According to the European Commission's report, effective investigation of hate-motivated crimes remains a challenge for Georgia.²¹ National legislation has provided for the punishment of hate crimes,²² including gender-based violence and gender discrimination, but their practical enforcement is problematic. It is necessary to implement effective protective mechanisms and victim support tools.²³ The investigation of hate-motivated crimes is complicated by the social situation, the perception of the crime itself, the collection of evidence, and the process of proof in court. Given the complexity of the evidentiary process, the personal nature of the hate motive, and the priority of punishing the offender, in many cases, the prosecutor's office prefers to be guided by general criminal law provisions rather than specific hate crime provisions.

| **2.3. Freedom of Assembly and Association, Political Rights**

In March 2023, the so-called 'Agents Law' caused great turmoil and mass protests, resulting in Parliament's refusal to finally adopt the bill.²⁴ The draft law contained numerous threats and damaged the ongoing democratic processes in the state, the rule of law,

17 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 34.

18 | Ibid., p. 35.

19 | See Law N1514 of Georgia 'On Electronic Communications', 2 June 2005.

20 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 35.

21 | Ibid., pp. 30, 33.

22 | See Law 763-III of Georgia amending Criminal Code of Georgia, 4 May 2017; Law 3772-III of Georgia amending Criminal Code of Georgia, 30 November 2018.

23 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 38.

24 | Venice Commission, CDL-AD(2024)020, para. 7.

and equality before the law. Nevertheless, in the spring of 2024, the Georgian Parliament again returned to discussing the draft law 'On Transparency of Foreign Influence', which once again proceeded against a backdrop of mass protests and demonstrations. The Venice Commission considered the law incompatible with human rights, stating that it stigmatises individuals and organisations, is not a proportionate means of achieving a legitimate aim, and damages the rule of law.²⁵ The President of Georgia vetoed the law, but despite this, Parliament overrode it and ensured the act's implementation. The law declares organisations that receive more than 20% of their income from other states or international organisations as subjects of foreign influence.²⁶ It stigmatises individuals and associations of individuals, inciting hostile attitudes towards them,²⁷ and has many legal problems. The regulation establishes an unpredictable regime for non-governmental organisations, equips the executive branch with broad discretion to restrict fundamental human rights based on its own decision without prior court control, and endangers the protection of professional secrecy and personal data. Most importantly, the restrictive actions and regulation fail to meet proportionality – specifically the criterion of necessity in a democratic society, as the legitimate public goal of the law (financial transparency of non-governmental organisations) can be achieved using numerous alternatives and less restrictive mechanisms.

On 1 October 2023, Parliament adopted amendments to the 'Law on Assembly and Manifestations', which restricted freedom of assembly. The law was criticised by the Public Defender, and the President vetoed it.²⁸ The policy towards freedom of assembly, association, and political rights is complex and, unfortunately, damages both human rights and threatens the country's international image and political and electoral environment, as well as inciting discord between different groups in society, which ultimately endangers the sustainability and practical enforcement of the rule of law.

| 2.4. Discrimination and Gender Equality

Georgia has modern anti-discrimination legislation, but there is no particular emphasis on protecting the rights of certain vulnerable groups.²⁹ Fighting discrimination is not a one-time or exhaustible goal; it requires both legal foundations and effective rights protection mechanisms. Protecting equality and eliminating discrimination for various vulnerable groups requires different approaches. The challenges differ in terms of protecting the rights of children and women, LGBTIQ individuals, ensuring gender equality, and creating an appropriate political and legal environment for religious and ethnic minorities.

Gender policy needs to be strengthened in favour of women. At the social and labour levels, there are noticeable differences in many areas between women's and men's remuneration and social guarantees. Women's participation in decision-making processes is also problematic.³⁰ In 2020, the obligation for gender quotas in local and parliamentary

25 | See *Ibid.*, paras. 98–101.

26 | Law 4194-XIV8b-X83 of Georgia 'On Transparency of Foreign Influence', 28 May 2024, Art. 2(1).

27 | See Tabatadze et al., 2024, pp. 3–16.

28 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 36.

29 | *Ibid.*, p. 37.

30 | *Ibid.*, p. 38.

elections was reflected at the legislative level, taking into account past OSCE/ODIHR recommendations.³¹ Gender quotas are a common practice, and according to the Venice Commission, they do not contradict the electoral principle of equality if they have proper constitutional foundations.³² The Constitutional Court of Georgia shared the same position, considering gender quotas in electoral legislation constitutional and noting that it was justified by the legitimate aim of ensuring gender equality.³³

In 2024, the Parliament of Georgia expedited the review and approval of changes to electoral legislation, abolishing the obligation of gender quotas for political parties in elections.³⁴ According to the Venice Commission's assessment, there was no need to abolish quotas, and such a decision should have been made much more calmly, based on the analysis and discussion of modern approaches and opinions.³⁵ Given that women's representation in electoral processes at the parliamentary and local levels needs strengthening, the Commission recommends that Georgia develop temporary measures to overcome the problem.³⁶ These measures or mechanisms may not be related to quotas at all and could be much more effective and results-oriented, changing the existing situation at the social level. However, the hasty abolition of quotas and implementation of changes in this manner certainly cannot be perceived as a positive step.

There are other challenges in protecting women's rights: prevention of sexual harassment and investigation/civil litigation of related cases, prevention and investigation of domestic violence cases, freedom of expression for women who have experienced violence, proper legislative regulation of crimes against sexual freedom, etc. According to the European Commission's assessment, progress in protecting victims' rights is noteworthy, but it should be noted that there is inconsistent practice regarding the granting of victim status itself, and granting such status in high-profile cases related to freedom of expression is problematic.³⁷ In court practice, attempts to silence women who are victims of harassment or violence are frequent, both through SLAPP lawsuits and the use of other procedural mechanisms.³⁸

LGBTIQ individuals are the most marginalised group in Georgia, with the protection of their rights being a particular problem both socially and politically. Aggression towards them is often encouraged by political actors.³⁹ The human rights strategy adopted by the Georgian Parliament does not focus on protecting LGBTIQ rights.⁴⁰ Moreover, in September 2024, the legislature passed a law 'On Family Values and Protection of Minors', which the president did not sign; however, the law still came into force. Unfortunately, this legislative act further contributes to the stigmatisation of LGBTIQ persons, reinforcing

31 | See OSCE/ODIHR, 2016, Rec. 16.

32 | Venice Commission, CDL-AD(2002)023rev2-cor, Guideline I.2.5.

33 | See Decision N3/3/1526 of the Constitutional Court of Georgia, 25 September 2020.

34 | See Organic Law N4158-XIV06-X03 of Georgia amending Election Code of Georgia, 15 May 2024.

35 | Venice Commission, CDL-AD(2024)023, para. 18.

36 | *Ibid.*, para. 43.

37 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 29.

38 | Bakhtadze, 2024, pp. 17–25.

39 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 40.

40 | Resolution N2663-XI06-X03 of the Parliament of Georgia, 23 March 2023.

negative societal attitudes towards them, and establishes an unpredictable legal regime with abstract and general goals, which is inherently unconstitutional and also contradicts the European Convention.

The realisation of the rights of persons with disabilities (PWDs) is quite limited in certain aspects of life, leading to their marginalisation and low levels of social welfare.⁴¹ Protecting the rights of PWDs and ensuring their legal development requires the state to properly recognise its positive obligations and develop appropriate policies that ensure both a suitable economic environment and social justice.

Georgia has taken several important steps in protecting children's and minors' rights. In 2015, the Georgian Parliament adopted the Juvenile Justice Code, which established a qualitatively new regime oriented towards the best interests of minors.⁴² This was followed a few years later by the Code on Child Rights,⁴³ which comprehensively unified various issues related to child rights protection and elevated the protection of the child's best interests to a different level in civil and administrative legal relations. Nevertheless, there are numerous challenges at the practical level in the field of child rights protection. Of particular concern are the interests of children in orphanages and special institutions, where there is no adequate response to violations of their rights. Combating and preventing violence against children deserves special attention, as it is a pressing challenge. In this respect, supportive mechanisms and interdisciplinary approaches need to be strengthened, work needs to be done on preventing early and forced marriages, and an action plan corresponding to the Lanzarote Convention needs to be developed for children's safety in cyberspace and against violence towards them.⁴⁴

Issues of knowledge and teaching of the state language for ethnic minorities are a challenge.⁴⁵ Despite numerous programs and projects, many representatives of ethnic minorities do not speak the state language, which automatically implies problems with social integration, realisation of civil rights, and limited access to state services.⁴⁶ In this respect, the teaching of the state language and projects for the social integration of ethnic minorities need to be strengthened so that each citizen of Georgia perceives themselves as equal before the law and as a full member of the society.

The European Commission highlighted the issue of equal tax exemptions for religious minorities and the rehabilitation of their places of worship.⁴⁷ Georgia's church-state relationship model is cooperative secularism, which implies a cooperative and positive attitude from the state towards both majority and minority religions.⁴⁸ Nevertheless, the relationship with the Orthodox Church bears an even more distinct character from legal, political, and social perspectives, often ensuring a privileged position compared to other religious organisations. The Constitutional Court of Georgia declared

41 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 39.

42 | Law 3708-III of Georgia 'Juvenile Justice Code', 12 June 2015.

43 | Law 5004-III of Georgia 'Code on the Rights of Child', 20 September 2019.

44 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, pp. 39, 44.

45 | *Ibid.*, p. 40.

46 | Gegenava, Partsvania and Tusashvili, 2024, pp. 61–62.

47 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 33.

48 | Gegenava, 2018, p. 122.

unconstitutional the exclusive nature of certain tax exemptions for the Orthodox Church and extended them to other religious organisations.⁴⁹ Some tax exemptions still apply only to the Orthodox Church, as the Constitutional Agreement exempts the church from any payment, and this does not require additional establishment by the tax code. Disputed places of worship, which are owned by the Orthodox Church but are rightfully claimed by the Roman Catholic Church and the Armenian Apostolic Church, are also a significant problem.⁵⁰ It is necessary to review the legal framework of church-state relations and develop and implement a non-discriminatory policy.

| 2.5. Personal Data Protection

Georgia adopted comprehensive legislation on personal data protection in 2011, with the new institution and related innovations being gradually established in the country. Numerous bylaws were adopted, and the Association Agreement with the EU necessitated significant reform. A special body for personal data protection was first created in Georgia in 2013 in the form of the Personal Data Protection Inspector, whose authority was expanded in 2015 to include the responsibility of controlling actions carried out by state bodies regarding personal data. This was followed by several waves of reform in subsequent years, including a change in the name of the body.⁵¹

Since the institution operating under the name of the State Inspector was responsible for both personal data protection and the investigation of crimes committed by law enforcement, there were many questions about its independence. In 2021, without any discussion, the Georgian Parliament expedited the legislative reform of the body responsible for personal data protection, disbanded the State Inspector's Office, and instead established two independent institutions—the Personal Data Protection Service and the Special Investigation Service—while prematurely terminating the authority of the inspector elected for a 6-year term.⁵² The Constitutional Court of Georgia declared the premature termination of authority without compensation unconstitutional, but did not annul the reform itself.⁵³ In December 2025, the Parliament of Georgia adopted the amendments, under which the Personal Data Protection Service will be abolished as of 2 March 2026 and its powers will be assumed by the State Audit Office.⁵⁴ This reform calls into question the institutional autonomy and guarantees of operational independence of the authority responsible for personal data protection, particularly given that the State Audit Office is a heavily burdened and functionally diverse body whose legal nature is less directly aligned with the protection of human rights.

In 2023, Georgia adopted a new law 'On Personal Data Protection', which introduced many beneficial innovations, improved the standard of personal data protection, and showed some progress in fulfilling the obligations under the Association Agreement. However, there are still numerous challenges in this field related to the public perception of personal data and respect for privacy by state bodies. It should be noted that legislation

49 | Decision N1/2/671 of the Constitutional Court of Georgia, 3 July 2018; Decision N1/1/811 of the Constitutional Court of Georgia, 3 July 2018.

50 | Gegenava, 2018, pp. 126–127.

51 | Gugava, 2022, p. 36.

52 | Ibid.

53 | See Decision N1/9/1673,1681 of the Constitutional Court of Georgia, 17 November 2022.

54 | Law N1289-IV0b-XI03 of Georgia amending the 'Law on Personal Data Protection', 17 December 2025.

regarding state surveillance of electronic communication means has already been declared unconstitutional once by the Constitutional Court of Georgia.⁵⁵ Meanwhile, on another equally important case, where the constitutionality of a new regulation of the same issue was raised for the second time, the Constitutional Court has not announced a decision for several years.⁵⁶

Regarding personal data protection for criminal law purposes, it is noteworthy that in 2022, the Venice Commission severely criticised the amendment to Georgia's Criminal Procedure Code, which simplified the procedure for conducting covert investigative actions and gave investigative bodies broad discretion.⁵⁷ The President of Georgia vetoed the bill, but the Parliament overrode it despite the President's opposition and the Venice Commission's recommendations.⁵⁸ The protection of personal data rights in the field of investigation remains problematic and is a serious challenge in the context of fundamental human rights.

2.6. Implementation of Case-Law of the European Court of Human Rights

The statistical indicator of the implementation of ECtHR decisions needs analysis, as the percentage data and the substantive significance and scale of unimplemented decisions are completely different. Although the rate of formally implemented decisions is quite high, unfortunately, the number of unimplemented leading cases is also high, with a large part of them having been adopted 10 or more years ago. The high rate of current leading cases is alarming, and in this regard, Georgia surpasses only five states among Council of Europe members. In Georgia's case, the decisions under enhanced supervision concern severe systemic problems that are challenges not only in one individual case but also in other similar cases (ill-treatment, freedom of religion, LGBTIQ rights, etc.). The main obstacles to implementing ECtHR case-law are: lack of political will, ineffective mechanisms for investigating and responding to crimes committed in law enforcement systems, etc.⁵⁹

The implementation of ECtHR decisions is of particular importance for the protection of human rights in Georgia, which has a long way to go to ensure the sustainability of the fundamental rights system and establish the rule of law. In a politically unstable domestic environment, the decisions of an objective, authoritative international court have a strategic function for Georgia in diagnosing the real state of human rights and improving them in the future.

55 | Decision N1/1/625,640 of the Constitutional Court of Georgia, 14 April 2016.

56 | Recording Notice N3/4/N885-924, 928-929, 931-1207, 1213, 1220-1224, 1231 of the Constitutional Court of Georgia, 29 December 2017.

57 | See Venice Commission, CDL-PI(2022)028.

58 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 33.

59 | Kvitskhadze, 2024, pp. 3, 5–8.

3. Protection of Fundamental Rights, Justice, and Prosecution

| 3.1. *The Judiciary*

One of the most significant and critical parts of the European Commission's 2023 report concerns the justice system, as the judiciary is the primary and irreplaceable mechanism for protecting the rule of law and fundamental human rights. This was predictable, as one of the 12 recommendations issued by the European Commission in 2022 regarding the EU membership application, specifically the third recommendation, addressed the challenges of the court and justice system.⁶⁰

In Eastern European and South Caucasian states, challenges related to judicial independence are mainly manifested in three directions: 1. Judicial system management; 2. Procedures, criteria, and decision-making for the appointment, selection, and nomination of judges; 3. The effectiveness and judicial accountability and independence in decision-making.⁶¹ Considering the regional context, while most problems in Georgian justice are symptomatic, some challenges are truly exclusive and uniquely Georgian, as they stem from the existing reality and legal environment in the country. OSCE/ODIHR lists the main challenges of Georgian judicial system: the administration of the judiciary and the composition, operation, and decision-making process of the High Council of Justice; the system of case distribution to judges; the functions and status of administrative and managerial positions in the court; the independence of judicial branch from external interference; the independence of judges within the court; the transparency and verifiability of judges' property declarations; and issues of disciplinary responsibility of judges.⁶²

Taking into account the assessments of international and local observers, the European Commission highlighted several significant problems in Georgian judiciary: 1. Administration of justice and the activities of the High Council of Justice; 2. Guarantees for disciplinary responsibility, secondments, and individual protection of judges; 3. The need for systemic reform; 4. Legal basis and process for the nomination and appointment of judges; 5. Changes to the procedure and required majority for appointing the Prosecutor General.⁶³

3.1.1. *Reforms and Judicial Independence*

After regaining independence, Georgia's judicial system underwent several stages of transformation. Until 2004, Georgian justice was under strong influence from the executive branch, essentially executing the will of the president.⁶⁴ Following the Rose Revolution, systemic and qualitative reforms were implemented in many areas, causing fundamental

60 | European Commission, Opinion on the EU Membership Application by Georgia, Brussels, 17 June 2022.

61 | See Kyiv Recommendations, 2010.

62 | OSCE/ODIHR, Opinion-Nr.: JUD-GEO/457/2023 [NR], Note on Several Issues Relating to Judicial Reform, Warsaw, 26 June 2023, p. 2.

63 | See European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, pp. 20–21.

64 | Borkowski et al., 2024, p. 43.

changes in state governance.⁶⁵ Naturally, these changes affected the judiciary as well. It can be said that the reforms carried out in 2004-2012 significantly improved the system from a formal perspective: organisational and administrative aspects were streamlined, judges' social and legal status was ensured, corruption was eliminated, and the judicial corps was renewed with young judges. However, the individual and organisational independence of judges was not secured, with criminal justice being particularly problematic and critical.⁶⁶ The executive branch, especially the prosecution and the Ministry of Justice, had significant influence over the court⁶⁷ and effectively controlled it.

In 2012, following parliamentary elections, the Georgian government changed. One of the new ruling coalition's main priorities was to reform the justice, prosecution, and penitentiary systems. However, the new government made political concessions to an influential group within the judiciary. Gradually, relations between the government and the court stabilised. By 2017, the so-called 'clan' had gained complete dominance over the judicial system and received guarantees of inviolability, while the ruling party gained the ability to exert desired influence over the system.⁶⁸ As a result, corporatism and clientelism were reinforced in the court, and the political authority created a dangerous symbiosis with the judiciary.⁶⁹

From 2013, the first wave of court reform began, followed by three more waves in subsequent years.⁷⁰ These reforms were aimed at more or less decentralising the justice system and eliminating problems. The parliament adopted significant constitutional and legislative changes, but substantive judicial independence was not achieved.⁷¹ This was logical and predictable. While government bodies bear significant responsibility for the success of judicial reform, the decisive role ultimately falls to the judges themselves.⁷² Without their active participation, any attempt at fundamental and substantive change in the judicial system is doomed.

On 4 August 2023, a working group on judicial reform was created in the Legal Affairs Committee of the Georgian Parliament, aimed at creating a strategy and action plan to implement the European Commission's 2022 recommendations. Despite the participation of parliamentary members, state body representatives, professional groups, and civil associations, it was still not sufficiently representative.⁷³ For this and other reasons, the 'Judicial Reform Strategy and Action Plan' created by the working group is only formal in nature, quite superficial, and does not adequately address the fundamental challenges of the justice system.⁷⁴

Public trust is vital for the effectiveness of the court and real justice outcomes. For this, public perception and the direct attitude of the population are important, as the ultimate addressees of justice are people. According to research, more than half of Georgia's

65 | Gegenava and Goradze, 2024, pp. 234–235.

66 | Borkowski et al., 2024, p. 43.

67 | Menabde, 2023, p. 7.

68 | Ibid., p. 14.

69 | Papuashvili et al., 2023, p. 7.

70 | See Menabde, 2023, pp. 13–14.

71 | Borkowski et al., 2024, p. 43.

72 | Hagenloch, 2024a, p. 2.

73 | Imnadze, 2023, p. 3.

74 | Ibid., p. 7.

population believes that the court system is under political influence.⁷⁵ The need for judicial reform remains on the agenda, and improving the independence, transparency, and effectiveness of the court will be impossible without systemic and fundamental changes. Only in this case will the system function and be oriented towards people, thus fulfilling its true purpose.

3.1.2. *Administration of Justice*

The collegial management model of the judicial system was favoured by international organisations in Georgia and other post-Soviet countries.⁷⁶ The High Council of Justice was defined as the supreme body for administering common courts, and over the years, it became the main institution that effectively decides all important issues related to courts and judges. The idea of a collegial management model has been marginalised and is presented in an extremely distorted form. Today, the High Council of Justice itself is a significant threat and challenge to the judicial system and court independence.⁷⁷

Unfortunately, politics and the noticeable influence of political players have been observed in Georgian courts for years.⁷⁸ It can be said that for almost 20 years, the rulers and power holders in the Georgian judicial system have not changed.⁷⁹ The current model of justice is characterised by clan governance and an extremely closed form of judicial system management by a narrow circle of judges.⁸⁰ The existence of the so-called 'clan' (an influential group of judges) has been recognised and strongly criticised by numerous local and international organisations.⁸¹ Consequently, it is logical that self-governance of judges in the Georgian court is essentially formal and not independent, with the 'clan' equipped with formal and unofficial mechanisms of influence and power.⁸² In April 2023, the U.S. State Department imposed sanctions on Georgian judges who were members of the clan due to corruption allegations,⁸³ which were not investigated in Georgia and for which no corresponding responsibility was established.⁸⁴

The composition of the High Council of Justice, as well as the election of judge and non-judge members and the council's activities, pose significant challenges.⁸⁵ All this directly affects the independence and impartiality of both the council and its individual members.⁸⁶ When appointing non-judge members of the High Council of Justice, public trust and political consensus regarding the candidate should be considered.⁸⁷ The Venice Commission recommends that the constitutional arrangement for the composition of the High Council of Justice needs revision. It is desirable that the High Council of Justice not

75 | Gobronidze, Gerliani and Papuashvili, 2021, p. 116.

76 | Verdzeuli, 2021, p. 9.

77 | Papuashvili et al., 2023, p. 8.

78 | Mamrikishvili, 2020, p. 60.

79 | Hagenloech, 2023, p. 1.

80 | See Menabde, 2023, p. 7.

81 | Gobronidze, Gerliani and Papuashvili, 2021, p. 115.

82 | Borkowski et al., 2024, p. 44.

83 | U.S. Department of State, Press Statement, 2023.

84 | Borkowski et al., 2024, p. 43.

85 | See European Commission, Georgia 2023 Report, SWD(2023)697 Final, Brussels, 8 November 2023, pp. 21–22.

86 | OSCE/ODIHR, Opinion-Nr.: JUD-GEO/457/2023 [NR], Note on Several Issues Relating to Judicial Reform, Warsaw, 26 June 2023, para. 30.

87 | Papuashvili et al., 2023, p. 16.

be composed all at once, but rather that at least a quarter of its composition be renewed periodically every two years. It is also important to ensure anti-deadlock mechanisms when composing the council.⁸⁸

In 2021, the Georgian Parliament adopted legislative changes without consulting judges and specialised public actors, significantly reducing guarantees of judicial independence and consequently increasing the power of the High Council of Justice.⁸⁹ In assessing these changes, the Venice Commission indicated that public attitudes towards the High Council of Justice, accusations of corporatism, and other allegations could significantly damage trust in the council and the court in general.⁹⁰ In contrast, despite the assessment of local and international experts, the Constitutional Court believes that the model for composing the Justice Council ensures the prevention of corporatism in the council.⁹¹ Such a position reinforces doubts about political influences on the Constitutional Court.

For the ruling elite of the Georgian court, the priority has never been the introduction of European values,⁹² the establishment of the rule of law, and ensuring independent justice. To this day, for powerful judges, the priority remains total control of judicial power at the expense of restricting judicial independence and maintaining secrecy, which damages not only the justice system but also the right to a fair trial as a whole.

3.1.3. *Appointment of Judges*

Despite four waves of judicial reform, both the legislative regulation and the practical implementation of norms regarding the appointment of judges, as well as the exercise of authority by the High Council of Justice in this direction, remain problematic.⁹³ The Council is vested with exclusive authority in the appointment and promotion of first and second instance judges,⁹⁴ and it also exclusively presents Supreme Court judge candidates to the Georgian Parliament.⁹⁵ The appointment of judges is based on loyalty to the so-called 'clan', and their individual freedom and independence essentially do not exist.⁹⁶ Similarly, judges' freedom of expression has been reduced to a merely formal, normative-level ephemeral and unrealistic concept.

According to Georgian legislation, candidates for judicial appointments are evaluated based on integrity and professionalism criteria.⁹⁷ Integrity and professionalism are not only important for the judicial system in the general context of the rule of law; they are much more – an independent judiciary is a fundamental human right.⁹⁸ A clear illustration of the state of Georgian justice in this regard is that Georgia is the first country to which the Venice Commission recommended integrity checks.⁹⁹ The appointment to a judicial

88 | Venice Commission, CDL-AD(2023)033, paras. 18, 22, 28.

89 | Papuashvili et al., 2023, p. 7.

90 | Venice Commission, CDL-AD(2022)010, para. 60.

91 | Decision N3/1/1459,1491 of the Constitutional Court of Georgia, 30 July 2020, para. 33.

92 | Hagenloch, 2023, p. 1.

93 | Papuashvili et al., 2023, p. 24.

94 | Ibid.

95 | Constitution of Georgia, 24 August 1995, Art. 61(2).

96 | Abashidze et al., 2017, p. 10.

97 | Organic Law N2257 of Georgia 'On the Common Courts', 4 December 2009, Art. 35.

98 | Hagenloch, 2024b, p. 4.

99 | Borkowski et al., 2024, p. 42. See Venice Commission, CDL-AD(2023)033.

position should not be politically motivated; the process should focus on assessing the candidate's professional qualifications, skills, and integrity.¹⁰⁰ In Georgian reality, loyalty to the 'clan' is much more important for current and future judges than professionalism and integrity, which significantly hinders the development of the court and the ensuring of its independence.¹⁰¹ It is noteworthy that talk of vetting caused concern among judges; they again sought refuge in the clan and received guarantees of protection from it, which fundamentally determined the lack of prospects for vetting.¹⁰² The predictability, criteria, and justification for issues such as secondment of judges without consent, change of specialisation, promotion, and transfer to other courts are also particularly problematic.¹⁰³ These can be used as means of influencing judges.

In 2019–2020, before the appointment of Supreme Court judges, the Georgian Parliament hastily adopted legislative changes, which were negatively assessed by the Venice Commission,¹⁰⁴ the European Union, the European Parliamentary Assembly co-rapporteurs on Georgia issues, and others.¹⁰⁵ The Commission criticised the process of selecting and appointing Supreme Court judges and called on Georgia to ensure a transparent and fair process.¹⁰⁶

The Public Defender of Georgia challenged the rule for filling the positions of judges of the Supreme Court of Georgia and demanded it be declared unconstitutional, as the system for selecting candidates for judges could not ensure fair selection procedures and established unjustified restrictions. According to the Constitutional Court's interpretation, the two-stage system for selecting judges of the Supreme Court of Georgia and granting the authority to select candidates for the Parliament to the High Council of Justice prevents corporatism and reduces the risk of corruption. The Constitutional Court considered the model of staffing the Supreme Court and the selection of candidates by the Justice Council without justification to be constitutional, noting that since the final decision is to be made by the Parliament, this essentially differentiates this procedure from the appointment of first and second instance court judges, the authority for which is exclusively entrusted to the Council.¹⁰⁷

Four members of the Constitutional Court wrote a dissenting opinion regarding the constitutionality of appointing Supreme Court judges. In their assessment, when defining the model for appointing Supreme Court judges in the Constitution, the legislator intended to reduce the emphasis on politicisation by political decision-makers and create a maximally transparent system. Replacing the President with the Justice Council in the process of appointing Supreme Court judges aimed to involve an apolitical, competent body that would make reasoned decisions based on the evaluation of candidates and present judicial candidates to the Parliament accordingly. The High Council of Justice can select a candidate for the Supreme Court judgeship without justification, without any clear and public argumentation; other candidates who are not presented will not have sufficient information about why they were not selected. The opaque, vague, unjustified

100 | Decision N3/2/717 of the Constitutional Court of Georgia, 7 April 2017, para. II-17.

101 | Hagenloch, 2024a, p. 2.

102 | Hagenloch, 2024b, p. 4.

103 | Papuashvili et al., 2023, pp. 32–34.

104 | See Venice Commission, CDL-AD(2020)021.

105 | Gobronidze, Gerliani and Papuashvili, 2021, p. 116.

106 | See Venice Commission, CDL-AD(2019)009.

107 | Decision N3/1/1459,1491 of the Constitutional Court of Georgia, 30 July 2020, paras. 7, 19, 20.

procedure for appointing Supreme Court judges and the lack of reasoning for the decision significantly contribute to the impossibility of building public trust in the process and its discreditation.¹⁰⁸

Ultimately, the process of selecting Supreme Court candidates, presenting them to Parliament, parliamentary hearings, and approval was conducted against a backdrop of tension, raising numerous questions and creating discord.¹⁰⁹ This further damaged the reputation of Georgian justice and trust in and authority of the Supreme Court.

3.1.4. Judicial Accountability and Personal Guarantees for Judges

Prior to the 2013 reform, disciplinary accountability of judges was implemented in a very strict manner and was primarily an active means of pressuring judges. As a result of four waves of reform, the mechanism of disciplinary accountability has been significantly refined and improved in terms of both procedure and substance. However, despite numerous reforms, lawyers have little trust in these rules and mechanisms.¹¹⁰

In the context of disciplinary accountability, the effectiveness of the independent inspector is crucial; it should possess sufficient resources both to investigate misconduct and to make decisions regarding the examination of such misconduct.¹¹¹ The ineffectiveness of disciplinary accountability is evidenced by prolonged disciplinary proceedings, the formal nature of the process, failure to make decisions on accountability, etc.¹¹² Due to the ineffectiveness of the accountability mechanisms and the independent inspector, there is no existing level or assessment indicator of individual judicial integrity.¹¹³ The flawed model of judicial disciplinary accountability paves the way for the establishment of corporatism in judiciary.¹¹⁴

As a result of the 2017–2018 constitutional reform, impeachment was defined as the only ground for dismissal of a Supreme Court judge.¹¹⁵ This placed Supreme Court judges in a somewhat privileged position, with the disciplinary accountability mechanism becoming merely formal for them.¹¹⁶ The role and function of the Supreme Court in disciplinary accountability is also an important issue. According to the Venice Commission's recommendation, Supreme Court decisions in this area should preferably be binding for the High Council of Justice,¹¹⁷ as this ensures greater independence for judges and prevents the Council from having uncontrolled power.

108 | Joint Dissenting Opinion of Judges: Tughushi, Imerlishvili, Kverenchkhiladze and Tsabutashvili on Decision N3/1/1459,1491 of the Constitutional Court of Georgia, 30 July 2020, paras. 27, 28, 49, 112.

109 | See OSCE/ODIHR Report, June–December 2019; OSCE/ODIHR Report, June–September 2019.

110 | Tsikarishvili, 2021, pp. 6–7.

111 | Papuashvili et al., 2023, pp. 38–39.

112 | Ibid., p. 40.

113 | Hagenloech, 2024b, p. 8.

114 | OSCE/ODIHR, Opinion-Nr.: JUD-GEO/457/2023 [NR], Note on Several Issues Relating to Judicial Reform, Warsaw, 26 June 2023, para. 70.

115 | Constitution of Georgia, 24 August 1995, Art. 48(1).

116 | Tsikarishvili, 2021, p. 8.

117 | Venice Commission, CDL-AD(2023)006, para. 52.

Decisions on the appointment, promotion, or disciplinary accountability of judges are made by a 2/3 majority of the Council's composition, which significantly reduces the possibility of lay members influencing the decision-making process.¹¹⁸

Some judges of common courts considered the rules related to judicial secondment, suspension of powers, freedom of expression, and disciplinary accountability as a restriction of their rights and appealed the amendments to the Constitutional Court.¹¹⁹ They argued that the norms contradict the principle of legal security and fail to meet the requirement of legal certainty.¹²⁰ The Constitutional Court deemed the constitutional claim admissible in part and is currently considering it. Three judges of the Constitutional Court published a dissenting opinion regarding the inadmissibility of part of the claim.¹²¹

Judicial independence is an integral part of the rule of law and should not be perceived as a privilege.¹²² This independence is achieved not only through social guarantees, indemnity, or immunity but also through the real possibility of exercising freedom of expression when necessary, of course, while observing the rules of judicial ethics, and without expecting to be punished or subjected to disciplinary or more severe legal mechanisms for doing so.

Formally, Georgian judiciary is based on judicial self-governance,¹²³ but this is only formal; in reality, the situation is radically different. In 2013, under the governance of a new political force, some judges formed the 'Unity of Georgian Judges', aimed at implementing systemic judicial reform and ensuring judicial independence. However, some of these judges were not reappointed for lifelong term in 2014–2015 or were forced to leave the 'Unity' through various means.¹²⁴ The emergence of a provision on 'violation of political neutrality' in the context of judicial disciplinary accountability has further restricted judges; it can be said that this norm is less predictable and creates a risk of limiting judges' freedom of expression.¹²⁵

Today, differing opinions are virtually unheard within Georgian courts, individual freedom of judges is at a very low level, and there are serious problems in terms of transparency, judicial professionalism, and integrity.¹²⁶ There is no constructive debate.¹²⁷ Judges are gripped by an entirely logical and predictable fear, as the punishment of those seeking judicial reform in the years following 2012 had a regrettable preventive effect and served as a 'lesson'.¹²⁸

118 | Papuashvili et al., 2023, p. 15. Venice Commission, CDL-AD(2023)033, para. 18.

119 | See Constitutional Complaint N1693 of Ekaterine Areshidze, Ketevan Meskhishvili, Madona Maisuradze, Mamuka Tsiklauri and Tamar Khazhomia, 11 April 2022.

120 | See Recording Notice N3/14/1693 of the Constitutional Court of Georgia, 25 November 2022.

121 | See Joint Dissenting Opinion of Judges: Kobakhidze, Roinishvili and Tughushi on the Recording Notice N3/14/1693 of the Constitutional Court of Georgia, 25 November 2022.

122 | Consultative Council of European Judges, Conclusion N1(2001), para. 10.

123 | Papuashvili et al., 2023, p. 10.

124 | Hagenloch, 2023, p. 2; Borkowski et al., 2024, p. 43.

125 | See Venice Commission, CDL-AD(2023)033, paras. 31–33.

126 | Borkowski et al., 2024, p. 43.

127 | Hagenloch, 2023, p. 4.

128 | See Ibid., p. 3.

3.1.5. *Publicity of Court Decisions*

The Georgian judicial system is one of the most closed and non-transparent, which effectively precludes any kind of trust from society towards both justice in general and judges individually.¹²⁹ Independence, impartiality, and transparency were also considered one of the most important challenges of Georgian justice by the European Commission.¹³⁰ The Venice Commission also issued a recommendation on ensuring very high transparency,¹³¹ and one of the important components of it is the accessibility of court acts while protecting personal data.¹³²

Since 2015, access to court acts and public information in courts has deteriorated,¹³³ which has ultimately turned Georgian common courts into one of the most closed and non-transparent organisations. In 2019, the Constitutional Court of Georgia declared the restriction on access to court decisions unconstitutional and explained that court decisions should be publicly available while protecting personal data.¹³⁴

Legislative amendments that came into effect on January 1, 2024, significantly improved the situation regarding the issuance of public information on court acts, establishing general accessibility of acts, and defining the time of publication of the judicial act as the entry into legal force of the final decision on the case. However, despite the legislative regulation, courts still do not fully fulfil their obligations related to the publication of court acts and the provision of information.¹³⁵ The publication of decisions of first and second instance courts had been virtually suspended for a long time.¹³⁶ The Supreme Court of Georgia remains the only Georgian court that ensures the publication of its decisions in a depersonalised form on its website.¹³⁷

Access to court acts is not simply related to the transparency of the justice system; it is an integral part of the right to a fair trial. Access to court decisions in a depersonalised form contributes to achieving legal certainty as well as unifying and synchronising legal practice. The High Council of Justice should update the rule of proactive publication of court acts in accordance with the legislation and the principle of transparency of justice.¹³⁸ It is essential that decisions are published according to the procedure established by law and are accessible to the public. Considering that many cases are decided at the appellate level, while some serious disputes are resolved at the first instance, the publicity of these decisions becomes even more important.

| 3.2. *Prosecution*

In Georgia, the prosecution has often been used not only as a repressive mechanism, which it logically has the authority to do by law, but also as a means of political retaliation.

129 | Papuashvili et al., 2023, p. 46.

130 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 22.

131 | See Venice Commission, CDI-AD(2020)021, para. 18.

132 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 24.

133 | IDFI, 2024, p. 9.

134 | See Decision N1/4/693/857 of the Constitutional Court of Georgia, 7 June 2019.

135 | IDFI, 2024, p. 6.

136 | Papuashvili et al., 2023, p. 47.

137 | IDFI, 2024, p. 6.

138 | Ibid., p. 7.

Therefore, from the point of view of both systemic, institutional, and individual independence, it is very important that the system is well-organised, stable, and equipped with proper guarantees. For this purpose, the relevant recommendations of the Venice Commission and the OSCE should be taken into account.¹³⁹ Formally, the 2017–2018 constitutional reform envisaged a new constitutional body – the Prosecutorial Council – to ensure the independence and transparency of the prosecution, which was given the exclusive authority to select and present to the parliament a candidate for the Prosecutor General.¹⁴⁰ The council consists of prosecutor and lay members,¹⁴¹ which is certainly welcome, but more balance between them is necessary to ensure the internal independence of the council.¹⁴²

According to the European Commission's assessment, the appointment to the position of Prosecutor General requires an absolute majority of votes, which is considered problematic and a very low quorum;¹⁴³ for its legitimacy, it is necessary to increase the mandatory number of votes to a qualified majority. Since this issue is directly regulated by the Constitution of Georgia, an amendment to the Constitution of Georgia is necessary to implement this recommendation. For this purpose, in 2022, the Parliament of Georgia initiated such an amendment, but it has not been passed.

4. Fighting Crime, Migration, and Anti-Corruption Policy

The European Commission's fifth recommendation concerned the fight against organised crime – specifically, strengthening the fight against organised crime and ensuring the accountability of relevant authorised bodies.¹⁴⁴ There is some progress in this area, and it can be said that the recommendation has been largely fulfilled. However, investigation in criminal networks, as well as data-based police control and analytical skills of investigators need to be improved. A particular problem is the coordination of the fight against organised crime, as this authority belongs to responsibility of several state bodies, and coordination between them is ensured by the Inter-Agency Coordination Council for Combating Organized Crime – which, according to the European Commission's assessment, should be strengthened.¹⁴⁵

Georgia is operating successfully in the prevention of terrorist financing, but money laundering issues in general are a significant challenge, especially with regard to the

139 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 23.

140 | Constitution of Georgia, 24 August 1995, Art. 65.

141 | Organic Law N3794-Ilb of Georgia 'On the Prosecutor's Office', 30 November 2018, Art. 19.

142 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 22.

143 | *Ibid.*, p. 21.

144 | European Commission, Opinion on the EU Membership Application by Georgia, Brussels, 17 June 2022.

145 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, pp. 42–43.

investigation of these cases and the independence of investigative bodies in the investigation process.¹⁴⁶

In general, the norms on drug crimes in the Criminal Code of Georgia are mostly in line with EU policy.¹⁴⁷ For years, Georgia had a very strict drug policy. The Constitutional Court of Georgia played a significant role in mitigating it – first declaring imprisonment for marijuana use unconstitutional,¹⁴⁸ then completely abolishing related criminal sanctions and decriminalising it.¹⁴⁹ Useful steps can still be taken in the direction of drug policy and proper planning at the strategic level.

Georgian legislation regarding foreign citizens and migrants is generally harmonised with EU law, but issues related to ensuring migrants' rights remain a challenge, and migrant reintegration programs need to be developed. The country's immigration policy needs to be refined, as issues related to residence permits and migrant reception are not harmonised. A particular challenge is Georgian citizens applying for asylum in EU countries; the statistics are very high. According to the European Commission's recommendation, the Ministry of Internal Affairs should improve data exchange for inter-agency risk prevention and analytics in the direction of customs management. It is necessary to increase the funding and budget of the Agency of Internally Displaced Persons, Eco-migrants and Livelihood Provision, as the resources allocated to perform its assigned functions and tasks are insufficient.¹⁵⁰

The European Commission's fourth recommendation addressed the activities of the anti-corruption agency, special investigative, and personal data protection services, ensuring their institutional independence and effectiveness.¹⁵¹ Therefore, these issues were logically included in the report related to candidate status. In the direction of fighting corruption, the European Commission focused on several main topics: improving the activities of the anti-corruption bureau and legislation on fighting corruption; ensuring the independence of the anti-corruption bureau's activities; creating a realistic, result-oriented anti-corruption strategy and action plan; reviewing Georgia's decision to withdraw from the next round of monitoring in OECD/CAN and implementing previous recommendations; and de-oligarchisation.¹⁵²

The Anti-Corruption Bureau was established by legislation in November 2022 and began operations on 1 September 2023.¹⁵³ It is noteworthy that the parliament did not initially send the anti-corruption legislation to the Venice Commission.¹⁵⁴ Eventually, the Venice Commission checked the law.¹⁵⁵ Today, the Anti-Corruption Bureau does not have

146 | Ibid., p. 47.

147 | Ibid., pp. 45–46.

148 | Decision N1/4/592 of the Constitutional Court of Georgia, 24 October 2015.

149 | Decision N1/13/732 of the Constitutional Court of Georgia, 30 November 2017.

150 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, pp. 49–52.

151 | European Commission, Opinion on the EU Membership Application by Georgia, Brussels, 17 June 2022.

152 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 25.

153 | Law N2204-IX06-X03 of Georgia amending the Law 'On Conflict of Interests and Corruption in Public Institution', 30 November 2022.

154 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 26.

155 | See Venice Commission, CDL-AD(2023)046.

investigative authority,¹⁵⁶ which causes additional problems. According to the European Commission's assessment, the function of investigating corruption is distributed among several state bodies, which creates a consolidation problem. Ensuring the autonomy of bodies responsible for investigating corruption and the transparency of appointing their leaders is also a significant challenge.¹⁵⁷ On 17 December 2025, the Parliament of Georgia adopted legislative amendments under which the Anti-Corruption Bureau, as an independent legal entity, will be abolished as of 2 March 2026, and its powers will be transferred to the State Audit Office.¹⁵⁸ This development, naturally, further undermines expectations regarding the credibility and effectiveness of the state's actions in the field of anti-corruption policy.

The Parliament of Georgia initiated a draft law 'On De-Oligarchization', but its content was extremely problematic and uncertain; the legitimate purpose of adopting the law clearly differed from the legal regime to be established by the act itself.¹⁵⁹ The draft law was negatively assessed by the Venice Commission and was not recommended for adoption.¹⁶⁰ The issue of de-oligarchisation is still open in Georgian reality and certainly needs proper response, especially since there are virtually substantiated suspicions about the transparency of state governance, informal management, and influences.

5. Conclusion

The protection of human rights and ensuring the rule of law are not finite goals; they are practical systems of values that, along with legal foundations, require well-functioning, sustainable practices and daily implementation. The issues and challenges raised in the European Commission's 2023 report serve as a good aid for the Georgian legal system to diagnose, study, and address political and legal symptoms identified through external observation.

Several fundamental issues remain challenging in the area of human rights:

1. The effectiveness of legal mechanisms for protecting fundamental rights, especially the timeframes for resolving cases in court, legal consequences, and reasoned decisions;
2. The practical application of freedom of assembly and the proportionality of force used during protests, ensuring freedom of association, and the threat of stigmatisation and restriction of activities of civil society representatives;
3. The fulfilment of the state's positive obligations in the field of freedom of speech and expression, creating a free environment for media independence and information dissemination. Particular attention should be paid to the process and effectiveness of investigating actions directed against freedom of expression;

156 | See Law N2204-IX06-X03 of Georgia amending the 'Law on Conflict of Interests and Corruption in Public Institution', 30 November 2022.

157 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 27.

158 | Law N1290-IV06-XI03 of Georgia amending the 'Law on Conflict of Interests and Corruption in Public Institution', 17 December 2025.

159 | See Sarukhanishvili, 2023, pp. 32–43.

160 | See Venice Commission, CDL-AD(2023)017.

4. Eliminating discrimination, ensuring the validity of rights protection mechanisms established by anti-discrimination legislation, protecting equality for vulnerable groups, and their full integration into society.

The practical operation of fundamental rights is inconceivable without effective mechanisms for their protection. Among these, the most important are the constitutional and common courts. The judiciary should be transparent, based on democratic self-governance, with a well-functioning system of judicial accountability and freedom of expression for judges. Justice is the key element of the rule of law; a fair trial determines the priority and actualisation of the human being as the supreme value of law.

The issues presented in the European Commission's report are real and require appropriate response, not for their formal satisfaction, but for the real development and progress of the state. The protection of fundamental human rights and the creation of an appropriate political and legal environment in the country ensures the existence of legal security not only at the general national and social level but also for every individual. This, in turn, transforms human rights into real, active law and an integral part of the legal order in the country.

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REFUGEE PROTECTION IN POLAND AFTER 2022: BETWEEN HUMANITARIAN RESPONSE AND LEGAL OBLIGATION

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ABSTRACT

The Russian full-scale invasion of Ukraine in 2022 triggered a humanitarian crisis, leading to significant changes in the refugee protection system in Poland and Ukraine's other neighbouring countries. This study investigates the emergence of alternative refugee protection mechanisms in Poland, focusing on the differential treatment of various groups seeking protection. By analysing legal frameworks, policies and the socio-political context, this study highlights the complexities and challenges faced by different groups of refugees and Polish authorities.

These findings reveal a sharp contrast to Poland's approach. Ukrainian refugees have received substantial support, including legalised residency and access to public services, reflecting a positive and supportive attitude. In contrast, asylum seekers at the Belarusian border have encountered restrictive measures such as pushback and limited access to asylum procedures, raising concerns about consistency in humanitarian responses. Poland's actions also aligned with broader European trends. The EU Migration Pact and related policies emphasise border security, risking the erosion of international protection such as the Geneva Convention. Poland's recent legislative changes, including the suspension of asylum rights, further challenge these norms.

This study concludes that while Poland has shown flexibility and responsiveness in humanitarian support, particularly for Ukrainians, adhering to impartial humanitarian principles and international standards remains a significant challenge amid ongoing crises and geopolitical tensions. These contrasting responses emphasise the need for equitable and principled approaches for all displaced individuals, regardless of their country of origin.

KEYWORDS

refugees
temporary protection
human rights
Ukrainian asylum seekers
humanitarian crisis
Polish-Belarusian border

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1. Introduction

The ongoing war in Ukraine has not only led to a humanitarian crisis but has also prompted significant changes in how refugee protection is administered in neighbouring countries, including Poland. This study explores the emergence of alternative refugee protection systems in Poland in response to the influx of people fleeing from Ukraine. It examines the differences in the treatment of various groups seeking protection, highlighting the complexities and challenges faced by both refugees and Polish authorities. By analysing laws, policies and the socio-political context, this study aims to provide a comprehensive understanding of the evolving landscape of Poland's refugee protection system in light of international human rights standards.

Since 1991, Poland has been a party to the Convention relating to the Status of Refugees of 28 July 1953. As an EU member State, Poland is also bound by EU legislation, which has shaped national migration laws over the last 20 years.

State Parties to the Geneva Convention must guarantee the protection of basic human rights, as well as social and economic rights, including access to medical care and education, at least to the extent that it is enjoyed by foreigners legally residing in the territory of that state. The Convention also contains the fundamental principles governing refugee law. These include the principles of non-discrimination, prohibition of punishment for illegal entry or stay in a territory (incompatible with the internal immigration laws of the states), and *non-refoulement*. The latter is found in art. 33 of the Refugee Convention, which states that it is prohibited 'to expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'. Direct reference to this and other provisions of the Convention can also be found in the EU Charter of Fundamental Rights. The principle of *non-refoulement* is also present in the case law of the European Court of Human Rights in Strasbourg. Cases under art. 3 of the European Convention on Human Rights (hereafter: ECHR) on the absolute prohibition of torture and inhuman or degrading treatment sometimes involves third-country nationals at risk of such practices if they are forcibly expelled to a country. Furthermore, art. 3 is a frequent reason for a court to apply a so-called 'interim measure' ordering that a person's deportation from a country be withheld pending the conclusion of proceedings before the Court if there is a risk of a violation of the prohibition of torture by the target country⁴. In addition, the ECHR jurisprudence has influenced the shaping of the EU's subsidiary protection, particularly by highlighting the need to provide additional protection to those who do not qualify for refugee status but nevertheless require protection⁵.

3 | UNTS vol. 189, p. 137; hereinafter: Refugee Convention/Geneva Convention.

4 | See: *Khemais v. Italy*, *Addolkhani and Karminia v. Turkey*, *M.K and others v. Poland*, *D.A. and others v. Poland*.

5 | McAdam, 2005.

2. Forms of Protection in Poland

2.1. *International Protection*

2.1.1. *Refugee Status*

The main form of international protection is mentioned in art. 56 par. 2 of the Polish Constitution as refugee status. The Constitution does not define that notion, but according to the Geneva Convention, a refugee is a person who,

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or unwilling because of such fear to avail himself of the protection of that country.

The same conditions were introduced in art. 13 of the Act on Granting Protection to Aliens within the Territory of the Republic of Poland of 13 June 2003⁶. This implies that the institution of refugee status applies to people seeking refuge outside the country as a result of persecution or being in fear of it. The Polish Supreme Administrative Court stated that the right to seek refugee status, insofar as it is granted by the Geneva Convention, acquires the character of constitutional entitlement, which may be subject to restriction only by law and only for the reasons stated in art. 31, paragraph 3 of the Polish Constitution⁷. The jurisprudence of the Supreme Administrative Court has served as a source of legal guidance on issues such as the prerequisites for applying for refugee status and the collection of evidence⁸.

2.1.2. *Subsidiary Protection*

Subsidiary protection is another type of international protection. It was introduced to Polish law in 2008 in the course of the implementation of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, along with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. Subsidiary protection may be granted to foreigners who do not meet the prerequisites for refugee status, whose return to the country of origin would involve a real risk of suffering serious harm through the imposition of the death penalty or execution; torture, inhuman or degrading treatment or punishment; or a serious and individualised threat to health or life resulting from the widespread use of violence against civilians, in a situation of international or internal armed conflict⁹.

6 | Journal of Laws of 2003, No. 128, item 1176, as amended; hereinafter: Protection Act.

7 | Judgement of 26 August 1999, V SA 708/99.

8 | Braniewicz, 2024.

9 | Protection Act, art. 15.

2.1.3. *Applying for International Protection*

Proceedings for granting subsidiary protection are the same as for refugee status—foreigners submit a single application for international protection; based on this application, the Head of the Office for Foreigners first assesses whether the person can obtain refugee status, and if not, automatically assesses whether he or she can obtain subsidiary protection in one procedure. It should be noted that subsidiary protection differs from refugee status, although in practical terms, these two statuses are very similar. The main difference is that refugees receive a residence card for three years rather than two, as in the case of subsidiary protection. In addition, refugees receive a so-called Geneva Travel Document that is valid for a period of two years, whereas a person who was granted subsidiary protection is entitled to apply for a Polish travel document when his or her travel document has been lost, destroyed, become invalid or when he or she has not had a travel document before and it is not possible for the foreigner to obtain a new travel document¹⁰. Foreigners who have received a residence card based on international protection have free access to the labour market in Poland; therefore, the employer has the opportunity to employ this foreigner without having to obtain additional documents (e.g. work permit, statement on entrusting work). After the expiration of the residence card, the foreigner is issued another card for the same period.

Submission of an application for international protection is possible while entering Poland's territory during border control; it is necessary to inform the Border Guard officer about the willingness to apply for international protection. It is also possible to do so while already present in the territory of the Republic of Poland by reporting to any Border Guard office. Foreigners who are in a detention centre for foreigners or a penitentiary institution can apply through the relevant Border Guard office¹¹. Acceptance of an application is a technical act. There are no provisions allowing a Border Guard officer to refuse to accept an application for international protection nor make any substantive assessment thereof. If the application includes other persons (e.g. minor children or the applicant's spouse), they must also be present when the application is submitted. In cases of unaccompanied minors, an application for refugee status shall be submitted on their behalf by a guardian or representative of an international or non-governmental organisation providing assistance to foreigners, including legal assistance, if, based on an individual assessment of the unaccompanied minor's situation, the organisation determines that the child may be in need of such protection¹².

The application is filled out by the Border Guard officer on a special form based on the information obtained during a conversation between the foreigner and an officer. The submission of the application should take place under conditions that ensure an appropriate degree of confidentiality for the foreigner and allow him or her to present all the reasons for applying for international protection¹³. Acceptance of the application initiates the procedure. During the application submission, a person must hand over his or her travel documents to a deposit¹⁴. Therefore, each adult applicant receives a docu-

10 | Act on Foreigners of 12 December 2013, Journal of Laws of 2013, item 1650, as amended, art. 252; hereinafter: Foreigners Act.

11 | Protection Act, art. 24.

12 | *Ibid.*, art. 26.2.

13 | *Ibid.*, art. 30.2.

14 | *Ibid.*, art. 31.1.

ment of confirmation (a temporary certificate of identity of the foreigner), which, during the period of its validity, confirms the identity and entitles the person and minor children included therein to stay in the territory of Poland¹⁵. During the submission, the applicant should also be informed in writing, in a language that he or she understands, about the rules and procedures of the international protection procedure and his or her rights and obligations, as well as about social and medical assistance and free legal aid.

The most important phase in the proceedings of applying for international protection is the interview¹⁶. During the interview, it is possible to clarify the facts relevant to the determination of the case, as well as to provide additional explanations regarding inconsistencies or contradictions in the applicant's statements. The interview is held without the presence of the persons on whose behalf the applicant is applying, unless their presence is necessary for the clarification of the case¹⁷. If necessary, the interview is conducted in the presence of an interpreter who speaks a language understood by the applicant, giving him or her a chance to freely and accurately express all arguments that may affect the decision. After the interview, the foreigner receives a copy of the interview protocol. The applicant shall be informed in writing and in a language he or she understands of the outcome of the proceedings and the appeal procedure.

The statutory period for the proceedings is up to six months and in principle, this term should not be exceeded by the authorities. In some instances, however, six months is insufficient time; complicated cases, such as those concerning security issues or situations of foreigners without documents, require more careful scrutiny. In such instances, an extension of the processing period may be necessary and justified, as it will allow for a thorough consideration of the situation in question. If proceedings concerning international protection are not settled within six months (without the applicant's fault), the Head of the Office for Foreigners, at the request of the applicant, shall issue a certificate that entitles that person to seek employment¹⁸. Decisions by the Head of the Office for Foreigners may be appealed against to the Council for Refugees¹⁹. Appeals must be brought within 14 days from the date of the delivery of the decision or its announcement. The Council for Refugees issues decisions in a three-member panel and, in the case of manifestly unfounded applications, in a single-member panel²⁰. Within 30 days, the negative decision issued by the Council may be subject to appeal to the Administrative Court; nevertheless, lodging the appeal does not prevent a negative decision from being enforced – suspension of the decision requires a separate motion to this effect²¹.

Foreigners who applied for international protection in Poland are entitled to accommodation in designated reception centres. These facilities satisfy basic needs, providing food, health care and small sums of money for personal hygiene products and clothing²².

15 | *Ibid.*, art. 55.

16 | Braniewicz, 2024, p. 101.

17 | Protection Act, art. 44.3.

18 | *Ibid.*, art. 35.

19 | *Ibid.*, art. 89p.

20 | *Ibid.*, art. 89z.

21 | Act on Proceedings Before Administrative Courts from 30 August 2002, Journal of Laws of 2002, No. 152, item 1270, as amended, art. 61 § 1 and § 3.

22 | Ordinance of the Minister of Internal Affairs and Administration of 6 October 2023 on the amount of assistance to foreigners applying for international protection, Journal of Laws of 2023, item 2154, § 2–4.

A person may be accommodated outside the reception centre, but only in cases justified by medical conditions (serious health problems that require specialised medical care), family reasons (having family members living in Poland) or other well-founded reasons (such as pregnancy or other exceptional circumstances). In such cases, a person is entitled to financial assistance, which is intended to cover the cost of housing and living outside the centre²³. The rates of such benefits are extremely low and have not been increased for almost 20 years (!). Placing foreigners who are seeking international protection in centres often results in their exclusion and isolation. This problem is exacerbated by the location of these facilities, most of which are located in or on the outskirts of small towns, with limited access to public transportation²⁴.

A person who has applied for international protection may also be detained in a guarded centre or custody for foreigners for up to six months²⁵ and then up to 18 months in the return procedure in the event of a negative protection decision²⁶. The court issues a decision in this case at the request of the Border Guards. Detention is most often used to establish or verify the identity of foreigners or to collect with their participation information on which the application for international protection is based, which would be impossible to obtain without detention, in cases where there is a significant probability of escape²⁷. Unfortunately, for years, Poland has witnessed abuse of the detention measure, unjustified prolongation of stay in guarded centres, and placement of persons from vulnerable groups who are prohibited by the law from being placed in detention; for example, this occurs when their psychophysical condition may justify the presumption that they have been subjected to violence²⁸ and when use of alternatives to detention are too infrequent²⁹.

2.1.4. Statistics

In 2021, 7.7 thousand foreigners applied for international protection in Poland. The largest number of applications were submitted by the citizens of Belarus (almost 2.3 thousand people), followed by Afghanistan (1.8 thousand people), Iraq (1.4 thousand people), Russia (1 thousand people) and Ukraine (260 people). These numbers were influenced by the internal situation in Belarus, evacuation of associates of the Polish military, and diplomacy from Afghanistan. In the same year, the Office for Foreigners issued decisions regarding 4,700 people. The conditions for granting international protection were met by 2155 foreigners, mainly citizens of Belarus (1,150 individuals) and Afghanistan (750 individuals). In total, 1,460 individuals received negative decisions, predominantly citizens of Russia (645 individuals) and Iraq (270 individuals). Nearly 1.1 thousand proceedings were discontinued, in most cases because the applicant left Poland territory before the decision was issued³⁰. In 2022 9.9 thousand foreigners applied for international protection in Poland. The largest number of applications were submitted by the citizens of Belarus (3.1 thousand individuals), Russia (2.2 thousand individuals), Ukraine (1.8

23 | Nazimek, 2018, pp. 152–153.

24 | Ibid., pp. 141, 152.

25 | Protection Act, art. 89.

26 | Foreigners Act, art. 403.

27 | Protection Act, art. 87.

28 | Ibid., art. 88a. 3.

29 | Klaus et al., 2024.

30 | Statistics of the Office for Foreigners, 2021.

thousand individuals), Iraq and Afghanistan (together 1 thousand individuals). The Office for Foreigners issued decisions regarding 10,700 individuals. The conditions for granting international protection were met by almost 5 thousand foreigners, including citizens of Belarus (3.6 thousand individuals) and Ukraine (1 thousand individuals). Furthermore, 1.6 thousand individuals received negative decisions – mostly citizens of Russia and Iraq. Nearly 4.1 thousand proceedings were discontinued. In 2022, there was a noticeable increase in the number of decisions issued and a further reduction in the length of proceedings³¹. In 2023, 9.5 thousand foreigners applied for international protection in Poland; as in the previous year, the largest number of applications came from citizens of Belarus (3.7 thousand individuals), followed by Ukraine and Russia (1.8 thousand individuals each). The conditions for granting international protection were met by almost 4,6 thousand foreigners, including citizens of Belarus (2.9 thousand individuals) and Ukraine (1,1 thousand individuals). Furthermore, 1,9 thousand individuals received negative decisions – mostly Russian citizens. Nearly 2.3 thousand proceedings were discontinued³².

| 2.2. Political Asylum

In addition to the previously described forms of protection, art. 90 of the Protection Act stipulates that a foreign person may, at his request, be granted asylum in the Republic of Poland when it is necessary to provide him with protection and when the important interests of the Republic of Poland warrant. An asylum application may be filed in the territory of the Republic of Poland or from abroad. The application is directly submitted to the Head of the Office for Foreigners. Applications may also include other people, particularly the applicant's spouse or minor children. In such a case, written consent of the spouse is required to submit the application on his or her behalf and the behalf of children. There is no special form, but the application for political asylum must include details of the applicant, identification of his or her country of origin, and identification of the relevant events that gave rise to a request for political asylum. A foreigner who submits an asylum application while in the territory of Poland is obliged to submit to fingerprinting and photography.

The strict distinction between asylum and refugee status and the introduction of a separate institution of asylum into domestic law is a peculiarity of Polish law, the legitimacy of which may raise some doubts³³. In recent years, there have been very few applications for this form of protection in Poland. In 2022, there were 50 applications and only eight people were granted asylum; in 2023, there were 64 applications and eight people received this kind of protection. In the first half of 2024, 62 foreigners applied for asylum, but none succeeded³⁴.

| 2.3. Temporary Protection

The final form of protection described in this study is temporary protection. It was created to address the mass influx of foreigners who have left their country of origin or a specific geographical area due to foreign invasion, war, civil war, ethnic conflicts or gross violations of human rights. Such people may be granted temporary protection in

31 | Statistics of the Office for Foreigners, 2022.

32 | Statistics of the Office for Foreigners, 2023.

33 | Kowalski, 2006.

34 | Statistics of the Office for Foreigners, 2022-2024.

the territory of the Republic of Poland regardless of whether their arrival was spontaneous or resulted from assistance provided by the Republic of Poland or the international community³⁵. Temporary protection is granted either by a decision of the EU Council or by a regulation of the Council of Ministers³⁶. Such an act should specify, among other things, detailed rules for the financing of temporary protection, the number of foreigners to whom temporary protection may be granted, duration of protection and conditions for its termination. Its purpose is to provide temporary residence and grant certain rights, such as the right to work, education and healthcare, in a simplified administrative procedure. In Poland, this type of protection proved relevant for people who arrived from Ukraine after 24 February 2022, but did not have Ukrainian citizenship, nor were they spouses of a Ukrainian citizen (as the protection of Ukrainian citizens and their spouses is covered by a special act described in part 2.3 of this art.). In accordance with the decision of the Council of the EU³⁷, those who lived in Ukraine legally on the basis of a permanent residence permit and are unable to safely return to their country or region of origin or have lived in Ukraine based on refugee status or a similar form of protection (or are family members of a person entitled to such protection in Ukraine) may be granted temporary protection in Poland or the territory of another EU country. Here, the Head of the Office for Foreigners in Poland issues an appropriate certificate that confirms the holder's right to reside in the Polish territory. Such persons may also take up employment and carry out economic activities in Poland in the same manner as Polish citizens. At their request, they are also provided with medical care, accommodation and meals or assistance in the form of monetary benefits.

3. The Varied Treatment of Asylum Seekers in Poland in 2020 to 2024

| 3.1. *After the Brutal Repression of Peaceful Protests in Belarus*³⁸

After the rigged elections in 2020, many Belarusians had to leave their country because of government repression only after participating in peaceful protests. Given this situation, Polish consulates in Belarus have started to issue numerous so-called 'humanitarian visas', the purpose of which is to arrive for humanitarian reasons, due to the interests of the State or international obligations³⁹. In 2020, 3356 such visas were issued to Belarusian citizens, constituting 98.6% of all the visas issued for this purpose. In 2021, 19,411 'humanitarian' visas were granted to Belarusians, accounting for 98.3% of the visas issued for this purpose. Polish regulations have long provided issuing visas for

35 | Protection Act, art. 106.

36 | *Ibid.*, art. 107.

37 | Council Implementing Decision 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of art. 5 of Directive 2001/55/EC and having the effect of introducing temporary protection.

38 | Parts of this chapter were based on a doctoral thesis, which is not published [M.N].

39 | Foreigners Act, art. 60.1. [23].

this purpose. However, in reality, they have been used sporadically. In 2019, only 84 such visas were issued, of which only one was a long-term type D visa⁴⁰.

Belarusian citizens, like the representatives of any other country, in connection with leaving their country of origin due to a threat from State authorities, can declare their willingness to apply for international protection to the Polish Border Guard authorities, which should result in access to the territory of the Republic of Poland so they can then apply for protection. However, the Polish side has decided to use the 'humanitarian' visa solution on a larger scale, so that Belarusian citizens do not have a problem with access to Polish territory and with leaving the territory of their country.

The use of this tool led to several legal changes. Until 30 November 2020, the Employment Promotion and Labour Market Institutions Act clearly indicated that persons residing in Poland based on a 'humanitarian' visa could not take up employment in the territory of the Republic. When an increasing number of Belarusians started to come to Poland based on this particular visa, the amendment of 1 December 2020 removed it from the list of residential grounds blocking employment. On the same day, the regulation of the Minister of Development, Labour and Technology came into force, which extended the list of cases in which entrusting work to a foreigner on the territory of the Republic of Poland is permissible without the need to obtain a work permit to include persons staying on a visa issued for humanitarian purposes⁴¹.

This huge convenience was introduced rather quickly in response to the difficulties experienced by Belarusian nationals who arrived in Poland because of the situation in their country of origin and who did not necessarily want to apply for international protection or already wanted to work from the start of this procedure, as the refugee procedure in Poland prohibits undertaking work for the first six months⁴².

Belarusian citizens were also the first to benefit from the Poland Business Harbour Program⁴³, which was suspended in 2024. The program supported entrepreneurs in the relocation process to Poland, whose beneficiaries may work in Poland without obtaining a work permit during the validity of their visa and set up a business on conditions analogous to those of persons with Polish citizenship. In addition, Belarusian students do not have to deduct the funds allocated to housing costs when determining the amount of monthly living expenses that a foreigner must demonstrate in the procedure for a temporary residence permit due to studies⁴⁴.

Some Belarusian citizens came to Poland due to the threat of repression in their country of origin and applied for international protection. In 2021, almost 2.3 thousand persons originating from Belarus submitted such applications and the Office for Foreigners issued decisions to 1,150 citizens of Belarus, of which 95.3% were positive decisions, 0.2% were negative decisions and 4.5% of the decisions were related to the discontinuation

40 | Data for 2019 to 2021 obtained from the Ministry of Foreign Affairs through access to public information.

41 | Ordinance of the Minister of Development, Labour and Technology of 20 November 2020, Journal of Laws of 2020, item 2081, § 1.

42 | Protection Act, art. 35.

43 | Poland Business Harbour, 2025.

44 | Ordinance of the Council of Ministers of 24 September 2020, Journal of Laws of 2020, item 1688; Foreigners Act, art. 144.

of proceedings⁴⁵, which gave Poland one of the highest rates of granting international protection to citizens of a country where there is no armed conflict over its entire territory.

The solutions applied to Belarusians illustrate how quickly specific legal changes can be introduced to facilitate the entry and stay in Poland for those who must leave their country. These solutions aligned with Polish migration policy, which targets migrants from countries that the authorities consider to be culturally close. Belarusians were already in the group of migrants with easier access to the labour market in Poland, but after the brutally suppressed protests related to the falsification of the presidential elections, they could count on many facilitations, especially in terms of entering the Polish labour market. These facilitations are most often motivated by the need to support repressed individuals; however, prompt entry into the labour market or relocation to Poland is also undeniably associated with benefits for the Polish economy.

3.2. Humanitarian Crisis on the Polish-Belarusian Border

An important background to the crisis, which has given it a political character, is the long-standing cooperation of the European Union with Belarus to counter illegal migration through, *inter alia*, joint EU projects, cooperation of Belarus with Frontex and signed partnership agreements⁴⁶. Such cooperation of the Union is not a novelty, as Marta Górczyńska points out in her text, *Pact with the Devil, or border cooperation between the Union and Belarus*⁴⁷ and is related to the process of externalisation of EU borders, which is based on transferring the responsibility for protecting these borders, including the fight against illegal migration and the reception of persons seeking international protection who reach the borders, to third countries. According to Beata Przybylska-Maszner, the following is noted:

Since 2004 we can observe a process of integration of migration and asylum issues into the external policy of the Union, which resulted from the EU shifting some of the border management issues and responsibilities to these countries⁴⁸.

Belarus' cooperation with the European Union ran parallel to the sanctions imposed by the Union related to the violently repressed protests of Belarusians against the rigged presidential elections of 2020⁴⁹. Such a practice is also nothing new and, as Górczyńska points out, 'History has already shown several times how much the Union can swallow to maintain cooperation in the area of migration with its key partners and how many concessions it is prepared to make in order to keep refugees out of its borders'⁵⁰. However, at the end of June 2021, Belarus suspended its participation in the partnership in response to sanctions and an increase in illegal border crossings was observed in the territory of Poland and Lithuania⁵¹. This was related to the Belarusian side facilitating the process of obtaining tourist visas to Belarus by citizens of *inter alia* Afghanistan or Iraq for onward

45 | International Protection in 2021 r., 2022.

46 | IOM, 2018.

47 | Górczyńska, 2021.

48 | Przybylska-Maszner, 2021, p. 437.

49 | Council of the EU and the European Council, 2024.

50 | Górczyńska, 2021.

51 | Border Guards, 2021.

travel to European countries. Such practices were considered exploitation by the Belarusian authorities of the pathology of the European visa system, 'which makes it impossible for the majority of people seeking safe refuge or family reunification to obtain a visa to EU countries'⁵², because (as indicated earlier) visas for humanitarian purposes are issued by the Polish authorities mainly to Belarusian citizens.

The obstruction of foreigners' access to the asylum procedure at the Polish-Belarusian section of the border had been ongoing for many years, as confirmed by the judgments of the European Court of Human Rights; however, in August 2021, the situation escalated significantly. The relevant documents were not accepted from persons declaring their willingness to apply for international protection⁵³, and increasingly, these persons were returned to the border line with Belarus⁵⁴ without providing them with legally guaranteed protection against expulsion to a country where they were in danger. Subsequently, on 20 August 2021, a decree by the Minister of Internal Affairs and Administration introduced the possibility of the expulsion of foreigners from the territory without the need to initiate administrative proceedings for an obligation to return⁵⁵. On 2 September 2021, the President of the Republic of Poland introduced a state of emergency due to a 'particular threat to the security of citizens and public order'⁵⁶. The imposition of the state of emergency restricted the right to public information and freedom of movement of local residents and other citizens, but most importantly, it prevented the provision of humanitarian, medical and legal assistance to foreigners within the zone under the state of emergency. Subsequently, on 26 October 2021, the so-called 'Expulsion Law' was enacted⁵⁷, which *inter alia* introduced art. 303b of the Act on Foreigners, stipulating that a decision to leave the territory of the Republic of Poland is to be issued to a person who has been detained in connection with an illegal border crossing. This order is subject to the complaint that, in practice, foreigners without adequate legal assistance cannot apply on their own. In this way, the practice of so-called pushbacks has been legalised, contrary to applicable EU regulations⁵⁸. In addition, the Act introduced paragraph 1a to art. 33 of the Act on Granting Protection to Aliens on the Territory of the Republic of Poland, according to which the following apply:

The Head of the Office may leave unprocessed an application for granting international protection which has been submitted by a foreigner apprehended immediately after crossing, in violation of the law, a border constituting an external border within the meaning of Article 2(2) of Regulation No. 2016/399 of the European Parliament and of the Council of 9 March 2016 on the Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ EU L 77, 23.03.2016, p. 1, as amended), unless the foreigner has come directly from a territory where his or her life or freedom was threatened by a danger of persecution

52 | Klaus et al., 2020, p. 3.

53 | Commissioner for Human Rights, 2021b.

54 | Amnesty International, 2022, p. 4.

55 | Ordinance of the Minister of Internal Affairs and Administration of 20 August 2021, Journal of Laws 2021, item 1536.

56 | Regulation of the President of the Republic of Poland of 2 September 2021, Journal of Laws 2021, item 1612.

57 | Act amending the Act on Foreigners and certain other acts of 14 October 2021, Journal of Laws 2021, item 1918, art. 1[3].

58 | Klaus et al., 2020, p. 14.

or a risk of serious harm, and has presented credible reasons for entering the territory of the Republic of Poland illegally and has applied for international protection immediately after crossing the border⁵⁹.

This provision conditions access to the asylum procedure depending on the manner in which the person arrived on the territory of Poland and, in addition, by using the term 'immediately', it vaguely defines when the provision will apply.

An additional safeguard to protect the state border against illegal border crossings is the construction of a wall on its Polish-Belarusian section. The barrier is planned to be 186 kilometres long and the cost of construction is 1.6 billion PLN⁶⁰. The Polish Commissioner for Human Rights, in his comments on the Act on the Construction of the State Border Security⁶¹, pointed out *inter alia* that, according to art. 6, the provisions of the Construction Law, Water Law, Environmental Law, Law on Making Environmental Information Available, Geodetic and Cartographic Law, Law on Spatial Planning and Development, Protection of Agricultural and Forest Land and the Environmental Law, Law on Railway Transport, and Law on Special Principles for the Preparation and Implementation of Investments in the Field of Public Roads do not apply to this investment. Many provisions of the Act are irreconcilable with the Constitution and European law⁶². However, to ensure the safety of citizens and secure the proceedings on the obligation to return, most of the foreigners who managed to stay on the territory of the Republic of Poland were transferred to detention centres. In August 2021, due to an increase in the number of foreigners detained due to irregularly crossing the state border and lacking a residential permit in the territory of Poland, a Temporary Guarded Centre for Foreigners was established in Wędrzyn, which was located in the territory of an active military training ground. Representatives of the National Torture Prevention Mechanism found residential buildings in very poor conditions surrounded by concertina-type entanglements resembling prisons. They found that the sounds of gunfire and explosions heard every day caused tremendous stress to foreigners. Some individuals had left their country because of armed conflicts and such conditions could lead to deepening trauma⁶³. In the Spring of 2022, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Poland. The report shows that the Polish authorities do not effectively prevent torture and inhuman or degrading treatments.

In addition, the regulation of the Minister of the Interior and Administration reduced the minimum surface area per foreigner placed in a guarded centre to 2 m²⁶⁴, which *de facto* led to huge overcrowding in the centres. Incidentally, it is worth noting that the

59 | Protection Act, art. 33, par. 1a.

60 | Szczepańska, 2022.

61 | Law on the Construction of the State Border Security of 29 October 2021, Journal of Laws 2021, item 1992.

62 | Commissioner for Human Rights, 2021a.

63 | Commissioner for Human Rights, 2021c; Commissioner for Human Rights, 2022b; Commissioner for Human Rights, 2021d.

64 | Regulation of the Minister of the Interior and Administration of 13 August 2021, amending the Ordinance on Guarded Centers and Detention Centers for Foreigners, Journal of Laws of 2021, item 1482.

minimum area established by the regulation is smaller than the area per inmate in penitentiary units. In Poland, it is 3 m², whereas the European standard is 4 m²⁶⁵.

| 3.3. *Russian Federation's Invasion of Ukrainian Territory*

The full-scale Russian aggression on 24 February 2022 led to a war that forced people living in Ukraine to flee their homes and leave their country. In the first week of this armed conflict, more than one million refugees from Ukraine crossed the borders of their country, finding refuge in neighbouring countries. As of October 2024, more than six million Ukrainian refugees were registered in Europe⁶⁶. A significant number arrived in Poland⁶⁷. We observed opposite reactions of Polish state authorities to those taking place in response to the Polish-Belarusian border crisis. The Polish-Ukrainian border was practically completely opened to people leaving Ukraine, and the controls operated by the Border Guard were carried out in a way that streamlined the entire procedure wherever possible, with a massive application of art. 32 of the Foreigners Act. This provision allows the commanding officer of a Border Guard office to issue a permit to enter the territory of the Republic of Poland for a period of stay not exceeding 15 days for a foreigner who does not meet such requirements as having a valid travel document entitling the holder to cross the border, having a visa or the possibility of entering visa-free traffic or sufficient means of subsistence⁶⁸. The Office for Foreigners reported the following on 27 February 2022:

All people fleeing Ukraine from the armed conflict do not need to register at reception points or worry about formalities. All persons fleeing Ukraine seeking refuge in Poland need not worry about the legality of their stay. There is also no need to submit any applications to the Office for Foreigners, provincial offices, or Border Guard posts in the coming days. The same applies to Ukrainian citizens who are in Poland and whose residence permits have expired⁶⁹.

At that time, provincial governors and city authorities opened reception sites for those arriving to provide shelter and food.

On 4 March, the EU adopted the Council Implementing Decision 2022/382, establishing the existence of a massive influx of displaced persons from Ukraine within the meaning of art. 5 of Directive 2001/55/EC. Shortly thereafter, on 12 March 2022 the Polish Parliament adopted the Act on Assistance to Citizens of Ukraine in connection with the Armed Conflict on the Territory of that Country (hereinafter: Act on Assistance to Citizens of Ukraine). It entered into force on the very same day, with most of the provisions being effective from 24 February⁷⁰.

For citizens of Ukraine (and their spouses) who have arrived legally in the territory of the Republic of Poland in the period from 24 February 2022 and who have declared their intention to stay in the territory of Poland, this law *inter alia* legalises their stay for an initial 18 months (beginning at 24 February 2022), grants social benefits, provides

65 | Commissioner for Human Rights, 2022b.

66 | UNHCR Statistics, 2024.

67 | Bil, 2023, p. 128.

68 | EU Regulation 2016/399, art. 6.

69 | Office for Foreigners, 2022.

70 | Act on Assistance to Citizens of Ukraine, art. 116.

accommodation and food, and allows the possibility to apply for a special temporary residence permit for three years⁷¹. In addition, the period of stay of Ukrainian citizens in the territory of the Republic of Poland based on national and Schengen visas issued by Polish authorities, visas issued by another state of the Schengen area in visa-free traffic, and the validity of issued residence cards have been extended⁷². In principle, the law does not apply to persons who have filed applications for international protection in Poland unless such a person withdraws the application. Leaving Poland's territory for more than 30 days results in depriving benefits resulting from the Act.

One group that was completely disregarded by the Polish legislature was persons without Ukrainian citizenship who were ineligible for temporary protection by the Executive Decision of the Council of the European Union⁷³. This group mostly included students and workers in Ukraine during their temporary stays. Despite the attention drawn to this problem already at the legislative stage by NGOs, the Centre for Studies and Legislation of the National Council of Legal Advisers⁷⁴, and the Commissioner for Human Rights⁷⁵, these persons were formally excluded from any support. Only in the governmental project on the amendment of the Act on Assistance to Citizens of Ukraine was it proposed that the stay of foreigners who were not citizens of Ukraine – and whom the commanding officer of the Border Guard office located in the specific section of the border between the Republic of Poland and Ukraine in the period from 24 February 2022 allowed to enter the territory of the Republic of Poland under art. 32.1. of the Foreigners Act – were extended by law for a further 90 days. Such a retroactive extension could have positive consequences for persons who applied for a temporary residence permit 15 days after entry into the territory of the Republic of Poland and thus de facto during an already undocumented stay. However, such a solution should be considered insufficient, as the people who were also fleeing the war in Ukraine had only 15 days to decide what to do next upon arrival in Poland. Given that this was a period of great information chaos and that the government website of the Office for Foreigners had the aforementioned information that all persons fleeing Ukraine from the armed conflict did not need to worry about formalities, the non-extension of the legal stay of persons who did not have Ukrainian citizenship was a clear signal that their longer stay in Polish territory was undesirable. Unfortunately, the amendment in question was not included in the final version of the amendment of 8 June 2022⁷⁶. At the same time, Germany informed that third-country nationals who were in Ukraine on 24 February 2022 could enter and stay in Germany without a visa or resident permit.

These solutions, which were applied in response to the mass exodus of civilians from Ukrainian territories, should be considered adequate from the perspective of international obligations. The implementation of available tools to enable those fleeing war to quickly find safe refuge and the introduction of further forms of support and facilitation for Ukrainian citizens indicate openness to this community, which was clearly expressed

71 | Act on Assistance to Citizens of Ukraine, art. 2, 12, 26 and 38.

72 | Act on Assistance to Citizens of Ukraine, art. 42.

73 | Council Implementing Decision (EU) 2022/382.

74 | National Council of Legal Advisers, 2022.

75 | Commissioner for Human Rights, 2022.

76 | Amendment of the Act on Assistance to Citizens of Ukraine of 8 June 2022, Journal of Laws 2022, item 1383.

and fits with the assumptions of migration policy regarding the targeting of Polish policy toward immigrants from culturally close countries and those who can quickly enter the labour market; this in turn shows more objectifying rather than subject-centered treatment. At this point, it is worth emphasising the tremendous amount of work done by Polish society and NGOs during this time, without which the reception of so many people would not have been possible⁷⁷.

Unfortunately, a limitation should also be pointed out here, namely a removal from the Protection Act art. 110.2.⁷⁸, which was the right of foreigners to enjoy temporary protection to obtain a temporary residence permit for one year and a residence card. It is unclear what dictated such a change, which posed a real difficulty for many people, especially in the context of the need to fulfil business trips or travel for health reasons. It was not until July 2022 that Poland notified the European Commission of a new electronic document on the *diia.pl* mobile application that confirmed their legal stay in Poland and allowed them to cross its borders. However, the stark difference in how Poland treated people with and without Ukrainian citizenship during the Russian aggression – an aggression that forced many people in Ukraine, regardless of their nationality, to escape the country – reveals a deeply unequal approach to different groups of migrants. Some of these people may return to their safe country of origin, while for others, this may not be possible.

In the sphere of labour law, the Act on Assistance to Citizens of Ukraine regulates issues such as access to the labour market, as well as unemployment and job-seeker status for Ukrainian citizens. When employing such a person, the employer must notify the Employment Office about that fact within 14 days and a separate work permit is not required. Moreover, it allows Ukrainian citizens to undertake and carry out economic activities in the same manner as Polish citizens. The Act on Assistance to Citizens of Ukraine also regulates the conditions under which Polish and Ukrainian citizens who studied in Ukraine or were employed as academic teachers/researchers there, were able to continue their education or scientific activities at Polish universities. Ukrainian children and students were provided with education. The Ministry adopted laws that allowed an increase in the number of children in classrooms and preschool groups⁷⁹. If a child who arrived from Ukraine does not have parents or other legal guardians in Poland, it is necessary to apply to the court for the appointment of a temporary guardian. Such a person holds custody of the child and the child's property. A temporary guardian does not have as broad powers as a parent; nevertheless, important decisions (e.g. subjecting the child to surgery or leaving the country) require the permission of the court. When appointing a guardian, the court must consider the best interests of the child. The guardian may be a child's relative or another person who guarantees proper performance of the guardian's duties. Citizens of Poland and Ukraine could become temporary guardians. Whenever possible, one temporary guardian should be appointed for siblings and one person can also be appointed for several unrelated children, provided that there is no conflict between their interests⁸⁰.

77 | See, inter alia Jarosz and Klaus, 2023.

78 | Act on Assistance to Citizens of Ukraine, art. 80[4)a].

79 | Ordinance of the Minister of Education and Science of 21 March 2022, Journal of Laws of 2023, item 2094.

80 | Act on Assistance to Citizens of Ukraine, art. 25.

To gain access to public benefits and services, it was necessary to obtain a personal ID number (PESEL UKR); however, the procedure has been simplified⁸¹. Material support included family and child-rearing benefits, support in the form of cash and non-cash social assistance benefits, access to free psychological assistance, access to medical care under the same conditions as those covered by health insurance in Poland, and food aid under the Fund for European Aid to the Most Deprived (FEAD). People with disabilities could access programs financed by the State Fund for the Rehabilitation of the Disabled⁸². In addition, any entity that decided to provide accommodation and meals to Ukrainian citizens was entitled to monetary benefits. The benefit was to be paid by the municipal authorities for a maximum period of 60 days and then up to 120 days, which could still be extended in justified cases. The Polish government also created a special website (pomagamukrainie.gov.pl) containing information about issues such as reception and information points, obtaining personal ID numbers, NGO activities, and points where free legal advice is provided. It is available in Polish, English, Russian and Ukrainian. The website is still a good source of knowledge about many aspects relevant to Ukrainian citizens' daily lives in Poland.

It is important to stress that Ukrainian refugees in Poland, like those in other parts of Europe, face several stereotypes. One stereotype perceives Ukrainian refugees as suitable only for low-skilled jobs. This overlooks the diverse skills and qualifications that many Ukrainians possess. Another stereotype is that Ukrainian refugees depend heavily on social aid and do not contribute to economic growth. In reality, many Ukrainians actively seek employment and contribute to the local economy. As of mid-2023, more than three million Ukrainian citizens were living in Poland. This number includes around 1.3 million economic migrants who were already in Poland before the full-scale invasion and 1.8 million refugees who arrived after 24 February 2022⁸³. Ukrainians have had a significant impact on both Polish society and the economy. According to a study conducted by the UNHCR in 2023, refugees from Ukraine will contribute between 0.7 and 1.1 percent of Poland's GDP and the size of their contribution is likely to grow further⁸⁴. Ukrainian migrants have helped fill labour shortages in various sectors, including construction, agriculture, healthcare and services, which have been crucial in maintaining economic stability and growth. Moreover, in 2023 alone, Ukrainians founded approximately 10% of the over 300,000 new companies registered in Poland⁸⁵. Overall, while there have been challenges, the presence of Ukrainian refugees in Poland has brought numerous benefits, contributing to economic growth and enriching the country's social fabric.

81 | *Ibid.*, arts. 4, 23.2, 29.

82 | *Ibid.*, art 34.

83 | Korzeniowski et al., 2024.

84 | UNHCR, 2024.

85 | Kujawski, 2024.

4. Changing Perspectives on Protection in 2024

4.1. *After Two Years of War in Ukraine*

Some major amendments to the Act on Assistance to Citizens of Ukraine came into force on 1 July 2024⁸⁶. First, the amendment extended the possibility of a legal stay in Poland to 30 September 2025. The amendment also changed the rules concerning the accommodation of Ukrainian refugees. The Act ended the period during which a monetary benefit could be paid for housing and catering provided by private entities. As explained by the government, this benefit was of an extraordinary nature and has lost its original meaning over time, while the number of vacant places in collective accommodation facilities increased. In addition, the amendment made it mandatory for municipal authorities to confirm the identity of a person based on a valid travel document⁸⁷. This requirement has resulted in the impossibility of granting the relevant rights to persons who do not have a valid travel document and cannot obtain one at a Ukrainian consulate in Polish territory. This mainly affects people from the occupied territories, especially men of conscription age, who can only obtain passports within Ukraine. The rules concerning the legal requirements for the employment of Ukrainian citizens remain the same. However, the deadline for sending notices to the Employment Office has been shortened. As of 1 July 2024, the employer has only seven days to fulfil this obligation. The amendment also linked the payment of parental benefits with the obligation to realise mandatory education in Polish schooling institutions, while many children were included in the Ukrainian online school system⁸⁸.

The attitude of the Polish people toward Ukrainian refugees has changed since 2022. Compassion fatigue is one of the many factors that contributes to a decline in solidarity. It is defined as a state of emotional and physical exhaustion that affects individuals who are intensely involved in helping others. It is particularly common among caring professionals such as social workers, nurses and therapists, but has also become a significant problem among NGO workers, who often deal with high levels of stress and emotional exhaustion due to their work with vulnerable groups. This condition, also known as secondary traumatic stress, occurs when caregivers become emotionally drained from constant exposure to the suffering of others. Compassion fatigue has become a noticeable phenomenon in the context of helping refugees from Ukraine in Poland⁸⁹. After a significant initial willingness to help, the intensity of the assistance quickly decreased. According to a report by the Polish Economic Institute, the percentage of Poles who believed that Ukrainian refugees needed help decreased from 84% at the beginning of the invasion to 50% in the autumn of 2022⁹⁰. Although the social acceptance of Ukrainian refugees remains high, there has been a noticeable decline in their determination to help.

86 | Act amending the Act on Assistance to Citizens of Ukraine of 14 May 2024, Journal of Laws 2024, item 854.

87 | Ibid., art 4.11.

88 | Ibid., art. 26.1.2.

89 | Jarosz, 2024, p. 9; Hargrave et al., 2024, pp. 9, 21.

90 | Baszczak et al., 2023, p. 26.

| 4.2. Double Standards?

After the successful reception of refugees from Ukraine and the response of international NGOs that began large-scale operations in Poland for the first time, along with the unimaginable work of national and local NGOs and Polish society as a whole, a stark contrast became evident in the governmental response to the crisis at the Polish-Belarusian border compared to that triggered by the war in Ukraine. Numerous NGOs, particularly those engaged in both contexts, have observed disparities in the treatment of various groups seeking protection in Poland. These differences not only shaped the official stance but have also had a significant impact on the scope and character of the humanitarian response. Based on the annual report, 'Pepper Spray in a Bottle of Water'⁹¹ of the We Are Monitoring Association, which has been collecting data on the crisis on the Polish-Belarusian border from the beginning of the crisis, double humanitarian standards occurred in Poland on many levels. These are mainly noticeable in terms of access to information and the territory, scale, rate of launching support, legal changes and implementation of international provisions, financing, attitude toward those providing assistance, humanitarian narrative and the rhetoric of Polish authorities, and perspective on who deserves or does not deserve help and support in the further journey or integration in Poland⁹².

The markedly different treatment of individuals seeking protection simultaneously on the two Polish borders, which are external borders of the European Union, is also part of a broader discussion of the narratives created around the Ukrainian response and humanitarian principles. Next to the frequently used term of 'solidarity', we could also notice debates around the narrative of 'exceptionalism'⁹³ to describe the response to the war in Ukraine and its specificity, justified for example by the fact that it is an invasion of one UN member state by another or the largest war in Europe since the end of World War II. This 'exceptionalism' was visible in the scale of the response, political support or even media coverage. It is crucial to emphasise the following:

A narrative of exceptionalism around Russia's war in Ukraine – the notion that this is 'a different kind of crisis' – has posed challenges for impartiality: driving disproportionate funding to the humanitarian response and uniquely generous policies towards Ukrainian refugees. While the principle of impartiality dictates that humanitarian action must be delivered on the basis of need alone, in Poland and the UK, civil society have been among those accusing their governments of double standards, highlighting the different approaches between arrivals from Ukraine and the rest of the world. In Poland, this charge has also been put to international humanitarian organisations which, in the midst of a large-scale response to Ukrainian refugees, were seen as reluctant to support Polish civil society to respond to a longer-running humanitarian crisis on the Poland–Belarus border⁹⁴.

| 4.3. Restriction of the Right to Seek International Protection

In October 2024, the Polish Government adopted the document 'Take Back Control. Ensure Security. Poland's Comprehensive and Responsible Migration Strategy for

91 | We Are Monitoring, 2024.

92 | Ibid., pp. 124–136.

93 | Hargrave, 2024, pp. 22–32.

94 | Ibid., pp. 7–8.

2025-2030⁹⁵, which introduced the announcement of legal changes that will allow temporary and territorial suspension of the right to accept asylum applications. Despite widespread criticism of many provisions of the strategy (particularly the possibility of suspending the right to asylum) from numerous sectors, including academics and NGOs⁹⁶, the process of legalising the draft amendment to the Protection Act has been accelerated.

It is difficult to disagree that the proposed legislation violates the international (Refugee Convention), EU⁹⁷ and national laws⁹⁸. UNHCR highlights that the principle of non-refoulement is binding, universal and non-derogable in all situations of people on the move, including in the context of ‘instrumentalization’⁹⁹.

Nevertheless, in December 2024, the European Commission, in its communication with the European Parliament and Council on countering hybrid threats from the weaponization of migration and strengthening security at the EU’s external borders¹⁰⁰, took the following position:

In view of the serious nature and persistence of the threat to the security of the EU and the territorial integrity of Member States at the EU external borders with Russia and Belarus, Member States may invoke Treaty provisions to exceptionally and under stringent conditions go further than what is provided for by EU secondary legislation under the control of the Court of Justice. This could include measures that may entail serious interferences with fundamental rights such as the right to asylum and related guarantees subject to the requirements under the Charter. Today’s Communication outlines the conditions for such measures which have to be proportionate, limited to what is strictly necessary in clearly defined cases, and temporary¹⁰¹.

As shown, all changes proposed in Poland are part of a broader EU context. Adopted in May 2024, the Pact on Migration and Asylum was also widely criticised by experts due to its restrictions on access to asylum procedures¹⁰². Polish social organisations offering legal, integration and humanitarian support to migrants in Poland prepared recommendations for the Polish National Implementation Plan of the EU Pact, in which they drew the Polish government’s attention to how questionable provisions of the Pact can still be implemented in Poland in a way that best ensures the realisation of the rights of those seeking protection, especially concerning the protection of people from vulnerable groups, providing legal aid or establishing independent monitoring of fundamental rights¹⁰³. In parallel, the Polish government publicly stated that the EU Pact would not be implemented in Poland because it did not reflect the specific situation of Poland and did not respond to its security challenges.

95 | Chancellery of the Prime Minister, 2024.

96 | See, inter alia Statement of I/NGOs, 2024.

97 | Charter of Fundamental Rights of the European Union, art. 18.

98 | The Constitution of the Republic of Poland, art. 56; see, inter alia Association for Legal Intervention, 2024.

99 | UNHCR, 2024.

100 | European Commission, 2024a.

101 | European Commission, 2024b.

102 | PICUM, 2024.

103 | Migration Consortium, 2024.

On 27 March 2025, Poland introduced a temporary restriction on the right to apply for international protection at the State border with Belarus¹⁰⁴, justifying this position on security grounds.

The position of the Commission and the steps taken by the Polish government raised concerns about the potential erosion of the rights provided by the Geneva Convention, which was established in connection with the terrible consequences of World War II and originally intended to address the problem of population displacement in Europe. Today, we observe practices that may undermine the fundamental principles of international protection, including the right to seek asylum. Owing to ongoing wars, conflicts, persecution and forced displacement due to climate change, there is a pressing need to reinforce rather than weaken the international protection framework. However, recent developments suggest a troubling departure from the core values upon which Europe's commitment to human rights and solidarity was built.

5. Conclusion

Poland's approach to refugee protection demonstrates significant contrasts. Ukrainian refugees have received extensive support, including legalised residency, access to public services and integration into the labour market, reflecting solidarity and a positive attitude toward them, especially in the first year of Russia's full-scale invasion. In contrast, asylum seekers at the Belarusian border faced restrictive measures, such as pushback and limited access to asylum procedures, highlighting the double standards in humanitarian responses. These differences reflect both national priorities and broader EU trends in which security concerns increasingly overshadow commitments to international refugee protection. The experiences in recent years have shown how quickly Polish authorities and society are able to respond to the need for humanitarian support (in the case of Ukrainians) and how flexibly they can adapt legal regulations to political decisions (in all cases indicated). By contrast, impartial adherence to humanitarian principles and international standards of refugee protection appears to be a much greater challenge, especially in the face of ongoing crises and Russia's hostile policies involving the instrumental exploitation of desperate people seeking protection.

104 | Protection Act, art. 33a-c, Regulation of the Council of Ministers of 27 March 2025, Journal of Laws 2025, item 390.

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Ordinance of the Minister of Education and Science of 21 March 2022, Journal of Laws of 2023, item 2094.

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HUMAN RIGHTS ISSUES IN THE EU ACCESSION NEGOTIATIONS: THE CASE OF BOSNIA AND HERZEGOVINA

Igor Milinković¹

ABSTRACT

Only a few years after the conclusion of armed conflict in Bosnia and Herzegovina (BiH), the country embarked on its path toward European Union (EU) accession (a process deemed essential by political elites and one of the few issues with broad consensus among its citizens). However, progress has been slow, and the reforms required to meet the Copenhagen criteria have not produced satisfactory results yet. In 2016, BiH applied for EU membership, prompting the European Commission to issue its Opinion on the Application for Membership in 2019. This document outlined 14 key priorities, covering areas, such as democracy, government functionality, the rule of law, fundamental rights, and public administration reform. The European Commission's Opinion was accompanied by an Analytical Report, a comprehensive document identifying 115 specific priorities aligned with the political and economic criteria and the chapters of the Acquis Communautaire. This study examines the implementation of the priorities outlined in the European Commission's Opinion, with a particular emphasis on human rights protection, the rule of law strengthening, and judicial reform. Special attention is given to the provisions introduced by the Law on Amendments to the Law on the High Judicial and Prosecutorial Council of BiH, aimed at enhancing the accountability of both Council members and judicial office holders.

KEYWORDS

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1. Bosnia and Herzegovina's EU Accession Negotiations Process: A Long and Rocky Journey

Bosnia and Herzegovina (BiH) has long pursued the goal of attaining full membership in the European Union (EU), with this aspiration formally articulated in the late 1990s (only a few years after the armed conflict in the country ended). In 1998, the Council of the EU issued a Declaration on Special Relations between the EU and BiH, expressing its commitment to strengthen relations with BiH, provided that the conditions outlined in the Regional Approach are fulfilled.² On 28 January 1999, the BiH Council of Ministers adopted the 'Decision on Launching the Initiative for BiH's EU Accession'³, followed by the Parliamentary Assembly of BiH's adoption of the 'Resolution on European Integration and the Stability Pact for South-East Europe'⁴ on 27 July 1999. These documents established the framework for BiH's EU accession and affirmed its commitment to the EU integration process. The 'Decision on Launching the Initiative for BiH's EU Accession' assigned the BiH Ministry of Foreign Affairs and the BiH Ministry of Foreign Trade and Economic Relations the responsibility to lead political and economic efforts related to EU integration.

The 'General Directions and Priorities for the Implementation of the Foreign Policy of BiH'⁵, adopted by the BiH Presidency in 2003, identified EU membership as the country's principal foreign policy objective, aligning its efforts with the Stabilization and Association Process (SAP) to strengthen institutional relations with the EU. On 29 January 2015, the BiH Presidency issued the 'Statement on the Commitment of Government Institutions at All Levels to Implement Necessary Reforms within the EU Accession Process' (subsequently endorsed by the Parliamentary Assembly of BiH later that year)⁶. The Statement emphasised the need for comprehensive reforms across all levels of government and addressed both shared and exclusive competences.⁷ This marked a shift toward an integrated approach to EU integration involving all levels of government in the enlargement process and domestic reforms.

2 | Hansen, 1999, p. 16.

3 | 'Decision on Launching the Initiative for BiH's EU Accession', Council of Ministers of BiH (1999), *Official Gazette of BiH*, No. 3/99.

4 | 'Resolution on European Integration and Stability Pact for South-East Europe', Parliamentary Assembly of BiH (1999), *Official Gazette of BiH*, No. 12/99.

5 | 'General Directions and Priorities for Implementation of Foreign Policy of Bosnia and Herzegovina', BiH Presidency (2003), No. 01-645-30/03.

6 | 'Declaration on the Commitment of Government Institutions in Bosnia and Herzegovina at All Levels to Implement the Necessary Reforms in the Framework of the EU Accession Process', 2015, *Official Gazette of BiH*, No. 16/15.

7 | One of the key factors influencing BiH's progress in fulfilling the conditions for EU accession is the country's complex state structure. The country is a complex state, often described in the literature as a federation with distinct confederal elements (Stanković, 2019, p. 4). It consists of two entities (federal units): the Republic of Srpska (RS), which is a unitary entity, and the Federation of Bosnia and Herzegovina (FBiH), which is organized as a federation comprising ten cantons. The third subnational unit in BiH is the Brčko District (BD) of BiH, a special administrative unit of local self-government, as defined in Article 1.1 of the BD Statute, which possesses extensive legislative autonomy.

The 'Foreign Policy Strategy 2018–2023'⁸, adopted by the BiH Presidency on 13 March 2018, further outlined the country's strategic priorities for the EU integration process. This document provided a comprehensive framework focusing on security, economic prosperity, protection of citizens abroad, and the global promotion of BiH. However, the core of this strategy was the explicit prioritisation of EU membership, reaffirming it as a core element of BiH's long-term foreign policy objectives.

On 23 July 2015, the BiH Presidency adopted the 'Master Plan for the Process of Integrating BiH into the EU'. This document outlined a time-bound framework specifying key activities for advancing EU integration, with responsibilities distributed across all levels of government and accompanied by specific deadlines. The Master Plan identified 11 priority activities, including the adoption of a declaration on the EU by the BiH Parliamentary Assembly, the establishment of a coordination mechanism among government institutions, and the submission of a credible EU membership application. Although the plan aimed for BiH to obtain EU candidate status by 31 December 2017, only seven activities were fully implemented, whereas four experienced delays or were only partially completed. A notable example of these delays was the late submission of 'BiH's Responses to the European Commission's Questionnaire', which was submitted on 28 February 2018 instead of the scheduled 31 May 2017.⁹

Complementing the Master Plan, the 'Reform Agenda for 2015–2018'¹⁰ was adopted by the BiH Council of Ministers, as well as entity and cantonal governments on 10 June 2015. The agenda outlined reforms in six key areas: 1. public finance, taxation, and fiscal sustainability; 2. business climate and competitiveness; 3. labour market policies; 4. social welfare and pension reform; 5. rule of law and good governance; and 6. public administration reform. The Agenda stipulated that the Council of Ministers, entity governments, cantonal governments, and the Brčko District (BD) government would maintain close consultations with the EU throughout the Agenda's implementation. Regular progress reports on its implementation were submitted to the EU Delegation in Sarajevo. These reports were required to be factual, concise, and technical, while also providing detailed information on all adopted measures and offering explanations for any delays or modifications to the original plans. Action plans for the Agenda's implementation were adopted by different levels of government, with the FBiH and its ten cantons adopting 61 measures, the Republic of Srpska (RS) adopting 78 measures, and the BiH-level plan comprising 33 measures.

In 2005, negotiations to sign the Stabilisation and Association Agreement (SAA) between the EU and the BiH were initiated. At that point, the European Commission recognised BiH's significant progress in implementing the required reforms. The negotiations were successfully finalised in 2006, and the SAA was officially signed in

8 | 'Foreign Policy Strategy of Bosnia and Herzegovina 2018–2023', Presidency of BiH (2018), No. 01-50-1-936-27-1/18. [Online]. Available at: <https://www.predsjednistvobih.ba/van/default.aspx?id=79555&langTag=en-US> (Accessed: 7 April 2026).

9 | 'BiH's Responses to the European Commission's Questionnaire', Directorate for European Integration (DEI) (2018) [Online]. Available at: <https://www.dei.gov.ba/en/odgovori-na-upitnik-ek> (Accessed: 7 April 2026).

10 | 'Reformska agenda za Bosnu i Hercegovinu za period 2015-2018. godine' ('Reform Agenda for Bosnia and Herzegovina 2015 – 2018'), Council of Ministers of BiH, 2015 [Online]. Available at: https://fbihvlada.gov.ba/uploads/documents/reformska-agenda_1644324760.pdf (Accessed: 11 September 2024).

2008, accompanied by the Interim Agreement on Trade and Trade-Related Affairs. The SAA included a free trade agreement and provided support for comprehensive legal, administrative, institutional, and economic reforms aimed at bringing BiH closer to the EU and preparing it for eventual membership negotiations. Although the agreement was provisionally applied upon signing, it did not enter into full force until 2015, as the EU suspended its implementation, pending significant political reforms in BiH.¹¹

On 28 January 2016, the BiH Presidency ratified the 'Decision on the Submission of BiH's EU Membership Application', authorising the Chairman of the Presidency to submit the application. The application was officially presented to the EU on 15 February 2016, eight years after signing the SAA, reaffirming BiH's commitment to implement the necessary reforms in accordance with Article 49 of the EU Treaty.

Following the submission, the Council of the EU acknowledged the application, and on 9 December 2016, the European Commission issued a questionnaire with 3,242 questions to the BiH authorities. After a 14-month review, BiH submitted its responses on 28 February 2018. In response, the European Commission issued 655 additional questions on 20 June 2018 to which BiH replied on 4 March 2019. These submissions enabled the EU to prepare its formal opinion, or *Avis*, on BiH's membership application, which was presented to the BiH authorities on 29 May 2019.

In its Opinion on Bosnia and Herzegovina's application for EU membership, the European Commission identified 14 key priorities that BiH must address. Among these priorities, the European Commission's Opinion highlighted issues necessitating constitutional amendments, indicating that EU accession will not be achievable without changes to the Dayton Constitution (rendering the fulfilment of these requirements particularly challenging). Constitutional changes were essential in at least six areas:

1. Establishing legal certainty regarding the distribution of competences across all levels of government;
2. Introducing a substitution clause that allows the state, upon accession, to temporarily assume the competences of other government levels to prevent or address breaches of EU law;
3. Ensuring the independence of the judiciary, including the self-governance of the High Judicial and Prosecutorial Council (HJPC) of BiH;
4. Reforming the BiH Constitutional Court, particularly by addressing the presence of international judges and ensuring the enforcement of its decisions;
5. Ensuring legal certainty by establishing a judicial body responsible for the consistent interpretation of laws across BiH;
6. Ensuring equality and non-discrimination of citizens, particularly by addressing the ECtHR case law.¹²

Several additional priorities outlined in the European Commission's Opinion related specifically to the functioning of judicial self-governance and the judiciary in BiH. These

11 | Nielsen, 2022, p. 7. The EU delayed the entry into force of the SAA due to BiH's failure to comply with the Sejdić-Finci ruling of the European Court of Human Rights (ECtHR). One of the factors contributing to the final entry into force of the SAA was the German-British initiative, which prioritized the implementation of the Reform Agenda without requiring the execution of the Sejdić-Finci ruling (Galić, Barbarić and Bošnjak, 2022, p. 267).

12 | Woelk, Galić and Sekulić, 2023, p. 460.

include the requirement to adopt new legislation governing the organisation and operations of the High HJPC and strengthening measures to combat corruption.

Accompanying this Opinion was an Analytical Report¹³ – a comprehensive document outlining 115 specific priorities aligned with the political and economic criteria and chapters of the *Acquis Communautaire*. In response, the Council of Ministers of BiH adopted the ‘Action Plan for the Implementation of Priorities from the Analytical Report of the European Commission’¹⁴ on 15 October 2019. Formulated by the BiH Directorate for European Integration (DEI), the Action Plan established deadlines for implementing various measures, ranging from July 2019 to May 2020.

The Action Plan included 691 measures designed to meet the 115 priorities outlined in the Analytical Report, distributed across different levels of government: 230 measures at the state level, 391 at lower levels of government, and 70 spanning multiple government tiers. The measures were categorised as follows:

1. Laws - 115;
2. By-laws - 92;
3. Strategic, planning, and program documents – 94;
4. Strengthening administrative capacities – 79;
5. Other measures (e.g. coordination improvements, IT solutions, international agreements, memoranda of cooperation, and operational activities) – 311.

A total of 231 institutions across all government levels participated in the development and implementation of the Action Plan, including 47 at the BiH level, 31 at the FBiH entity level, 31 from the RS, 17 from the BD, and 105 at the cantonal level in the FBiH.

Despite these efforts, the Action Plan yielded limited results. According to the ‘Final Report on the Action Plan for Implementing Measures from the Analytical Report’¹⁵, endorsed by the Council of Ministers on 22 October 2020, only 288 out of the 691 planned measures (42%) were successfully implemented, while 403 measures (58%) remained unfulfilled. The implementation breakdown is as follows:

1. Laws: 26 of 115 measures (23%);
2. Bylaws: 26 of 92 measures (28%);
3. Strategic, planning, and program documents: 28 of 94 measures (30%);
4. Strengthening administrative capacity: 40 of 79 measures (51%);

13 | Analytical Report accompanying European Commission's Opinion on BiH's application for membership of the EU, European Commission (2019). Available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/b6ce79f2-cde7-429f-aa06-a0e1a8860072_en?filename=20190529-bosnia-and-herzegovina-analytical-report.pdf (Accessed: 7 April 2026).

14 | ‘Akcioni plan za realizaciju prioriteta iz Analitičkog izvještaja Evropske komisije’ (‘Action Plan for the Implementation of Priorities from the Analytical Report of the European Commission’), Council of Ministers of BiH (2019) [Online]. Available at: https://www.dei.gov.ba/uploads/documents/akcioni-plan-za-realizaciju-prioriteta-iz-analitickog-izvjestaja-ek_1604657034.pdf (Accessed: 12 September 2024).

15 | ‘Finalni izvještaj o realizaciji Akcionog plana za realizaciju prioriteta iz Analitičkog izvještaja Evropske Komisije’ (‘Final Report on the Action Plan for Implementing Measures from the European Commission's Analytical Report’), DEI (2020) [Online]. Available at: https://www.dei.gov.ba/uploads/documents/finalni-izvjestaj-o-realizaciji-akcionog-plana-za-realizaciju-prioriteta-iz-analitickog-izvjestaja-evropske-komisije_1604657038.pdf (Accessed: 1 September 2024).

5. Other measures (e.g. IT solutions, international agreements, and operational activities): 168 of 311 measures (54%).

These outcomes reflect significant challenges in aligning institutional efforts and governance structures to effectively meet the accession requirements of the EU.

2. EU Conditionality and Judicial Reform: Advancing Judicial Self-governance

The Treaty on the EU, in its Article 49, stated that any European country may apply for membership if it respects the democratic values of the EU and is committed to promoting them. The EU assesses the readiness of applicant countries according to three accession criteria defined by the European Council in Copenhagen in 1993 ('Copenhagen criteria'). These criteria are: 1. political criteria: stable institutions guaranteeing democracy, rule of law, human rights, and respect for and protection of minorities; 2. economic criteria: existence of a functioning market economy and capacity to cope with competition and market forces in the EU; and 3. EU *acquis* criteria: the ability to effectively take on and implement the obligations of membership, including adherence to the aims of political, economic, and monetary unions. One of the conditions, constituting an element of the Copenhagen Criteria, is the strengthening of judicial self-governance through the introduction of judicial councils. Over time, the initial flexibility of the judicial organisation models was abandoned. Moreover, the introduction of judicial councils had become a component of the pre-accession conditionality due to the 2004 enlargement of the EU. Romania and Bulgaria, whose accession to EU membership was postponed until 2007, faced explicit demands from the European Commission to organise their judicial councils in alignment with European standards. However, some authors argue that the pressure to introduce or restructure judicial councils has not been based on a clearly defined 'European model' of such institutions.¹⁶ Instead, the requirements focused on the application of the existing normative framework, which primarily consists of 'soft law' instruments developed by advisory bodies, such as the Consultative Council of European Judges (CCJE), the European Network of Judicial Councils, and the Venice Commission.

The 2003 Feasibility Study adopted by the European Commission identified the establishment of the HJPC of BiH as a key condition for initiating negotiations on the SAA between the EU and BiH. The establishment of this institution was recognised as a significant step toward strengthening the rule of law and enhancing the independence and efficiency of the judiciary. The BiH HJPC was established in 2004 following the adoption of the Law on HJPC of BiH by the Parliamentary Assembly of BiH. This legislative act was preceded by an agreement that transferred certain competencies from the entity to the state level. The agreement provided for the creation of a unified HJPC of BiH, tasked with ensuring the independence, impartiality, professionalism, and effectiveness of judiciary and prosecution services across the FBiH, RS, and state levels. With the formation of the

16 | Bobek and Kosař, 2014, p. 1262.

HJPC of BiH, the existing high judicial and prosecutorial councils at the entity and state levels, established in 2002, ceased to operate.¹⁷

The HJPC of BiH is composed of 15 members: 11 judges and prosecutors representing various jurisdictions, including two members from the state level, four from each entity, and one elected by the Judicial Commission of the BD. Additionally, the membership includes two lawyers, one selected by the Bar Association of the FBiH and the other by the RS Bar Association. The remaining two members are appointed by non-judicial bodies: one by the House of Representatives of the Parliamentary Assembly of BiH, who does not hold a judicial position or membership in the Assembly, and the other by the Council of Ministers of BiH, upon the recommendation of the Minister of Justice, who also holds no judicial role and is not a member of the Council (Article 4, paragraph 1 of the Law on the HJPC of BiH).¹⁸

A key question concerns the extent to which the composition of the HJPC of BiH aligns with European standards for judicial councils. Although the Council's structure formally meets the requirements of the majority of judicial office holders, including prosecutors as representatives of the judiciary, concerns remain. A criticism of the Council's structure is that decisions regarding judicial appointments are made collectively, allowing prosecutors to participate in the process. This arrangement reduces the influence of judges in the decision-making process, as judicial office holders constitute only one-third of the Council's total membership. This issue can be addressed by creating two sub-councils within the HJPC, one for judges and the other for prosecutors. This model was included in earlier drafts of the new Law on HJPC of BiH and received support from the Venice Commission. The Venice Commission regarded this model as a 'balanced solution' that would prevent excessive interference by one legal profession in the affairs of the other while maintaining the current structure as a joint body of judges and prosecutors.¹⁹ An alternative solution would involve restructuring the current institution by establishing two separate bodies: High Judicial Council and High Prosecutorial Council.²⁰

However, the structure of the Council remained unchanged under the 2023 Law on Amendments to the Law on the HJPC of BiH. Despite prior announcements, the law does not provide for the establishment of separate sub-councils for judges and prosecutors.²¹

Article 17, paragraph 1, of the Law on HJPC of BiH stipulates that the Council is responsible for appointing judges, including court presidents, lay judges, and additional judges, at all levels of the judiciary. This includes courts at the state, entity, cantonal, district, and municipal levels, as well as in BD, with the exception of the constitutional courts of the entities. To facilitate the appointment process, four sub-councils were established to nominate candidates, reflecting the complex state structure of BiH and its judiciary:

17 | Milinković, 2021, p. 60 fn. 147.

18 | Ibid., pp. 61–62.

19 | 'Opinion no. 712/2013 on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (paragraph 61)', Venice Commission (2014) [Online]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)008-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)008-e) (Accessed: 1 September 2024); 'Opinion no. 648/2011 on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina (paragraph 93)', Venice Commission (2012) [Online]. Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)014-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)014-e) (Accessed: 11 September 2024).

20 | Milinković, 2021, p. 62.

21 | Law on Amendments to the Law on the HJPC, *Official Gazette of BiH*, no. 68/23.

the Sub-council at the state level, the BD Sub-council, the RS Sub-council, and the FBiH Sub-council.²²

The Sub-council at the state level, appointed by the President of the Council, consists of at least three HJPC members, including, if possible, at least one judge or prosecutor from the BiH level, one from the RS, and one from the FBiH. The Sub-council conducts interviews with candidates for vacant positions at the BiH level and submits a ranked list of candidates to the Council, which makes appointment decisions (Article 37 of the Law on HJPC BiH). The Sub-councils responsible for proposing candidates for judicial and prosecutorial positions at the entity level are composed of five Council members from the respective entity. These sub-councils appoint commissions of three council members to conduct interviews with candidates and rank them based on their ability, suitability, and expertise.²³ Where possible, the majority of commission members should be members of the relevant entity sub-council, and a commission member who is a judge or prosecutor from the same institution as the candidate being interviewed cannot participate in the composition of the commission (Article 41 paras 2 and 3 of the Rules of Procedure of HJPC BiH). Based on the ranking performed by the commission, the entity sub-council submits a ranked list of candidates to the council, which makes the final decision regarding all appointments (Article 38, paragraph 5 of the Law on HJPC BiH). The Sub-council for BD BiH, appointed by the President of the Council, consists of at least three Council members, including, if possible, at least one judge or prosecutor from BD, from the BiH level, and one from the entity level. This Sub-council conducts interviews with candidates for vacant positions in BD, and the final decision on appointments to judicial office, as in the previous cases, is made by the Council (Article 37 of the Law on HJPC BiH). According to the Law, a decision on appointment constitutes a final administrative act of an institution of BiH within the meaning of Article 4 of the Law on Administrative Disputes of BiH²⁴ (Official Gazette of BiH, no. 19/02, 88/07, 83/08, and 74/10) and therefore, may be challenged by an administrative dispute before the Court of BiH.

The lawsuits referred to above must be filed within eight days of the date of publication of the appointment decision on the Council's official website. In such proceedings, the Court of BiH reviews the legality of the appointment procedure and decides under an expedited procedure no later than eight days from the submission of the response to the lawsuit, which the defendant is required to submit within eight days of receipt of the claim.²⁵

The HJPC of BiH also holds jurisdiction over the implementation of procedures to determine the disciplinary responsibility of judicial office holders. Disciplinary proceedings are initiated by the Office of the Disciplinary Prosecutor before the First Instance Disciplinary Commission, which begins by filing a formal complaint (Article 67, paragraph 1 of the Law on the HJPC of BiH). The First Instance Commission consists of three members, at least two of whom must be Council members. If the proceedings concern a judge, the majority of the Commission members must also be judges (Article 60, paras

22 | Milinković, 2021, p. 60.

23 | Article 38 of the Law on HJPC BiH; Article 41, paragraph 1. of the Rules of Procedure of HJPC BiH [Online]. Available at: <https://vstv.pravosudje.ba/vstvfo/Sc/141/kategorije-vijesti/1172/1180/4570> (Accessed: 7 April 2026).

24 | *Official Gazette of BiH*, no. 19/02, 88/07, 83/08 and 74/10.

25 | Article 9 of the Law on Amendments to the Law on the HJPC.

3 and 5). Appeals against the decisions of the First Instance Commission are permitted before the Second Instance Disciplinary Commission. If a disciplinary measure is imposed by the Second Instance Commission, an appeal may be submitted to the Council. If the Council does not uphold a dismissal, it may impose another disciplinary measure provided by law (Article 60, paragraph 6).

If the Council confirm dismissal, the affected judge has the right to appeal to the Court of BiH if there is reason to believe that (a) the Council committed a substantial violation of procedural rules during the proceedings, or (b) the Council misapplied the law (Article 60, paragraph 7). Beyond these remedies, the Constitution of BiH grants the Constitutional Court appellate jurisdiction over constitutional matters arising from court decisions. The Constitutional Court of BiH has held that its jurisdiction extends not only to decisions issued by the Court of BiH but also to those made by the HJPC of BiH. The Court has further clarified that the HJPC of BiH, although not a traditional court, functions as an ‘independent and impartial tribunal established by law’, within the meaning of Article 6, paragraph 1 of the European Convention on Human Rights. As such, its decisions in disciplinary proceedings qualify as judgments under Article VI/3(b) of the BiH Constitution and Article 15, paragraph 3, of the Rules of Procedure of the Constitutional Court.²⁶

Furthermore, BiH has implemented a relatively complex framework for determining the disciplinary responsibility of judges, which can be regarded as a safeguard for judicial independence. However, an expert analysis commissioned by the European Commission recommended simplifying this procedure by reducing it to two stages: an initial decision followed by an appeal with judicial oversight of first-instance commission decisions. While maintaining a complex disciplinary procedure protects judicial independence by minimising the risk of abuse, an overly complicated system may hinder the effective sanctioning of disciplinary offences. To enhance efficiency, the literature suggests classifying disciplinary offences into categories based on severity. This model, applied in countries such as Spain, Slovakia, Montenegro, and Albania, promotes both legal certainty, especially regarding dismissal, and procedural efficiency by allowing for less complex procedures for minor offences.²⁷

The European Commission also recommended a clearer definition of disciplinary offences for judicial office holders. Although the 2023 amendments to the Law on the HJPC of BiH revised provisions related to judicial disciplinary offences, they did not introduce a classification based on severity, as suggested by the Commission. This omission leaves room for further improvement in the disciplinary framework to align it with comparative best practices and ensure a balance between judicial independence and accountability.²⁸

The extensive powers vested in the HJPC of BiH raise the question of establishing an adequate legal framework to ensure the accountability of its members. It is unrealistic to expect judicial councils to effectively promote responsibility and integrity in the exercise of judicial power if their members are not subject to clear rules that guarantee adherence to the aforementioned principles. The need for appropriate procedures to hold judicial council members accountable is particularly acute in countries where public trust in the

26 | Milinković, 2021, p. 108 fn. 251.

27 | *Ibid.*, pp. 106–107.

28 | *Ibid.*, p. 107.

judiciary, including judicial self-governance bodies, is relatively low—a condition prevalent in BiH.

The situation in BiH was further exacerbated by several scandals involving HJPC members, including the Council's president. In 2019, public attention focused on the 'Horseshoeing' affair following the release of a recorded conversation involving the then-President of the HJPC, M.T. In the recording, M.T. engages with N.A., a private party expressing interest in the status of a specific criminal case, to which the president responded by promising to discuss the matter with the chief prosecutor of Sarajevo Canton, D.B. The conversation later continued without M.T.'s presence, during which an acquaintance of the private party, a member of the State Investigation and Protection Agency (SIPA), solicited money from N.A. under the pretext of 'bribery'. In response to the scandal, the Office of the Disciplinary Prosecutor initiated proceedings against the HJPC president for the disciplinary offence of 'any behavior that constitutes a serious breach of official duty or undermines public trust in the impartiality and credibility of the judiciary' (Article 56, point 23 of the Law on the HJPC of BiH).²⁹ However, the First Instance Disciplinary Commission dismissed the case, ruling that the disciplinary provisions applicable to judges did not extend to members of the HJPC. Subsequently, the Second Instance Disciplinary Commission upheld the decision.³⁰

During that period, Article 54 of the Law on the HJPC of BiH addressed the disciplinary responsibility of judges, prosecutors, additional judges, and lay judges, including court presidents and chief prosecutors, but made no explicit reference to the accountability of Council members. Although the Law on the HJPC of BiH provided the possibility of removing a Council member by a two-thirds majority vote of the Council's present members, such a proposal had to be initiated by either the disciplinary commission or at least one-third of the Council's members. In this framework, Council members could be dismissed for: (1) failing to perform their duties in a proper, effective, or impartial manner; (2) being unable to fulfil their responsibilities due to illness or other reasons; or (3) committing acts disqualifying them from Council service (Article 6, points d), e), and f) of the Law).

Despite the legal grounds for dismissal, Council members supported the president, and the removal mechanism was not employed. This exposed a significant weakness in the legal framework, as accountability for Council members could be obstructed by internal resistance, allowing members to block any attempt to hold each other accountable. In the absence of an action from the Council, the House of Representatives of the Parliamentary Assembly of BiH established a Temporary Commission of Inquiry to investigate the situation within the judicial institutions of BiH, focusing on the Council's operations. However, the formation of the commission raised concerns about potential political interference in the judiciary. The president of the HJPC deemed the enquiry unconstitutional and illegal, whereas the Council condemned the commission as an impermissible encroachment on judicial independence. Although the Parliamentary Assembly's actions were driven by

29 | *Tegeltija goes on vacation due to disciplinary action* (2019) Radio Slobodna Europa, 31 May [Online]. Available at: <https://www.slobodnaevropa.org/a/29974875.html> (Accessed: 7 April 2026).

30 | *The second-instance commission rejected the appeal against Milan Tegeltija* (2019) Radio Slobodna Europa, 31 May [Online]. Available at: <https://www.slobodnaevropa.org/a/29999615.html> (Accessed: 7 April 2026).

limitations of the existing legal framework, they highlighted the tension between safeguarding judicial independence and ensuring accountability in the judiciary.

The weaknesses in the legal framework for determining the accountability of members of the HJPC of BiH were highlighted in the 'Expert Report on Rule of Law Issues in Bosnia and Herzegovina' ('Priebe Report') (2019)³¹. The Report emphasised the need to enhance responsibility and transparency in the operations of the HJPC of BiH and establish appropriate oversight mechanisms for its members, along with clear procedures for determining their accountability.

The Law on Amendments to the Law on the HJPC³² of BiH allocated significant attention to the issue of Council member accountability. Article 5 of this Act introduces Article 6a, following Article 6 of the Law, which outlines the procedure for dismissing Council members. Under the new Article 6a, a Council member may be removed from office if, through a violation of the law or other actions, they seriously damage the Council's reputation, if they hold an incompatible position, if they are absent from office for more than three consecutive months or for more than six consecutive months in cases of illness. In such cases, the HJPC establishes a special five-member commission tasked with investigating relevant facts and recommending decisions. Dismissal requires a two-thirds majority vote from the present Council members.

It was previously noted that the disciplinary provisions applicable to judges under the Law on the HJPC of BiH could not be applied analogously to Council members. In response, Article 13 of the Law on Amendments to the Law on the HJPC of BiH amends the Law by introducing Article 57a, which defines disciplinary offences applicable to Council members. These offences follow the same framework as those governing the disciplinary responsibilities of judges. Article 57a enumerates disciplinary offences across 13 points, with the final provision stating that 'behavior that damages the reputation and integrity of the Council and the judiciary as a whole, which is not specifically prescribed as a separate offense in this article', shall also constitute a violation.

Furthermore, Article 15 of the Law on Amendments to the Law on the HJPC of BiH introduces new Articles 61a and 61b, which regulate the procedures for conducting disciplinary proceedings against Council members. These provisions establish that disciplinary proceedings are handled by the first and second instance disciplinary commissions. Appeals against decisions made by the first-instance commission will be reviewed by the second-instance commission, whose decisions constitute the final administrative acts subject to review through administrative litigation before the Court of BiH (Article 61a, paragraph 7).

The first- and second-instance commissions each consisted of three members (Article 61a, paras. 4 - 5). In proceedings against a Council member who is a judge, both the first- and second-instance commissions comprise judges, whereas proceedings involving a Council member who is a prosecutor are adjudicated by commissions composed entirely of prosecutors. For cases involving Council members who are neither judges

31 | *Expert Report on Rule of Law Issues in Bosnia and Herzegovina* (2019) *The European External Action Service*, 5 December [Online]. Available at: <https://www.eeas.europa.eu/sites/default/files/documents/2024/ExpertReportonRuleofLawissuesinBosniaandHerzegovina.pdf> (Accessed: 11 September 2024).

32 | Law on Amendments to the Law on the HJPC, *Official Gazette of BiH*, no. 68/23.

nor prosecutors, the commission will include one judge, one prosecutor, and one Council member who holds no judicial or prosecutorial office (Article 61a, paragraph 3).

Due to the importance of ensuring legal and professional accountability in the HJPC, the introduction of disciplinary responsibility provisions for Council members is a necessary and justified reform. These measures reinforce accountability and trust in the judiciary by addressing gaps in the previous legal framework.

Furthermore, one of the changes foreseen in the Law on Amendments to the Law on the HJPC of BiH refers to the obligation of judges and prosecutors (as well as members of the HJPC of BiH) to declare property. It is a controversial measure that, on the one hand, raises the question of adequately balancing the right to privacy of the holders of judicial office, or members of their families, and on the other hand, the public interest, whose protection requires the implementation of measures aimed at suppressing corruption and strengthening the integrity of the judiciary. The justification for the introduction of this measure was also pointed out in CCJE Opinion no. 21 on the prevention of corruption among judges³³, from 2018. In the Opinion, it was stated that

a strong property reporting system can contribute to the recognition and then avoidance of conflicts of interest, if all relevant steps are taken, and thus lead to greater transparency in the judiciary and contribute to fostering a climate of judicial integrity.

However, in the aforementioned Opinion, the CCJE also warned of the necessity of respecting the principle of proportionality when balancing the obligation to declare assets and the right to the privacy of judges and their family members. This opinion suggests that the disclosure of information to which the reporting obligation applies should be made possible only on the basis of a request and only if the requester proves that there is a justified interest in it, whereas the privacy of third parties, such as members of the judge's family, should enjoy a higher level of protection.

Opinion No. 21 of the CCJE references the recommendations of the Group of States against Corruption (GRECO) presented in its fourth evaluation round titled 'Prevention of Corruption among Members of Parliament, Judges, and Prosecutors'. In the Evaluation Report for BiH from 2016³⁴, GRECO recommended the establishment of an efficient system for controlling the annual financial reports of judges and prosecutors, with the prescription of appropriate sanctions for cases of noncompliance with rules or false reporting. In the Report, GRECO suggested considering the provision of publication and easy access to the mentioned financial information while respecting the privacy and security of judges, prosecutors, and their close relatives. The obligation to declare the assets of judges and their family members is not unknown in comparative legislation. For example, in Bulgaria, Article 175b of the Law on the Court System³⁵ stipulates the obligation of judges, prosecutors, and investigative judges to provide information on

33 | Council of Europe (2018) 'Opinion no. 21 on preventing corruption among judges' CCJE, 9 November. [Online]. Available at: <https://rm.coe.int/ccje-2018-3e-avis-21-ccje-2018-prevent-corruption-amongst-judges/native/16808fd8dd> (Accessed: 23 August 2024).

34 | 'Evaluation Report: Bosnia and Herzegovina', GRECO – Group of States against Corruption (2016), p. 36.

35 | Council of Europe (2018) 'Judiciary System Act of the Republic of Bulgaria' CDL, 10 August. [Online]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2017\)034-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2017)034-e) (Accessed: 27 November 2023).

financial interests in Bulgaria and abroad (including information on ownership of real estate, motor vehicles, and other means of transport that are subject to registration; all monetary amounts, including deposits, bank accounts, and receivables, with a total value of more than BGN 10,000, including those in foreign currency; etc.).

Attempts to introduce the obligation to submit financial reports by the holders of judicial office, with the aim of suppressing corruption and investigating the origin of property, were made even before the adoption of the Law on Amendments to the Law on the HJPC of BiH. In 2018, the HJPC of BiH adopted the Rulebook on submission, verification, and processing of financial reports of judges and prosecutors, number: 08-02-2-3186/2018, which prescribed the rules and procedures for submitting financial reports of judges and prosecutors in BiH, as well as the method of checking, processing, publication, storage, and access to financial reports. However, the Agency for the Protection of Personal Data in BiH issued an ex officio decision prohibiting the HJPC of BiH from processing the personal data of judges and prosecutors in the manner prescribed by the Ordinance, since this act imposed obligations and interfered with the right to privacy of judges and prosecutors and their relatives, contrary to the provisions of the Law on the HJPC of BiH, the Law on the Unique Identification Number, and the provisions of the Convention against Corruption. The HJPC of BiH filed a lawsuit with the Court of BiH, requesting that the decision be annulled. The Court of BiH rejected the lawsuit as unfounded, concluding that, contrary to the claims of the lawsuit, the contested decision of the Agency was based on a properly established factual situation and the proper application of the rules of the procedure that preceded the adoption of the final administrative act and the proper application of the law.³⁶

Article 21 of the Law on Amendments to the Law on the HJPC of BiH, which amended Article 86 of the Law on the HJPC of BiH, prescribes the obligation of judges and prosecutors to submit to the Council “initial and annual reports on assets and interests, including the method and time of acquisition and purchase value, on income, interests, obligations, expenses and guarantees for themselves, marital and common-law partners, parents and children and other persons with whom they live in a joint household” (Article 86, paragraph 1). The Law stipulates the obligation of judges to state in the report, in addition to data on their own incomes, data on all incomes of marital and non-marital partners, parents, children, and other persons with whom they live in a joint household (Article 86, paragraph 2.b). The Law also prescribes the obligation to report data on income from other paid activities; on the right of ownership of real estate, including the method and time of their acquisition and purchase value; and data on the right of ownership of vehicles and other movables of individual value over BAM 5000. Judges are also obliged to include financial assets in banks or other financial institutions in the report data, including electronic currencies and cash worth of more than BAM 5,000. In the context of efforts to combat corruption, provisions on the obligation to report gifts and donations are particularly important. The law establishes the obligation to report data on gifts and donations received in connection with the performance of judicial functions in the value of more than BAM 25 and data on gifts and donations received in a private capacity if their

36 | Decision of the Agency for the Protection of Personal Data in BiH (dated March 5, 2019) [Online]. Available at: http://www.azlp.ba/rjesenja/Archive.aspx?langTag=sr-SP-Cyrl&template_id=1496&pageIndex=4 (Accessed: 24 September 2024).

individual value exceeds BAM 500 or BAM 1000 on an annual basis (Article 86, paragraph 2 points i and j).

Article 22 of the Law on Amendments to the Law on the HJPC of BiH introduces new Articles 86a to 86k, that govern access to data from asset and interest reports, their verification and analysis, and the creation of a register for these reports. Article 86a, paragraph 1 mandates that reports on assets and interests be published on the HJPC's official website to enhance integrity, transparency, and public trust in the judiciary and prevent conflicts of interest and other forms of undue influence in judicial functions.

However, paragraph 2 of Article 86a specifies information from reports that will not be publicly accessible, including the full names of minors (only initials will be displayed), unique identification numbers, and residential addresses of judges or prosecutors, along with those of other individuals mentioned in the reports. Additionally, the exact location of properties; bank account and financial identification numbers; individual amounts of cash owned by judges, prosecutors, or their household members; vehicle registration numbers; annual income tax returns; and any other attachments submitted to the reports will remain confidential. This Law established a special Department in the Secretariat of the Council to oversee the implementation of procedures related to asset and interest reports. This Department operates independently, without external instructions or interference in individual cases (Article 86f, paragraph 1). Furthermore, Article 86k stipulates that the legal provisions governing asset and interest reporting apply equally to all Council members. This equal application is justified given that corrupt actions by Council members pose a significant threat to the judiciary's independence than those committed by individual judicial office holders. Thus, ensuring the accountability and transparency of Council members is essential to maintain public trust and safeguard judicial integrity.

The legislative changes discussed above align with the priorities outlined in the European Commission's Opinion, as they strengthen the accountability of HJPC members and, given the scope of the HJPC's authority, promote the effective implementation of the principle of judicial independence alongside the accountability of judicial office holders. Furthermore, these reforms contributed to combating corruption, as identified in the European Commission's Opinion as a crucial prerequisite for ensuring the rule of law in BiH.

3. Anticorruption Measures in BiH: Challenges and Gradual Progress

In the framework of the European Union's enlargement policy, the fight against corruption constitutes a fundamental pillar and is explicitly embedded in Chapter 23 of the EU *Acquis Communautaire* (Judiciary and Fundamental Rights). Accordingly, alignment with EU law, respect for the rule of law, and effective implementation of anti-corruption reforms represents decisive criteria shaping both the dynamics and pace of accession for candidate countries. In the case of BiH, although the effective fight against corruption is explicitly identified as a priority in the European Commission's Opinion,

significant deficiencies continue to characterise the legal framework across various levels of government.

In the context of BiH's EU accession process, the establishment of an adequate and effective framework for the protection of persons who report corruption (whistleblowers) represents one of the key components of a credible anti-corruption policy. In its Opinion, the European Commission explicitly emphasised the adoption and effective implementation of whistleblower protection legislation as a relevant and necessary element of the broader fight against corruption. However, the legal system of BiH is characterised by an uneven regulatory framework governing whistleblower protection across different levels of government. The law regulating the status of whistleblowers has not yet been adopted in the FBiH (although a legal framework for whistleblower protection has been established in Sarajevo Canton, one of the cantons within the FBiH)³⁷, while the implementation of the Law on the Protection of Persons Who Report Corruption in the RS³⁸ and at the state level³⁹ is insufficiently effective. In BD, the Law on the Protection of Persons Reporting Corruption was adopted in 2018.⁴⁰

The state-level Law on the Protection of Persons Reporting Corruption in the Institutions of BiH primarily focuses on protecting whistleblowers in state institutions. As such, it provides a narrow scope of protection, limited exclusively to BiH institutions. This restrictive approach excludes both the private sector and individuals who are not formally employed in the institutions related to the reported corruption. Consequently, a significant number of potential whistleblowers, particularly those operating in mixed public-private contexts or external collaborators, remain outside the protective reach of the law, contrary to contemporary European standards that increasingly emphasise broad, functional definitions of whistleblowing.

The Law on the Protection of Persons Who Report Corruption in the RS provides considerably broader protection than state-level regulations. In addition to extending the scope of protected persons, the RS law clearly articulates fundamental principles governing whistleblower protection, such as confidentiality, prohibition of retaliation, and the right to effective legal remedies.⁴¹ Moreover, it explicitly defines the forms of protection that must be made available to whistleblowers, including preventive, procedural, and compensatory measures. In this context, the RS framework represents a comprehensive and coherent approach that aligns closely with international and European standards. Similar to the law adopted in the RS, the 2018 BD Law on the Protection of Persons Reporting Corruption provides a broader framework of protection that extends beyond the public sector to encompass the private sector.

37 | *Bosnia and Herzegovina Report 2024*, European Commission [Online]. Available at: https://enlargement.ec.europa.eu/document/download/451db011-6779-40ea-b34b-a0eeda451746_en?filename=Bosnia%20and%20Herzegovina%20Report%202024.pdf (Accessed: 17 April 2025).

38 | *Official Gazette of the Republic of Srpska*, no. 62/2017.

39 | Law on the Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina, *Official Gazette of BiH*, no. 100/2013.

40 | Law on the Protection of Persons Reporting Corruption [Online]. Available at: <https://skupstinabd.ba/3-zakon/ba/Zakon%20o%20zastiti%20lica%20koja%20prijavljuju%20korupciju/000%2025-18%20Zakon%20o%20zas--titi%20lica%20koja%20prijavljuju%20korupciju.pdf> (Accessed: 12 April 2025).

41 | Kazic, 2018, p. 112.

Several preventive bodies have been established to address corruption, including the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK). The Council of Ministers of BiH, following a proposal from APIK, adopted the 'Strategy for the Fight against Corruption 2024–2028'⁴² and the accompanying Action Plan for its implementation. The adoption of these documents aligns with the 14 key priorities. As noted above, the fight against corruption is a critical challenge in strengthening the rule of law, achieving sustainable economic development, and improving the quality of life for citizens. The Strategy and Action Plans were developed with input from representatives of all levels of government, international organisations, and civil society, demonstrating BiH's commitment to combating corruption through systemic solutions and fostering effective anti-corruption efforts.

A relevant dimension of anti-corruption reform in BiH, the importance of which was also emphasised in the European Commission's Opinion, is the development and implementation of conflicts of interest legislation and associated protection mechanisms. The first law regulating conflicts of interest in BiH entered into force in 2002. Drafted under significant influence of the international community, this law introduced a broad set of restrictions applicable to public office holders and entrusted its implementation to the Central Election Commission, which exercised jurisdiction over all office holders in BiH until the subsequent adoption of entity-level legislation.⁴³

Following the adoption of entity laws and the Law on Conflict of Interest in the BD in 2008, the regulatory framework governing conflicts of interest in BiH became formally decentralised. Since then, four separate legal instruments have directly regulated this area: the Law on Conflict of Interest in the Institutions of the BiH, the Law on Conflict of Interest in the Government Bodies of the FBiH⁴⁴, the Law on Prevention of Conflict of Interest in the Government Bodies of the RS⁴⁵, and the Law on Conflict of Interest in the Institutions of the BD of BiH⁴⁶. During the period between the adoption of entity-level legislation in 2008 and the adoption of amendments to the Law on Conflict of Interest in the Institutions of BiH in 2013, the Central Election Commission exercised its competence to implement conflict of interest regulations at the BiH, FBiH, and BD levels. The Commission for the Determination of Conflict of Interest in the Government Institutions of the RS was, and continues to be, responsible for the application of conflict of interest legislation in the RS. Then, the established legal framework was subject to sustained criticism owing to inherent deficiencies and the evident need for harmonisation with relevant international

42 | 'Strategija za borbu protiv korupcije 2024-2028' ('Strategy for the Fight against Corruption 2024–2028'), Agency for Prevention of Corruption and Coordination of the Fight against Corruption (2024) [Online]. Available at: https://www.apik.ba/zakoni-i-drugi-akti/strategije/Archive.aspx?langTag=bs-BA&template_id=1968&pageIndex=1 (Accessed: 1 September 2024).

43 | Korajlić, 2021, p. 4.

44 | Zakon, O Sukobu Interesa, U Organima Vlasti U Federaciji Bosne I Hercegovine [Online]. Available at: <https://www.fbihvlada.gov.ba/bosanski/zakoni/2008/zakoni/28hrv.htm> (Accessed: 17 April 2025).

45 | *Official Gazette of the Republic of Srpska*, no. 73/08, 52/14, and 90/23.

46 | Zakono, Sprečavanju Sukoba Interesa U Institucijama Brčko Distrikta Bosne I Hercegovine [Online]. Available at: <https://skupstinabd.ba/3-zakon/ba/Zakon%20o%20sprec--avanju%20sukoba%20interesa%20u%20institucijama%20Brc--ko%20Distrikta%20BiH/01B04%20Zakon%20o%20sprec--avanju%20sukoba%20interesa%20u%20institucijama%20Brc--ko%20Distrikta.pdf> (Accessed: 11 March 2025).

standards. These criticisms primarily concerned the lack of coherence across different levels of regulation and the limited personal scope of the legislation, which failed to encompass all categories of public office holders, including directors of public enterprises and public institutions. Additional shortcomings relate to the fragmented regulation of financial disclosure and asset declaration obligations, the absence of effective mechanisms for verifying the accuracy of such declarations, and insufficiently defined restrictions on the ownership of private companies engaged in business relations with public authorities. Finally, the sanctioning regime was widely regarded as inadequate, as the penalties prescribed were disproportionate to potential illicit gains or institutional harm, and the legal framework lacked mechanisms for annulling or reversing acts and decisions adopted in situations involving conflicts of interest.

The 2013 amendments to the state-level Law on Conflict of Interest resulted in a profound restructuring of the existing system to prevent conflicts of interest. These amendments transferred competence for the application of conflict of interest regulations concerning office holders at the level of BiH from the Central Election Commission to the newly established Commission for Deciding on Conflict of Interest. The reconstituted body was designed as a nine-member commission composed of three members from the House of Representatives of the Parliamentary Assembly of BiH and three members from the House of Peoples, with at least one-third of these parliamentary members drawn from opposition parties and their mandates linked to their parliamentary terms. The remaining three members were appointed from the management of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK), thereby creating a mixed institutional structure that combines political and administrative representatives. Under the amended framework, decisions of the Commission required affirmative votes from at least two members of each of the constituent peoples, thereby introducing a qualified majority and national consensus requirement into the decision-making process. The 2013 amendments also abolished the sanction of ineligibility to stand for public office, invoking the Venice Commission's opinion and the protection of the right to candidacy, and replaced it with non-binding measures, such as proposals for compulsory retirement and calls for resignation. Together, these changes substantially weakened the deterrent effect of the sanctioning regime and further reduced the overall effectiveness of conflict of interest prevention mechanisms.⁴⁷

In 2024, the Parliamentary Assembly of BiH adopted a new state-level Law on the Prevention of Conflict of Interest in the Institutions of BiH⁴⁸, addressing the requirements identified by the European Commission. The 2024 Law established a Commission for the Prevention of Conflict of Interest as an independent and specialised body responsible for the application and enforcement of conflict of interest regulations at the level of BiH. The Commission is composed of seven members appointed by the Parliamentary Assembly of BiH through a public and transparent selection procedure based on professional qualifications, integrity, and relevant experience. Members are appointed for a fixed term and subject to strict incompatibility rules intended to limit political influence and ensure functional independence. The Commission elects its chairperson from among its members. While the European Commission, in its Bosnia and Herzegovina Report 2024, welcomed the adoption of the state-level Law on the Prevention of Conflict of

47 | Ibid, pp. 5–6.

48 | *Official Gazette of BiH*, no. 18/2024.

Interest, it also observed that the legislation has not yet been fully aligned with European standards.

4. Operation and Challenges of the Prison System in BiH

The European Commission Analytical Report also addressed the issue of prison system reforms and identified several weaknesses. According to the Report, the legislation governing the prison system remains insufficiently harmonised across the country and is not fully aligned with European standards. The execution of criminal sentences is undermined by the lack of coordination and harmonisation of procedures across countries. However, BiH started implementing some of the recommendations of the 2016 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Prisons and detention facilities have seen improvements in conditions and management, with positive effects on living conditions. Overcrowding in detention facilities has decreased, partly because of the introduction of alternatives to detention in the FBiH. Investments are required to replace outdated facilities which do not provide adequate detention conditions. Despite some improvements, healthcare services in prisons lack resources, particularly for medical staff. Furthermore, no structured programmes support the reintegration of former prisoners into society. The forensic psychiatry institution in Sokolac is operational but remains underutilised, and the state prison in East Sarajevo is still not functional. Police holding facilities are often in poor condition and lack natural light, adequate ventilation, and proper hygiene. Further efforts are required to meet international and European standards for the treatment of persons deprived of their liberty. Moreover, BiH should strengthen its efforts to improve detention conditions in prisons and police-holding facilities, and ensure that they conform to the ECHR standards and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

The 2023 Report⁴⁹ raised similar concerns, highlighting the persistent absence of a comprehensive countrywide strategy for the prison system and the lack of substantial progress in improving detention conditions. The report emphasises the need to harmonise legislation across the country and align it with European and international standards. Notably, the FBiH has not taken steps to adopt legislation enabling the transfer of prisoners between entities, professionalisation of prison staff, or implementation of a parole system. Key areas that require further development include digitalisation, reintegration programs, and coordination with healthcare and social services. The report also recommended expanding the use of alternatives to detention, particularly in RS. Although the new state prison now operates at full capacity, many detention facilities across the country still require significant infrastructure upgrades. In addition, prison regimes must undergo modernisation to align with contemporary standards. The Report

49 | European Commission (2023) 'Bosnia and Herzegovina 2023 Report', *European Commission*, 8 November. [Online]. Available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/e3045ec9-f2fc-45c8-a97f-58a2d9b9945a_en?filename=SWD_2023_691%20Bosnia%20and%20Herzegovina%20report.pdf (Accessed: 11 September 2024).

indicates ongoing concerns regarding the treatment of persons deprived of their liberty, as reflected in the 77 complaints submitted to the Ombudsman in 2022, following 91 complaints in 2021.

These concerns were reiterated in the European Commission's BiH Report 2024, which highlighted the continued absence of a countrywide strategy for the execution of criminal sanctions and the lack of reliable statistical data. The Report stressed the need to harmonise the relevant legal framework across all levels of government and align it with European and international standards. It also underlines the importance of appointing prison directors based on merit, improving detention facilities and prison regimes, strengthening reintegration programmes, and introducing an effective probation system.

5. Conclusion

The prospect of the BiH's accession to the EU is one of the few issues that enjoy broad consensus among its citizens, with political elites expressing at least declarative support for this objective. The granting of candidate status to BiH in 2022, although largely influenced by current geopolitical circumstances, represented a significant step toward EU membership. However, the reforms outlined in the European Commission's Opinion require both time and political will, particularly in relation to constitutional amendments that remain difficult to achieve.

As discussed in this study, several important steps have been taken to meet the requirements for enhancing the independence and accountability of the judiciary, including reforms targeting the HJPC of BiH as the central body of judicial self-governance. Nevertheless, the legal framework for combating corruption remains incomplete, and the enforcement of existing laws has not yet been characterised as effective. As a result, despite the progress made through various reform initiatives, BiH's path to EU membership remains uncertain, as does the timeframe for achieving this goal.

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THE MOLDOVAN SITUATION OF PEOPLE FLEEING FROM THE RUSSO–UKRAINIAN WAR

Andrei Nastas¹

ABSTRACT

In its 30 years of existence as an independent state, the Republic of Moldova has never faced the consequences of a humanitarian crisis like that caused by the armed conflict between Russia and Ukraine, which began on 24 February 2024. In the first year following the outbreak of the conflict, approximately one million people from Ukraine crossed the border with the Republic of Moldova. No other country has dealt with such a high number of displaced people relative to its population. The events following the outbreak of hostilities in Ukraine necessitated adaptation of the existing national framework and urgent adoption of special regulations to determine the legal status of individuals displaced by hostilities in Ukraine. Temporary structures were established to manage external financial assistance to meet the needs of people fleeing the Russo–Ukrainian war. This study aimed to identify the legal framework of the Republic of Moldova in the field of foreigner protection. To this end, we analysed data provided by the Moldovan authorities directly involved in managing the refugee crisis. Additionally, it was necessary to outline the measures undertaken by government authorities to integrate individuals from Ukraine. Where relevant, the study discussed issues within the national asylum system and proposed solutions to address these shortcomings to ensure the effective fulfilment of the state's positive obligations to uphold the rights of those benefiting from protection.

KEYWORDS

asylum
displaced person
international protection
Republic of Moldova
Russo–Ukrainian war
temporary protection

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1. Introduction

After declaring independence, the Republic of Moldova became a member state of the United Nations and numerous regional organisations, subsequently ratifying the most important legal instruments for the protection of human rights, such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social, and Cultural Rights (1966), the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), and the Geneva Conventions (I–IV) (1949) among others.

In 1997, the Representative Office of the United Nations High Commissioner for Refugees (UNHCR) was opened in the Republic of Moldova. It is a specialised UN agency responsible for processing asylum applications submitted in our country. Following the recommendations of the UNHCR, Moldova acceded through Law No. 677-XV on 23 November 2001 to the 1951 Refugee Convention and its 1967 Additional Protocol. The Convention came into force for Moldova on 1 May 2002 and the Protocol on 31 January 2002 forming the foundation of international refugee law and defining the concept of a refugee and the minimum standards for the treatment of persons granted this status.² The Republic of Moldova ratified the Convention relating to the status of refugees, with certain declarations and reservations. These results show that, until the full restoration of the territorial integrity of the Republic of Moldova, the provisions of this Convention are applicable only in the territory where the jurisdiction of the Republic of Moldova is exercised.

In addition, the Republic of Moldova has undertaken the commitment to apply the provisions of this convention with no discrimination generally, not only as to race, religion, or country of origin, as stipulated in Article 3 of the Convention.

According to Paragraph 1 of Article 42 of the Convention, the Republic of Moldova reserves the right that the provisions of the Convention, according to which refugees shall be accorded treatment no less favourable than that accorded aliens generally, are not interpreted as an obligation to offer refugees a regime similar to that accorded to the citizens of the states with which the Republic of Moldova has signed regional customs, economic, political, and social security treaties.

Likewise, the Republic of Moldova reserves the right to consider the provisions of the Convention regarding movable and immovable property and certain provisions related to wage earnings as recommendations and not obligations. The Republic of Moldova interprets the provisions of Article 21 of the Convention as not being obliged to accord housing to refugees.

The Government of the Republic of Moldova reserves the right to apply the provisions of Article 24 so that it does not infringe upon the constitutional and domestic legislative provisions regarding the right to labour and social protection. According to Paragraph 1 of Article 42 of the Convention, in implementing Article 26, the Republic of Moldova reserves

the right to establish a place of residence for certain refugees or groups of refugees in the interest of the state and society.³

The aforementioned documents primarily regulate fundamental human rights and freedoms derived from the dignity of human beings, which are not conditioned by the political–legal relationship between an individual and a state. Consequently, the legal framework existing in the Republic of Moldova as of 24 February 2024, the date when military actions began in Ukraine, was already consistent and aligned with existing trends in the protection of persons displaced by such crises.

Between 24 February 2022 and 22 February 2023, a total of 937,568 Ukrainian citizens entered the Republic of Moldova. Of the total number of Ukrainian citizens who entered the country, 833, 557 left.

Managing refugee flows from Ukraine to the Republic of Moldova is essential for differentiating these three stages. The first stage was ‘chaotic’, when the authorities were trying to find ways to meet the urgent needs of displaced people from Ukraine, establish a refugee crisis management system, and identify and remove specific gaps in this process, in order to establish partnerships with international agencies and CSOs. The massive flow of displaced people characterizes this stage; most refugees are in transit in the territory of the Republic of Moldova. The displaced persons at this stage were women with children and men ‘wealthy, with very expensive cars not requiring support from Moldovan authorities’, also children accompanied by relatives or other adults. This period was from February to April 2022. In the second stage, the refugee management system became more functional, but the flow of displaced people decreased. Many who crossed state borders remained in the Republic of Moldova. At this stage, the flow of displaced people had a high level of vulnerability: ‘people who have nothing ... really in need, especially women and children, we did not see men anymore’. The most vulnerable people have remained in the Republic of Moldova: mothers with small children; older people, including those with serious health issues unable to travel or travelling with difficulty; people without ID; people who do not speak other foreign languages (except Russian); people who have left behind close relatives in Ukraine (spouses, parents); and those who wanted to return home as soon as possible. This period included May–September 2022. The third stage is the ‘autumn–winter period’. At this stage, the flow of displaced people could increase owing to weather conditions and damage to Ukraine’s energy system. During the third stage, the flow of displaced people ‘calmed down’, and people crossing the border were more informed and came with an established destination: relatives, acquaintances, temporary placement centres for refugees, and other placement centres. Refugees who stay in the Republic of Moldova are (I) people who have relatives/kinship with Moldovan citizens; (II) people who do not speak foreign languages; (III) people with limited financial resources; (IV) elderly people or with many children; (V) Roma people or other categories of Ukrainians, without identity documents; and (VI) unaccompanied and separated children.⁴

Despite adequate and sufficient regulations, the need to ensure efficient and safe management of both the transit of displaced persons and their temporary placement

3 | States parties, including reservations and declarations, to the 1951 Refugee Convention. [Online] Available at: <https://www.unhcr.org/media/states-parties-including-reservations-and-declarations-1951-refugee-convention> (Accessed: 2 January 2026).

4 | Cheianu-Andrei, 2022, p. 112.

in the territory of the Republic of Moldova revealed that the implementation of international protection standards for displaced persons requires additional procedures. In this context, a particular issue was the absence of control over the localities on the left bank of the Dniester (Transnistria) and the Transnistrian segment of the Moldovan–Ukrainian border⁵. Therefore, all the data presented in this study refer exclusively to crisis management caused by the Russo–Ukrainian war in a territory controlled by the central authorities.

Based on the decision of the Extraordinary Situations Commission of the Republic of Moldova No. 1 from 24 February 2022, a series of derogations from the current legal framework were established to regulate the crossing of the state border by foreigners coming from Ukraine.⁶ Thus, crossing the state border was authorised for foreigners coming directly from Ukraine, even with expired identity documents. A separate procedure was also established for the documentation and registration of foreigners arriving directly from Ukraine, as well as for the authorisation of the entry of vehicles from Ukraine into the Republic of Moldova without the presentation of mandatory civil liability insurance for damages caused by vehicles. Additionally, rapid testing procedures have been implemented for individuals with symptoms of SARS-CoV-2 infection.

Among the government initiatives undertaken to provide assistance to displaced persons from Ukraine are the creation of provisional centres for managing foreign influxes, the launch of the portal dopomoga.gov.md, and the establishment of a helpline for the Migration and Asylum Bureau within the Ministry of Internal Affairs of the Republic of Moldova.

To implement the provisions of the law regarding foreigners' status in the Republic of Moldova, the National Mechanism for the unified and coherent management of the situation in the event of an increased influx of foreigners was approved. The mechanism directly regulates the planning, organisation, coordination, monitoring, and unified leadership of competent institutions' actions in response to a situation generated by an increased influx of foreigners and represents an additional measure for efficient management in the field of migration.⁷ From 28 February 2022 to 15 March 2023, the Unified Crisis Management Center operated under the leadership of the Exceptional Situations Commission of the Republic of Moldova. The centre coordinates the assistance efforts of the government, international organisations, private initiatives, and volunteers. Representatives of the United Nations High Commissioner for Refugees (UNHCR) worked within the unified centre. The centre had a helpline where all citizens were able to learn how to help in the created situation. Within the Unified Centre, cells were created for

5 | Cernomoreț, 2018, pp. 230–245.

6 | Dispoziția Comisiei pentru Situații Excepționale a Republicii Moldova nr. 1 din 24 februarie 2022 emisă în conformitate cu Article 22 din Legea nr. 212/2004 privind regimul stării de urgență, de asediu și de război, Article 2 din Hotărârea Parlamentului nr. 41/2022 privind declararea stării de urgență, pct. 6, 7, 8 și 9 din Regulamentul Comisiei pentru Situații Excepționale a Republicii Moldova, aprobat prin Hotărârea Guvernului nr. 1340/2001. [Online]. Available at: https://social.gov.md/wp-content/uploads/2022/04/dispozitie_cse_1_24.02.2022_modif_d_3.5.6.7.8.10.pdf (Accessed: 2 January 2026).

7 | Report No. 1 of 18.05.2022 on the monitoring the observance of the rights of foreigners from Ukraine in the context of the state of emergency for the period from February 25 to April 30, 2022 [Online]. Available at: <https://ombudsman.md/en/post-document/raportul-nr-1-3/> (Accessed: 2 January 2026).

specific tasks: goods, accommodation, medical assistance, transportation, food products, psychological counselling, consular and legal services, volunteer platforms, coordination of the efforts of economic agents, and international assistance.

On 14 May 2025, the Government of the Republic of Moldova adopted Decision No. 285 of 14-05-2025 for the approval of the National Program for the phased integration of foreigners, including displaced persons in the Republic of Moldova, for the period 2025–2027⁸. The decision aims to facilitate the gradual integration of foreigners by developing the necessary measures to ensure access to education, healthcare, housing, social assistance, and the labour market. In the absence of concrete, coherent, and synergistic measures, the economic and social imbalances caused by insufficient integration could lead to the marginalisation of foreigners and a decline in social cohesion, thereby affecting the economic and social stability of the Republic of Moldova.

2. Forms of Protection Granted on the Territory of the Republic of Moldova

The Constitution of the Republic of Moldova, adopted on 27 August 1991 expressly stipulates in Article 19, titled ‘Legal Status of Foreign Citizens and Stateless Persons’, that foreign citizens and stateless persons enjoy the same rights and duties as Moldovan citizens, except for those established by law. In the same context, the right to asylum is granted and withdrawn under the conditions of the law, in compliance with international treaties to which the Republic of Moldova is a party.

Under the Law on Asylum in the Republic of Moldova⁹, adopted on 18 December 2008 and in force on 24 February 2022 one of the following forms of protection can be granted to individuals in the territory of the Republic of Moldova: refugee status, humanitarian protection, temporary protection, and political asylum.

The Moldovan legislator defines several key terms and concepts used in the Law on Asylum in the Republic of Moldova. As such, asylum is understood as a legal institution through which the state provides protection to foreigners by recognising their refugee status and granting them humanitarian, temporary, or political asylum. International protection encompasses both refugee status and humanitarian protection:

a) Refugee Status

Upon request, refugee status is granted to foreigners who, due to a well-founded fear of being persecuted on the grounds of race, religion, nationality, membership in a particular social group, or political opinion, are outside the country of their nationality and are unable or, due to such fear, unwilling to avail themselves

8 | Hotărâre Nr. 285 din 14-05-2025 cu privire la aprobarea Programului național privind integrarea etapizată a străinilor, inclusiv a persoanelor strămutate în Republica Moldova, pentru perioada 2025-2027 Publicat: 29-05-2025 în Monitorul Oficial Nr. 261-264 Article 307 [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=148656&lang=ro (Accessed: 2 January 2026).

9 | Lege Nr. 270 din 18-12-2008 privind azilul în Republica Moldova Publicat : 13-03-2009 în Monitorul Oficial Nr. 53-54 Article 145 [Online] Available at: https://www.legis.md/cautare/getResults?doc_id=144620&lang=ro (Accessed: 2 January 2026).

of the protection of that country. This status also applies to stateless individuals who, for similar reasons, are outside the country of their habitual residence and cannot, or because of such fear, do not wish to return.

b) Humanitarian Protection

Humanitarian protection is granted to foreigners who do not meet the conditions for recognition of refugee status but for whom there are serious and well-founded reasons to believe that if returned to their country of origin, they would face a real risk of suffering severe harm and cannot or, due to this risk, do not wish to seek protection from that country.

These provisions ensure a comprehensive framework for granting protection to individuals in need, aligning them with international standards and addressing the diverse needs of displaced people.

c) Political Asylum

In exceptional cases, individuals who have held political, diplomatic, or public-interest positions in other states or international organisations as well as individuals who have demonstrated significant attachment, respect, and interest toward the Republic of Moldova or other prominent figures persecuted in their country of origin may request political asylum from the President of the Republic of Moldova. People whose requests for political asylum are denied may seek other forms of protection under the provisions of the Law on Asylum in the Republic of Moldova.

d) Temporary Protection

The legislation of the Republic of Moldova defines temporary protection as an exceptional measure aimed at providing immediate and temporary protection to displaced individuals in the event of a massive and spontaneous influx of people who cannot return to their country of origin. This measure is implemented when there is a risk that the asylum system will be unable to process the influx without adverse effects on its efficient functioning to the detriment of both displaced individuals and others in need of protection.

Temporary protection is granted by a government decision based on a proposal from the Ministry of Internal Affairs following a report presented by the Bureau for Migration and Asylum regarding the necessity of such protection. The Government's decisions also specify the measures and duration for which temporary protection is granted.

Temporary protection is initially provided for one year. If the reasons for granting temporary protection persist, the duration may be extended in increments of six months for a maximum of one additional year, but not exceeding a total of two years.

In the granting, implementation, and termination of temporary protection, the Government consults with the UNHCR and other international organisations.

3. Temporary Protection for Displaced Persons From Ukraine

Approximately two years after the outbreak of armed conflict in Ukraine, the Government of the Republic of Moldova adopted a decision granting temporary protection to

displaced persons from Ukraine¹⁰. This decision established the Conditions for Granting Temporary Protection, and an accompanying Action Plan. Initially, temporary protection was granted for one year, starting on 1 March 2023 and later extended for an additional year, until 1 March 2025.

Under Moldovan legislation, temporary protection is granted to Ukrainian citizens residing in Ukraine before 24 February 2022; Ukrainian citizens present in Moldova prior to 24 February 2022; stateless persons and nationals of third countries (other than Ukraine) who benefited from international or equivalent national protection in Ukraine before 24 February 2022 and cannot safely return to their country or region of origin; and family members of the aforementioned individuals.

Annex No. 1 of Government Decision No. 21/2023 specifies in detail the documents that must be submitted by applicants for temporary protection. It should be noted that the regulatory framework of the Republic of Moldova in this regard is protective, allowing for the granting of temporary protection based on national identity documents with expired validity, as well as identity certificates issued by the Embassy of Ukraine in the Republic of Moldova. Special regulations have been established for processing applications by minors who arrive at state borders without identity documents, with expired or damaged documents, or as unaccompanied minors.

Simultaneously, the national mechanism for granting temporary protection stipulates that adults crossing the state border with a national identity document (identity card/internal passport) are entitled to only one entry and exit between Moldova and Ukraine.

Temporary protection takes effect on an individual from the date they express their intention to benefit from this type of protection by registering their application to obtain an identity document with a competent authority for foreigners under the Ministry of Internal Affairs. On the day the application is submitted, the authority issues it free of charge, and based on the submitted documents, an identity document granting individual permission to remain in the territory of the Republic of Moldova.

During the identity documentation registration process, beneficiaries of temporary protection must confirm their temporary address of residence in Moldova. The General Police Inspectorate, in coordination with the General Inspectorate for Migration of the Ministry of Internal Affairs, may conduct unannounced inspections at the residential address declared the beneficiary's responsibility.

Data on beneficiaries of temporary protection are recorded in the automated information system of the competent authority for foreigners under the Ministry of Internal Affairs and can be accessed by state authorities via the interoperability platform.

The competent authority for foreigners under the Ministry of Internal Affairs informs the beneficiary of temporary protection in writing during the registration process in a language that they understand or can reasonably be expected to understand their rights and obligations during the temporary protection period, as well as about the processing of their personal data.

The competent authority for foreigners under the Ministry of Internal Affairs and the Intelligence and Security Service verifies whether there are grounds for exclusion from

10 | Hotărârea Guvernului Republicii Moldova Nr. 21 din 18-01-2023 privind acordarea protecției temporare persoanelor strămutate din Ucraina [Online] Available at: https://www.legis.md/cautare/getResults?doc_id=142062&lang=ro# (Accessed: 2 January 2026).

temporary protection within 10 working days from the date of registration. These grounds include committing a crime against peace, a war crime, or a crime against humanity, as defined in international treaties to which Moldova is a party and in its criminal legislation; committing a serious, particularly serious, or exceptionally serious common law offence before entering Moldova; committing acts contrary to the purposes and principles of the United Nations, as outlined in the Preamble and Articles 1 and 2 of the UN Charter; presenting a danger to public order or the security of Moldova; and planning, facilitating, or participating in acts of terrorism, as defined in international treaties to which Moldova is a party.

If there are valid reasons to believe that a person granted temporary protection falls under one of the exclusion clauses, the competent authority for foreigners under the Ministry of Internal Affairs will inform the person about the termination of temporary protection and the initiation of the standard asylum procedure in accordance with the provisions of the Law on Asylum in the Republic of Moldova.

Between 1 March 2023 and 9 December 2024, a total of 82,732 people were pre-registered for temporary protection, of which 64,891 identity documents for beneficiaries of temporary protection were issued. As of 9 December 2024, the asylum system in the Republic of Moldova registered 670 Ukrainian citizens, including one refugee, 202 beneficiaries of humanitarian protection, and 467 asylum seekers. A total of 3,820 Ukrainian citizens hold temporary residential rights in the Republic of Moldova, whereas 3,095 Ukrainian citizens hold permanent residential rights. A total of 3,088 Ukrainians applied for Moldovan citizenship and 2,273 Ukrainians acquired it.

4. Measures on the Field of Integration of Foreigners in the Republic of Moldova

4.1. *The Legal Status of Beneficiaries of International Protection in the Republic of Moldova*

The Law on the Integration of Foreigners in the Republic of Moldova¹¹ partially transposed Directive 2011/95/EU of the European Parliament and Council on 13 December 2011, on the standards regarding the conditions that third-country nationals or stateless persons must meet to benefit from international protection, a uniform status for refugees or persons eligible for subsidiary protection, and the content of the protection granted (recast). The law stipulates that foreigners who have obtained international protection or political asylum in the Republic of Moldova (unaccompanied minors; single-parent families with children; families with three or more children dependent on them; persons with disabilities; pregnant women; victims of human trafficking; persons with intellectual and mental health issues; as well as individuals who have been subjected to torture, rape, or other forms of serious psychological, mental, or sexual violence; and persons who have reached retirement age) and, simultaneously, have a reduced potential for

11 | Lege Nr. 274 din 27-12-2011 privind integrarea străinilor în Republica Moldova. Publicat : 31-12-2020 în Monitorul Oficial Nr. 372-382 Article 342 [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=136576&lang=ro (Accessed: 2 January 2026).

self-sufficiency due to objective factors beyond their control, benefit from equal and fair access to assistance, just like Moldovan citizens, under the conditions of the law (Article 6). The measures provided by the Moldovan legislature aimed at integrating foreigners into the Republic of Moldova are as follows:

- a) Integration activities, including specialised information sessions, sociocultural accommodation sessions, Romanian language courses, employment measures, and information/ counselling to obtain Moldovan citizenship;
- b) specialised integration plans/programs, fully or partially funded by public means or external funding sources, carried out through cooperation between central public authorities and/or with the support of local authorities and non-profit organisations; and
- c) other integration measures that do not contravene the law, aimed at facilitating diverse and positive interactions between foreigners and the host society, and creating various opportunities for interaction.

In this context, from the moment of obtaining residence rights, recognition of stateless status in the Republic of Moldova, or obtaining international protection, foreigners are informed about their rights and obligations in the territory of the Republic of Moldova, including the integration measures granted, as confirmed by the beneficiary's signature on an official standardised document approved by the competent authority for foreigners. Specialised information and sociocultural accommodation sessions will be organised, and free Romanian language courses will be provided to foreigners who have obtained international protection in the Republic of Moldova.

Foreigners have access to the labor market to ensure their self-sufficiency, make use of their potential, and identify their area of involvement in relation to the conditions of the Republic of Moldova, based on the capacities and needs of the labor market in the Republic of Moldova. Simultaneously, in the case of beneficiaries of international protection registered as unemployed and included in the integration programme, the unjustified refusal of an appropriate job or unjustified refusal to participate in one of the employment promotion measures offered by the local employment office results in the cessation of one or more measures provided in the individual integration plan, such as the withdrawal of accommodation rights and/or financial assistance provided by the Asylum Law in the Republic of Moldova.

Foreigners who have legalised their stay in the Republic of Moldova have access to education. The beneficiaries of international protection are included in compulsory education and other forms of education under the same conditions as Moldovan citizens. Foreigners' admission to study is conditioned by prior recognition and equivalence of the educational documents presented by the candidates.

Minors who have obtained international protection benefits, if necessary, from a free introductory Romanian language course for integration into the education system organised by local public authorities for one school year.

Access to medical services: During the program, beneficiaries of international protection included in an integration program receive the status of insured persons under the mandatory healthcare insurance system, categorised as non-employed persons insured by the Government.

Access to the social assistance and insurance system: Foreigners benefit from social assistance and access to the public social insurance system under the conditions established by the law for Moldovan citizens.

Beneficiaries of international protection who do not participate in integration programmes assume responsibility for their own integration.

Beneficiaries of international protection may receive free accommodation for a period not exceeding six months in accommodation centres managed by the competent authority for foreigners.

Protection of minors. Unaccompanied minors who have obtained international protection are included in the child protection system in accordance with legislation by the Social Assistance and Family Protection Directorate/Municipal Directorate for Child Protection, which will take the necessary measures to adapt the services provided to the specific needs of unaccompanied minors as follows:

- a) Special training for staff in specialized institutions
- b) Use of interpreters and experts in activities carried out by specialized institutions
- c) Adapting accommodation conditions to the cultural specifics of unaccompanied minors who have obtained international protections

At the location of the unaccompanied minor, the Social Assistance and Family Protection Directorate/Child Rights Protection Directorate takes necessary measures to ensure their legal representation and provides them with international protection in accordance with the law.

To protect the best interests of the unaccompanied minor, the Social Assistance and Family Protection Section/Directorate, together with other competent authorities and institutions, takes measures to identify the minor's family if this does not contradict the asylum procedure. If the life or physical and mental integrity of unaccompanied minors or their relatives is threatened, particularly if they remain in their country of origin, the collection, processing, and dissemination of information regarding these persons must be confidential.

Unaccompanied minors who benefit from international protection participate, in parallel with the activities carried out by specialised institutions, in integration programs based on individual plans developed by the Social Assistance and Family Protection Section/Directorate or the Municipal Directorate for Child Protection in Chişinău in collaboration with the competent authority for foreigners.

| 4.2. The Legal Status of Beneficiaries of Temporary Protection in the Republic of Moldova

Minors benefiting from temporary protection have access to education in public general education institutions, within the limits of the educational system's capabilities and under the same conditions as Moldovan citizen minors.

Beneficiaries of temporary protection, upon request, have access to accommodation in the Temporary Placement Centre for persons with difficulties under the conditions set by law.

Beneficiaries of temporary protection can access social assistance measures funded by international organisations, with the financial aid provided by international organisations correlated with the financial aid set by the Government for beneficiaries of international protection.

Families benefiting from temporary protection can access support services for families with children, including financial aid, to prevent and/or overcome risky situations and ensure the upbringing and education of the child in a family environment.

The benefits of temporary protection include the right to work in the Republic of Moldova without obtaining temporary residence for work purposes. In this regard, they benefit from employment support provided by the legislation of the Republic of Moldova.

Analysing the Moldavian labour market for the Ukrainian refugees at mid-June 2022, it has been found that 560 of the Ukrainian refugees have found jobs mainly in the following sectors: trade (10%), construction (7%), agriculture (6%), and hospitality (7%).¹²

For employment in the healthcare system, beneficiaries of temporary protection must obtain permission from the Ministry of Health to be employed during their temporary protection period.

Beneficiaries of temporary protection can access emergency medical care and primary healthcare, including compensated medicines and medical devices, specialised outpatient care, and free medical examinations for public health reasons within medical institutions in accordance with the list of medical services established by the Ministry of Health.

The costs incurred by medical institutions under the mandatory healthcare insurance system for emergency medical care, primary medical care, and free medical examinations for public health reasons provided to beneficiaries of temporary protection are covered by the financial resources accumulated in the mandatory healthcare insurance fund, with reimbursement from the state budget in the form of special transfers and/or other income in the form of donations and/or grants.

The benefits of temporary protection include the right to temporarily admit private transport in the Republic of Moldova. The maximum period for maintaining them under the temporary customs regime for the same use and responsibility of the same authorisation holder is up to 12 months. Additionally, if the authorised usage period is insufficient, the Customs Service of the Republic of Moldova may extend it for a reasonable period based on a justified request from the authorisation holder.

The obligations of the beneficiary of temporary protection are as follows:

1. To provide truthful information to the competent foreign authorities within the Ministry of Internal Affairs about themselves and their family members.
2. To comply with mandatory photographing and fingerprinting.
3. To respect the internal regulations of the temporary placement centers for persons in difficulty.
4. To inform the competent authority for foreigners within the Ministry of Internal Affairs in case of a voluntary return to Ukraine or obtaining another form of protection in another country.
5. To inform the competent authority of foreigners within the Ministry of Internal Affairs within 10 days about any changes in their legal status, civil status, change of residence in the Republic of Moldova, or loss or damage to the temporary protection beneficiary's identity document.
6. To undergo the mandatory free medical examination for public health reasons.

¹² | Koroutchev, 2023, p. 58.

7. To respect the legislation of the Republic of Moldova without violating the rights and freedoms of others, to behave in a civilised and correct manner, respecting the rules established by the authorities.
8. To respond to requests from state authorities with responsibilities in temporary protection matters.
9. To inform the state authorities about incidents of human rights violations, if applicable.¹³
10. Temporary protection ceases in any of the following situations:
11. Upon reaching the maximum duration of temporary protection established in this decision.
12. The person renounced temporary protection by informing the competent authority for foreigners within the Ministry of Internal Affairs.
13. The person voluntarily repatriated to Ukraine or relocated to another country, informing the competent authority for foreigners within the Ministry of Internal Affairs.
14. In the case of granting residence rights to the beneficiary of temporary protection under Law no. 200/2010 regarding the status of foreigners in the Republic of Moldova.
15. There are valid grounds to consider that a person granted temporary protection falls under one of the exclusion clauses for temporary protection.
16. Another form of protection provided by the Asylum Law in the Republic of Moldova was granted.¹⁴

5. The National Mechanism for Monitoring the Respect for the Rights of Persons Displaced From Ukrainian Territory

To ensure effective monitoring of Ukrainian citizens forced to leave the country due to ongoing hostilities, the Methodology for Monitoring the Respect for the Rights of Refugees in the Republic of Moldova was developed under the auspices of the Ombudsman's Office. The methodology was designed in the spirit of respecting human dignity and was based on the International Bill of Human Rights, the Convention Relating to the Status of Refugees, and soft law principles such as the guidelines and principles developed under the auspices of the UNHCR or OHCHR, and the OHCHR's Recommended Principles and Guidelines on Human Rights at International Borders.

The methodology for monitoring refugee rights in the Republic of Moldova was structured into five essential components: shelter, hygiene, health, safety, and nutrition. The methodology adopted a dual approach, covering both protected categories of rights and

13 | Hotărârea Guvernului Republicii Moldova Nr. 21 din 18-01-2023 privind acordarea protecției temporare persoanelor strămutate din Ucraina [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=142062&lang=ro# (Accessed: 2 January 2026).

14 | Hotărârea Guvernului Republicii Moldova Nr. 21 din 18-01-2023 privind acordarea protecției temporare persoanelor strămutate din Ucraina [Online]. Available at: https://www.legis.md/cautare/getResults?doc_id=142062&lang=ro# (Accessed: 2 January 2026).

categories of people requiring special protection (e.g. pregnant women, unaccompanied children, persons with disabilities, and Roma individuals). Following this, the Ombudsman's Office prepared general periodic reports on the monitoring of the rights of foreign nationals from Ukraine in the context of the armed conflict, as well as special reports, such as the Report on the Assessment of Access to Essential Health Services for Refugees in the Republic of Moldova or the Special Report on the Evaluation of the Procedures for Accepting Asylum Applications at the State Border Crossing Point 'Chişinău International Airport' and Ensuring the Rights of Asylum Seekers at the Accommodation Centre of the General Inspectorate for Migration.

The situation at the time of drafting this text, as reported in the 'Report on Monitoring the Respect of Refugee Rights in the Context of the Armed Conflict in Ukraine (for the period January – June 2024)',¹⁵ shows that refugees, who are inherently vulnerable groups, are limited in exercising their rights to work, access to healthcare, access to social insurance, and access to housing.

In this regard, the Ombudsperson's Office has made several recommendations to the authorities to review the legal framework regarding labour market integration to include beneficiaries of temporary protection as eligible persons for all employment measures, adopt gender-sensitive employment measures, expedite the adoption of a Social Security Agreement between the Republic of Moldova and Ukraine, ensure access to accommodation services for all beneficiaries of temporary protection, strengthen mechanisms to prevent discrimination faced by beneficiaries of temporary protection in the labour market, and establish a mechanism to cap rental prices for housing, among others.

6. Moldova as a Migration Corridor: Security, Vulnerability, and Human Rights Risks in Times of War

The outbreak of war between the Russian Federation and Ukraine has tended to be the most significant military conflict since the end of World War II. Any war – especially one of this intensity, as we are witnessing in Ukraine – is generally a factor of political-military and socioeconomic change, which also drives shifts in the security landscape.¹⁶ As a 'gateway' to Europe, the Republic of Moldova, due to its geopolitical and geostrategic position, feels the pressure of transnational organised crime at its borders, including phenomena such as migration – in both forms, immigration and emigration – drug trafficking, human trafficking, arms, ammunition, and explosive materials trafficking, the smuggling of luxury stolen vehicles, and the smuggling of goods and products (national and cultural heritage items, drugs, cigarettes, alcohol, petroleum products, medicines, etc.). The military conflict in Ukraine, which began in 2022, has had a direct impact on

15 | Report on the monitoring of the respect for the rights of refugees, in the context of the armed conflict in Ukraine for the period January – June 2024 [Online]. Available at: <https://ombudsman.md/en/post-document/report-on-the-monitoring-of-the-respect-for-the-rights-of-refugees-in-the-context-of-the-armed-conflict-in-ukraine-for-the-period-january-june-2024-2/> (Accessed: 14 December 2024).

16 | Cebotari, 2024, pp. 171–179.

the development of organised crime, particularly concerning illegal migration. Instability in the Transnistrian region is becoming a corridor for an increasing flow of illegal migration. Once these individuals are detected at the border, they request asylum, a form of international protection that offers them temporary and safe stay in the Republic of Moldova. However, for most asylum seekers, the Republic of Moldova is seen merely as a temporary refuge and transit country on its way to the European Union.¹⁷

In 2023, 96,653 individuals were documented to have attempted or illegally crossed the state border for the purpose of illegal migration, marking an increase of over 40% compared to 2022, when 66,604 individuals were documented. The forms in which this phenomenon manifests at the state border are as follows:

1. Illegal border crossing through the 'green' (unofficial) border area
2. Illegal entry into the Republic of Moldova via the Moldovan-Ukrainian 'green' border, while holding valid documents, followed by exit from Moldova through the Moldovan-Romanian segment using valid documents
3. Crossing the border through official border-crossing points (BCPs) using false/forged or foreign documents
4. Attempted entry into or exit from the Republic of Moldova through BCPs while being hidden by means of transport

The Moldovan-Ukrainian border segment is characterised by illegal crossings carried out by Ukrainian citizens. In the air and Moldovan-Romanian border segments, attempts have been made by non-regional foreign nationals to illegally cross the state border with the goal of reaching the European Union by transiting through the Republic of Moldova. During the reporting period, there was an approximately 50% increase in the illegal border-crossing attempts by Ukrainian citizens. Additionally, during the same period, 90 non-regional foreign nationals were documented for attempting to illegally cross the border through official crossing points, along with 76 individuals attempting to cross via the 'green' border segment.

The increasing trend of illegal migration by non-regional citizens at the borders of Moldova is influenced by several factors, including:

- a) Geographic proximity of the Republic of Moldova to the European Union, as it borders Romania, an entry point into the EU. Thus, Moldova is an attractive destination for illegal migrants seeking to reach the EU.
- b) Moldova's visa policy. The possibility of obtaining an electronic visa for Moldova by applying for false or forged documents. The relatively low costs of acquiring a work visa and residence permit make this option appealing for migrants. All documented foreign citizens attempting to illegally cross the border on the Moldovan-Romanian segment entered the country using valid C- and D-type visas.
- c) The conflict in Ukraine has led many migrants to alter their routes toward the EU, now transitioning through Moldova. Before the conflict began, Ukraine was ranked among the top transit countries along the eastern route to the EU.
- d) The tense migration situation in Turkey has made it the main transit country for illegal migration from the Middle East to the EU.¹⁸

17 | Cebotari and Lungu, 2024, p. 183.

18 | Cebotari, 2024, p. 177.

7. Conclusions

The challenges faced by the Republic of Moldova since the beginning of the humanitarian crisis triggered by the armed conflict in the neighbouring country were the lack of relevant international legal frameworks for the particular situation of refugees resulting from armed conflicts, insufficient financial resources necessary to meet the minimum standards for the treatment of persons in distress, the absence of an efficient and transparent mechanism for managing external assistance, and the lack of effective control by the central authorities in the territories on the left bank of the Dniester.

However, at the start of the crisis, the national authorities' approach was based on the idea that individuals affected by the armed conflict in Ukraine did not need to hold legal status in the Republic of Moldova to be protected or receive humanitarian assistance. The full implementation of the obligations assumed by the Republic of Moldova through the ratification of international treaties in the field of human rights in general, and in the field of persons benefiting from protection in particular, is currently only possible through the combined efforts of the state, the international community, and private entities.

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NATIONAL HUMAN RIGHTS INSTITUTIONS IN CROATIA

Jasna Omejec¹

ABSTRACT

With the exception of the Constitutional Court of the Republic of Croatia and other courts, this paper provides an overview of the national human-rights institutions (NHRIs) in Croatia, which mainly derive from constitutional provisions governing human rights and fundamental freedoms (hereinafter 'fundamental rights'). These are state bodies, agencies and institutions endowed with a constitutional or statutory mandate to safeguard such rights. A multitude of NHRIs operate at both national and regional levels, many of which are dedicated to the rights of vulnerable groups. The paper examines in greater depth the composition, functions, and activities of the Croatian People's Ombudsperson, the specialised ombudspersons for gender equality, disability, and protection of children, the Information Commissioner, the Personal Data Protection Agency, the Council for Electronic Media, and other governmental and parliamentary entities that address issues pertaining to fundamental rights. It also considers the various commissions and inter-sectoral NHRIs operating at national and regional tiers. Nevertheless, the mere existence of numerous institutions does not, in itself, guarantee the effective protection and promotion of human rights and fundamental freedoms. Moreover, the majority of Croatian NHRIs fall short of fully complying with – or meeting – the standards set out in the 1993 United Nations Paris Principles.

KEYWORDS

UN Paris Principles
Croatia's human rights institutions
Croatia's ombudspersons
Information Commissioner
Personal Data Protection Agency
Council for Electronic Media

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1. National Human Rights Institutions in the Republic of Croatia

| 1.1. *The Paris Principles*

In addition to the extensive protection of fundamental rights afforded by the Constitutional Court of the Republic of Croatia and other courts, Croatia has established a network of NHRIs, defined as ‘state bodies with a constitutional and/or legislative mandate to protect and promote human rights’.² These institutions have been established either as a constitutional obligation or pursuant to Croatia’s membership in the EU, its participation in global or regional international organisations, its status as a party to international treaties, or under national laws and regulations where the creation of such an institution was deemed beneficial for addressing specific fundamental rights challenges.

However, not all Croatian NHRIs are fully compliant with the 1993 United Nations Paris Principles.³ These Principles, formulated in 1993 through the efforts of NHRIs worldwide, led to the creation of the Global Alliance of National Human Rights Institutions (GANHRI),⁴ which coordinates the activities of NHRIs internationally and accredits members in accordance with their level of compliance with the Paris Principles. The Principles define the role, composition, status and functions of NHRIs, establishing internationally recognised minimum standards that such institutions must meet to be considered credible and effective. They set out requirements regarding a broad mandate and functions, legal or constitutional independence from government, pluralism, sufficient powers and resources, cooperative operations, and international engagement. The Paris Principles are ‘broadly accepted as the test of an institution’s legitimacy and credibility, and have become part of the human rights lexicon’.⁵

The GANHRI accredits NHRIs based on the extent of their compliance with the Paris Principles. There are currently three levels of accreditation:

‘A’ status – Voting member: fully compliant with the Paris Principles;

‘B’ status – Observer member: not fully compliant or has not yet submitted sufficient documentation;

‘C’ status – Non-member: not compliant with the Paris Principles.

Institutions accredited with ‘A’ status are entitled to participate fully in the international and regional activities and meetings of NHRIs as voting members. They may hold office within the GANHRI Bureau or any of its sub-committees. They also have the right to participate in sessions of the Human Rights Council, to speak under any agenda item, submit documentation, and occupy separate seating. All ‘A’ status NHRIs are subject to reaccreditation every five years to ensure they continue to meet the Principles. Reaccreditation requires submission of supporting documentation, and unless compelling

2 | GANHRI, National Human Rights Institutions [Online]. Available at: <https://ganhri.org/nhri/> (Accessed: 3 February 2025). For more details, see de Beco and Murray, 2014.

3 | UN, 1993.

4 | The GANHRI was previously known as the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).

5 | OHCHR, 2010, p. 7.

and exceptional circumstances are demonstrated, failure to do so will result in loss of status, necessitating a new application.

The GANHRI Sub-Committee on Accreditation (hereinafter ‘the SCA’) is mandated to review and assess accreditation applications submitted by the GANHRI Chair and to make recommendations regarding the applicant’s compliance with the Paris Principles.⁶

This paper provides an overview of Croatia’s current NHRIs, the establishment of which derives primarily from the constitutional provisions concerning fundamental rights. Other NHRIs operating in Croatia are only briefly addressed in this paper.⁷

1.2. Constitutionally Based National Human Rights Institutions in Croatia

1.2.1. People’s Ombudsperson

Pursuant to Art. 93.1 of the Constitution of the Republic of Croatia (hereinafter ‘the Constitution’),⁸ the Croatian People’s Ombudsperson (*pučki pravobranitelj*) (hereinafter ‘the CPO’) is a commissioner of the Croatian Parliament, entrusted with the promotion and protection of fundamental rights as enshrined in the Constitution, national legislation, and ratified international human rights instruments. Croatia thus adopted a parliamentary, monocratic, and general model of the Ombudsperson. The CPO commenced operations in 1992, following the entry into force of the first People’s Ombudsperson Act (hereinafter ‘the CPO Act’).⁹

Art. 93.3 of the Constitution guarantees the autonomy and independence of the CPO. The CPO Act, considered organic law, further stipulates that ‘any form of influence on the Ombudsperson’s work shall be forbidden’ (Art. 7.1). The CPO and their deputies enjoy the same legal immunity as Members of Parliament. Their roles are incompatible with any other public or professional office, as well as with membership in political parties.

The Croatian Parliament elects the CPO for a renewable term of eight years. Candidates are selected through a public call, after which the Parliamentary Committee responsible for human rights provides an opinion. The Parliamentary Committee competent for constitutional matters then nominates at least two candidates for parliamentary consideration.¹⁰

The CPO is responsible for adopting the Office’s Rules of Procedure, interpreting their provisions, issuing implementation instructions, and ensuring proper application.

6 | The SCA members are elected by their respective regional networks. They serve a three-year renewable term. There are four SCA members representing each of the four regions: Africa, Americas, Asia Pacific and Europe. The current SCA member from Europe is the Croatian People’s Ombudsperson Tena Šimonović Einwalter (elected by the Parliament for an eight-year term 2021–2029). GANHRI, Sub-Committee on Accreditation – Membership [Online]. Available at: <https://ganhri.org/sub-committee-on-accreditation/> (Accessed: 3 February 2025).

7 | For more details, see CPO, 2023.

8 | Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*), edited and consolidated text prepared by the Constitutional Court of the Republic of Croatia on 15 January 2014 [Online]. Available at: https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf (Accessed: 9 February 2025).

9 | The current People’s Ombudsperson Act (*Zakon o pučkom pravobranitelju*) entered into force on 9 July 2012, Official Gazette (*Narodne novine*) (hereinafter ‘OG’) 76/12.

10 | Art. 93.3 of the Constitution; Art. 10 of the CPO Act.

To improve accessibility for citizens, the CPO has established three regional offices in addition to the headquarters in Zagreb. Members of the public may access these offices in person, via e-mail, telephone, or standard postal mail. Contact details are publicly available in the telephone registry and on the CPO's official website.

To enhance pluralism, the CPO Act introduced the Council for Human Rights as an advisory body. The Council formulates strategic guidelines, fosters cooperation between the CPO, civil society, the academic community and the media, and addresses matters of relevance to the CPO's work. The CPO appoints Council members for a renewable four-year term. Members represent academia, civil society organisations (hereinafter 'the CSOs'), the media, and national minorities. Additionally, the CPO has developed a network of anti-discrimination contact points through cooperation agreements with 11 CSOs from across the country, all working in the areas of anti-discrimination and equality.

The CPO's financial resources are secured through the State Budget. However, the Office may also undertake activities funded by external donors, such as the EU or the United Nations.

The CPO has a broad mandate and general functions, enabling effective promotion and protection of all fundamental rights. Specifically, the CPO: examines complaints of unlawful practices and irregularities in the activities of state bodies, self-government bodies, and public legal persons (lodging a complaint is free of charge); protects the rights of individuals deprived of liberty; monitors the overall state of fundamental rights and highlights the need for their protection; monitors the conformity of laws and other regulations with the Constitution and international human rights instruments; promotes alignment with international and European legal standards and ensures their consistent application; conducts research and analysis; maintains an institutional database and relevant documentation; informs the public and relevant stakeholders of violations or infringements of fundamental rights; fosters cooperation with CSOs, international organisations, and academic and research institutions.

The CPO may issue recommendations, opinions, proposals and warnings to the authorities involved in the subject of complaints. These bodies are obliged to inform the CPO of any measures taken. The CPO, therefore, possesses adequate powers, and the SCA has classified it as an NHRI with quasi-jurisdictional functions.¹¹

Each year, the CPO submits a regular report to Parliament, which includes an evaluation of the overall status of the protection of fundamental rights in Croatia. The report also contains recommendations for addressing systemic deficiencies and irregularities that have led to violations of citizens' fundamental and statutory rights. The CPO may also submit special reports on specific issues within its mandate. There are no legal or practical consequences should Parliament decline to accept the CPO's annual report.

Beyond the CPO Act, the CPO's responsibilities are defined in other legislation.

Under the Act on the National Preventive Mechanism,¹² the CPO serves as the national authority responsible for implementing the National Preventive Mechanism,

11 | GANHRI, NHRI Accreditation Database [Online]. Available at: [https://ganhri.org/nhri-accreditation-database/\(under+Croatia\)](https://ganhri.org/nhri-accreditation-database/(under+Croatia)) (Accessed: 3 February 2025).

12 | Act on the National Preventive Mechanism for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*Zakon o Nacionalnom preventivnom mehanizmu za sprečavanje mučenja i drugih okrutnih, neljudskih ili ponižavajućih postupaka ili kažnjavanja*), OGs 18/11, 33/15.

established pursuant to the UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Croatia has been a party since 2005.

Moreover, under the Anti-Discrimination Act,¹³ the CPO functions as the central body responsible for combating discrimination on all grounds, acting as the national equality body. The European Commission against Racism and Intolerance (hereinafter 'the ECRI') of the Council of Europe has assessed that the CPO possesses all the powers recommended in ECRI's General Policy Recommendation (GPR) No. 7 § 24, and is aligned with GPR No. 2 concerning national specialised bodies combating racism, xenophobia, antisemitism and intolerance at the national level.¹⁴

The CPO also serves as the external body designated to receive reports of irregularities under the Whistleblowers' Protection Act.¹⁵

In light of the above, the CPO fully complies with the Paris Principles and currently holds an 'A' status, which was last reaffirmed in March 2019.¹⁶ While there is always scope for improvement, the CPO and its Office serve as a model of an independent, pluralistic, cooperative, accessible, internationally active and adequately state-funded NHRI, with a broad mandate and a comprehensive range of functions that enable the effective promotion and protection of all fundamental rights.

1.2.2. Specialised Ombudspersons

The Constitution also provides for the existence of 'other commissioners of the Croatian Parliament responsible for the promotion and protection of human rights and fundamental freedoms' (Art. 93.5). The Republic of Croatia has three specialised parliamentary commissioners (ombudspersons): the Ombudsperson for Gender Equality; the Ombudsperson for Persons with Disabilities; the Ombudsperson for Children, each established under a separate statute.¹⁷

Gender equality constitutes one of the fundamental values of the constitutional order of the Republic of Croatia.¹⁸ The Ombudsperson for Gender Equality (*pravobranitelj za ravnopravnost spolova*) (hereinafter 'the OGE') became operational in 2003. Under the Gender Equality Act of 2008, the OGE performs the duties of an independent body tasked with combating discrimination in the area of gender equality.

The Ombudsperson for Children (*pravobranitelj za djecu*) (hereinafter 'the OC') was also established in 2003 as the first specialised institution of its kind in Croatia dedicated to the protection and promotion of the rights and interests of children. Its establishment was prompted by the 1996 Recommendations of the United Nations Committee on the Rights of the Child. Upon reviewing the Croatian Government's report on the implementation of the Convention on the Rights of the Child, the Committee recommended

13 | Anti-Discrimination Act (*Zakon o suzbijanju diskriminacije*), OGs 85/08, 112/12.

14 | CPO, 2023, p. 17. Incumbent CPO Tena Šimonović Einwalter is the 1st Vice-Chair of the ECRI.

15 | The Whistleblower Protection Act (*Zakon o zaštiti prijavitelja nepravilnosti*), OG 46/22.

16 | GANHRI, Our members [Online]. Available at: <https://ganhri.org/membership/> (Accessed: 3 February 2025).

17 | Gender Equality Act (*Zakon o ravnopravnosti spolova*), OGs 82/08, 125/11, 20/12, 138/12, 69/17; Act on the Ombudsperson for Children (*Zakon o pravobranitelju za djecu*), OG 73/17; Act on the Ombudsperson for Persons with Disabilities (*Zakon o pravobranitelju za osobe s invaliditetom*), OGs 107/07, 125/11, 20/12.

18 | Art. 3 of the Constitution.

the establishment of an independent supervisory institution. The OC acts on the basis of individual complaints or on its own initiative, addressing violations of children's rights and interests, either in specific cases or more generally.

Based on the United Nations Convention on the Rights of Persons with Disabilities, the National Strategy for the Equalisation of Opportunities for Persons with Disabilities 2007–2015 was adopted. One of the measures within this Strategy was the establishment of the Ombudsperson for Persons with Disabilities (*pravobranitelj za osobe s invaliditetom*) (hereinafter 'the OPD') to enhance the legal protection of persons with disabilities.

All three specialised ombudspersons are vested with powers similar to those of the CPO, particularly in relation to discrimination within their respective domains. Additionally, the OGE functions as an equality body tasked with addressing discrimination on the grounds of sex, gender, gender identity, sexual orientation, and family status. The OC similarly acts as an equality body combating discrimination against children. The OPD, however, does not fall within the mandate of the ECRI.

Per the relevant legislation, all three specialised ombudspersons operate independently and autonomously, adhering to principles of fairness and moral integrity. They must not be subject to instructions or directives in the execution of their duties. Each is appointed for a renewable term of eight years. Nonetheless, their respective procedures of election and the grounds for removal from office differ significantly from those applicable to the CPO.

The Parliament appoints the OGE and the OPD based on nominations submitted by the Government. In contrast, the OC is appointed by the Parliament upon proposal by a competent parliamentary committee, which selects candidates through a public call for applications.

All three ombudspersons may be dismissed prior to the expiry of their term in accordance with the grounds prescribed by the relevant legal provisions. One such ground includes the parliamentary rejection of their annual activity reports. The ECRI has expressed concern that the parliamentary vote on such reports, as well as the potential for dismissal upon rejection, constitute serious threats to the independence of the OGE and the OC. The same concerns apply to the OPD, which the United Nations Committee on the Rights of Persons with Disabilities has not recognised as an Independent Monitoring Mechanism under the UN Convention on the Rights of Persons with Disabilities.¹⁹

Furthermore, the OC's independence is further constrained by the requirement to submit its annual work plan for approval to the Parliamentary Committee responsible for family and youth affairs.²⁰

1.2.3. Information Commissioner

The right of access to information is enshrined in the Constitution (Art. 38). The Act on the Right of Access to Information (hereinafter 'the ARAI'),²¹ adopted in 2013, established

19 | Committee on the Rights of Persons with Disabilities (CRPD), Independent Monitoring Mechanisms (IMM) Repository [Online]. Available at: <https://www.ohchr.org/en/treaty-bodies/crpd/crpd-independent-monitoring-mechanisms-imm-repository> (Accessed: 4 February 2025).

20 | CPO, 2023, p. 21.

21 | Act on the Right of Access to Information (*Zakon o pravu na pristup informacijama*), OGs 25/13, 85/15, 69/22.

the Information Commissioner (*povjerenik za informiranje*) (hereinafter 'the IC') as the authority responsible for safeguarding, monitoring, and promoting the right of access to and re-use of information as guaranteed by the Constitution.

The IC's principal duties include conducting second-instance (appellate) proceedings concerning access to and re-use of information. The IC carries out inspections and enforces compliance with the law, engages in international cooperation, and works with EU institutions, domestic experts, and public authorities. Furthermore, the IC informs the public, promotes awareness of access rights, and recommends measures and training programmes.

The Parliament appoints the IC for a renewable five-year term following a public call announced by the Parliamentary Committee responsible for constitutional matters. The Committee proposes at least two candidates from among the applicants and submits its recommendation to Parliament, having first obtained the consent of the Parliamentary Committee responsible for information.

The IC operates independently and is accountable to the Parliament. The IC is required to submit reports on the implementation of the ARAI and any additional reports upon request by the Parliament. Notably, there are neither legal nor practical consequences if Parliament fails to adopt the IC's report.

As an appellate state authority, the IC adjudicates parties' rights in access to information proceedings. Consequently, either the public authority involved or the individual who filed the appeal may initiate administrative proceedings before the High Administrative Court of the Republic of Croatia. The Court must rule on such disputes within 90 days. If the first-instance decision granted access to information, the initiation of a dispute has a suspensive effect.

A distinguishing feature of the IC is its Office's authority to conduct inspections concerning the application of the ARAI. These inspections may be triggered by a remonstrance, a third-party proposal, or *ex officio*. Inspections may be conducted directly or indirectly. A direct inspection involves an on-site review of data, documentation, and operational practices of the supervised public authority. An indirect inspection is based on data and documentation submitted to the IC by the public authority.

Moreover, the constitutional principle of proportionality, a foundational legal standard in both regulatory frameworks and individual adjudications, is explicitly articulated in Art. 38.4 of the Constitution: 'Limitations to the right of access to information must be proportionate to the nature of the need for such limitation in each individual case and necessary in a free and democratic society, as stipulated by law'. In line with this, the ARAI introduced the 'Test of Proportionality and Public Interest', defined in Art. 5.7 as 'the assessment of proportionality between the reasons for granting access to information and reasons for imposing limitations and granting access to information only if the public interest prevails'. The IC is currently the only NHRI in Croatia that adjudicates party rights through a case-by-case application of the proportionality test, the balancing test, and the necessity test within a democratic society (public interest). This practice significantly contributes to aligning the conduct of state authorities, outside the judiciary, with European legal standards.

Given the characteristics of the IC and the outcomes of its work in practice, it appears to be the NHRI in Croatia that most comprehensively meets the criteria of the Paris Principles.

1.2.4. Personal Data Protection Agency

The Constitution guarantees the security and confidentiality of personal data. Personal data may not be collected, processed, or used without the consent of the data subject, except under conditions established by law. The use of personal data contrary to the stated purpose of their collection is prohibited. The protection of data and the supervision of information system operations must be governed by law (Art. 37).

The Croatian Personal Data Protection Agency (*Agencija za zaštitu osobnih podataka*) (hereinafter 'the PDPA') was established in 2004 under the Act on Personal Data Protection. It currently functions as the supervisory authority within the meaning of Art. 51 of Regulation (EU) 2016/679 (General Data Protection Regulation, GDPR).²²

The PDPA is an independent public authority that reports to the Parliament. The Director and Deputy Director are appointed by the Parliament, upon proposal by the Government, following a public call for candidacies. They serve a four-year term and may be reappointed for one additional term.

The PDPA actively participates in the work of various Supervisory Coordination Groups, including the Schengen Information System II, the Visa Information System, the Customs Information System, and the European Asylum Dactyloscopy Database, as well as the Europol Cooperation Board.

Given its institutional features and its performance in practice, the PDPA appears to satisfy all the criteria set out in the Paris Principles.

1.2.5. Council for Electronic Media

The Constitution guarantees freedom of expression, which explicitly encompasses the freedom of the press and other media, as well as the free establishment of all institutions of public communication. Censorship is prohibited. Journalists possess the right to freedom of reporting and access to information (Art. 38). Furthermore, the Constitution guarantees the freedom of cultural and artistic creativity, along with the protection of the moral and material rights deriving from cultural, artistic, intellectual, and other creative efforts (Art. 69). Regulation and support mechanisms within the Croatian media market apply to all public, commercial (electronic and print), and non-profit media.

The Agency for Electronic Media (*Agencija za elektroničke medije*) (hereinafter 'the AEM') has operated since 2007 as an autonomous, independent, and non-profit legal entity vested with public authority. Any form of influence on the work of the AEM that might compromise its autonomy or independence is expressly forbidden. The Republic of Croatia is the founder of the AEM, with the Croatian Parliament exercising the founding rights. The AEM is registered in the Court Register.

The governing bodies of the AEM comprise the Director and the Council for Electronic Media (*Vijeće za elektroničke medije*) (hereinafter 'the CEM'). The Director of the AEM also serves as Chair of the CEM. The CEM administers the AEM and performs the functions of a regulatory authority in the field of electronic media. The principal responsibilities of the CEM are defined by the Electronic Media Act (hereinafter 'the EMA')²³ and the Croatian Radio and Television Act. These responsibilities include, inter alia, the allocation of

22 | Act on the Implementation of the General Data Protection Regulation (*Zakon o provedbi Opće uredbe o zaštiti podataka*), OG 42/18.

23 | Electronic Media Act (*Zakon o elektroničkim medijima*), OGs 111/21, 114/22.

resources from the Media Pluralism and Diversity Fund and the examination of citizens' complaints.

Pursuant to Art. 59 of the EMA, the CEM comprises seven members appointed by the Croatian Parliament upon the proposal of the Government, following a public call for candidates. Appointments are made for a five-year term, renewable upon expiry. Only Croatian nationals possessing relevant professional expertise, competencies, and experience are eligible for appointment. Several additional restrictions apply, primarily to prevent conflicts of interest.

The appointment of CEM members has consistently generated significant political tension. During the most recent amendments to the EMA, the CPO noted that several CSOs had expressed concern that the selection process did not adequately safeguard the independence of the CEM or its members. Moreover, these organisations emphasised the need to enhance the transparency of the CEM's decision-making processes.²⁴

The independence and operational effectiveness of both the CEM and the AEM are essential for the continued development of Croatian society. Technological advancements, increasing convergence, widespread broadband Internet access, and the proliferation of smartphones have profoundly transformed the Croatian media landscape. Foreign entertainment content now dominates across all platforms, both linear and non-linear. In this environment, domestic productions and European content would scarcely remain viable in the global media market without the support of mandated quotas.

In Croatia, the lack of proper enforcement of the Media Act has significantly undermined journalistic ethics and standards, largely due to pressures stemming from the market economy. Increasing attention is being paid to the proliferation of so-called 'fake news' and the erosion of editorial accountability, particularly across non-linear platforms. The regulation of non-linear services presents distinct challenges, especially regarding the protection of minors and the combating of hate speech. To this end, the EMA prohibits any act that encourages, favours, incites, or disseminates hatred or discrimination on the basis of race, ethnicity, skin colour, sex, language, religion, political or other convictions, national or social origin, antisemitism, xenophobia, or advocacy of fascist and other totalitarian ideologies.

Finally, a persistent concern within the Croatian media landscape is the lack of transparency surrounding media ownership structures. While such structures are frequently described as opaque, no concrete evidence has yet been presented in this regard.²⁵

| 1.3. List of Other National Human Rights Institutions in Croatia

1.3.1. Government and Parliamentary Bodies

The following working bodies of the Croatian Parliament, established by its Standing Orders, address issues related to fundamental rights:²⁶

24 | CPO, 2023, p. 27.

25 | Open Government Partnership, Croatia – Amending Legal Framework for Transparency in Media Sector (HR0048) [Online]. Available at: <https://www.opengovpartnership.org/members/croatia/commitments/HR0048/> (Accessed: 1 February 2025).

26 | Standing Orders of the Croatian Parliament (*Poslovnik Hrvatskoga sabora*), OG 81/13, with last amendments in 86/23.

1. Committee on the Constitution, Standing Orders and Political System (*Odbor za Ustav, Poslovnik i politički sustav*);
2. Committee on Human and National Minority Rights (*Odbor za ljudska prava i prava nacionalnih manjina*);
3. Gender Equality Committee (*Odbor za ravnopravnost spolova*);
4. Committee on the Family, Youth and Sports (*Odbor za obitelj, mlade i sport*);
5. Health and Social Policy Committee (*Odbor za zdravstvo i socijalnu politiku*);
6. Council for Civilian Oversight of Security and Intelligence Agencies (*Vijeće za građanski nadzor sigurnosno-obavještajnih agencija*).
7. The Croatian Government exercises executive authority through a range of professional services. In accordance with the Government Act,²⁷ the following government offices support the Government's expert work on fundamental rights:
8. Government Office for Human Rights and Rights of National Minorities (*Ured za ljudska prava i prava nacionalnih manjina Vlade Republike Hrvatske*);²⁸
9. Government Office for Gender Equality (*Ured za ravnopravnost spolova Vlade Republike Hrvatske*);
10. Government Office for Cooperation with Non-governmental Organisations (*Ured za udruge Vlade Republike Hrvatske*).²⁹

1.3.2. Commissions and Inter-Sectoral National Human Rights Institutions at National and Regional Levels

First, in 2002, the Constitutional Act on the Rights of National Minorities (hereinafter 'CA-RNM')³⁰ prescribed the right of members of national minorities to elect their representatives to the councils of national minorities (*vijeća nacionalnih manjina*) within local and regional self-government units. The aim was to improve, preserve, and protect the position of national minorities in society, as well as to ensure their participation in public life and in the decision-making processes regarding local affairs at the municipal, city, and county levels. Council representatives are elected by members of their respective minority groups through a direct secret ballot for a term of four years. Upon registration in the Register of Councils, the elected council acquires the status of a non-profit legal entity. Among other competences, the councils hold the right to nominate candidates for positions within state administration and self-government bodies. They are also entitled to be informed of all matters discussed by the working bodies of self-government representative bodies that concern the position of national minorities, enabling them to propose appropriate measures. However, the Advisory Committee of the Framework Convention on the Rights of National Minorities has noted numerous complaints regarding

27 | Art. 27 of the Act on the Government of the Republic of Croatia (*Zakon o Vladi Republike Hrvatske*), OG 150/11, with last amendments in 78/24.

28 | This Office is designated as the National Focal Point for the EU Charter of Fundamental Rights, and a staff member is appointed as National Liaison Officer to the EU Agency for Fundamental Rights (FRA).

29 | This Office serves as the first-level intermediate body within the EU Social Fund Operational Programme Efficient Human Resources.

30 | Constitutional Act on the Rights of National Minorities (*Ustavni zakon o pravima nacionalnih manjina*), OGs 155/02, 47/10, 80/10, 93/11.

the limited influence of local or regional minority councils on decision-making processes within self-government bodies.³¹

The CA-RNM further introduced the Council for National Minorities (*Savjet za nacionalne manjine*) at the national level. This body was established to facilitate the participation of national minorities in public life, particularly by considering and proposing regulations and approaches for resolving issues related to the implementation and protection of minority rights. Its members are exclusively persons belonging to national minorities and are appointed by the Government for a four-year term. Seven are selected from among candidates proposed by the councils of national minorities, and five are drawn from distinguished public figures proposed by minority associations, citizens, national minority Members of Parliament, religious communities, and legal entities. National minority Members of Parliament are members of the Council by virtue of their office. Over time, the Council has evolved into a powerful NHRI, supported by generous financial resources from the state.³²

Second, in 2011, the Government adopted the first Protocol on the Procedure in Cases of Hate Crimes, with the most recent version adopted in 2021.³³ In addition to the competent state authorities, such as the Ministry of the Interior, the central responsibility lies with the Government Office for Human Rights and Rights of National Minorities. This Office is tasked with collecting and publishing data on hate crimes, strengthening the institutional response to such crimes, and cooperating with civil society organisations (CSOs) and international bodies. The Office's Working Group for Monitoring Hate Crimes (*Radna skupina za praćenje zločina iz mržnje*) includes representatives of institutions responsible for addressing hate crimes, academia, and CSOs engaged in monitoring and combating hate crimes, elected by the Council for Civil Society Development. Representatives of the CPO are also members. The OSCE has recognised this system as an example of good practice among participating states, highlighting the Protocol and the Working Group's establishment as particularly significant achievements.³⁴

Third, in 2015, amendments to the Police Act introduced 'complaints working commissions', that is, civilian oversight commissions (*povjerenstva za rad po pritužbama – povjerenstva za građanski nadzor nad radom policije*). These bodies constitute a third-instance forum for complaints lodged by individuals who believe their rights and freedoms have been violated through action or inaction by police officers in the exercise of police powers. The commissions are established both at the Ministry of the Interior's headquarters and in each police department throughout the country. Each commission comprises three members and three substitute members, citizens recognised for their professional and personal standing in society. Members are appointed and dismissed by Parliament upon the recommendation of the Parliamentary Committee responsible

31 | CPO, 2023, p. 35.

32 | Council of Europe, National Minorities (FCNM), 6th State Report due on 1 March 2023 – Croatia. [Online]. Available at: <https://www.coe.int/en/web/minorities/croatia> (Accessed: 6 February 2025).

33 | Protocol for Procedure in Cases of Hate Crimes (*Protokol o postupanju u slučaju zločina iz mržnje*), OG 43/21.

34 | Office for Human Rights and the Rights of National Minorities, Combating Hate Crimes (*Suzbijanje zločina iz mržnje*). [Online]. Available at: <https://ljudskaprava.gov.hr/suzbijanje-zlocina-iz-mrznje/602> (Accessed: 6 February 2025).

for human rights, which in turn acts on nominations received from CSOs, professional associations, and non-governmental organisations (hereinafter 'the NGOs').³⁵

Fourth, pursuant to the 2017 Gender Equality Act, the heads of public bodies are required to appoint an official or senior civil servant to act as a gender equality coordinator (*koordinator za ravnopravnost spolova*). These coordinators are responsible for implementing the Gender Equality Act and the National Policy for the Promotion of Gender Equality, in cooperation with the Government Office for Gender Equality. Furthermore, local and regional self-government units are required to establish and fund county commissions for gender equality (*županijska povjerenstva za ravnopravnost spolova*), which promote gender equality at the local level. These commissions function as working and consultative bodies of county assemblies and include members of county assemblies, gender equality coordinators, NGO representatives, and independent experts. Municipalities and cities may also establish their own gender equality commissions.

Fifth, at the beginning of 2021, the Croatian Government established the Council for the Development of Civil Society (*Savjet za nadzor civilnog društva*),³⁶ an advisory body that promotes cooperation between the Government and CSOs in the implementation of strategic plans aimed at fostering a supportive environment for civil society, philanthropy, social capital, and inter-sectoral collaboration. The Council comprises 37 members appointed by the Government for a renewable three-year term, based on nominations from state administration bodies, government offices, and CSOs. According to the CPO, CSOs have rated their cooperation with the Council as stagnant.³⁷ Since 2016, Croatia has lacked a national strategy to support the effective functioning of civil society. The most recent such strategy covered the period from 2012 to 2016.

Sixth, in 2021, the Independent Mechanism for Monitoring the Actions of Police Officers of the Ministry of the Interior concerning illegal migration and international protection (*Nezavisni mehanizam nadzora postupanja policijskih službenika Ministarstva unutarnjih poslova u području nezakonitih migracija i međunarodne zaštite*) was established. This Mechanism was created through a Cooperation Agreement between the Ministry of the Interior and the Croatian Academy of Medical Sciences, Croatian Academy of Legal Sciences, Centre for Cultural Dialogue, Croatian Red Cross, and Professor Iris Goldner Lang. Its activities include observing police conduct at border crossings and police stations, conducting announced visits to the green border, and reviewing finalised legal files concerning complaints of unlawful treatment of irregular migrants and applicants for international protection. However, the CPO has stressed that the Mechanism must not replace or assume the responsibilities of the competent institutions charged with investigating allegations of misconduct within the police.³⁸

Seventh, later in 2021, the Government established the Human Rights Council (*Savjet za ljudska prava*),³⁹ an inter-sectoral and advisory body tasked with addressing fundamental rights issues in Croatia. Its responsibilities include the continuous monitoring

35 | Art. 1 of the Act on Amendments to the Police Act (*Zakon o izmjenama i dopunama Zakona o policiji*), OG 33/15.

36 | Decision on Establishing the Council for the Development of the Civil Society (*Odluka o osnivanju Savjeta za razvoj civilnoga društva*), OG 14/21.

37 | CPO, 2023, p. 33.

38 | *Ibid.*, p. 28.

39 | Decision on Establishing the Council for Human Rights (*Odluka o osnivanju Savjeta za ljudska prava*), OG 136/21.

and analysis of public policies impacting fundamental rights, and cooperation with ombudspersons, other NHRIs, and NGOs active in the human rights field. The Council is chaired by the Vice-President of the Government responsible for fundamental rights and includes 14 representatives of state administration bodies and government services, as well as three representatives of NGOs concerned with fundamental rights. The Government appoints both the Chair and members for a three-year term.

In accordance with the Government's Human Rights National Plan to 2027, County Coordinating Bodies for Human Rights (*županijske organizacije za ljudska prava*) have been established at the regional level.⁴⁰ These entities are closely connected to the Human Rights Council and operate either as committees of county assemblies or as inter-sectoral bodies created by those assemblies.

Eighth, under the 2022 Social Welfare Act, the Civilian Oversight Commission (*Povjerenstvo za odlučivanje o osnovanosti pritužbe*) was established.⁴¹ This NHRI acts as a third-instance decision-making body for petitions submitted by social welfare system users who are dissatisfied with the Ministry's response to complaints regarding conduct or failures to act by individuals within the social welfare system. The Commission comprises five citizen representatives who were either proposed by CSOs or applied individually following a public call. The Parliamentary Committee responsible for social policy proposes candidates for appointment and dismissal by Parliament, with members serving a four-year renewable term. Decisions of the Commission do not constitute administrative acts; however, if a complaint is found to be well-founded, the Ministry must revisit the complaint and issue a new decision on its merits.

Ninth, beyond these bodies, the Government has established numerous other inter-sectoral bodies focused on specific population groups, including:

1. Interdepartmental Working Group for the Implementation of Activities for the Reception and Care of Refugees from Ukraine (*Međuresorna radna skupina za provedbu aktivnosti prihvata i zbrinjavanja izbjeglog stanovništva iz Ukrajine*);
2. Permanent Council for the Integration of Foreigners into Croatian Society (*Stalno povjerenstvo za provedbu integracije stranaca u hrvatsko društvo*);
3. Advisory Group of Third-Country Nationals and Persons of Migrant Origin (*Savjetodavna skupina državljana trećih zemalja i osoba migrantskog porijekla*);
4. National Team for the Prevention and Combating of Violence against Women and Domestic Violence (*Nacionalni tim za sprečavanje i borbu protiv nasilja nad ženama i nasilja u obitelji*);
5. National Committee for Combating Human Trafficking (*Nacionalni odbor za suzbijanje trgovanja ljudima*), among others.

Consequently, the protection of fundamental rights, particularly for vulnerable groups, is addressed by a large number of NHRIs operating at both national and regional

40 | Government's National Plan for the Protection and Promotion of Human Rights and Combatting Discrimination for the Period to 2027 (*Nacionalni plan zaštite i promicanja ljudskih prava i suzbijanja diskriminacije za razdoblje do 2027. godine*), p. 86. [Online]. Available in English at: <https://ljudskaprava.gov.hr/nacionalni-plan-zastite-i-promicanja-ljudskih-prava-i-suzbijanja-diskriminacije-za-razdoblje-do-2027-godine/989> (Accessed: 6 February 2025).

41 | Arts. 150–160 of the Social Welfare Act (*Zakon o socijalnoj skrbi*), OG 18/22, with last amendments in 156/23.

levels in Croatia. However, the mere proliferation of such institutions does not automatically translate into a high quality of human rights protection and promotion. Moreover, many of the aforementioned NHRIs do not fully satisfy the requirements of the Paris Principles. To paraphrase Voßkuhle, simply expanding the activities of different NHRIs in the pursuit of maximal rights protection is not sufficient; what truly matters is the efficient coordination and integration of their respective contributions.⁴²

This lesson appears to remain unlearned in Croatia. The issue of whether rationalisation of the Croatian NHRI system is necessary was addressed in the 2010 project 'Rationalisation of the Croatian Human Rights Protection System', commissioned by the United Nations Development Programme.⁴³ This project examined the organisational, financial, and political effectiveness of Croatia's NHRI landscape, focusing on four Ombudsman institutions, three government offices with responsibilities in the field of human rights, and the Human Rights Centre. The study's key findings were two-fold. First, the Croatian human rights system suffers from serious underfunding. Resources could be used more effectively, provided that any savings from rationalisation remain within the system and support the expansion of substantive work. Second, practical cooperation among the institutions on substantive matters is more valuable than formal mergers or institutional consolidation.⁴⁴

2. Concluding Remarks

This paper provides essential information on the NHRIs in Croatia, which mainly derive from constitutional provisions governing fundamental rights. These rights, particularly those of vulnerable groups, fall within the remit of numerous NHRIs operating at both national and regional levels. However, efficacy is not merely a function of quantity; a proliferation of NHRIs does not inherently guarantee high standards in the protection and promotion of fundamental rights. Furthermore, a majority of Croatian NHRIs fail to satisfy, either in whole or in part, the criteria established by the Paris Principles.

In evaluating the state of fundamental rights in Croatia, it is essential to move beyond superficial indicators – such as the mere number of NHRIs – and a formalistic reliance on statutory language. Instead, focus must be directed towards substantive realities.

In this regard, it may be concluded that Croatia continues to encounter human rights challenges rooted in unresolved issues from its socialist legacy, the Homeland War, and post-war conditions, all of which are compounded by the political and legal uncertainties inherent in transitional societies. Concurrently, the state is confronted with contemporary demands for the recognition of emerging individual and collective rights.

The Croatian constitutional state seeks to uphold and safeguard these emerging rights while balancing them against the traditional tenets of Croatian society, which is predominantly Catholic, close-knit, and family-oriented, with deeply rooted historical traditions and worldviews that are notably resistant to rapid transformation. These multifaceted challenges are unfolding within an increasingly fraught political, social,

42 | Voßkuhle, 2013, p. 3.

43 | Carver, Dvornik and Redžepagić, 2010.

44 | See: 'Executive Summary' in Carver, Dvornik and Redžepagić, 2010, p. 4. See also Carver, 2011.

and economic landscape, marked by heightened tensions, protracted conflicts, and the corrosive influence of rising populism.

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EQUALITY OF THE MEMBER STATES BEFORE THE EU INSTITUTIONS

Michal Říha¹

ABSTRACT

The equality of states is an evolving concept that has changed over time. But whereas in the past states were imaginary fortresses where equality protected them from outside interference and threats, today a balance must be sought in the face of increasing interdependence and complexity. The European Union is a particular example of a complex form of integration in which equal treatment of Member States is important, even though these same states share some of their sovereignty with this supranational organisation. The relationship between the Member States and the Union, and between the states themselves, is a very complicated discipline, as it is necessary to ensure a balance between the freedom of the states and the preservation of a coherent and autonomous Union legal order. Equal treatment by the Union's institutions is crucial for maintaining trust between Member States and for the functioning of the European Union as a whole. The EU institutions have a duty to act impartially and fairly, ensuring that no state is favoured or disadvantaged because of its size, political influence or economic power. This includes equal access to decision-making, funding and the implementation of European policies. If the Union's institutions were to favour some states or neglect others, this could undermine the principles of solidarity, equality and justice that underpin the EU. Equal treatment ensures that all Member States have the same opportunities to promote their interests and participate in the shaping of European policies. This strengthens not only the stability of the Union but also its legitimacy in the eyes of its citizens.

KEYWORDS

equality
European integration
rule of law
infringement procedure
EU membership

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1. Introduction

The principle of equal treatment is one of the basic conditions for the co-existence of any community. Without it, real or perceived injustices arise, which can have centrifugal tendencies leading to its disintegration. Traditionally, inequality can be seen as the different treatment of two subjects in the same or similar situation or, conversely, equal treatment of two subjects not in the same situation. Beyond the mere act of doing so, there must be a distinction prohibited by law, which, in the case of the European Union, we can find in Article 4(2) of the Treaty on European Union (hereinafter 'TEU'): 'The Union shall respect the equality of Member States before the Treaties as well as their national identities...' However, Luboš Tichý points out that the EU prohibits the selective treatment of a Member State, but this does not prevent differential treatment.²

Within the framework of EU law, a distinction can be drawn between formal and substantive equal treatment. The latter is particularly pertinent in instances of differential treatment, where the Union's policies aim to address genuine material inequalities that are historically and/or factually associated with the functioning of the Single Market. The instruments of cohesion policy and the instruments of the common agricultural policy, which together account for the vast majority of the Union's budget expenditure, are particularly pertinent in this regard. Consequently, it can be deduced that States are not formally treated equally, since some States and their regions are in fact more heavily burdened than others and require a greater amount of central support.

Despite the intriguing nature of the subject matter, this text will be constrained in its scope to the formal concept of equality among Member States in the EU within its constitutional context. The primary objective is to present the evolution of this institute and to analyse its content, with particular emphasis on the case law of the Court of Justice of the European Union (hereinafter 'Court', 'CJEU' or 'Court of Justice')³.

2. Concept of Equality of States

The principle of equality of states is considered by many to be one of the cornerstones of international relations and international law. It is essentially based on the concept of equality in sovereignty, i.e. that states which have no superior subject are sovereign. Sovereign recognises no one superior to himself (*superiorem non recognosens*), therefore sovereigns are equal to each other.⁴ At least, this is the doctrine based on a theory of natural law, which also derives from the concept of human equality.⁵

The concept of equality in sovereignty, at least in principle, experienced a significant theoretical development in the 19th century following the Napoleonic Wars. This period,

2 | Tichý, 2021, p. 13.

3 | The Court of Justice of the European Union consists of two courts – The Court of Justice and the European General Court; unless stated otherwise, the paper will work with the case law of the Court of Justice.

4 | Anand, 2008.

5 | Rossi and Casolari, 2017, p. 4.

characterised by a series of congresses on the future of Europe, is often referred to as the Concert of Powers, reflecting the notion that only the major powers were effectively considered equal. The enforcement of equality between major powers could, at times, be perceived as somewhat absurd. For instance, Henry Kissinger cited the example of the 'two hats' situation, where the British Ambassador to Russia doffed his hat as a sign of respect towards the Russian monarch, yet simultaneously retained a second hat symbolising the equality of Britain.⁶ It is also notable that, with the exception of the United States of America, equality was reserved only to the European countries – the invitation to the Ottoman Empire was only extended after the Crimean War.⁷ The subordinate status to the great powers was often emphasised in a formal context, as evidenced by the seating arrangements during summits and congresses. This symbolism could be abused for political gestures, as illustrated by the incident during the Frankfurt Congress when the Prussian representative, Otto von Bismarck, took the liberty of lighting a cigarette and removing his jacket, an action that was only permitted to the Austrian representative, count von Thun-Hohenstein. Bismarck thus clearly declared to the other German states gathered that he considered Prussia to be the equal of the Austrian Empire.⁸

The rise of Germany was concomitant with the decline of the concert of great powers, and the assertion of a formally more equal status for smaller nations. This process had already been initiated at the pre-war Hague Peace Conferences of 1889 and 1907, and was fully realised in the negotiations at Versailles, where the right of smaller nations to self-determination and the concept of one state, one vote were enshrined.⁹ The exception was intended for defeated nations. The newly established League of Nations respected these principles and was built on consensual decision-making and the impossibility of forcing a state to take an action to which it did not voluntarily subscribe.¹⁰

A significant transformation of the international legal framework was the adoption of the UN Charter, which in its Article 2(1) declared: 'The Organization is based on the principle of the sovereign equality of all its Members.' But the Charter itself contained systemic inequalities. In the first place, the UN established a Security Council whose decisions were to be binding on all states, including non-member states. The Security Council is composed of ten elected states representing geographical regions, as well as five permanent members, who were the victorious powers of 1945. In addition, the permanent members of the Security Council, as opposed to the elected members, have veto power individually, which extends to the reform of the body. It is no coincidence that the permanent members of the Security Council have subsequently also become the only states legally possessing nuclear weapons under the nuclear Non-Proliferation Treaty, further increasing their de facto power. Equality was not granted either under Article 78 to former colonies that held the status of trusteeships.¹¹

In 1970, the General Assembly passed the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations that, while not binding from a legal standpoint, was

6 | Kissinger, 2011.

7 | Yosmaoglu, 2017.

8 | Steinberg, 2013.

9 | Rossi and Casolari, 2017, p. 6.

10 | Weinschel, 1951.

11 | Ansong, 2016, p. 16.

widely regarded as one codifying the principle of state equality as a fundamental pillar of international law, even on the basis of recognised international custom. This declaration asserted that states must accept their equality with each other, regardless of size, wealth or population, and must act in good faith. The principle of equality in sovereignty entails the prohibition of interference in internal affairs; failure to do so may result in the liability of the offending state for the consequences of its actions.¹²

However, the concept of sovereignty also confers upon states the liberty to engage in treaty frameworks that may impose limitations or the delegation of sovereignty to supranational entities. Consequently, as states become increasingly interconnected through globalised trade, the rise of supranational justice and regional alliances may lead to a state of interdependence.¹³ Such organisations include the International Monetary Fund, in which the distribution of voting rights is determined by the size of the contribution, the International Criminal Court under Rome Statute, or the European Union.

3. Article 4(2) TEU and Union Concept of Equal Member States

Article 4 TEU is the fundamental constitutional provision of the Treaty, which defines the relationship between the Member States and the Union, and between the Member States and each other. Kopa Bončková and Týč refer to this provision as the codification of the current state of EU federalism.¹⁴ In addition to the principle of the equality of Member States, the provision also operates with the obligation for the Union to respect the national identity of the Member States, including the political and constitutional structure and organisation of self-government. The paragraph further defines agendas for which the Member State remains primarily responsible, such as ensuring territorial integrity, public security and the protection of public order. The provision thus defines the legal limits of the future direction of European integration in the context of the existing treaty basis. The Maastricht Treaty of 1993 already incorporated the concept of respect to constitutional identity of the Member States, interweaving it with the principles of conferred powers and the division of competences between the Union and the Member States. However, the precise nature of these concepts was not detailed further. The present wording of Article 4(2) TEU is derived from that of the Treaty establishing a Constitution for Europe (hereinafter 'Constitutional Treaty'), which has been expanded by the Lisbon Treaty to encompass the equality of Member States and the listing of its essential tasks for the preservation of Member States' integrity. From the perspective of the Member States, it is a constitutionally-defensive provision, as it potentially gives the States the tools to protect themselves against too much federalisation of the European project and balances the concept of an 'ever closer union' referred to in Article 1 TEU.

In order to comprehend Article 4(2) TEU, it is necessary to take into account other fundamental principles of the relationship between the Union and its Member States. Article 4(1) TEU can also be regarded as a protective provision, as it establishes a residual

12 | See International Court of Justice, 1984, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

13 | Anand, 2008.

14 | Tomášek et al., 2022, p. 1209.

category of powers not explicitly conferred upon the Union that are to be exercised by the Member States. This provision builds on Articles 3, 4 and 5 of the Treaty on the Functioning of the European Union (hereinafter 'TFEU'), which further divide the Union's powers into different categories. A similar provision can be found in other constitutional documents governing the relationship of the states to the federation.¹⁵ In comparison to classical federal systems, this element is further strengthened by the fact that it is the Member States that keep *Kompetenz-Komptenz*, the ability to create and confer powers on the Union level.

Conversely, Article 4(3) TEU establishes the duty of loyalty and good faith of Member States towards the Union, a principle that has been part of primary law since the Treaty of Paris establishing the European Coal and Steel Community. The principle of loyalty entails the obligation to undertake all necessary measures to fulfil the commitments arising from European integration, whilst simultaneously refraining from actions that could potentially compromise the attainment of objectives.¹⁶ Beyond this, the principle has not only vertical effects, but also horizontal effects between Member States, which must respect and cooperate in solidarity. Both the principles of equality and respect for constitutional identities must be read in the context of these other provisions.

By Article 4(2), the TEU accepts the sovereign equality of the Member States as they are Masters of the Treaties (*Herren der Verträge*). That is further reflected in their formal equality contained in the consensual amendment of the primary law. The ordinary procedure for amending primary law requires the ratification of all changes by all States in accordance with their constitutional traditions (48(4) TEU). Similarly, the simplified procedure requires consensual adoption by the European Council (48(6-7) TEU), followed by national ratification. Each Member State therefore has a potential veto over any changes. Such a construction is in many ways very strict, as even many federal constitutions place a lower quorum on the approval of organic law amendments.¹⁷ Originally, the equality of Member States has also been reflected in the Council's decision-making processes - initially on the legal basis for the first stages of the establishment of the Common Market. Later Member States stuck to this principle contradicting the legal rules of the Treaties via a political agreement on the permanent retention of the veto, the so-called Luxembourg Compromise. The Compromise worked with the concept of 'very important interests', which any Member State could declare at any point of the discussion and demand that the matter be decided by consensus. However, this practice led to the freezing of many negotiations and the abuse of the veto right in order to cross-block agendas and blackmail each other. The Compromise was used in the Council until the 80s, however, even today the Council is seeking consensus among its members,¹⁸ even though for most areas the Treaties prescribe only a qualified majority.

When reading the Article 4(2), it is advisable to pay attention to the wording that speaks of the equality of Member States 'before the Treaties'. This leads to a narrower

15 | El-Sabawi, 2020.

16 | Tomášek et al., 2022.

17 | For example, Article V of the U.S. Constitution requires a 2/3 majority in both houses of Congress followed by ratification by 3/4 of the States; the German Constitution in Article 79 requires a 2/3 majority in both houses of Parliament; the UN Charter in Article 108 requires approval by a 2/3 majority of the General Assembly followed by ratification by 2/3 of the States, including all permanent members of the UN Security Council.

18 | Novak, 2013.

interpretation of the notion of equality, which entails the formal equality in the application of the Treaties. The Treaties themselves may thus enshrine in a number of places the legally sanctioned unequal status of Member States - an example is the over-representation of representatives of small states in the European Parliament, or the consideration of the populousness of large states when voting in the Council, violating the principle of 'one state, one vote'. It should be noted that the inequality in question is approved by the Member States.

| 3.1. *Equality of the Member States*

It has previously been established by the Court of Justice that all Member States must be treated equally, irrespective of the date of their accession. With regard to the allocation of fishing quotas, the Court has ruled that the accession of Portugal and Spain to the Community entitles those states to a share of the quotas, despite the allocation having taken place prior to their accession.¹⁹ In a similar fashion, the Court of Justice permitted Poland's action for an annulment of the Regulation on transitional measures in the sugar sector, despite the procedural time-limit for initiating legal action having elapsed, on the grounds that the time-limit had commenced prior to Poland's accession to the Union. As a Community founded on the rule of law, its acts must be subject to judicial review, and similar procedural restrictions would violate this principle.²⁰ On the other hand, the Union could differentiate its approach to a newly incoming Member State and exclude it from the Common Agricultural Policy subsidy system because its agriculture was in a transitional phase. In such instances, the subsidies would no longer serve the same purpose as in other countries.²¹ Furthermore, the transitional period and its conditions were established directly by the Act of Accession, which is part of primary law and therefore constitutes a special arrangement. In summary, exceptions are generally permissible, but derogations must be proportionate to its objective and must not create an inadequate obstacle to the functioning of the Single Market.²²

Furthermore, it should be noted at the outset that differentiation may also occur naturally. For example, certain Member States may not be subject to transposition obligations due to geographical factors, such as their landlock location, which precludes the existence of ports and thus the related regulation, or the absence of a regulated area within their jurisdiction.²³ However, the Court of Justice interprets such exceptions restrictively and a hypothetical situation may occur requiring implementation.²⁴ Conversely, the EU legislator is only obligated to consider the EU-wide context of the legislation adopted, and

19 | Judgement of the Court of 13 October 1992, Portuguese Republic and Kingdom of Spain v Council of the European Communities. Joined cases C-63/90 and C-67/90, ECLI:EU:C:1992:381, para. 37.

20 | Judgement of the Court (Grand Chamber) of 26 June 2012, Republic of Poland v European Commission, Case C-336/09 P, ECLI:EU:C:2012:386.

21 | Judgement of the Court (Grand Chamber) of 23 October 2007, Republic of Poland v Council of the European Union, C-273/04, ECLI:EU:C:2007:622.

22 | Judgement of the Court of 17 July 1963, Italian Republic v Commission of the European Economic Community, 13-63, ECLI:EU:C:1963:20.

23 | Judgement of the Court (Sixth Chamber) of 16 November 2000, Commission of the European Communities v Hellenic Republic, C-214/98, ECLI:EU:C:2000:624.

24 | Judgement of the Court (Third Chamber) of 14 January 2010, European Commission v Czech Republic, C-343/08, ECLI:EU:C:2010:14.

is not required to adapt the act to the specific circumstances of each individual Member State: ‘... Therefore, the attempt to strike such a balance, taking into account not the particular situation of a single Member State, but that of all EU Member States, cannot, in itself, be regarded as contrary to the principle of proportionality...’²⁵ Paradoxically, the reverse course of action would result in a breach of the principle of equality in legislation. This is because the content would differ in each jurisdiction. It is important to note that this does not imply that the European legislator should disregard the principle of subsidiarity. Indeed, it is vital that Member States are granted greater scope to take account of local conditions. Unfortunately, in practice we see the opposite trend and the increasing replacement of directives by regulations.²⁶

| 3.2. *Differentiated Integration*

The formulation ‘equality of Member States before the Treaties’ also requires a certain degree of attention. The phrase ‘before the Treaties’ suggests that this is a formal equality, which is linked to the prohibition of arbitrary treatment by the Union institutions.²⁷ However, it is also possible to accept the view that the general rule of Article 4(2) TEU does not apply to situations covered by the Treaties in a special way. This means that the Member States, in their sovereignty, may have agreed to the creation of unequal conditions.

As referred to earlier, the Council’s voting system reflects population size, while the European Parliament’s system is weighted towards smaller nations. The presidential trios are formed based on the principle of representativeness, considering factors like how long a state has been a member, its geographical location, size, and involvement in the eurozone (for the Eurogroup presidency). However, the length and regularity of the presidency is the same for all states. The number of judges in both CJEU courts is equally based on the number of states, but the large states keep permanent Advocates General representation, while those of the smaller states rotate. The European Commission consists of nominations from all states, even though the primary law said there would be fewer Commissioners. As we can see, there are various quotas brought about by political compromises between equality/representativeness and the efficiency of the composition of the bodies in question.

Differentiations are often based on the sovereign capacity of states to enter into unequal treaties when primary law is changed - in which case the majority takes on more obligations than states that are exempt from the regime. Examples are the Danish and Irish opt-outs from the Area of Freedom, Security and Justice,²⁸ or Poland’s negotiated dubious²⁹ exemption from the Charter of Fundamental Rights in the area of social

25 | Judgement of the Court (Sixth Chamber) of 13 March 2019, *Republic of Poland v European Parliament and Council of the European Union*, C-128/17, ECLI:EU:C:2019:194.

26 | Svobodova, 2024.

27 | Haratsch, 2020.

28 | Protocol on the position of the United Kingdom and Ireland.

29 | Judgement of the Court (Grand Chamber) of 21 December 2011, *N. S. (C-411/10) v Secretary of State for the Home Department and M. E. and Others (C-493/10) v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*, joined cases C-411/10 and C-493/10, ECLI:EU:C:2011:865.

rights.³⁰ Another example is a turnover limit threshold for VAT registration for Czech businessmen and other European entrepreneurs.³¹ Some differentiations, on the other hand, are de facto the continuation of the accession process and are intended to be phased out when conditions are met, such as when countries fulfil the Maastricht criteria and join the eurozone.

Conversely, primary law contains a considerable number of other differentiating provisions that create space within primary law for deeper, albeit selective, integration. These provisions respond to historical experience and the different intents of Member States to integrate. For example, the Schengen acquis stood outside the Community legal structure until the Treaty of Amsterdam. This prompts the concept of instruments of differentiated integration, which, by its very logic, necessitates a multi-speed Europe that directly requires differential treatment on the basis of the consent of the Member States concerned. This form of enhanced cooperation must be kept open for other Member States to join at a later stage,³² so that it can serve as a sandbox laboratory for further integration.

| **3.3. Precursor for Primacy**

The principle of citizens being equal before the law, an outcome of the 18th century revolutions, prohibits the state from discriminating based on wealth or social status. It also prohibits exemptions and privileges for the nobility and the church, which frequently included exemption from taxation or military service. While equality protects individuals from taking on more than others, it also imposes obligations, such as the duty to endure what others must endure. Consequently, the horizontal aspect of the principle of equality, in conjunction with the principle of loyalty, prohibits Member States from deviating from their obligations under EU law. This principle predates the explicit codification of the principle of equal treatment in primary law, as evidenced by the *Costa v Enel* decision:

The law stemming from the Treaty, an independent source of law, could not because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community.³³

The unilateral derogation of EU law undermines its autonomous status and results in an unequal (often more favourable) position of a given Member State in the face of other EU members

...for a State unilaterally to break, according to its own conception of national interest, the equilibrium between advantages and obligations flowing from its adherence to the

30 | Protocol 7 on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom.

31 | Council Implementing Decision (EU) 2022/865 of 24 May 2022 authorising the Czech Republic to introduce a special measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax.

32 | Article 330 TFEU.

33 | Judgement of the Court of 15 July 1964, *Flaminio Costa v E.N.E.L.*, 6-64, ECLI:EU:C:1964:66.

Community brings into question the equality of Member States before Community law and creates discriminations...³⁴

In addition to the principle of sincere cooperation and loyalty, the situation thus created must also be considered in the context of the principle of solidarity between Member States. This is so that the advantages gained by the unilateral action of a Member State are to the detriment of other Member States and their populations:

In permitting Member States to profit from the advantages of the Community, the Treaty imposes on them also the obligation to respect its rules. For a State unilaterally to break, according to its own conception of national interest, the equilibrium between advantages and obligations flowing from its adherence to the Community brings into question the equality of Member States before Community law and creates discriminations at the expense of their nationals, and above all of the nationals of the state itself which places itself outside the Community rules. This failure in the duty of solidarity accepted by Member States by the fact of their adherence to the Community strikes at the fundamental basis of the Community legal order.³⁵

This is true even if such a derogation should be justified by a specific political or legal argument if it lies outside the scope of the rules of EU law allowing derogation. Conversely, as Týč and Bočková contend, the principle of solidarity itself does not engender any rights or obligations for Member States.³⁶

The Court of Justice renewed the debate on the primacy of EU law with its press release responding to the decision of the German Federal Constitutional Court (hereinafter 'BVerfG') in the European Central Bank's Public Sector Purchase Programme case.³⁷ This is a very rare instance of the European Court of Justice to publicly react to and comment on a decision of the highest court of a Member State, as the decision represents the culmination of a clash between the two highest courts over the nature of European integration and the separation of powers between the Union (and its judicial authorities) and the Member States (and their judicial authorities). The press release was grounded in the well-established case law of the Court of Justice, which established a direct correlation between the binding nature of its interpretation of EU law and the obligation of national courts to ensure the full implementation of EU law as the sole means of safeguarding the equality of Member States.³⁸

The basis for this conflict was the European Central Bank's decision to launch a Public Sector Purchase Programme to buy government bonds on the secondary market, arguing that the prohibition on financing Member States' budgets in Article 123 TFEU only applied to primary issuance. Put simply, the European Central Bank, which conducts monetary

34 | Judgement of the Court of 7 February 1979, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, 128/78, ECLI:EU:C:1979:32.

35 | Judgement of the Court of 7 February 1973, *Commission of the European Communities v Italian Republic*, 39-72, ECLI:EU:C:1973:13.

36 | Tomášek et al., 2022, p. 1213.

37 | Judgement of the Second Senate of 5 May 2020 of the Federal Constitutional Court of Germany, 2 BvR 859/15, 2 BvR 1651/15, 2 BvR 2006/15, 2 BvR 980/16.

38 | Court of Justice of the European Union, Press Release No. 58/20, 8 May 2020, following the judgement of the German Constitutional Court of 5 May 2020.

policy independently for countries whose currency is the euro, has used its tools to indirectly support the fiscal policy of Member States with economic problems in order to maintain the functionality of the monetary union. This mechanism was endorsed by the CJEU in the *Gauweiler* decision,³⁹ although the BVerfG had previously announced that it considered this action to be an overreach of the European Central Bank's powers, since budgetary competence in Germany belongs to the Bundestag, not to the central bank. The CJEU's positive review was then included by the federal court as an overreach of the Union's transfer of powers. The reaction was a statement by the CJEU, which drew attention to the fact that it is not possible for national judicial authorities to assess the validity of EU law unilaterally and to disregard the binding interpretation of the CJEU.

The Court's position presented in the press release subsequently found its way into case law:

It must be added that Article 4(2) TEU provides that the Union is to respect the equality of Member States before the Treaties. However, the Union can respect such equality only if the Member States are unable, under the principle of the primacy of EU law, to rely on, as against the EU legal order, a unilateral measure, whatever its nature.⁴⁰

The Court of Justice has thus made equal treatment of Member States conditional on their sincere cooperation, thus limiting the provisions of Article 4(2) TEU by an unwritten clause based on the system of the Treaties. Subsequent decisions of the Court, however, go even further:

Compliance with that obligation [supremacy] is also necessary in order to ensure respect for the equality of Member States before the Treaties, which precludes the possibility of relying on, as against the EU legal order, a unilateral measure, whatever its nature, and constitutes an expression of the principle of sincere cooperation set out in Article 4(3) TEU, which requires any provision of national law which may be to the contrary to be disapplied, whether the latter is prior to or subsequent to the EU legal rule having direct effect.⁴¹

The Court of Justice has continued the Commission's action against the organisation of the Polish judiciary and in particular its disciplinary system: 'Compliance with that obligation [supremacy] is necessary in particular in order to ensure respect for the equality of Member States before the Treaties and constitutes an expression of the principle of sincere cooperation set out in Article 4(3) TEU.'⁴² Christoph Krenn thus points out that while in the *Euro Box Promotion* decision the CJEU perceived the principle of supremacy

39 | Judgement of the Court (Grand Chamber) of 16 June 2015, *Peter Gauweiler and Others v Deutscher Bundestag*, C-62/14, ECLI:EU:C:2015:400.

40 | Judgement of the Court (Grand Chamber) of 21 December 2021, *Criminal proceedings against PM and Others*, joined Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, ECLI:EU:C:2021:1034, para. 249.

41 | Judgement of the Court (Grand Chamber) of 22 February 2022, *RS*, C-430/21, ECLI:EU:C:2022:99, para. 55.

42 | Judgement of the Court (Grand Chamber) of 5 July 2023, *European Commission v Republic of Poland*, C-204/21, ECLI:EU:C:2023:442, para. 77.

and the principle of equality of Member States as separate principles, subsequent case law makes supremacy an inseparable prerequisite for the equality of Member States.⁴³

In this context, Federico Fabbrini points out a certain limitation of the European constitutional discourse, which is devoted to bilateral relations between the European Union and the Member States, with a particular interest in conflicts between the highest courts of these institutions. However, the principle of equality of Member States has a neglected multilateral aspect, as any outlying decision of any national court affects the position of other members of the community of states.⁴⁴ Article 4(2) TEU under this approach is therefore not a defence of a Member State in bilateral negotiations with the Union, as many have read the provision.⁴⁵ On the contrary, it is limiting manoeuvring space for individual Member States in order to prevent actions that could hinder the rights of other Member States and their nationals.⁴⁶ Moreover, it would not be a novelty but an interpretation following the logic of the earlier CJEU case law.⁴⁷

This idea is also related to van Middelaar's observation of the attitude of the remaining Member States towards France during the empty chair crisis leading to the aforementioned Luxembourg Compromise. The other states declined to engage in conventional bilateral negotiations with de Gaulle, opting instead to align their positions and insisted on resolving the crisis within the European treaty framework. The Member States thus together form a single unit, which at the same time stands outside the EU institutions (internal sphere) and yet do not deal in a multilateral international relations regime (external sphere). The states are thus simultaneously interdependent and codependent.⁴⁸ Lenaerts refers to this phenomenon as a multilateral aspect of the autonomy of the EU legal system.⁴⁹

Under public international law, if one of the contracting parties breaches its obligations, the other parties concerned can take countermeasures without breaching their contractual obligations (*exceptio non adimpleti contractus*). For more than 60 years, European law has rejected such a solution, arguing that Member States gave up this possibility by establishing the Community, which offers instruments of redress of a supranational nature.⁵⁰ From historical documents we can doubt whether the Member States actually knew that they were establishing a supranational organisation, but the current logic of the construction of the EU legal system is to insist on its autonomy. The power to interpret and rule on the validity of EU acts has been conferred to the Court of Justice by the 27 Member States, either by the original founding treaties or the acts of accession, so that if an institution of one Member State arrogates this power to itself without the consent of the other Member States, it is acting *ultra vires* on its own. Richard Král reflects on this when he joins the discussion on the resolution of judicial conflicts and clearly says

43 | Krenn, 2024.

44 | Fabbrini, 2015, p. 1015.

45 | Schill and von Bogdandy, 2011.

46 | Filipek and Taborowski, 2024.

47 | Judgement of the Court of 7 February 1973, *Commission of the European Communities v Italian Republic*, 39-72, ECLI:EU:C:1973:13, para. 24.

48 | van Middelaar, 2014.

49 | Lenaerts, 2020.

50 | Judgement of the Court of 13 November 1964, *Commission of the European Economic Community v Grand Duchy of Luxembourg and Kingdom of Belgium*, joined cases 90/63 and 91/63, ECLI:EU:C:1964:80.

that the resolution of EU disputes must be left to the EU level - which, of course, does not exclude some form of involvement of national judges.⁵¹ There is also a practical aspect to be noted: while other states can intervene in proceedings before the Court of Justice, they are not given the same opportunity to do so in national proceedings.

Here David Preßlein, points out a paradox, since this whole approach is based on Kelsen's monistic conception of international law, based on reciprocity, which European law has historically rejected.⁵²

| 3.4. *Respect of National Identities*

The equality of Member States serves as a counterbalance to the respect for national constitutional identities. Some authors have suggested that this might be a possible exception to the absolute primacy of EU law,⁵³ as referenced in Article 4(2) TEU. However, I will not be textualist enough to infer a precedence relation between these maxims from the structure of this sentence.⁵⁴

Respect for identity specificities was given by the Court of Justice even before it was explicitly enshrined in primary law, for example in the *Groener* case, where a Dutch teacher was required to pass an Irish language examination even though she was to practise her profession in an English-speaking environment. However, the CJEU accepted this restrictive measure with the aim of promoting the first official language under the condition that implementation will be proportionate.⁵⁵ Similarly, the argument of constitutional identity was successfully plead by Austria with regard to the republican system and the equality of its citizens, when it did not allow the use of a title of nobility acquired in Germany to its citizen.⁵⁶ Furthermore, the Court of Justice has allowed, in view of the specificities of German history, the prohibition of games simulating killing, provided that the general rules on restrictions on the free movement of services are maintained. In this case, the Court further emphasised that such exceptions are not permanent and must be assessed on a case-by-case basis:

...specific circumstances which may justify recourse to the concept of public policy may vary from one country to another and from one era to another. The competent national authorities must therefore be allowed a margin of discretion within the limits imposed by the Treaty.⁵⁷

In the *Bogendorff von Wolffersdorff* case, we recognise this approach, since, in contrast to the Austrian case, the Court of Justice has given the German republican tradition,

51 | Král, 2023.

52 | Preßlein, 2024, p. 10.

53 | Schill and von Bogdandy, 2011.

54 | Fabbrini, 2015.

55 | Judgement of the Court of 28 November 1989, Anita Groener v the Minister for Education and the City of Dublin Vocational Educational Committee, C-379/87, ECLI:EU:C:1989:599.

56 | Judgement of the Court (Second Chamber) of 22 December 2010, Ilonka Sayn-Wittgenstein v Landeshauptmann von Wien, C-208/09, ECLI:EU:C:2010:806.

57 | Judgement of the Court (First Chamber) of 14 October 2004, Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn, C-36/02, ECLI:EU:C:2004:614.

which allows for titles of nobility, less protection and less room for manoeuvre to deny recognition of titles acquired abroad.⁵⁸

It follows from the foregoing that the identical reservation is accepted as a rule of reason exception, but that it is neither absolute nor automatic as a derogatory ground of the general regime. It is thus not a provision that would allow Member States to cherry-pick individual provisions of European law that are or are not in conformity with them.⁵⁹ This was particularly highlighted in Hungary's action for the annulment of the Conditionality Regulation,⁶⁰ where the Member State argued that the concept of the rule of law under Article 2 TEU is not centrally defined, thus it should be defined by each Member State in the context of its constitutional traditions (*ergo* differently).⁶¹ As a result, this argument would mean that the content of the fundamental values on which the Union is based would not be the same for each Member State. However, this approach was rejected by the Court:

The Member States are therefore obliged, by reason, *inter alia*, of the principle of sincere cooperation, set out in the first subparagraph of Article 4(3) TEU, to ensure, in their respective territories, the application of and respect for EU law. In that regard, as provided for by the second subparagraph of Article 19(1) TEU, Member States are to provide remedies sufficient to ensure effective judicial protection for individual parties in the fields covered by EU law.⁶²

On the contrary, the European legal system, according to the Court, requires similarity in all Member States to the extent that it ensures the homogeneity of the European legal system, and only then can derogations be permitted within the procedural autonomy of the Member States, reflecting identity and constitutional specificities.⁶³

The CJEU confirms this approach in the case of the organisation of the Romanian courts: 'However, in choosing their respective constitutional model, the Member States are required to comply, *inter alia*, with the requirement that the courts be independent stemming from the abovementioned provisions of EU law.'⁶⁴ Respect for the constitutional identity of Member States is limited upon the acceptance of their decisions regarding the organisation of state and political institutions, provided that these decisions are consistent with the values articulated in Article 2 TEU, the interpretation of which is exclusively reserved for the CJEU. The homogeneous content of such concepts is determined by the

58 | Judgement of the Court (Second Chamber) of 2 June 2016, *Nabiel Peter Bogendorff von Wolffersdorff v Standesamt der Stadt Karlsruhe and Zentraler Juristischer Dienst der Stadt Karlsruhe* Request for a preliminary ruling from the *Amtsgericht Karlsruhe*, C-438/14, ECLI:EU:C:2016:401.

59 | Kelemen and Pech, 2018.

60 | Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

61 | Judgement of the Court (Full Court) of 16 February 2022, *Hungary v the European Parliament and Council of the European Union*, C-156/21, ECLI:EU:C:2022:97, para. 211.

62 | Judgement of the Court (Grand Chamber) of 27 February 2018, *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*, C-64/16, ECLI:EU:C:2018:117, para. 34.

63 | Bobek ironically comments on this concept that procedural autonomy is a term for an area not yet regulated by EU rules. Bobek, 2022.

64 | Judgement of the Court (Grand Chamber) of 22 February 2022, *RS*, C-430/21, ECLI:EU:C:2022:99, para. 43.

systematics of EU law, from which other rules are derived, including the principle of mutual trust in the area judicial cooperation.⁶⁵

4. Equal Treatment in the Enforcement Process

Any legal norm will be imperfect unless it is accompanied by a sanction and a procedural instrument to enforce it. Sanctions are a significant encroachment on the sovereignty of the Member States in the classical sense. The fact that the Member States have allowed the Treaties to create mechanisms that can sanction them even against their will only demonstrates the high degree of European integration. In the following text, we will look at the two most important instruments, the infringement procedure and the procedure under Article 7 TEU. Each of these procedures has its own specific purpose, although we can see a tendency of the Commission to replace Article 7 TEU, because of its low effectiveness, with the procedure under Article 258 TFEU, which was originally intended for 'ordinary' infringements.

| 4.1. Infringement Proceedings

The European Commission is often called the guardian of the Treaties because, since the beginning of European integration, it has been endowed with active legitimacy to initiate infringement proceedings against Member States. Over time, changes in the unchanged legal framework have politicised the whole process, making the decision to initiate proceedings a responsibility of the political leadership of the European Commission rather than being left to the technocratic approach of the civil servants. Former Portuguese Minister and Prime Minister José Manuel Barroso, at the head of the College of Commissioners, sought ways to push the Commission's agenda vis-à-vis the other Union institutions. Drawing on his experience in the Council and the European Council, he perceived an aversion on the part of Member State representatives to the indiscriminate, semi-automatic initiation of infringement procedures over which he, as President of the Commission, had no control. So, the possibility of using the litigation initiative to force the Commission's proposals through came handy.⁶⁶ After 2007, the European Commission introduced the EU Pilot procedure, an informal dialogue with Member States preceding the administrative phase of the Article 258 TFEU procedure, dramatically reducing the number of procedures. The informal pre-negotiation of potential non-compliance cases has radically reduced infringement proceedings - while in 2006 the Commission brought 254 cases before the Court of Justice against Member States, 15 years later in 2021 the Commission brought only 31 actions.⁶⁷ Luca Prete and Ben Smulders describe this development as a sign of the maturity of the system, as the Commission is less formalistic and ignores marginal infringements, allowing it to focus on key cases that are important for

65 | Judgement of the Court (Grand Chamber) of 21 December 2011, N. S. (C-411/10) v Secretary of State for the Home Department and M. E. and Others (C-493/10) v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform, joined cases C-411/10 and C-493/10, ECLI:EU:C:2011:865, para. 83.

66 | Kelemen and Pavone, 2023.

67 | Ibid.

European integration.⁶⁸ On the other hand, Daniel Kelemen and Tommaso Pavone highlight the consequences of this trend regarding the rule of law at EU level and the selectivity of the European Commission's initiation of proceedings. The Commission, they argue, is trading its role as Guardian of the Treaties to win the Member States' support of its proposals.⁶⁹

For example, the Commission initiated infringement proceedings against Finland for maintaining bilateral capital movements agreements with third countries concluded prior to Finland's accession to the Community. According to the Commission, although the Community had not concluded another similar agreement with these third countries, Finland had transferred this competence to the Council, thereby creating an obligation to terminate the original agreements.⁷⁰ In the present case, the Court rejected Finland's defence that other Member States also maintain similar bilateral arrangements:

A Member State may not rely on the fact that other Member States have also failed to perform their obligations in order to justify its own failure to fulfil its obligations under the Treaty. In the Community legal order established by the Treaty, the implementation of Community law by the Member States cannot be made subject to a condition of reciprocity.⁷¹

In seeking to preserve the unity of the Community legal regime (*ergo* the equal status of Member States), the Commission has thus created an inequality by initiating infringement proceedings against only one state which has kept such contracts in force. Similarly, the CJEU has upheld the prohibition of deviations from the general EU regulatory framework for bilateral investment treaties between Member States (albeit without explicit reference to the equality of Member States).⁷² In contrast, the Court of Justice has permitted Member States to enter into international treaties to establish a European stability mechanism, even in areas where the European Union has exclusive competence, such as the eurozone. This is allowed as long as the Union has not been granted specific authority to act in that particular sub-area.⁷³

The Commission's discretion further deepened after Lisbon by the introduction of the alternative fast-track procedure under Article 260(3) TFEU. Article 260(3) TFEU allows for a combination of the discovery phase and the sanction phase in cases where the Member State's transposition of the Directive has not been notified to the Commission, which is a stand-alone offence. In 2018, twenty Member States did not complete the transposition of the fourth Anti-Money Laundering Directive establishing a register of beneficial owners in time. However, only Romania and Ireland have been subject to Article 260(3) TFEU proceedings, both of which were highlighted in their submissions. Ireland pointed out that there was no explanation given by the Commission as to why it did not proceed under

68 | Smulders and Prete, 2021, p 287.

69 | Kelemen and Pavone, 2023.

70 | Judgement of the Court (Second Chamber) of 19 November 2009, *Commission of the European Communities v Republic of Finland*, C-118/07, ECLI:EU:C:2009:715, para. 47.

71 | Judgement of the Court (Second Chamber) of 19 November 2009, *Commission of the European Communities v Republic of Finland*, C-118/07, ECLI:EU:C:2009:715, para. 48.

72 | Judgement of the Court (Grand Chamber) of 6 March 2018, *Slowakische Republik v Achmea BV*, C-284/16, ECLI:EU:C:2018:158.

73 | Judgement of the Court (Full Court), 27 November 2012, *Thomas Pringle v Government of Ireland and Others*, C-370/12, ECLI:EU:C:2012:756.

Article 258 TFEU and opted for the faster procedure, which, however, provides the Member State with fewer procedural defences. According to the Member State, the Commission wants to make an example of the defendants as a deterrent to other states.⁷⁴ However, the Court of Justice, referring to the absence of jurisdiction to review the Commission's discretion in choosing the form of the proceedings and/or in initiating them in the first place, rejected this plea.⁷⁵ It is therefore at the Commission's discretion whether to initiate proceedings under Article 258 or 260(3) TFEU. It is also at the Commission's discretion whether to require a decision on the infringement and the imposition of a sanction or to be satisfied with a finding of non-compliance with the notification obligation.⁷⁶ In its reasoning, the Court referred to the *travaux préparatoires* for the Constitutional Treaty,⁷⁷ in the draft of which the non-communication procedure appeared precisely as a tool to speed up and simplify this specific infringement procedure.

The case-law of the Court of Justice shows that the infringement and the related amount of the penalty are assessed at the time the action is brought.⁷⁸ Thus, while the Commission cannot extend the action beyond its reasoned opinion, it can nevertheless motivate the Member State to comply by offering a partial withdrawal of the action or a reduction of the penalty, which the Court cannot increase again.⁷⁹ While such a procedure may lead to the gamification of the process and reduce non-compliance, it may also create unequal treatment of Member States. Moreover, with the absence of judicial review, as the discretion is explicitly based on the wording of Article 258 TFEU.

| 4.2. Procedure Under Article 7 TEU

The founding countries built European integration on the fact that they shared common interests and values. However much the new acceding states brought their own traditions and perspectives to the European project, the basic foundation was the elementary uniformity of the fundamental constitutional core, which is now codified in Article 2 TEU. While this was originally an unspoken condition, the Member States that joined after 1993 subscribed to these values within the framework of the Copenhagen criteria. Robert Böttner and Nic Schröder speak of horizontal homogeneity in this context.⁸⁰ In some cases, EU institutions bring about vertical - especially vertically descending - interaction that can further homogenise the environment of the EU legal space. For example, the Court of Justice drew the human rights agenda into European law despite the lack of explicit support for this in primary law.⁸¹ Later, it even went beyond the text of primary law

74 | Judgement of the Court (Grand Chamber) of 16 July 2020, *European Commission v Ireland*, C-550/18, ECLI:EU:C:2020:564, para. 65.

75 | Judgement of the Court (Second Chamber) of 14 February 1989, *Star Fruit Company SA v Commission of the European Communities*, 247/87, ECLI:EU:C:1989:58.

76 | Judgement of the Court (Grand Chamber) of 16 July 2020, *European Commission v Romania*, C-549/18, ECLI:EU:C:2020:563, para. 49.

77 | Judgement of the Court (Grand Chamber) of 8 July 2019, *European Commission v Kingdom of Belgium*, C-543/17, ECLI:EU:C:2019:573.

78 | Judgement of the Court (Sixth Chamber) of 30 January 2002, *Commission of the European Communities v Hellenic Republic*, C-103/00, ECLI:EU:C:2002:60.

79 | Judgement of the Court (Grand Chamber) of 12 July 2005, *Commission of the European Communities v French Republic*, C-304/02, ECLI:EU:C:2005:444.

80 | Böttner and Schröder, 2024.

81 | Judgement of the Court of 12 November 1969, *Erich Stauder v City of Ulm - Sozialamt*, 29-69, ECLI:EU:C:1969:57.

by allowing the review of acts of the European Parliament on the argument of ensuring the guarantees of the rule of law.⁸² Furthermore, it has defined itself in favour of ensuring effective judicial protection against the rules of international law.⁸³ Among the criticised cases that have shaped the national environment, we find anti-discrimination decisions in the areas of sex,⁸⁴ age⁸⁵ and sexual orientation⁸⁶ which were not accepted by the states positively.

Enforcement of the constitutional value core is an agenda in which the Member States have a dominant role, although formally they now act as an EU body. However, in 2000 the Member States took joint action outside the scope of primary law against Austria, where the right-wing political party FPÖ had come to power and there was concern about the respect of shared values. In the absence of a legal instrument, Member States coordinated to limit formal and informal bilateral cooperation, which included cutting diplomatic cooperation, withdrawing support from Austrian candidacies and proposals. Following an investigation directly in Austria and the subsequent Wise men report, these restrictions were discontinued.⁸⁷ However, experience has shown the necessity to enshrine a suitable instrument in primary law, whilst also acknowledging the reluctance to repeat the situation. Article 7 TEU, which was introduced by the Treaty of Amsterdam, already existed. However, its application was limited to the *ex post* sanctioning of violations of EU values. This was not the case in Austria.

The Treaty of Lisbon saw the introduction of a new procedure, Article 7(1) TEU, which allows for the initiation of a procedure on the grounds of only the risk of a breach of values. The initiation under Article 7(1) can be initiated by a third of the Member States, the European Parliament or the European Commission, who direct their proposal to the Council, which decides on the matter by a four-fifths majority of its members after receiving the consent of the European Parliament. The Council then monitors the situation regularly and makes recommendations to the state. The *ex post* sanction mechanism under Article 7(2) TEU may be initiated by a third of the states or the European Commission and referred to the European Council, which decides unanimously after receiving the consent of the European Parliament. If the European Council decides in the affirmative, the Council may, on the basis of Article 7(3) TEU, by a qualified majority, restrict the rights of the Member State concerned. In both the Council and the European Council, the representatives of the Member State concerned are excluded from voting under Article 354 TFEU.

82 | Judgement of the Court of 23 April 1986, Parti écologiste 'Les Verts' v European Parliament, 294/83, ECLI:EU:C:1986:166.

83 | Judgement of the Court (Grand Chamber) of 3 September 2008, Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities, joined cases C-402/05 P and C-415/05 P, ECLI:EU:C:2008:461.

84 | Judgement of the Court of 8 April 1976, Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena, 43-75, ECLI:EU:C:1976:56.

85 | Judgement of the Court (Grand Chamber) of 22 November 2005, Werner Mangold v Rüdiger Helm, C-144/04, ECLI:EU:C:2005:709.

86 | Judgement of the Court (Grand Chamber) of 5 June 2018, Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne. Request for a preliminary ruling from the Curtea Constituțională a României, C- 673/16, ECLI:EU:C:2018:385.

87 | Ahtisaari, Frowein, and Oreja, 2000.

Similarly to the EU Pilot, the European Commission is conducting an informal pre-Article 7 dialogue with the state concerned.⁸⁸ In 2015, the Commission initiated proceedings against Poland, which had recently enacted a series of legislative acts aimed at reforming the judiciary and potentially curtailing its autonomy. The issue of the appointment of the highest judicial officials has become a matter of particular concern.⁸⁹ Some commentators pointed out the futility and naivety of starting this process with a government which is determined to implement its reforms and is uninterested in real dialogue.⁹⁰ However, it should be noted that Article 4(3) TEU is a two-way instrument which requires sincere cooperation and an attempt to find an amicable solution. Despite concerns about the breach of values enshrined in Article 2 TEU, the principle of mutual trust between Member States and the Commission must continue to apply until the procedure under Article 7(2) TEU has been completed.⁹¹ In contrast, the Commission did not initiate this dialogue with Hungary, despite the fact that Hungary has also taken a number of steps that could threaten the rule of law, which some see as an advantage over Poland.⁹² On the other hand, engaging in a similar process – as in the case of the EU pilot – could lead to a clarification of the situation and a peaceful resolution. However, the informal dialogue was not successful, and the Commission eventually initiated the procedure under Article 7 of the TEU with Poland in 2017.⁹³

Article 7 TEU is often referred to as a nuclear button, whose main purpose is to deter a situation in which it would have to be used.⁹⁴ But as with the decision to use a weapon of mass destruction, it is a political decision.⁹⁵ This is confirmed by the Court of Justice. The Court confines itself to a procedural review of the procedure under Article 7 TEU.⁹⁶ It is therefore up to the Member States to decide to what extent they wish to defend the horizontal homogeneity of EU values, regardless of the formal decisions of the Council or the European Council. Particularly in the context of Article 7(2) TEU, this aspect is further strengthened by requiring the unanimity of all the Prime Ministers or Presidents of the Member States, with the exception of the representative of the state concerned. It is thus a confirmation or redefinition of what is and what is not permissible behaviour in the club of states. Apart from the obligation to respect the procedural rights of the Member State concerned, the European Council has a very wide margin of discretion since it operates almost exclusively within political boundaries.

88 | Communication from the Commission: A Europe of results – Applying Community law, COM(2007)502.

89 | Wilms, 2017.

90 | Kochenov, 2016.

91 | Judgement of the Court (Grand Chamber) of 22 February 2022, X and Y v Openbaar Ministerie, joined Cases C-562/21 PPU and C-563/21 PPU, ECLI:EU:C:2022:100.

92 | Gostyńska-Jakubowska, 2016.

93 | Motion was later withdrawn by the Commission in the 2024.

94 | Wilms, 2017.

95 | Schmitt von Sydow, 2001.

96 | Judgement of the Court (Grand Chamber) of 3 June 2021, Hungary v European Parliament, C-650/18, ECLI:EU:C:2021:426.

5. Conclusions

Article 4(2) TEU is somewhat difficult to read. Respect for the equality of all Member States before the Treaties leads many to hope that this is a defensive provision, designed to protect Member States against the arbitrariness of the EU institutions. However, such a reading would be limited and lacks a systematic basis in the complexity of EU law, which requires contextualising this principle with other principles and rules that together form the EU's constitutional framework. Moreover, it is a general rule that can be overridden by specific provisions that often either allow or directly require unequal treatment. The obligation of equality between Member States is to be interpreted as a prohibition of arbitrariness on the part of the EU institutions, but the case law of the Court of Justice shows that it is more of a maxim than an enforceable obligation, particularly where the EU institutions pursue the objectives of European integration and have a wide margin of discretion – especially in procedural matters.

Additionally, we must not forget that equal treatment is not a unilateral obligation, as one might assume from a quick reading, and goes hand in hand with maintaining the necessary degree of uniformity between Member States – the principle of equality does not guarantee the right to differentiate unilaterally while demanding equal treatment.

The equality of the Member States has also been weaponised in the face of the poly-crisis facing the Union and the subsequent reaction of the highest courts of the Member States. In an attempt to protect the prerogatives of the Member States, the courts are threatening the unity of European law. The autonomous nature of European law requires the preservation of the principle of primacy and, as a countermeasure, the Court of Justice has drawn the horizontal multilateral aspect of equality between Member States into a decade-long debate in order to guarantee the principle.

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INSTITUTIONAL PROTECTION OF FUNDAMENTAL RIGHTS IN THE CZECH REPUBLIC BY THE CONSTITUTIONAL COURT AND THE NATIONAL HUMAN RIGHTS INSTITUTION

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ABSTRACT

This paper primarily examines the fundamental rights adjudication in the Czech Republic. Article 83 of the Constitution states that the Constitutional Court of the Czech Republic is a judicial body for the protection of constitutionality. In the Czech Republic, the concept of constitutionality protection is not expressly defined in the Constitution. It may, however, be understood both as the legal space (range of cases) within which the Constitutional Court operates and as the set of means through which it safeguards the fundamental rights and freedoms of the constitutional law addressees. A somewhat more specific definition is provided by certain theorists who understand the protection of constitutionality as the safeguarding of constitutional rules, principles, and values contained in the constitutional order against the exercise of public power.

As regards the existence of circumstances in the Czech Republic that may affect the effective protection of fundamental rights, it follows from the consistent case-law of the Constitutional Court that the binding nature of its judgements is almost absolute. It should, however, be added that with respect to the so-called precedential binding nature of the Constitutional Court's judgements, general courts may depart from the legal opinions of the Constitutional Court, provided that they present competing considerations in good faith and thereby initiate a constitutional dialogue with the Constitutional Court.

KEYWORDS

*the fundamental rights adjudication
the constitutionality protection
the Constitutional Court of the Czech Republic
the National Human Rights Institution (NHRI)
the Defender*

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1. The Fundamental Rights Adjudication

| 1.1. *The Judicial Body for the Constitutionality Protection*

Article 83 of the Constitution states that the Constitutional Court of the Czech Republic is a judicial body for the constitutionality protection.² The concept of constitutionality protection itself is not defined in the Constitution, but can be understood as both the legal space (range of cases) wherein the Constitutional Court decides and set of means by which it decides to preserve the fundamental rights and freedoms of the constitutional law addressees. A somewhat more specific definition is provided by some authors who understand constitutionality protection as the protection of constitutional rules, principles and values contained in the constitutional order against public power.³ The democratic majority, represented by the public authorities, thus collides with the boundaries of constitutionality and the Constitutional Court is a kind of arbiter and regulator overseeing compliance with the basic rules of democratic governance.⁴ The Constitutional Court provides protection for the fundamental principles of the rule of law and, above all, fundamental rights and freedoms; ensures the balance between the various state bodies; decides on the measures necessary to implement the decisions of the international courts; and performs other tasks assigned to it by the Constitution and the implementing regulation, that is Act no. 182/1993 Coll., on the Constitutional Court of the Czech Republic (hereinafter 'the Constitutional Court Act'). In connection with the above, it is noteworthy that the Czech Republic has a concentrated model of constitutional justice within which abstract, concrete, incident, preventive and consequential control of legal norms is conducted, both in terms of formal and substantive constitutionality.⁵

The Constitution and the Constitutional Court Act set out the basic structure, organisation, competences of the Constitutional Court⁶ and the proceedings held before it, namely constitutional complaint proceedings.⁷ As for its structure and organisation, under Sections 1 to 26 of the Constitutional Court Act, the Constitutional Court comprises the President, two Vice-Presidents, and twelve Justices. The President of the Constitutional Court represents the Court vis-à-vis third parties, conducts the Court's administrative activities, convenes and presides over the meetings of the Constitutional Court's Plenum, sets the agenda of the plenary meetings, appoints Presidents of the Constitutional Court's Panels, and performs other tasks accorded him by statute. The Constitutional Court's internal structure includes a Plenum, which comprises all Justices, and four three-member Panels. The Constitutional Court lays down which matters are to be decided by the Plenum and the Panels. To each case, a Judge-Rapporteur is assigned. Each Justice is assigned three assistants. Justices' chambers were created to facilitate the business of the individual judicial offices. Apart from the President and Vice-Presidents,

2 | For more details see Sládeček et al., 2016, pp. 905–920 and see also Vyhnaněk, 2024, pp. 773–790; Grinc, 2022, pp. 423–433; Kokeš, 2011, pp. 175–187.

3 | See also Garlicki, 2007, pp. 44–68.

4 | See also Zidouemba, 2025.

5 | For more details see Filip, Holländer and Šimíček, 2007, pp. XVII–XXIV and see Linhart, 2008, p. 41.

6 | See also Kysela and Stádník, 2021, pp. 899–998.

7 | See also Weber, 2024, pp. 605–620.

the Constitutional Court's other official is the Secretary General, under whose direct purview comes the entire Court's administration, the Judicial Department, the Analytics Department, including the Library, and the External Relations and Protocol Department. The Court's administration itself is managed by the Director of Court's Administration.⁸

As for the Judge-Rapporteur, their position is defined primarily in Sections 40 of the Constitutional Court Act.⁹ Specifically, if the petition concerns a matter that the Court deals with in the Plenum, then the petition shall be assigned to the Judge-Rapporteur designated by the court schedule. If the petition concerns a matter within the jurisdiction of a Panel, it shall be assigned to a Justice who is designated as the Judge-Rapporteur by the work schedule and to the Panel designated by the work schedule. If the Justice designated as the Judge-Rapporteur is excluded from the matter due to doubts about impartiality, by a resolution, the President of the Constitutional Court shall assign the petition to another Judge-Rapporteur designated for that purpose by the work schedule.¹⁰

The Judge-Rapporteur shall see to the necessary procedural work of the case; in particular, they shall see to the gathering of documentary evidence and the examination of witnesses, possibly even by means of another court, if such evidence was proposed by one of the parties and if, according to the current status of the proceeding, it might serve to establish the facts of the case. The Judge-Rapporteur shall also, without delay, see to it that the petition is delivered to the other parties, and when appropriate also to secondary parties, with the request that they give their view upon it by the deadline designated by the Judge-Rapporteur or which is provided for by the Constitutional Court Act. Under Section 43(1) of the Constitutional Court Act, without holding an oral hearing and without the parties being present, the Judge-Rapporteur shall by preliminary ruling reject the petition, if: (a) the petitioner fails to cure defects in the petition by the deadline designated therefore; (b) the petition was submitted after the deadline for its submission laid down in the Constitutional Court Act; (c) the petition was submitted by a person who is clearly not authorised to submit it; (d) it is a petition over which the Court has no jurisdiction; or (e) the submitted petition is inadmissible, unless the Constitutional Court Act provides otherwise.¹¹

Under Section 47 of the Constitutional Court Act, at the oral hearing, the Justice who is presiding over the hearing shall first give the floor to the Judge-Rapporteur, who shall inform the Court of the contents of the petition instituting the proceeding and of the results of the proceeding before the Court up until that time; her report must not contain an opinion as to how the petition should be decided. Under Section 49(3) of the Constitutional Court Act, after a proceeding is instituted, the Court may safeguard evidence upon motion if there is concern that it would not be possible to procure it later, or only with great difficulty. The Judge-Rapporteur shall have the evidence safeguarded by the court within the jurisdiction of which the threatened evidence is found. Under Section 55 of the Constitutional Court Act, the Judge-Rapporteur shall prepare a draft of a judgment or ruling. However, if a proposal for a decision is adopted which differs considerably from the

8 | For more details see Filip, Holländer and Šimíček, 2007, pp. 1–116; see the Constitutional Court of the Czech Republic, 2015a and for more details see Filip, Holländer and Šimíček, 2007, pp. 1–116.

9 | See also Lazović, 2023, pp. 193–209.

10 | For more details see Filip, Holländer and Šimíček, 2007, pp. 199–202.

11 | For more details see Filip, Holländer and Šimíček, 2007, pp. 203–267.

Judge-Rapporteur's draft, the judgment or ruling shall be prepared by a Justice designated by the presiding Justice.¹²

Regarding the role of advisory staff, under Section 8 of the Constitutional Court Act, each Justice is appointed at least one Assistant to the Justice (hereinafter only as 'the Assistant') for a definite period of time not exceeding the time for which the Justice to whom the Assistant has been appointed is engaged. The President of the Constitutional Court names and recalls each Assistant on the basis of a proposal of the Justice for whom they will work. Under Section 9 of the Constitutional Court Act, any upstanding person who has completed a university legal education may be appointed as an Assistant. An Assistant may resign from office: the employment of the Assistant shall terminate on the day after the day on which the letter of resignation was delivered to the President of the Constitutional Court unless the date stated on the resignation letter was the following day. The employment of an Assistant shall further terminate (a) upon termination of the office of the Justice to whom the Assistant was appointed, (b) on the day when a decision by which an Assistant is convicted of a criminal offence becomes final, (c) upon his recall, (d) by expiration of the period of time for which an Assistant has been appointed, provided they had been appointed for a definite period of time. An Assistant is obliged to maintain confidentiality on matters learned during the course of the performance of office. This obligation shall stand after termination of office; however, the President of the Constitutional Court may discharge an Assistant from such obligation. At this point, it is also important to mention that unless the Constitutional Court Act provides differently, the provisions of the Act no. 262/2006 Coll., the Labour Code, shall apply to the employment relations pertaining to the office of a Justice and the position of Assistant.¹³

Under Section 41 of the Constitutional Court Act, Justices may assign to their Assistants (a) the task of refusing submissions which, as ascertained from the contents, are manifestly not a petition instituting a proceeding, and of notifying accordingly the person who made the submission; (b) should the petition instituting a proceeding not meet the requirements of this Statute, the task of notifying the petitioner accordingly and of setting for him a deadline by which the defects in the petition must be cured. Justices may also assign to their Assistants the procedural tasks of the Judge-Rapporteur under Section 42(2) and (4) the Constitutional Court Act, with the exception of the examination of witnesses.¹⁴

| **1.2. The Main Roles of the Constitutional Court**

Under Article 87(1) and (2) of the Constitution, the Constitutional Court has jurisdiction: to annul statutes or individual provisions thereof if they are in conflict with the constitutional order; to annul other legal enactments or individual provisions thereof if they are in conflict with the constitutional order or a statute;¹⁵ over constitutional complaints by the representative body of a self-governing region against an unlawful encroachment by the state; to decide jurisdictional disputes between state bodies, state bodies and bodies of self-governing regions, and between bodies of self-governing regions, unless that power is given by statute to another body; over constitutional complaints of natural or legal

12 | Ibid, pp. 276–277.

13 | For more details see Filip, Holländer and Šimíček, 2007, pp. 39–43.

14 | Ibid, pp. 195–198.

15 | See also Florczak-Wator, 2020.

persons against final decisions or other encroachments by public authorities infringing upon constitutionally guaranteed fundamental rights and basic freedoms; over remedial actions from decisions concerning the certification of the election of a Deputy or Senator; to resolve doubts concerning a Deputy or Senator's loss of eligibility to hold office or their incompatibility under Article 25 of the Constitution of some other position or activity with holding the office of Deputy or Senator; over a constitutional charge brought by the Senate against the President of the Republic under Article 65(2) of the Constitution; to decide on a petition by the President of the Republic seeking the revocation of a joint resolution of the Assembly of Deputies and the Senate under Article 66 of the Constitution; to decide on the measures necessary to implement a decision of an international tribunal, which is binding on the Czech Republic, in the event that it cannot be otherwise implemented; to determine whether a decision to dissolve a political party or other decisions relating to the activities of a political party is in conformity with constitutional acts or other laws; and to decide concerning the conformity with the constitutional order of a treaty under Article 10a or Article 49 of the Constitution, prior to the ratification of such treaty.¹⁶

As previously mentioned, under Article 87(1) of the Constitution, the Constitutional Court rules on a constitutional complaint against a decision that has gone into legal effect or other intervention by a public authority that interferes in constitutionally guaranteed rights and freedoms. In constitutional complaint proceedings, the Constitutional Court Act sets out who is entitled to file the constitutional complaint. Specifically, under Section 72(1) of the Constitutional Court Act, the constitutional complaint can be filed by an individual or legal entity who claims that a decision that has entered into legal effect in a proceeding wherein they were parties, a measure or other intervention by a public authority violated their fundamental right or freedom guaranteed by the constitutional order. The practical consequence of this legal regulation is that the complainants must state in the constitutional complaint which fundamental right or freedom was violated in their case, by which public authority and by what decision or intervention was it violated, and specifically what that violation of a fundamental right or freedom consisted of. The Constitutional Court may not consider any other rights. In this regard, it must be remembered that the Constitutional Court is not hierarchically above the general courts, or the court of final appeal; it only reviews constitutionality, not the legality or correctness, of judicial decisions. The Constitutional Court's role is only the protection of constitutionally guaranteed fundamental rights and freedoms.¹⁷

Under Section 74 of the Constitutional Court Act, the constitutional complaint may also propose annulment of a provision of a legal regulation, but only if application of that provision led to a circumstance that is the subject matter of the constitutional complaint, and the complainant claims that the legal regulation or the provision is inconsistent with a constitutional act, or another law, in the case of a sub-statutory legal regulation. In other words, the contested legal regulation must have actually been applied in the complainant's case, and the complainant must state which constitutional act or law, and which provision thereof, the contested legal regulation is inconsistent with. A petition seeking the annulment of a legal regulation is of an accessory nature as regards a constitutional

16 | For more details see Sládeček et al., 2016, pp. 940–1005; see the Constitutional Court of the Czech Republic, 2015b; and see also Ondřejková, Blažková and Chmel, 2019, pp. 589–617.

17 | See the Constitutional Court of the Czech Republic, 2015c and for more details see Filip, Holländer and Šimíček, 2007, pp. 490–667.

complainant, which means that it shares its fate. Therefore, if the constitutional complaint is denied for any reason, the petition seeking annulment of a legal regulation is thereby also automatically denied. Without a connection to a particular decision or intervention by a public authority, an individual or legal entity is not entitled to propose the annulment of a legal regulation. In the sense of Section 43(1)(c) of the Constitutional Court Act, the Constitutional Court would have to deny a direct petition seeking the annulment of a legal regulation because it is filed by an obviously unauthorised party.¹⁸

As for the conditions of its submission, under Section 75 of the Constitutional Court Act, the constitutional complaint is not permissible if it concerns a matter on which the Constitutional Court has already issued a judgment. The constitutional complaint is also impermissible if the Constitutional Court is already conducting proceedings in the same matter or the complainant has not exhausted all procedural remedies that the law provides him for protection of his rights. Such means include all regular remedies, typically an appeal, a complaint, a complaint in the administrative court, as well as extraordinary remedies, such as an appeal on a point of law or a cassation complaint. In addition to these common remedies for protection of rights, it is also necessary to exhaust other procedural remedies that are connected to the opening of a judicial, administrative, or other legal proceedings. However, among extraordinary remedies, it is not necessary to exhaust a petition to renew proceedings or extraordinary remedies that the body ruling on them can deny as impermissible on grounds that are within its discretion. If such a remedy was exercised nevertheless, one may wait until the appropriate body rules on it, because the constitutional complaint can be filed against a foregoing decision on a procedural remedy for protection of rights, which was contested by the extraordinary remedy, within a period of 60 days from the delivery of that decision on the extraordinary remedy. Under Section 43 of the Constitutional Court Act, if the Constitutional Court finds that the constitutional complaint is impermissible – that it was filed in a matter on which the Constitutional Court has already ruled in a judgment, or on which proceedings are being conducted, or that the complainant did not exhaust all the prescribed procedural remedies – it has no choice but to deny the constitutional complaint due to impermissibility. It is also necessary to note that a complainant cannot write the constitutional complaint, file it, or appear in a proceeding himself. Under Section 29 and 30 of the Constitutional Court Act, every individual or legal entity that is a party, including the complainant or secondary party, must be represented by an attorney in proceedings before the Constitutional Court. The power of attorney issued for representation must expressly state that it is given for representation before the Constitutional Court. The Constitutional Court does not assign attorneys to complainants. In case of difficulty finding an attorney, one must turn to the Czech Bar Association, which, under certain conditions, can assign an attorney under the Act no. 85/1996 Coll., on the Legal Profession.¹⁹

Under Section 82 of the Constitutional Court Act, if the Constitutional Court finds the constitutional complaint to be justified, specifically, if it determines that a fundamental right or freedom guaranteed by the constitutional order was violated, it may annul the contested decision and, in the event of the constitutional complaint against a different kind of intervention by a public authority, it may forbid that public authority from continuing

18 | Ibid.

19 | See the Constitutional Court of the Czech Republic, 2015c and for more details see Filip, Holländer and Šimíček 2007, pp. 490–667.

to violate the right or freedom and order it to, insofar as possible, return matters to the condition before the violation. Therefore, it is necessary to keep these options for the Constitutional Court's action in mind when formulating the proposed judgment of the constitutional complaint, namely, when formulating what the complainant seeks from the Constitutional Court, what he asks from it. The Constitutional Court cannot, for example, order a public authority to grant a particular request from the complainant, to provide some particular performance, and so on. The Constitutional Court cannot change the contested decision, nor can it decide instead of the relevant public authority or court. If it annuls the contested decision, the matter is returned to the public authority for a new decision. If the complainant seeks from the Constitutional Court something that is not within its competence, the Constitutional Court must deny the constitutional complaint due to inappropriateness.²⁰

1.3. *The Review of Norms*

As for the proceedings on the proposed annulment of a statute or some other enactment, a petition under Article 87(1)(a) of the Constitution proposing the annulment of a statute, or individual provisions thereof, may be submitted by: (a) the President of the Czech Republic; (b) a group of at least 41 Deputies or at least 17 Senators; (c) a Panel of the Court in connection with deciding a constitutional complaint; (d) the government, under the conditions stated in Section 118; (e) anyone who submits a constitutional complaint under the conditions stated in Section 74 of the Constitutional Court Act or who submits a petition for rehearing under the conditions stated in Section 119(4) of the Constitutional Court Act.²¹

A petition under Article 87(1)(b) of the Constitution proposing the annulment of some other enactment, or individual provisions thereof, may be submitted by: (a) the government; (b) a group of at least 25 Deputies or at least 10 Senators; (c) a Panel of the Court in connection with deciding a constitutional complaint; (d) anyone who submits a constitutional complaint under the conditions stated in Section 74 of the Constitutional Court Act or who submits a petition for rehearing under the conditions stated in Section 119(4) of the Constitutional Court Act; (e) the representative body of a region; (f) the Defender; (g) the Interior Minister, in cases concerning petitions proposing the annulment of generally binding municipal ordinances, of regional ordinances, or ordinances of the capital city of Prague, under the conditions laid down in the acts governing territorial self-government; (h) the competent ministry or other central administrative office, in cases concerning petitions proposing the annulment of orders of a region or of the capital city of Prague, under the conditions laid down in the acts governing territorial self-government; (i) the director of a regional office, in cases concerning petitions proposing the annulment of municipal orders under the conditions laid down in the acts governing territorial self-government; (j) representative body of a municipality, in cases concerning petitions proposing the annulment of a legal enactment of a region within the territory of which the municipality lies. The petition of a group of Deputies or Senators must be signed by the required number of Deputies or Senators. The head of a county office may also submit

20 | Ibid.

21 | For more details see Filip, Holländer and Šimíček, 2007, pp. 347–385.

a petition proposing the annulment of an enactment, or individual provisions thereof, issued by a municipality.²²

Under Section 74 of the Constitutional Court Act, a complainant may submit, together with their constitutional complaint, a petition proposing the annulment of a statute or some other enactment, or individual provisions thereof, the application of which resulted in the situation which is the subject of the constitutional complaint, if the complainant alleges it to be in conflict with a constitutional act, or with a statute if the complaint concerns some other enactment. Under Section 119(4) of the Constitutional Court Act, a petitioner may submit, together with a petition for rehearing, a petition proposing the annulment of a statute or other legal enactment, or individual provisions thereof, the application of which gave rise to the facts which are the subject of the petition for rehearing, if they are, according to the petitioner's assertion, in conflict with a constitutional act, or with a statute if the petition concerns some other enactment.²³

In connection with decision-making under Article 95(2) of the Constitution, courts are also authorised to submit petitions proposing the annulment of a statute or individual provisions thereof. The Plenum may institute a proceeding to annul a statute or some other enactment, or individual provisions thereof, if there are grounds therefore under Section 78(2) of the Constitutional Court Act, stating that if in connection with deciding a constitutional complaint, a Panel comes to the conclusion that a statute or some other enactment, or individual provisions thereof, the application of which resulted in the situation that is the subject of the constitutional complaint, is inconsistent with a constitutional act, or with a statute if the complaint concerns some other enactment. It shall then suspend the proceeding and submit to the Plenum a proposal under Article 87(1)(a) or (b) of the Constitution for the annulment of that statute or other enactment. Should the Plenum come to such a conclusion in connection with deciding a constitutional complaint, it shall institute and bring to conclusion a proceeding under Article 87(1)(a) or (b) of the Constitution.²⁴

Under Section 66 of the Constitutional Court Act, the petition shall be inadmissible if the statute or other enactment, or individual provisions thereof, which are proposed be annulled, lost force and effect prior to the petition's delivery to the Court, or if at that point it had not yet been promulgated either in the Collection of Laws or in some other legally prescribed manner. The petition shall further be inadmissible if, prior to its delivery to the Court, the constitutional act or the statute, with which the enactment under review is alleged to be in conflict, lost force and effect, or if at that point it had not yet been promulgated in the Collection of Laws. Under Section 67 of the Constitutional Court Act, if the statute or other enactment, or individual provisions thereof, which are proposed to be annulled, lose force and effect prior to the completion of the proceeding before the Court, the proceeding shall be discontinued. The proceeding shall likewise be discontinued in the case of the petition proposing the annulment of a statute or some other enactment, or individual provisions thereof, due to their alleged conflict with a constitutional act or a statute, if the constitutional act or statute loses force and effect. On the other hand, under Section 68 of the Constitutional Court Act, if the petition has not been rejected on preliminary grounds or if grounds for its discontinuance have not arisen during the

22 | For more details see Filip, Holländer and Šimíček, 2007, pp. 347–385.

23 | Ibid, pp. 543–549.

24 | Ibid, pp. 615–621.

course of the proceeding, the Court is obliged to act upon it and to resolve the matter, even without the submission of further petitions. In making its decision, the Court shall assess the contents of a statute or some other enactment from the perspective of its conformity with constitutional acts, or, if the matter concerns some other type of enactment, with statutes, and ascertain whether it was adopted and issued within the confines of the powers set down in the Constitution and in the constitutionally prescribed manner.²⁵

Section 69 of the Constitutional Court Act then defines the parties to proceedings for annulment of statutes or some other enactments, which primarily include the petitioner. The body that issued the statute or other enactment that is proposed to be annulled shall also be a party to the proceeding; without delay, the Judge-Rapporteur shall send it the petition that instituted the proceeding and a request to submit its views on the petition within 30 days of receiving it. The Judge-Rapporteur shall immediately send the petition seeking to initiate the proceeding under Article 87(1)(b) of the Constitution to the Government unless the petition concerned is filed by the Government, thus the Government may notify the Constitutional Court within 30 days after the receipt of such a petition that it shall participate in the proceedings. Should the Government do so, it shall have the status of a secondary party. Without delay the Judge-Rapporteur shall also send the petition initiating a proceeding under Article 87(1)(a) and (b) of the Constitution to the Public Protector of Rights, provided he is not the petitioner. Within 10 days of the petition's delivery to him, he may inform the Constitutional Court that he is intervening in the proceeding, in which case he shall have the status of a secondary party.²⁶

Section 70 of the Constitutional Court Act states that if, after holding a proceeding, the Constitutional Court comes to the conclusion that a statute, or individual provisions thereof, is in conflict with a constitutional act, or that some other enactment, or individual provisions thereof, conflicts with a constitutional act or a statute, it shall declare in its judgment that such statute or other type of enactment, or individual provisions thereof, shall be annulled on the day specified in the judgment. On the other hand, if the Constitutional Court comes to the conclusion that no grounds have been adduced for the invalidation of the statute or other enactment, or individual provisions thereof, it shall reject the petition on the merits. At this point, it is also necessary to add that if the Constitutional Court annuls a statute, or individual provisions thereof, on the basis of which implementing regulations have been issued, then it shall also state in its judgment which of the implementing regulations, or which individual provisions thereof, shall lose force and effect simultaneously with the statute.²⁷

At the end of the commentary on the legal regulation of the Constitutional Court, it is appropriate to mention Section 71 of the Constitutional Court Act, which states that if, on the basis of a statute or some other enactment which the Court has annulled, a court in a criminal proceeding has passed a judgment which has acquired legal effect but has not yet been enforced, the invalidation of this statute or other enactment shall constitute grounds for reopening the proceeding in accordance with the provisions of the law on criminal judicial proceedings. Other legally effective decisions issued on the basis of a statute, or some other enactment, which has been annulled remain unaffected; however, rights and duties arising from such decisions may not be enforced. This also applies

25 | For more details see Filip, Holländer and Šimíček, 2007, pp. 386–405.

26 | Ibid, pp. 405–421.

27 | For more details see Filip, Holländer and Šimíček, 2007, pp. 421–453.

in cases wherein a part of a statute or some other enactment, or any of the provisions thereof, is invalidated. Otherwise, rights and duties flowing from legal relations created prior to the invalidation of the statute, or other type of enactment, remain unaffected.²⁸

| **1.4. The Current Constitutional Court's Decision-Making in the Area of Fundamental Rights and Freedoms**

As for the Constitutional Court's decision-making in the area of fundamental rights and freedoms, in 2024, one of the most fundamental human rights, protected under Article 6 of the Charter, was addressed by the Constitutional Court in connection with criminal liability for the death of a child during a home birth. In Judgment Case no. I. ÚS 605/24 of 19 November 2024, the Constitutional Court upheld the conclusions of the general courts that the child was protected under criminal law from the moment it began to leave the mother's body during birth. It stated that the child was not a subject of the right to life under the first sentence of Article 6(1) of the Charter, as it was not proven that the entire body had left the mother while still alive. However, its life was protected under the second sentence of the same article. This protection, though weaker than after birth, is stronger than during pregnancy. During labour, the unborn child is also protected against interventions by the mother. If the life or health of the foetus or the child being born is at risk, reasonable restrictions on a woman's right to freely choose the circumstances and location of childbirth are permissible.²⁹

Over the past year, the Constitutional Court dealt with several cases concerning pre-trial detention. It emphasised the principle of adversarial proceedings in detention decisions in Judgment Case no. I. ÚS 306/24 of 28 February 2024, illustrating, among other things, how a breach of 'mere' legality – in this case, the failure to deliver the request for an extension of detention – does not necessarily render the contested decision unconstitutional. The principle of adversarial proceedings was also addressed in Judgment Case no. I. ÚS 682/24 of 24 April 2024, wherein the Constitutional Court found that this principle had been violated when the appellate court fully endorsed the public prosecutor's arguments without giving the complainant a real opportunity to respond to the appeal. The Constitutional Court stressed that in decisions concerning personal liberty, the right to a fair trial includes the creation of a space in which the party can effectively raise objections capable of influencing the court's decision.³⁰

This is also linked to the requirement for proper reasoning in decisions to keep an accused person in detention – a principle reaffirmed by the Constitutional Court, for example, in Judgment Case no. III. ÚS 5/24 of 20 March 2024. The general courts had repeatedly failed to provide adequate reasoning in detention decisions, errors that the Constitutional Court had already criticised in the same criminal case in Judgment Case no. III. ÚS 2498/23. The Constitutional Court reiterated the doctrine of heightened justification, which must be provided for the continued deprivation of personal liberty. A violation of the right to personal liberty may occur when a court merely repeats the grounds stated in the initial phase of detention without explaining why continued detention remains necessary. In line with its previous case law, the Constitutional Court also found errors in Judgment Case no. IV. ÚS 94/24 of 20 March 2024, in which the general court

28 | Ibid, pp. 744–762.

29 | See the Constitutional Court of the Czech Republic, 2025, pp. 38–52.

30 | See the Constitutional Court of the Czech Republic, 2025, pp. 38–52.

entirely ignored clearly and specifically formulated objections, in which the complainant had thoroughly explained circumstances relevant to their release from detention. The Constitutional Court had already ruled in this matter once before (Judgment Case no. IV. ÚS 2442/23), yet the general court repeated the unconstitutional approach.³¹

1.5. *The Circumstances Affecting the Effective Protection of Fundamental Rights*

At this point of the paper, it is necessary to answer the question of whether there are any circumstances in the Czech Republic that affect the effective protection of fundamental rights, whether there is any jurisdictional dispute or dominance struggle between the Constitutional Court and ordinary courts or the Supreme Court, and whether there is any resistance from courts to enforce the Constitutional Court's decisions. The answer to these questions follows from the consistent case-law of the Constitutional Court, in particular from Judgment Cases no. III. ÚS 425/97 of 2 April 1998, no. IV. ÚS 1642/11 of 8 November 2011, no. Pl. ÚS 20/15 of 19 July 2016 et seq., dealing in great detail with the binding nature of Constitutional Court judgments. It follows from these judgments that the binding nature of the Constitutional Court's judgments is almost absolute. The requirements for reflecting a cassation judgement in a subsequent decision of a general court are significantly stricter than in the case of mere precedential binding nature. While in the case of the so-called precedential binding nature of Constitutional Court's judgements, it is possible for a general court not to reflect the legal opinions of the Constitutional Court by presenting competing considerations in good faith and initiating a constitutional dialogue with the Constitutional Court. The cassation binding nature can only be reflected by unconditional respect for the Constitutional Court's judgement; however, of course, this is only if the facts of the case remain unchanged (for more on this, see Judgment Case no. III. ÚS 467/98 of February 25, 1999, et seq). Therefore, in proceedings following a cassation judgment, there is no room for consideration of whether the legal opinion of the Constitutional Court is correct, well-founded, or complete. This rule does not stem from the Constitutional Court's conviction of its own infallibility, but from the need to definitively end a specific dispute and prevent endless judicial ping-pong. This legal opinion is a logical expression of the very meaning of cassation in the legal system and is broadly supported in legal literature. Therefore, the Constitutional Court repeatedly emphasises that the rule according to which a judgment of the Constitutional Court cannot be appealed has the effect that a judgment of the Constitutional Court constitutes a final resolution of constitutional issues in a specific case, and must, therefore, be respected by the court concerned, even if the latter has doubts. The Constitutional Court adds that failure to respect a previous judgment of the Constitutional Court causes the proceedings before the courts to be prolonged further and without proper cause, thereby violating the complainant's fundamental right to a fair trial within the meaning of the European Convention on Human Rights, Article 36(1), and Article 38(2) of the Charter.³²

As for the potential domestic resistance to the European Court of Human Rights' decisions, the legal regulation under Section 119 of the Constitutional Court Act is absolutely crucial. Specifically, Section 119 of the Constitutional Court Act states that should the Constitutional Court have decided in a matter in which an international court found that, as the result of the encroachment of a public authority, a human right or fundamental

31 | Ibid, pp. 38–52.

32 | See the Constitutional Court of the Czech Republic, 2025, pp. 38–52.

freedom was infringed in conflict with an international treaty, a petition for rehearing may be submitted against such decision of the Constitutional Court under the conditions set down in this Statute. Such a petition may be submitted by a person who was a party to the proceeding before the Constitutional Court in a matter mentioned above, and in whose favour the international court decided. A petition for rehearing may be submitted within six months of the day the decision handed down by the international court becomes final in accordance with the relevant international treaty. In addition to the general requirements for a petition, a designation of the Constitutional Court's decision against which the petition is directed and of the international court's decision on which the petition rests must be included, and it must describe the conflict between the Constitutional Court's decision and that of the international court. The petitioner may submit with the petition for rehearing, a petition proposing the annulment of a statute or other legal enactment, or individual provisions thereof, the application of which gave rise to the facts which are the subject of the petition for rehearing, if they are, according to the petitioner's assertion, in conflict with a constitutional act, or with a statute if the petition concerns some other enactment. Apart from the petitioner, persons who were parties to the proceeding before the Constitutional Court, the rehearing of which is proposed, shall also be parties to the proceeding on the petition for rehearing; those persons who were secondary parties in that proceeding shall also have that status in the proceeding on the petition for rehearing.³³

In 2024, the Constitutional Court issued 3,712 decisions, of which 234 were judgments and 3,478 resolutions. Regarding judgments, 196 constitutional complaints were granted, 48 constitutional complaints were rejected, and 10 constitutional complaints were partially granted and partially rejected.³⁴

2. The National Human Rights Institution (NHRI)

| **2.1. The Six Key Pillars (Independence, Pluralism, Cooperation, Access, Funding, Broad Mandate) of the National Human Rights Institution (NHRI), in Line With the Paris Principles**

The National Human Rights Institution³⁵ (hereinafter 'the NHRI') in the Czech Republic will be established with effect from 1 July 2025 by Act no. 77/2025 Coll., amending the Defender Act (hereinafter 'the Amendment').³⁶ In connection with the expansion of the human rights mandate of the Defender, the mission of the institution is to be redefined. The traditional ombudsman task of promoting the principles of good administration³⁷ shall be expanded to include the task of protecting and promoting fundamental rights and freedoms. This solution is not unusual in foreign legal systems. In a number of European countries, this solution, which links independent ombudsman institutions

33 | Ibid.

34 | Ibid, p. 56.

35 | See also Meuwissen, 2015, pp. 441–484.

36 | See also Doubek, 2023, pp. 353–379.

37 | See also Křepelka, 2020, pp. 602–620.

with the protection of fundamental rights, has proven to be very effective.³⁸ Although the protection of fundamental rights is already well represented in the current activities of the Defender, the current legislation still perceives it either as a supplementary aspect of the ombudsman's activities (under the current wording of the law, the ombudsman only contributes to the protection of fundamental rights), or the ombudsman's human rights activities focus on specific human rights issues (i.e. protection against ill-treatment, equal treatment, and the rights of persons with disabilities). The individual activities of the Defender shall be aimed at achieving this general objective. Thus, the Defender shall contribute to the protection and promotion of fundamental rights and freedoms through all of its activities, including both its traditional ombudsman and existing human rights powers. To this end, the Defender shall also conduct analyses and research, evaluate the protection of individual fundamental rights and freedoms, formulate recommendations for its improvement, and raise awareness of these rights through education and information.³⁹

In Section 1a(1)(a) of the Amendment, new powers are assigned to the Defender as a national human rights institution,⁴⁰ i.e. the performance of tasks in the area of protection and enforcement of fundamental rights and freedoms under Section 21a of the Amendment. Specifically, Section 21a of the Amendment states that, for the purpose of protecting and promoting fundamental rights and freedoms, the Defender (a) systematically monitors and evaluates the fulfilment of fundamental rights and freedoms; (b) conducts research and analysis in the field of fundamental rights and freedoms; (c) issues reports, opinions, and recommendations on the fulfilment of fundamental rights and freedoms; (d) supports the fulfilment of fundamental rights and freedoms and recommends measures to improve their protection; (e) supports raising awareness of fundamental rights and freedoms in society, including education in the field of human rights; (f) cooperates and ensures the exchange of information with relevant international bodies that monitor the Czech Republic's compliance with its obligations under international treaties on fundamental rights and freedoms; and (g) cooperates and ensures the exchange of information with domestic and foreign bodies and persons active in the field of the protection of fundamental rights and freedoms, including representatives of civil society.⁴¹

The other provisions of the Amendment are a list of all the existing powers of the Defender. The definition of these powers has remained virtually unchanged. Only minor legislative and technical amendments have been made in connection with the new Section 1a of the Defender Act, whereby in Section 1a(1)(f) a reference has been added to directly applicable EU regulation, namely Regulation (EU) no. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union. Many of the existing powers overlap significantly, and some could be subsumed under the new powers of the national human rights institution.⁴² However, as these competences fulfil many specific obligations of the Czech Republic under EU or international law, they remain subject to separate legislation. A more detailed description of the activities through which the Defender should fulfil his individual competences is

38 | See also Lacatus, 2022, pp. 192–213.

39 | The Ministry of Justice of the Czech Republic, 2024.

40 | See also Vidović and Petričušić, 2024, pp. 113–146.

41 | The Ministry of Justice of the Czech Republic, 2024.

42 | See also de Beco, 2007, pp. 331–370.

contained in the other provisions of the Defender Act. The investigation procedure is described in Section 9 - Section 21, and the fulfilment of individual human rights agendas is then contained in Section 21a - Section 21i.⁴³

The legal regulation under Section 1b of the Amendment defines the personal competence of the Defender. It contains an explicit definition of the range of entities whose activities the Defender shall be able to deal with. This is important for future accreditation and for the general legal certainty of all entities concerned. However, this does not mean that the Defender has any regulatory power over these entities to enforce compliance with his conclusions. The findings of the Defender shall continue to be of a recommendatory nature, both in the case of individual complaints and in the case of monitoring and supervision of the fulfilment of fundamental rights and freedoms. The Defender's activities shall not have an authoritative character in this respect. They shall not be an exercise of state power in the true sense of the word. The definition of personal jurisdiction varies in individual areas of competence. The scope of personal jurisdiction is defined in such a way as to cover all entities that are relevant for monitoring the fulfilment of the specified range of fundamental rights and freedoms.^{44 45}

In Section 1b(1) of the Amendment, the range of entities whose activities may be subject to investigation by the Defender is specified. There is no change from the current situation. An investigation by the Defender is a specific form of activity whose aim is to independently assess the conduct of the investigated entity in an individual case. As before, the subject of an investigation by the Defender may only be the exercise of state administration, in particular, by state authorities and local self-government bodies. In the text of the Defender Act, they are referred to by the legislative abbreviation 'authorities'. The text of this paragraph is, with only minor legislative technical adjustments, similar to the currently valid Section 1(2) of the Defender Act. Closely related to the proposed Section 1b(1) is Section 1b(5) of the Amendment, which excludes certain state authorities from the investigative powers of the Defender. These are the Parliament, the President of the Republic and the Government, the Supreme Audit Office, the intelligence services of the Czech Republic, law enforcement authorities, public prosecutors' offices and courts, with the exception of the administrative units of public prosecutors' offices and the state administration of courts. A similar list of entities excluded from the jurisdiction of the Defender is also contained in the current wording of the Defender Act.⁴⁶

The exercise of the investigative (supervisory) powers of the Defender⁴⁷ in relation to these state authorities could be considered inappropriate (the President, the Government, the intelligence services), or ill-conceived (the Chamber of Deputies), or potentially threatening to their independent exercise of their powers (the Supreme Audit Office). In the case of exclusions relating to the decision-making activities of courts or criminal justice authorities, the purpose is to clearly define the absence of the Defender's supervisory powers over these entities in individual cases. This exclusion is established for the exercise of investigative powers. In the case of the exercise of the mandate of an NHRI, the Defender should be entitled to collect information and, on that basis, to evaluate in

43 | The Ministry of Justice of the Czech Republic, 2024.

44 | See also Hossain et al., 2021.

45 | The Ministry of Justice of the Czech Republic, 2024.

46 | The Ministry of Justice of the Czech Republic, 2024.

47 | See also Magiera and Weiß, 2014, pp. 489–536.

general terms the practices of all domestic authorities in the implementation of fundamental rights and freedoms. In practice, this would most often involve monitoring court case law and domestic legislative activity, and analysing it from the perspective of the fulfilment of fundamental rights and freedoms. However, this would not allow the Defender to interfere with or influence the activities of courts or other state authorities.⁴⁸

Legal regulation under Section 1b(2) of the Amendment defines the range of facilities whose activities the Defender shall be able to examine during systematic visits carried out for the purpose of preventive protection against ill-treatment. Although the Defender already carries out inspections in these facilities under the current legislation, the legislator nevertheless considers it important that the Amendment emphasises that Section 1b(2) also applies to facilities where preliminary court measures, educational measures imposed by the court, and measures imposed by the juvenile court are conducted.⁴⁹

In the case of Section 1b(3) of the Amendment, the personal jurisdiction of the Defender for the exercise of the power to monitor expulsion is established. This shall apply both to facilities where foreigners may be placed, which are mostly prisons or detention facilities, and to the entities that administer them, specifically, the Prison Service of the Czech Republic and the Refugee Facilities Administration of the Ministry of the Interior. In this case, too, the Amendment does not aim to change the manner or scope of the Defender's monitoring of expulsion.⁵⁰

The amendment newly regulates the qualification requirements and the process of nomination and election of the ombudsman and deputy ombudsman such that they are closer to the requirements for NHRI accreditation at level A. This proposal reflects the need to strengthen transparency, openness, and consideration of expertise in the nomination and election process. Many bodies recommend taking expertise into account within the evaluation advisory body or, more generally, a participatory process open to as many candidates as possible. Here, the GANHRI⁵¹ Subcommittee on Accreditation, which is responsible for accrediting NHRIs in accordance with the Paris Principles,⁵² can be mentioned. This requirement is also part of the Venice Principles, which set out the optimal functioning of ombudsman institutions. Furthermore, this method of establishment is recommended by the European Union Agency for Fundamental Rights (FRA)⁵³ and is also mentioned by the Committee of Ministers of the Council of Europe.⁵⁴

Thus, it can be assumed that this prerequisite is important for the purpose of A-level accreditation, and for this reason, the number of eligible nominators for the position of the Defender and their Deputy is being expanded to include a body composed of representatives of higher education institutions. The intention of the submitter of the Amendment in selecting a new nominator of candidates was to find a body with a sufficient degree of independence and impartiality⁵⁵ which, given the professional requirements for the performance of the function, would be able to generate professionally qualified candidates and whose existence is already provided for by the legal order of the Czech Republic.

48 | The Ministry of Justice of the Czech Republic, 2024.

49 | Ibid.

50 | Ibid.

51 | See also Takata, 2022, pp. 285–305.

52 | Ramcharan et al., 2023, pp. 105–108.

53 | See also De Schutter, 2009, pp. 93–136.

54 | The Ministry of Justice of the Czech Republic, 2024.

55 | See also Sześciło and Zakroczyński, 2021, pp. 1819–1834.

At the same time, it is necessary to ensure that, prior to the election by the Chamber of Deputies, candidates undergo an evaluation process wherein their qualifications for the position are assessed and which ensures broader participation in the selection process. Consequently, under Section 2(4) of the Amendment, the Chamber of Deputies shall establish an evaluation committee composed of representatives of the scientific and academic spheres, civil society, national and other social groups, taking into account the fair representation of men and women.⁵⁶

The legal regulation under Section 2(4) of the Amendment does not prevent the Chamber of Deputies from allowing representatives of public administration to participate in the evaluation committee; however, such participation may only be permitted in an observer or advisory role. The Paris Principles and the recommendations of the Sub-Committee on Accreditation (GANHRI) prohibit representatives of public administration from having decision-making powers within the evaluation committee. Thus, they cannot be full members, including the right to vote in the evaluation committee.⁵⁷

As for the required qualifications,⁵⁸ the Amendment removes the provision linking them to the rules governing eligibility for election to the Senate. The law shall now regulate qualification requirements separately. With regard to maintaining citizenship as one of the qualifications laid down by law, the submitter may make use of the exception in Article 45(4) of the Treaty on the Functioning of the EU, in accordance with the relevant case-law of the Court of Justice of the European Union. Contrary to previous requirements, a specific qualification has been added for the Defender and their Deputies, namely, previous experience in the field of protecting or promoting fundamental rights and freedoms for at least five of the last ten years. This experience refers to a non-exhaustive list of professional activities, whether in public authorities, academia or the non-profit sector, the essence of which is either the promotion or protection of fundamental rights and freedoms. The requirement of such experience is considered to be fulfilled in particular by activities carried out within the Human Rights and Minorities Department of the Office of the Government, the Human Rights and Transformation Policy Department of the Ministry of Foreign Affairs, the Government Council for Human Rights or the Office of the Public Defender of Rights, the position of Government Commissioner for the Representation of the Czech Republic before the European Court of Human Rights in Strasbourg and activities carried out within his office, the position of Government Commissioner for the Representation of the Czech Republic before the Court of Justice of the European Union, the position of judge, legal practice, academic activities at public universities focusing on human rights, or work performed in non-profit organisations whose activities are aimed at promoting or protecting human rights.⁵⁹

In Section 2a(1) and (2) of the Amendment, the mutual relations between the Defender and their Deputy are defined. The Amendment attempts to clarify certain issues concerning the Deputy's participation in the exercise of the Defender's powers. Given the similarity of the election procedure for the Defender and his Deputy (and the similar degree of legitimacy derived from the Chamber of Deputies), the Amendment formally strengthens the role of the Deputy. Unlike the current wording of Section 2(4) of the Defender Act (the

56 | The Ministry of Justice of the Czech Republic, 2024.

57 | Ibid.

58 | Meuwissen, 2015, pp. 441–484.

59 | The Ministry of Justice of the Czech Republic, 2024.

Defender may delegate part of his powers to their Deputy), it has been established that the delegation of part of the Defender's powers to their Deputy is not merely an optional possibility at the Defender's discretion. Therefore, the Amendment expressly states that the division should take place no later than 30 days after the deputy ombudsman takes office. The proposal also assumes that the Deputy should be entrusted with half of the Defender's powers. In this respect, the Amendment reflects the long-standing practice of dividing responsibilities between ombudsmen and their deputies. Defenders have delegated approximately half of the matters entrusted to them to their deputies, in terms of workload, importance, and number. Such a division is generally desirable, also in view of the overall scope of work associated with the exercise of the powers entrusted to the Defender. Since the institution of the Defender was established, the overall volume of work has increased significantly and is difficult for one person to manage.⁶⁰

In addition, the Amendment assumes that the Deputy shall fully represent the Defender in their absence. In practice, only long-term inability to perform the function (i.e. hospitalisation, resignation, etc.) is considered 'absence'. The Amendment aims to ensure that the ombudsman's function is performed continuously, even if one of the functions remains temporarily vacant. The requirement to ensure the stability and continuity of the mandate is demanded by the Sub-Committee on Accreditation (GANHRI) with reference to point B.3 of the Paris Principles.⁶¹ For this reason, in the event of failure to comply with the statutory 30-day deadline, it is also proposed to allow the Deputy to exercise *ex lege* the powers of the Defender under Section 1a(1)(a), (c) and (e) to (g) of the Amendment, namely, the powers exercised by the Defender in the field of the protection of fundamental human rights.⁶²

These are the powers of an NHRI, a national preventive mechanism for ill-treatment (NPM)⁶³, monitoring of the rights of persons with disabilities (CRPD),⁶⁴ equal treatment (DIS) and protection of the right of EU citizens and their family members to free movement. The main aim of the proposed provision is to ensure that, in the event of inaction or potential disagreements between the Defender of Rights and their Deputy, the requirement to ensure the stability and continuity of the mandate of the NHRI is not jeopardised. However, the Amendment leaves the different internal arrangements between the Defender and their Deputy to their discretion and mutual agreement.⁶⁵

The legal regulation under Section 2a(2) of the Amendment imposes an obligation on the Defender and their Deputy to cooperate with each other. Although the exercise of their mandates should be formally separate and independent, in practice they shall be linked not only by a shared office ensuring their activities but also by their common task of protecting and promoting fundamental rights and freedoms. As for Section 2b of the Amendment, the seat of the Office of the Public Defender of Rights remains in Brno. At the same time, in the context of Section 1c of the Amendment, Brno is the seat of the Defender. However, this does not rule out the possibility of establishing a branch office in Prague. The main reason for this is its proximity to the seat of the government, central

60 | Ibid.

61 | See also White, 2020, pp. 21–35.

62 | The Ministry of Justice of the Czech Republic, 2024.

63 | See also Carver and Handley, 2020, pp. 387–408.

64 | See also Caughey and Liu, 2024, pp. 617–641.

65 | The Ministry of Justice of the Czech Republic, 2024.

state administration bodies, and both Chambers of Parliament, with which they shall be in frequent contact regarding recommendations for improving the fulfilment of fundamental human rights and freedoms.⁶⁶

The Amendment deleted from Section 3(1) of the Defender Act is the prohibition on concurrently holding the office of judge and public defender or deputy public defender. In addition, the Amendment added a new reason for temporary suspension from the office of judge to Section 99(4) of Act no. 7/2002 Coll., on Courts and Judges, namely, election of a judge to the office of Public Defender of Rights, and Deputy Public Defender of Rights. The temporary suspension of a judge's duties would take effect by operation of law on the date of taking up the aforementioned positions. During this period, the judge would not be entitled to remuneration or other benefits associated with the performance of the duties of a judge under a special legal regulation.⁶⁷

The reason for this legal provision is that it is generally desirable, given the importance of the office of the Defender and the tasks entrusted to them, that the legal provisions governing candidacy for and performance of these offices should not unjustifiably exclude an entire professional group, whose members (perhaps best) meet the requirements expected of a candidate for the office of the Defender (experienced lawyer, objective, impartial, professionally knowledgeable). The reasons for establishing the incompatibility of the office of judge with that of the Defender on the basis of the law (authorisation in Article 82(3) in fine of the Constitution) are not apparent even on the basis of an analysis of the very concept of incompatibility as one of the components, and guarantees of judicial independence and the separation of powers. The office of the Defender is characterised by the absence of prescriptive and decision-making powers (it does not decide on rights and obligations).⁶⁸

Although the Defender is often associated with legislative power (under Section 2 of the Defender Act, the Defender is elected to office by the Chamber of Deputies, under Section 5(2) of the Defender Act, the Defender is responsible to the Chamber of Deputies for the performance of their duties, and under Section 23 and 24 of the Defender Act, the Defender must submit reports on their activities to the Chamber of Deputies at specified intervals), administrative law characterises them as an autonomous state supervisory body. The independence (institutional aspect) and impartiality (subjective aspect) of the Defender's office are reinforced by a number of provisions of the Defender Act (criminal procedural immunity, fixed term of office, exhaustively defined grounds for termination of office, confidentiality, prohibition of membership in a political party or movement, incompatibility with other public functions, the Defender's salary, organisational independence, and so on). Therefore, based on the above, there seems to be no reason to consider the function of the Defender incompatible with the function of a judge due to insufficient fulfilment of the principle of separation of powers.⁶⁹

66 | Ibid.

67 | Ibid.

68 | Ibid.

69 | The Ministry of Justice of the Czech Republic, 2024; see also Young, 2025, pp. 1–31; Sunstein, 2025, pp. 149–179.

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BETWEEN COMMITMENTS AND COMPLIANCE: HUMAN RIGHTS DYNAMICS IN NORTH MACEDONIA'S EU ACCESSION PROCESS

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ABSTRACT

This paper comprehensively analyses human rights issues and judicial reform efforts in North Macedonia within the context of its negotiations for European Union (EU) accession. Focusing on Chapters 23 and 24 of the EU Acquis package, the paper examines the country's progress in judicial independence, fundamental rights protection, combatting organised crime and terrorism, and migration and asylum policies.

In analysing progress and challenges, the paper highlights achievements in legislative reforms, improvements in the judiciary and successes in combatting organised crime while also addressing remaining issues such as political interference in the judiciary, human rights concerns and institutional gaps.

The conclusion synthesises key findings, assesses North Macedonia's progress towards EU accession, and outlines the future outlook and potential impacts of continued reforms. Emphasising the importance of sustained commitment to European values and principles, the paper underscores the transformative potential of North Macedonia's European journey and the collective pursuit of a future anchored in democracy, prosperity and unity.

KEYWORDS

North Macedonia
human rights
rule of law
fundamental rights
European integration

1. Introduction

North Macedonia, formerly known as the Former Yugoslav Republic of Macedonia (FYROM), has pursued membership in the European Union (EU) for several decades. The country's EU accession process officially began when it applied for EU membership

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in 2004. The European Council granted today's North Macedonia candidate status in December 2005, recognising its progress in meeting the political and economic criteria set by the Copenhagen European Council in 1993.²

Despite being granted candidate status in 2005, accession negotiations were delayed due to a long-standing name dispute with Greece. This dispute, centred on using the name 'Macedonia,' was resolved in June 2018 by signing the Prespa Agreement, in which Macedonia agreed to change its name to North Macedonia.³ This historic agreement paved the way for the European Council to agree in March 2020 to open accession negotiations with North Macedonia.⁴

The European Commission has closely monitored North Macedonia's progress throughout this period through annual country reports. These reports assess the country's advancements and challenges in various areas, including judicial independence, anti-corruption measures, human rights, and adherence to EU standards and values.⁵

Meeting the requirements of Chapters 23 and 24 is particularly significant for North Macedonia, given the historical and ongoing challenges in these areas. Ensuring judicial independence, combatting corruption, protecting fundamental rights, and securing borders are not just EU accession criteria but are also essential for the country's socio-political stability and development.⁶

For North Macedonia, the reports on Chapters 23 and 24 are particularly critical, as these chapters are often among the most challenging and are usually opened early and closed last in the negotiation process.⁷ The rigorous monitoring and detailed evaluations provided by the country reports ensure that North Macedonia's progress in these areas is closely tracked and that necessary reforms are implemented effectively.⁸

2. Chapter 23: Judiciary and Fundamental Rights

Chapter 23 of the EU Acquis, dealing with Judiciary and Fundamental Rights, is pivotal in the accession negotiations for North Macedonia. It focuses on establishing a robust legal framework that guarantees the independence and impartiality of the judiciary, implements effective anti-corruption measures, and ensures the protection of fundamental human rights.

| 2.1. *Functioning of the Judiciary and Prosecution Service*

Judicial independence refers to the freedom of judges to make decisions based solely on the law and facts of a case, without external pressures or influence from other branches of government, political parties, or other interest groups.⁹ For North Macedonia, achieving true judicial independence has been a significant challenge, given the

2 | European Council, 2005.

3 | Prespa Agreement, 2018.

4 | European Council, 2022.

5 | Republic of North Macedonia, no date.

6 | European Commission, 2021a.

7 | European Commission, 2022a.

8 | European Commission, 2023a.

9 | European Commission, 2025.

historical context of political influence over the judiciary.¹⁰ The European Commission's reports have pointed out several areas of concern.¹¹

1. **Appointment and Promotion of Judges:** The process for appointing and promoting judges has often been criticised for lacking transparency and being susceptible to political influence. Reforms have been recommended to ensure that these processes are merit-based and insulated from political pressures.
2. **Judicial Council:** The Judicial Council, which plays a crucial role in overseeing the judiciary, must operate independently and impartially. The Commission has stressed the importance of reforming the composition and functioning of the Judicial Council to prevent political interference and ensure it acts in the best interests of judicial integrity.
3. **Tenure and Security of Judges:** Ensuring judges have secure tenure and are protected from arbitrary dismissal is vital for maintaining judicial independence. The reports have emphasised the need for legal safeguards that protect judges from undue influence and ensure their decisions are respected and upheld.

Impartiality in judicial proceedings means that judges must not have any personal interest in the outcomes of cases they adjudicate and must treat all parties fairly and without bias.¹²

1. The European Commission has noted several measures North Macedonia needs to implement to enhance judicial impartiality.¹³
2. **Training and Education:** Continuous professional development and training for judges on the principles of impartiality and judicial ethics are essential. This includes training on EU laws and human rights standards to ensure judges are well-equipped to handle cases impartially.
3. **Monitoring and Accountability:** Establishing mechanisms to monitor judicial conduct and hold judges accountable for bias or misconduct is crucial. The Commission has recommended the creation of independent bodies to investigate complaints against judges and take appropriate disciplinary action when necessary.
4. **Transparency in Proceedings:** Increasing transparency in judicial proceedings can help build public trust in the judiciary's impartiality. This includes publishing court decisions and ensuring that court processes are open and accessible to the public and media.
5. North Macedonia has undertaken several reforms to address these issues, but challenges remain.¹⁴ Key reforms include:
6. **Amendments to the Law on Courts and Judicial Council:** These amendments aim to enhance the transparency and merit-based nature of judicial appointments and promotions. However, effective implementation and continuous monitoring are required to ensure these reforms have the desired impact.

10 | Freedom House, 2021.

11 | Popovikj, 2021.

12 | Transparency International, nda.

13 | European Commission, 2018.

14 | Popovikj, 2021.

7. Strengthening the Role of the Academy for Judges and Public Prosecutors: The Academy provides training and education for judges and prosecutors, focusing on promoting judicial independence and impartiality. Enhancing the Academy's role and resources is critical for ongoing judicial reform efforts.
8. Anti-corruption measures are critical to judicial reform and the broader efforts to align North Macedonia with EU standards.¹⁵
9. North Macedonia has made significant strides in developing a comprehensive legal and institutional framework to combat corruption¹⁶. Critical components of this framework include:
 10. Anti-Corruption Legislation: The country has enacted several laws to prevent and combat corruption. These include laws on preventing corruption, conflicts of interest, and the protection of whistleblowers. The legal framework aligns with international standards and provides a basis for prosecuting corruption cases.
 11. State Commission for the Prevention of Corruption (SCPC): The SCPC plays a central role in the country's anti-corruption efforts. It is responsible for preventing corruption, investigating corruption-related offenses, and promoting transparency and accountability in public administration. Strengthening the SCPC's capacity and independence has been a priority in the reform process.¹⁷
 12. Despite the robust legal framework, implementing anti-corruption measures faces several challenges, as highlighted in the European Commission's reports¹⁸:
 13. Political Interference: One of the most significant challenges is political interference in anti-corruption bodies and the judiciary. Ensuring the independence of these institutions is crucial for their effectiveness. The reports have noted instances where political pressure has hampered investigations and prosecutions.
 14. Resources and Capacity: The SCPC and other relevant institutions often need more resources and capacity to carry out their mandates effectively. This includes the need for adequate staffing, training, and financial resources to conduct thorough investigations and enforce anti-corruption laws.
 15. Judicial Inefficiency: Corruption cases often face delays in the judicial process, undermining public confidence in the system. Enhancing the judiciary's efficiency and effectiveness in handling corruption cases is essential for building trust and ensuring justice is served.

Ensuring the judiciary's integrity is essential for maintaining public confidence in the legal system and upholding the rule of law.¹⁹ Implementing and enforcing codes of conduct for judges and prosecutors is a fundamental aspect of integrity measures. These codes outline the ethical principles and standards of behaviour expected from judicial officials. In North Macedonia, efforts have been made to develop comprehensive codes of conduct that align with international standards.²⁰ Key elements include:

15 | Netpress, no date.

16 | Regional Anti-Corruption Initiative, no date.

17 | State Commission for the Prevention of Corruption, no date.

18 | European Commission, 2023b.

19 | Greenstein, 2019.

20 | Transparency International, ndb.

1. **Impartiality and Independence:** Judges and prosecutors must act impartially and independently, free from external influence or personal bias.
2. **Confidentiality:** Judicial officials must maintain the confidentiality of information obtained during their duties and avoid disclosing sensitive information improperly.
3. **Conflict of Interest:** Clear guidelines are provided to identify and manage potential conflicts of interest, ensuring that judicial decisions are based solely on the law and facts of each case.

Continuous professional development and training are critical for promoting integrity within the judiciary. North Macedonia has implemented several initiatives to enhance the training of judges and prosecutors on ethical standards and integrity measures:²¹

1. **Judicial Academy:** The Academy for Judges and Public Prosecutors offers specialised training programmes on judicial ethics, anti-corruption measures, and the principles of judicial independence. These programmes are designed to equip judicial officials with the knowledge and skills to uphold integrity.²²
2. **Workshops and Seminars:** Regular workshops and seminars are conducted to raise awareness of integrity issues and provide practical guidance on adhering to ethical standards. These events often feature experts from international organisations and other EU Member States who share best practices and experiences.

The European Commission's reports highlight the need for robust systems to detect and address misconduct within the judiciary²³:

1. **Disciplinary Procedures:** Clear and transparent disciplinary procedures are in place to investigate misconduct allegations and impose appropriate sanctions. These procedures must be impartial and ensure due process for the accused.
2. **Oversight Bodies:** Independent oversight bodies, such as judicial councils or ethics commissions, play a crucial role in monitoring compliance with integrity standards. These bodies are responsible for investigating complaints, conducting audits, and providing recommendations for improving integrity measures.²⁴
3. **Whistleblower Protections:** Legal protections for whistleblowers encourage the reporting of unethical behaviour without fear of retaliation. This is vital for uncovering misconduct and promoting a culture of accountability within the judiciary.²⁵

Despite progress in implementing integrity measures, several challenges remain²⁶:

1. **Political Interference:** Ensuring the true independence of oversight bodies and disciplinary procedures from political influence is a persistent challenge. The European Commission has emphasised the need for further reforms to protect these institutions from external pressures.

21 | Academy for Judges and Public Prosecutors, no date.

22 | Najchevska et al., 2020.

23 | European Commission, 2023a.

24 | OECD, 2020.

25 | OECD, 2016; National Whistleblower Center, 2023.

26 | National Democratic Institute, no date.

2. **Resource Constraints:** Limited resources and capacity can hinder the effectiveness of training programmes and monitoring mechanisms. Ensuring adequate funding and support for these initiatives is crucial for their success.
3. **Public Perception:** Building public trust in the judiciary requires the consistent and transparent enforcement of integrity measures. Continued efforts to improve transparency and accountability are needed to address public scepticism and enhance the credibility of the judicial system.

The caseload and clearance rate of the judiciary are essential indicators of its efficiency and effectiveness in delivering justice. The caseload refers to the number of cases pending before the courts at any given time.²⁷ Factors Contributing to High Caseload:

1. **Legislative Complexity:** Complex legal frameworks and frequent changes in legislation can contribute to a high caseload. Clarity and consistency in laws and regulations can help streamline court proceedings and reduce unnecessary litigation.
2. **Resource Constraints:** Limited resources, including judicial personnel, court infrastructure, and financial support, can impact the judiciary's capacity to handle its caseload efficiently. Investing in additional resources and modernising court processes can alleviate these challenges.
3. **Procedural Delays:** Procedural delays, such as adjournments, postponements, and scheduling conflicts, can prolong the resolution of cases and contribute to backlog. Implementing measures to expedite court proceedings and reduce unnecessary delays is essential for improving caseload management.

The clearance rate measures the efficiency of the judiciary in resolving cases within a specific period. A high clearance rate indicates that courts are processing cases in a timely manner and reducing the backlog of pending cases. North Macedonia has faced challenges in achieving a satisfactory clearance rate, with many cases remaining unresolved for extended periods.²⁸ North Macedonia has implemented several reforms to improve caseload management and clearance rates:²⁹

1. **Judicial Reform Strategy:** The government has adopted a comprehensive judicial reform strategy to modernise court processes, enhance judicial efficiency, and reduce case backlog. This includes measures to digitise court records, streamline procedures, and improve access to justice.
2. **Capacity Building Initiatives:** Efforts have been made to increase the judiciary's capacity through training programmes, recruitment of additional judges and court staff, and investment in court infrastructure. These initiatives aim to address resource constraints and improve the speed and quality of case processing.
3. **Promotion of Alternative Dispute Resolution:** The government has promoted the use of alternative dispute resolution mechanisms to reduce the court's caseload. Initiatives to train judges and legal professionals in mediation and arbitration techniques aim to facilitate faster and more efficient dispute resolution.

27 | Council of Europe, no date.

28 | European Commission, 2022a.

29 | European Commission, 2023a.

| 2.2. Fundamental Rights

Fundamental rights are the cornerstone of a democratic society, ensuring the protection of individual liberties and freedoms.³⁰ Chapter 23 of the EU Acquis addresses these critical issues, emphasising the need for robust protections and adherence to international human rights standards.

The conditions within the prison system are critical to respecting human rights and ensuring the dignity of individuals deprived of their liberty.³¹

Reports from the European Commission on North Macedonia have highlighted significant issues regarding the prison system's conditions. The primary concerns are overcrowding, inadequate facilities, and limited access to healthcare and rehabilitation programmes.³² These challenges pose profound human rights implications and demand prompt action from authorities.³³

Overcrowding is prevalent in North Macedonia's prisons, with facilities often operating beyond their intended capacity.³⁴ This overcrowding leads to heightened tensions among inmates, increased risk of violence and exploitation, and undermines efforts toward rehabilitation. Mitigating overcrowding requires a multifaceted approach, including measures to reduce the prison population, improve infrastructure, and promote alternatives to incarceration.

Many of North Macedonia's prisons suffer from outdated infrastructure and inadequate facilities.³⁵ Overcrowded cells, poor sanitation, and limited access to basic amenities are common issues in prisons. Upgrading the physical conditions of prisons is crucial for ensuring inmates' safety, health, and well-being. This necessitates renovations, construction of new facilities, and adherence to modern prison design and construction standards.

Access to healthcare and rehabilitation programmes is fundamental for promoting prisoners' physical and mental well-being and aiding their reintegration into society upon release.³⁶ However, reports indicate deficiencies in healthcare services within North Macedonia's prisons, including shortages of medical staff and inadequate medical facilities.³⁷ Similarly, rehabilitation programmes such as vocational training and education are not consistently available. Improving access to healthcare and rehabilitation services is imperative for upholding prisoners' rights and reducing recidivism rates. North Macedonia has initiated reforms to address challenges within its prison system³⁸:

1. **Legislative Reforms:** The government has enacted legislative reforms to improve prison conditions and safeguard inmates' rights. These reforms include strengthening oversight mechanisms, expanding legal assistance, and promoting alternatives to imprisonment for non-violent offenders.

30 | European Commission, nda.

31 | Office of the High Commissioner for Human Rights (OHCHR), 1990.

32 | European Western Balkans, 2023.

33 | European Commission, 2022a.

34 | Amnesty International, 2021.

35 | European Western Balkans, 2023.

36 | Møller et al., 2007.

37 | Council of Europe – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2024.

38 | European Western Balkans, 2023.

2. **Infrastructure Investments:** Efforts have been made to upgrade prison infrastructure and facilities. Renovations, construction of new prisons, and improvements in sanitation aim to enhance living conditions for inmates.
3. **Healthcare and Rehabilitation Initiatives:** Initiatives have been launched to enhance prison access to healthcare and rehabilitation programmes. This includes increasing medical staffing, expanding medical facilities, and providing educational and vocational opportunities for inmates.

The treatment of detainees in North Macedonia has been a subject of scrutiny, with reports highlighting instances of mistreatment, abuse, and inadequate access to legal representation. Concerns have been raised regarding the use of excessive force by law enforcement officials, arbitrary detention practices, and lack of safeguards against torture and ill-treatment.³⁹

Protecting detainees against torture and ill-treatment is a non-negotiable obligation under international law.⁴⁰ North Macedonia is party to various international treaties and conventions that prohibit torture and cruel, inhuman, or degrading treatment or punishment. However, reports suggest that instances of torture and ill-treatment continue to occur, highlighting the need for more robust safeguards and accountability mechanisms.

Access to legal representation is a fundamental right essential for safeguarding detainees' rights and ensuring fair and impartial legal proceedings.⁴¹ However, challenges exist in North Macedonia regarding detainees' access to legal counsel, particularly for vulnerable groups such as migrants, refugees, and individuals from marginalised communities. Efforts are needed to strengthen legal aid services and ensure that detainees can effectively exercise their right to legal representation.⁴²

Legislative reforms protect fundamental rights and align national laws with European Union standards. In the context of North Macedonia's EU accession process, legislative reforms are essential for strengthening the rule of law, promoting accountability, and upholding human rights.⁴³

North Macedonia has made progress in enacting legislative reforms to align with EU standards, particularly in criminal justice, human rights, and anti-corruption. However, challenges remain in fully implementing and enforcing these reforms, including institutional capacity, political will, and public awareness.⁴⁴

Harmonising national legislation with the EU *acquis* is a complex and ongoing process that requires comprehensive reforms across various sectors. North Macedonia has made significant efforts to align its legal framework with EU standards, particularly in the areas covered by Chapters 23 and 24 of the *Acquis*.⁴⁵

Combating corruption is a priority for North Macedonia's EU accession process, requiring legislative reforms to strengthen anti-corruption mechanisms, enhance

39 | Amnesty International, 2024.

40 | United Nations, 1984.

41 | Lawson-Remer, 2013.

42 | European Union Agency for Fundamental Rights (FRA), 2023.

43 | European Commission, 2023a.

44 | European Commission, ndc.

45 | European Commission, ndc.

transparency, and promote accountability.⁴⁶ Efforts have been made to enact laws criminalising corruption, establish independent anti-corruption agencies, and promote transparency in public procurement and financial transactions.⁴⁷

Despite progress in legislative reforms, challenges persist in fully implementing and enforcing these measures:

1. **Institutional Capacity:** Building institutional capacity and ensuring effective implementation of legislative reforms remain ongoing challenges. This includes training judges, prosecutors, and law enforcement officials and strengthening the capacity of regulatory bodies and oversight institutions.
2. **Political Will:** Sustaining political will and commitment to reforms is essential for overcoming resistance to change and addressing vested interests that may hinder progress. Political stability and consensus-building are crucial for advancing legislative reforms and ensuring their effective implementation.
3. **Public Awareness:** Raising public awareness of legal rights and responsibilities is vital for promoting respect for the rule of law and fostering a culture of compliance with legal norms. Public education campaigns, legal aid services, and civic engagement initiatives can empower citizens and enhance their understanding of their rights and obligations under the law.

Observer status in the Fundamental Rights Agency (FRA) allows countries aspiring to EU membership, like North Macedonia, to engage in discussions on fundamental rights issues and benefit from the agency's expertise and resources.⁴⁸ North Macedonia obtained observer status in the FRA in 2020, granting it access to the agency's activities, reports, and expertise on fundamental rights issues. Observer status in the FRA offers several benefits for North Macedonia:

1. **Access to Expertise:** North Macedonia can access the FRA's expertise and resources on fundamental rights issues, including the rule of law, non-discrimination, and data protection. This allows the country to benefit from best practices, research findings, and policy recommendations to address human rights challenges domestically.⁴⁹
2. **Networking Opportunities:** Participation in FRA meetings and events facilitates networking and knowledge-sharing with other EU Member States and observer countries. This enables North Macedonia to build partnerships, exchange experiences, and foster cooperation on human rights issues of mutual interest.⁵⁰
3. **Capacity Building:** Engagement with the FRA can contribute to capacity building and institutional strengthening in North Macedonia, particularly in data collection and analysis, human rights monitoring, and legal reforms. By adopting international standards and best practices, North Macedonia can enhance its human rights infrastructure and promote accountability and transparency.⁵¹

46 | GRECO, 2023.

47 | Government of North Macedonia, 2021-2025.

48 | European Union Agency for Fundamental Rights (FRA), 2020.

49 | European Union Agency for Fundamental Rights (FRA), 2022.

50 | European Union Agency for Fundamental Rights (FRA), 2021.

51 | European Union Agency for Fundamental Rights (FRA), nda.

4. Policy Influence: Observer status provides North Macedonia a platform to voice its perspectives and concerns on fundamental rights issues within the EU context. By actively participating in FRA activities and consultations, North Macedonia can advocate for its interests and contribute to shaping EU policies and initiatives related to human rights.⁵²

3. Chapter 24: Justice, Freedom, and Security

In the context of North Macedonia's EU accession process, Chapter 24 of the EU Acquis focuses on strengthening legal frameworks and operational capacities to combat organised crime and terrorism effectively.⁵³

3.1. *Combating Organised Crime and Terrorism*

North Macedonia has made significant strides in developing legislative and institutional frameworks to combat organised crime and terrorism.⁵⁴ The country has enacted laws targeting various forms of criminal activity, including drug trafficking, human trafficking, and money laundering. Additionally, institutions such as the Ministry of Interior, the Public Prosecutor's Office, and specialised police units have been established to investigate and prosecute these crimes.

North Macedonia has implemented various legislative measures to address organised crime and terrorism:⁵⁵

1. Criminalisation of critical offenses: Laws have been enacted to criminalise activities such as drug trafficking, human trafficking, arms smuggling, and money laundering, providing law enforcement agencies with the legal tools to combat these crimes effectively.
2. Strengthening penalties: Penalties for organised crime and terrorism-related offenses have been enhanced to deter criminal activity and ensure that perpetrators are held accountable for their actions.
3. International cooperation: North Macedonia has ratified international conventions and agreements to combat organised crime and terrorism, facilitating collaboration with foreign law enforcement agencies and international organisations in investigating and prosecuting transnational criminal activities.

While progress has been made in developing the legal and institutional framework to combat organised crime and terrorism, challenges persist:⁵⁶

1. Capacity building: Strengthening the capacity of law enforcement agencies and judicial institutions is essential for enhancing their ability to investigate, prosecute, and adjudicate complex organised crime and terrorism cases.

52 | European Union Agency for Fundamental Rights (FRA), ndb.

53 | European Commission, ndb.

54 | European Commission, 2022a.

55 | Organised Crime Index, no date.

56 | Organised Crime Index, no date.

2. Resource allocation: Adequate resources, including funding, equipment, and personnel, are necessary to support the effective functioning of law enforcement and judicial institutions involved in combatting organised crime and terrorism.
3. Cooperation and coordination: Enhancing cooperation and coordination between domestic law enforcement agencies and international partners is critical for effectively addressing transnational organised crime and terrorism threats.

North Macedonia has established mechanisms for cooperation between judicial and police authorities to combat organised crime and terrorism.

While cooperation between judicial and police authorities is essential, challenges hinder effective collaboration:⁵⁷

1. Legal and procedural barriers: Differences in legal frameworks and procedures between judicial and police authorities can create obstacles to practical cooperation and coordination. Harmonising these frameworks and streamlining procedures can facilitate collaboration and enhance operational effectiveness.
2. Resource constraints: Limited resources, including personnel, equipment, and training, can hamper the ability of judicial and police authorities to collaborate effectively. Adequate investment in capacity building and resource allocation is necessary to overcome these challenges and strengthen cooperation.
3. Institutional culture: Developing a culture of cooperation and mutual trust between judicial and police authorities is essential for fostering effective collaboration. This requires ongoing efforts to promote communication, information sharing, and joint decision-making processes within and between agencies.

Combatting organised crime requires a multifaceted approach. North Macedonia has enacted laws targeting organised crime, providing law enforcement agencies with the legal tools to investigate, prosecute, and disrupt criminal activities.⁵⁸ These laws criminalise critical offenses associated with organised crime, including participation in criminal organisations, money laundering, and trafficking in drugs and persons. Strengthening penalties for organised crime offenses serves as a deterrent and ensures that perpetrators are held accountable for their actions.

Law enforcement agencies in North Macedonia play a crucial role in combatting organised crime through proactive investigation, intelligence gathering, and operational activities. Specialised police units, such as the Organised Crime Unit and the Anti-Terrorism Unit, are tasked with targeting criminal networks, dismantling illicit enterprises, and apprehending key offenders.⁵⁹ International cooperation with neighbouring countries and EU partners further enhances the effectiveness of law enforcement efforts by facilitating information sharing, joint operations, and suspect extradition.⁶⁰

Despite progress in combatting organised crime, challenges persist that require sustained efforts and cooperation:

1. Transnational nature: Organised crime networks operate across national borders, exploiting gaps in law enforcement and jurisdictional challenges.

57 | INTERPOL, 2023a.

58 | Organised Crime Index, no date.

59 | Organised Crime Index, no date.

60 | Ministry of Interior, North Macedonia, no date.

Enhanced international cooperation and coordination are necessary to counter-act these transnational threats effectively.⁶¹

2. Corruption and impunity: Corruption within state institutions and the judiciary undermines efforts to combat organised crime and promotes a culture of impunity. Strengthening anti-corruption measures and ensuring accountability are essential for maintaining the integrity of law enforcement and judicial institutions.⁶²
3. Evolving threats: Organised crime is dynamic and adaptable, constantly evolving to exploit new opportunities and technologies. Law enforcement agencies must remain vigilant and responsive to emerging threats, leveraging intelligence capabilities and innovative investigative techniques to stay ahead of criminal organisations.⁶³

North Macedonia faces the threat of terrorism, both from domestic and international sources, necessitating a comprehensive approach to counter-terrorism. While the country has not experienced large-scale terrorist attacks, it remains vigilant against potential threats and actively collaborates with international partners to address terrorism-related challenges.⁶⁴

North Macedonia has enacted laws and regulations to criminalise terrorism-related offenses and provide law enforcement agencies with the legal tools to investigate, prosecute, and prevent terrorist activities. These laws define terrorism offenses, establish penalties for terrorist acts, and outline procedures for counter-terrorism operations and investigations. Additionally, legal frameworks for international cooperation in counter-terrorism efforts have been established to facilitate information sharing, extradition, and mutual legal assistance.⁶⁵

Preventing radicalisation and violent extremism is a critical component of North Macedonia's counter-terrorism strategy. The government has implemented initiatives to address the root causes of radicalisation, including social and economic marginalisation, ideological indoctrination, and recruitment by extremist groups.⁶⁶ Community engagement programmes, youth outreach initiatives, and religious dialogue efforts aim to promote tolerance, resilience, and social cohesion and counter extremist narratives and ideologies.

Given the transnational nature of terrorism, international cooperation is essential for effectively combatting it. North Macedonia collaborates with regional and global partners, including EU Member States, NATO allies, and organisations such as Interpol and Europol, to share intelligence, coordinate operations, and enhance capacity-building efforts.⁶⁷ Participation in international forums and initiatives strengthens North Macedonia's ability to respond to terrorism-related challenges and contribute to global counter-terrorism efforts.

61 | Williams, 2007, pp. 201–222.

62 | Transparency International, ndc.

63 | Congressional Research Service, 2013.

64 | U.S. Department of State, 2022.

65 | UNODC, 2022.

66 | OSCE Mission to Skopje, no date.

67 | Europol, 2009; INTERPOL, 2023b.

Despite progress in countering terrorism, North Macedonia faces challenges that require sustained efforts and cooperation:

1. Radicalisation and recruitment: Preventing radicalisation and countering extremist narratives remain ongoing challenges, particularly with the proliferation of online propaganda and recruitment efforts by terrorist organisations.⁶⁸
2. Border security: Enhancing border security and preventing the movement of foreign terrorist fighters across borders require continued investment in border control infrastructure, technology, and personnel training.⁶⁹
3. Institutional capacity: Strengthening the capacity of law enforcement and security agencies, as well as judicial institutions, is necessary to investigate, prosecute, and adjudicate terrorism-related cases effectively.⁷⁰

| 3.2. Judicial and Police Cooperation

North Macedonia has established legal frameworks and mechanisms to facilitate judicial cooperation with other countries, particularly in criminal matters.⁷¹

Extradition treaties enable North Macedonia to request the extradition of individuals accused or convicted of criminal offenses from other countries and to extradite individuals to face justice in foreign jurisdictions.⁷²

Mutual legal assistance agreements facilitate the exchange of legal information, evidence, and assistance between judicial authorities in different countries. North Macedonia has entered into mutual legal assistance agreements with various countries, enabling cooperation in criminal investigations, evidence gathering, and judicial proceedings.

As a candidate country for EU membership, North Macedonia participates in European Union mechanisms for judicial cooperation, such as the European Judicial Network and Eurojust. These platforms facilitate communication and collaboration between judicial authorities in EU Member States and candidate countries, streamlining processes for information exchange, coordination of investigations, and mutual legal assistance.⁷³

While progress has been made in strengthening judicial cooperation mechanisms, challenges persist that require attention:

1. Legal harmonisation: Ensuring compatibility between North Macedonia's legal framework and international standards is essential for practical judicial cooperation. Harmonising laws and procedures, particularly in areas such as extradition and mutual legal assistance, can enhance the efficiency and effectiveness of cooperation mechanisms.⁷⁴
2. Capacity building: Strengthening the capacity of judicial authorities to handle complex international cases and requests for legal assistance is necessary for ensuring timely and practical cooperation. Training programmes, exchange initiatives, and technical assistance can support capacity-building efforts and enhance the skills of legal professionals involved in international cooperation.⁷⁵

68 | Steinbach, 2016.

69 | Ager, 2019.

70 | United Nations Network on Migration, 2023.

71 | Eurojust, no date.

72 | European Judicial Network, no date.

73 | European Commission, 2023a.

74 | European Commission, n.d.

75 | European Commission, n.d.

3. Procedural challenges: Overcoming procedural hurdles and streamlining processes for requesting and providing legal assistance can facilitate smoother cooperation between judicial authorities. Clear guidelines, standardised forms, and efficient communication channels are essential for minimising delays and maximising the effectiveness of cooperation mechanisms.⁷⁶

North Macedonia has established mechanisms for police cooperation at the national and international levels to address various forms of criminal activity, including organised crime, terrorism, and illicit trafficking.⁷⁷ Domestically, law enforcement agencies collaborate through inter-agency task forces, joint operations, and information-sharing platforms to coordinate efforts and target criminal networks. Internationally, North Macedonia engages in police cooperation initiatives with neighbouring countries, EU Member States, and international organisations to exchange intelligence, conduct joint investigations, and apprehend suspects involved in cross-border crime.⁷⁸

While progress has been made in enhancing police cooperation, challenges remain that require attention:

1. Information sharing: Improving mechanisms for sharing intelligence and operational information between law enforcement agencies domestically and internationally is essential for enhancing police cooperation and coordination.
2. Legal barriers: Overcoming legal and procedural obstacles to police cooperation, such as differences in legal frameworks and data protection regulations, can facilitate smoother collaboration between countries and agencies.
3. Resource constraints: Addressing resource constraints, including funding, equipment, and personnel shortages, is necessary for sustaining practical police cooperation and enhancing law enforcement capabilities over the long term.

| 3.3. Migration and Asylum Policies

North Macedonia has enacted laws and regulations governing the entry, stay, and rights of migrants and asylum seekers within its territory.⁷⁹ Additionally, North Macedonia is party to international conventions and treaties related to refugees and asylum, such as the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, which provide a legal framework for protecting the rights of refugees and asylum seekers.⁸⁰

North Macedonia has established procedures for processing asylum applications and determining refugee status under international standards and best practices. These procedures include the registration of asylum seekers, individual interviews to assess claims for international protection, and appeals mechanisms to review adverse decisions.⁸¹ Asylum seekers can access legal assistance and interpretation services throughout the asylum process to ensure their rights are respected, and their claims are fairly adjudicated.

76 | UNODC, no date.

77 | UNODC, 2021.

78 | UNODC, 2022.

79 | International Organization for Migration, 2022.

80 | UNHCR, 1951.

81 | UNHCR, nda.

Migrants and asylum seekers in North Macedonia are entitled to certain rights and protections under domestic and international law, including the right to non-refoulement (non-return to a country where they face persecution), access to healthcare and education, and freedom of movement within the country. Additionally, migrants and asylum seekers must comply with national laws and regulations, including registration requirements, reporting obligations, and cooperation with authorities.⁸²

While progress has been made in developing a legal framework for migrants and asylum seekers, challenges remain that require attention:

1. Capacity and resources: Strengthening the capacity of asylum authorities and refugee agencies to process asylum applications efficiently and effectively ensures timely access to protection for asylum seekers.
2. Access to services: Ensuring equal access to healthcare, education, and social services for migrants and asylum seekers, including vulnerable groups such as women, children, and persons with disabilities, requires targeted policies and programmes.
3. Integration and social cohesion: Promoting the integration of migrants and asylum seekers into society and fostering social cohesion among host communities requires comprehensive integration measures, including language training, vocational skills development, and cultural orientation programmes.

As a candidate country for EU membership, North Macedonia has committed to aligning its migration and border management policies with Schengen standards and requirements.⁸³

Enhancing border security is a critical component of implementing Schengen requirements. North Macedonia has invested in infrastructure, technology, and personnel to strengthen its borders and prevent irregular migration, smuggling, and trafficking of persons. Measures such as border controls, surveillance systems, and cooperation with neighbouring countries contribute to ensuring the integrity and security of North Macedonia's borders.⁸⁴

Aligning visa policies with Schengen standards involves harmonising visa regimes, procedures, and issuance criteria with EU standards. North Macedonia has implemented visa liberalisation measures with certain EU Member States, allowing for more accessible travel and visa-free entry for citizens. Additionally, efforts to combat document fraud, enhance consular cooperation and improve visa application processes contribute to aligning visa policies with Schengen requirements.⁸⁵

Adhering to Schengen requirements also entails implementing fair and efficient asylum procedures that comply with EU standards. North Macedonia has progressed in developing asylum procedures, enhancing reception conditions for asylum seekers, and improving access to legal assistance and interpretation services. By aligning asylum procedures with EU norms, North Macedonia aims to ensure the adequate protection of refugees and asylum seekers and promote international cooperation in asylum matters.⁸⁶

82 | UNHCR, nda.

83 | European Commission, 2022b.

84 | SchengenVisaInfo, 2022.

85 | European Commission, 2021b.

86 | UNHCR, ndb.

While progress has been made in implementing Schengen requirements, challenges require sustained efforts⁸⁷:

1. Capacity building: Enhancing the capacity of border authorities, asylum agencies, and law enforcement agencies to implement Schengen requirements effectively is essential for ensuring compliance and upholding border security.
2. Technical assistance: Accessing technical assistance and support from EU institutions and agencies can help address capacity gaps, build institutional capacity, and strengthen migration management capabilities.
3. Legal harmonisation: Harmonising national legislation and regulations with the EU acquis in the field of migration and asylum is necessary to ensure legal coherence and compliance with Schengen standards.

Effective border management and security policies are essential for safeguarding national sovereignty. North Macedonia is strategically located on migration routes connecting regions with high migration flows, prioritising border management and security.⁸⁸

North Macedonia has deployed various border control measures to regulate the entry and exit of persons and goods across its borders. These measures include physical barriers, border checkpoints, surveillance systems, and patrols conducted by border police and law enforcement agencies. Additionally, North Macedonia cooperates with neighbouring countries and EU Member States to exchange information, conduct joint patrols, and coordinate border management activities to prevent irregular migration and combat cross-border crime.⁸⁹

North Macedonia engages in bilateral and regional initiatives to enhance cross-border cooperation, information sharing, and joint operations and address common security challenges.⁹⁰ Platforms such as the Southeast European Law Enforcement Center (SELEC) and regional border management forums facilitate cooperation between law enforcement agencies and border authorities in the Western Balkans region, contributing to improved border security and stability.

North Macedonia participates in training programmes, exchange initiatives and technical assistance projects provided by international partners and organisations to strengthen border officials' skills, knowledge, and capacities in areas such as border control techniques, document verification, risk analysis and inter-agency cooperation.⁹¹

While progress has been made in border management and security, challenges that require ongoing attention and cooperation remain⁹²:

1. Transnational threats: Addressing transnational threats such as irregular migration, human trafficking, and smuggling of contraband requires comprehensive and coordinated responses involving multiple stakeholders at the national, regional, and international levels.

87 | European Commission, nde.

88 | Kingham, 2023.

89 | European Western Balkans, 2023.

90 | The European Union's Cross-Border Cooperation Programme, no date.

91 | U.S. Department of State, 2022; U.S. Department of Justice 2022.

92 | U.S. Department of State, 2022.

2. Capacity constraints: Enhancing the capacity of border authorities, including infrastructure, equipment, and personnel, is necessary for effectively managing borders and responding to evolving security threats.
3. Legal and regulatory frameworks: Ensuring alignment with international standards and best practices in border management and security requires harmonising national legislation and regulations with relevant international conventions and agreements.

4. Analysis of Progress and Challenges

Significant achievements have marked North Macedonia's journey towards EU accession and challenges in crucial reform and development areas.⁹³

| 4.1. Achievements

North Macedonia has undertaken significant reforms to align its legislative framework and institutional practices with European Union standards and requirements.

North Macedonia has enacted comprehensive legislative reforms across various sectors to harmonise its legal framework with the EU *acquis communautaire*. These reforms encompass the judiciary, anti-corruption, public administration, human rights, and fundamental freedoms. Adopting new laws, amending existing legislation and establishing regulatory bodies have enhanced legal certainty, accountability, and transparency in the country's governance.

Significant efforts have been made to reform the judiciary and improve its independence, efficiency, and integrity. Measures such as the establishment of the Judicial Council, reforms in judicial appointments and promotions, and implementation of performance evaluation mechanisms have strengthened the judiciary's independence and enhanced public trust in the judicial system. Additionally, initiatives to streamline court procedures, improve case management and enhance access to justice have contributed to the effective administration of justice.

North Macedonia has intensified its efforts to combat corruption and enhance transparency and accountability in public administration. Adopting anti-corruption laws, establishing anti-corruption institutions and implementing integrity measures in the public sector have strengthened the country's anti-corruption framework. Furthermore, initiatives to promote integrity, prevent conflicts of interest, and ensure transparency in public procurement processes have reduced corruption risks and improved governance.

Reforms in public administration aim to modernise government structures, improve service delivery, and enhance efficiency and effectiveness in public institutions. Measures such as digitalising administrative services, decentralising decision-making powers and capacity-building programmes for civil servants have promoted good governance and facilitated citizen engagement. These reforms have also aligned public administration practices with EU standards and principles.

North Macedonia has implemented measures to safeguard the independence of judges and prosecutors, including the establishment of judicial councils, clear criteria

93 | Balkan Civil Society Development Network, 2024.

for judicial appointments, and mechanisms to prevent undue influence or interference in judicial proceedings. These efforts have contributed to building a more resilient and impartial judiciary capable of upholding the rule of law.

Improvements in access to justice and legal remedies have enhanced the protection of fundamental rights and ensured effective redress for individuals whose rights have been violated. North Macedonia has taken steps to improve the accessibility, affordability, and efficiency of the judicial system, including reforms to simplify court procedures, reduce case backlogs, and enhance legal aid services. North Macedonia has reinforced its commitment to upholding fundamental rights and ensuring equal protection under the law by expanding access to justice for all citizens, particularly marginalised and vulnerable groups.

North Macedonia has intensified its efforts to combat organised crime through comprehensive strategies, law enforcement operations, and international cooperation. The country has implemented measures to disrupt criminal networks, dismantle illicit trafficking networks, and prosecute perpetrators of organised crime. Efforts to strengthen law enforcement capabilities, enhance intelligence sharing, and improve coordination between relevant agencies have resulted in successful operations targeting various forms of organised crime, including drug trafficking, human trafficking, and financial crimes.

North Macedonia has demonstrated resilience in tackling terrorism and extremism, preventing radicalisation, and countering terrorist threats. The country has implemented strategies to combat terrorism through legislative measures, law enforcement operations and cooperation with international partners. Efforts to enhance border security, monitor extremist activities, and counter-terrorist financing have contributed to mitigating the risks posed by terrorism and extremism. Additionally, initiatives to promote social cohesion, interfaith dialogue and community engagement have fostered resilience against radicalisation and violent extremism.

International cooperation has been instrumental in North Macedonia's successes in combatting organised crime and terrorism. The country has engaged in bilateral and multilateral initiatives, regional partnerships, and cooperation with international organisations to address security threats effectively. Collaboration with neighbouring countries, EU Member States, and international agencies such as Interpol and Europol has facilitated intelligence sharing, joint operations, and capacity-building efforts to enhance regional security and stability.

| 4.2. Challenges

While North Macedonia has made significant strides in enhancing judicial independence, several challenges persist that undermine the judiciary's integrity and impartiality.

One of the primary challenges facing North Macedonia's judiciary is political interference and influence in judicial processes. Despite efforts to establish mechanisms to safeguard judicial independence, political pressure on judges and prosecutors still occurs, impacting the impartiality and integrity of judicial decisions. The politicisation of the judiciary undermines public trust in the legal system and hampers the effective administration of justice.

Another challenge is the lack of effective accountability mechanisms to hold judicial officials accountable for misconduct or breaches of ethical standards. While disciplinary

bodies exist to address complaints against judges and prosecutors, their effectiveness and independence have been questioned. The absence of transparent and impartial procedures for investigating allegations of judicial misconduct undermines accountability and erodes public confidence in the judiciary.

The judiciary's institutional autonomy remains insufficient, challenging its independence from external influences. Limited financial autonomy, inadequate resources and administrative constraints restrain the judiciary's ability to function independently and efficiently. Dependence on external entities for funding and administrative support undermines the judiciary's autonomy and compromises its ability to uphold the rule of law and protect fundamental rights.

Freedom of expression and media freedom remain areas of concern in North Macedonia, with reports of limitations on media independence, censorship, and attacks on journalists. Instances of intimidation, harassment and violence against media professionals undermine freedom of expression and restrict the diversity of viewpoints in the public discourse. Ensuring a free and independent media environment fosters transparency, accountability and democratic governance.

Protection of minority rights, including ethnic minorities' rights, remains a challenge in North Macedonia. Despite legal provisions and international obligations, discrimination, marginalization and exclusion of minority groups persist, particularly in areas such as access to education, employment and public services. Efforts to promote cultural diversity, linguistic rights and equal opportunities for all minority communities are essential for building an inclusive and cohesive society.

Vulnerable groups, including women, children, and persons with disabilities, face systemic barriers and discrimination in North Macedonia. Limited access to healthcare, education, employment and social services exacerbates inequalities and undermines the enjoyment of fundamental rights and freedoms. Strengthening legal protections, raising awareness and providing support services for vulnerable groups are critical for ensuring their rights are respected and upheld.

Challenges in access to justice and the effective implementation of the rule of law persist in North Macedonia. Legal and procedural barriers, including lengthy court proceedings, lack of legal aid, and inadequate enforcement of court decisions hinder access to justice for marginalised and vulnerable populations. Enhancing judicial efficiency, improving legal aid services and ensuring equal access to justice for all citizens are essential for upholding the rule of law and protecting human rights.

North Macedonia faces challenges stemming from institutional and legislative gaps that hinder its progress toward European integration and democratic consolidation. This subsection will examine the key institutional and legislative challenges that must be addressed.

Despite efforts to combat corruption, institutional weaknesses and loopholes in anti-corruption measures remain a significant challenge in North Macedonia. More effective enforcement mechanisms, transparency in public procurement processes and accountability for corrupt practices that undermine efforts to tackle corruption effectively need to be implemented. Strengthening anti-corruption institutions, enhancing transparency and accountability mechanisms and promoting a culture of integrity are essential for combatting corruption and promoting good governance.

Public administration reform is essential for improving governance, enhancing service delivery, and strengthening institutional capacity in North Macedonia. However,

progress in this area has been slow, with persistent challenges such as political interference, lack of merit-based recruitment and insufficient resources hindering practical reform efforts. Enhancing professionalism, streamlining administrative procedures and promoting meritocracy in public service recruitment are necessary for modernising public administration and improving its effectiveness.

Alignment of national legislation with the European Union *acquis* remains a crucial challenge for North Macedonia's EU accession process. While significant progress has been made in adopting EU-related legislation, gaps and inconsistencies persist, particularly in the judiciary, fundamental rights and the rule of law. Strengthening legislative capacity, enhancing coordination between government institutions and prioritising legislative reforms in alignment with EU standards are crucial for advancing the accession process and ensuring compatibility with EU legal norms.

5. Conclusion

North Macedonia's pursuit of European Union accession represents a pivotal chapter in its history, a journey marked by steadfast determination, transformative reforms and enduring challenges.

The nation has traversed significant milestones on its path to European integration, demonstrating a commendable commitment to aligning its legal framework, bolstering democratic institutions and fortifying the rule of law. Progress in legislative reforms, judicial independence, and fundamental rights protection underscores North Macedonia's dedication to European values and aspirations.

However, persistent challenges linger amidst these achievements, casting a shadow over the nation's accession aspirations. Issues such as political interference in the judiciary, human rights concerns and institutional deficiencies constraints continue to pose formidable obstacles to progress.

The future outlook for North Macedonia is shaped by its ability to navigate complexities, catalyse reforms and embrace the transformative power of European integration. Continued efforts to strengthen democratic institutions, uphold the rule of law and protect fundamental rights will advance the nation's European aspirations.

By addressing the remaining challenges, implementing further reforms and upholding European values and principles, North Macedonia can propel itself closer to EU membership and realise the full potential of its European journey.

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THE SLOVAKIAN SITUATION OF PEOPLE FLEEING FROM THE RUSSIAN-UKRAINIAN WAR

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ABSTRACT

Migration, as a socio-historical phenomenon, is shaped by various factors and has occurred in significant waves throughout history, each driven by specific circumstances. It has played a key role in shaping national policies. Migration can support economic and social development by expanding the workforce, increasing tax revenues, strengthening social welfare systems, and attracting skilled professionals. For example, in the 20th century, migration supported economic recovery, particularly after World War II. However, migration can also create challenges, potentially leading to negative economic outcomes or generating social and political tensions. Since World War II, the conflict in Ukraine has caused the largest and fastest displacement of people in Europe, with millions of Ukrainians fleeing abroad. In this context, this study examines the national legal framework regulating migration in Slovakia, focusing on the protection provided under domestic law, the available protection statuses, and related measures in education, the labour market, and non-governmental (civil) initiatives.

KEYWORDS

migration
asylum
rights
human rights
Slovakia

1. Introduction

In recent years, migration flows within Europe have increased, affecting all forms of migration. By 2019, nearly one-third of all migrants worldwide resided in Europe, highlighting the continent's central role in global population mobility.²

In 2015, Europe faced a major humanitarian crisis when over 1 million migrants arrived, representing a fourfold increase in refugee arrivals compared to previous years.

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2 | International Organization for Migration, 2020.



Most migrants came from countries such as Syria, Afghanistan, Eritrea, and Nigeria, with the majority travelling to Germany, and others seeking refuge in Hungary and Sweden. The global scale, urgency, and ongoing nature of the crisis led to varied responses among European countries, making migration a central topic in public discourse.³

The conflict in Ukraine, which began in 2022, caused Europe's largest and fastest displacement of people since World War II.⁴ Millions fled Ukraine, and Slovakia, which had previously experienced only limited migration,⁵ became one of the main countries receiving refugees.⁶ By February 2023, over 1.1 million Ukrainians had entered Slovakia;⁷ however, only about 10 percent applied for temporary refugee status, with many moving to Western Europe or returning to Ukraine. In the first month, 270,000 refugees crossed into Slovakia, and local authorities, charities, and volunteers led the response.⁸ The state's delayed intervention received criticism but was later followed by financial support for hosts and the introduction of temporary protection status to improve assistance. Some argued that this aid reduced support for Slovak citizens during a period of rising costs.⁹ Over time, public attention shifted to the increasing cost of living, especially energy prices, which became Slovakia's main concern. Despite these difficulties, Slovakia's support for Ukraine remained among the highest in international comparisons.¹⁰

Given the above, this paper examines the challenges Slovakia faces due to the Russian-Ukrainian conflict and the regional refugee crisis. It analyses the national legal framework for migration, the concept of protection under domestic law, available protection statuses in Slovakia, and measures implemented in education, the labour market, and civil initiatives.

2. Terminological Framework

The evolution of asylum law¹¹ resulted in the establishment of new institutions and concepts intended to advance and strengthen both national and international asylum frameworks, with European Union (hereinafter also referred to as the EU) law playing a significant role. The development of asylum law within the EU introduced mechanisms

3 | Letavajová et al., 2020, p. 7.

4 | Seberíni et al., 2024, p. 1.

5 | In recent years, the majority of working migrants in Slovakia have originated from Serbia, Romania, Hungary, the Czech Republic, and Ukraine. In 2015 and 2016, Slovak authorities recorded fewer asylum requests compared to previous years, suggesting that refugees continue to view Slovakia primarily as a transit country. See Eurostat, 2018.

6 | Letavajová et al., 2024, p. 12.

7 | See the website of the International Organization of Migration [Online]. Available at: <https://www.iom.sk/sk/aktivita/pomoc-iom-ukrajine/prehľad.html> (Accessed: 18 November 2024).

8 | Petrík, 2023.

9 | Ibid.

10 | Ibid.

11 | The principle of non-refoulement, established in Article 33 of the 1951 Geneva Convention, is closely linked to asylum law. It prohibits expelling or returning individuals to a country where their life or liberty would be at risk because of their race, religion, nationality, membership in a particular social group, or political opinion (Elbert, 2016, p. 14; Šípulová, Mareková and Smekal, 2012, pp. 1442–1452; Béres, 2024, pp. 31–49).

to harmonise Member States' asylum procedures, address negative aspects, and improve basic rights standards for asylum seekers.¹² Although the EU has only engaged in asylum law in recent decades, it is not the only international body concerned with this issue. The United Nations (hereinafter also referred to as the UN)¹³ played a key role in the early stages of asylum law development,¹⁴ and it is to this organisation that the establishment of the fundamental principles governing the status of refugees forced to flee their homes because of persecution is owed.¹⁵

First, regarding the topic, the International Organization for Migration defines migration¹⁶ as the movement of individuals or groups across geographical and social spaces, resulting in a temporary or permanent change of residence.¹⁷ The European Commission's Glossary presents migration in a broader global context, describing it as the movement of people across international borders or within a single country for at least one year, regardless of cause, voluntariness, legal status, or regularity.¹⁸

A 'migrant' is typically defined as an individual who moves within a specific geographical area or across the borders of a country where they usually reside. When departing from their home country, the person is referred to as an emigrant; upon entering another country, they are considered an immigrant.¹⁹

In Slovak legal practice, the term 'migrant' is not used; instead, the term 'foreigner' (*cudzinec*) is used.²⁰ According to Act No. 404/2011 Coll. on the Residence of Foreigners, as amended (Foreigners' Residence Act), a foreigner is defined as any person who is not a citizen of Slovakia.²¹ The act classifies foreigners into two groups: citizens of the EU and the European Economic Area, and individuals from outside these areas, including stateless persons, as nationals of third countries. In contrast, academic disciplines concerned with migration and migration processes commonly use the term migrant.²²

Another important term is 'refugee' (*utečenec*), which refers to a specific category of migrants. The 1951 Refugee Convention, signed in Geneva, defines a refugee as an individual with a well-founded fear of persecution due to race, religion, nationality, membership in a particular social group, or political opinion, who is unable or unwilling to seek protection from their country of origin because of these fears.²³ In Slovak law, the term

12 | For more information, see Elbert, 2016, pp. 14–17.

13 | Along with its predecessor, the League of Nations.

14 | That is, by adopting key declarations and conventions, including the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention Relating to the Status of Refugees.

15 | Elbert, 2016, p. 10.

16 | Migration has several different types. See, for example, Letavajová et al., 2020, p. 14.

17 | International Organization for Migration, 2020.

18 | European Migration Network, 2018.

19 | Letavajová et al., 2020, p. 15.

20 | See the website of the Ministry of Labour, Social Affairs and Family of the Slovak Republic [Online]. Available at: <https://www.employment.gov.sk/sk/informacie-cudzincov/zakladne-pojmy/> (Accessed: 18 November 2024).

21 | Foreigners' Residence Act, para. 2(2).

22 | Kadlečíková, 2015, p. 5.

23 | Letavajová et al., 2020, p. 15.

refugee is replaced by 'asylum seeker' (*azylant*).²⁴ According to Act No. 480/2002 Coll. on Asylum, as amended (hereinafter referred to as the Asylum Act), an asylum seeker is a foreigner who has been granted asylum by the Ministry of Interior of the Slovak Republic²⁵ (hereinafter referred to as the Ministry of Interior)²⁶ based on grounds specified in international treaties. A person who formally declares their intention to seek asylum or subsidiary protection in Slovakia, following legal procedures, is referred to as an 'asylum applicant' (*žiadateľ o azyl*).²⁷

Slovakia provides 'subsidiary protection' (*doplnková ochrana*)²⁸ to foreigners who face serious human rights violations in their country of origin, in line with its obligations under EU law—specifically the Qualification Directive,²⁹ harmonises protection standards across all Member States. As the term indicates, this protection is secondary to asylum and is typically granted to individuals who have not received asylum but have valid reasons to fear that, if returned to their home country, they would face the death penalty, torture, inhumane treatment, or a significant and personal threat to their life.³⁰

It is important to distinguish between asylum and subsidiary protection, as these forms of international protection confer different statuses on beneficiaries. An asylum seeker receives permanent residence status, which permits travel within the Schengen Area, employment, access to health insurance, a 10-year residence permit, and a travel document valid for 2 years. In contrast, an individual granted subsidiary protection receives temporary residence status, which allows travel within the Schengen Area, employment, health insurance, a 2-year residence permit, and a foreigner's passport valid for up to 1 year.³¹

Two additional terms are essential to this topic: 'persecution' (*prenasledovanie*) and 'serious harm' (*vážne bezprávie*). Although the 1951 Geneva Convention does not explicitly define persecution, it refers to threats to life or freedom based on race, religion, social group membership, or political beliefs. The Asylum Act interprets persecution as serious and repeated actions resulting in severe human rights violations, including physical, psychological, or sexual violence, discrimination, and denial of judicial protection. Persecution differs from serious harm, which includes the death penalty, torture, inhuman treatment, or severe threats to life due to indiscriminate violence in conflicts.³² Harm that is less severe than threats to life is classified as serious harm.³³

24 | See the website of the Ministry of Labour, Social Affairs and Family of the Slovak Republic [Online]. Available at: <https://www.employment.gov.sk/sk/informacie-cudzincov/zakladne-pojmy/> (Accessed: 20 November 2024).

25 | Asylum Act, para. 2 i).

26 | In the Slovak Republic, the Ministry of Interior is the 'migration policy leader'.

27 | Asylum Act, para. 2 h).

28 | *Ibid.*, para. 13.

29 | Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 establishes standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, provides a uniform status for refugees and persons eligible for subsidiary protection, and defines the content of the protection granted (hereinafter referred to as the Qualification Directive).

30 | Letavajová et al., 2020, p. 16.

31 | Elbert, 2016, p. 19.

32 | *Ibid.*, para. 2 f).

33 | Elbert, 2016, p. 19.

I agree with statements in the scientific literature that, given ongoing developments in this area, terminology will likely continue to evolve in response to factors driving migration.³⁴ This evolution may be influenced not only by the current migration crisis in Europe, which is linked to global armed conflicts, but also by emerging reasons for granting asylum or other forms of international protection, such as the effects of climate change. There is increasing discussion about the need to revise the status of so-called 'climate refugees'.³⁵

Slovakia's policies will need to remain flexible, addressing the complex factors driving migration while maintaining its commitment to protect individuals fleeing persecution and serious harm.

3. General National Legal Regulation of Migration

At both international and European regional levels, numerous documents have been adopted to protect the rights and freedoms of migrants, ensuring their fundamental protections.³⁶ In Slovakia, the legal framework regarding the status and rights of migrants is shaped by international, European, and domestic legislation. Slovak national law provides protections for foreigners, refugees, and others, specifying their fundamental rights and freedoms. The prohibition of discrimination is a key principle in both international and domestic legal provisions, central to safeguarding the basic rights of all individuals in Slovakia.³⁷

The Constitution of the Slovak Republic³⁸ – the country's highest legal source – guarantees fundamental rights and freedoms and serves as the primary basis for asylum law, as it provides constitutional asylum to individuals persecuted in their country of origin for exercising political rights.³⁹

34 | See Ibid.

35 | Ibid., p. 20. See also Demjanovič, 2016, p. 143.

36 | These include universal frameworks established by the UN. The Council of Europe has developed key legal documents, such as the European Convention on Human Rights, the European Social Charter, the European Convention on the Legal Status of Migrant Workers, and the Convention on the Participation of Foreigners in Public Life at Local Level. The EU has also taken significant steps to shape a coherent migration and asylum policy. Foundational texts, including the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights, are complemented by strategic policy measures such as the European Pact on Immigration and Asylum, the Dublin Convention (later replaced by Council Regulation (EC) No. 343/2003), the Stockholm Program, and the Global Approach to Migration. In asylum policy, three directives have been central to harmonising procedures and standards across Member States: Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (Reception Conditions Directive), 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 (Asylum Procedures Directive), and the Qualification Directive.

37 | Marczyová, 2018, p. 120.

38 | *Ústava Slovenskej republiky*.

39 | Constitution of the Slovak Republic, Article 53.

Article 52(2) of the Constitution guarantees foreign nationals the fundamental human rights and freedoms specified in the Constitution, except where these rights are expressly reserved for citizens. It also grants foreign nationals the exclusive right to asylum,⁴⁰ stating that the country shall provide asylum to foreign nationals persecuted for exercising political rights and freedoms. However, asylum may be denied to individuals who have violated fundamental human rights and freedoms. The specific details are determined by law.⁴¹ These provisions may be interpreted in light of international treaties and applied broadly to the subject of the right to asylum. Therefore, although the Constitution defines asylum as a right for foreign nationals, its application also extends to stateless persons.⁴²

The right to asylum is based on two cumulative conditions: persecution and the exercise of political rights and freedoms. A link between the persecution and the exercise of these rights must be demonstrated. Asylum aims to protect individuals persecuted for exercising political rights and freedoms, even if the persecution results from the exercise of only one specific right or freedom.⁴³

A key issue concerns whether the reasons for seeking asylum are legitimate and which situations qualify as persecution. For example, poverty or economic hardship is not regarded as persecution under asylum law.⁴⁴

As Bröstl et al. noted, the fundamental and universally recognised purpose of asylum law is to guarantee this right to a foreign national who cannot remain in their home country because its political system deprives them of freedom, life, or property.⁴⁵ When an eligible person applies for asylum, the Slovak Republic is obliged to determine whether asylum will be granted. Any foreign national who meets the constitutional criteria is granted the right to asylum; however, this right is not absolute.⁴⁶ A foreign national does not have an absolute and unrestricted right to asylum, as it may be denied to individuals who have violated fundamental human rights and freedoms.⁴⁷

Drgonec noted that if a person claiming the right to asylum in the Slovak Republic has not violated fundamental human rights and freedoms, asylum cannot be denied. Meeting the conditions set by the Constitution does not preclude the granting of asylum.⁴⁸ The burden of proof that an asylum seeker has breached fundamental human rights and freedoms shifts from the applicant to the Slovak Republic. Historically, the core of this traditional right is the right to seek asylum,⁴⁹ not the right to receive it. In international law, the right to asylum is regarded as the exclusive right of a sovereign state, in relation to other states, to provide protection and refuge on its territory to individuals who are

40 | Ibid.

41 | Ibid.

42 | Marczyová, 2018, p. 122.

43 | Čič et al., 2012, p. 367.

44 | Marczyová, 2018, p. 122.

45 | Bröstl et al., 2013, p. 177.

46 | Marczyová, 2018, p. 122.

47 | Concerning this, see the Resolution of the Constitutional Court of the Slovak Republic of 19 February 1998, No. ÚS 12/98. Regarding the practice of the Slovak Constitutional Court concerning migration and refugee affairs, see Gregová Širicová, 2023, pp. 111–132.

48 | Drgonec, 2015, p. 997.

49 | Marczyová, 2018, p. 122.

not its citizens and are persecuted for specific reasons, unless restricted by international treaties.⁵⁰

In addition to the Constitution, the main legal framework governing asylum in the Slovak Republic includes the Asylum Act and the Foreigners' Residence Act. National asylum legislation primarily defines the status of foreign nationals seeking asylum, the asylum procedure, the specific rights and duties of the parties involved, and the status of individuals granted international protection, either as asylum or subsidiary protection.⁵¹

The Asylum Act regulates the asylum procedure and specifies the conditions for granting asylum and subsidiary protection. As Elbert noted, although asylum is not explicitly defined,⁵² it is generally understood as protection from persecution due to race, ethnicity, religion, or the exercise of political rights and freedoms in the country of origin. The act also allows for humanitarian asylum, with eligibility criteria such as old age or health issues determined by a regulation from the Minister of Interior. Asylum may also be granted for family reunification, including the spouse of the asylum seeker, unmarried children under 18, and parents of an unmarried asylum seeker. After three years, individuals are required to submit a new asylum application.⁵³

Additionally, on 16 March 2022, Slovakia implemented Lex Ukrajina,⁵⁴ a set of laws supporting the integration of individuals fleeing the Russian invasion of Ukraine. This legislation includes provisions on asylum and residency for foreign nationals, addressing residence permits, temporary protection, employment, education, transportation, housing, social welfare, and healthcare. The new laws align Slovakia's temporary protection framework with the EU's 'activation' of the Temporary Protection Directive.⁵⁵ Under this directive, temporary protection is granted in all EU Member States for an initial period of one year (until March 2023), with the option to extend for up to one additional year. For Ukrainian arrivals, this protection covers immediate family and dependent relatives. Non-Ukrainian nationals fleeing Ukraine may also qualify for temporary protection if they previously held refugee or international protection status in Ukraine, or if they had permanent residency there but cannot safely return to their country of origin.⁵⁶

A key provision in the package enables Ukrainian asylum seekers and their families to begin employment immediately after submitting their asylum applications. Individuals granted temporary protection may also access the labour market as soon as their status is confirmed, allowing employers to hire them without the additional approvals usually required for third-country nationals in Slovakia. The legislation also streamlines the recognition of medical qualifications for newly arrived Ukrainians and waives the requirement for criminal records, accepting affidavits of integrity instead. Slovakia

50 | Bröstl et al., 2013, p. 177.

51 | Elbert, 2016, p. 17.

52 | However, it is governed by para. 8 of the Asylum Act, Article 18 of the Charter of Fundamental Rights of the European Union.

53 | Elbert, 2016, p. 18.

54 | Kullová, 2022.

55 | Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

56 | Sekulová, 2022.

has introduced several measures to support Ukrainian refugees. Those with temporary refugee status are entitled to urgent medical care for the first 30 days after arrival, while asylum seekers and applicants for temporary protection have indefinite access.⁵⁷ The Ministry of Health of the Slovak Republic covers these costs, and free COVID-19 vaccinations are available to Ukrainian nationals. Hosts of refugees may receive allowances, and refugees may apply for social welfare benefits. Ukrainian children attending kindergartens or primary schools are eligible for meal allowances, and vehicles registered in Ukraine are exempt from highway tolls.⁵⁸

As of 1 July 2024, Lex Ukraine 4, an amendment to the Asylum Act from the Ministry of Interior, is in force⁵⁹ and introduces changes to the asylum procedure and the provision of temporary shelter.⁶⁰ The legislation replaces the blanket provision of assistance to refugees from Ukraine with a more targeted system and streamlines processes related to the protection of third-country nationals in the Slovak Republic. Under the revised provisions, housing allowances for third-country nationals are granted only under specific conditions, including criteria concerning family ties and property ownership in Slovakia. The housing allowance is available for 120 days from the initial granting of temporary protection, with possible extensions in certain cases.⁶¹ Additionally, the Ministry of Transport and Construction of the Slovak Republic will no longer provide accommodation allowances under the Act on the Support of Tourism.^{62,63}

Moreover, the procedure for granting temporary shelter is simplified when it begins with the birth of a child on Slovak territory to a displaced person or a foreign national seeking temporary protection.⁶⁴

A child born in Slovakia to an applicant, an asylum holder, or a foreign national under subsidiary protection who acquires citizenship of another EU Member State at birth will no longer automatically be considered an applicant by law, and the asylum procedure will not be initiated. The term ‘substantial change in factual circumstances’ in repeated asylum applications is now more clearly defined. The Asylum Act now explicitly adds new reasons for terminating asylum procedures in connection with established obligations. Asylum holders and foreigners under subsidiary protection are no longer eligible for a one-time or integration allowance if they previously held or currently hold permanent or temporary residence, or if they were granted temporary shelter in Slovakia. The law also defines additional circumstances requiring a displaced person to leave an asylum facility,

57 | Gehrrová, 2022.

58 | Sekulová, 2022.

59 | For more information see the press release at the website of the Ministry of Interior [Online]. Available at: <https://www.minv.sk/?tlacove-spravy-6&sprava=lex-ukrajina-4-od-1-jula-je-ucinna-novela-zakona-o-azyle-adresnejsie-upravujuca-poskytovanie-prispevku-zabytovanie-odidencov> (Accessed: 18 November 2024).

60 | Ibid.

61 | For example, household members receive assistance for material needs if the recipient has a severe disability and qualifies for humanitarian aid subsidies, is 65 years of age or older, is a single parent caring for a child under 5, or is providing care for a child under 5 based on a court order.

62 | Act No. 91/2010 Coll., as amended.

63 | Sekulová, 2024.

64 | Ibid.

such as the expiry of temporary shelter status, notification by the ministry of relocation to another asylum facility, or severe violations of the facility's internal rules.⁶⁵

In addition to the above, the Migration Policy of the Slovak Republic⁶⁶ with a perspective until 2025 (hereinafter referred to as the Migration Policy) is a key document for Slovakia, forming the basis for developing a modern, comprehensive, and effective government policy on all aspects of migration.⁶⁷ The Migration Policy builds on and continues the Migration Policy of the Slovak Republic with a perspective until 2020. It demonstrates the country's readiness and willingness to engage in effective migration solutions, both within Slovakia and in accordance with EU policies and Slovakia's international obligations. The Migration Policy identifies key areas affected by migration and references existing strategies and concepts developed for specific areas.⁶⁸

Integration policy forms a key part of the overall migration approach and is an essential element of migration policy. In Slovakia, integration activities are implemented under the Concept of Foreigner Integration in the Slovak Republic. Slovakia's integration policy is based on the 2009 Concept of Foreigners' Integration in the Slovak Republic.⁶⁹ Slovakia's integration policy⁷⁰ is based on the 2009 Concept of Foreigners' Integration in the Slovak Republic,⁷¹ various documents, and EU directives.⁷² Additionally, Act No. 40/1993 Coll. on Citizenship of the Slovak Republic, as amended, partially regulates and formally concludes the process of integrating foreigners.⁷³

4. The Typology of Protection Statutes in Slovakia

Slovakia offers two major forms of international protection⁷⁴ to individuals fleeing persecution or serious harm in their home countries: asylum and subsidiary protection. These legal statuses are based on Slovak national legislation, particularly the Asylum Act, as well as international and EU law, including the 1951 Geneva Convention on the Status of Refugees, the 1967 Protocol, and relevant EU directives.⁷⁵

Asylum in Slovakia is granted to individuals who meet the 1951 Geneva Convention definition of refugees, meaning they are unable or unwilling to return to their country of origin because of a well-founded fear of persecution based on race, religion, nationality,

65 | See the website of the Ministry of Interior [Online]. Available at: <https://www.minv.sk/?tlacove-spravy-68sprava=lex-ukrajina-4-od-1-jula-je-ucinna-novela-zakona-o-azyle-adresnejšie-upravujúca-poskytovanie-prispevku-za-ubytovanie-odidencov> (Accessed: 29 November 2024).

66 | *Migračná politika Slovenskej republiky s výhľadom do roku 2025*.

67 | In connection with this, see, for example, Elbert, 2024, p. 114.

68 | See the material published by the Government Office of the Slovak Republic [Online]. Available at: <https://rokovania.gov.sk/RVL/Material/26387/1> (Accessed: 29 November 2024).

69 | *Koncepcia integrácie cudzincov v Slovenskej republike*.

70 | Government Resolution No. 45 of 29 January 2014 (*Uznesenie vlády č. 45 z 29. januára 2014*).

71 | Government Resolution No. 338 of 6 May 2009 (*Uznesenie vlády č. 338 zo 6. mája 2009*).

72 | Marczyová, 2018, pp. 121–122.

73 | *Ibid.*, p. 127.

74 | Asylum Act, para. 2 a).

75 | Letavajová, Chlebcová Hečková, Krno and Bošelová, 2020, p. 15.

membership in a particular social group, or political opinion.⁷⁶ Asylum is intended as a permanent form of protection and provides beneficiaries with rights similar to those of Slovak citizens in several areas. Applicants must demonstrate a credible fear of persecution in their country of origin for one or more of the specified reasons and show that their government is unwilling or unable to protect them.⁷⁷

Individuals granted asylum in Slovakia are entitled to permanent residency,⁷⁸ freedom of movement,⁷⁹ employment,⁸⁰ social and healthcare services,⁸¹ education,⁸² and documentation.⁸³ Although asylum offers strong protection, it does not automatically result in Slovak citizenship. However, asylum recipients may apply for citizenship after a specified period of legal residency if they meet additional criteria established by Slovak law.⁸⁴

In contrast, subsidiary protection⁸⁵ is a complementary status for individuals who do not qualify for asylum but would face serious harm if returned to their country of origin. It is typically granted when individuals are at risk because of generalised violence or other non-persecutory threats. Subsidiary protection is provided if there are serious reasons to believe the individual would face the death penalty or execution, torture, inhumane or degrading treatment or punishment, or a severe and individualised threat to life or safety due to indiscriminate violence in situations of international or internal armed conflict. Unlike asylum, subsidiary protection does not require evidence of targeted persecution; instead, it considers whether the individual would face harm because of conditions in their country.⁸⁶

This type of protection grants temporary residency in Slovakia, initially for two years;⁸⁷ beneficiaries may travel within the Schengen Area⁸⁸ and work in Slovakia without additional permits; and they have access to healthcare and certain social benefits. They receive a residency card valid for two years and a foreigner's passport valid for up to one year, which is issued specifically for travel when the national passport cannot be used. Subsidiary protection does not provide permanent residency, resulting in a more precarious status than asylum. Renewal depends on ongoing evidence that the individual faces harm in their country of origin. Beneficiaries lack the long-term stability and rights of asylum recipients, and their status may be revoked if conditions in their home country improve.⁸⁹

76 | Ibid.

77 | Elbert, 2016, p. 11.

78 | Asylum status includes permanent residency rights in Slovakia, allowing beneficiaries to remain indefinitely.

79 | They are permitted to travel within the Schengen Area without a visa.

80 | Asylum recipients can work in Slovakia without the need for additional work permits.

81 | Full access to the Slovak healthcare system and other social welfare programs.

82 | Children of asylum recipients can access Slovak public education systems under the same conditions as Slovak citizens.

83 | They receive a residency card valid for 10 years and a travel document valid for 2 years that functions similarly to a refugee passport, allowing them to travel internationally.

84 | Cf. Grethe Guličová and Bargerová, 2008, pp. 28–49.

85 | Asylum Act, para. 2 c). See also para. 13a and 13b.

86 | Elbert, 2016, p. 18.

87 | Can be extended if the conditions in the individual's home country remain unchanged.

88 | Similar to asylum recipients.

89 | Michalíková, 2017.

In June 2022, Slovakia amended its asylum law to improve integration measures for individuals seeking or granted international protection. The amendments introduced increased financial support, access to social and psychological counselling, and cultural orientation training tailored to individual needs. The waiting period for asylum seekers to access the labour market was also reduced from nine to six months.

Table 1: Author's compilation

Aspect	Asylum	Subsidiary protection
Residency type	Permanent residency	Temporary residency
Basis for granting	Persecution based on – Race – Religion – Nationality – Social group – Political opinion	Risk of serious harm – Death penalty – Torture – Generalized violence
Status stability	Permanent	Temporary, renewable
Access to rights	Comprehensive access to healthcare, employment, and education	Similar access, but with less stability

The primary distinction between the two types of protection is their duration. Asylum generally grants foreigners permanent residence in Slovakia, except when granted for family reunification, in which case asylum is initially granted for three years and may be extended to an indefinite period upon request.⁹⁰

The distinctions between asylum and subsidiary protection also indicate differences in the rights and status of individuals under these forms of international protection. A person granted asylum is classified as a foreigner with permanent residency, permitted to travel within the Schengen Area, work, receive health insurance, and hold a residence permit valid for 10 years, as well as a travel document valid for two years. In contrast, an individual granted subsidiary protection is considered a foreigner with temporary residency, allowed to travel within the Schengen Area, work, receive health insurance, and hold a residence permit valid for two years, along with a foreigner's passport valid for up to one year.⁹¹

Although the asylum law has been amended, disparities remain between the rights and benefits of individuals granted asylum and those granted subsidiary protection. This is particularly evident in integration efforts: the state is responsible for integrating asylum seekers, whereas non-governmental organisations are responsible for integrating individuals granted subsidiary protection.⁹²

Several practical challenges commonly arise during the asylum-granting process, such as difficulties in collecting sufficient evidence to support claims, frequent absence of identity documents, language barriers, and misunderstandings regarding the purpose

90 | Marczyová, 2018, p. 125.

91 | Elbert, 2016, p. 19.

92 | Marczyová, 2018, p. 125.

of applicant interviews. Verifying the authenticity of submitted documents is also challenging, often because of limited verification resources. In some cases, incomplete or inaccurate information about the applicant's country of origin, sometimes resulting from migration office errors, further complicates the process. Despite these challenges, asylum proceedings in Slovakia are generally conducted efficiently and without significant delays.⁹³

5. Measures in the Field of Education, the Labour Market, and Civil Initiatives

In Slovakia, several measures have been implemented in education, the labour market, and through civil initiatives to support migrant integration and inclusion in Slovak society. These initiatives aim to help migrants adapt to their new environment and contribute to the country's social and economic development.

The Slovak population provided significant financial and material assistance to Ukrainian refugees, frequently offering housing and participating in volunteer activities at the border and within the country. Many individuals supported specific people, either independently or through organisations, mainly from the non-governmental sector, in response to initiatives such as the prominent campaign 'Who Will Help Ukraine?' These efforts were reflected in a survey conducted as part of the project 'How Are You Doing, Slovakia?' by the Institute of Sociology, the Institute of Social Communication Research of the Slovak Republic, and the agencies MNFORCE and Seesame.⁹⁴

In April 2022, Slovak support for Ukrainians remained stable but decreased over time. Surveys by the Slovak Academy of Sciences indicated that unrestricted asylum support declined from 40% in March to 30% in December, while support for integration fell from 42% to 36%. This reduction was associated with economic difficulties, rising prices, and misinformation.⁹⁵

| 5.1. Education

Education in Slovakia plays a key role in integrating migrants, with Slovak language education as a central element. Slovak law, consistent with Article 27(1) of the Qualification Directive, ensures that children of foreign citizens have the same educational rights as Slovak nationals. The Act No. 245/2008 Coll. on Education and Training, as amended (hereinafter referred to as the Education Act), regulates the education, training, accommodation, and meals of foreign children, asylum seekers, and Slovaks living abroad under the same conditions as Slovak citizens. To address language barriers, schools

93 | Ibid., p. 126.

94 | Letavajová et al., 2024, p. 119.

95 | Papcunová, 2023.

may organise Slovak language courses, funded by district education offices and local authorities.⁹⁶

Compulsory school attendance in Slovakia lasts 10 years or until age 16. Parents or guardians are required to enrol children in school, while child protection authorities are responsible for unaccompanied minors. School principals assess prior education and language skills to place children in suitable grades. If language proficiency is inadequate, students may be assigned to age-appropriate grades for up to one year, during which Slovak courses may be provided with funding from regional education departments.⁹⁷

Secondary school admissions are regulated by paras. 62–71 of the Education Act, with principals making decisions based on entrance examinations. Students lacking proof of lower secondary education are ineligible for programmes leading to the General Certificate of Education (*maturita*) but may complete lower secondary education at elementary or vocational schools. District offices are responsible for recognising primary education certificates from non-EU countries, assessing their equivalency with Slovak education standards.⁹⁸

In addition, the Ministry of Labour, Social Affairs, and Family of the Slovak Republic, in cooperation with the Chief Expert for General Child and Adolescent Care at the Ministry of Health of the Slovak Republic, MUDr. Elena Prokopová, developed a guideline on admitting children arriving from Ukraine into childcare facilities for children up to three years old⁹⁹ during a declared state of emergency related to the mass influx of foreigners into Slovakia due to the armed conflict in Ukraine. To reduce health risks in these facilities, children must undergo a health assessment by a paediatrician to determine their suitability for group care. Children whose parents are applying for or have been granted asylum, temporary refuge, or supplementary protection are eligible for admission, as are those whose parents receive social services to balance work and family life. Parents of children under three who work in Slovakia may also apply for a childcare allowance of up to EUR280 to cover care costs. A health check is required before admission to assess the child's suitability for the facility.¹⁰⁰

Starting next school year, Ukrainian children residing in Slovakia will be required to attend school. This compulsory attendance for children of foreign nationals is one of 89 amendments in a major education reform. However, areas near the capital are expected to face challenges in meeting increased demand because of limited capacity. Critics argue that schools lack adequate resources and conditions to support these children's

96 | Additionally, Act No. 596/2003 Coll. on State Administration in the Education and School Self-government, as amended, specifies that district education offices, in collaboration with local authorities, are responsible for organizing and funding state language courses for children of foreign citizens residing in Slovakia.

97 | See the website of the Ministry of Education, Research, Development and Youth of the Slovak Republic: Available at: <https://www.minedu.sk/vzdelavanie-deti-cudzincov-education-of-children-of-foreigners/> (Accessed: 10 December 2024).

98 | Ibid.

99 | *Usmernenie k prijímaniu detí prichádzajúcich z Ukrajiny do zariadení starostlivosti o deti do troch rokov veku dieťaťa.*

100 | See the website of the Ministry of Labour, Social Affairs and Family of the Slovak Republic [Online]. Available at: <https://www.employment.gov.sk/files/sk/uvodna-stranka/pomoc-odidencov-z-ukrajiny/usmernenie-k-prijimaniu-deti-do-zariadeni-jasle--zdravotna-sposobilost-24-3-2022.pdf> (Accessed: 11 December 2024).

education. Since the beginning of the military conflict in Ukraine, many young people have sought refuge in Slovakia and are now subject to school attendance requirements. Some have continued their education online through Ukrainian schools, while others have not been enrolled in any form of schooling.¹⁰¹

| 5.2. Labour Market

Employment remains a central aspect of migrant integration, and Slovakia has introduced comprehensive measures to facilitate migrants' access to the labour market. Barriers persist, particularly in regulated professions such as healthcare and education. Increasing labour market demands are leading more employers to consider hiring nationals from third countries (i.e., non-EU states). The employment¹⁰² of these individuals in Slovakia is primarily regulated by Act No. 5/2004 Coll. on Employment Services, as amended (hereinafter referred to as the Employment Services Act), and the Foreigners' Residence Act.¹⁰³ However, because of the scope of this paper and its focus on Ukrainian refugees, general employment rules, including those for third-country nationals, are not discussed.

Ukrainian citizens may remain in Slovakia for up to 90 days under a visa-free regime.¹⁰⁴ During this period, they are not required to apply immediately for international protection or temporary refuge, but must report their address to the Foreign Police within three working days of arrival. They are not permitted to work or conduct business activities during this stay, and do not have access to public health insurance for the 90-day period.¹⁰⁵

Individuals granted temporary refuge (*odídenc*) may work full-time or part-time, engage in self-employment, or operate a business. As employees, they are covered by public health insurance if they earn at least the minimum wage. Their employment rights are limited to Slovakia. Those granted asylum or subsidiary protection (refugee status) also have the right to work full-time or part-time and to run a business, without needing additional work permits. They are covered by public health insurance, and their right to work and conduct business is similarly restricted to Slovakia.¹⁰⁶

They can search for job opportunities through several popular job portals, some of which now include sections specifically for people arriving from Ukraine. Notable portals are the public job portal (sluzbyzamestnanosti.gov.sk) and commercial sites such as profesia.sk, kariera.sk, adeccojobsforukraine.com, and worki.sk. The Migration Information Centre offers further resources and support for those needing assistance with job market orientation, language training, or requalification.

When applying for employment, the employer is required to notify the authorities that they are hiring a foreign national¹⁰⁷ and must provide the required documents.

101 | STVR, 2024.

102 | The possibility that an employer may employ a foreigner from a third country is listed in Section 21 of the Employment Services Act.

103 | Michalíková, 2018.

104 | See para. 23(6) of the Foreigners' Residence Act.

105 | International Organization for Migration, 2024 [Online]. Available at: <https://mic.iom.sk/en/news/768-conditions-of-employment-in-slovakia-for-refugees-temporary-refugeeholders-or-asylum-seekers-from-ukraine.html> (Accessed: 15 December 2024).

106 | Ibid.

107 | Michalíková, 2018.

In most cases, no additional documentation is required to work in Slovakia; however, some regulated professions may require specific documents, particularly those that demand certain qualifications or education. For information on recognising foreign qualifications, individuals can contact the Centre for Recognition of Diplomas. For professions that typically require a criminal background check, such as public service or teaching roles, a declaration of honour may suffice instead of an official criminal record extract.¹⁰⁸

If the employer violates the terms of the employment contract or breaches the Labour Code¹⁰⁹ any way, the employee can contact the relevant Labour Inspectorate or seek free legal assistance from the Slovak Bar Association,¹¹⁰ the IOM Migration Information Centre, or the Legal Aid Centre.

| 5.3. Non-Governmental Initiatives

Civil society initiatives are essential in supplementing state-led integration efforts, with non-governmental organizations and local communities leading these activities. These organisations provide various support services, such as legal, social, and psychological assistance to migrants.

The mass arrival of Ukrainians due to the military conflict in Ukraine, which began in February 2022, marked a significant turning point in Slovakia's migration landscape and public attitudes toward migrants. This unprecedented event generated a strong wave of solidarity across the country, with civil society leading efforts to support newly arrived Ukrainians and often compensating for insufficient state assistance.¹¹¹

The key principles of integration policy are based on equality, fairness, and respect for the human dignity of every individual living in the country. Local and regional self-governments play a crucial role in supporting the integration of foreigners into society. These institutions promote mutual understanding and cohesion between the majority population and migrant communities. The effective implementation of integration policies depends on coordinated collaboration among state authorities, local governments, public administration, migrant communities, non-governmental organisations, and other entities involved in the integration process.¹¹²

In Slovakia, the Ministry of Interior oversees migration policy. Integration efforts for foreigners involve activities supported by state bodies, local governments, and various organisations and associations. Multiple projects aim to facilitate integration in different areas of social life. For example, the Ministry of Labour, Social Affairs and Family of the Slovak Republic, in cooperation with the 'migration policy leader', announced a call for applications for non-refundable financial contributions and participation in the national project within the Programme Slovakia 2021–2027, entitled 'Integration of third-country

108 | International Organization for Migration, 2024 [Online]. Available at: <https://www.mic.iom.sk/en/news/768-conditions-of-employment-in-slovakia-for-refugees-temporary-refugee-holders-or-asylum-seekers-from-ukraine.html> (Accessed: 15 December 2024).

109 | Act No. 311/2001 Coll., as amended.

110 | There is a possibility to contact the lawyers via email or by phone which is available exclusively for individuals from Ukraine affected by the military conflict.

111 | Letavajová et al., 2024, p. 118.

112 | Marczyová, 2018, p. 121.

nationals, including migrants'.¹¹³ Particular recognition should be given to the efforts of institutions such as the International Organization for Migration, the Migration Information Centre of the International Organization for Migration (operating in Bratislava and Košice¹¹⁴),¹¹⁵ the Migration Office of the Ministry of Interior, the United Nations High Commissioner for Refugees, the Institute for Public Affairs, the Centre for Research on Ethnicity and Culture, and the Human Rights League.¹¹⁶ NGOs such as the Human Rights League, the Migration Information Centre, and the Slovak Humanitarian Council provide essential resources that help migrants address integration challenges. In addition to direct support, civil initiatives promote community engagement through programmes that encourage cultural exchange, social inclusion, and mutual understanding between migrants and the local population. These initiatives also often advocate for legal and policy reforms to improve integration outcomes, serving as intermediaries between migrants and public institutions.¹¹⁷

Additionally, municipalities play a vital role in supporting migrant integration. They serve as a communication bridge with public institutions, provide essential information, and deliver public services, including social, cultural, and educational services. Municipalities are also central to implementing programmes in areas where migrants reside, ensuring that integration efforts address the needs of local communities.¹¹⁸

Despite these advancements, Slovakia still faces challenges in integration efforts. Insufficient resources, limited funding, and institutional capacity remain significant barriers to effective implementation of integration measures. Language barriers persist because the accessibility and quality of language courses are inconsistent. Negative public attitudes towards migrants also hinder integration initiatives. Addressing these challenges requires a comprehensive approach. Improved coordination among state authorities, local governments, and civil society organisations is essential. Increased investment in integration programmes, especially in education and language training, would improve outcomes. Public awareness campaigns to combat prejudice and promote social cohesion are also critical for encouraging tolerance and inclusivity within Slovak society.¹¹⁹

113 | For more information see the website of the Ministry of Labour, Social Affairs, and Family of the Slovak Republic [Online]. Available at: https://www.employment.gov.sk/sk/uvodna-stranka/programy-europskej-unie/program-slovensko-2021-2027/narodne-projekty/?fbclid=IwZXhObgNhZW0CMATAAR2-VIjvR26CRrRf8AhgiJGt6bOzBEZlJYyhW2Zws5_nhKcxprOMZMRAHdg_aem_cdNQNUOdLCqHt_sWEgIL3Q (Accessed: 18 November 2024).

114 | Offering comprehensive services to migrants, including legal, social, and employment counseling, further education, labour market inclusion, and community support.

115 | For more information, see the Summary Report on the Status of Implementation of the Objectives and Measures of the Integration Policy of the Slovak Republic for 2016, p. 4. (*Súhrnná správa o stave plnenia cieľov a opatrení Integrovačnej politiky Slovenskej republiky za rok 2016*).

116 | Marczyová, 2018, pp. 121–122. See also Bakošová, 2024, pp. 17–18.

117 | Ibid.

118 | Ibid.

119 | Ibid.

6. Conclusions

Migration has been a constant aspect of human existence, with its intensity and urgency increasing, particularly in recent decades. It is now one of the most pressing global issues in an increasingly interconnected world. The need for coordinated responses at national and international levels has never been more urgent.

This paper aimed to provide a detailed analysis of Slovakia's legal framework and practical measures for the protection and integration of migrants. The analysis highlighted the distinct characteristics of asylum and subsidiary protection within Slovakia's system, clarifying their eligibility criteria, associated rights, and legal implications.

Asylum, granted to individuals fleeing persecution due to race, religion, nationality, membership in a particular social group, or political opinion, provides more permanent protection and confers significant rights and privileges similar to those of Slovak citizens. In contrast, subsidiary protection is a temporary status for individuals at risk of serious harm not linked to targeted persecution, such as generalised violence or the threat of torture. Although it allows access to healthcare and employment, its temporary status and requirement for periodic renewal create less legal stability for recipients. This distinction between asylum and subsidiary protection highlights the differing levels of stability and long-term integration opportunities available to refugees in Slovakia.

This paper examined Slovakia's integration policies in education, employment, and non-governmental initiatives. Education formed a central part of integration, with Slovak language courses and curriculum adjustments helping refugee children adapt to the local system. In employment, Slovakia's policies supported migrant labour market participation by recognising their skills and addressing labour shortages. However, language barriers, limited resources, and insufficient institutional capacity continued to hinder full integration. Civil society organisations complemented government efforts by providing legal, social, and psychological support to migrants. The solidarity of the Slovak population, especially during the arrival of Ukrainian refugees, indicated a broad societal commitment to integration. Nevertheless, persistent public resistance and resource constraints highlighted the need for increased investment in integration programmes and public awareness campaigns.

In conclusion, Slovakia has made significant progress in adapting its migration policies and improving the legal protection of migrants, particularly refugees. However, the rising number of non-EU migrants, partly due to the Ukrainian conflict, highlights the need for ongoing adaptation of legal frameworks and public services. To achieve successful integration, Slovakia should prioritise long-term strategies that promote inclusivity, offering not only refuge but also opportunities for migrants to contribute to Slovak society. The success of integration efforts depends on continued cooperation among the government, civil society, and local communities to create a supportive environment for both migrants and the wider society. The country's legal framework and integration measures are important steps towards supporting migrants in their transition to Slovak society, but sustained efforts and greater cross-sector collaboration are required to address ongoing challenges. By strengthening integration policies and practices, Slovakia can ensure that migration supports societal development and mutual enrichment.

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EXPANSION IN ROMAN TIMES: SUBJUGATION OR INTEGRATION?

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ABSTRACT

The article explores the historical experience of Ancient Rome, particularly its methods of state organisation and governance, as a lens to examine contemporary challenges in European integration. Ancient Rome's approach to expansion, international relations, administrative organisation, citizenship policies, and the manumission of slaves offers valuable insights that can be applied to modern dilemmas faced by European nations. Rome's expansion strategy, marked by the integration of diverse territories and cultures under a unified political and legal framework, demonstrates a model for managing diversity within a broader union. The Roman Empire's ability to forge alliances, negotiate treaties, and maintain stability across a vast, multi-ethnic domain parallels the European Union's efforts to harmonise relations among Member States with diverse cultural and political histories. The administrative organisation of Ancient Rome on various stages of its history also provides a historical precedent for balancing local autonomy with centralised authority. Rome's system of provincial governance, which delegated responsibilities while ensuring accountability to central institutions, resonates with the EU's ongoing quest to balance national sovereignty with supranational governance. Moreover, Rome's inclusive citizenship policies – extending citizenship rights to conquered peoples – can serve as a case study for addressing integration and identity in Europe. This historical practice highlights the potential for fostering unity through inclusive legal frameworks, even in diverse and complex societies. Finally, the Roman practice of manumitting slaves and incorporating them into the social and economic fabric of the Empire reflects an early example of integrating marginalised groups into the mainstream. This approach could inform contemporary discussions on immigration and social inclusion in Europe. By analysing Rome's historical experiences, the article underscores the relevance of ancient practices to modern governance, offering a comparative framework to address current challenges in achieving cohesion, inclusivity, and effective administration within the European Union.

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KEYWORDS

*Ancient Rome**Roman law**Roman Empire**Roman citizenship**manumission**Roman administration**European integration theories*

1. Introduction

The Romans were generally focused on territorial expansion. They gained new territories not only by conquest, but also through alliances and treaties. The initially small town in central Italy gradually occupied the Apennine Peninsula before turning to overseas territories, where Roman provinces began to be founded. The people of these lands did not commonly obtain Roman citizenship, but continued to be governed by their own local laws, which Roman officials accepted. Roman religion and customs were also not customarily imposed on the conquered peoples, allowing them a far-reaching degree of freedom. Local elites were often left in power. This practice was only abandoned in communities with a warlike attitude.

The second very inclusive aspect of Roman social policy was the issue of slavery. The Romans derived their slaves mainly from conquests, and by extension from the principle that the child of a slave was born into a state of slavery. However, it was decided very early on in the Roman state that a formally manumitted slave became a Roman citizen. This policy offered a pathway to integration and social mobility, setting a significant precedent for the inclusivity of Roman society.

Many people living in Roman territory did not hold a citizenship. Very early on, the Romans began to look for a way to include them in the legal framework. The main obstacle was the principle of the personality of the law, a defining characteristic of the ancient world. Individuals were subject to the laws of their own community, regardless of their location. The answer to this hindrance was the concept of *ius gentium* – the law of nations, common to all. Based on this, Roman praetors began to provide protection in disputes where at least one party was a foreigner, creating a new layer of law – alongside the archaic *ius civile* – called *ius honorarium*.

The Roman Empire was thus a powerful and heterogeneous state, a multicultural melting pot in which customs and languages mingled, in which a global market developed, in which people moved around and which was connected for the first time in history by the world wide web, the powerful network of Roman roads.

It is this world that laid the foundations of a European culture, and it is here that we can look for inspiration and answers to many questions. Perhaps it is here that the ideas behind European integration can be found². The Romans united much more than Europe, and their motivation was debatable to say the least, but it was in Rome that ideas were born about how to keep this world in harmony.

2 | Cf. Martin, 1995; Marks, 2012.

2. Theories of European Integration – an Outline

European integration refers to the process of political, economic, and social cooperation among European nations, aimed at creating a unified and cohesive region. Theories of European integration seek to explain how and why this process unfolds, offering insights into the development of institutions like the European Union and the dynamics between Member States. There are several theories of European integration which offer different solutions and perspectives³. Neo-Functionalism theory emphasises the role of supranational institutions and the concept of spillover, where integration in one sector creates momentum for integration in others. The intergovernmentalism theory focuses on the dominance of national governments in the integration process underlining that progress is visible when states perceive mutual benefits but remains constrained by national sovereignty and divergent interests. Liberal Intergovernmentalism theory builds on intergovernmentalism but incorporates domestic politics and economic preferences. It argues that integration results from rational bargaining between states based on their national interests. The constructivism theory highlights the importance of shared ideas, norms, and identities. Integration, in this approach, is influenced by how European citizens construct their sense of community and shared purpose. Postfunctionalism is a theory that emerged in response to growing public discontent, which stresses the role of domestic politics, identity, and the limits of integration due to public opinion and nationalist resistance. Each of these theories offers valuable perspectives, emphasising different drivers of integration, such as economic benefits, political negotiations, institutional dynamics, or cultural factors. Together, they provide a comprehensive framework for understanding the complexities of European unity. Let us examine these theories through the prism of Roman experience. The Roman concept of war and the law of war, foreign policy and treaties should be covered first, followed by the administrative division of the state and how the various territories were governed, followed by citizenship and the policy of inclusion.

3. The Laws of War and the Role of the Fetiales

According to our sources, the laws of war were first regulated by two of the Roman kings: Tullus Hostilius and Ancus Marcius. The first introduced the law according to which wars were to be initiated and consecrated in accordance with the rite of the fetials, so that any war that was not declared formally and proclaimed properly would be judged unjust and ungodly⁴. The second focused on the ceremonies of war: not only were wars fought, but also declared in accordance with a specific ritual, on the basis of which compensation for damage was demanded from the foreign state⁵.

3 | Cf. Rosamond, 2000; Wiener, Borzel and Risse, 2019; Czaputowicz, 2020.

4 | Cic., *De rep.* 2, 31.

5 | Liv. 1, 32, 5.

The *fetiales* constituted a priestly college of twenty members, which had been in existence since regal times and which was responsible for the laws of war. This included performing the ceremonies for declaring war and concluding peace⁶.

Cicero, in his treatise *De legibus*⁷, wrote that the *fetiales* should deal with peace treaties and matters of war. The powers of this college were summed up by Varro in his work *De lingua Latina*⁸ writing that it was up to them to guard allegiance between peoples, to see that war was declared and ended in an appropriate manner and that treaties were observed. They were also the ones who concluded treaties on behalf of Rome. If a peace or alliance was concluded, after the terms of the treaty had been read out in the presence of the *fetiales* and representatives of the other state, the *fetial* in charge called *pater patratus* performed the sacrifice in the Forum. This consisted of killing a sacrificial animal with a sharp stone and casting a curse on those who would break the agreement. Varro also reported that before declaring war, *pater patratus* demanded reparation from enemies, i.e. performed the *rerum repetitio* ceremony, during which Rome demanded that the hostile people satisfy certain conditions, failing which war would ensue. In the event that war had to be declared after an ineffective *rerum repetitio*, after a decision had been taken by the Senate and the *lex de bello indicendo* had been passed at the centuriate assembly, the *pater patratus* was again sent to the border of the hostile community, where he performed the ceremony.

First, the *pater patratus* delivered the formula for declaring war. The text quoted by Gellius⁹ includes the name of the hostile people, the Hermunduli, which may be a deliberate reworking of the authentic name of the Germanic tribe Hermunduri or another version of this name. This formula was, in a slightly more elaborate version, quoted, for example, by Livy¹⁰, writing about the war with the Latini Prisci under King Ancus Marcius:

Whereas the Hermundulan people and the men of the Hermundulam people have made war against the Roman people and have transgressed against them, and whereas the Roman people have ordered war with the Hermundulan people and the men of the Hermundulans, therefore I and the Roman people declare and make war with the Hermundulan people and with the men of the Hermundulans¹¹.

After these words, the *pater patratus* would throw a spear into enemy territory. A war thus declared was treated as a just war – *bellum iustum*, whereby the enemy had to be an organised community, i.e. the people – *populus*, and not, for example, fugitive slaves or pirates¹².

It is worth mentioning that, as the territory of the Empire grew, when the land of the people with whom war was to be initiated was too distant, the ceremony was carried out symbolically in Rome on a designated piece of land near the temple of Bellona called *ager hostilis*. Octavian declared war on Cleopatra and – indirectly – Antony in the same way¹³.

6 | Cf. North, n.d.

7 | Cic., *De leg.* 2, 21.

8 | Varr., *De ling. Lat.* 5, 86.

9 | Gell. 16, 4, 1.

10 | Liv. 1, 32, 13.

11 | Transl. J.C. Rolfe.

12 | Cf. Cic., *De off.* 3, 108.

13 | Cf. Dio Cass. 50, 4.

It is worth taking a closer look at the Roman concept of 'just war', or *bellum iustum*. According to Cicero, a just war (*iustum piumque bellum*¹⁴) was only fought when it was declared by the fetials against *hostis*¹⁵ *iustus et legitimus*¹⁶. In such a war, it was lawful to kill enemies, take them captive and appropriate their property. However, oaths and laws of war also had to be observed. Cicero addressed this issue by dissecting the case of M. Atilius Regulus¹⁷, who – captured by the Carthaginians – was sent to Rome to negotiate the release of Carthaginian captives in exchange for his freedom. Regulus presented his message to the Senate, but refused to participate in the deliberations, considering that as long as he was bound by the *iusiurandum* sworn to his enemies, he was not a senator. In addition, he advised against the release of captives and – when the Senate followed his advice – returned to Carthage where he was executed. By this example Cicero sought to explain the importance of the *iusiurandum*, the oath taken to Jupiter, and argued that it was absolutely necessary to keep it when dealing with the enemy¹⁸.

4. International Treaties and Policy

To foreigners, the Romans appeared as a strange people. They possessed a young and initially parochial state, yet displayed remarkable arrogance. They looked down on the ancient powers of the East – civilizations millennia older than their own – and often treated foreign customs and cults with contempt.

To the other peoples of the Mediterranean Basin, the Romans were distinguished above all by their togas – strange and bizarre garments that often inspired fear or, at the very least, respect. The Roman Republic, symbolised by the toga, was a unique phenomenon in the ancient world. Despite its humble beginnings, the scope of Roman expansion was unparalleled¹⁹. One example illustrating this phenomenon is an episode from 168 BC, featuring Gaius Popillius Laenas, who was sent to Egypt as a legate of the Senate²⁰. His mission ascended from the invasion of the Ptolemaic kingdom by Antiochus IV Epiphanes, the ruler of the Seleucid Empire. This episode was recounted by various authors²¹, including Valerius Maximus²², a collector of anecdotes.

When Popillius met Antiochus, he refused to shake the king's extended hand. Instead, he handed him the tablets bearing the Senate's resolution, which ordered the withdrawal of Antiochus's army from Egypt. When the king expressed a desire to consult with his advisors, Popillius drew a circle on the ground around him and declared that he could not step out of it until he provided an answer to the Senate. Only after Antiochus announced his agreement to withdraw from Egypt did Popillius shake his hand as a gesture of

14 | Cic., *De rep.* 2, 31.

15 | Initially, the Romans used the word *hostis* to refer to foreigners. Only later did it acquire the meaning of enemy, cf. Fest. 91 L., s.v. *hostis*.

16 | Cic. *De off.* 3, 108.

17 | Cf. D. 49, 15, 5, 3 (*Pomp. 37 ad Quintum Mucium*); Calore, 2003, pp. 136–137.

18 | Cf. Catalano, 1964, pp. 373–383.

19 | Cf. Polyb. 1, 1, 5.

20 | Cf. Broughton, 1951, p. 430.

21 | Cf. Cic., *Phil.* 8, 8, 23; Polyb. 29, 27; Vell. Pat. 1, 10, 1–2; Liv. 45, 12.

22 | Val. Max. 6, 4, 3.

alliance with the Roman people. According to Valerius Maximus, the legate in this encounter embodied the very authority of the Senate. He was dignified and resolute, and though addressing a king, he assumed the role of a sovereign figure who would tolerate no opposition.

The conversation between Lucius Cornelius Sulla, Ariobarzanes, king of Cappadocia, and Orobazus, a Persian envoy sent by King Mithridates II in 96 BC, had a similarly symbolic nature. Sulla orchestrated the meeting to assert his supremacy. He ordered three chairs to be arranged, with the central one slightly elevated, which he occupied²³. This arrangement allowed him to physically and symbolically tower over his interlocutors. Ariobarzanes found himself in a supplicant position, relying on Roman support to remain on the throne, while Persia, at the time, was an undisputed power. Nevertheless, Orobazus was executed for accepting Sulla's terms.

This episode, however, is captivating for another reason. Sulla's actions mirrored those of Popillius, but with a key distinction. Popillius acted as a representative of the Senate, embodying its authority. Sulla, on the other hand, demonstrated his personal dignity and authority, emphasising his own standing rather than that of the Senate.

These events illustrate the Roman approach to international politics. The general principle of *divide et impera* that they applied is well known. However, it is worth examining how this principle manifested in formal terms, particularly in the context of the treaties concluded by Rome.

Foreign policy was in the hands of the Senate, although initially the college of the *fetiales* also played a major role. Treaties (*foedera*) were often concluded by generals in the form of *sponsio*, with subsequent approval of the agreement by the senate required. In the event of a negative decision, there could be a surrender (*noxae deditio*) of the general to the people with whom he had concluded the agreement as reparation for failure to keep his oath²⁴.

Treaties could be based on the equality of the parties (*foedera aequa*) or contain an element of Roman supremacy (*foedera iniqua*). Other peoples were given either the status of Latins, which allowed them to enter into trade agreements and marriages with the Romans, or the status of Italics, which did not include these privileges or any possibility of acquiring Roman citizenship, or the status of foreigners. In the latter case, a distinction was made between communities bound to Rome by a treaty and having a status similar to that of the Italics, communities that were free and exempt from taxes, and free communities that had to pay both direct and indirect taxes.

5. Local Administration: From the Republic to the Principate

The communities incorporated into Rome could be transformed into municipalities, with their inhabitants granted Roman citizenship. Initially, this was full citizenship (*civitas optimo iure*), but later it often took the form of limited citizenship (*civitas sine suffragio*). The latter excluded two key rights: *ius suffragii* (the right to vote in popular assemblies) and, by extension, *ius honorum* (the right to stand for public office).

23 | Cf. Plut., *Sull.* 5, 9-10; Letzner, 2005, pp. 31-33.

24 | Cf. Bederman, 2001, p. 200.

The first community to receive *civitas sine suffragio* was the town of Caere (modern Cerveteri), an Etruscan settlement known for its amicable relations with Rome. In 390 BC, during the Gallic invasion, the people of Cerveteri provided refuge to Romans, including priests and Vestal Virgins. As a probable reward, they were granted Roman citizenship *sine suffragio*, although this recognition likely came about forty years later, and notably without imposing financial or military obligations.

Aulus Gellius provides crucial information regarding the *Tabulae Caerites*²⁵, which sheds light on the practice of *civitas sine suffragio*. He notes that Roman censors recorded individuals on these tablets as a form of punishment, effectively stripping them of their *ius suffragii*. Inscription on the *Tabulae Caerites* symbolised social degradation and the loss of good name, i.e. *ignominia*²⁶.

The Romans left the municipalities a great deal of freedom, allowing them to retain their existing system and laws and to keep local officials in place. Etymologically, the terms *municipium* and *municeps* were derived from the words *munus* – ‘burden’ and *capere* – ‘to take on’, and thus it was a community that took on certain burdens²⁷. One could become a citizen of a *municipium* by birth, adoption or manumission²⁸.

Colonies, on the other hand, were cities founded by Rome, initially in the Italian territories and later outside these areas, in order to gain control over a given territory. They were called *propugnacula imperii* – ‘the bulwarks of the Empire’²⁹. Some were founded under Roman law (*coloniae civium Romanorum*), others under Latin law (*coloniae Latinae*)³⁰. A colony was founded by statute, plebiscite or senate decision. Officials called *duoviri* or *triumviri coloniae deducendae* were appointed. Roman volunteers became colonists, but in the case of a colony founded under Latin law, they lost their Roman citizenship and acquired the status of *Latini coloniarum*, thus experiencing *capitis deminutio media*.

According to Servius³¹, a colony was a group of people sent from their community to occupy a place in their name. The colony was led by *duoviri* and other local officials, especially aediles, along with a municipal council, modelled on the Roman Senate, composed of decurions.

The Roman provinces were considered as conquests of the Roman people (*praedia populi Romani*) outside Italy. The first were founded (in 227 BC) as a result of the First Punic War, one in Sicily and the other in Sardinia and Corsica. Two others were founded in Spain (Hispania Ulterior and Hispania Citerior). In the East, in addition to Macedonia and Greece, the province of Asia was founded upon by the will of Attalus III, King of Pergamon. In Gaul the province of Gallia Narbonensis was added to the Cisalpine Gaul that belonged to Rome. After the final defeat of Carthage in the Third Punic War, the province of Africa was formed from part of the lands belonging to Carthage. Subsequently, an increasing number of provinces were added.

During the Republican period, the organisation of the provinces varied and was provisional, adapted to the changing situation. The Roman state did not conclude treaties

25 | Gell. 16,13,7.

26 | More extensively Tarwacka, 2025, pp. 109–110.

27 | Cf. Fest. 155 L., s.v. *Municipium*; 126 L., s.v. *Municeps*.

28 | Cf. Fest. 126 L., s.v. *Municeps*; Ulp. D. 50, 1, 1.

29 | Cic., *De leg. agr.* 2, 73.

30 | Some municipalities could become colonies. Cf. Gagliardi, 2023a, pp. 87–114.

31 | Serv., *Ad Verg. Aen.* 1, 12.

with the province as a whole, but with the city-states (*civitates, poleis*) belonging to it and, in less developed areas, even with tribes. Some of the city-states belonging to the province were privileged as *civitates foederatae*, for example Athens, Rhodes and Massalia. While they provided fleets and armies, they did not pay taxes and were exempt from quartering the army. They also had their own judiciary. City-states that had no alliance with Rome and were dependent on the Senate (*civitates sine foedera liberae ac immunes*) were in a similar position. The most numerous, however, were those that paid tribute to Rome (*civitates stipendariae*). The inhabitants of these city-states were not, in principle, obliged to perform military service, but they did have to pay taxes, ordinarily those in effect in the province before its annexation.

Originally, the provinces were governed by those magistrates, usually praetors, who held office in Rome. Important provinces, especially those in which wars were fought, were entrusted to one of the consuls, as the other had to remain in Italy. Occasionally, the Senate extended the term of office of some of the provincial magistrates (*prorogatio imperii*). However, the system of entrusting the provinces to magistrates performing office in Rome proved inconvenient and was reformed under Sulla, in 81 BC. Henceforth, the provinces were administered for a period of one year after the end of the tenure in Rome, by proconsuls and propraeors. The governors had administrative, military and judicial powers. Only Roman citizens could appeal against their judgements and orders. Typically, proconsuls were entrusted with provinces that were not yet fully subjugated and required the upkeep of an army in them, while propraeors were entrusted with provinces that were peaceful.

The governor was assisted by quaestors in matters which in Rome fell within the jurisdiction of the curule aediles, and by legates, originally appointed by the Senate and later nominated by the governors and approved by the Senate. In addition, the governor used the services of his *cohors comituum*, to whom he entrusted certain minor tasks. He also had lower officials to assist him, such as secretaries (*scribae*).

The Senate supervised the provinces by determining which of them were to be classified as consular and which as praetorian, and laying down the main principles of provincial organisation. Additionally, the governor of the province laid down rules for dealing with detailed matters, especially in the area of jurisdiction, by issuing a provincial edict, modelled on the praetor's edict in Rome.

Governors were appointed by lot among those eligible for the office. The office of governor, like that of the Roman magistrate, was unpaid. In reality, however, the provinces became an important source of wealth for the governors.

Most of the territories transformed into provinces fell into the hands of the Romans through conquests. Their inhabitants had only those rights granted to them by the victors, which could be withdrawn from them at any time. In practice, however, they were granted considerable autonomy, especially in terms of local administration. The provincial governors interfered in the internal affairs of the provinces only for compelling reasons, such as disloyalty, anarchy or financial mismanagement.

Revenue from the provinces became the main source of wealth for the Roman state, so much so that in 167 BC Roman citizens were exempted from a tax paid for military purposes (*tributum*). Indeed, land in the provinces was the property of the Roman people and tribute was paid for its use in crops or money. The collection of tribute, especially taxes from the local population, was leased to Roman entrepreneurs who came from the

equestrian state and formed companies called *societates publicanorum* for this purpose³². They collected the tribute on their own account, often deceiving the local population. They paid only a fixed sum to the state treasury and took the surplus for themselves or shared it with the provincial governors. Finally, the local population had no right of appeal against the provincial governor's decision. Since the special tribunals for complaints about governors' extortions were of little help, the Roman provinces became poorer at an alarming rate towards the end of the Republic.

6. Subsidiarity in Roman Jurisdiction

Running a powerful Empire was not easy. Under the principate, the emperor became the supreme judge, to whom lower courts could be appealed. To enable the princeps to carry out their judicial duties, the principle of subsidiarity was introduced, whereby minor matters were delegated to local authorities. The second important element was the principle of hierarchy, which, on the one hand, emphasised the supremacy of Roman law over local laws and, on the other hand, the hierarchical order of jurisdiction of local authorities, Roman officials and, finally, imperial jurisdiction³³.

The jurist Julian stated that in case of doubt about the applicable norms one should refer to the practice, and in the absence thereof, analogy should be used, and when even this does not provide an answer, then the law used by the city of Rome should be applied³⁴. This opinion must have applied to the settlement of cases in local communities, where reference was first made to written law, then to custom and analogy, and only finally to Roman law. The Romans showed an extreme tolerance for other legal orders, as long as they did not conflict with the basic principles of law guaranteeing the order and stability of the state.

This picture is confirmed by numerous documents of legal practice showing how disputes were settled both at local level and before Roman officials, and finally by the emperor himself³⁵.

7. Inclusion by Citizenship

The Roman citizenship was an object of desire because it resulted in many privileges and possibilities³⁶. In private law, only the citizens had the right of ownership, power in the family (*patria potestas*), the capacity to make a will and receive benefits therefrom, the right to appear in court to enforce their claims, the capacity to marry and to perform legal transactions in business. Foreigners were sometimes given legal protection, but

32 | Cf. Badian, 1972, pp. 101 ff.; Milazzo, 1993; Mateo, 1999; Maganzani, 2002; Malmendier, 2002, pp. 259 ff.

33 | Cf. Hurlet, 2019, pp. 122–137.

34 | D. 1, 3, 32 pr. (Iul. 84 dig.).

35 | Cf. Yiftach-Firanko, 2009, pp. 553 ff.

36 | Cf. Sherwin-White, 1980; Gardner, 1993, pp. 1 ff.

typically by using a fiction of citizenship. As far as the rights in public law are concerned, the citizens could serve in the army (*ius militandi*), vote in the popular assemblies (*ius suffragii*), run for office (*ius honorum*), turn to plebeian tribunes for help (*ius auxilii*), as well as appeal to the people when a magistrate intended to punish them with death, flogging or high financial penalty (*ius provocationis*).

There were various ways of obtaining Roman citizenship. First of all, children born in *iustum matrimonium*, that is a lawful marriage, became Roman citizens. The exception was when a Roman citizen married a foreigner who had the *ius conubii* – the right to marry. In such a case, the child became a *peregrinus*. According to the rule of the *ius gentium*, the child acquires the status of the mother, and children born out of wedlock acquired Roman citizenship if their mother held it. An exception to this rule was introduced by the *lex Minicia* of c. 90 BC, under which a child of a foreigner and a Roman citizen did not acquire Roman citizenship from his/her mother if the father did not have *conubium*³⁷.

Under the *ius migrandi*, citizenship by settlement in Rome could be obtained by *Latini prisci*, i.e. members of the Latin communities, although they were required to leave a son in their home town³⁸.

During the republican period, citizenship could also be granted by the popular assembly (for example, the *leges Iulia et Plautia Papiria* of 90–89 BC concerning the granting of citizenship to Rome's allies in Italy). The assembly could, however, delegate this power to other bodies in the form of *lex*. Such powers were given, for example, to officials appointed to establish a Roman colony – *triumviri coloniae deducendae*. In the period of the decline of the republic, it was also given to generals, who granted citizenship to deserving soldiers *virtutis ergo* (for valour)³⁹.

During the principate, however, citizenship was granted by the emperor through an edict. It became established practice (from the time of Claudius) to grant citizenship to soldiers who honourably completed their service in the army (*missio honesta*), along with their offspring. Additionally, *conubium* was granted to these soldiers in relation to women with whom they had been in a *de facto* relationship during their service or whom they later wished to marry. As proof of this conferral, the veteran received a document called the *diploma militare*⁴⁰.

In some municipal laws (e.g. *lex Irnitana*⁴¹) regulating non-citizen towns, it was stipulated that local office holders received Roman citizenship at the end of their term of office, along with their parents, wife and offspring from marriage.

Exceptionally, in trials for extortions of provincial governors, citizenship could be acquired by a foreigner who had won the case before the *quaestio repetundarum*, the criminal tribunal established for that crime.

37 | G. 1, 78.

38 | Cf. Gagliardi, 2023b, pp. 83 ff.

39 | Cf. McDonnell, 2006, p. 50.

40 | Cf. Wesch-Klein, 2007, pp. 442–443.

41 | *Lex Irnitana* 21.

8. Manumission as a Form of Inclusion

One of the most striking features of the Roman policy was, however, the fact that former slaves could also become citizens. The acquisition of citizenship resulted in the formal manumission of the slave⁴²: in a will (*manumissio testamentaria*), by means of fictitious proceedings before a praetor or other official endowed with jurisdiction (*manumissio vindicta*), or by registration in the relevant *tribus* and *centuria* at the time of the census by the censor or other official conducting the census (*manumissio censu*), and in Christian times in the church as well (*manumissio in ecclesia*). Manumission in a will could take two forms: direct manumission (*manumissio testamentaria directa*), when the testator imperatively granted freedom to the slave, or indirect manumission (*manumissio testamentaria indirecta vel fideicommissaria*), when the testator included a trust provision in the will requesting that a third party manumit the slave. In the first case, the patron of the freedman was his deceased owner; in the second case, the patron was the person burdened with the request for manumission, which ensured that the freedman was not alone. He needed to be loyal to his patron, but he could also expect support in return. The *manumissio vindicta* took place before an official. The *adsertor libertatis*, or so-called 'defender of liberty', assisting in the procedure (perhaps this function was performed by the lictor accompanying the official) stated that the slave was a free man, which the owner did not deny. In this situation, the praetor, seeing no dispute between the parties, granted the slave his freedom (*addictio*). As there was no dispute between the parties, this was a fictitious trial for freedom. The *manumissio censu*, on the other hand, consisted of enrolling the slave in the list of citizens. For this purpose, the owner informed the censors of his intention to perform the manumission and only then did the slave appear before the censors, when they made the entry.

Slaves were not granted citizenship if they were freed informally (for example, in the presence of the owner's friends – *inter amicos*)⁴³. Initially, even their freedom was debatable. However, under the *lex Iunia Norbana* (probably from 19 AD), they were given the status of Junian Latins (*Latini Iuniani*), following the example of the inhabitants of colonies founded under Latin law. Upon their death, all their property was inherited by the former owner, i.e. the patron, but this inconvenience was compensated for by the ease with which they could obtain Roman citizenship⁴⁴. They could achieve this by marrying a Roman citizen or a woman of Latin status having a one-year old child with her and then serve (first for six, then for three years) in the Roman city watch (*vigiles*), while providing a grain from Egypt for six years, running a mill in Rome for three years or building a house in Rome worth half an estate of at least 200,000 sesterces.

42 | Cf. Cic., *Top.* 10; G. 1, 17; *FD* 5; Weiss, 1930, col. 1366–1377; Buckland, 1908, pp. 437 ff.; Duff, 1958, pp. 23 ff.; Treggiari, 1969, pp. 20 ff.; Robleda, 1976, pp. 105 ff.; Watson, 1967, pp. 185 ff.; Watson, 1987, pp. 24 ff.; Masi Doria, 1999, pp. 1 ff.; López Barja de Quiroga, 2007, pp. 16–37.

43 | Cfr. G. 1, 41; 1, 44; Ulp. 1, 10; 1, 18; Biscardi, 1939; Duff, 1958, pp. 21 ff.; Albanese, 1962, pp. 5–103; Albanese, 1970, pp. 19–30; Watson, 1967, pp. 196–198; Balestri Fumagalli, 1982, pp. 117–169; López Barja de Quiroga, 2007, pp. 37–40.

44 | G. 1, 28–33.

9. The Speech of the Emperor Claudius (Tabula Lugdunensis) and Encomium on Rome by Aelius Aristides

Inclusiveness in the granting of citizenship did not necessarily extend to other areas of public life. For example, there were strong protests when Julius Caesar decided to allow Gallic elites (who had already been granted citizenship) to hold the dignity of Senator. The nobility could not swallow this. Public sentiment was decidedly hostile. Opposition manifested itself in various ways. For example, there was a proclamation (*libellus*): ‘Let it be done well. Let no one show the new senator the way to the Curia’, which is a parody of a magistrate’s edict. The new senators were unfamiliar with the topography of Rome, and some mischief-maker decided that they would not even get to the Senatorial Curia unless someone showed them the way. Moreover, songs circulated in the streets mocking Caesar for leading the Gauls in triumph – only to bring them to the doors of the Senate – and for how the Gauls had exchanged their trousers for purple-bordered togas⁴⁵.

A similar situation occurred in 48 AD when Emperor Claudius decided to admit the wealthy inhabitants of Transalpine Gaul into the Senate. There was significant opposition among the senators, prompting Claudius to deliver a speech in which he sought to persuade them that his decision, made in his capacity as censor⁴⁶, was justified.

According to Tacitus⁴⁷ Claudius reasoned that it was a Roman tradition to bind the conquered peoples by making them Roman. He also underlined the evolution of the state in which firstly only patricians were magistrates, then the plebeians were admitted to the offices, followed by the Latins and all inhabitants of Italy. The speech has been preserved in epigraphic form⁴⁸ and is displayed at the Gallo-Roman Museum in Lyon – the ancient Lugdunum, where Claudius himself was born. This version differs from Tacitus’s, but it clearly bears the hallmarks of Claudius’s attitude. The text begins with a long passage on the early history of Rome, with references to all the kings, the transition to Republic, the consulship, the dictatorship, the plebeian tribunate, the decemvirate, the military tribunate and the priesthood. The Emperor then pointed out that already under Augustus and Tiberius the best and richest inhabitants of the municipalities and colonies had been admitted to the Senate, and he expressed the opinion that provincial senators could prove useful to this august body. He also indicated that Gallia Narbonensis already had senators, and that the Long-Haired Gaul should therefore be granted this privilege. The main argument is that the policy of inclusion ensures peace.

A century later, the *Roman Oration*, or *Encomion on Rome*, by Aelius Aristides, a Greek orator and member of the Second Sophistic, is a praise of the Roman Empire. Its key passages⁴⁹ explain how the Romans created a common identity that included everyone in a universal way. This means that people are citizens of their towns as well as of Rome, and the Romans have nothing to fear from them. Local communities that guarded their

45 | Cf. Suet., *Div. Iul.* 80, 2.

46 | Cf. Tarwacka, 2025, pp. 33–34.

47 | Tac., *Ann.* 11, 23–25.

48 | Cf. Malloch, 2020.

49 | Ael. Aristid. 14, 214–216.

homes also guarded the Empire. The author also notes a double system of government: the central one in Rome and the local ones in the communities.

Thus, the policy of inclusion seems to have been the key element in creating a unified Empire to which people could feel they belonged.

10. *Constitutio Antoniniana* – Towards Integration

In 212 AD, Emperor Caracalla issued an edict known as the *Constitutio Antoniniana*, granting Roman citizenship to almost all free inhabitants of the Empire⁵⁰. This is often perceived as a milestone towards the integration and uniformity of the state.

The jurist Ulpian, whose account was included in the Justinian's Digest, reported that all those located in *orbe Romano*, i.e. in the Roman world, were granted Roman citizenship⁵¹. The text of the famous edict is preserved in the papyrus P. Giss. 40, but the document was damaged and raises some questions of interpretation. The Emperor wrote that he gives Roman citizenship to foreigners living in the Roman world including city dwellers, but with some exceptions. Because of the lacuna in the text, one can only assume that the category of *peregrini dediticii* is intended. This category includes former slaves who were chained as punishment by their owners, branded or tortured based on accusations of crimes, and convicted of those crimes. Some were forced to fight with words or against animals, while others were sent to gladiatorial schools or prison; if these individuals were later freed (*manumitted*) by the same owner or another, they would acquire the status of *peregrini dediticii*. Such disgraced slaves, regardless of how they were freed and at what age, even if they belonged to their owners in the eyes of the law, could never become citizens of Rome or Latins⁵².

The major question raised by the scholars is how actually did this edict change matters? Doubts arise due to lack of evidence and previous sources discussing unity. The *Constitutio Antoniniana* significantly extended Roman citizenship to many individuals who previously did not have it. We have to bear in mind, however, that these people were also a part of the empire, its jurisdiction, taxes and administration. They must have felt changes mostly in those areas of life where the law they used differed significantly from Roman law⁵³ and where the rules of *ius gentium* had not been adopted. This could have been the case with the Roman *patria potestas*, which also comprised adult children who then had no legal capacity, but the papyrological evidence shows that this was usually not the case⁵⁴.

The unification of the Empire must therefore be seen as a process, and the *Constitutio Antoniniana* as a stage in that process. Nevertheless, even after its publication, local laws were applied in the periphery of the state, and the primacy of Roman law was not absolute.

50 | Cf. Méléze Modrzejewski, 2011, pp. 21–36; Urbanik, 2024, pp. 27–30.

51 | D. 1, 5, 17 (Ulp. 22 *ad ed.*). Cf. Dio Cass. 78, 9, 5; Aug., *De civ. Dei* 5, 17.

52 | G. 1, 13–15.

53 | Cf. Urbanik, 2024, p. 29.

54 | Cf. Alonso, 2020, pp. 48–49.

11. Conclusions

The Roman Empire's approaches to subjugation and integration reveal a nuanced and adaptable system of governance that balanced conquest with inclusion. Through mechanisms such as *ius gentium*, municipal self-government and the eventual universal grant of citizenship through the *Constitutio Antoniniana*, Rome created a framework that allowed for the coexistence of diverse cultures and identities within a unified state. This duality of dominance and integration underpinned the Empire's enduring influence on subsequent political and legal systems.

These practices resonate with modern theories of integration, where the balance between sovereignty and unity, inclusiveness and diversity remains an enduring challenge. Roman history demonstrates that the integration of diverse peoples is best achieved through a combination of legal innovation, cultural respect and practical governance. This legacy provides a valuable lens through which to examine and address the complexities of contemporary global and regional integration efforts.

By analysing Rome's strategies, we gain insight into the dynamics of unification and the potential pathways to harmony in multicultural societies, reinforcing Rome's relevance as both a historical and conceptual guide to modern integration.

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ISSUES CAUSED BY THE RUSSIAN–UKRAINIAN WAR AND THE REGIONAL REFUGEE CRISIS IN PARTICULAR COUNTRIES: FOCUSING ON HUNGARY

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ABSTRACT

This study explores the main steps the Hungarian Government has taken in terms of ensuring protection status for those fleeing from Ukraine, as well as the main services indispensable for their everyday life in Hungary. Hungary immediately opened the border and allowed people in without restrictions; an extensive infrastructure was created and is still maintained, adapting to changing trends. The temporary protection status was introduced on the first evening of the war; subsequently, its personal scope was adjusted to the activation of the Temporary Protection Directive. The range of benefits has been provided to applicants and beneficiaries of temporary protection in Hungary; yet, the goal from the beginning was their independent success and integration as soon as possible, mainly by employment. Several legislative changes have been made to rationalise the access to services. In addition, Hungarian–Ukrainian dual citizens must be provided with the same benefits as Ukrainian citizens arriving to Hungary. Although more than 40,000 Ukrainians have so far gained temporary protection in Hungary, the majority of those fleeing continued their journeys to other EU countries. Thus, Hungary's role continues to stand out primarily in providing entry into the EU and first instance aid.

KEYWORDS

*temporary protection of Ukrainians in Hungary
Temporary Protection Directive
services for Ukrainian refugees
integration
dual citizens*

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1. Introduction

1.1. *Fleeing From the Russian War of Aggression in Ukraine: The Hungarian Context*

Following the full-scale invasion of the Russian war of aggression in Ukraine, millions of people, mainly women and children, arrived in the European Union (hereinafter: EU) in the first few months. The focus of the four Member States bordering Ukraine (Poland, Slovakia, Hungary, and Romania) together with Moldova was rightly on meeting the immediate reception and protection needs of those fleeing the war. Therefore, they opened their Eastern borders and ensured an unconditional but simultaneously controlled inflow to their territory. The European Commission also acknowledged their efforts after seeing first-hand the highly substantial support programs these countries provided.² To lay the foundation for long-term prospects, the EU activated the Temporary Protection Directive (hereinafter: TPD),³ thereby guaranteeing that those fleeing Ukraine will receive a secure status and related services for the duration of the war.

In mid-2024, there were approximately 4.19 million displaced persons from Ukraine benefitting from temporary protection in the EU. Moreover, further arrivals on a large scale cannot be excluded, due to the difficult humanitarian conditions, broader volatility, and the uncertainty of the situation in Ukraine following Russia's war of aggression. The United Nations Office for the Coordination of Humanitarian Affairs estimated that over 14.6 million people in Ukraine are in need of urgent humanitarian assistance in 2024. The International Organization for Migration estimates that 3.6 million people are internally displaced within Ukraine as of March 2024, with 80% of all internally displaced persons reporting having been displaced for one year or longer. Thus, the risk of escalation persists.⁴

In Hungary, the number of border crossings from Ukraine has reached 4.2 million.⁵ According to data until 24 November 2024,⁶ 42,418 people have been recognised as beneficiaries of temporary protection since the outbreak of the war. The total number of applications is 48,594, meaning the recognition rate is very high, with 3,158 people receiving recognition as beneficiaries of temporary protection. Nevertheless, two facts must be considered when comparing this relatively low data to those in other countries in the EU or the region. First, EU law allows those fleeing from Ukraine to freely choose their place of residence in the EU regardless of where they entered the EU from. Therefore, several circumstances influence such decisions, such as the types and amount of aid provided, job opportunities, and family ties, but also language barriers or further obstacles. Second, there is a unique feature in terms of those fleeing from Transcarpathia, the region closest to Hungary, as many have Hungarian descendants and thus can easily gain Hungarian

2 | Communication from the Commission, 2022, p. 4.

3 | Council Directive 2001/55/EC.

4 | Council Implementing Decision (EU) 2024/1836 of June 25 2024.

5 | OM, 2024, p. 3.

6 | Igazságügyi Minisztérium (2024) 'Emlékeztető', Menekültügyért felelős tematikus munkacsoport, 2 December. [Online]. Available at: <https://emberijogok.kormany.hu/download/d/1d/63000/Menek%C3%BAlt%C3%BCgy%C3%A9rt%20Felel%C5%91s%20TMCS%20eml%C3%A9keztet%C5%91%20241202.pdf> (Accessed: 2 January 2026).

citizenship.⁷ These Ukrainian–Hungarian dual nationals are treated as Hungarian citizens and not foreigners by the legal framework. However, given their lack of legal relations in Hungary, although they are not considered beneficiaries of temporary protection, the Hungarian Government still has to ensure that they can benefit from special services and rights on an equal basis with non-dual citizen Ukrainian nationals.

This study intends to describe the main steps the Hungarian Government has taken so far in terms of ensuring protection status for those fleeing from Ukraine, as well as the main services indispensable for their everyday life in Hungary. The study relies much on the information shared at the Safe in Hungary website run by the Hungarian Government,⁸ but also builds upon practical information as regards the usefulness and characteristics of the provided services and the demands of and obstacles for those fleeing from Ukraine.

1.2. Legal Framework of International Protection in Hungary

1.2.1. International and National Protection Statuses in Hungary

International protection statuses are harmonised at the EU level in line with which Hungarian law contains three different international protection statuses: refugees, beneficiary of subsidiary protection, and beneficiary of temporary protection.⁹ It is also important to note that there is a special status (tolerated stay) designed in national competence for persons not having a legal right to stay but can provide humanitarian grounds for their temporary stay in Hungary.

A refugee ('menekült') is a foreigner who verifies or substantiates that the criteria determined in Article XIV of the Fundamental Law,¹⁰ in compliance with Article 1 of the Geneva Convention,¹¹ exist in respect of his/her person; therefore, a refugee status is granted based on persecution in the country of origin or residence. The status does not have a specific validity date; however, it is subject to mandatory review every three years if it was granted after 1 June 2016. Refugees in Hungary generally share most of the rights and responsibilities as Hungarian citizens, although there are a few exceptions. Refugees in Hungary possess the right to vote in local municipal elections, as well as participate in local referendums; however, this right does not extend to national elections. They also cannot hold positions requiring Hungarian citizenship as a prerequisite. They can obtain

7 | On the patterns of (im)mobility in the Hungarian ethnic minority living in Transcarpathia, see, for example, Erőss, 2024.

8 | Safe in Hungary [Online]. Available at: <https://safeinhungary.gov.hu/en> (Accessed: 2 January 2026).

9 | Act LXXX of 2007 on the right to asylum stipulates the content of the asylum granted by Hungary, the criteria of recognition as a refugee, a beneficiary of subsidiary and temporary protection and a person with tolerated stay and the procedure aimed at expulsion ordered by the refugee authority, as well as the recognition and the revocation thereof.

10 | Hungary shall, upon request, grant asylum to non-Hungarian nationals who are persecuted in their country or in the country of their habitual residence for reasons of race, nationality, the membership of a particular social group, religious or political beliefs, or have a well-founded reason to fear direct persecution if they do not receive protection from their country of origin, nor from any other country. A non-Hungarian national shall not be entitled to asylum if he or she arrived in the territory of Hungary through any country where he or she was not persecuted or directly threatened with persecution.

11 | Act LXXX of 2007, Section 6(1).

a personal identity card and a bilingual travel document, and also apply for Hungarian citizenship after three years of residence, instead of the general rule of eight years.

Subsidiary protection ('oltalmazott') is granted to a foreigner who does not satisfy the criteria of recognition as a refugee but there is a risk that in the event of his/her return to his/her country of origin, s/he would be exposed to serious harm and s/he is unable or, owing to fear of such risk, unwilling to avail himself/herself of the protection of his/her country of origin.¹² The status does not have a specific validity date; however, it is subject to mandatory review every three years if it was granted after 1 June 2016. Beneficiaries of subsidiary protection generally have the same rights and obligations as refugees. However, there are some distinct differences – for example, they do not have the right to vote for municipal elections in Hungary nor do they have the same accelerated path to citizenship as refugees.

Temporary protection ('menedékes') is granted in Hungary to a foreigner who belongs to a group of displaced persons arriving in the territory of Hungary *en masse*, which has been recognised (I) by the Council of the EU as eligible for temporary protection under the procedure determined in the TPD, or (II) by the Government as eligible for temporary protection, as the persons belonging to the group had been forced to leave their country due to an armed conflict; civil war or ethnic clashes; or the general, systematic, or gross violation of human rights, in particular, torture, cruel, inhuman, or degrading treatment.¹³

A tolerated status ('befogadott') is a complementary form of protection in Hungary, the rules of which are set out in national competence. Hungary shall grant protection in the form of tolerated stay to a foreigner not complying with the criteria for recognition as a refugee or beneficiary of subsidiary protection but, in the event of his/her return to the country of origin, s/he would be exposed to a risk of persecution for reasons of race, religion, ethnicity, membership of a particular social group, or a political opinion or behaviour as specified in Article XIV (3) of the Fundamental Law, and there is no safe third country to admit him/her.¹⁴ The tolerated status is granted for a duration of one year and is subject to annual review by the National Directorate-General for Aliens Policing (NDGAP). Tolerated status holders are not entitled to all the rights that refugees and beneficiaries of subsidiary protection enjoy.

1.2.2. Applying for International Protection in Hungary

There are three layers of rules regulating the asylum procedure in Hungary based on which refugee status or subsidiary protection could be gained, while a completely different set of rules applies to those wishing to be recognised as a person under temporary protection (see Chapter 2.3). Although the main rules of procedure have been set out by transposing the applicable EU asylum acquis, there are two other special sets of rules applicable in particular circumstances.

A 'state of crisis due to mass migration' was introduced into Hungarian law in September 2015,¹⁵ and consequently, from 28 March 2017 until 26 May 2020 (but in practice, until March 2020),¹⁶ asylum applications could only be submitted in transit zones, with

12 | Act LXXX of 2007, Section 12(1).

13 | Act LXXX of 2007, Section 19.

14 | Act LXXX of 2007, Section 25/A.

15 | On the securitisation of the Hungarian asylum system, see, for example, Nagy, 2016.

16 | See Juhász, 2017.

the exception of those staying lawfully in the country.¹⁷ All asylum seekers, excluding unaccompanied minors below the age of 14 years, had to stay at the transit zones for the whole duration of their asylum procedure. Nevertheless, in the infringement procedure C-808/18, the Court of Justice of the EU (hereinafter: CJEU) declared¹⁸ that Hungary had failed to fulfil its obligations deriving from certain elements of EU migration and asylum acquis.¹⁹

As of 26 May 2020, another set of special conditions are applicable for submitting an asylum application deviating from general rules.²⁰ This second set of special procedural provisions was first implemented in view of the emergency situation caused by the COVID-19 pandemic. Currently, the armed conflict and humanitarian disaster in Ukraine and the prevention and management of their consequences in Hungary provide legal basis²¹ for their implementation. Consequently, in the present state of emergency, the regular procedure can be used only by those who carry out a special procedure before entering the country.²² It is also important to note that, according to Hungarian legislation, if one enters Hungary without a legal basis authorising the entry and stay, authorities may stop them and remove them from Hungarian territory through the border fence with Serbia. Nevertheless, it also needs to be stated that on 22 June 2023, the CJEU found that not allowing people to seek asylum on the territory of Hungary violates EU law.²³

2. Provision of Entry of Those Fleeing the War in Ukraine and Acquisition of the Temporary Protection Status in Hungary

| 2.1. Provision of Entry

Hungary enables entry for all persons directly fleeing Ukraine and offers the opportunity to apply for temporary protection regardless of whether he/she meets the conditions of entry. Based on applicable Schengen rules, holders of a biometric passport can enter visa-free and stay in the country for a total of 90 days within the last 180 days. Without

17 | On Hungary's position during asylum reform negotiations, see, for example, Stepper, 2016.

18 | Judgment of the Court, 17 December 2020.

19 | See Tóttós, 2021.

20 | Based on Act LVIII of 2020 and Government Decree 292/2020 (VI. 17.).

21 | Government Decree 424/2022. (X. 28.).

22 | If one is outside Hungary, they shall first submit a so-called declaration of intent to the Hungarian embassy in Belgrade (Serbia) or Kyiv (Ukraine). To do this, one needs to make an appointment at the relevant embassy. They may be summoned to the embassy for an interview. If the Hungarian authorities approve the declaration of intent, one will receive a one-time travel document with which they can travel to Hungary and apply for asylum. If the person is already in Hungary, they do not need to submit a declaration of intent to the embassy if they belong to any of the following groups: (1) Recognised beneficiaries of subsidiary protection staying in Hungary (or seeking recognition as a refugee); (2) family members of recognised refugees or beneficiaries of subsidiary protection staying in Hungary; (3) any person who is in detention, in custody, or imprisoned, except for those who have crossed the state border of Hungary in an irregular manner. In these cases, one can apply for asylum by visiting any of the NDGAP client offices in person and expressing their wish to do so.

23 | Judgment of the Court, 22 June 2023.

a biometric travel document or valid travel document, the person wishing to enter may request a temporary residence certificate (different from temporary protection) at the border, with which he/she must report to the NDGAP branch office located at his/her place of residence within 30 days.

In case Ukrainians wish to receive protection in Hungary, they indicate this intention to the authority to be recognised as a beneficiary of temporary protection at the customer service of the NDGAP or the Government Customer Services. Ukrainian-Hungarian dual citizens may not request temporary protection status, as they may return home to Hungary at all times and stay in the country as long as they wish without any kind of special permission.

The Hungarian Government has also been prepared in practice to provide immediate assistance following entry. During the state of danger announced under Article 53 of the Fundamental Law, the Charity Council – complemented with representatives of the State Secretariat for Local Authorities and State Secretariat for Welfare Policy of the Ministry of the Interior, and the National Directorate-General for Disaster Management – operates as the National Humanitarian Coordination Council (hereinafter: NHKT). From the beginning and in addition to local authorities and inhabitants from settlements along the border, charity organisations have been actively participating in performing tasks related to the assistance of persons fleeing the Russian-Ukrainian war at several assistance points at the border.²⁴ The Government of Hungary presently operates assistance points at two locations along the Hungarian-Ukrainian border for persons fleeing the Russian-Ukrainian war with the close cooperation and involvement of the Government Office of Szabolcs-Szatmár-Bereg County. People fleeing the war are provided at the assistance points, among other things, basic services (food, hygiene packages etc.); temporary overnight accommodation; sanitation opportunities; assistance in continued travel; provision of information; psychological support, where necessary; playrooms or mother-baby rooms at certain locations; charging of communication devices; internet and phone use; management of donations; and administrative and epidemiological coordination.

A major assistance transit point in Budapest was set up in the BOK hall.²⁵ From 1 August 2023, the transit point operating in the BOK hall temporarily suspended its activity due to the decreased number of arrivals; however, if necessary, operation of the Humanitarian Transit Point in the BOK hall can be restored in less than a half day. The services assisting persons fleeing the Russian-Ukrainian war are still available: information on means to obtain housing (in some cases, accommodation requests) and other information – for continued travel or application for beneficiary of temporary protection status – is offered at the Government Customer Service located in the Western railway station ('Nyugati') in Budapest.

Hungarian Rails (MÁV) has been offering free travel from the border station to people and families fleeing the Russian-Ukrainian war to Hungary since the outbreak of the war. Originally, the so-called Solidarity Ticket could be obtained for any lines; however, since 15 September 2022, it can be obtained only under certain conditions. Hungary grants discounts for other domestic travel in accordance with Government Decree No. 85/2007 and

24 | Safe in Hungary [Online]. Available at: <https://safeinhungary.gov.hu/en/arrive/helppoint-border> (Accessed: 2 January 2026).

25 | Safe in Hungary [Online]. Available at: <https://safeinhungary.gov.hu/en/arrive/helppoint-capital> (Accessed: 2 January 2026).

tariffs of the railway company. Therefore, a person recognised as a refugee, beneficiary of subsidiary protection, or beneficiary of temporary protection, or those applying for such statuses, may travel free of charge with the certificate issued by the NDGAP for using the travel discount along routes specified therein. Children under the age of 6 years may also travel free of charge, while children aged 6–14 years are entitled to a 50% discount.

2.2. Acquisition of the Temporary Protection Status

2.2.1. Activation of the TPD²⁶

The Russian war of aggression in Ukraine gave the European Commission the momentum to propose the activation of the TPD mechanism for the first time on 2 March 2022.²⁷ Shortly after, during their Council meeting on 3 March, Home Affairs Ministers officially agreed on the activation of the TPD by adopting a Council Decision.²⁸ The main purpose was to enable EU Member States to provide people fleeing the conflict in Ukraine with an appropriate response for their situation by offering a status harmonised at the EU level while also supporting Member States under pressure. Furthermore, this move had a symbolic nature, demonstrating that Europeans are responding in unity and solidarity, faced with this ongoing crisis in the heart of our continent.

The Council decided to establish three different categories of eligibility for temporary protection. (I) There are categories to which the TPD shall be applied; (II) in case of the second category, the adequate level of protection may be ensured by either providing temporary protection set out in the TPD or under national law; and (III) third, Member States may extend the application of the TPD to other categories. In accordance with Article 4(1) of Directive 2001/55/EC, temporary protection was first applicable for an initial period of one year, until 4 March 2023, and was then automatically extended for one additional year until 4 March 2024. On 19 October 2023, in accordance with Article 4(2) of Directive 2001/55/EC, the Council adopted two Implementing Decisions,²⁹ extending the temporary protection introduced by Implementing Decision (EU) 2022/382 with one year each. Most lately, the June 2025 Justice and Home Affairs Council reached a political agreement on extending temporary protection for people displaced from Ukraine by a further year until 4 March 2027. Ministers also discussed a draft Council recommendation to prepare for a coordinated transition out of temporary protection.³⁰ The recommendation will address matters such as switching to other residence statuses, paving the way for a gradual return to Ukraine, and stepping up the provision of information about available options.

In the context of the activation of Directive 2001/55/EC, on 4 March 2022, Member States unanimously agreed in a statement not to apply Article 11 of Directive 2001/55/EC in relation to persons who enjoy temporary protection in a given Member State in accordance with Implementing Decision (EU) 2022/382, and who move to another Member State without authorisation, unless Member States agree otherwise on a bilateral basis.³¹

26 | See Töttös, 2022.

27 | Proposal for a Council Implementing Decision, (2022) 91 final.

28 | Council Implementing Decision (EU) 2022/382.

29 | Council Implementing Decision (EU) 2023/2409 and Council Implementing Decisions (EU) 2024/1836.

30 | Proposal for a Council Recommendation, COM/2025/651 final.

31 | Council Implementing Decision (EU) 2022/382, Recital (15).

This means that with a view to supporting Member States who are the main entry points of the mass arrival of displaced persons fleeing war from Ukraine, a Member State shall not take back a person enjoying temporary protection on its territory, if the said person remains on, or seeks to enter without authorisation onto, the territory of another Member State.³² This also provides ample opportunities for those fleeing from Ukraine to find the place in the EU where they see their future guaranteed the most. Nevertheless, given that a person can benefit from the rights attached to temporary protection in only one Member State at a time, beneficiaries of temporary protection who move to another Member State to enjoy temporary protection should not benefit from social assistance in two Member States simultaneously.

2.2.2. Acquisition of the Temporary Protection Status in Hungary

According to Section 19 of Hungary's Act LXXX of 2007 on asylum, Hungary grants temporary protection on the basis of not only the TPD but also the Government's decision. It should be noted that before 2014, it was the Hungarian Parliament that had such a right; yet, in 2014 – presumably as a result of the Crimean conflict – this competence was moved to the Government to establish a quicker activation procedure.³³ Nevertheless, just as in the case of the TPD, the national application process had not been activated before the Ukrainian war either. Yet, already on the eve of 24 February 2022, the Hungarian Government made an instant move, and by issuing a Government Decree,³⁴ it activated the national temporary protection mechanism to those fleeing from Ukraine.

The personal scope of the national activation was surprisingly wide as it extended to all Ukrainian citizens who arrived from the territory of Ukraine and all the third-country nationals legally residing in Ukraine. The laconic Government Decree did not therefore exclude non-Ukrainian nationals, who only temporarily but legally resided in Ukraine before having to leave the country. Nevertheless, following the activation of the TPD at the EU level, a new Government Decree,³⁵ repealing the previous one, significantly narrowed down the categories eligible for temporary protection in Hungary. Section 1 of the new Government Decree repeats the obligatory categories set out in the Council Decision. As a result, presently, upon request, Hungary may grant temporary protection to the following persons (recognition as a beneficiary of temporary protection): (I) Ukrainian citizens residing in Ukraine before 24 February 2022; (II) stateless persons or non-Ukrainian third country nationals, who have been granted international protection or equivalent national protection in Ukraine before 24 February 2022; and (III) family members of the above-mentioned persons. If a citizen of Ukraine arrived in Hungary before 24 February 2022, they do not qualify for temporary protection. However, they can still apply for temporary protection status, and although it will be rejected, they will likely receive the 'tolerated status.' Although it is not the same as temporary protection, it still allows its beneficiary to remain in Hungary and provides them with certain rights.

It is possible to submit the application for beneficiary of temporary protection status at any customer service office of the NDGAP or at Government Customer Services during opening hours. Before arrival at the customer service of the Directorate-General or

32 | Tóttós, 2022, p. 196.

33 | Act XVI of 2014, Section 277(2).

34 | Government Decree 56/2022. (II. 24.).

35 | Government Decree 86/2022. (III. 7.).

Government Customer Service, applicants can upload their data in advance using the ‘Menedékes’ app or the Enter Hungary platform.³⁶ The procedure related to application for recognition as a beneficiary of temporary protection is launched after verification and registration of the applicant’s personal identification and biometric data.

Until the receipt of the document certifying the status of beneficiary of temporary protection (plastic card), the applicant’s identity data, right of residence in Hungary, legal status, and address of his/her accommodation in Hungary are certified by the residence document issued at the time of application. The residence document does not in itself entitle the applicant to travel abroad. The beneficiary of temporary protection is issued a residence permit document (plastic card) containing biometric data in a specific form and with specific data content, certifying his/her identity, the lawfulness of his/her stay in Hungary, and his/her entitlement to benefits and allowances. The expiry of the document (plastic card) proving the personal identity and right of residence of foreign nationals fleeing the Russian–Ukrainian war, recognised as a beneficiary of temporary protection in Hungary, has been automatically prolonged to 4 March 2026 (regardless of the expiry date stated on the document).³⁷ This extension applies even if the expiration date on the card is different. One can also request an official certificate from the NDGAP confirming the validity of the temporary protection status.

According to data until 24 November 2024,³⁸ 42,418 people have been recognised as beneficiaries of temporary protection since the full-scale extension of the war. The total number of applications is 48,594, meaning the recognition rate is very high: 3,158 people have received recognition as beneficiaries of temporary protection. The average number of applicants is approximately 32 people per working day. The government customer services are available in more than 300 locations nationwide. Nevertheless, it is estimated that out of the Ukrainian nationals who have registered in Hungary after the outbreak of the war of aggression in Ukraine, around two-third hold temporary protection status, while one-third have residence permits, most for work or study purposes. This attests to the flexibility and adaptation in securing their legal stay in Hungary based on their specific needs, circumstances, and future plans.³⁹

3. Rights and services enjoyed by beneficiaries of temporary protection in Hungary

The aid organisations operating in Hungary perform extraordinary work in relation to persons fleeing the Russian–Ukrainian war not only at the border, but at the national

36 | Enter Hungary [Online]. Available at: <https://enterhungary.gov.hu> (Accessed: 2 January 2026).

37 | Government Decree 86/2022. (III. 7.), Section 5(3).

38 | Igazságügyi Minisztérium (2024) ‘Emlékeztető’, Menekültügyért felelős tematikus munkacsoport, 2 December. [Online]. Available at: <https://emberijogok.kormany.hu/download/d/1d/63000/Menek%C3%BClt%C3%BCgy%C3%A9rt%20Felel%C5%91s%20TMCS%20eml%C3%A9keztet%C5%91%20241202.pdf> (Accessed: 2 January 2026).

39 | UNHCR, 2024, p. 13.

level and in Budapest. Several aid organisations⁴⁰ operate integration centres, organise childcare services and language courses, provide housing programmes etc. The Government Office located at the Western railway station can provide those fleeing from Ukraine with information and emergency housing referrals. This includes one-night reception accommodations, assistance in locating long-term housing, information about temporary protection, details about regular subsistence allowances and employment opportunities in Hungary, and further services available for those fleeing the war. It is also important to note that under the current circumstances, Hungarian-Ukrainian dual citizens with a permanent residence in Ukraine and fleeing Ukraine to Hungary on 24 February 2022 or later are also entitled to services provided to Ukrainian nationals, who apply for protection.⁴¹

During the state of danger announced under Article 53 of the Fundamental Law, the Charity Council – complemented with representatives of the State Secretariat for Local Authorities and State Secretariat for Welfare Policy of the Ministry of the Interior, and the National Directorate-General for Disaster Management – operates as the NHKT. The Government coordinates through the NHKT the delivery of aid, collection of donations and humanitarian aid deliveries, and the work of Hungarian aid organisations. The Government established the Bridge for Transcarpathia ('Híd Kárpátaljáért') initiative, within the framework of which the amount of donations received has exceeded 1 billion HUF.⁴²

The Government also appointed Norbert Pál as the Government Commissioner responsible for persons fleeing the Russian-Ukrainian war to Hungary for a period of two years from 16 May 2023.⁴³ The Government Commissioner performs several tasks, such as the following: he participates in the preparation of government decisions related to persons fleeing war; he coordinates the performance of government tasks related to supporting the accommodation of persons arriving; he makes proposals to the Government regarding legislative and other tasks requiring decisions related to the employment, education, social, and housing issues of persons fleeing the war, as necessary; he proposes, in cooperation with the Minister responsible for Government Communication, the development of a communication strategy necessary to adequately inform persons fleeing the war, and shall cooperate in its implementation; he cooperates with the ministries responsible for performing related tasks, the National Directorate General for Aliens, Hungarian and international humanitarian aid organisations, and organisations dealing with labour leasing and placement. The activities of the Commissioner are directed by the Minister Heading the Prime Minister's Office (Gergely Gulyás), and a five-person secretariat assists him in performing his duties.

40 | Hungarian Baptist Aid, Caritas Hungary, Hungarian Maltese Charity Service Association, Hungarian Interchurch Aid, Charity Service of the Hungarian Reformed Church, Hungarian Red Cross.

41 | Government Decree No. 86/2022 (III.7.), Section 8.

42 | The NHKT decides on the distribution and use of donations received through the National Unity Hotline (hereinafter 'Donation Hotline') with the 1357 phone number and on the 11711711-22222222 bank account. By dialling the Donation Hotline and sending a text message to that number, HUF 500 is donated to support the work of the NHKT organisation members.

43 | Government Resolution 1197/2023. (V. 15.).

3.1. Subsistence and Family Allowances

Pursuant to current provisions in force,⁴⁴ only recognised beneficiaries of temporary protection and persons with Ukrainian–Hungarian citizenship who fled Ukraine after 24 February 2022 are entitled to a regular subsistence allowance.⁴⁵ The amount of the regular subsistence allowance is HUF 22,800/capita/month, while the amount of subsidy for minors is HUF 13,700/capita/month. The National Directorate General of Immigration Police is responsible for the disbursement of regular subsistence support. The amount of benefits in kind is decreasing, but the demand for this support is continuous. Since the full scale extension of the war, the National Directorate General of Immigration Police has spent 3 billion 79 million HUF on the disbursement of this support.⁴⁶

Payment is conditional on the beneficiary of temporary protection – those eligible for employment as well as those not eligible above the age of 6 years – in particular, the fulfilment of his/her obligation to appear every month, during the month preceding the payment, before the district office according to the place of accommodation or residence designated to him/her. The legal representative of a beneficiary of temporary protection who is over 6 but under 18 years of age can fulfil the obligation to appear instead of him/her. The asylum authority also pays the regular subsistence allowance to beneficiaries of temporary protection under the age of 6 years, although they are not obliged to appear before the district office. If the beneficiary of temporary protection does not comply with the obligation to appear before the competent district office of his/her place of accommodation or designated place of stay, he/she cannot claim a subsequent payment of the subsistence allowance for the given month. The district office shall inform the asylum authority about the fact of fulfilment of the obligation to appear.

The beneficiary of temporary protection of adult age who is eligible for employment and the minor beneficiary of temporary protection who has reached the age of 16 years are obliged to register as an applicant for services with the district office of their place of residence in Hungary and cooperate with the district office before receiving the first regular subsistence allowance. The person who is eligible for employment is obliged to accept the suitable job offered to him/her,⁴⁷ including public employment, within 45 days of receiving the first regular subsistence allowance, in cooperation with the district office.⁴⁸ If a suitable job is offered to a beneficiary of temporary protection who is eligible for employment and the beneficiary of temporary protection does not accept it despite

44 | Government Decree No. 106/2022 (III. 12.).

45 | Safe in Hungary [Online]. Available at: <https://safeinhungary.gov.hu/en/stay/maintenance-grant/> (Accessed: 12 January 2026).

46 | Data shared on 2 December 2024: Igazságügyi Minisztérium (2024) 'Emlékeztető', Menekültügyért felelős tematikus munkacsoport, 2 December. [Online]. Available at: <https://emberijogok.kormany.hu/download/d/1d/63000/Menek%C3%BClt%C3%BCgy%C3%A9rt%20Felel%C5%91s%20TMCs%20eml%C3%A9keztet%C5%91%20241202.pdf> (Accessed: 2 January 2026).

47 | A person eligible for employment is not obliged to accept the job offered to him/her if (1) at the time of the offer of employment, he/she is in an employment relationship with an employer in Hungary and the Hungarian employer certifies it, (2) is obliged to provide care for a minor under the age of three years, or (3) is a student in a full-time regular school education system and has not reached the age of 18 years.

48 | The rules of Act IV of 1991 on the promotion of employment and unemployment benefits and Act CVI of 2011 on public employment and the amendment of other acts related to public employment and other acts shall apply with regards to suitable employment.

being obliged to do so, the asylum authority shall terminate payment of the regular subsistence allowance.

In Hungary, family policy plays a key role; therefore, the system of family support is immensely diverse and multifaceted.⁴⁹ It is crucial to inform people fleeing the war in Ukraine about Hungarian family support benefits, as they are eligible for numerous benefits if certain conditions are met.

| **3.2. Health Care**⁵⁰

Access to health care for a person arriving from Ukraine to Hungary is fundamentally determined by his/her legal status, that is, the legal title under which he/she is residing in Hungary.⁵¹ If neither the patient, nor persons in his/her environment are able to communicate with the specialist/physician in his/her language at the necessary level, it is possible to use an interpreter in short notice by dialling 1812.

A Ukrainian national residing temporarily in Hungary, in possession of documents, who did not apply for temporary protection status or a residence permit is entitled to emergency care (medical, specialist medical treatment; supply of medicine; treatment in a hospital and medical institution; medical devices, which he/she may use only in case of acute sickness and urgent necessity).

Persons applying for recognition and recognised as beneficiaries of temporary protection, without a legal relationship of social security, and Ukrainian–Hungarian dual nationals with a permanent address in Ukraine and arriving from Ukraine on or after 24 February 2022, who fall ill, are entitled to several health services free of charge.⁵² The

49 | Family support benefits can be divided into two broad areas: one is insurance-linked benefits, the other is non-insurance-linked benefits (based on subjective right) benefits.

50 | Safe in Hungary [Online]. Available at: <https://safeinhungary.gov.hu/en/stay/healthcare> (Accessed: 2 January 2026).

51 | Applications for a social security (TAJ) card may be submitted by the employer or the educational institution in accordance with Government Decree No. 217/1997 (XII. 1.) for Hungarian nationals living in Ukraine, who do not have a Hungarian domicile, and foreign nationals holding a residence permit (e.g. residence permit for employment or study).

52 | Basic health care services, examinations, and therapeutic treatment falling within the scope of general practitioner care; mandatory vaccines related to their age; in case of urgent necessity, examination and therapeutic treatment provided as outpatient care, and medicine and bandages used during care; inpatient-medical institution care received in case of urgent necessity, therapeutic treatment, surgery, medical treatment, medicine necessary for therapeutic treatment, bandages, and meals; examinations and therapeutic treatment as part of oncological specialty care, treatment of other chronic diseases, and pharmaceutical products available with a price subsidy for beneficiaries of certain social security benefits, related to the improvement or maintenance of the health condition or pain relief within the framework of oncological specialty care or other care for chronic disease; necessary examinations, therapeutic treatment, and medicine after outpatient specialty care or inpatient-medical institution care until recovery or stabilisation of the condition; other medical devices ordered by the physician and their repair; emergency dental care and preservative dental care; prenatal care and obstetrical care, and procedures aimed at pregnancy termination under conditions set out in the act on the protection of foetal life; medicine and bandages ordered according to specific legislation free of charge for persons 'entitled to public health care' and with 90% or 100% social security financing 'on the basis of health care provision'; transport of patients in relation to specific care, if transportation by other means is not possible due to their health condition.

person applying for recognition as a beneficiary of temporary protection has the right to receive general practitioner care at the general practitioner – providing health services with territorial care obligations – operating at the place of his/her accommodation. Specialty care may be received from the health provider operating with territorial care obligations based on the referral of the physician providing general practitioner care or requests to return to specialty care. A vulnerable person (e.g. unaccompanied minor, old person, person with disabilities, pregnant woman) is entitled to specialist physician and hospital care not only in case of urgent necessity.

Apart from the services listed above, there are special fields where additional support is provided. The Heim Pál National Paediatric Institute admits children arriving from Ukraine, in need of health care 24/7; communication is assisted by interpreters, if necessary. The Trauma Centre of the Cordelia Foundation provides psychological support to persons affected by the Ukrainian war. Psychiatric and addictology specialty care is provided without referral. Psychologists and psychiatrists of the Crisis Intervention Health Service (Péterfy Hospital, Budapest) provide free crisis intervention therapy, and psychiatric assistance, if necessary, for refugees in both Hungarian and English.

The importance of easy access to health services is proven by the fact that over one in five of those fleeing from Ukraine with health needs struggles to access medical care in Hungary, citing, among others, language barriers, long waiting times, and administrative issues as obstacles. Further, the average monthly health-related expenditure for these families is roughly equivalent to the full subsistence allowance granted to vulnerable persons – making their situation more difficult.⁵³

| 3.3. Job Opportunities and Recognition of Certificates and Diplomas

The household income of those fleeing from Ukraine primarily comes from employment, with remittances, social protection benefits, and humanitarian aid supplementing it.⁵⁴ Ukrainian citizens with biometric travel documents have the opportunity to work in certain shortage professions immediately after their entry, without having to apply for recognition.⁵⁵ In non-shortage professions, Ukrainian citizens with biometric travel documents may work for a maximum of 90 days after their entry, provided they have a work permit. The employer applies for the work permit at the competent government office. A person submitting an application for recognition as a beneficiary of temporary protection has the right to work in Hungary, including employment through temporary agency work.⁵⁶ The employer is required to report employment of a beneficiary of temporary protection.

Right after the first arrivals, the Hungarian Government provided support to the employers to facilitate the employment in Hungary of a person with Ukrainian citizenship or Ukrainian–Hungarian dual citizenship fleeing the armed conflict in Ukraine for their employment in the territory of Hungary, if the employee’s employment relationship was established for a fixed or indefinite period of time, for employment of at least 20 hours

53 | UNHCR, 2024, p. 8.

54 | Ibid.

55 | Safe in Hungary [Online]. Available at: <https://safeinhungary.gov.hu/en/job/joblink> (Accessed: 2 January 2026).

56 | Government Decree 86/2022 (III. 7.), Section 6(4).

per week.⁵⁷ Currently, this support provided for the employer is introduced as the housing allowance of employed beneficiaries of temporary protection since late 2023.⁵⁸ Pursuant to this initiative,⁵⁹ the State reimburses HUF 80,000 or HUF 120,000 in housing allowance each month to the employer of beneficiaries of temporary protection.⁶⁰

A beneficiary of temporary protection, or one who applied for such a status, may request recognition of his/her foreign diploma and certificate.⁶¹ Recognition of certificates and diplomas received abroad, including Ukraine, may be requested from the Hungarian Equivalence and Information Centre of the Educational Authority (OH-MEIK),⁶² with some exceptions.⁶³ Substantial relief may be received by applicants of the OH-MEIK, who are or have applied for their recognition as a beneficiary of temporary protection and by Ukrainian–Hungarian nationals, who have a permanent address in Ukraine and arrived from Ukraine on or after 24 February 2022. A person may also request recognition of his/her certificate or diploma, if he/she does not possess all documents listed for submission in the procedural notice, and proves or it is assumed that he/she is not responsible for the unavailability of such documents.

Pursuant to Government Decree No. 121/2022 (III. 28.) on rules of the state of danger relating to the Hungarian employment of health workers fleeing Ukraine, for starting work, it is sufficient for such workers to present to the employer the document proving educational attainment and scientific degrees issued in Ukraine, recognised by the State, and to simultaneously launch the homologation procedure of his/her qualifications. Several companies offer their labour placement services to Ukrainian nationals.⁶⁴

57 | Government Decree 96/2022 (III. 10.).

58 | Government Decree 104/2022. (III. 12.), Subtitle 1/A.

59 | More detailed information (including templates of documents and informational materials required to apply for the support. Menedékes munkavállalók lakhatási támogatása (2024) NFSZ. [Online]. Available at: https://nfsz.munka.hu/cikk/3076/Menedekes_munkavallalok_lakhatasi_tamogatasa (Accessed: 2 January 2026).

60 | It depends on whether their accommodation is located in cities or rural areas, defined in Annex 2 of Government Decree 17/2016 (II. 10.) on family housing subsidies for the purchase or expansion of used housing or in a different settlement.

61 | The application for recognition of a foreign certificate or diploma may be submitted to the Educational Authority, or the county and capital government offices. The recognition procedure is bound to a fee, but the beneficiary of temporary protection, a person applying for recognition as a beneficiary of temporary protection, and a Ukrainian–Hungarian national with a permanent address in Ukraine and arriving from Ukraine on or after 24 February 2022 may request exemption from payment of procedural costs (including possible expertise fees).

62 | Oktatási Hivatal [Online]. Available at: https://www.oktatas.hu/kepesitesek_elismertetese/meik_oldalok (Accessed: 2 January 2026).

63 | Exceptions to the general rule: secondary health qualifications (e.g. nurse) acquired abroad should not be submitted not to the Educational Authority, because the National Healthcare Service Center recognises these. Recognition of most secondary level qualifications (e.g. sales clerk, waiter, hairdresser, mason, electrical fitter) may be requested from the Government Office of Pest County. The procedure aimed at recognising foreign certificates and diplomas for higher education falls within the competence of educational institutions at which the applicant wishes to pursue studies. Persons intending to enrol their children in Hungarian public education institutions should contact the director of the chosen school. In the above cases, recognition of the foreign certificate or diploma by the OH-MEIK is not necessary.

64 | Useful links: Adapt [Online]. Available at: <https://adapt.hu/> (Accessed: 2 January 2026). Delego [Online]. Available at: <https://delego.hu/> (Accessed: 2 January 2026). Workforce [Online]. Available at: <https://allasajanlatok.workforce.hu/jobs/> (Accessed: 2 January 2026).

Accordingly, if the person holds professional qualifications in the health care domain, he/she also has the right to carry out activity until conclusion of the recognition or homologation procedure; or if he/she holds qualifications of a physician, dentist, or pharmacist, he/she may participate in the tertiary-level health vocational training system without homologation or recognition of his/her professional qualifications, also until conclusion of the recognition or homologation procedure.

The program entitled ‘Support for corporate childcare and language courses to encourage employment of people arriving from Ukraine’,⁶⁵ of the OFA National Employment Public Nonprofit Limited Liability Company, merits mention here. The aims of the program are to respond to the labour market processes related to those arriving from Ukraine following the outbreak of the Russian–Ukrainian war, to facilitate the employment environment of Ukrainian parents staying in Hungary with young children, and to alleviate the labour shortage in Hungary. Another goal is to facilitate the integration of Ukrainian citizen employees, on the one hand, by providing daytime supervision for their young children through corporate childcare, and on the other hand, by developing the language competencies of Ukrainian employees who do not speak Hungarian and by supporting Hungarian as a foreign language course. Non-refundable support is provided within the framework of the program.

| 3.4. Housing⁶⁶

Temporary accommodation was provided by several civil organisations as well as individuals⁶⁷ for those fleeing from the war; however, subsidised longer-term accommodation also needed to be organised. Starting from 21 August 2024, only those persons fleeing the Russian–Ukrainian war are entitled to state-financed additional accommodation, who arrive from administrative-territorial units of Ukraine directly affected by military operations and have their permanent residence in these administrative units – if they do not wish to receive housing allowance of employed beneficiaries of temporary protection – upon entering Hungary, in accordance with the following conditions: (I) Persons not applying for temporary protection status may benefit from this type of accommodation for 30 days from their arrival date. (II) In case of persons being able to work, until the last day of the month following the recognition of their temporary protection status (approximately 2–3 months). (III) In case of so-called vulnerable persons, defined in Government Decree No. 104/2022, they may stay at state-financed accommodation until the end of the temporary protected status. The exceptions (vulnerable group) include pregnant women from the determination of their pregnancy; a person under the age of 18 years and one of his/her legal representatives living in a common household; a person with disabilities and his/her caregivers; and persons over 65 years.

65 | Ukrajnából érkezők foglalkoztatásának ösztönzése érdekében vállalati gyermekmegőrzés és nyelvtanfolyam támogatása (2025) OFA Nonprofit. [Online]. Available at: <https://ofa.hu/program/ukrajnabol-erkezo-k-foglalkoztatasanak-osztonzese-erdekeben-vallalati-gyermekegorgzes-es-nyelvtanfolyam-tamogatasa> (Accessed: 2 January 2026).

66 | Safe in Hungary [Online]. Available at: <https://safeinhungary.gov.hu/en/stay/permanent-residence> (Accessed: 2 January 2026).

67 | On the Hungarian public opinion on Ukrainian refugees, see Thomas et al., 2024.

Pursuant to Section 2/A of Government Decree 104/2022. (III.12.), the list of war-affected areas⁶⁸ is compiled by the Government Commissioner responsible for persons fleeing the Russian-Ukrainian war to Hungary, with the involvement of the Minister responsible for National Defence and the Minister responsible for Foreign Policy. The accommodation for those persons who arrive from administrative-territorial units of Ukraine directly affected by military operations is provided by the Hungarian Maltese Charity Service Association, which has extensive experience in the field of social integration programs. The housing also includes meals free of charge. If the place of origin or residence is not included within these war-affected areas, they will no longer be eligible for subsidised accommodation starting from 21 August 2024. Yet, if one believes that due to special individual circumstances (such as being older than 65 years, having medical needs, or living with a disability), they need continued support despite not coming from a war-affected region, they need to apply for an exemption with the local defence committee by 10 July 2024.⁶⁹

The change of conditions for receiving help in terms of housing generated criticism;⁷⁰ therefore, it is worth examining the motives of this move of the Hungarian Government. One of the biggest challenges for Hungary (as well as other countries in Europe) regarding persons with temporary protected status is how to create incentives for taking up employment and becoming self-sufficient in the long run. This is also in line with the Action Plan on Integration and Inclusion 2021–2027,⁷¹ according to which ‘if integration and inclusion are to be successful, it must also be a two-way process whereby migrants and EU citizens with migrant background are offered help to integrate and they in turn make an active effort to become integrated’. This led the Hungarian Government to introduce the housing allowance scheme entitled ‘Housing allowance of employed beneficiaries of temporary protection’ (Menedékes Munkavállalók Lakhatási Támogatása) already in 2023.⁷² Pursuant to this initiative,⁷³ the State reimburses HUF 80,000 or HUF 120,000 in housing allowance each month to the employer of beneficiaries of temporary protection.⁷⁴

The most recent Hungarian amendments were motivated by the same aspiration, to create incentives for taking up employment for persons with temporary protection to be able to work, while maintaining the fully state-financed accommodation system for

68 | The list of Ukrainian territories considered to be ‘war-affected’ are published by the Government on their website and updated every month: Dnipropetrovsk Region, Donetsk Region, Zaporizhzhia Region, Kyiv Region and Kyiv City, Mykolaiv Region, Odesa Region, Sumy Region, Kharkiv Region, Kherson Region, Chernihiv Region, Luhansk Region, Zhytomyr Region, Autonomous Republic of Crimea and the city of Sevastopol.

69 | The procedure and form in which these circumstances were evaluated were challenged before the Budapest Court, which concluded that the Government Commissioner must make formally correct decisions, containing specific facts, legal references, and justifications.

70 | Hungary: Ukrainian Refugees Losing Housing (2024) Human Rights Watch, 11 September [Online]. Available at: <https://www.hrw.org/news/2024/09/11/hungary-ukrainian-refugees-losing-housing> (Accessed: 2 January 2026).

71 | Action plan on Integration and Inclusion 2021–2027, COM(2020) 758 final.

72 | Government Decree 104/2022. (III. 12.), Subtitle 1/A.

73 | More detailed information (including templates of documents and informational materials required to apply for the support). [Online]. Available at: https://nfsz.munka.hu/cikk/3076/Menedekes_munkavallalok_lakhatasi_tamogatasa (Accessed: 2 January 2026).

74 | It depends on whether their accommodation is located in cities or rural areas, defined in Annex 2 of Government Decree 17/2016 (II. 10.).

the most vulnerable persons who have fled from war-torn areas and for persons who are unable to work (e.g. due to age or disability). The regime changes are therefore meant to create incentives for people to take up work in Hungary and become self-sufficient, but concurrently continue to offer fully compensated state-financed accommodation for the most vulnerable persons who have fled from war-torn areas and for persons unable to work. It is also important to mention that most of the Member States only offer accommodation support for a limited period of time, while Hungary compensates the entire rent of people who are eligible for state-financed accommodation.

| 3.5. Education⁷⁵

To ensure placement of a minor, the beneficiary of temporary protection caring for a minor has the right to use the following under conditions identical to those of Hungarian nationals: nursery care; kindergarten care and education; and services of the Sure Start Children's House (Biztos Kezdet Gyerekház).⁷⁶ From submission of the application for recognition as a beneficiary of temporary protection, the minor has the right to participate in public education under conditions identical to those applicable to Hungarian nationals, and is subject to compulsory education. Children of kindergarten age, subject to compulsory public education (from the age of 3 years) and children of compulsory school age may participate in free public kindergarten and school education in public education institutions competent at the place of their accommodation.⁷⁷ Ukrainian children fleeing to Hungary become subject to compulsory education when they submit an application for recognition as a beneficiary of temporary protection. The principle of the free choice of schools also applies to applicant students, but district schools are required to grant admission to children applying to them.

Public education provides textbooks via school libraries and through Könyvtárellátó Nonprofit Kft. (KELLO). To assist native Ukrainian speaking children in learning Hungarian, the institutions concerned have available a 'Hungarian as a foreign language' textbook, which can be used in grades 3–8. The Hungarian public education system provides five lessons a week in individual preparation (Hungarian language learning, remedial catch-up education in different subjects) for child beneficiaries of temporary protection to facilitate remedial catch-up education and socialisation (inclusion), the costs of which are financed by the Government. Children with dual Ukrainian–Hungarian citizenship may use the educational system under conditions identical to those applicable to Hungarian nationals.

The first bilingual Hungarian–Ukrainian primary and secondary school fully funded by Hungary opened in Budapest on 31 August 2024. Its creation was agreed upon by President Volodymyr Zelenskyy and Prime Minister Viktor Orbán during the Hungarian leader's visit to Kyiv in July 2024. President Zelenskyy even visited the school in November 2024. Classes are taught in Ukrainian, and the curriculum also includes Hungarian and

75 | Safe in Hungary [Online]. Available at: <https://safeinhungary.gov.hu/en/stay/education> (Accessed: 2 January 2026).

76 | Government Decree 106/2022 (III. 12.), Section 3.

77 | Act CXCV of 2011, Subsection (1) a) and Subsections (3)–(4) of Section 92.

English. Currently, over 300 children are enrolled, with a staff of 33 teachers. The school has a capacity for 700 students in total.⁷⁸

Owing to, among other things, government efforts, 79% of children fleeing from Ukraine aged 3–16 years were reported by their parents as enrolled in Hungarian kindergartens and schools in the 2023/24 school year. For the rest, language barriers and a preference for Ukrainian online education contributed to the decision not to enrol in Hungarian public schools. Nevertheless, some initiatives also helped Ukrainian children to continue their education in Ukrainian.⁷⁹ For example, since March 2022, the American International School of Budapest (AISB) supported over 300 refugee children in a volunteer-led program aimed at continuing their education in Ukrainian and building a supportive community on campus, and they currently run an after-school program to help children maintain learning in their home language.⁸⁰

The beneficiary of temporary protection living in the territory of Hungary has the right to pursue studies in higher education institutions⁸¹ under conditions set out in the act on national higher education, with a Hungarian State scholarship, Hungarian State partial scholarship, or by paying tuition.⁸² The 'Students at Risk' sub-programme⁸³ was launched in 2022 within the framework of the Stipendium Hungaricum programme managed by the Ministry of Foreign Affairs and Trade and coordinated by the Tempus Public Foundation, which offers an opportunity to Ukrainian students fleeing the war to pursue their studies at Hungarian higher education institutions. For fellows, the sub-programme provides exemption from tuition, a monthly grant, health insurance, and a housing contribution or dormitory accommodation. The Hunyadi János Scholarship⁸⁴ offers an opportunity to students living in the Hungarian diaspora to participate in higher education programmes in Hungary, which are 'shortage courses' not taught in Hungarian outside the country.

4. Conclusions

Hungary immediately opened the border and allowed people in without restrictions and continues to do so to this day. An extensive infrastructure was created for this, and it is still maintained to this day, adapting to changing trends. The temporary protection

78 | President Visits State Ukrainian-Hungarian School in Budapest (2024) President of Ukraine, 7 November. [Online]. Available at: <https://www.president.gov.ua/en/news/prezident-vidvidav-derzhavnu-ukrayinsko-ugorsku-shkolu-v-bud-94297> (Accessed: 2 January 2026).

79 | UNHCR, 2024, p. 7.

80 | AISB [Online]. Available at: <https://www.aish.hu/en/our-community/aish-cares> (Accessed: 2 January 2026).

81 | Safe in Hungary [Online]. Available at: <https://safeinhungary.gov.hu/en/scholarship/students-at-risk> (Accessed: 2 January 2026).

82 | Act CCIV of 2011, Section 39(1)b).

83 | Stipendium Hungaricum [Online]. Available at: <https://stipendiumhungaricum.hu/studentsatrisk> (Accessed: 2 January 2026).

84 | The call for proposal contains the tender conditions and other details, which is uploaded in each tender period to the website of the Tempus Public Foundation coordinating the tender. [Online]. Available at: <https://tka.hu/> (Accessed: 2 January 2026).

status was introduced on the first evening; subsequently, the EU also responded, but the personal scope of the protection shows a slight difference. Owing to the large number and continuity of arrivals as a result of the protracted war, only a few remained in Hungary; the majority continued their journeys to other EU countries, which EU law also permits. Those wishing to reside in Hungary permanently can apply for temporary protection status, which more than 40,000 individuals have done so far. However, Hungary's role continues to stand out primarily in providing entry into the EU and first instance aid.

The range of benefits provided to seekers and beneficiaries of temporary protection in Hungary is wide; however, the goal from the beginning was their independent success and integration as soon as possible, mainly by employment. Several legislative changes have been made, which have rationalised and also narrowed the access to various benefits. In addition, there is a special aspect of Hungary's support for those fleeing Ukraine, as they include Hungary's own citizens, and after leaving their homeland in Transcarpathia, they must be provided with the same benefits as Ukrainian citizens arriving in the country.

The result of these efforts is that those who want to succeed in Hungary find their way. Liliána Grexa, representative of the Ukrainian minority in the Hungarian Parliament, believes that the Hungarian protection system was not built to ensure that beneficiaries remain in the country on state benefits in the long term, but to inspire people to find their way if they want to stay in the country.⁸⁵ However, it is a fact that they have to overcome many obstacles in everyday life, so their long-term integration requires additional support. In this regard, the Regional Refugee Response Plan (RRP) highlights the deepening ownership of the response by host governments and their increased investments in the socio-economic inclusion of refugees. Host countries and humanitarian actors have shifted from immediate emergency aid to long-term strategies that focus on including beneficiaries of temporary protection into national systems.⁸⁶

Liliána Grexa stated⁸⁷ that she currently does not see any general problems with the system, but at the same time she would place greater emphasis on bringing the Hungarian majority and Ukrainians closer together, because 'it is not good for anyone if a segregated community develops'. She sees that there are cultural differences between Hungarians and Ukrainians, but because they are two European and Christian nations, they can be overcome. Thus, she sees the greatest problem to be the lack of knowledge of the Hungarian language and believes that it is necessary to help Ukrainians acquire language skills through free language courses, especially those who plan to stay here in the long term. She considers the undeveloped system of Ukrainian-language education as the other major problem; thus, the issue of education is also very important because as long as children do not go to school, parents cannot work.

As the refugee response moves into 2025 and 2026, it faces the challenge of addressing a complex and evolving situation. According to a recent survey by Germany's largest economic think tank, the Ifo Institute,⁸⁸ the longer the war lasts, the fewer refugees are considering returning home. The report showed that 25% of Ukrainian refugees have

85 | Pataki, 2024.

86 | UNHCR, 2025, p. 11.

87 | Pataki, 2024.

88 | Ein Viertel der ukrainischen Geflüchteten will sich dauerhaft im Ausland niederlassen (2024) Ifo Institut, 18 October. [Online]. Available at: <https://www.ifo.de/pressemitteilung/2024-10-18/ein-viertel-ukrainische-gefluechtete-ausland> (Accessed: 2 January 2026).

decided not to return to their homeland, and 35% believe that they can only do so when it is safe. Therefore, Member States must also monitor the trends and respond appropriately to the needs that are arising. A Commission Communication titled 'A Predictable and Common European Way Forward for Ukrainians in the EU'⁸⁹ set out the strategic framework underpinning, on the one hand, the proposal for the extension of the application of TPD till March 2027, and on the other hand, a proposal for a Council Recommendation outlining a coordinated strategy to phase out temporary protection, with a focus on long-term solutions such as transitions to residence status and voluntary returns.

The newest proposals carry some lessons. First and foremost, those who believed that the TPD sets an apparently clear temporal limit of three years may sight serious concerns about the legal soundness and credibility of the TPD as an emergency instrument.⁹⁰ The Commission intends to resolve the legal inconsistency by justifying the extension on four grounds: ongoing volatility in Ukraine; the need to safeguard those still requiring protection; the risk of overwhelming asylum systems if temporary protection ends abruptly; and the persistence of the original conditions that triggered the Directive's activation in 2022. Personally, I agree with those that highlight the Directive's ability to respond quickly and without intra-EU conflict, especially if neither the asylum quota system nor the Dublin system is used for those fleeing from Ukraine.⁹¹

Nevertheless, the application of the TPD also means the provision of a wide range of rights and services to those enjoying temporary protection, which may overburden Member States, especially if the extension continues to an unexpected period of time. Furthermore, host states may duly expect Ukrainians to integrate and begin gradual self-care, becoming useful members of society. Therefore, it is time to map and prepare for the available options for the future.⁹²

From a Hungarian perspective, apart from the challenges existing in parallel in several Member States, Hungary faces unique consequences as regards the dramatic changes and future of Transcarpathian Hungarians; this is due to the fact that since the outbreak of the full-scale war in Ukraine in 2022, thousands of ethnic Hungarians have left Transcarpathia and typically resettled in Hungary as Hungarian citizens, which resulted in the distortion of the demographic and social composition of the Transcarpathian Hungarian population. Consequently, combined with the arrival of the internally displaced persons, the ongoing processes severely impact the social and demographic position of the Hungarian minority in Transcarpathia.⁹³

89 | Commission Communication, COM/2025/649 final.

90 | Cığır, 2025.

91 | Thym, 2022.

92 | Cığır, 2023.

93 | Erőss et al., 2024.

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HUMAN RIGHTS ISSUES AT THE NEGOTIATIONS ON EU ACCESSION WITH CANDIDATE STATES: MONTENEGRO¹

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ABSTRACT

This paper analyses human rights issues and the independence of the judiciary in the context of Montenegro's EU accession negotiations, with a focus on Chapters 23 and 24 of the Acquis Communautaire. These chapters address the rule of law and the fundamental rights central to the EU enlargement process. The analysis is based on the European Commission's country reports and enlargement policy communications, offering a detailed assessment of the judiciary's functioning, the prosecution service, and the fight against corruption in Montenegro. It highlights key issues, such as judicial impartiality, anti-corruption initiatives, case-load handling, and clearance rates. Furthermore, it assesses the country's actions to combat organised crime and terrorism, its judicial and police cooperation, and its progress in implementing Schengen standards and managing migration. The findings underscore the importance of legal reforms and institutional integrity in Montenegro's path towards EU membership.

KEYWORDS

human rights
rule of law
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Montenegro
judicial impartiality

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1. Constitutional Arrangement of Montenegro

By the decision of the citizens at the referendum held on 21 May 2006, Montenegro restored its independence. At the session held on 3 June 2006, the Parliament of Montenegro adopted the Decision on the Declaration of Independence of the Republic of Montenegro and the Declaration of the Independent Republic of Montenegro. The first part of the Declaration has the character of a preamble, stating the basic postulates and values on which the state organisation of Montenegro rests, emphasising its civil character, respect for human rights and the rights of minorities, the principle of parliamentary democracy, the rule of law, and the market economy.

The basic determinants of the foreign policy orientation of the State of Montenegro are stated in the continuation of the Declaration, such as respect for the principles and assumption of obligations established by the documents of the UN, the Council of Europe, and other international organisations, the EU integration process, respect for the principles of international law, including the decisions of the International Court of Justice, and the International Criminal Court for the former Yugoslavia (today, the International Residual Mechanism for Criminal Courts).

Montenegro has a republican form of government, with the constitutional attributes of a civil, democratic, ecological, and social-justice state, based on the principles of the rule of law.⁴ In terms of organisation, it belongs to parliamentary systems. Citizens of Montenegro elect the president of the state by direct and secret ballot, on the basis of universal and equal suffrage. This is a characteristic of presidential systems. The justification for such an election of the head of state in a parliamentary system is that small states and 'young' democracies seek to give this function greater legitimacy, so that the newly elected president is a symbol of national unity.

Power in Montenegro is divided on the basis of the standard tripartite conception, into legislative, executive, and judicial power, and it rests on their 'balance and mutual control'. Art. 11 of the Constitution stipulates that the Constitutional Court is responsible for safeguarding constitutionality and legality. Through this provision, constitutional framers have crafted the 'constitutional judicial power' as a *sui generis* power, assigning the court the role of ensuring that all bodies created by the Constitution, as well as other entities, conduct their actions in compliance with the state's supreme legal act.⁵

Below, Art. 15 of the Constitution defines the relationship of Montenegro with other international organisations, so that para. 3 specifically singles out the right of the Parliament of Montenegro to decide on the method of accession to the European Union, considering it a priority international integration that is of vital interest to the state of Montenegro. Art. 15 of the Constitution reinforces Montenegro's commitment to actively pursue EU integration, as previously expressed in the Declaration of Independence of Montenegro. This commitment is outlined in the section on 'accession to European and Euro-Atlantic structures' specifically in point 2, para. 5, and is also emphasised in the preamble of the Constitution, which speaks of 'equal cooperation with other nations and states and European and Euro-Atlantic integration'. These provisions underscore

4 | Vukčević, 2015, p. 52.

5 | Ibid., p. 72.

the significance of these objectives as they now carry explicit constitutional and legal obligations.

2. The Negotiation Process of Montenegro – a Retrospective

Montenegro confirmed its commitment to the comprehensive process of transition and reform, including political and economic transformation, as well as the strengthening of parliamentary democracy by signing the Stabilisation and Association Agreement and the Interim Agreement on Trade and Related Matters in Luxembourg in October 2007, which at the same time marked the beginning of the contractual relationship between Montenegro and the European Union. Montenegro officially submitted its request for membership in December 2008, based on a general political consensus and a high degree of support from Montenegrin citizens for EU membership. By submitting the request, Montenegro initiated internal reforms and preparations for the commencement of accession negotiations, aimed at strengthening democratic capacities and establishing independent institutions, in accordance with Art. 2 of the EU Treaty. This includes a particular emphasis on upholding human dignity, freedom, democracy, equality, the rule of law, and human rights. In 2010, Montenegro was granted candidate country status. The following year, the European Commission published a report on Montenegro, recommending the commencement of accession negotiations with the European Union. These negotiations officially began in 2012 with the convening of the first Intergovernmental Conference between Montenegro and the EU. With its future accession, Montenegro has committed to adopting the EU's legal acquis in the areas of justice, freedom, and security. This commitment includes contributing fully to the implementation of European standards regarding judicial independence and human rights, combating corruption and organised crime, and applying key international legal instruments in these areas.

In light of the conclusions from the Thessaloniki summit, where the EU reaffirmed its strong support for the European future of Western Balkan countries, and the introduction of the 'progress based on individual merit' criterion, the EU enlargement strategy for the Western Balkans was updated in 2018. This strategy underscores the Union's intention to build a stable, strong, and united Europe based on shared values. Starting from the strategic commitment to the European perspective of the WB countries, the Union adopted this accession methodology in February 2020. The intention was to make the accession negotiations even more dynamic and credible. The candidate states are expected to show significantly greater involvement in implementing fundamental reforms in areas of special importance, such as the rule of law and human rights. Thanks to the adoption of the mentioned methodology, thematic clusters have been formed within which several negotiation chapters are combined with the aim of a more intensive political focus of the candidate countries on certain sectors that are of particular importance for European integration. Montenegro was the first candidate country to which the new negotiation methodology was applied. Six clusters were formed of 33 negotiation chapters. They will be opened after meeting the benchmarks and factoring in negotiations on key reforms. Chapter 23-Judiciary and fundamental rights and Chapter 24-Justice, freedom, and security will remain open until the end of membership negotiations, and progress in these areas will be of crucial importance to the further negotiation process.

Thanks to the successful receipt of the IBAR in June 2024, Montenegro aims to close the remaining negotiation chapters by the end of the year. Under the slogan '28 member states until 2028', which may have overtones of premature optimism, work on implementing further reforms in the area of the rule of law and fundamental human rights is yet to come.

3. The Question of Judicial Independence

The rule of law and respect for human rights are among the fundamental values of the European Union, since its foundation, and the existence of an efficient, independent, and high-quality judicial system is considered a prerequisite for the preservation of democratic values. Judicial independence is crucial to the concept of a constitutional state, as it ensures the protection of human rights⁶ and is regarded as a fundamental element of the rule of law. This independence allows for the oversight of the executive and legislative branches, preventing the abuse of power and maintaining the separation of powers.

The importance of judicial independence is also evidenced by the Constitution of Montenegro, in the preamble, which emphasises the importance of the independence of the courts, through the citizens' determination to live in a state where the rule of law, among other things, is highlighted as the highest social value. Also, the second part of the Constitution, which deals with the regulation and guarantees for human rights, contains key elements for the exercise of the judicial function and the position of the courts, such as equality before the law, the right to a legal remedy, the right to a fair and public trial, the principles of legality, the presumption of innocence, the principles *ne bis in idem*, and others.

The administrative body that is responsible for the effective management and coordination of the judicial system, and whose main goal is to ensure the independence, autonomy, and professionalism of the judicial system, is the Judicial Council. The Judicial Council submits an annual report on the judiciary to the Parliament, proposes the budget for the judiciary to the Government, evaluates, appoints, dismisses and considers complaints about judges and presidents of courts.

However, since the adoption of the Constitution, international institutions have criticised the way judges are appointed and dismissed, which can also be seen in the reports of the European Commission on Montenegro. The 2008 Report highlighted the need for further reform of the judicial system in order to ensure judicial independence, responsibility, and efficient functioning of the entire system. The 2009 report did not state any progress in the fulfilment of given recommendations and harmonisation with European standards in the field of justice and prosecution, due to the still present political influence.

The problem of judicial independence, the unclear division of competences between the Judicial Council and the Ministry of Justice, and the appointment and dismissal of the President of the Judicial Council by the Assembly were causes for concern for the

6 | In this sense, the principle of independence of the judicial system has become a universal value that has found its place in numerous international conventions and modern constitutions.

European Commission.⁷ For these reasons, the Constitution was amended on 31 July 2013 and after the adoption of the aforementioned amendments, Art. 127 of the Constitution of Montenegro reads as follows: ‘... the president of the Judicial Council is elected by the Judicial Council from among its members who are not holders of judicial office, by a two-thirds majority of the members of the Judicial Council’. It is important to note that a minister responsible for judicial affairs cannot be elected as the president of the Council.⁸ For several years, the Judicial and Prosecutorial Councils, the two primary self-governing bodies of the judicial system responsible for overseeing the careers of judges and prosecutors, were not fully constituted. The Judicial Council began to function again with full composition only after August 2022 and the appointment of new members from the judges’ ranks. However, the GRECO committee found the inclusion of the Minister of Justice in the Judicial Council particularly problematic, given past concerns about the politicisation of Montenegro’s judicial system. According to Opinion No. 10 from 2007, the Advisory Council of European judges, or members of the Judicial Council, should not be active politicians or members of the Government. For many years, Montenegro has failed to respond to this GRECO recommendation, as indicated by the European Commission’s annual reports.

To move towards fulfilling the criteria from the EU agenda, Montenegro, and more precisely, the Ministry of Justice, after a series of consultations, in October 2022 requested the opinion of the Venice Commission on the draft amendments to the Law on the Judicial Council and Judges, which would clarify in more detail the issues of the working rights of judges (including a strict limit for retirement)⁹, harmonisation of evaluation, and disciplinary procedures against judges with European standards, all with the aim of strengthening the independence of the Judicial Council and providing legal guarantees to avoid undue political influence.

However, the results of the work of the Ministry of Justice were very modest, in the sense that the Draft Amendments to the Law on the Judicial Council and Judges were adopted, but the recommendations of the Venice Commission and the European Commission were not respected. This means that Montenegro continues to be out of line with the legal acquis of the Union in terms of independence, impartiality, accountability, integrity, and efficiency of the judicial system.

Montenegro has yet to fully implement the Venice Commission’s recommendations on the Law on State Prosecution, particularly concerning the appointment of members

7 | It is common knowledge that most European countries have established special bodies whose primary function is to ensure the independence of courts and judges. In this way, the aforementioned bodies directly participate in the process of selection and promotion of judges, and an institution of this type in Montenegro is the Judicial Council, whose work is defined both by the Constitution and by the Law on the Judicial Council and Judges.

8 | As for its internal organisation, in addition to the president, the Council consists of nine other members, and their mandate lasts for 4 years.

9 | The Montenegrin judiciary faced a significant issue that sparked public debate regarding the interpretation of legal requirements for the retirement of judges and prosecutors. Specifically, the 2020 Law on Pension Insurance lowered the general retirement age, deviating from the provisions of the General Labor Law. In late 2022, the Administrative Court overturned the Judicial Council’s decision to end a Supreme Court judge’s mandate based on retirement eligibility. Following this, the Judicial Council informed the Supreme Court that the judge had the right to return to work. It’s important to note that proceedings on this matter are still ongoing before the Administrative Court.

to the Prosecutorial Council. Specifically, the recommendation that members should not be selected from among the ranks of judges has not yet been fully adhered to. Due to evident delays in the adoption of recommendations, the Ministry of Justice formed a working group that will deal with the issue of amending the above-mentioned Law in more detail.

According to the European Commission's report, Montenegro is still moderately prepared to implement the EU *acquis* and European standards in the area of justice and fundamental rights, with only limited progress.¹⁰ It should certainly be borne in mind that the above-mentioned laws are of key importance for the functioning of the judiciary, and that their full compliance with the EU *acquis* is a *conditio sine qua non* for the further course of the negotiation process.

| 3.1. Organisation of Courts in Montenegro

In addition to the Constitution, the basic provisions of courts are given in the Law on Courts¹¹, which was created as a result of the reform of Montenegro's judicial system. Other principles of the exercise of judicial authority were elaborated in the Law, with the aim of ensuring a greater degree of efficiency in the work of the courts, to improve and protect human rights and freedoms while respecting international standards. The Law on Courts establishes the principle of judicial independence so that judges in the performance of their duties are obliged to adhere only to the Constitution, laws, and international treaties.

Montenegro's judicial system consists of basic courts, high courts, the Court of Appeal, and the Supreme Court. Montenegro has 15 basic courts, which are responsible for resolving disputes and conducting cases in the first instance. The basic courts are responsible for both civil and criminal cases. There are two higher courts in Montenegro, Podgorica and Bijelo Polje, which, as courts of second instance, decide on appeals against the decisions of basic courts, and are competent for civil and criminal cases. The Court of Appeal is located in Podgorica and is competent to decide on appeals against first-instance decisions of higher courts, as well as appeals against decisions of the Commercial Court. The Supreme Court of Montenegro is the highest court, responsible for ensuring the uniform application of the law and resolving disputes between different courts in Montenegro. Its jurisdiction extends to all types of cases, including civil, criminal, and administrative cases.

The Constitution of Montenegro, more precisely, Art. 124 stipulates that an individual can be elected president of the Supreme Court a maximum of two times, and the Law on Judicial Council in Art. 42 stipulates that no one can be elected president of the same court more than twice. However, in 2019, the Judicial Council elected the former president of the Supreme Court and several other court presidents for the third term (some elected court presidents were elected for their fifth or eighth terms). The European Union sent a sharp

10 | For the year 2024, according to the survey conducted by Eurobarometer FL540, we have information that 35% of the general population and 28% of businesses considered the level of independence of the courts to be 'fairly' or 'very good'.

11 | Alongside the Law on Courts, the Law on the Special State Prosecution is crucial for the judicial system. It outlines the organisation and jurisdiction of the Special State Prosecution, details the conditions and procedures for electing the Chief State Prosecutor and special prosecutors, and defines their interactions with other state bodies and administrative institutions to combat corruption.

criticism to the Judicial Council, and in a ‘non-paper’ document from 2019 regarding the situation in Chapters 23 and 24, the Union pointed out that high-ranking appointments in the judiciary, even after the expiration of two mandates, caused serious concern regarding the interpretation of the Constitution and valid laws by the Judicial Council.¹² Under pressure from the European Union and other internal political actors, Vesna Medenica, the then-President of the Supreme Court, resigned at the end of 2020 after holding the position for 13 years.¹³ On the other hand, the Judicial Council elected Valentina Pavličić as President of the Supreme Court only on 2 December 2024.

In addition to regular courts, Montenegro also has specialised courts, such as the Administrative Court, which decides on cases in the field of administrative law, and the Commercial Court, which decides on commercial disputes. Amendments to the Law on Courts from 2015 also established three misdemeanour courts in Podgorica, Bijelo Polje, and Budva.

Montenegro has 263 full-time judicial and 103 prosecutorial positions. The efficiency of the judiciary is significantly hampered due to the lack of effective systems for managing human resources and personnel, and the insufficient financial resources.¹⁴ Meanwhile, a positive trend can be observed in alternative dispute resolution. Over the past year, the Center for Alternative Dispute Resolution has received 10,773 cases of mediation. Considering the efficiency of Montenegrin courts, in 2022, there were 130,881 pending cases, of which 78,758 were resolved. By the end of 2022, 51,539 cases were pending before the courts. Of these, 4,890 were cases older than three years. The average time resolution of disputes amounted to 178 days for cases of the Basic Court, 442 days for cases of the Commercial Court, and 1,158 days for cases of the Constitutional Court, and the execution rate in 2022 was reduced from 92% to 86% from the previous year.

The EU’s recommendations regarding the rationalisation of the court network have not yet been implemented, and the full implementation of instructions for the collection of statistical data in accordance with the guidelines of the European Commission for efficiency in the judiciary remains a challenge. The new judicial information system (PRIS) for the modernisation and reform of the judicial system has not yet been established. Workspaces and working conditions at all levels of the judiciary are still inadequate. Appropriate information and communication infrastructure, as well as equipment for work in the judiciary, are also still lacking.

4. Fundamental Rights

According to the latest Report of the European Union, the Montenegrin legislative and institutional framework on fundamental rights largely continues to fulfil its international

12 | In the Report of Montenegro from 2020, the European Commission observed that as many as seven court presidents were elected using a misinterpretation of the Constitution by the Judicial Council.

13 | In 2022, Ms. Medenica was arrested on suspicion of abuse of office and involvement in a criminal organisation.

14 | In the first quarter of 2023, there were 79,027 cases before Montenegrin courts, of which 20,262 were resolved in the first quarter. The backlog in the number of pending enforcement cases before the courts has decreased.

obligations regarding respect for human rights. However, the problems that persist primarily concern the fight against discrimination, where some of the most vulnerable social groups, such as the Roma and Egyptians, people with disabilities, and the LGBTIQ population, continue to be exposed to hate speech and hate crimes. It is important to note that the Law on Life Partnerships of Persons of the Same Sex, which was adopted in 2020, must be subject to further harmonisation with European standards to provide full legal security to same-sex marriages and cohabiting unions, while the Law on Legal Recognition of gender identity based on self-determination has not yet been adopted.

| **4.1. Discrimination Issues as Part of the Human Rights Challenges**

4.1.1. Gender Equality

Unfortunately, the Montenegrin legislation did not ensure complete compliance with the EU acquis, and neither did it follow the recommendations of the European Commission for the fight against racism and intolerance, which dates back to 2017.¹⁵ The increasing polarisation of society, misogyny, and hate speech have largely characterised Montenegrin society and its political scene in the last few years. According to recent research conducted in 2022 by the Center for Democracy and Human Rights, 67% of respondents felt that discrimination exists in Montenegro, primarily based on political orientation. In the same year, the Office of the Protector of Human Rights received 256 complaints about discrimination, which represents a significant growth trend compared to 2021, when there were 173.

When we talk about discrimination based on gender, Montenegro continued with the implementation of national strategies, but failed to tackle the fight against gender-based violence and domestic violence. The concept of 'violence against women' is not defined in Montenegrin legislation, but the Law on Gender Equality refers to 'violence based on gender'.¹⁶ Considering the reports of the GREVIO Committee for Montenegro, it is unequivocally concluded that the national legal framework, more specifically the Law on Gender Equality, provided a definition of gender-based violence that is not in accordance with the definitions of the same name given in Art. 3 of the Istanbul Convention. On the other hand, we also have a problem with the different formulations of domestic violence

15 | The Constitution of Montenegro, in Art. 8 st. 1 prohibits any direct or indirect discrimination on any basis, while para. 2 of the same article states that the application of special measures aimed at: '...creating conditions for achieving gender equality and overall equality and protection of persons who are on what basis in an unequal position'. Also, Art. 18 of the Constitution, prescribes that the state guarantees the equality of women and men and develops a policy of equal opportunities.

16 | Law on Gender Equality, Gazette of the Republic of Montenegro, no. 046/07 of July 31, 2007, Official Gazette of Montenegro, no. 073/10 from 10.12.2010, 040/11 from 08.08.2011, 035/15 from 07.07.2015. Art. 7 st. 7.

within two national laws, namely the Law on Protection from Domestic Violence¹⁷ and the Criminal Code of Montenegro.¹⁸

Despite the robust legal framework, there is a significant lack of systematic responses to cases of violence. Investigative and judicial practices remain lenient, with only a few protective measures applied in misdemeanour cases and very few security measures imposed in criminal proceedings.¹⁹ Data on gender-based violence in Montenegro indicate that every fifth woman has been a victim of at least one form of violence. In the last seven years, as many as 17²⁰ femicides occurred, where the youngest victim was 18 years old, and the oldest was 84.

Thus, according to the latest report, of all misdemeanour sanctions imposed, fines accounted for 1/3, conditional sentences for 1/5, and prison sentences are still very rarely imposed.

The law on protection against domestic violence is *lex specialis* and, as such, introduces specific provisions aimed at preventing and protecting against domestic violence, citing coercion and physical abuse as forms of the criminal offence of domestic violence. At the same time, the Criminal Code introduces new offences, such as genital mutilation of women and persecution, thus only partially harmonising with the Istanbul Convention because it did not include the criminal offence of inciting, coercing, and inducing girls to undergo the aforementioned procedure.

On the other hand, women continue to be insufficiently present on the political scene and in the decision-making process. In Montenegro, gender inequality is most visible in the economic sphere, where not even a quarter of the business entities are owned by women. Of the total number of unemployed women make up to 60% and represent the majority of those who are not actively looking for work. Less than 10% of all property in Montenegro is owned by women, and the gender gap in income is 16%. The Labour Law²¹ has integrated the principle of equal pay for work of equal value, which is poorly applied in practice. In its Report on the Progress of Montenegro for 2021, the European Commission

17 | Law on Protection from Domestic Violence, Official Gazette of Montenegro, No. 46/2010.

18 | Criminal Code of Montenegro Gazette of the Republic of Montenegro, no. 70/2003, 13/2004-corr. I 47/2006 and Gazette of the Republic of Montenegro, no. 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013 - amended 14/2015, 42/2015, 58/2015 - dr. law, 44/2017, 49/2018 and 3/2020. The first law defines violence as: '...an act or omission of a family member that endangers the physical, psychological, sexual or economic integrity, mental health and peace of mind of another family member' without taking into account the place where the violence took place, which is in accordance with the definition given in the Istanbul Convention, while another law, more precisely CC, in its art. 220, narrows the circle of criminal offenses by referring only to the one who 'uses gross violence to violate physical or mental integrity', applying only to 'family members'.

19 | One of the main problems of the increased rate of violence, and which we have noted before, is reflected in the extremely low rate of trust of victims of violence in the national legislative system. We have data according to which even 74% of victims of sexual violence have never reported the violence to anyone, which can be explained by a lack of trust in the competent institutions, because unfortunately we have still not fully harmonised the penal policy with international standards.

20 | Protector of Human Rights and Freedoms of Montenegro, Analysis of the decisions of the courts for misdemeanours of Montenegro in the area of domestic violence and gender-based violence with reference to the practice of the institution of the protector and the ECtHR in that area, Podgorica, 2021.

21 | Official Gazette of Montenegro, no. 74/2019 and 8/2021.

stated, ‘...women continue to experience inequality in participation in political and public life and access to employment and economic opportunities, and gender-based violence and violence against children cause serious concern.’

4.1.2. Minorities

Art. 79 and 80 of the Constitution of Montenegro guarantee the identity protection of the members of the minority nations, as well as the prohibition of assimilation. Notably, the set of minority rights reflects the democratic character of the constitutional arrangement of Montenegro, since its content complements rather than opposes the civil concept of the state proclaimed in the preamble of the Constitution.²²

We encounter a problem in defining minorities when defining the term ‘identity’, and as is already known, the constituent elements of identity are not the same in all countries; they change and are supplemented depending on the expansion of the body of human rights. In this sense, Art. 80 of the Constitution defines the rights related to the protection of identity, while the development of the same is foreseen by the Law on Minority Rights and Freedoms,²³ which, in Art. 1, stipulates that

Montenegro, in accordance with the Constitution, confirmed and published international treaties and generally accepted rules of international law, provides minority peoples and other minority national communities, i.e. their members, with the protection of human rights and freedoms guaranteed to all citizens, as well as the protection of special minority rights and freedoms.²⁴

This law establishes several fundamental principles regarding the status of minority members, including: the methods for exercising their rights, the illegality and culpability of violating minority rights, and the obligation of state authorities to take action to protect these rights, among other provisions.

However, regarding the prohibition of assimilation²⁵ outlined in Art. 80 of the Constitution of Montenegro, it is important to consider the stance of the Constitutional Court. The Court has ruled that requiring knowledge of the Montenegrin language sufficient for basic communication as a condition for acquiring Montenegrin citizenship does not constitute an excessive constitutional restriction and does not violate the anti-assimilation provisions of Art. 80.²⁶

As for the specific steps taken by the Montenegrin legislation, with the aim of protecting members of minority nations, we can single out the Action Plan for 2022 for the

22 | Vukčević and Pajvančić, 2012, p. 202.

23 | Official Gazette of Montenegro, no. 031/06, 051/06, 038/07, 002/11, 008/11, 031/17.

24 | The electoral legislation of Montenegro introduced a model for the authentic representation of minority peoples as well as other minority national communities. In this sense, their electoral lists that do not pass the general electoral census of 3%, acquire the right to participate in the distribution of mandates if they individually achieve (a special census for them) 0.7% of valid votes.

25 | The prohibition of assimilation is contained in numerous international documents. Thus, the Framework Convention for the Protection of the Rights of Members of National Minorities from 1995 prescribes in Art. 16 that ‘states must refrain from measures that change the population ratio in areas inhabited by members of national minorities’.

26 | Decision of the Constitutional Court of Montenegro U. no. 111/08.

implementation of the policy strategy for minorities for the period 2019/23 (whose data are not available) and the Action Plan for 2023. In July 2022, the Ministry for Human and Minority Rights established a new Directorate for the Promotion and Protection of the Rights of Minority Peoples and Other Minority Communities. The Roma and the Egyptians remain the most vulnerable groups²⁷, with no progress made in reducing their census representation in the Assembly due to the lack of implementation of changes to the Law on the Election of Councillors and Members of Parliament.

The Framework Convention for the Protection of National Minorities²⁸, to which Montenegro is a signatory, represents one of the most comprehensive treaties designed to protect the rights of members of national minorities. It obliges the provision of full and effective equality for members of national minorities in the fields of economic, social, cultural, and political life, thereby enabling them to express, preserve, and develop their cultures and identities. Montenegro's fourth report on the implementation of the Framework Convention highlighted amendments, supplements, and innovations in the legal and institutional framework for the protection of minority peoples and other national minority communities in Montenegro, as well as the measures taken and planned to improve and develop their rights. It also noted the progress in implementing the recommendations of the Advisory Committee on the Framework Convention, thus confirming its advancement. However, Montenegro has not taken any concrete steps to address child begging and marriage, nor has it made efforts to resolve the issue of statelessness²⁹, as recommended by the United Nations High Commissioner for Refugees (UNHCR).

4.1.3. *Persons With Disabilities*

Persons with disabilities in Montenegro are unable to fully exercise their rights and, unfortunately, remain subjected to various forms of discrimination. The draft law on a single body for disability assessment has yet to be adopted, and the importance of its adoption is reflected precisely in fairer and easier access to rights, which would enable the transition from a medical model to a model based on human rights. Another important document awaiting adoption is the Law on Professional Rehabilitation and Employment of Persons with Disabilities. To compensate for the inertia of legislators and the failure to fulfil the recommendations of the UN Committee on the Rights of Persons with Disabilities from 2017 regarding the necessary reforms of guardianship and decision-making on behalf of persons with disabilities, the Office of the Protector of Human Rights established an independent mechanism in May 2023 for monitoring in accordance with the Convention on the Rights of Persons with Disabilities.

It is important to mention that the High Court in Podgorica, in December 2022, confirmed the earlier verdict of the Basic Court in Podgorica, which established that one individual faced repeated discrimination based on disability from the social work centres

27 | In the 2022/2023 school year, 202 Roma children attended preschool, 1,833 attended elementary school, and 214 attended high school. As for the high education, there are currently 14 Roma students.

28 | The Framework Convention for the Protection of National Minorities, adopted in Strasbourg on November 10, 1995, entered into force on February 1, 1998; Series of European International Treaties No. 157. [Online]. Available at: <https://rm.coe.int/okvirna-konvencija-za-zastitunacionalnih-manjina/168094dfe6> (Accessed: 8 April 2026).

29 | From the entry into force of the Law on Foreigners in 2018 and until 2023, 9 persons have been determined to be stateless, while the procedure for determining statelessness is ongoing for 17.

in Kotor, Tivat, and Budva. This is the first final judgment in Montenegro concerning the protection of persons with disabilities, which may indicate a future positive trend in the exercise of the rights guaranteed to them by the Constitution (Art. 68) and other laws.

| 4.2. *Children's Rights*

In the field of children's rights, the legislative and institutional framework is mostly aligned with international standards, including the UN Convention on the Rights of the Child and its accompanying protocols. The Constitution of Montenegro, in Art. 74 defines the rights of children, who enjoy rights and freedoms, that are 'appropriate to their age and maturity'. Para. 2 of the aforementioned article introduces additional protection of children against psychological, physical, economic, and any other forms of exploitation or abuse. It is noteworthy that Art. 74 of the Constitution of Montenegro does not enumerate the specific individual rights of the child, unlike the Universal Declaration of Human Rights, which outlines such rights in Arts. 25 and 26, while the International Covenant on Civil and Political Rights talks about it in Art. 24, and the European Social Charter in Art. 7.³⁰

The right to education belongs to the rights of positive status and inevitably requires the active role of the state in its realisation. It should be borne in mind that the Constitution differentiates between levels of education, so we have a constitutional provision that indicates the obligation of basic education, that is, the first level of education.³¹ Other levels of education are not mandatory, but the principle of availability applies to them as well.

However, an increase in peer violence has been observed in Montenegrin society in the last few years. According to research conducted by the Institute for Education on the prevalence and types of violence in schools in Montenegro in 2023, 43% of students will report witnessing peer violence.³² The Criminal Code of Montenegro stipulates prison sentences ranging from six months to five years for individuals who disrupt public order and peace or endanger others through severe insults, abuse, violence, physical altercation, or brazen behaviour. A juvenile over the age of 14 years may be sentenced to educational measures, juvenile prison sentence, or other measures for committing such a crime. If the perpetrator is under the age of 14, the cases are typically referred to social services. These services are responsible for supporting the victims, advising the young offender, monitoring their behaviour, and implementing other protective measures. Under the

30 | Of all the international documents that exclusively refer to children's rights, it is important to highlight the UN Declaration on the Rights of the Child from 1959 and the UN Convention on the Rights of the Child from 1989, which, unlike the Declaration, is a legally binding act. The right to education is provided for in Art. 75 of the Constitution of Montenegro and is guaranteed to all citizens, starting from the principle of equality of conditions in its use. On the basis of this article, the absence of discrimination in the educational process on any basis is also understood, and it is considered a prerequisite for the realisation of other human rights and freedoms.

31 | This right is contained in the International Covenant on Civil and Political Rights, which in Art. 13 prescribes the obligation of states to provide free primary education, as well as to provide primary education to adults.

32 | The Institute for Education of Montenegro conducted 'Research on the prevalence of forms of violence in schools in Montenegro during 2022/23. school years', author of the research, Zoran Lalović, MSc, independent consultant at the Institute of Education of Montenegro, document [Online]. Available at: <https://www.gov.me/clanak/mjere-za-upravljanje-problemom-nasilja-u-skoli-prevencija-i-intervencija> (Accessed: 8 April 2026).

Basic Education Act³³, schools can address student violence by imposing disciplinary actions. These may include educational measures such as reprimands or transferring the student to different classes or schools.

However, there is no satisfactory level of protection of children from the perpetrators of sexual offences, nor are there any systematically collected data on sexual abuse of children. In 2022, the Police Directorate registered 23 criminal acts of sexual abuse of children (three related to rape, five qualified as child abuse, 11 as illicit sexual acts, and four as child pornography). In this sense, the Criminal Code needs to be revised to comply with the Convention on the Rights of the Child and the First Optional Protocol on the sale of children, child prostitution, and child pornography.

| 4.3. *Freedom of Thought, Conscience and Religion*

The framers of the Montenegrin Constitution combined the freedoms of thought, conscience, and religion under a single article (Art. 46), as they view all three as essential components of a person's spiritual integrity.³⁴ Freedom of religion encompasses both the right to freely develop one's own religious beliefs and the right of each individual to choose not to adhere to the doctrines of any religion.

In accordance with Art. 55 of the Constitution, this right includes the prohibition of the abuse of religion for political purposes; more specifically, the prohibition of the activities of political parties and all other organisations whose work would be aimed at inciting religious hatred and intolerance. Attempts by other persons to convert a certain group of people in a religious sense are not in the domain of absolute rights, as stated in the practice of the European Court of Human Rights, which distinguishes between 'permitted' and 'unpermitted' proselytism, i.e. the right to spread religious conviction, including the right to persuade others to change of faith.³⁵ In this context, it is important to note Art. 14 of the Constitution, which states that 'Religious communities are separate from the state'. This confirms the principle of church-state separation. The principle of secularity does not mean the absolute separation of the church and state, but rather a principled division in which the church is free to perform religious affairs and ceremonies, and the state is sovereign in exercising its powers related to the secular level.³⁶ This way, the regime of separation of the church and state fully creates the conditions for the equality of all religious communities and affirms the right to religion as the right of every individual. However, there is a concerning piece of information regarding Montenegro's adherence to the principle of secularity. Research from 2003 indicated that Montenegro was one of the most secular countries globally. However, by 2023, it is expected to be comparable to countries such as Iran, Turkey, and Tunisia in terms of secularism.

When we talk about the limitations of freedom of thought, conscience, and religion, based on Art. 25, para. 3 of the Constitution, they are prohibited, even during the declaration of war or a state of emergency. More detailed regulation of religious freedom is

33 | Official Gazette of Montenegro, no. 64/2002, 49/2007, 45/2010, 40/2022, other laws 39/2013, 47/2017.

34 | Vukčević, 2015, p. 147. In the Constitution of Slovenia, Art. 41 talks about freedom of conscience, and the Croatian Constitution, in Art. 40, talks about freedom of conscience and religion and the free public expression of religion or other beliefs.

35 | *Kokkinakis v. Greece*, application no. 14307/88.

36 | Vukčević, 2015, p. 83.

contained in the Law on Freedom of Religion or Belief and the Legal Position of Religious Communities³⁷, and the regulation of the relationship between the state and religious communities is regulated through contracts.³⁸

| 4.4. *Freedom of Expression*

Freedom of expression occupies an important place in the body of law of every state. It represents the basis of questioning and discussion about the social values upon which the community rests. Art. 47 st. 1 of the Constitution of Montenegro guarantees the right to freedom of expression by speech, written word, image or other means. This freedom encompasses both a personal and a political dimension: it includes the ability to express one's own views on various issues and the activities of political actors whose main objective is to influence public change. Both aspects are integral to the same fundamental right.

Freedom of expression is not absolute, but can be limited by the other's right to dignity, reputation, and honour, as well as in cases of endangering public morals or security (Art. 47, para. 2 of the Constitution of Montenegro). As stated in the Decision of the Constitutional Court, 'it is the task of the independent judiciary to clearly determine in

37 | Official Gazette of Montenegro, no. 074/19, 008/21.

38 | The latest signing of the contract (the Basic Contract) regulating the relationship between the state of Montenegro and the Serbian Orthodox Church (SPC) caused violent reactions from the public. Going back just a few years, in 2019 to be exact, the Parliament passed the Law on Freedom of Religion, which caused huge protests by members of the Serbian Orthodox Church due to the provision of the Law, which stipulates that the state becomes the owner of all religious buildings that were built before December 1918, if religious communities do not prove ownership. Back in 2015, Montenegro sent to the Council of Europe's Venice Commission a draft law on freedom of religion and the status of religious communities, but it was withdrawn due to numerous criticisms from the Montenegrin public. The new draft was sent in 2019, and the commission's experts praised a number of adopted legal solutions. However, the most controversial continued to be the points (according to those who contested this law) which foresee the transfer of religious buildings to state property if there is no proof of ownership before 1918, when Montenegro became an integral part of the Kingdom of Serbs, Croats and Slovenes. According to the experts of the Venice Commission, the state has the right to impose strict conditions for the use of property in order to protect the cultural heritage, but it must also foresee protection measures in administrative and judicial proceedings in order to prove the right to the property of religious communities. The Serbian Orthodox Church strongly opposed the adoption of the Law, especially because it stipulated that in the administrative procedure, religious communities prove ownership of property and therefore have the obligation to register, which the members of the Serbian Orthodox Church categorically considered unnecessary because 'the Church has existed for centuries'. According to the assessment of some political analysts, the adoption of the aforementioned law had a major impact on the outcome of the parliamentary elections organised in August 2020, when the government was changed. Among the first laws passed, the new government passed amendments to the Law on Freedom of Religion, which, according to some Montenegrin politicians, led to the desecularisation of the state. Protests were not absent in this case either, especially by members of the Montenegrin Orthodox Church (CPC), which led to an even more intense polarisation of Montenegrin society, especially if we bear in mind the fact that the CPC remained the only religious organisation with which the state of Montenegro did not sign an agreement on organisation mutual relations, which continued to deepen discrimination among the believers of the SPC and the CPC.

each individual case the boundary between justified and necessary, and unjustified and unnecessary restrictions, which confirm a principle as a rule or deny it'.³⁹

Drawing a parallel with the European Convention on Human Rights, Art. 10, para. 1 defines freedom of expression as 'the freedom to have one's own opinion, to receive and communicate information and ideas without the interference of public authorities and regardless of borders', and the practice of the European Court of Human Rights⁴⁰ has taken the position that this freedom represents the very core of a democratic society.⁴¹

According to the latest report from the European Commission, Montenegro has achieved a certain level of readiness in the area of freedom of expression, thanks to its pluralistic media landscape. In addition to the Constitutional provisions, media freedom is also defined by the Law on Audiovisual Media Services, the Law on the National Public Broadcaster, and the Law on Media, which is the umbrella document in the mentioned area⁴². The Agency for Audiovisual Media Services (formerly the Agency for Electronic Media)⁴³ is an independent regulator for audiovisual media services. The media strategy for the period 2023/2027, together with the Action Plan for 2023/24, represents the first government strategy in this area, whose primary goal is to improve freedom of expression and promote free journalism.⁴⁴

A significant increase in hate speech and verbal threats against journalists and civil activists has been recorded in Montenegro, whereas the number of unsolved cases of

39 | Decision of the Constitutional Court of Montenegro no. 87/09 of January 19, 2012.

40 | The Charter of Fundamental Rights of the EU (2000), in Art. 11, defines freedom of expression in the same way as the European Convention on Human Rights.

41 | *Lingens v. Austria*, 1986, item 42. cited according to: T. Mendel (2014) *Freedom of expression - a guide to the interpretation of Art. 10 of the European Convention on Human Rights and its context*. Belgrade, p. 10.

42 | Law on the Public Broadcasting Services of Montenegro, (OG 80/202), Law on Media, (OG 80/202), Law on Audiovisual Media Services (OG 46/10, 40/11, 53/11, 6/13, 55 /16, 92/17 and 82/20).

43 | Law on Audiovisual Media Services, OG 54/2024 of 11.06.2024, Art. 139.

44 | On this occasion, it is important to mention the appointment of the General Director of Radio Television of Montenegro (RTCG) by the RTCG Council, which was contested in court. In January 2023, the Basic Court in Podgorica overturned the appointment of RTCG's chief director, a decision that was upheld by the Podgorica High Court, only for the RTCG Council to re-appoint the same person in January 2023, sparking strong public criticism and a subsequent criminal investigation into potential misconduct. In April 2024, the Basic Court in Podgorica once again annulled the decision of the RTCG Council, which the Council appealed to the Higher Court in Podgorica.

attacks on journalists has been constantly increasing.⁴⁵ Unfortunately, violence against journalists in Montenegro has a long history. The attack on the journalist Olivera Lakić from 2018 has not yet received its judicial epilogue, and neither has the murder of the former editor of the daily newspaper 'Dan', Duško Jovanović. Darko Šuković, editor of Antena M, as well as columnist Ljubomir Filipović, received death threats, which resulted in numerous appeals from both domestic and foreign organisations, to investigate all kinds of intimidation and violence against the media.

5. State Authorities for the Protection of Human Rights

Judicial protection is the primary form of protection of human rights and, as such, is accepted and guaranteed in numerous international documents. The judicial protection of human rights is foreseen by the Constitution in Arts. 6, 19, 24, and 149 as the most significant and common form of institutional protection of human rights. It is, therefore, about the right of every citizen to request protection before regular courts, by filing a complaint with the competent court. Before the courts, there are different procedures for the protection of human rights depending on the type of violation thereof. If it is a violation of human rights with the features of a criminal offence, then the court will decide in the criminal procedure by applying the procedural rules of that procedure. However, if it concerns violations of human rights that do not have the characteristics of a criminal offence, then civil proceedings will be conducted.

In addition to regular courts, there are also special institutions whose task is to protect human rights. One such institute in the Montenegrin legislative system is the Protector of Human Rights and Freedoms, which operates within the institution of the Protector of Human Rights and Freedoms with the aim of preventing torture and other forms of cruel, inhuman, or degrading treatment—that is, punishment and discrimination.

The Institute of the Protector is also regulated by Art. 81 of the Constitution of Montenegro, which defines it as an independent body with the task of taking a series of measures aimed at protecting human rights and freedoms. He performs his function on the basis of the Constitution, laws, and confirmed international treaties, adhering to the principles of

45 | An interesting case was from October 27, 2023, where the Higher State Prosecutor's Office requested the Court for Misdemeanours in Podgorica to initiate proceedings against the professor of the Faculty of Montenegrin Language and Literature, Boban Batričević, because of his criticism of the Serbian Orthodox Church, in a column that was published on the Antene M portal in August of that year. According to the prosecution, Batričević is suspected of violating the Law on Public Order and Peace, i.e. an insult based on religious affiliation, because he stated in the column that the priests of the Serbian Orthodox Church 'do not preach the faith of Christ' but that they are 'spreading Serbian nationalism, hatred and xenophobia', and therefore that the church is 'destroying multi-ethnic and multi-religious Montenegro, and the Montenegrin national, cultural and territorial identity' in the long term. The procedure was formally suspended in March 2024. The second case dates back to April 2023, when Dritan Abazović was the prime minister at the time, when he accused the local broadcaster of one television station of spreading religious and national hatred, only to accuse another television station of being owned by organised crime and drug cartels just two months later. Like him, the President of Montenegro, Jakov Milatović, in September 2023 accused the daily 'Pobjeda' of being associated with crime.

justice and fairness.⁴⁶ He is not the embodiment of either a state or a judicial body; he does not judge, but rather points out and warns of irregularities. His mandate lasts six years, and he is elected by the Assembly on the proposal of the competent working body of the Assembly by a majority of votes from the total number of deputies.

The Ombudsperson can conduct investigations into alleged violations of human rights by the state, as well as conduct unannounced tours of prisons and detention centres. At the same time, the Ombudsperson can have access to all documents, regardless of their degree of secrecy (persons in detention or prison). On the other hand, the Ombudsperson cannot take action on complaints related to ongoing court proceedings, with the exception of complaints of delay, obvious violation of the procedure, or in cases of non-execution of a court decision.

The protector of human rights and freedoms can propose laws, ask for an assessment of the constitutionality of certain laws, give an assessment of issues related to human rights if a request has been sent to him by a competent authority, and deal with general issues that are important for the promotion of human rights and freedom. If the Ombudsperson establishes that there has been a violation of human rights by some state institutions, he can propose corrective measures that may include the dismissal of the person who committed the offence. Untimely non-fulfilment of requests for undertaking corrective measures submitted by the Ombudsperson is subject to a fine of up to 2,500 euros. The Government of Montenegro, as well as the courts, often implemented the recommendations of the Protector of Human Rights and Freedoms with delay⁴⁷.

Regarding the fulfilment of its international obligations in the field of human rights, according to the latest report of the European Commission, Montenegro was positively evaluated, thanks to, among other things, the continuation of good cooperation with the European Court of Human Rights, which for 2023 did not issue a single verdict in relation to Montenegro, unlike the previous year, in 2022, when there were 5. However, the specific problem faced by the Montenegrin human rights protection system is the lack of institutional capacity. In this sense, it is important to mention the problem that existed until recently, specifically, it concerned the incomplete composition of the Constitutional Court⁴⁸, which was responsible for providing a legal remedy for the violation of human rights.

The Office of the Protector of Human Rights and Freedoms⁴⁹ is still perceived by the Montenegrin public as one of the most trusted institutions. However, the decisions and recommendations of the Ombudsperson remain non-binding; they do not have the legal force of a verdict, and Montenegro must improve their systematic monitoring in all public institutions.

46 | Vukčević and Pajvančić, 2012, p. 256.

47 | It is important to mention that, in addition to the Ombudsperson institute, the Parliament of Montenegro has a permanent working body, the Committee for Human Rights and Freedoms, which has 13 members, as well as the Committee for Gender equality of also 13 members, while the Ministry of Human and Minority Rights is an integral part of the Government.

48 | By the end of 2022, there were 2,564 unresolved cases in the backlog before the Constitutional Court related to the protection of human rights.

49 | In 2023, the office processed 1,107 complaints and closed 958 cases. It conducted investigations in 576 cases, issued an opinion in 238 cases, while in 86 cases it pointed out the omissions of state bodies.

6. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Other Forms of Ill-Treatment

The Constitution of Montenegro, specifically Art. 28, stipulates that 'No one shall be subjected to torture or to inhuman or degrading treatment'. Despite the strong legislative framework, which was further strengthened by the ratification of the European Convention on Human Rights, several reports of police torture of suspects, as well as cases of beatings in prisons and detention units throughout the country, were recorded in Montenegro. The state prosecuted individual police officers, as well as prison guards, who were accused of exceeding their authority; however, there were numerous delays in court proceedings, which compromised the efficiency of processing reported persons.

The Committee of the Council of Europe for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concluded in its latest report that the Montenegrin authorities must act proactively to suppress abuse by the police, as well as officers of the Sector for the fight against organised crime and corruption, special units, criminal police, and inspectors from numerous police stations from several Montenegrin cities. Montenegro is in the process of amending the Criminal Code and the Code of Criminal Procedure in order to harmonise with the recommendations given by the CPT, harmonise the definition of torture with the Convention, and to punish committed torture or ill-treatment with punishments that would be proportionate to the nature and gravity of the offence, and abolish the statute of limitations of the criminal offence of torture.⁵⁰

Regarding the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which date back to 2019, Montenegro is making some progress. The Administration for the Execution of Criminal Sanctions initiated 11 disciplinary proceedings for breach of official duty, but not for abuse of official position or authority in connection with torture or inhumane treatment of persons deprived of their liberty.

When we talk about the capacity of the prison systems in Montenegro, based on data from 2022, there were 605 convicted persons, of which 19 were women. The number of detainees was 464, of which 16 were women (56 of them are housed in the pre-trial prison in Bijelo Polje, while the remaining 408 are in the pre-trial prison in Podgorica, which has a capacity for only 292 prisoners). As stated in the latest report by the European Commission, the material conditions in prisons, remand prisons, and psychiatric hospitals are still below international standards.⁵¹ In Montenegro, the expansion of existing prison capacities has been planned for many years, as well as the construction of a new Institute

50 | One of the glaring examples of gross overstepping of authority by members of police units was recorded in Cetinje, in September 2021, during the enthronement of the Metropolitan of the Serbian Orthodox church at the Cetinje Monastery. An event that was accompanied by numerous controversies, especially regarding the excessive use of chemical agents against demonstrators who opposed the enthronement. In all cases, the National Preventive Mechanism established an excess in the use of chemical agents, which resulted in a violation of Art. 3 of the European Convention on Human Rights (prohibition of torture), as well as Art. 28 of the Constitution of Montenegro (dignity and inviolability of the person). Unfortunately, despite this, the investigations are still ongoing and there is still no judicial epilogue.

51 | European Commission, 2023, p. 44.

for the execution of criminal sanctions due to the decades-long problem of overcrowding and limited access to health care within them. Staying in the mentioned prison units causes concern in terms of respecting basic human rights, leaving less than three square meters of space per prisoner. Apart from the problem of insufficient space in prison structures, problems such as insufficient hygiene, poor ventilation, and irregular food supply primarily affect persons who are ordered to stay in police stations for up to 72 hours.

Violence among prisoners was one of the biggest problems faced by the main prison in Montenegro, which was attributed to the long-standing struggle between the two largest organised crime groups in the country. In addition to violence, prisoners were repeatedly denied psychiatric help, as well as difficult access to appropriate treatment. On the other hand, the Montenegrin authorities did conduct investigations into abuse, but they initiated those same investigations only after stormy media campaigns or recommendations of the Ombudsperson.

7. The Fight Against Corruption and Organised Crime

The fight against corruption and organised crime in Montenegro is not only an institutional problem, but also the result of historical, social, and cultural heritage. Montenegro is struggling with problems of corruption, like other transitional countries of Central and Eastern Europe. According to the Corruption Perceptions Index for 2023 published by Transparency International, Montenegro is rated 46/100, and ranks 63rd in the world (as it has been for the last five years).⁵² The parliamentary elections held in 2020 brought a significant political change in government structures, after 30 years of dominance by one political party. Since 2021, a series of activities have been started that have significantly influenced the change in the attitude toward Montenegro's inaction in the fight against organised crime and corruption.⁵³

The legal regulations for the prevention of corruption in Montenegro consist of the Law on Prevention of Corruption⁵⁴, the Law on Financing of Political Entities and Election

52 | Transparency International (2024), Corruption Perceptions Index 2023. Based on the latest research conducted in the spring of 2024, 55.7% of respondents believe that corruption is very widespread in Montenegrin institutions, and citizens perceive the highest levels of corruption among customs officers (19.3%) and police officers (19.1%). When it comes to public officials, political party leaders are seen as the most corrupt, with a perception rate of 24.7%.

53 | In this sense, today we have the former president of the Supreme Court, who is being tried for various accusations precisely at the expense of organised crime, as well as the former president of the Commercial Court, who is being tried on the same basis. In addition to the president of the courts, we also have a former chief of police who was only recently released to defend himself, and who is accused of numerous criminal activities. There were also many former ministers, as well as public officials who were prosecuted under various charges, starting from abuse of official position and ending with embezzlement of public funds. On the other hand, we also have a couple of representatives of the new ruling structures who have been detained or are on trial, such as the mayor of Budva, who was accused of cocaine smuggling, and the former director of the Revenue and Customs Administration, who was accused of cigarette smuggling and abuse of office.

54 | Official Gazette of Montenegro, no. 53/14, 42/17 and 73/23.

Campaigns⁵⁵ and the Law on Lobbying⁵⁶. They provide a legal basis and framework for the functioning of the main body for the prevention of corruption, namely the Agency for the Prevention of Corruption, which was founded in 2016.⁵⁷ The powers of the Agency are as follows: determining the existence of conflicts of interest in the work of officials, as well as taking concrete measures to prevent them; control of restrictions on the performance of public functions; control of receiving gifts, sponsorships, and donations; verification of data from the Report on income and assets of officials⁵⁸, and others. The effectiveness of the work of the Agency is shown by the fact that 289 officials resigned due to the actions of the ASK in the period from 2016 to 2019, a number which dropped to 107 officials resigning in the period from 2020 to 2023.⁵⁹

The Law on the Prevention of Corruption prescribes measures to prevent conflicts of public and private interest, introduces restrictions on the performance of public functions, and defines ways of submitting reports on the income and assets of officials. According to this law, corruption means any abuse of an official, economic, or social position or influence to achieve personal benefit, or benefit for another person. As for the Law on the Financing of Political Entities and Election Campaigns, it mainly deals with the method of obtaining and providing financial resources for the regular work and election campaigns of political entities, as well as prohibitions and restrictions on the disposal of state property, supervision and auditing of the financing of political entities, and all in to realise the legality and publicity of their business. The Law on Lobbying regulates the conditions and methods of carrying out lobbying activities and defines the rules of lobbying and other important issues. Based on Art. 2 of the law, lobbying is considered any activity that influences legislative bodies and executive power at the state and local levels, state administration bodies, independent bodies, regulatory bodies, public institutions, public companies, and other legal entities exercising public powers.

Issues such as high-level corruption continue to cause great concern, due to the still insufficiently developed legislative and strategic framework for preventing and fighting corruption that would be in line with the acquis of the Union, as well as European and international standards. Key deficiencies in the legal framework for preventing and

55 | Official Gazette of Montenegro, no. 3/20 and 38/20.

56 | Official Gazette of Montenegro, no. 52/14.

57 | On this occasion, it is important to mention the Law on confiscation of property benefits acquired through criminal activity, which regulates the conditions for confiscation of property benefits acquired through criminal activity, as well as the procedure for confiscation of property and property benefits, management of confiscated property, and other such. It should be borne in mind that the mentioned procedure can be conducted, based on Art. 4 of the Law, before, during and after the completion of criminal proceedings, while the confiscation of property must be carried out in accordance with the Criminal Procedure Law.

58 | At the beginning of 2023, the Agency submitted the final list of officials in Montenegro, a document that, according to the recommendations of the European Commission, should have been published in 2016.

59 | However, due to her questionable independence, impartiality and responsibility, the Director of the Agency is under the scrutiny of the Special State Prosecutor's Office, who was accused of abuse of office, which damaged the budget by more than 100,000 euros. In the first-instance verdict of the Basic Court in Podgorica, from August 2024, the Agency's director, Jelena Perović, will have to return 58,539.7 euros to the state, as well as default interest from May 17, 2019, because she sold an 87-square-meter apartment that she received for favourable conditions, but she did not fulfil the obligation and remained five years in the position of judge.

fighting corruption were primarily identified in the non-implementation of the recommendations of EU expert missions and the GRECO report. It is up to Montenegro to show an extremely strong and coherent response to the fight against organised crime, improving results in terms of investigations, prosecutions, final judgments, and confiscation of assets.⁶⁰

Before the beginning of the negotiation process with the European Union, until December 2023, the Strategy for the fight against corruption and organised crime, which was adopted in 2010, was the first and only strategy adopted in this area, and it included a time interval of implementation of only four years. However, instead of a new strategic document, the Government of Montenegro adopted the Operational Document for the Prevention of Corruption in Areas of Special Risk in 2016, which was a kind of equivalent for the Strategy for the fight against corruption and organised crime. Continuity has been preserved in this way, whereas the issue of realistic upgrading, or more precisely, the successful implementation of the mentioned document, has become questionable. In October 2022, the Government of Montenegro carried out *par excellence* improvisation by adopting the Action Plan to address key priorities that led to the fulfilment of the remaining temporary benchmarks in Chapters 23 and 24. It was an *ad hoc* document created primarily to answer the needs of fulfilling the priority areas in Chapters 23 and 24. Unfortunately, the document did not produce any report on implementation, which undoubtedly had a detrimental effect on the creation of a sustainable and coherent system of regulations for the fulfilment of Montenegro's obligations in the process of negotiations with the union.

The perception of impunity, which is highly expressed in the Montenegrin society, provides a picture of the inefficiency of the judicial system, which deeply worries international partners. Therefore, in June 2024, the Government of Montenegro presented its strategic response to corruption by adopting the Strategy for the fight Against Corruption for the period 2024/28 and the Action Plan for the two-year period, with which the Government of Montenegro placed the fight against corruption on its agenda. However, the human resources of the Special State Prosecutor's Office, which is responsible for

60 | At the 97th plenary session of the Group of Countries of the Council of Europe Against Corruption (GRECO), held from June 17 to 21 in Strasbourg, the first Compliance Report for Montenegro was discussed and adopted within the 5th evaluation round, on the topic 'Prevention of corruption in relation to the highest levels of executive power and the police'. The Montenegrin authorities fulfilled only 3 of the 22 recommendations, while of the remaining 19 recommendations, 11 were partially fulfilled and 8 were not fulfilled at all. With the compliance report, GRECO recognised the implemented and initiated activities aimed at further implementation of the given recommendations, which is a good signal for Montenegro and a green light for the continuation of further reforms towards meeting the standards of the Council of Europe and the introduction of practices that will bring Montenegro closer to membership in the European Union. Montenegro is obliged to submit additional information regarding the implementation of the remaining recommendations by December 31, 2025, on the basis of which the second Compliance Report for Montenegro will be prepared within the next evaluation round.

conducting investigations in the field of organised crime and corruption, continue to be insufficient, as reflected in the number of cases per special prosecutor, which is 100:1.⁶¹

The High Court in Podgorica is a specialised court responsible for high-level corruption cases and currently employs only 34 judges, of which only five work in the Special Department for Organised Crime, Corruption, Terrorism, and War Crimes. In the annual report on the work of the Special Department of the High Court in Podgorica, which deals with cases of organised crime, corruption, and war crimes, in 2023, there were only 176 cases, with a completion rate of 19.75% (33 verdicts in 176 cases). In the same period, the State Prosecutor's Office filed reports on corruption against 1,085 persons, with an additional 852 reports from previous years, which amounts to 1,937 active cases only for the year 2023. Thus far, no single final conviction has been issued for criminal offences of organised crime and corruption at a high level.

8. The Fight Against Terrorism

The dangers of terrorism and violent extremism in Montenegro are relatively low. Montenegro harmonised its legal framework with the EU *acquis* in the fight against terrorism and continued to implement the measures provided in the Agreement on the Implementation of the Joint Action Plan for the Fight against Terrorism for the Western Balkans, which was signed with the Union in November 2019.⁶² In September 2022, the Parliament of Montenegro adopted the Law on the Processing of Air Passenger Data, with the aim of preventing and detecting acts of terrorism. Currently, there are no people convicted of terrorism in Montenegrin prisons, but concerns about its possible occurrence do not subside, especially if we consider the polarisation of society along ethnic lines, the increased level of misinformation online and hate speech.⁶³

61 | In 2022, the Special Prosecutor's Office issued orders for the investigation of high-level corruption crimes in 11 cases against 76 natural persons and 5 legal entities, whereas in 2021 there were 15 cases against 70 natural persons and 19 legal entities, whereas financial investigations in 2022, initiated in 5 cases, against 43 natural persons and 4 legal entities (in 2021, there were 7 cases, against 40 natural persons and 4 legal entities).

62 | In January 2023, a new National Coordinator for Combating Violent Extremism, Terrorism, Money Laundering and Terrorist Financing was appointed, as the previous coordinator was nominated as director of the Revenue and Customs Administration and then arrested as part of an investigation into tobacco smuggling.

63 | It is important to mention the repeated trial of 13 defendants who were found guilty of terrorism in the case of the 'coup d'état' in 2016 on the day of the parliamentary elections. In 2022, the Court of Appeal annulled the first-instance verdict and sent the case back to the High Court for a new decision. In July 2024, the High Court acquitted all the accused, stating that there was no evidence of attempted terrorism.

9. Solving War Crimes Cases at the National Level

Montenegro convicted only 11 persons in 26 years, for war crimes committed on the territory of the former Yugoslavia during the period of the wars of the 1990s. This is less than a third of the accused. The indictments were dropped (because all the accused were acquitted) in three cases: Bukovica, Deportation and Kaluđerski laz. No single procedure was initiated using the criminal law institute of command responsibility, complicity, incitement, or assistance, although there were numerous criticisms by the European Commission on this issue.

For nine consecutive years since 2013, the European Commission has insisted on its reports on the obligation of the Montenegrin judiciary to process war crimes in accordance with domestic and international laws. In strategic documents on foreign policy and expansion to the Western Balkans from 2015, the EU highlighted transitional justice as a priority for candidate states, and highlighted the processing of war crimes as an issue that requires prompt resolution.⁶⁴

The strategic approach in the investigation of war crimes in Montenegro was recognised in the very process of accession to the Union⁶⁵. The temporary benchmarks for negotiations in chapter 23 required that it

effectively demonstrate the capacity of state authorities to apply the law for the independent resolution of war crimes cases in accordance with international humanitarian law and by the practice of the International Criminal Tribunal for the former Yugoslavia, while taking effective measures to solve the issue of impunity.⁶⁶

Respecting the given recommendations, the former Supreme State Prosecutor Ivica Stanković in May 2015 adopted the Strategy for the Investigation of War Crimes, by which the Supreme State Prosecutor's Office undertook to strengthen the fight against impunity for war crimes 'through more efficient investigation, prosecution, trial and punishment in accordance with international standards'.⁶⁷ However, even after the establishment of the Strategy for the Prosecution of War Crimes in 2015, Montenegro did not achieve significant results in this regard, nor has the Strategy been revised until today. Improving the investigation and prosecution of war crimes in accordance with international humanitarian law is necessary to effectively implement and monitor the strategy.

In accordance with the recommendations of the International Residual Mechanism for Criminal Courts, Montenegrin criminal legislation should take a proactive approach to resolve legal and practical obstacles to conducting effective investigations, prosecutions, and trials and punishments for war crimes. In 2020, a case was submitted from The Hague, Montenegro, to 15 Montenegrin citizens who were suspected of having committed war crimes, including sexual violence, in the 1990s. However, investigative actions have

64 | European External Action Service, 2015.

65 | Government of Montenegro, Action plan for chapter 23 Judiciary and fundamental rights, area of Judiciary, measure 1.5.1.1, p. 64.

66 | Government of Montenegro, Ministry of European Affairs, 2018.

67 | Strategy for the investigation of war crimes, Supreme State Prosecutor's Office of Montenegro, Tu. no. 96/15 of 8 May 2015.

not yet been undertaken in this case due to the problem of access to certain witnesses. On the other hand, for the case of Bukovica, the Special State Prosecutor's Office of Montenegro formed a new case based on the files that were delivered to the Montenegrin prosecutors by colleagues from the Prosecutor's Office in Trebinje in May 2021. Meanwhile, the Ministry of Justice proposed amendments to the Code of Criminal Procedure to allow the use of evidence presented before the Hague Tribunal and the International Residual Mechanism in domestic courts.⁶⁸ Additionally, the proposed changes to the Criminal Code of Montenegro aim to incorporate the concept of command responsibility, including the accountability of subordinates, as a component of criminal offence.⁶⁹

Unfortunately, the prosecution of war crimes was not the result of the self-initiative actions of the Montenegrin prosecutor's office, which the European Commission had expected since the 2013 report.⁷⁰ That is why the Commission, in the Report from 2023, characterised as 'limited' the progress achieved in solving war crimes cases.⁷¹

10. Migrations

When we talk about the area of legal and illegal migration, Montenegro's legal framework is largely harmonised with the legal *acquis* of the union. Apart from the 12 agreements on readmission to non-EU countries, Montenegro has not signed an agreement with any of the countries to which most migrants come.⁷² However, a modern system for identifying and registering migrants' fingerprints, linked to a central biometric database, has not yet been established.⁷³ However, owing to the collaboration with Frontex, efforts are underway to meet the technical requirements necessary to implement this system.

In 2022, 8,519 migrants will be registered based on data submitted by the Ministry of Internal Affairs, which is twice the number compared to the previous year. In the same

68 | Art. 2 of the Draft Law on Amendments to the CPC prescribes that: Under the conditions from para. 2 of this article, evidence obtained or produced in accordance with the Statute and Rules on Procedure and Evidence of the International Criminal Court and the International Residual Mechanism may be used in criminal proceedings in Montenegro in the manner in which it could be used before these bodies. Art. 3 of the Draft gives the meaning of the term International Residual Mechanism: 'The International Residual Mechanism is the International Residual Mechanism for Criminal Courts, i.e. the term that serves as a general name for the International Tribunal for the Criminal Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law on the territory of the former Yugoslavia after 1991 and the International Residual Mechanism for Criminal Courts.'

69 | Art. 440 of the Criminal Procedure Code stipulates that by applying the institute of command responsibility, the following will be punished: 'A military commander or a person who actually performs this function or a superior civilian person, who knowing that the forces he commands or controls are preparing or have started the commission of a criminal offense from Art. 426 to 430, Art. 432, 434 to 437 and Art. 439 of this Code does not take the necessary measures that he could and was obliged to take to prevent the commission of the act, and as a result, the commission of that act took place...'

70 | European Commission, 2013, p. 10

71 | European Commission, 2023, p. 31.

72 | We are talking about the following countries – Afghanistan, Bangladesh and Iran.

73 | Migrants' fingerprints are still collected through ink on paper.

year, 2022, 4,920 illegal entry attempts (situations in which illegal migrants returned from border crossings when they saw patrols) were prevented, and 511 people were detained by the border police for illegal entry. In addition to the apprehension, the border police discovered eight cases of migrant smuggling and arrested nine.⁷⁴

The readmission agreement between Montenegro and the EU and its 15 protocols continue to be implemented. Readmission from Montenegro to neighbouring countries for the period 2022 is in decline compared to the previous year, from 60 to 33 people. In the same year, 37 voluntary returns were obtained. Of these, the border police managed 25 returns to neighbouring countries, and the International Organization for Migration facilitated 12 returns to countries of origin. Plans for the reintegration of Montenegrin returnees upon their return to Montenegro were created, along with a reintegration support team.

| 10.1. Asylum

The asylum system in Montenegro was established as part of fulfilling the conditions for obtaining a visa-free regime with Schengen Area countries through the adoption of the Law on Asylum, which was in effect from 25 January 2007 until the adoption of the new Law on International and Temporary Protection of Foreigners⁷⁵, which remains in force today.

The right to asylum in Montenegro is defined in Art. 44 of the Constitution, based on which 'a foreigner who has a well-founded fear of persecution because of his race, language, religion or belonging to a nation or group or because of political beliefs can request asylum in Montenegro'. It is important to note that we are discussing the comparative existence of two rights, namely the right of foreigners to seek asylum and the right of the state to grant or deny asylum. Montenegro also adheres to the principle of non-refoulement under international law, meaning that it will not deport foreigners to the country they fled from for fear of persecution based on the grounds listed in Art. 44 of the Constitution. Only competent authorities can decide the expulsion of foreigners within the time prescribed by law.⁷⁶

Thanks to cooperation with the EU Asylum Agency (EUAA), Montenegro continued to strengthen its institutional capacities, especially the Directorate for Asylum, and standard operating procedures were adopted to harmonise asylum procedures.

Submitting an application for asylum in Montenegro is carried out as follows: applicants must first register their intention to seek asylum with the border police⁷⁷, after which they have a deadline of 15 days to submit a request to the Directorate for Asylum.⁷⁸ Montenegro has only 2 reception centres, with a total capacity of 164 beds, of which 60 beds

74 | In 2022, we had 5 indictments related to migrant smuggling combined with organised crime.

75 | Official Gazette of Montenegro, no.2/2017 and 3/2019.

76 | The Treaty of Amsterdam, Art. 63 contains standards and conditions for exercising the right to asylum, which is regulated in more detail by the Directive on Temporary Protection (2001), the Directive on Reception Conditions (2003), the Directive on Asylum Procedures (2005), and others.

77 | Since recently, that request is possible submitted in several municipalities, not only in the migrant centre Božaj.

78 | In 2022, the number of asylum applications was 8,320, which is 150% higher than in 2021. However, only 175 persons (of those registered) submitted in the end application for asylum, whereas the others continued their migratory route.

are in a temporary container settlement in Božaj, on the border with Albania. The average occupancy of these centres is approximately 30%, and Montenegro is the only country in the Western Balkans that finances these reception centres from the state budget. Since the beginning of the war between Ukraine and Russia, Montenegro has hosted the largest number of Ukrainian citizens compared to other countries of the Western Balkans. By the end of March 2023, 7,857 Ukrainian citizens received temporary protection (70% were women), as well as access to health care services and accommodation in a volume that exceeded EU standards.⁷⁹

| 10.2. Visa Policy – Schengen and External Borders

The Montenegrin legal framework in this area is largely harmonised with the legal acquisition of the Union. In May 2023, Montenegro and the EU signed a Status Agreement, which enabled the European Border and Coast Guard Agency (Frontex) to be deployed in the territory of Montenegro at the request of Montenegrin authorities. Montenegro continued to implement its strategy of integrated border management, as well as the Schengen Action Plan. The number of jobs in the border police increased to fulfil the requirements of the plan, and now amounts to 1,540. The optimal number of jobs should be increased by another 450. On the other hand, active cooperation between Interpol, Europol, and EU member states in the fight against smuggling continued.

11. Closing Remarks

Montenegro, as one of the six former republics of the Federal Republic of Yugoslavia (SFRY), is an example of a very slow transition of a society and state, from the communist model of governance to the current model of hybrid democracy. The period from 1990 to 2020 in Montenegro was marked by the prolonged dominance of a single political party, during which numerous analyses highlighted concerns related to political corruption, the misuse of state resources, and the extensive influence exerted by partisan structures

79 | Based on Art. 92 of the Law on International and Temporary Protection of Foreigners, the Government of Montenegro issued a Decision on March 10, 2022, approving temporary protection for individuals from Ukraine. This decision grants temporary protection for a period of one year to Ukrainian nationals, stateless persons whose last residence was in Ukraine, and individuals who were granted international protection by Ukraine and who cannot return to Ukraine, which they were forced to leave due to armed conflicts, or to their country of origin. The existence of reasons for which these individuals will not be granted temporary protection, in accordance with Art. 94 of the Law on International and Temporary Protection of Foreigners, is determined by the competent authorities based on available data. This measure was taken to align Montenegro's laws and practices with the EU asylum policy, whose authorities made the decision based on Council Directive 2001/55/EC of July 20, 2001, on minimum standards for granting temporary protection in the event of a mass influx of displaced persons, and on measures to promote balanced efforts among member states in hosting these individuals. On the proposal of the European Commission, the EU Council adopted Implementing Decision No. 2022/382 on March 4, 2022, implementing Art. 5 of the aforementioned directive, which introduces temporary protection for Ukrainian nationals who were residing in Ukraine and who were displaced on or after February 24, 2022, due to the military invasion by Russian armed forces that began on that date.

over public institutions. Following the party's defeat in the parliamentary elections of August 2020, the incoming governing coalition, considered by some to consist of populist and clerically oriented political actors, Montenegro received a government with a lower level of democratic standards than the previous one. In this regard, it is essential to consider the broader Montenegrin political context, which significantly shapes the interpretation and implementation of legal norms, including those governing the protection of human rights.

The political commitment of the Montenegrin government towards European integration has been consistently cited as a key priority of the state since the beginning of the negotiation process. Unfortunately, more serious progress in the implementation of reforms, which would bring Montenegro closer to membership, has significantly stalled in the years behind us. The pronounced polarisation of society and political instability are considered to be the primary motives for inertia in the implementation of European reforms.⁸⁰

On the other hand, increasing threats to peace, such as the Russian attack on Ukraine, geopolitical instability, and growing Russian influence on certain countries of the Western Balkans,⁸¹ gave a clear message to the EU about the importance of continuing the process of expanding the Union towards the East.

By aligning its national legislation with European standards and meeting key benchmarks, Montenegro confirmed in June 2024, during the intergovernmental conference on accession, that it had fulfilled the transitional benchmarks in the crucial negotiation chapters 23 and 24, which pertain to the judiciary, fundamental rights, and governance. In this way, the accession negotiations were unfrozen, and new momentum was given to them. Alongside receiving the IBAR, the EU established criteria for closing this essential cluster, which is vital for the accession process to the Union. Further success of Montenegro on its way to the EU will depend on a consistent record of the implementation of adopted policies, with the aim of achieving results in the areas of fundamental rights, the fight against organised crime and high corruption, criminal prosecution and trial for remaining war crimes, and the policy of asylum, migration, and visa policy.⁸²

Whether Montenegro can serve as a positive example of the Union's readiness for further expansion and integration, thereby demonstrating a clear commitment to

80 | Since declaring independence in 2006, Montenegro has had 44 different governments. Since 2020, there have been three changes in government and the formation of numerous coalitions within coalitions, leading to a form of challenging cohabitation.

81 | Let us revisit the interview given by Tonin Picula, the permanent rapporteur of the European Parliament for Montenegro since October 2019 and the head of the working group for the Western Balkans since 2020, who in an interview with Radio Free Europe in May 2024, assessed that 'The Serbian Ortofox Church, with the active support of the Serbian state, has significantly increased its already great influence in recent years, and does not give up promoting its political agenda, to the detriment of Montenegrin statehood and Podgorica's pro-Atlantic partnerships.' Complete interview [Online]. Available at: <https://www.slobodnaevropa.org/a/tonino-picula-zapad-eu-balkan-crna-gora/32947127.html> (Accessed: 8 April 2026).

82 | Based on official data obtained in accordance with the Law on Free Access to Information, out of 102 obligations undertaken by the end of June 2024, the institutions have implemented only 50, i.e. 49%, and 52 unfinished obligations are transferred to the second half of the year, when a total of 285 remain. Of the 102 planned obligations for the first half of 2024, 28 relate to laws, 28 to by-laws and 46 to strategic documents, and the lowest degree of fulfilment is recorded in relation to strategic documents (37%), laws (57%) and related by-laws (61%).

completing the process of forming a large and united European family, will depend on Montenegro's efforts to fulfil its obligations, rather than solely on the actions of the EU. It should not be expected that the Union will lower the criteria for accession, as it is essential for the citizens of member states to trust that new members will adhere to the same rules as existing ones to maintain legal security and uphold European standards. In this context, a robust and proactive approach is anticipated from the current Montenegrin government to finalise accession negotiations to ensure that Montenegro can join the community of democratic values, such as the European Union, as swiftly as possible.

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