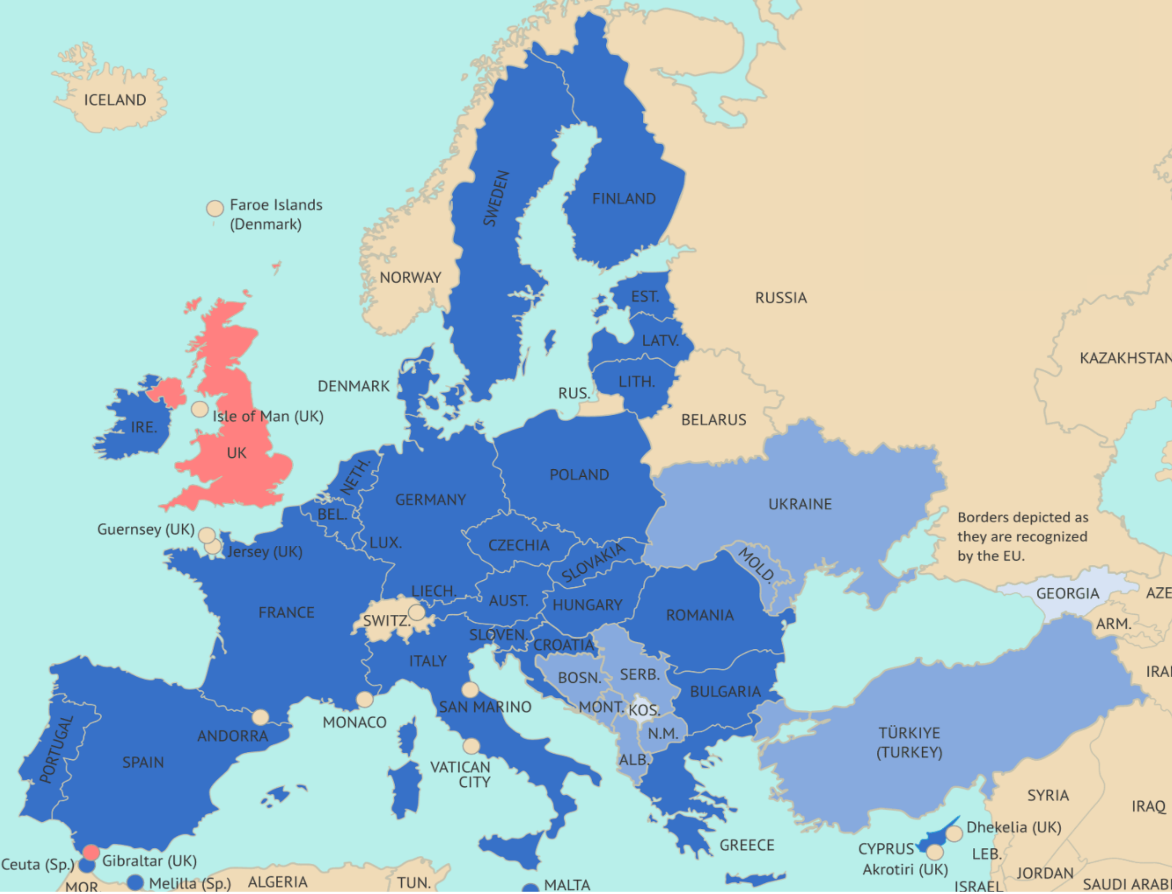

Malkhaz Nakashidze (Editor)

Democracy, Rule of Law, and Protection of Human Rights in the European Union

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Chapter 1.

Introduction to the Edition

Malkhaz Nakashidze[1]

The presented edited book addresses the issues of democracy, rule of law and human rights protection in the European Union, although it is not limited to the borders of the Union and considers the challenges beyond the borders of the Union. These fundamental values are relevant in many parts of the world today, but one of the important actors that serve to protect these fundamental values is the European Union. According to Article 2 of the EU Treaty: „The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail ".

The European Union is not only based on these values, and not only ensures its protection within its member states, but it also promotes the protection of democracy, the rule of law and human rights in its immediate neighborhood and globally. These values are also the EU enlargement policy, the so-called part of the Copenhagen Criteria (1993) and countries wishing to join the European Union are obliged to implement reforms to achieve a high standard of protection of these values and to be ready to become full members of the Union. Democracy today faces challenges all over the world, including in the EU member states themselves (for example, Hungary, Poland), as well as in the countries of the former Soviet Union or EU candidate countries (for example, Turkey, Georgia, Moldova, and elsewhere). The European Union, in cooperation with its partners, is trying to promote the consolidation of democracy in these countries.

There are many challenges in the EU and its neighborhood, such as climate change and its legal and political consequences, sustainable development, financial crises, EU green policies, child rights, consumer rights, minority rights, digital identity and legal rights, freedom of speech and expression etc. The issues mentioned in this book are discussed from different contexts and by authors from different countries, both EU member and candidate countries and other regions.

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These fundamental values have been especially threatened since the Russian invasion of Ukraine. The European Union and its member states responded appropriately to the gross violation of international law by the Russian Federation and the occupation of the territory of Ukraine. Before Ukraine, the Russian Federation invaded Georgia in 2008 and still occupies 20% of its territory, bordering, abducting and killing Georgian citizens almost every day. The war in Ukraine accelerated the start of the accession procedure for the countries interested in EU membership (Ukraine, Moldova, Georgia). The European Union granted candidate status to Ukraine and Moldova in 2022, and Georgia in 2023. During the next 10 years, these and other candidate countries will be in the process of intensive reforms in the field of democracy, rule of law and protection of human rights, with the special contribution of scholars and universities around the world. This book is latest contribution in terms of promoting the fundamental European values and spreading knowledge about the European Union in Georgia and wordwide. The book combines papers presented at the Jean Monnet International Conference held at the Batumi Shota Rustaveli State University on September 29-30, 2023. Both the conference and this book are funded by the European Union and aim to promote the values of the European Union by promoting the development of research and teaching about the European Union.

I am glad that about 100 Georgian and foreign professors, doctoral students, students, representatives of Jean Monnet chairs, modules, leading Jean Monnet centers from 14 countries of the world (Georgia, Germany, Romania, Hungary, China, Great Britain, Ukraine, North Macedonia, Croatia, Moldova, Turkey, Israel, Pakistan) participated in the event. It can be said that such a meeting took place for the first time in Batumi, Georgia, and the conference was very fruitful. The conference hosted a plenary session with the participation of Georgian and foreign experts and 11 panel sessions/discussions on the European Union and related topics. The participants had the opportunity to present their papers, receive recommendations and suggestions from colleagues, conduct a discussion and plan future cooperation. I think the conference was especially useful for promoting the scientific activities of young scholars and doctoral students. I hope our cooperation will continue in the future in new projects.

Malkhaz Nakashidze

Professor, Jean Monnet Chair
Batumi Shota Rustaveli State University

November 2023, Batumi, Georgia

Chapter 2.

The Rule of Law in Private Law and the Principle of Good Faith: A German Perspective

Günter Reiner and Anna Piplack[2]

Abstract: The relationship of good faith to the rule of law principle has not been widely explored thus far. This article determines to which extent the good faith principle is consistent with the rule of law and its associated values, like legal certainty and proportionality. It examines whether good faith acts as a meta-principle of law, which governs the application of other principles and serves the more legal purposes associated with the rule of law principle, or it is a special manifestation of the rule of law. The article shows that good faith and the rule of law are not only interrelated but that the good faith principle can weaken the effect of the rule of law. While good faith can help to mediate the effects of State powers in constitutional law, it can also be used to import ideology, as seen in some countries during the period of totalitarianism.

1. Introduction

Together with the principle of democracy, the rule of law principle is the cornerstone of a liberal state. In Germany and, e.g., in Switzerland, it is explicitly enshrined ("Rechtsstaat") in the constitution; likewise, it is in the primary law of the European Union [1]. The term "rule of law" dates to the 19th century and was originally a legal-political "fighting term" (Kampfbegriff) [2]. With its political content, the rule of law describes "one, perhaps the ideal of the state" [3]: the ideal of the rule of law, which is primarily directed not against monarch or legislature but against a highly developed administrative apparatus [4]. Its legal condensate is the rule of law as a constitutional principle. According to the German Federal Constitutional Court (Bundesverfassungsgericht - BVerfG), the "rule of law principle", together with the principle of democracy and the principle of the federal state, is "one of the fundamental principles of the Basic Law" [5]. The rule of law has a focus on the state and, therefore, primarily on public law. In private law - except the civil procedural law, which regulates sovereign relations and is basically public law - there is almost never any mention of the rule of law principle. Instead, the discourse in private law, especially in contract law, is characterised by good faith as the highest principle. This principle originates in private law but has also been recognised as a principle of public law since the time of the Weimar Empire [6].

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Vice versa, the rule of law, which is extensive, should be demonstrable in private law, even if it is not explicitly mentioned there. In a state governed by the rule of law, private autonomy does not apply by itself but owes its existence to the state's guarantee and legitimation.

The following questions will be examined in further detail below:

(1) How does the principle of the rule of law manifest itself in private law?
(2) Are there connections between the rule of law principle and the principle of good faith in private law, and what is the nature of these interrelations?

Is one of the two principles the overarching one, or is the statement that one can read in the literature true, that good faith and the rule of law stand "independently side by side", even if individual contents are congruent [7]?

In particular, are private law legal institutions such as the protection of legitimate expectations and forfeiture, which are usually associated with good faith, also or first and foremost a manifestation of the rule of law principle?

2. The Principle of Good Faith

2.1. Functions of Good Faith in Private Law

The German Civil Code (BGB) mentions the term "good faith" in seven different places. The most important is undoubtedly section 242 ("Performance in good faith"), which reads as follows: "An obligor has a duty to perform according to the requirements of good faith, taking customary practice into consideration". Systematically, it is assigned to the general part of the law of obligations; however, far beyond its wording, which is limited to determining the content of performance obligations of any kind, it is virtually understood as the epitome of the principle of good faith in the whole German law system and is constantly cited in this function. Section 157 of the German Civil Code ("Interpretation of Contracts") is also frequently cited, albeit to a much lesser extent than section 242. It is found in the so-called general part of the German Civil Code, which claims application for the entire Code but, by its content, is to be assigned to contract law. According to this, contracts are to be interpreted "as required by good faith, taking customary practice into consideration". Regarding the determination of the content of contractual obligations, section 157 BGB and section 242 BGB are closely related.

Sections 275, 307 and 320 BGB deserve special mention. According to para. 2 of section 275 BGB ("Exclusion of the duty to performance"), which is dedicated to impossibility, the obligor may refuse performance (among other things) insofar as it "requires an expenditure of time and effort that, taking into account the subject matter of the obligation and the requirement of acting in good faith, is grossly disproportionate to the obligee's interest in performance".

In this case of so-called practical (or factual) impossibility, which extends the idea

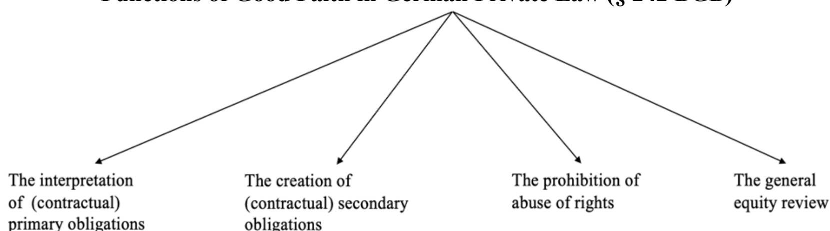
of the principle ultra posse nemo obligatur beyond impossibility under natural law, the concept of proportionality is expressed. The same applies to para. 2 of section 320 of the Civil Code, which is dedicated to the defence of an unperformed contract. The provision reads: “If one party has performed in part, consideration may not be refused to the extent that refusal, in the circumstances, in particular, because the part in arrears is relatively trivial, would be in bad faith”. The law thus establishes a direct connection between good faith and proportionality.

The provision of section 307 (“Test of reasonableness of contents”) of the German Civil Code, which is the core provision of the judicial review of general terms and conditions, expresses another aspect of the principle of good faith, fairness in contractual relations (and even beyond). According to the first sentence of the clause, “provisions in standard business terms are ineffective if, contrary to the requirement of good faith, they unreasonably disadvantage the party contracting with the user”.

In summary, four functions of good faith can be identified in German private law:

(1) the concretization/interpretation of (contractual) primary obligations,
(2) the creation of (contractual) secondary obligations, whereby a distinction is made between performance-related secondary obligations (implied terms) and further duties of conduct (duties to protect), which are basically of a tortious nature,
(3) the prohibition of abuse of rights. These include:
- the prohibition of harassment (section 226 BGB),
- the objection of contradictory conduct (venire contra factum proprium),
- the maxim dolo agit, qui petit, quod statim redditurus est,
- forfeiture and
- other cases of abuse of rights (individually and institutionally in the form of circumvention of the law),
(4) the general equity test, i.e., the correction of the results of (statutory or contractual) interpretation that are perceived to be extremely unjust, which is no longer within the scope of the admissible methods of interpretation.

Functions of Good Faith in German Private Law (§ 242 BGB)



Thus, according to German understanding, the principle of good faith is in international comparison, especially with common law countries, exceptionally extensive and charged [8]. In its function as a principle of interpretation, on the other hand,

good faith is likely to be the international standard [9]. We will return to the equity test and the principle of proportionality later.

2.2. Good Faith in Public Law

As already stated, good faith is one of the general principles of private and public law, including federal and state administrative law [10]. This is no surprise since good faith is considered a general principle of the entire German legal system [11]. Another question we will not discuss here is whether it is correct to cite the provision of section 242 BGB to justify the principle of good faith outside private law. In the literature, it is pointed out that section 242 BGB was deliberately not included in the general part of the law by the legislator but was anchored in the law of obligations so that it should be understood merely as a partial codification of a general principle of law [12].

In a more or less narrow sense, the principle of good faith is likely to be found in all legal systems - as long as they are not characterised by pure arbitrariness [13]. Accordingly, the principle is, for example, considered a customary rule of general international law [14].

However, using the good faith argument is rare in public law practice. First, as in private law, good faith is encountered as a principle of interpretation of singular legal acts like administrative acts and general decrees in contrast to statutes [15].

Second, the principle of good faith in public law has a certain value for protecting citizens who rely on the continued existence of a factual or legal situation created by the public decision-makers (Vertrauensschutz, “protection of legitimate expectations”). By the above distinction of the functions of good faith, the corresponding groups of cases can be assigned to the two areas of justification/concretisation of obligations or the prohibition of abuse of rights, depending on the case.

One group of cases, which, however, lost its significance in 1976 through its codification in the (almost word-for-word identical) administrative procedure laws of the (formerly) federal states and the federal government, was the withdrawal of unlawful administrative acts favouring the citizen (e.g., decision on social benefits; decision on subsidy; building permit, etc.) by the authority with effect for the past. Back then, the Federal Administrative Court expressly invoked the principle of good faith to protect the citizen’s legitimate expectations in the continued existence of an unlawful administrative act. In 1959, for example, the Court did not accept the argument that the rule-of-law principle of the legality of administrative action required the reimbursement of wrongfully granted pensions in every case. According to the Court, the consideration of the citizen's interest in reliance is not a violation of the legality of administrative action if it is a requirement of good faith “because good faith itself belongs to the core of the legal system” [16].

Similarly, administrative case law has, in individual cases, under the aspect of forfeiture (as a manifestation of good faith), denied allowing the administration to

exercise its rights vis-à-vis the citizen [17].

Now, however, the protection of the citizen's legitimate expectations in the case of retroactive administrative action is predominantly treated as a problem of the principle of the rule of law insofar as it is not regulated by law anyhow.

Likewise, in contrast to private law, the principle of proportionality in public law is not associated with the principle of good faith; it is derived from the principle of the rule of law and especially fundamental rights [18].

2.3. Constitutional Rank of the Public Law Principle of Good Faith

By referring to the principle of the rule of law, case law avoids the question of the rank of the principle of good faith in the hierarchy of norms. Unlike the Swiss Federal Constitution [19], the German constitutional legislator has refrained from referring to good faith.

In the decision from 1959, the Federal Administrative Court apparently assumed that good faith, which it saw as being in the "core of the legal system", has constitutional rank. Otherwise, this principle would not even be able to relativise the principle of the legality of administrative action [20]. In a decision of 1989 [21], the Federal Fiscal Court (Bundesfinanzhof, BFH) expressly left open the question of "what rank the principle of good faith is to be assigned in each case among the tax legal norms".

Suppose it is assumed with the so-called inner theory (Innentheorie) that good faith is inherent in rights [22]. In that case, it will be difficult to deny constitutional rank to rights that find their basis in constitutional law, including all state authorities interfering with fundamental rights.

3. Rule of Law Principle

3.1 Conventional (constitutional) Understanding of the Rule of Law Principle in Public Law

According to conventional German understanding, the rule of law principle has a formal and a substantive (or material) aspect [23]. The formal aspect includes the separation of powers, the binding of the legislature by constitutional order, the executive and the judiciary by law and justice (Art. 20 (3) Basic Law). Furthermore, must be added the guarantee of legal remedies for citizens (Article 19 (4) Basic Law), the right to be heard in court, the prohibition of retroactivity for criminal law and double jeopardy (Article 103 (1) to (3) Basic Law). The material aspect of the rule of law, as understood in Germany, constitutes the "state of justice" (Gerechtigkeitsstaat). It is characterized essentially by fundamental rights and the principle of proportionality associated with fundamental rights, as well as the foreseeability and predictability of state measures or, put another way, legal certainty.

In the words of the Federal Constitutional Court, the rule of law contains "as an essential element the guarantee of legal certainty", which requires "not only a regulated procedure of legal determination but also a completion whose legal stability is ensured" [24]. The protection of legitimate expectations includes that the enactment of laws with so-called "true" retroactive effect, i.e., with legal consequences that are linked to a citizen's past conduct, is "generally impermissible" [25]. The Court is particularly strict regarding the retroactive effect of laws linked to completed facts and legal relationships for the future, given the democratic legitimacy of the legislature [26]. In the case of the retroactive correction of materially erroneous administrative acts, the Court sets lower requireements since the protection of legitimate expectations is offset here by the interest in the enforcement of statutory law, which is based on the rule of law, too [27]; there is no mention of good faith in the cited decision.

According to the case law of the Federal Constitutional Court, the principle of proportionality (in the broader sense) and - as a partial aspect - the prohibition of excessiveness are also "to be derived from the principle of the rule of law as overarching guiding rules of all state action" [28]. The principle of proportionality states that a state measure must be suitable for achieving the objective pursued, that it must be necessary in the sense of the mildest means of achieving the goal, and that it must be reasonable when the interests concerned are weighed up, i.e., that it must not represent excessive hardship for the person concerned. It should only be noted in passing that the principle of proportionality vis-à-vis the legislature, insofar as the legislator is free to define its objectives, is hardly more than a plausibility check, which moreover runs empty as far as the Constitutional Court takes the lawmaker's factual bases as its own.

3.2. Private Law Implications

Private law connections can arise for such material aspects of the rule of law that do not have a compelling sovereign reference, such as the separation of powers. In particular, fundamental rights are considered, including the principle of equality, legal certainty, proportionality, as well as the corrective measures under private law in the service of material justice and equity. The direct rule of law requiements for private law (in particular, the prohibition of retroactivity and legal certainty) and civil proceedings (the requirement of fair and speedy trial, neutrality, etc.) are not considered here because they do not have any private law specificity.

3.2.1. Fundamental Rights

3.2.1.1. Indirect third-party effect. Fundamental rights are seen as an essential component of the material rule of law. It has long been recognised in the federal republican legal system that fundamental rights, although initially rights of defence vis-à-vis the state, affect the relationship among private individuals. This so-called indirect third-party effect of fundamental rights under private law can be traced back to the principle of the rule of law, even if the rule of law does not usually

appear in the chain of argumentation. The "Lüth" judgement of the Federal Constitutional Court of 1958 [29] on freedom of expression and its impact on private law, which admittedly likewise makes no explicit reference to the rule of law, was formative for developing the theory of indirect third-party effect.

The decision was based on a court ruling by the Hamburg Regional Court, which prohibited the head of the Hamburg press office, at the same time president of the "Hamburger Presseclub e.V." (plaintiff), from repeating his call for a boycott of a movie directed by a person who was proven to be anti-Semitic during the time of the "Third Reich". The Regional Court had qualified the call for a boycott as intentional and immoral damage within the meaning of German tort law (section 826 BGB). The Federal Constitutional Court found the ruling to violate the freedom of expression. It means that, in addition to their function as rights of defence against the state, fundamental rights were part of the "objective system of values" of the constitutional order, in which "a principled strengthening of the normative power of those basic rights is manifested" (juris, no 26). This system of values must apply as a fundamental constitutional standard to all areas of law and naturally "also influences the private law". No provision of private law may "contradict it"; each must be "interpreted in its spirit" (juris, no. 26). Accordingly, the civil courts would have to consider for instance, the importance of freedom of expression in proceedings over calls for boycotts by way of a "balancing of interests" when interpreting the characteristic of immorality in the context of tort law (juris, no. 38).

In other words, the state can violate fundamental rights through direct interference and indirectly by not giving them sufficient effect in the relationship between private individuals. Of course, the effect of fundamental rights in a private must be weaker than in a sovereign relationship because the other party of the private-law relationship is also the bearer of fundamental rights. In this case, the director has a fundamental right to exercise his general freedom of action. From today's perspective, one might think of countering the notorious censorship measures of powerful multimedia companies such as Facebook and YouTube against contributions critical of the government in certain areas (e.g., Corona politics) with the third-party effect of freedom of expression, particularly. However, no corresponding case law has become known so far. Instead, the claims of those affected are, insofar as can be ascertained, decided exclusively based on the relevant general terms and conditions.

It is interesting, moreover, to look at two court decisions on the significance of freedom of conscience and religion (Article 4 GG) in the context of contracts, which draw a connection between the protection of fundamental rights (under the rule of law) and the principle of good faith. The Düsseldorf Regional Labour Court (Landesarbeitsgericht, LAG) distinguished itself in a judgement of 1988 [30] by stating that "if, according to the common view, the performance of the work would bring the person concerned into an unreasonable conflict of conscience, the employer would be in breach of good faith by making such a request". The case concerned the complaint of the head of the research department of a pharmaceutical company against his dismissal. He had been dismissed because he had

refused, on medical-ethical grounds, to develop further a substance that was capable of suppressing symptoms of nuclear radiation in the short term, thereby ensuring the continued deployment of soldiers. The Federal Labour Court (Bundesarbeitsgericht, BAG) overturned the decision [31], however, not because of the reference to good faith but because the Regional Labour Court had wrongly denied the existence of a sufficient conflict of conscience in the specific case.

The second case is a judgement of the Regional Court of Heidelberg from 1965 [32]. Here, the Court granted the landlord of a large hall the right to withdraw from a lease on grounds of conscience after learning that the tenant planned to hold a lecture event in the hall featuring a controversial American history professor. The legal basis for the right of withdrawal here is the unreasonableness of the further fulfilment of the contract, derived from the principle of good faith according to section 242 BGB. The unreasonableness resulted from the fact that the fundamental right of freedom of conscience takes precedence over the legal obligation to contractual obligation.

3.2.1.2. Principle of equality in private law? Although equality is a fundamental right, it is rarely cited in connection with the principle of the rule of law. Some authors regard it as another fundamental principle standing alongside the rule of law. Indisputably, equality is a central expression of the idea of justice [33]. Whatever the case, the principle of equality (or, more precisely, the principle of equal treatment) has two manifestations in the sense of the German constitution. According to its general side (Article 3(1) of the Basic Law), all unequal treatment by the state towards its citizens requires a sufficient objective reason. On its specific side (Article 3(2) and (3) of the Basic Law), the principle of equal treatment prohibits certain differentiation criteria (gender, race, belief, religion, etc.) to protect disadvantaged groups and thus declares them - with few exceptions - to be unobjective reasons across the board (prohibition of discrimination). The so-called General Equal Treatment Act of 2006 (Allgemeines Gleichbehandlungsgesetz – AGG) has, admittedly not in the name of the Basic Law, but based on European law, created similar private law prohibitions of discrimination for bulk transactions as well as in particular for employment relationships.

Furthermore, the law knows various absolute prohibitions of equal treatment, such as the requirement of equal treatment of shareholders by the public limited company (section 53a Stock Corporation Act - Aktiengesetz) and of equal treatment of holders of securities in the case of public purchase and takeover offers [34] or the indirect requirement of equal informational treatment of investors in the context of the prohibition of insider trading under capital market law [35].

So far, however, there is no evidence of the general principle of equality having a broad impact on the relationship between private individuals in German law. There have been attempts in the literature to install the general principle of equality in private law, with the consequence that unequal treatment would not have the blessing of private autonomy behind it but would require justification per se; fortunately, this approach has not found any significant resonance so far. Only in

extreme cases can unequal treatment in the conclusion of a contract be sanctioned as immoral (intentional) damage under tort law (section 826 BGB), going beyond the prohibitions of discrimination in the General Equal Treatment Act of 2006.

The judgement of the Supreme Court of the German Reich (Reichsgericht) of 3.2.1914 [35a] can by no means be interpreted as the seed of a duty of equal treatment under private law. It cannot be transferred to the present day, for example, in the sense that the manufacturer of a limited vaccine would be obliged to serve all prospective buyers equally [36]. In the Reichsgericht case, the plaintiff had agreed in advance with a farmer on a contract to purchase a certain quantity of sugar beet seeds. Due to an unusually poor harvest because of high drought, the seller had only delivered a minor part of the goods to the buyer when the delivery obligation became due. After that, the plaintiff sued for subsequent delivery of the rest. The seed breeder claimed that he could only make a proportionate delivery in view of his other buyers. The Reichsgericht ruled in favour of the seed breeder, arguing that delivery was impossible. All buyers could have demanded that the seed breeder "proceed according to law and equity, i.e., evenly" in the distribution. The complete delivery to the plaintiff at the expense of the other buyers was not reasonable for the seed breeder because he would then be exposed to claims for compensation from these buyers; a corresponding demand would be "contrary to section 242 BGB". The seed breeder only had to perform "in good faith and with due regard to custom and usage" [37]. Between the buyers, "foreseeable to each of them", a "community of interests" had arisen, the consequence of which "had to be shown if the harvest was sufficient to satisfy individuals but not all".

So here we have a decision that justifies equal treatment in private law, though not on the basis of the rule of law but on good faith. Nevertheless, it cannot be generalised. The peculiarity of the case here is that the other buyers could have sued the supplier in the same way and that the Court could then have combined all the proceedings into a single action (section 147 of the Code of Civil Procedure) so that all the buyers would become joint litigants by law [38]. In this situation, however, an overall consideration of whether delivery was still possible would have been imperative; the Court would not have had the right to favour any individual of the resulting litigants. By finding a "community of interests", the Court, in this respect, only anticipated hypothetically possible joint litigation of the buyers in dispute.

For the sake of completeness, it should be mentioned that the equal treatment requirements are supplemented by norms which, conversely, even permit or order discrimination against members of (actually or supposedly) privileged groups based on the criteria determining group membership. This instrument is called Gleichstellung, literally "equalisation", in English terminology: equality. Constitutionally, it has found expression in Article 3 (2) sentence 2 of the Basic Law [39]. However, the approach is also followed by the four European Equal Treatment Directives that relate to private law and have been transposed into German law by the General Equal Treatment Act. The private law effects are considerable: examples are the allowance of so-called "positive discrimination" on the grounds

of race or ethnic origin, gender, religion or belief, disability, age, or sexual identity under this Act (section 5 in conjunction with section 1) or the gender quotas for executive and supervisory boards in stock corporations under the Stock Corporation Act (section 76 para. 3a, section 96 para. 2). In contrast to the equal treatment requirements, however, it is difficult to still interpret equality as a special manifestation or even a necessity of the rule of law.

3.2.2. Legal certainty in private law. Foremost, legal certainty can be used to deduce requirements for private law legislators (e.g., the prohibition of retroactivity). Since this is not a special private law effect of the rule of law principle, it will not be discussed further here.

Legal certainty also has an impact on what methods of applying the law are admissible. This concerns the legal interpretation and the methodical limits of "judicial further development of the law" (richterliche Rechtsfortbildung) beyond interpretation [40]. To ensure that the judiciary respects its constitutional commitment to law and justice, judicial reasoning must remain within the scope of the recognised rules regarding the application of the law. Again, this is not a specific private law effect of the rule of law. Nevertheless, it has an important point of contact with the principle of good faith insofar as the latter - mainly in private law - must serve to adjust statutory decisions in the name of equity. The rule of law sets limits to the freehand argumentation of equity. An interpretation contra legem is generally not allowed [41]. An exception is only conceded in extreme cases [42].
Moreover, legal certainty in the sense of the rule of law, i.e., the foreseeability of state action, is vaguely reminiscent of the private law principle of the protection of legal transactions (Verkehrssicherheit), which could be understood as private law legal certainty. Both principles are under the overarching sign of the protection of legitimate expectations. One could, therefore, initially fall for the idea that the security of legal transactions, e.g. the good faith acquisition from a person not entitled (sections 932 et seq. BGB, section 892 et seq. BGB; section 366 of Commercial Code - HGB) or the good faith protection regarding entries in state registers (e.g. land register, commercial register, e.g. section 891, 900 BGB; section 15 HGB), is an expression of the principle of the rule of law. However, such an assumption is by no means evident. The fact that the legal system treats erroneous ideas of participants in legal transactions (such as persons who consult the commercial register or even only could consult it) as if they were true rather conflicts with the rule of law. The rule of law is built on the legality of state action, which includes that only those legal consequences occur whose factual prerequisites are (really) fulfilled.

This impression that the protection of legal transactions cannot be derived directly from the rule of law is reflected in the observation that the private law prerequisites for the protection of legitimate expectations, e.g., with regard to an official register entry, are by no means always the same. Rather, the legislature balances the interests involved in different ways in each case. Sometimes, the protection is even effective against bad faith, and sometimes, simple negligent ignorance is damaging.

Nevertheless, it can be said that there is a connection between the private law protection of reliance on official announcements and the rule of law, for only those state authorities that act by the rule of law are reliable. In terms of civil proceedings, this idea is expressed in the special evidential value that the law assigns to official documents (section 415, para 1 of the Code of Civil Procedure).

3.2.3. Proportionality principle in private law. We have already pointed out above (2.1.) that the principle of good faith in German law contains an aspect that protects against unreasonable or disproportionate obligations in the relationship between private parties. Moreover, there are several monographic studies on the existence of a general principle of proportionality in private law and on the question of whether such a principle can be derived from the public-law principle of proportionality (Verhältnismäßigkeitsprinzip) and the prohibition of excessiveness (Übermaßverbot) in the relationship of the citizen to the state. At first glance, to the extent that the fundamental rights to which the public-law principle of proportionality is ultimately attributable are indirectly reflected in the relationship between private individuals, this idea might be adopted at first glance. However, it has already been said that the standards for protecting fundamental rights in private law are unequal to those in sovereign relationships because, in private law, there are fundamental rights holders on both sides, so the balancing of the interests involved must be different. Stürner, in his comprehensive study of the principle of proportionality in contract law [43], has likewise concluded that a simple transfer of the dogmatics of the principle of proportionality developed for public law is also "hardly worth considering" for private law. Parallels exist only on an abstract, methodological level, namely insofar as proportionality or, more precisely, its absence in balancing processes shows itself as an immanent limit for exercising a right.

Here, one might counter: If proportionality is ultimately viewed as "striving for material justice", "then its root actually lies in the principle of the rule of law" [44]. With this understanding, however, proportionality moves away from the core of its meaning in public law.

3.2.4. Material justice. Material justice in private law is the overriding aspect that underlies the criteria above of equality and proportionality as a catch-all to some extent. It operates at two levels: the constitutional control of statutory law by the Federal Constitutional Court under the aspect of the indirect effect of fundamental rights and the further development of the statutory law by courts.

3.2.4.1. Control of Statutory Law. The indirect third-party effect of fundamental rights has already been mentioned above. In the present context, the focus lies on corrections of ordinary statutory law, which are under the sign of proportionality, the rule of law, or even justice.

For example, the Federal Constitutional Court has repeatedly ruled on the compensation of old-age pension claims under private law in the event of divorce from a marriage. According to the Court decision in 1983 [45], the relevant provi-

sion of the Civil Code (Section 1587b para. (3) old version) was incompatible with the general freedom of action (Article 2 (1) of the Basic Law) “in conjunction with the principle of the rule of law” and was null and void. In the reasoning of its decision, the Court expresses the duty of the legislator “to give room leeway in extreme cases to the realisation of the principles of proportionality and of the welfare state as opposed to a rigid implementation of pension equalisation”. According to the Court, the existence of a statutory hardship clause (Härteklausel) is a possibility for courts to make “decisions oriented toward the idea of justice” (Gerechtigkeitsgedanken) in cases “in which the implementation of pension equalisation could lead to a simple 'premium reward’ for the conduct of one spouse in breach of duty or could be unfairly inequitable due to long periods of separation” [46].

The same line of thought can already be found in a preceding judgment of 1980 [47]. There, the Court measured the post-marital equalisation of pensions, i.e., the transfer of part of one partner's pension entitlements to the other partner, against the fundamental right of property (Article 14 of the Basic Law), which relates to all property rights, including pension entitlements (property rights in the constitutional sense) [48].

Interestingly, the Court also comments in this context on the aspect of the protection of legitimate expectations under private law without, however, referring to any of the special regulations for the protection of legal transactions mentioned above (3.2.2.). According to the Court, an essential function of the property guarantee is “to guarantee the citizen legal certainty with regard to the goods protected by Article 14 (1) of the Basic Law and to protect reliance on the property formed by the constitutional laws” (juris, no. 189). In this respect, the “rule-of-law principle of the protection of legitimate expectations for property has found its own expression and constitutional order in the fundamental property right” [49]. The property guarantee fulfils “therefore the function of the protection of legitimate expectations against acts of intervention for the pension insurance positions protected by it” (juris, no. 189). Here, the Court mentions at least - even if only roughly and hardly generalisable since it refers to the special case of a transfer of claims by the sovereign act - the constitutional necessity of protection of legitimate expectations under private law.

The decision of 1966 should not be forgotten either [50], where the Federal Constitutional Court repeats its earlier statement that the rule of law includes “not only legal certainty but also material justice” (juris, no. 33) [51].

3.2.4.2. Further development of law. The alternative way (to addressing the private law legislator and annulling unconstitutional private law) is the correction, immanent in the law, of inequitable results through “constitutional interpretation” (verfassungskonforme Auslegung) of private law norms. In particular, the general clauses of the Civil Code, like good faith and immorality, provide an opportunity to take constitutional value decisions into account. A judgement of 1994 of the Federal Constitutional Court on the constitutional limits of the principle of pacta sunt

servanda in the case of a surety agreement is important in this respect ("Bürgschaftsbeschluss") [52].

The third-party effect of fundamental rights, which has been recognised since the "Lüth" judgement of 1958 (see 3.2.1. above), is only confirmed; what is at issue, however, is the Court's intervention in a contractual obligation justified by the constitution, under the aspect of "disturbed contractual parity" (gestörte Vertragsparität). In this specific case, a bank asserted its rights under a surety contract against the daughter (and her husband) of its borrowers. The daughter had assured the repayment of her father's bank loan. The loan was to serve the acquisition of a plot of land and the construction of a house on this land without any discernible (direct) self-interest of the daughter. The civil courts, including the Federal Court of Justice (Bundesgerichtshof - BGH), had ruled in favour of the bank. The Federal Constitutional Court overturned these decisions insofar as they confirmed the surety's obligation and, at the same time, gave guidelines to the civil courts for the necessary rehearing of the case.

In interpreting the general clauses of the applicable private law, namely section 242 BGB (good faith) and section 138 BGB (immorality), the civil courts have, according to the Constitutional Court, to ensure that "contracts do not serve as a means of external determination" (juris, no. 22). The Court found that the daughter's liability risk was "extraordinarily high given her economic circumstances". At the time of the conclusion of the contract, her income was "by far not even" sufficient "to cover even the interest accruing on the loan for which she was liable beyond the amount of the surety" (juris, no. 24). The ability of the daughter (and her husband) to make an "independent decision when entering into the surety obligations" had been impaired given her young age and her lack of prior professional training (juris, no. 25). The civil courts had not sufficiently considered in their previous decisions the aspect of "disrupted contractual parity", they had misjudged the importance of this aspect "under the guarantee of private autonomy" in Article 2 (1) of the Basic Law (general freedom of action) (juris, no. 27). In other words, the daughter had only formally exercised her private autonomy; in reality, her signature on the surety contract was externally determined (juris, no. 21 f.), i.e. heteronomous [53].

The concept of the rule of law is not explicitly used in this decision, nor the concept of equity or justice, but that of the "fundamental right guaranteeing private autonomy", which can be understood as a concretisation of the rule of law. The fact that the Court invokes the social state principle instead of the rule of law (juris, no. 21) is somewhat surprising and, at the same time, shows that the (material) rule of law cannot be clearly distinguished from the social state principle.

4. Connection Between Good Faith and the Rule of Law Principle

4.1. Similarities and Differences

The foregoing overview of the principle of good faith and the rule of law, each in

private and public law, has revealed certain similarities and differences. The function as a principle of interpretation, whether for legal transactions or legal acts, seems to be reserved for the principle of good faith. The objection of abuse of rights (Rechtsmissbrauch or unzulässige Rechtsausübuing –inadmissible exercise of rights) also seems to be preferably based on the principle of good faith (section 242 BGB) in both private and public law [54]. The objection of forfeiture, which in private law is likewise argued with the principle of good faith, is justified in public law inconsistently with good faith or with the principle of the rule of law [55]. In addition, overlaps between the two arguments and influences of good faith into the preserve of the rule of law can be observed in the public law discourse, at least in the older one, furthermore in the justification of the protection of legitimate expectations regarding the existence of unlawful favourable administrative acts (2.2. above).

Another connection between the two principles is quite basic. The rule of law demands not only that the actions of the executive and the judiciary (including civil courts) are objectively in accordance with the law and within the bounds of the (at least just acceptable) interpretation of the law. In addition, it requires subjectively that the representatives of the state, when applying the laws, act with an honest will to give effect to the law. In the rule of law, the law is not merely an instrument of power but the framework and limit of the exercise of power (rule of law vs. rule by law). It would be incompatible with the rule of law to deliberately interpret the law as well as the underlying facts in such a way as to suit the state officials' own power interests. The fact that the application of law should not be with bad faith and, in this sense, requires "good faith" can be understood as a minimum condition of the principle of good faith.

In private law, the principle of good faith clearly dominates, as already stated in the introduction above. To the extent that the material rule of law is based on the existence of fundamental rights, however, the functioning of the indirect third-party effect of fundamental rights allows the identification of rule-of-law argumentation topoi in private law.

In the case of the protection of legitimate expectations under private law in the form of the safety of legal transactions, on the other hand, the rule of law is only indirectly discernible via the courts' binding to the law. Here, private law statutes create a framework that the judiciary must apply and on which participants in private law transactions can rely.

However, the protection of the reliance of private individuals in announcements by public authorities is justified more on the basis of the rule of law. The various elements of the so-called materialisation of private law [56], which correct the results of formal justice (especially the principle of pacta sunt servanda) with elements of material justice (equity), also bear the stamp of the rule of law. They have been implemented, at least so far, essentially only through the existing general clauses, especially the requirement of good faith and the corrective of immorality, which nullifies legal transactions (section 138 BGB) and generates claims for

damages and injunctive relief (sections 826, 1004 BGB). In their endeavour to realise "justice", they ultimately rely on the justice objective of the rule of law.

4.2. Good Faith as Part of the Rule of Law Principle or Vice Versa?

In the positivist-oriented German legal culture, the most convincing arguments are those that proceed from the written text. Unlike the principle of good faith, the rule of law is explicitly fixed in the constitution, in the Basic Law, and therefore can assert itself against simple statutory law, thanks to its unquestionable constitutional rank. For this reason, from a German perspective, the principle of the rule of law will ultimately be accorded the higher authority compared to good faith, even if case law has recognised that good faith pervades all areas of law, including constitutional law.

There is, however, a certain tendency to prefer the good faith argument when correcting statutory rules, even in public law, if the balancing considerations and the need for correction arise from the concrete circumstances of the parties' behaviour, especially the administration, in the individual case, whereas the rule of law principle is preferred in a more abstract-general argumentation [57]. For example, the Federal Fiscal Court (Bundesfinanzhof, BFH) wrote in a judgement of 1989 [58] that the "displacement of statutory law by the principle of good faith" could "only be considered in cases in which "the taxpayer's reliance on a certain conduct of the administration is worthy of protection to such a high degree according to the general feeling of justice [allgemeines Rechtsgefühl] that the principles of the legality of administrative action have to recede in relation to it" [59].

Last but not least, we would like to point out the following: To the extent that good faith and the rule-of-law argument are committed to material justice, they are both ideology-prone. Mostly, but by no means exclusively, this is true for ideology-driven totalitarian states. It is quite possible that the latter formally subscribes to the rule of law and good faith. Take the example of the socialist German Democratic Republic (GDR), which perished in 1990. Although the term "rule of law" did not appear in the GDR Constitution of October 7, 1974, we can find evidence of some rule of law principles there as well if we look closely. According to Article 19 of that Constitution, the German Democratic Republic guaranteed "socialist legality and legal certainty" and ensured "respect for and protection of the dignity and freedom of the personality" as a requirement for all state organs and all "social forces and every individual citizen"; this could be interpreted as a kind of socialist third-party effect of those fundamental rights.

As far as the principle of good faith is concerned, the BGB, including its section 242, applied not only throughout the German Reich from 1900 to 1945, including the period of the "Third Reich", and after the war in the Federal Republic of Germany, which back then was limited to the western part of the divided country, but also in the eastern part under the regime of the German Democratic Republic up to and including 1975. The independent civil code of the GDR of 1976 avoided the concept of good faith; however, the text did contain elements that could be under-

stood as an "emulation" of this principle under socialist premises. For example, the parties to private law relationships had a duty to cooperate "in good faith", albeit in accordance with the „principles of socialist morality" (sections 14 and 44 of the GDR Civil Code), as well as a duty to „exercise rights consciously" (section 15 of the Code), whereby the exercise of a right was inadmissible "if it pursues goals contrary to the legal provisions or the principles of socialist morality".

Even the "Third Reich" acknowledged, at least initially, the rule of law, as reported by Carl Schmitt. The author wrote in 1934: "As soon as the Leader of our German legal front utters the word 'constitutional state' – I have often experienced this at larger meetings and conferences – there is usually a particularly lively applause. Interrupted by the applause, the continuation of his word that it is, of course, a National Socialist constitutional state and that the National Socialist principles are unbreakable, is then sometimes lost" [60]. Schmitt himself tries to downplay the rule of law in the sense of the traditional understanding to a mere (formal legal) "state of statutes" (Gesetzesstaat), to which he contrasts the ("true") rule of law that strives for justice ("state of justice", Gerechtigkeitsstaat). Regarding the principle of good faith, which, as mentioned, remained applicable between 1933 and 1945 in the form of the BGB, Schmitt writes [61]: "All indeterminate terms, all so-called general clauses are to be applied unconditionally and without reservation in the National Socialist sense [...] 'good morals', 'good faith', [...] and whatever all these formulas are, are to be applied and expounded [...] without exception, in the National Socialist spirit".

Carl Schmitt's opportunistic statements during the period of the "Third Reich" are a striking example of the ideological appropriation of good faith and the rule of law. However, we should not deceive ourselves: Such appropriation is not exclusive to National Socialist or socialist ideology. This vulnerability exists at all times and vis-à-vis all ideologies, and therefore, the argument for justice, whether based on good faith or the rule of law, must not be overused. Distrust is called for, especially towards modern ideologies.

Conclusions

The article explores the relationship between the principle of good faith and the rule of law in German private law and, - for comparison - also in German public law. While good faith is regulated in the Civil Code and is seen as the fundamental principle in private law, the rule of law is a cornerstone of a liberal state, focusing on public law and explicitly enshrined in the Constitution. However, the two principles are interconnected. First of all, it can be stated that good faith has long been recognised as a principle of public law as well. There, it is applied in particular in the relationship between the citizen and the administration, insofar as no special rules on protecting legitimate expectations are available. The principle of the rule of law seems less suitable than good faith for putting a stop to unfair state behavior in individual cases.

The application of the rule of law principle in private law is less explicit but

unavoidable because of its extensive nature. In a state governed by the rule of law, private law does not stand alongside public law, and private autonomy does not apply by itself but owes ist existence to the state's guarantee and legitimation and is therefore coined by the principles of the rule of law. In private law, the justice mission of the rule of law principle is primarily pursued under the banner of so-called materialisation. Insofar as it has not found expression in special regulations, e.g. on employee, tenant, and consumer protection, it is realised by the so-called third-party effect of fundamental rights, i.e. the need for civil courts to consider themwhen interpreting general clauses like immorality and even good faith itself.

Delving into the interrelations of good faith and the rule of law, the article identifies functional similarities between the two principles. In addition to the protection of fundamental rights already mentioned, this is also the (related) principle of proportionality. The protection of legitimate expectations and equality are also principles mentioned in the context of the rule of law, as well as of good faith. However, both principles have different content.

Regarding the (more academic) question of whether the principle of good faith is part of the rule of law or vice versa, the article gives priority to the constitutional principle of the rule of law, taking into account the positivist-oriented German legal culture. Overall, the article provides valuable insights into the complex interplay between good faith and the rule of law and underscores the need for continued research, particularly in light of evolving legal and societal dynamics.

References

[1] Art. 2 of the Treaty on European Union: “Rule of Law”; Preamble of the EU Charter of Fundamental Rights: “It [the Union] is based on the principles of democracy and the rule of law”.

[2] Biaggini, BV-Kommentar, Zurich 2017, Art. 5, note 2.

[3] Bäcker, Gerechtigkeit im Rechtsstaat, Tübingen 2015, p. 182.

[4] Hayek, The Constitution of Liberty, Chicago 1960, reprinted in: Hamowy (ed.), The collected works of F.A. Hayek, Chicago 2011, Vol. XVII, p. 305.

[5] BVerfG, Judgement of 23.10.1951, 2 BvG 1/51, juris, at note 28.

[6] E.g., RG, Judgement of 2.2.1926, III 626/24, RGZ 113, 19, 24.

[7] In this sense Kemmler, Geldschulden im öffentlichen Recht, p. 533; with reference to Lünstedt, Treu und Glauben im Verwaltungsrecht, Diss. Heidelberg 1963, p. 114. Lünstedt, loc. cit., however, primarily compares the principle of legal certainty as a partial aspect of the rule of law principle with good faith.

[8] See, e.g., Zimmermann and Whittaker, Good faith in European contract law: surveying the legal landscape, in Good Faith in European Contract Law, ed. Zimmermann and Whittaker, Cambridge 2000, S. 7-62.

[9] Cf. Art. 31 para. 1 of the Vienna Convention on the Law of Treaties: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose".

[10] Thus, expressly Federal Administrative Court (Bundesverwaltungsgericht - BVerwG), Judgement of 1.4.2004, 4 B 17/04, juris, note 4.

[11] See, e.g., Bauer, Die Bundestreue, Tübingen 1992, p. 245, with further references.

[12] Kähler, in: BeckOnline-Großkommentar, BGB, section 242, note 124, as of 1.7.2023, Munich.

[13] See e.g., Filion, Les principes généraux du Droit et de la justice - Principes universels, Lévis (Canada), 2022, p. 94 ("Devoir de bonne foi") and p. 136 ("Devoir de loyauté").

[14] E.g., ECJ, Judgment of 11.7.2018, C-15/17, para. 45, Bosphorus Queen Shipping; so BGH, Judgment of 24.2.2015, XI ZR 193/14, juris, note 16.

[15] On the interpretation of a general decree, see Verwaltungsgericht Karlsruhe, Judgment of 17.1.2022, 14 K 119/22, juris, note 57.

[16] Federal Administrative Court, Judgement of 28.10.1959, VI C 88.57, BVerwGE 9, 251, juris, note 26.

[17] E.g., Higher Administrative Court (Oberverwaltungsgericht) of Lüneburg, Judgement of 11.12.2017, 2 LA 1/17, juris, note 15, on the prerequisites for the withdrawal of the doctoral degree and the reclaiming of the doctoral certificate due to plagiarism.

[18] E.g., BVerfG, Judgement of 15.12.1965, 1 BvR 513/65, juris, headnote 1.

[19] See Article 9: "Protection against arbitrary conduct and principle of good faith: Every person has the right to be treated by state authorities in good faith and in a non-arbitrary manner".

[20] Apparently disagreeing Turava, Die Aufhebung von Verwaltungsakten im georgischen Recht: Eine rechtsvergleichende Untersuchung unter besonderer Berücksichtigung der vertrauensschutzrechtlichen Aufhebungsvorschriften des deutschen Rechts und des Rechts der Europäischen Gemeinschaften, Berlin 2007, p. 96: The author referring to Maurer, Das Vertrauensschutzprinzip bei Rücknahme und Widerruf von Verwaltungsakten, in: Schmitt Glaeser (ed.),

Verwaltungsverfahren, Commemorative publication on the occasion of the 50th anniversary of Richard Boorberg Verlag, 1977, pp. 223, 227, claims to recognise that the Federal Administrative Court does not accord constitutional rank to the principle of good faith.

[21] BFH, Judgement of 9.8.1989, I R 181/85, Bundessteuerblatt II 1989, 990, juris, note 13.

[22] See, e.g., BVerfG, Judgement of 19.10.1993, 1 BvR 567/89 et al., BVerfGE 89, 214, juris, note 55: „More differentiated legal consequences result from section 242 BGB. Civil law scholars agree that the principle of good faith is an immanent limit of contractual power [...]".

[23] E.g., Weber, Rechtswörterbuch, Munich 30th ed. 2023, "Rechtsstaat".

[24] BVerfG, Judgement of 1.7.1953, 1 BvL 23/51, BVerfGE 2, 380, juris, headnote 6.

[25] E.g., BVerfG, Judgement of 10.6.2009, 1 BvR 571/07, juris, note 22.

[26] BVerfG, Judgement of 10.6.2009, see above, juris, note 24.

[27] BVerfG, Judgement of 10.6.2009, juris, note 25, on the right of the tax authorities tax assessment that is erroneous and can no longer be formally changed within the framework of taxation proceedings to the detriment of the taxpayer pursuant to section 177 para. 3 of the German Fiscal Code (Abgabenordnung).

[28] E.g., BVerfG, Judgement of 4.2.1975, 2 BvL 5/74, BVerfGE 38, 348, juris, note 60; confirmed, for example, by BVerfG, Judgement of 5.2.2002, 2 BvR 305/93 et al., BVerfGE 105, 17, 36.

[29] BVerfG, Judgement of 15.1.1958, 1 BvR 400/51, BVerfGE 7, 198. Erich Lüth was the name of the plaintiff.

[30] LAG Düsseldorf, Judgement of 22.4.1988, 11 Sa 1349/87 (unpublished), cited in BAG, judgement of 24.5.1989, 2 AZR 285/88, BAGE 62, 59, juris, note 34.

[31] BAG, Judgement of 24.5.1989, 2 AZR 285/88, BAGE 62, 59, juris, note 37 ff.

[32] Heidelberg, Judgement of 14.4.1965, 3 S 78/64, NJW 1966, 1922, 1923.

[33] Kainer, Gleichbehandlungsgrundsatz im Zivilrecht, 2011, unpublished to date, page 1, with further, but not comprehensible, references.

[34] See Section 3(1) of the Securities Acquisition and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz): "Holders of securities of the target company belonging to the same class shall be treated equally".

[35] See recital 24 of Regulation (EU) no. 596/2014 on market abuse: investor confidence is “based on the assurance [...] that investors will be placed on an equal footing and protected from the misuse of inside information”; for an overview of further examples, see Grünberger, Grundstrukturen (allgemeine Strukturmerkmale) von Gleichheitssätzen, in Kempny und Reimer (eds.), Gleichheitssatz: Dogmatik heute, Tübingen 2016, pp. 5, 14 et seq.

[35a] Reichsgericht, Judgement of 3.2.1914, II 625/13, RGZ 84, 125, 128 f.

[36] But so Kainer, Knapper Impfstoff und privatrechtliche Gleichbehandlungspflichten, NJW 2021, p. 816, 816.

[37] This was explicitly stated by the Reichsgericht, loc. cit., citing the wording of section 242 BGB.

[38] E.g., Fritsche, in Münchener Kommentar zur Zivilprozessordnung, 6th ed., Munich 2020, section 147, note 9.

[39] Art. 3 para. 2 sentence 2 GG reads: “The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist”.

[40] E.g., BVerfG, Judgment of 6.6.2018, 1 BvL 7/14 et al.

[41] See, e.g., BGH, Judgment of 7.4.1965, VIII ZR 200/63, juris, note 34, on rent agreements in work promotion contracts of private parties (on the application of law contra legem): “[...] Deciding against the law is fundamentally denied to the judge, who is bound by law and statute [...]. In doing so, he would substitute his own legal policy assessment for the assessment made by the legislature and thus arrogate to himself powers that only the legislature has [...]“.

[42] Cf. BGH, Judgment of 7.4.1965, VIII ZR 200/63, juris, note 34, with further references: “An exception may apply to cases in which compliance with the law would lead to 'intolerable injustice' [...] or to a 'legal emergency' [...] which could only be remedied by a decision against the law. [...]“.

[43] Stürner, Der Grundsatz der Verhältnismäßigkeit im Schuldvertragsrecht, Tübingen 2010, p. 445.
[44] Stürner, loc. cit., pp. 440 ff.

[45] BVerfG, Judgment of 27.1.1983, 1 BvR 1008/79 et al, BVerfGE 63, 88.

[46] BVerfG, Judgment of 27.1.1983, 1 BvR 1008/79 et al., juris, note 94, with further references.

[47] BVerfG, Judgment of 28.2.1980, 1 BvL 17/77 et al, Federal Law Gazette I

1980, 283, juris, note 161.

[48] BVerfG, Judgment of 28.2.1980, 1 BvL 17/77et al., juris, note 161.

[49] BVerfG, Judgment of 28.2.1980, 1 BvL 17/77 et al., juris, note 189, with a further reference.

[50] BVerfG, Judgment of 25.10.1966, 2 BvR 506/63, BVerfGE 20, 323.

[51] Not in private-law context, however, is the judgement of 28 May 1996 (1 BvR 927/91), where the BVerfG confirms an already previously formulated statement that the "principle of culpability under the rule of law" requires, that "no penal sanctions be imposed without fault" (juris, note 2). Although the term "fault" used is a civil law term (as opposed to the criminal law term of criminal "culpability"); the context is a sovereign one, "punishment-like" in the context of (civil) enforcement law.

[52] BVerfG, Judgment of 5.8.1994, 1 BvR 1402/89.

[53] See in this regard already Adomeit, Heteronome Gestaltungen im Zivilrecht? (Stellvertretung, Weisungsbefugnis, Verbandsgewalt), in: Festschrift für Hans Kelsen zum 90. Geburtstag, Vienna 1971, 9, 18 f.

[54] For social law, see, for example, Landessozialgericht Niedersachsen-Bremen, Judgment of 20.7.2023, L 14 U 117/22, juris, note 42, on the objection of limitation by the social authority against the needy person.

[55] See Kemmler, Geldschulden im öffentlichen Recht, Tübingen 2015, p. 527, in favour of the primacy of a derivation from the rule of law requirement of legal certainty.

[56] For a fundamental discussion, see Auer, Materialisierung, Flexibilisierung, Richterfreiheit: Generalklauseln im Spiegel der Antinomien des Privatrechtsdenkens, Tübingen 2015.

[57] Cf. Kemmler, Geldschulden im Öffentlichen Recht, Tübingen 2015, p. 517: "The principle of good faith applies between individual legal participants within a concrete legal relationship. It provides rules that shape the content of an individual legal relationship".

[58] BFH, Judgment of 9.8.1989, I R 181/85, Bundessteuerblatt II 1989, 990, on the question of whether an unlawful favourable tax assessment can be withdrawn.

[59] BFH, Judgment of 9.8.1989, I R 181/85, juris, note 15, with further references from tax case law.

[60] Schmitt, Nationalsozialismus und Rechtsstaat, Deutsche Verwaltung, 11. Jg.,

Nr. 3, 20.3,1934, pp. 35–42; re-published in: Gesammelte Schriften 1933 – 1936, Berlin 2021, p. 131, 132.

[61] Schmitt, loc. cit., p. 131, 142.

Chapter 3.

Has Turkey, A Candidate State of the European Union, Met the Criteria for the EU Accession on the Protection of Minorities?

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Abstract: Protection of minority groups is a human right, especially under international law. No single definition exists for the minority. However, international human rights law requires non-discrimination for minorities. Human rights have also helped EU members and candidate nations resolve minority issues. Because its member states have so many identities and cultures, the EU struggles to unify minority policies. The EU has urged Turkey to preserve minority rights and vulnerable communities. This appeal emphasises minority rights. In contrast, Turkey's minority rights are governed under the 1923 Lausanne Peace Treaty. Turkey exclusively accepts non-Muslim Armenian Orthodox Christians, Jews, and Greek Orthodox Christians as minorities. Some communities do not have legal recognition. Alevis, Protestants, Assyrians, Kurds, and LGBTI individuals are included in this setting. The EU considers minority rights and disadvantaged groups important to Turkey's EU membership. This study evaluates Turkey's unrecognised minorities and whether it fits EU requirements as an EU candidate state.

1. Introduction

The absence of a universally accepted definition of minorities in the realm of international law has led to the emergence of a significant concern regarding the empowerment and protection of non-dominant and vulnerable groups, which has now become a prominent human rights problem. Throughout history, states have employed ad hoc approaches in determining minority rights. Nevertheless, the distinctive basis of minority rule in Turkey can be attributed to the Lausanne Peace Treaty, 1923. The treaty only provided minority status to a limited number of non-Muslims in Turkey. However, the process of Turkey's candidature for EU membership presents potential opportunities for various unrecognized groups, including those defined by religious, ethnic, and cultural affiliations. These groups are now able to demand their rights to equitable representation by the state and fair treatment as citizens. In the context of EU membership and the safeguarding of human rights, the European Commission (EC) has extensively addressed the situation of minorities. The EC has emphasized the necessity of implementing measures that would effectively safeguard non-dominant and vulnerable groups' rights and promote equity in Turkey. In conjunction with the implementation of anti-discriminatory

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policies, the EU has recommended that Turkey pursue the empowerment of non-dominant and vulnerable groups who experience discrimination within society as a means to combat human rights breaches. In light of the ongoing advancements pertaining to the recognition of minority and equal citizenship rights it is crucial to consider the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the jurisprudence of the European Court of Human Rights (ECtHR), reports issued by the EC, and the Copenhagen political criteria.

This study focuses on the examination of legally unrecognised minorities in Turkey within the context of the EU accession process and analyses Turkey's progress in achieving the EU requirements pertaining to these groups. The next section pertains to the endeavour of comprehending the conceptualization of the term minority. Section two further explores the interrelationship between the EU, minority groups, and the protection of human rights. Section three provides an in-depth analysis of the minority policy implemented by the Turkish state subsequent to the signing of the Lausanne Peace Treaty. Section four examines the social groupings within Turkey that do not have official recognition as minorities. This section provides a detailed account of the status and recent developments concerning several groups in Turkey, namely Alevis, Protestants, Assyrians, Kurds, and individuals who identify as lesbian, gay, bisexual, transgender, and intersex (LGBTI). The fifth section of the paper aims to address the inquiry regarding Turkey's compliance with the EU's criteria concerning unrecognised minority groups. The paper concludes with a final conclusion section.

2. What Does Minority Mean?

Defining the concept of a minority in a universally agreed-upon manner presents challenges, although the definition put forth by Francesco Capotorti is widely recognized and can be regarded as a prominent reference. According to Capotorti, the term minority refers to: A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious, or linguistic characteristics differing from the rest of the population and show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion or language.[1]

In addition to the ongoing discourse surrounding the conceptualization of minorities, an alternative definition can be posited as follows: The minority group within a community is characterised by its reduced numerical representation, lack of domi-nance, and distinct characteristics in comparison to the majority.[2] According to the provided definition, the concept of oppression is also generally included, although not always, in the categorization of minorities. This classification encompasses several groups such as, homosexuals, transsexuals, transvestites, Krishna devotees, and women. [3] This definition encompasses two noteworthy components: a smaller population and being subjected to various forms of oppression. The attribute of numerical lowliness compared to the majority is indeed a noteworthy one, although it should be noted that being a minority does not necessarily means experiencing systemic oppression in certain circumstances. The

experiences of the Bosnians, who made up the majority during the conflict in Bosnia and Herzegovina, show that a group's numerical minority status does not always determine the degree of oppression they endure. Over the course of the past ten years, the conflict in Syria, which sprang from allegations of the Assad regime's oppression of the majority, has had farreaching consequences and has resulted in a significant deadlock involving several international actors. The events unfolding in Syria have also served as an example of the fact that a smaller numerical presence does not necessarily equate to experiencing oppression. When trying to define the concept of minority in the present context, it is important to highlight not only the numerical lowliness but also the unique features that distinguish the minority from the majority. These features may be in terms of language, religion, ethnic origin, gender, culture, or sexual orientation. It is also important that these people experience oppression.

The absence of any provision pertaining to migrants in minority definitions raises questions regarding the position of migrants in relation to minority groups. What is the current legal and social standing of individuals who are descendants of migrants and hold citizenship in the state to which their ancestors migrated? In accordance with Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, the Netherlands, in its submitted report, identified and acknowledged the presence of this subject and stated that: Those groups of citizens who are traditionally resident within the territory of the State and who live in their traditional/ancestral settlement areas, but who differ from the majority population through their own language, culture and history – i.e. have an identity of their own – and who wish to preserve that identity. [4]

Given the inherent difficulty in achieving a universally agreed-upon definition of minority at the global level, it becomes imperative for states to incorporate the notion of minority within their own frameworks while adhering to international human rights legislation in the process. Likewise, ongoing discussions and uncertainties persist inside the EU concerning legislation pertaining to minority groups.

3. The European Union

The EU functions as a multicultural supranational entity, encompassing a diverse range of ethnicities and minority groups. The EU faces significant challenges in formulating a unified policy on minority issues due to the broad range of identities and cultures represented among its 28 member states. The EU's policies pertaining to minority rights and human rights are not solely confined to internal affairs because the topic holds significant importance in the global affairs of the EU.

The domestic relations of the EU member states and the stance of the EU institutions should be considered while analysing their approach to minority and human rights issues. The EU does not possess a distinct competence pertaining to minority rights. This is the reason for the absence of a unified internal minority strategy within the EU. [5] The primary contributing cause to this situation is the hesitance of member states to delegate jurisdiction over minority issues to the institutions of

the EU. Although there is variation among member states in terms of their approach to minorities, the EU has imposed a set of regulations that require governments to comply with certain guidelines pertaining to minority issues. The EU employs the Treaty on the European Union (TEU) in the context of its domestic matters. The foundation principles of the EU, as outlined in the TEU, encompass a range of fundamental values. These include the respect of human dignity, the promotion of freedom, the safeguarding of democracy, the pursuit of equality, the adherence to the rule of law, and the protection of human rights, particularly the rights of mino-rity groups.[6] The provisions within the TEU underline the need to safeguard minority groups from discriminatory practises. Furthermore, it is imperative for both the member states and institutions of the EU to adhere to the legal framework established by the ECHR. The fundamental rights and freedoms outlined in the ECHR, "as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law." [7] In addition, the European Court of Justice (ECJ) interprets the principle of discrimination in minority issues. In instances of minority discrimination, the ECJ employs the principle of proportionality to assess whether such discrimination arises from an exemption or a required obligation under the proportionality available in EU law. [8] Also, the ECJ "takes into account the possible restrictions on free movement, regardless of what the main aim of the discriminatory application is."[9] Moreover, the Council of Europe (CoE) is the organization that created the Framework Convention for the Protection of National Minorities, a significant legal document for EU member states. Nevertheless, many EU member and candidate states, including France and Turkey, had not signed the Convention. Additionally, Greece and Belgium have signed the Convention but have yet to ratify it.

The need to safeguard minority rights, which EU member states and institutions impose on their interactions with non-member states and prospective member nations, might be considered an external affair of the EU. The Copenhagen political criteria, which outline the specific requirements for membership, exemplify the notion of conditionality within the EU. Adherence to human rights and safeguarding minority rights are essential requirements for prospective member states within the EU. "History has shown that minority protection needs a multilateral umbrella to shield it against encroachment by nationalist governments. EU conditionality has been one of the strongest mechanisms in this regard in the 21st century."[10] However, there are concerns raised by critics over the potential double standard in the EU's approach to minority rights. This is due to the fact that the EU has faced criticism for requiring candidate member states to adhere to the political standards outlined in the Copenhagen criteria while not having established a comprehensive internal policy on minority rights. [11] Moreover, a contentious discussion exists on the status and circumstances of people within the EU that do not meet the criteria for being classified as national minorities.[12] As a result, from this perspective, "it was, therefore, clear that not only in politics but also in policy, minority protection was considered a concern relevant only to the external affairs of the EU." [13]

The EU, as an entity, cannot become a party to international legal treaties that

address and protect minority rights, such as the ECHR and the International Covenant on Civil and Political Rights (ICCPR) adopted by the General Assembly of the United Nations (UN). According to Article 27 of the International Covenant on Civil and Political Rights "in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." [14]

Likewise, these materials have been rendered accessible for the purpose of state endorsement and ratification. In this context, "the ECJ made a statement according to which one can conclude that even international agreements of which the EU is not a party might have a relevance in the legal order of the EU." [15] Nevertheless, it should be noted that international treaties that have an impact on the rights of minority groups are also included in the body of laws and regulations known as the EU acquis. [16] Consequently, the ECJ takes into account the principles and obligations outlined in the international human rights treaties when interpreting and applying EU legislation.

It is noteworthy that the EU has established the European Charter for Minority or Regional Languages aimed at safeguarding the interests of minority groups. Together with the Framework Convention for the Protection of National Minorities this legal instrument had contributed to the advancement of national minority protection in Europe and the promotion of minority rights. Moreover, the ECHR's legally obligatory nature and the ECtHR's authority over EU member and candidate states have contributed to a certain degree of attention being given to minorities and human rights concerns.

The ECHR does not explicitly address the issue of minority rights. Nevertheless, within the framework of Article 14, which addresses the prohibition of discrimination, the Convention has established provisions to ensure that minorities are not subjected to any kind of prejudice when exercising their rights. The ECtHR addresses the issue of minorities' access to and exercise of rights and freedoms as outlined in the convention by referring to Article 14. In the year 2000, the introduction of Article 1 of Protocol No. 12 brought forth an entirely new interpretation that expanded the scope of prohibitions against discrimination. The scope of the prohibition of discrimination was broadened with the inclusion of the term 'any right established by law'. By enacting this regulation, all individuals, regardless of their minority status, shall be safeguarded from any form of discrimination when enjoying their lawful entitlements. As per the jurisprudence of the ECtHR, the scope of the prohibition of discrimination has been expanded to include the subsequent situations: "i. in the enjoyment of any right specifically granted to an individual under national law; ii. in the enjoyment of a right which may be inferred from a clear obligation of a public authority under national law, that is, where a public authority is under an obligation under national law to behave in a particular manner; iii. by a public authority in the exercise of discretionary power (for example, granting certain subsidies); iv. by any other act or omission by a public authority (for example, the behaviour of law enforcement officers when controlling

a riot).” [17]

The ECtHR considers the prohibition of discrimination against minorities alongside other rights and freedoms such as language rights, freedom of expression, freedom of religion, the right to education, and the right to participate effectively in cultural, religious, social, economic, and public life.

The interaction between international human rights law and EU legislation inevitably has an impact on the candidate states. The consideration of minorities and human rights holds great significance in the context of candidate nations, particularly where the principle of conditionality is of the utmost importance. EU membership necessitates that a candidate country align itself with the EU acquis, which encompasses foundational agreements, modifying agreements, secondary legislation, agreements with non-EU nations, rulings made by the ECJ, and other relevant components. In this context, the Republic of Turkey is one of the candidate states, and the EU's conditionality principle necessitates that Turkey ensure the requisite alignment in relation to minorities and human rights.

4. Minority Policy in the Republic of Turkey

The assessment of minority groups in Turkey necessitates an examination within the context of socio-political (or sociological) and law. [18] The legal position of minorities in Turkey is determined by national legislation and international treaties. The Lausanne Peace Treaty, which was accepted after the Turkish War of Independence that resulted in the establishment of the Turkish Republic, has been managing the minority policy of Turkey for 100 years. According to the Lausanne Peace Treaty, only the groups specified in the treaty are formally recognised as national minorities within the country's legal framework. Although the Lausanne Peace Treaty did not emphasise ethnic origin or religious sect [19], Armenian Orthodox Christians, Jews, and Christians with Greek Orthodox faith are considered minorities in practise. Furthermore, the Lausanne Peace Treaty also exerted influence in shaping Turkish identity. The Republic of Turkey was founded with the concept of the nation-state, and it recognized the Muslim Turkish identity as the primary constituents of the newly constituted state. According to Aritcle 40 “Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.” [20]

Although the Lausanne Peace Treaty's definition of minority status applies to only a group of the non-Muslim people mentioned earlier, there is a position, introduced by Oran, in favour of the treaty's alternative interpretation and application.[21] Based on this viewpoint, it can be observed that distinct types are present. These are “a) Turkish nationals who are not Muslims (Article 38 paragraph 3, Article 39 paragraph I, all of Article 49, 41, 42, 43, and 44); b) All Turkish natio-nals (Article

39, paragraphs 3 and 4); c) Everyone residing in Turkey (Article 38, paragraphs 1 and 2; Article 39, paragraph 2); and d) Turkish nationals speaking a language other than Turkish (Article 39, paragraph 5).” [22]

In this context, the rights of Turkish nationals who are not Muslims can be summarized as follows: enjoying freedom of movement and migration; protection of the life and freedoms of all Turkish people in the broadest sense; the free practice of any religion, sect, or belief that is not incompatible with public order and morality; enjoyment of civil and political rights; the right to receive education in one's own language; receiving aid from the state budget; protection of sanctuaries; establishment and operation of foundations and associations; ability to perform religious rites and ceremonies.[23]

For All Turkish nationals, again, the prohibition of discrimination based on religion [24] and “no restrictions on the free use of any language by any Turkish citizen, whether in private or commercial relations, in matters of religion, in the press or any kind of publication, or in meetings.” [25]

The following are the rights specified in the Lausanne Peace Treaty for all residents of Turkey: The right not to be discriminated against because of one's birth, country, language, ancestry, or religion; the right to openly practice any religion, sect, or belief in public and private; and the right of all, regardless of faith, to equality before the law. Finally, regardless of the status of the official language, Turkish nationals of non-Turkish speaking shall be provided with suitable opportunities [26] “for the oral use of their own language before the Courts.” [27]

Non-Muslim Turkish nationals, according to Oran, have the same rights as all Turkish nationals, everyone resident in Turkey, and Turkish nationals who speak a language other than Turkish. All Turkish nationals have the same rights as anyone else who lives in Turkey, as do Turkish nationals who speak a language other than Turkish. Turkish nationals who speak a language other than Turkish have the same rights as all Turkish nationals and residents.

In essence, the Lausanne Peace Treaty did not place emphasis on factors such as ethnic identity, religion, or language, nor did it make any reference to a regional regime. In this context, the implementation of articles pertaining to the entire population of Turkey and those specifically impacting Turkish citizens may lead to the partial resolution of some concerns faced by particular groups. [28]

5. Groups in Turkey Without Legal Recognition

In Turkey, Alevism and Protestants are examples of groups that differ from the majority based on religion; Assyrians and Kurds on the basis of language and ethnicity; and LGBTI members on the basis of sexual orientation. These groups are not legally recognised, but from Capotorti's socio-political perspective, they may be identified as a minority – e.g., in terms of having different characteristics.

5.1. Alevism

Alevism is difficult to describe scientifically. Its history includes conflicts that predominantly divided Islam into Sunni and Shia sects, as well as political disputes and battles for control of the caliphate. Some Turkish groups have merged Islam and Shia, particularly the spiritual and esoteric versions of Islam known as batıni, which deny formalist interpretations of Islam. The Alevi belief system acknowledged Islam's inner, esoteric significance. In Anatolia, Alevis do not pray in Arabic, but in Turkish. In Alevism, prayer is performed through the cem ritual. This event takes place in cemevis. Men and women pray together during cem ceremonies in cemevis, reading verses from the Qur'an in Turkish and chanting Alevi hymns. The conclusion of the rituals is the semah, a ritualistic dance performance.

The exact population density of Alevis in the Republic of Turkey has long been a source of contention. “Leaders of Alevi foundations estimate Alevi Muslims comprise 25 to 31 percent of the population” [29], which refers to at least 21 million Turkish Alevi citizens with a distinct belief system and rituals from the Sunni majority. Despite the presence of various distinguishing characteristics and a significant population rate, Alevis are not officially recognised as a minority group. The Alevis express a preference to not be classified as a minority, although they assert the necessity for acknowledgment of their distinct cultural and religious identity. Nevertheless, the state categorises Alevi identity within the framework of Islam. Moreover, following the establishment of the Republic of Turkey, “it is clear that Alevis have suffered from the oppression of the State which contributed to their discrimination in social and economic life.” [30]

In general, Alevis' post-Republic human rights challenges fall into three categories: discrimination, violations of their freedom of thought, conscience, and religion, and infringements on their right to education. Alevis’ problems with discrimination and freedom of thought, conscience, and religion originate from the state’s refusal to recognise cemevis as officially recognised places of worship, such as mosques. The mandatory religious culture and ethics lectures are related to their freedom of thought, conscience, and religion, the right to education, and the right not to be discriminated against. Children from Alevi and other groups are required to attend these Sunni Islam-dominated classes.

Despite the continued existence of problems in the overall framework, it cannot be denied that, since 2006, the first steps have been taken to find solutions. In this context, the government's accomplishments can be summarised as follows: In 2006, 80 Alevi religious leaders, directors of Alevi associations, and academicians parti-cipated in a three-day workshop, which concluded with a report on Alevis' demands and proposed solutions, as well as the decision to implement the Freedom of Belief and Prevention of Discrimination as a Foundation for Social Peace Project. The Action Plan on Necessary Steps to Meet the Demands of the Alevi-Bektashi Co-mmunity was followed by seminars conducted by the government in 2009 to identify the problems and demands of Alevis and take action to address them. The government established the Alevi-Bektashi Culture and Cemevi Pre-

sidency in 2023 with the mission to organise various activities in cooperation with non-governmental organisations and to ensure that the needs of cemevis are met by contributing to the protection, support, and transfer of Alevi-Bektashi faith and culture to future generations on a national and international scale.

5.2. Protestants

There are “7,000 to 10,000 members of Protestant and evangelical Christian denominations” [31] in Turkey. Protestants, as a Christian denomination, are another minority in Turkey with religious belief distinct from those of the Sunni majority. They are not recognised as a legal minority group, but from the sociological definition, they can be evaluated as a minority group.

Correspondence with one of the Protestant spokespeople in Turkey revealed that they face comparable obstacles to Alevis and Assyrians. According to the spokesperson, problems arise as a result of restrictions on their freedom to fully practise their religion, such as not being legally recognised, not accepting their church as a place of worship, and difficulties in publicising and obtaining special permission for any type of social activity (such as announcing Christmas celebrations). The spokesperson stated that the religious educational system in Turkey should be revised in two distinct ways. Initially, the existing system encourages their children to believe irresponsibly, and furthermore, this system has a deleterious impact on them. Second, the current religious education system causes students to feel alienated from their peers and teachers. They believe that mandatory religious culture and ethics instruction should be eliminated. The spokesperson does not wish to be misunderstood; according to him, the culture, traditions, and customs of Turkey are unique and should not be altered. However, according the spokesperson if the people of Turkey wish to coexist with civilised nations, it is imperative that they alter their way of thinking. The spokesperson believes that advancements and improvements in the religious education system are crucial for Turkey's EU accession and integration. According to the spokesperson, freedom of religion and belief exists in theory in Turkey, but it is not implemented in practise. [32] Currently, there have been no discernible alterations pertaining to the Protestant community.

5.3. Assyrians

Approximately 25,000 Syriac Orthodox Christians (also known as Syriacs or Assyrians) are not legally recognised as a minority in Turkey. “Today’s Assyrians are the easternmost indigenous Christians of the Middle East. They form the last ethnic world community to preserve Aramaic as a native language – the language spoken by Jesus – that was the lingua franca of the region before Arabic displaced it when Islam emerged.”[33] They are descended from the ancient Mesopotamian peoples, belonging to the Ecumenical Patriarchate of Antioch and currently representing the historical Antioch Patriarchate, which is one of the earliest Christian congergations. Due to the fact that the Assyrians' first religious centre was in Antakya, Turkey this city is of great importance to them. Even if theological discussions are avoided, Assyrians can be classified as a minority group from a socio-political

standpoint. Nonetheless, they were not included in the Lausanne Peace Treaty's interpretation of the term minority and this policy has presented numerous challenges. Assyrians do not have the right to education in their native language or to establish institutions. On the other hand, their religious beliefs prevent them from receiving assistance from the state and their children are required to receive compulsory religious education.

The Monastery of Mor Gabriel holds the distinction of being the most ancient surviving Syriac Orthodox monastery globally. The site is situated on the Tur Abdin plateau, which is recognised as the ancestral territory of the Assyrian people. Specifically, it is located inside the boundaries of Güngören village in the Midyat district of Mardin province. As part of the process of joining the EU, on February 25, 2014, the Republic of Turkey General Directorate of Foundations registered the Mor Gabriel Monastery Foundation as the owner of the monastery's land.

In 2018, another positive development occurred regarding a problem that had persisted since 2012. In 2012, the title of metropolitan municipality was bestowed upon the city of Mardin, where most Assyrians in Turkey reside. In 2014 50 immovables, including churches, monasteries, and cemeteries, belonging to the Assyrians were transferred to the Treasury, the General Directorate of Religious Affairs, and the General Directorate of Foundations. The deeds of these 50 Assyrian churches, monasteries, and cemeteries were transferred to the Mor Gabriel Monastery Foundation in 2018 via an omnibus measure. The president of the Mor Gabriel Monastery Foundation, Koryakos Ergün, commented on the matter, stating that he believes this decision will play a crucial role in the return of Assyrians living in Europe to their homelands. According to Ergün, this event also signified the restoration of minority rights that was granted in the Lausanne Peace Treaty, and he concluded that they would like to thank all those who contributed to these steps, particularly President Recep Tayyip Erdoğan. [34]

5.4. Kurds

Kurds are estimated to make up between 10 and 23 percent of Turkey's total population. Concerning the Kurds, the situation is significantly more complicated than with other groups. This issue has become more complicated over time, especially in view of the PKK (Kurdistan Workers' Party) terrorist organisation. The Kurdish issue must be investigated by isolating it from the PKK. In fact, it is crucial to evaluate the situation of citizens of Kurdish descent who advocate peacefully for their rights and freedoms.

In terms of ethnicity and language, the "newest DNA-research of advanced Human Anthropology indicates, that in earliest traceable origins, forefathers of Kurds were obviously descendants of indigenous (first) Neolithic Northern Fertile Crescent aborigines, geographically mainly from outside and northwest of what is Iran of today in Near East and Eurasia." [35] Kurdish is a hybrid language within the Indo-European family of languages. There are numerous dialects, with Kurmanji, Sorani, and Kelhurji being the most prominent. Kurmanji is the most widely

spoken language and dialect among Kurds in Turkey.

The issue that necessitates attention with regards to the Kurds pertains to the provision of education in their own language. Despite the enduring demand for education in the original language, it is stipulated in Article 42 of the Constitution of the Republic of Turkey that Turkish individuals are exclusively permitted to receive instruction in the Turkish language, hence prohibiting the teaching of any other language. In relation to this matter, which has also been extensively addersed in several international reports, the EU has reached the subsequent conclusion and stated that “on cultural rights, there were no development on the legislation to allow public services to be provided in languages other than Turkish.” [36] Similarly, the US Office of International Religious Freedom assessment noted that Kurds are unable to get education in their mother tongue and that language rights issues persist. [37] Turkey's reservation to the Article 13 of the International Covenant on Eco-nomic, Social, and Cultural Rights (ICESCR) already impedes mother tongue education other than Turkish.

In Turkey some progress has been made, despite the persistence of several critical difficulties. In 2009, a state-affiliated television programme called TRT Kurdi began airing in Kurdish. Additionally, Kurdish is offered as an elective in schools.

5.5. LGBTI

LGBTI people in Turkey who are not classified as a minority have encountered challenges in recent years. The government has labelled this group as deviant and has used propaganda in 2023 to imply that the opposition party coalition is a supporter of LGBT rights.[38] According to the sociological perspective of the concept of minority, these individuals’ problems can be resolved through prohibition of discrimination. According to the published report, Turkey is the second-worst country for LGBTI rights after Azerbaijan. [39] The Social Policies, Gender Identity, and Sexual Orientation Studies Association (Sosyal Politikalar Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği) stated that LGBTI individuals face discrimination in a variety of sectors, including the right to work, the right to housing, the right to health care, and the right to education.[40] Furthermore, homosexuality is still referred to negatively in Turkey as immorality, perversion, sickness, and abnormality. [41] As a result, LGBTI rights in Turkey face considerable opposition and there has been no advancement in the country. [42]

6. Turkey - EU Relations on Unrecognized Minority Groups

During the Helsinki Summit in December 1999, Turkey was granted the designation of a candidate country for the EU. Turkey has provided a guarantee for the safeguarding of minority groups, specifically, with the implementation of this policy. As per the EU report for the year 2022, the existence of unrecognised minority groups persists, accompanied by human rights concerns.

The EU has identified the non-recognition of religious groups as a significant concern with regards to the protection of freedom of religion. This issue is particularly pronounced for religious communities such as Alevis, Assyrians, Protestants, and others that face challenges in obtaining official acknowledgment for their places of worship. [43] Furthermore, the EU has seen the continued existence of acts of violence that target individuals based on their religious affiliation, specifically focusing on anti-Christian, anti-Protestant, and anti-Jewish sentiments. [44]

In the report it is also stated that “legal restrictions on mother-tongue education in primary and secondary schools” [45] continues. The EU also asserts that “gender-based violence, discrimination, and hate speech against minorities (in particular against lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) persons are still a matter of serious concern.” [46] The EU acquis, which is especially sensitive to discrimination, has already expanded the protection against discrimination principle and “with the Amsterdam Treaty, new elements were added to the fight against discrimination, including … sexual orientation” [47]

With the interpretation of the Lausanne Peace Treaty, the legal concept of a minority in Turkey has been condensed to particular religious communities. However, from a sociological standpoint, it's possible that some communities also fall under the definition of minorities. In reality, the EU has recently criticised and advised Turkey in relation to these groups' rights. In this regard, the fundamental and unifying premise must be that everyone in Turkey has the right to be free from birth, nationality, language, ancestry, religion, race, sexual orientation, and gender-based discrimination. Although Turkey has taken some steps towards the minorities' protection required for EU membership, the EU still demands further adjustments by declaring “non-discrimination is the first and traditional EU approach to minority protection” [48] and the second approach is the collective rights of minorities, which is “to respect cultural, religious and linguistic diversity.” [49]

The attainment of solutions appears to be facilitated when the matter of the minority issue is approached in accordance with Oran's proposition, or when the issue is construed as a question of equitable citizenship and inherent human rights. The comprehensive recognition of human rights for both majority and minority groups is vital in safeguarding and ensuring the well-being of people within a democratic society. It is also important to note that the “recognition as a national minority has a declaratory rather than a constitutive character. Access to minority rights should therefore not depend on formal recognition.” [50] From this particular standpoint, it is important to acknowledge that the minority policy in Turkey has been constrained within specific boundaries. The Turkish policy on minorities necessitates legal recognition. So, the matter of aligning with the advice of the CoE and the EU’s criticisms is expected to continue to be a subject of contention.

7. Conclusions

The concept of minority does not have a universally accepted meaning within the context of international law. Every state possesses its own distinct set of national

minority policies. From a sociological standpoint, the term minority can be described as a group of individuals who possess different characteristics, are numerically smaller than the dominant majority, face challenges in maintaining their unique features, and encounter various forms of oppression. The aforementioned distinctions can be classified into various categories, including but not limited to language, religion, ethnicity, gender, culture, and sexuality. Irrespective of the specific delineation, it is imperative to address and remedy the drawbacks and infringements against human rights experienced by this population.

The CoE and the EU have implemented specific criteria and undertaken efforts to combat and mitigate instances of discrimination targeting minority groups. The recognition of the importance of upholding the rights of minority groups and safeguarding them against human rights breaches and discriminatory practises has been acknowledged as a prerequisite for membership within the EU.

As an EU candidate country, the Republic of Turkey is obligated to protect disadvantaged and minority groups in accordance with both international human rights law and EU candidature requirements. However, within the framework of its minority policies, Turkey adheres to the Lausanne Peace Treaty and recognise as national minorities only certain non-Muslim groups, including Armenians, Greeks, and Jews. However, social reality demonstrates that, except for the Lausanne Peace Treaty minorities, some other groups coexist. These include Alevis, Assyrians, and Protestants, whose belief systems differ from those of the Sunni Muslim majority. Kurds, who belong to a distinct ethnic and linguistic group, and LGBTI members, who have a distinct sexual orientation.

Turkey's candidature for EU membership is significantly jeopardised due to the non-recognition of certain groups and the occurrence of related human rights breaches. Since 2002, the Turkish government has made efforts to enact various changes. While the adequacy of these endeavours may be up for debate, it is indisputable that certain actions have been implemented. The EU has brought attention to the circumstances of these particular groups and emphasised the imperative to strengthen their rights and freedoms. From this particular standpoint, Turkey demonstrates a notable dedication towards implementing certain enhancements; nonetheless, it has yet to fulfil the preconditions set by the EU regarding unrecognized minority groups.

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Chapter 4.

Empowering Consumer Rights by Fostering Digital Tools for a European Public Space

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Abstract: An effective consumer protection policy ensures that the single market can function properly and efficiently. The European public space should guarantee consumer rights in relation to traders and to provide additional protection by empowering digital tools for consumers, as vulnerable parts of contracts. Consumer protection rules have the potential to improve market outcomes for the entire economy. They make markets fairer and, by improving the quality of information provided to consumers, can lead to better environmental and social market outcomes. Empowering consumers and effectively protecting their safety and economic interests have become key objectives of EU policy. The aim of this paper is to discuss a series of progressive steps that must be followed when protection of consumer rights should be a property for the economy of any country. The main body of the paper provides a detailed analysis on the importance of digital tools for consumer rights protection. The discussion also explores effective consumer protection legislation, enforcement institutions and how to redress systems by fostering digital tools. The current research is focused on analyzing and comparing a set of consumer protection norms within the legal system, with the aim of identifying digital tools that are relevant for a European public space and concludes by identification the variety of non-formal digital consumer protection tools that are not directly regulated by law.

Keywords: Consumer Rights; Digital Tools; European Public Space; Network; Online Dispute

1. Introduction

Currently, the majority of consumers may not be aware of their legal rights or the processes for filing complaints with state bodies responsible for consumer protection, especially by applying digital tools. This lack of awareness can be attributed to a variety of factors, including limited access to information, insufficient education and awareness-raising campaigns, and a lack of trust in the effectiveness of state institutions. To address this issue, governments and other organizations can

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work to improve consumer education and outreach efforts, provide clear and accessible in-formation on consumer rights and the complaints process, and establish effective mechanisms for resolving consumer complaints. The actuality of the research topic arises from the need to protect the consumer who has been harmed in a direct or in-direct relationship with the professional, which has behind him a team of trained lawyers or even a marketing consulting office to promote products and services by using unfair commercial practices or abusive contractual terms in the standard contracts.

In the last period, the consumer is increasingly exposed to the risk of being deceived or prejudiced. The emergence of disputes more and more frequently is determined by the presence of certain socio-economic factors, namely: the spread of standard contracts, the development of electronic commerce, the intense circuit of goods and services, respectively, the development of international tourism and means of communication. At the same time, advertising and marketing techniques facilitate the emergence of consumer disputes. From this point of view, the scientific analysis of the role of the public administration in the consumer protection mechanism is not only current on a theoretical and practical level, but also necessary.

The main problem is that for most countries, especially for the Republic of Moldova (Moldova) as a non-Eu country, the economic year 2022 was marked by unprecedented inflation and the increase in energy prices. The beginning of 2022, after the COVID-19 restriction, initially seemed to be a favorable one for the economy of Moldova. However, the situation changed radically with Russia's military invasion of Ukraine, and the first crisis came with the flow of refugees from the neighboring country. Then the Government of Moldova, as well as the citizens, mobilized and collected part of the financial resources necessary to help the neighbors, who were fleeing the war. The prospects for 2023 are not optimistic either. The consequences of the war in Ukraine and the energy crisis have led to an increase in inflation of more than 30% and an explosion in the prices of all products and services. In these conditions, the Government of Moldova was forced to respond to the emerging crises and to support consumers, rather than to develop the economy, being focused on an economy that works for people (consumers), regardless of nationalities, with increased attention being focused on the empowering consumer rights by fostering electronic tools for a European public space.

The purpose of the proposed research is to align the efforts of the state in promoting digital tools in the same direction, namely to raise the trust of citizens as consumers of products and services, in the state mechanism protection, which play an impor-tant role in informing the protection of the legitimate interests of consumers.

In the Republic of Moldova, in 2023, with the creation of the new Government, the Ministry of Economy was reorganized into the Ministry of Economic Development and Digitalization, as the central body authorized to promote state policy in the field of economy and to coordinate the economic development of the Republic of

Moldova from the perspective of digitalization public services for consumers and professionals.

2. Data and Methodology

The current research is a comparative work, as it describes, analyses, and interprets information, in this case a set of norms belonging to the legal consumer protection system, to identify the relevant digital tools for a European public space, as well as the applicability of legal provisions in the context of measures undertaken by authorities in relation to violation of consumer rights. The research appears to be interdisciplinary in nature, drawing on legal, economic, and technological expertise to better understand how consumer protection norms can be enforced in an increasingly digital world. Overall, the research is aimed at identifying ways to improve consumer protection in the context of rapidly evolving technology and changing legal landscapes. By analyzing and interpreting existing norms, and identifying relevant digital tools and legal provisions, the research can help and inform policy decisions and regulatory frameworks that better protect consumers in Moldova, taking into consideration best practices from Europe. Hence, this brief identifies the necessary transformations and provides guidance to undergo them, highlighting among the most significant: adopting a rights-based approach, countering the digital divide, increasing transparency over the internet, enhancing data security and protection.

The subject is analyzed from the point of view of effective consumer protection digital tools, enforcement institutions and the doctrinal approach of both national and international authors. The article provides initially the importance of protecting the consumer by fostering digital tools and advances with European consumer protection digital instruments. In addition, this type of research involves analyses and comparing data from different sources to draw conclusions and make recommendations. During the writing process, various research methods were used, particularly theoretical and practical ones, including:

a) analysis, by dividing the topic into paragraphs and subparagraphs, making references to legal doctrine and EU and national regulations;
b) synthesis, by identifying the special features of special concepts, tracking the development of effective consumer protection legislation, enforcement institutions and redress systems by fostering digital tools.;
c) deduction, by making conclusions on the basis of the researched material and presenting the personal point of view on the subject under the current research;
d) classification, by dividing certain categories into different groups depending on various criteria, which allowed us to research each of them in more detail;
e) analogy, by using and comparing different institutions, as well as the rules of law in different states, which makes it possible to identify similar and distinctive features;
f) observation - by observing the statistical data, the dynamics of effective digital tools for consumer protection;

g) comparison, by comparing the level of legal regulation of the institution for consumer protection in the national legal system of the Republic of Moldova, with the legal regulation of this institution abroad.

3. Literature Review

Many studies proposals and opinions have already been produced on effective consumer protection legislation, enforcement institutions and redress systems by fostering digital tools [26]. Usually, a classic protection is based, in particular, on submission of a written complaint to the professional for the consumer damage caused, or in general to the competent authority for the resolution of the consumer's complaint, in this sense state control tools being applied by preventing, ascertainning and sanctioning the violation of consumer rights.

European Council's Strategic Agenda for 2019-2024, the Political Guidelines is focused on six headline ambitions for Europe for five years, three of priorities being focused on digital age, economy, and citizens' values [19]:

(1) An economy that works for people: a unique European social market economy, it is what allows the economies to grow – and what drives poverty and inequality to fall. It ensures that social fairness and welfare come first. Strengthening the social market economy is acutely important at a time when the states are redesigning the way of industry and of economy work.
(2) A Europe fit for the digital age: Digital technologies, especially Artificial Intelligence (AI), are transforming the world at an unprecedented speed. They have changed how we communicate, live and work. They have changed our societies and our economies.
(3) Promoting our European way of life: A Europe that protects must also stand up for justice and for values, including for consumer protection rights as „consumers are all us" [5]. Nowhere is this more important than when it comes to the respect of the rule of law in relationship with consumers. Ensuring the respect of the rule of law is a primary responsibility of each Member State.

However, as the Court of Justice has recently confirmed, we have a common interest in resolving problems. Strengthening the rule of law is a shared responsibility for all EU institutions and all Member States. To set the Union and its partners on the road to recovery and prepare for the transitions, four of the policy objectives are oriented on the economy that works for the citizens, for 2020-2024, as follows:

1. to ensure a full recovery from the COVID-19 pandemic
2. to maintain the EU's global leadership in fighting climate change;
3. to make the economy more resilient and robust;
4. to strengthen the EU's role as a global actor.

According to the EU-Moldova Association Agreement (AA), signed in 2014, name-ly Title IV, one of the areas focuses in particular on Consumer Protection

(Chapter 5) [2]. Enhanced cooperation should improve the administrative and regulatory framework for both EU and Moldovan businesses operating in the EU and in the Republic of Moldova, and should be based on EU policies, taking into account internationally recognized principles and practices in this field. To this end, the EU and Moldova will cooperate especially to:

(a) aiming at the approximation of consumer legislation, based on the priorities in Annex IV to this Agreement, while avoiding barriers to trade for ensuring consumers' real choices;
(b) promoting exchange of information on consumer protection systems, including consumer legislation and its enforcement, consumer product safety, including market surveillance, consumer information systems and tools, consumer education, empowerment and consumer redress, and sales and service contracts concluded between traders and consumers;
(c) promoting training activities for administration officials and other consumer interest representatives; and
(d) encouraging the development of independent consumer associations, including non-governmental consumer organizations (NGOs), and contacts between consumer representatives, as well as collaboration between authorities and NGOs in the field of consumer protection.

4. Importance of Protecting the Consumer by Fostering Digital Tools

To consume is most often to contract. The purpose of consumer law is to protect parties in a situation of obvious weakness in the face of informed professionals, a situation accentuated by the fact that the former contract for their private needs. The search for protection of the economically weak is a necessity for consumer law. In reality, doctrine and case law have long sought to protect the economically weak through the application of concepts or legal mechanisms pertaining to the general theory of obligations [17]. The participants in consumer relations are always in a position of inequality: on the one hand there is the "strong side", i.e. the profe-ssional, and on the other hand there is the "weak side", i.e. the consumer [4, 5, 6, 17]. The adoption of specific digital tools for consumer protection was premised on reality, when the consumer finds himself in a situation of triple inferiority to the professional. Today this need for consumer protection as a weaker contracting party by fostering digital tools can be motivated by:

a) Technical inferiority, first of all, in the sense that the professional always knows better than the consumer the characteristics, qualities, defects or methods of use, of the products or services that he offers on the market. The professional could then be tempted to take advantage of his superiority to advise him of a good or service more in line with his own interests than with the real needs expressed by the consumer;
b) Economic inferiority, then, because the professional, on the one hand, can use advertising to attract customers, possibly without real need and, on the other hand, always has more means to assert his rights in the event of a dispute;

c) Legal inferiority, finally, because, without even insisting on the fact that consumers are generally unaware of their rights, in their relations with them, professionals most often resort to pre-drafted standard contracts to their exclusive advantage; membership contracts that consumers are led to sign, without any possibility of having the terms modified and without even, most of the time, having had the opportunity to read the content [4, 5,6,17].

This inferiority is most often embodied in the adhesion contracts imposed on consumers [13, 26]. The economic, technical and legal inequality between the two contracting parties is the permitted situation that explains the spirit of the entire consumer protection legislation, which cannot be other than that of redressing the imbalance existing at the time of the conclusion of the contract or arising from the conclusion of the contract, by regulating some rules that counterbalance the ratio of power, acting in favor of the consumer and, in this way, determining a legal imbalance in the opposite direction.

European consumer protection measures aim to protect the health and safety, as well as the economic and legal interests of European consumers, regardless of where they live, travel or shop in the EU. EU provisions cover both physical transactions and e-commerce and contain rules of general applicability accompanied by provisions targeting specific products, including medicines, genetically modified organisms, tobacco products, cosmetics, toys and explosives.

5. European Consumer Protection Digital Instruments

According to the articles 114 and 169 of the Treaty on the Functioning of the European Union (TFEU) European consumer protection measures aim to protect the health and safety, as well as the economic and legal interests of European consumers, regardless of where they live, travel or shop in the EU [25]. EU pro-visions cover both physical transactions and e-commerce and contain rules of general applicability accompanied by provisions targeting specific products, inclu-ding medicines, genetically modified organisms, tobacco products, cosmetics, toys, and explosives. The main scope of the UE is to ensure a high common level of protection against risks and threats to their safety and economic interests for all consumers in the Union, - regardless of where they live, travel or shop in the EU - and to improve consumers' ability to -defend their own interests.

Authorities should encourage the development of fair, effective, transparent, and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution, including for cross-border cases. It is important to underline that established or maintained legal and/or administrative measures, including digital, will enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, transparent, inexpensive, and accessible. Such procedures should take particular account of the needs of vulnerable and disadvantaged consumers. Mem-ber States, thanks to the European consumer protection instruments, provide con-sumers with access to digital remedies that do not impose a cost, delay or

undue burden on the economic value at stake and at the same time do not impose ex-cessive or undue burdens on society and businesses.

A) The Network of European Consumer Centers (ECC-Net or "euro counters") and the "Your Europe" portal.

The network of European Consumer Centers provides consumers with information and assistance on cross-border transactions. The network cooperates with other European networks, in particular FIN-NET (financial), SOLVIT (internal market) and the European Judicial Network in civil and commercial matters. The "Your Europe" portal provides consumers with comprehensive information on contractual rights, telecommunications and internet services, financial products and services, possible unfair treatment, energy supply and consumer dispute resolution. Further improvements have been introduced through the single digital portal [Regulation (EU) 2018/1724].[22].

b) Alternative Dispute Resolution Procedures and Online Dispute Resolution

Alternative dispute resolution (ADR) procedures are out-of-court dispute resolution mechanisms that help consumers and traders to resolve their disputes especially through a third party such as a mediator, arbitrator or ombudsman. Recommendation 98/257/CE [9], Decision no. 20/2004/EC [12]. and Council Resolution 2000/C 155/01 [11]. provide the principles to be followed in ADR procedures, intended to guarantee less expensive and faster solutions for each consumer. Directive 2009/22/EC on consumer injunctions [14] harmonizes existing EU and national legislation and, in order to protect the collective interests of consumers, introduces 'injunctions' which can be opened at competent national courts against violations of the rules committed by commercial operators from other countries. Directive 2013/11/EU on consumer alternative dispute resolution [15] provides consumers with the opportunity to turn to entities that provide reliable alternative dispute resolution services for all types of contractual disputes between consumers and businesses, which may concern a purchase carried out online or offline, nationally or cross-border. Regulation (EU) no. 524/2013 on online dispute resolution [23] allows EU consumers and traders to resolve disputes online regarding national and cross-border purchases, through an EU-wide dispute resolution platform that these entities have been able to sign up to since February 2016.

c) The European Judicial Network in Civil and Commercial Matters and the Obligation of National Authorities to Cooperate

Decision 2001/470/EC [10] created a European judicial network to simplify the lives of citizens facing cross-border disputes, improving judicial cooperation mechanisms between Member States in civil and commercial matters and providing citizens with practical information to facilitate their access to justice. Regulation (EC) no. 2006/2004 [21] created a network of national authorities responsible for the effective enforcement of EU consumer protection legislation and, from 29 De-

cember 2005, required these authorities to cooperate to ensure the enforcement of EU legislation in this area and, in the event of breaches of these rules within the EU, the obligation to put an end to any infringement, using appropriate legal tools such as injunctions.

6. Institutions that Support Consumer Protection

States should encourage all businesses to resolve consumer disputes in an expeditious, fair, transparent, inexpensive, accessible, and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers. Information on available redress and other dispute-resolving procedures should be made available to consumers. Access to dispute resolution and redress mechanisms, including alternative dispute resolution, should be enhanced, particularly in cross-border disputes. State authorities should ensure that collective resolution procedures are expeditious, transparent, fair, inexpensive, and accessible to both consumers and businesses, including those pertaining to bankruptcy cases.

a) Consumer Protection Authorities

In many jurisdictions, government authorities or agencies are established to administer and enforce consumer protection legal frameworks. These may be standalone entities dedicated entirely to consumer protection issues (such as the National Authority for Consumer Protection of Romania or Consumer Financial Protection Bureau in the US), or entities with broader mandates extending to related matters including competition (such as the Competition and Fair-Trading Commission of Malawi). In some cases, a government Ministry is tasked with the mandate of consumer protection (such as Directorate-General for Competition, Consumer Affairs and Prevention of Fraud in France or State Inspectorate for the Supervision of Non-Food Products and Consumer Protection of Republic of Moldova).

Some common functions of a consumer protection authority include:

- Enforcing consumer protection laws
- Issuing administrative rules or regulations
- Advising the government on consumer protection issues
- Educating consumers on their rights
- Overseeing mechanisms to resolve consumer complaints

In the Republic of Moldova, as non-EU country, the main difficulty for consumers lies in the fact that with the delimitation of the competences of the control bodies by Law no. 131/2012 on the state control on entrepreneurs’ activity [16] and with the entry into force of the Administrative Code on April 1st, 2019 [1], consumers have a reduced access to direct communication with the responsible bodies for the prevention, information and /or sanctioning for violation of its rights, namely:

- Law no. 131 of 08.06.2012, establishes a list of 14 control bodies with distinct, but sometimes intersectoral competences that the consumer cannot independently delimit them. There is a need to delineate the competence in a stan-dardized digital form with an access button through a single call to the Consumer Call Center.
- The Administrative Code contains a volume of 258 article, or the obligation to redress the consumer's complaints established in the Code of 5 working days [1], delays the solution of the consumer's case, which sometimes loses its effects over time, more allies in the case of food and / or defective products. There is a need to substitute written addresses with direct calls to the Single Consumer Call Centre that would immediately solve the problem of consumers or clarify competence by choosing the relevant access button of the body responsible for the settlement.

b) Ombudsman

Some jurisdictions establish an office of the ombudsman to serve as an advocate for consumers in resolving complaints. An ombudsman is traditionally tasked with resolving complaints against public authorities, but this mandate can extend to consumer issues generally. The Ombudsman is appointed by the Government or by Parliament (usually with a significant degree of independence) to investigate complaints and attempt to resolve them, usually through recommendations (binding or not) or mediation.

c) Courts

Many consumer protection frameworks provide consumers with a private right of action against providers for violations. This permits them to bring a legal claim directly against a provider in a court. In many countries, consumer protection laws provide consumers with the ability to bring legal claims against providers in court for violations of their rights. This private right of action allows consumers to seek damages or other forms of relief for harm caused by the provider's actions, such as deceptive advertising or fraudulent business practices. Depending on the specific law and the jurisdiction in which the claim is filed, consumers may be able to bring their claims in small claims court, civil court, or even as part of a class action lawsuit. Courts play an important role in enforcing consumer protection laws and holding providers accountable for their actions.

d) Civil Cociety

Professional and industry organizations may adopt their own codes of conduct or rules relating to treatment of consumers which they can enforce against their members. They may also establish complaints and dispute resolution mechanisms. For example, the Malaysia Association of Money Services Business (MAMSB), an industry organization for licensed remittance providers, has adopted a “Code of Conduct” that requires fair and transparent dealings with customers and con-

fidentiality of customer information. The MAMSB receives complaints about providers from the public or from other members and can launch an inquiry. If a member is determined to have violated the Code, they may be subject to censure or suspension of their membership.

Consumer associations may also advocate on behalf of consumers. This may include providing input on policy and legislation, bringing claims in court on behalf of groups of affected consumers, or publishing comparative information useful for consumers evaluating providers.

e) Platform and Technology Providers

Platform and technology providers may also incentivize good behavior by businesses and consumers transacting on their platform. User ratings have served as a powerful incentive for good behavior by platform participants without regulatory intervention. Platform providers can also establish their own recourse mechanism to ensure that the consumers are able to lodge their complaints with the platform even if the businesses using the platform are unreachable.

7. Non-formal Digital Tools for Consumer Protections

The consumer requires fast and special protection, as identified in the relationship with the professional as a vulnerable party from the perspective of the factors stated above. There are a variety of non-formal digital consumer protection tools that are not directly regulated by law but are evolving rapidly and in step with technolo-gical developments. These might include:

a) Consumer protection websites - these provide detailed information on consumer rights, how to avoid fraud and how to report illegal business behavior.
b) Online review platforms - these allow consumers to share their experiences with different businesses, thereby helping others make informed decisions and avoid fraudulent businesses.
c) Mobile Apps - some mobile apps provide information about products and services, provide personalized recommendations, and allow users to report business behavior that violates consumer rights.
d) Social media - these can be used to inform consumers about products and services to avoid or to report business behavior that violates consumer rights.
e) Cameras - these are electronic devices that record video and audio and can be used to document interactions with businesses and protect consumers in the event of disputes.
f) Alert services - these allow consumers to receive alerts via email, SMS or mobile notifications when problems are discovered with products or services they have purchased.
g) Data protection software - this software helps protect consumers' personal information from hackers and other cyber threats.
h) Secure payment platforms - these allow consumers to make secure online

payments and protect their financial information.

These are just a few examples of non-formal digital consumer protection tools. There might be many other options available, and consumers have the possibility to explore all options to ensure they are properly protected

It is very important to underline the fact that electronic tools have the potential to greatly empower consumers rights and to create a European public space with safety products and services, especially on:

A. Protection of consumer health and safety;
B. Protection of consumers' economic interests;
C. Protection of legal interests of consumers.

Here are some ways in which electronic tools can be used to achieve the empower of consumer rights and their confidence in e-Governance:

a) Online platforms for information-sharing: Electronic tools can be used to create online platforms where consumers can share information and experiences about products and services. These platforms can be used to alert others to fraudulent or unethical practices, share knowledge about consumer rights and provide information about the quality of goods and services.
b) Online dispute resolution: Electronic tools can also be used to create online dispute resolution mechanisms. This can help consumers to resolve disputes with businesses in a quick and efficient manner, without the need for costly legal proceedings.
c) Consumer advocacy: Electronic tools can be used to support consumer advocacy initiatives. These initiatives can be focused on educating consumers about their rights and providing support to those who have been victimized by unfair business practices.
d) Public opinion polls: Electronic tools can be used to conduct public opinion polls on consumer-related issues. These polls can be used to gauge public opinion on issues such as product safety, environmental impact and consumer protection policies.
e) Online voting: Electronic tools can be used to facilitate online voting on consumer-related issues. This can be particularly useful in situations where consumers are geographically dispersed and cannot attend in-person meetings or events.

Overall, electronic tools have the potential to greatly empower consumers and create a European public space where consumers can share information and work together to achieve common goals. However, it is important to ensure that these tools are accessible to all and that they are used in an ethical and responsible manner.

8. Conclusions and Recommendations

In conclusion, we can state that in the near future the state, through institutions, will systematically monitor the consumer protection policy through the instruments and mechanisms established by law, which supervise the conditions at the national level for consumers in three areas (knowledge and trust, compliance and assurance of compliance and complaints and dispute resolution). The consumer protection policy is also to be systematically monitored with the help of the consumer markets dashboard, which collects data from consumers on recent purchases to track the performance of over 40 consumer markets according to key indicators, such as would be the trust that sellers comply with consumer protection rules, the comparability of offers, the options available in the market, the extent to which consumer expec-tations are met and the damages caused by problems faced by consumers. In addi-tion, the Single Market Program was launched on 28 April 2021 to help the Single Market reach its full potential and ensure Europe's recovery from the COVID-19 pandemic. Empowering consumer rights by fostering digital tools for a European public space would be possible by promoting and implementing the following sectoral measures, namely:

8.1. Consumer Groups

The involvement of consumer interest groups is essential for promoting and protecting the rights and interests of consumers in the EU. Consumer groups represent the voice of consumers and provide valuable insights and perspectives on various consumer-related issues. These groups are typically non-profit organizations that work to advance consumer protection, promote sustainable consumption, and improve the quality of goods and services. The European Consumer Consultative Group (ECCG) is a crucial platform for consulting with national and European consumer organizations. The ECCG comprises representatives of consumer organizations from all EU Member States, as well as from Iceland, Liechtenstein, and Norway. Its main objective is to provide advice and information to the European Commission on any matter related to the protection of consumer interests at EU level.

The ECCG plays a vital role in ensuring that consumer interests are taken into account in the development and implementation of EU policies and legislation. It provides a forum for consumer organizations to exchange best practices and coordinate their activities at the EU level. Additionally, the ECCG can help raise awareness of consumer issues and educate consumers on their rights. Overall, the involvement of consumer groups through the ECCG is an essential component of EU consumer policy and helps to ensure that the interests of consumers are protected and promoted at the EU level.

8.2. Consumer Education

Consumer education is a crucial element of EU consumer policy as it helps individuals to make informed choices and become more confident and competent con-

sumers. The EU has been actively involved in organizing consumer education actions at various levels, including primary and secondary education curricula. One such initiative is the "Consumer Classroom" which is a pan-European and multilingual community site for teachers. This site brings together an extensive consumer education library from across the EU and provides interactive and collaborative tools for preparing lessons and making them available to learners and other teachers. By using this site, teachers can access high-quality teaching resources and exchange best practices with other educators from different countries.

The interactive online consumer education tool "Dolceta" was also designed for trainers and teachers as well as consumers. The tool covers basic consumer rights, product safety, and basic financial education, among others. It provides users with interactive and engaging modules that can be used in a variety of settings, including schools, universities, and adult education programs.

The EU's initiatives in consumer education, such as the "Consumer Classroom" and "Dolceta," demonstrate its commitment to promoting consumer awareness and protection. These initiatives provide teachers and consumers with access to valuable resources and interactive tools that can help them develop the knowledge and skills needed to make informed choices and protect their rights as consumers.

8.3. Consumer Information

Consumer information is critical for ensuring that consumers are aware of their rights and can make informed decisions about the products and services they purchase. The EU has improved access to information through a single digital portal (Regulation (EU) 2018/1724), which provides a centralized platform for consumers to access information and resolve disputes. This portal makes it easier for consumers to access information, seek redress, and resolve disputes, ultimately promoting consumer confidence in the EU market.

The European Consumer Centers (ECC Network) and FIN-NET are two such mechanisms. The ECC Network provides information and advice on cross-border purchases, including resolving consumer complaints. Similarly, FIN-NET fulfills the same role for cross-border financial services complaints. Through these networks, consumers can access information and advice on their rights, how to resolve disputes, and how to make informed choices when purchasing goods and services across borders.

The Commission also organizes consumer information campaigns in the Member States and publishes Practical guides for consumers. These campaigns and guides aim to promote awareness of consumer rights, educate consumers on how to protect themselves from scams and fraud, and provide guidance on how to seek redress if their rights are violated.

SOLVIT is another service dedicated to resolving disputes resulting from violations of EU law. It offers an online platform where consumers and businesses can submit complaints related to the internal market, and SOLVIT will work to resolve the issue through informal means.

The Your Europe portal is also a vital resource for consumers. It provides access to better information on consumer protection policy and brings together various sources of information in a reference information center. The portal offers information on consumer rights, product safety, and redress mechanisms, making it easier for consumers to access the information they need.

8.4. Ensuring Compliance with Consumer Rights.

The EU has established Regulation (EU) 2017/2394 on cooperation between national authorities in charge of ensuring compliance with consumer protection legislation. This regulation aims to facilitate cooperation between national authorities across the EU, providing them with a framework for information exchange and cooperative actions to combat breaches of consumer protection legislation. Through this network, national authorities can conduct investigations and enforcement activities in a coordinated manner. For example, they may conduct internet verifycation activities to check whether websites comply with the law. The network also aims to ensure that national authorities have access to the necessary resources and tools to effectively enforce consumer protection legislation.

The network's scope includes areas such as misleading advertising, holiday packages, and distance sales. By providing a framework for cooperation and information exchange, the network aims to ensure that consumer rights are effectively protected and that consumers can make informed choices when purchasing goods and services.

In summary, ensuring compliance with consumer rights is critical for protecting consumers and maintaining a fair and transparent marketplace. The EU has established a network of national authorities responsible for enforcing consumer protection legislation, providing a framework for cooperation and information exchange to combat breaches of consumer protection legislation. The EU has established various mechanisms to provide consumers with information and advice on their rights and how to make informed choices when purchasing goods and services. These digital tools help to promote consumer confidence, protect consumers from fraud and scams, and ensure that consumers can seek redress when their rights are violated.

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Chapter 5.

Ensuring Child Rights and Interests in Media: European and Ukrainian Standards and Practice

Tetiana Ivaniukha[5]

Abstract: The article discusses legislative and other mechanisms for ensuring the rights and interests of children in the media, coverage of children's topics on the British and Ukrainian television. It is established, that observance and protection of the rights and interests of children in media is regulated at several levels: international legislation, national legislation, and the journalistic community at the level of codes, declarations, rules, etc. (self-regulation). In the article an example of a soci-ally important media project of the BBC"Panorama" is examined, where children's topics are constantly demonstrated and analyzed. The conclusion is made, that a clear editorial policy on protection of children’s rights at the BBC, the main docu-ments "Policy on the protection of children", "Guidelines for working with children and young people - program participants", "Code of conduct aimed at protection of the child" need further research and consideration in Ukrainian media practice.

1. Introduction

In the modern world information space, in the context of the conversation about socially responsible media activities, the problems of children and childhood are actively articulated. All possible documents, which would guarantee the observance of the rights of minors, of a global and local scale have been adopted, however, regardless of the level of development of countries, mass media violate the rights of the most vulnerable group - children. The problem is of relevance in developing countries and has been discussed in the media and scientific circles. The aim of the article is to compare European and Ukra-inian legal and regulatory mechanisms on the one hand, and media practices of children issues coverage using television as an example - on the other.

2. Mechanisms for Ensuring the Rights and Interests of Children in the Media Space

Observance and protection of the rights and interests of children in the media space is regulated at several levels: international legislation, national legislation and the journalistic community at the level of codes, declarations, rules, etc. (self-regulation). At the level of international legislation, it is:

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- Convention on the Protection of Human Rights and Fundamental Freedoms (Article 8),
- UN Convention on the Rights of the Child (Article 3),
- Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Violence (Article 31 "Basic Protection Measures"),
- The European Convention on Transfrontier Television (ratified with a declaration and reservation by Law No. 687-VI dated 17.12.2008) provides for the duties of the broadcaster (Article 7).

National legislation of Ukraine:
- Constitution of Ukraine, Art. 28, Art. 32, Art. 34,
- Law of Ukraine "On Protection of Childhood" Art. 10,
- Law of Ukraine "On Information" Art. 5,
- Law of Ukraine "On Television and Radio Broadcasting" Art. 6, Art. 59,
- Article 14 of the Law of Ukraine "On Protection of Personal Data".

However, the ineffectiveness of the legislative mechanisms made it necessary to develop the rules of media representation of children by journalists themselves, editorial teams, national or international journalistic communities. Thus, in 2002, the head of the International Federation of Journalists, A. White, was forced to state that children's issues are considered in most media "in the context of child abuse, exploitation and sensational media discourse. Children, as a rule, are seen and heard from a distance, showing their weak points, young people are rarely allowed to speak for themselves. Raising awareness of children's rights and promoting children's rights is an urgent challenge for the mass media. The mass media should not only fairly, honestly, and accurately report on the experience of childhood, but they should also provide space for diverse, colorful, and creative thoughts of the children themselves" [8].

Self-regulatory mechanisms in this field should also be considered on a national and international scale. In Ukraine, self-regulation is carried out through the Code of Ethics of a Ukrainian Journalist (Article 18), Joint Acts of Agreement from the National Council of Ukraine on Television and Radio Broadcasting, Media Industry and the Public ("Coverage by mass media of the topic of children's participation in armed conflicts", "Protection of a child who suffered sexual violence, when involved in media production", "Coverage of the topic of suicide by mass media").

At the international level, self-regulation is carried out thanks to the standards and guidelines of the International Federation of Journalists ("Putting Children in the Right - Guidelines for Journalists"), UNICEF has developed its own principles of ethical behavior in media coverage of issues related to children (www.unicef.org/media/media_tools_guidelines.html), hosts International Children's Radio and Television Day and other "Media events and good ideas proposed by children for children for children" (MAGIC) around the world (www.unicef.org/magic). Ways out of the critical situation regarding childhood problems in the media are outlined in the "Radio Manifesto" developed by young broadcasters from around the world (www.worldradioforum.org), and the World Press Association for Young Readers

(www.wan-press. org), the World Summit on Media and Children and Adolescents is held every three years (www.childrensmediasummit.com).

Therefore, today we can state a high level of development of methods and rules for covering children's issues and children's participation in the media. The above-mentioned documents and manuals outline the main ideas, difficulties, and recommendations for journalists when covering childhood problems, but European broadcasters have developed their own positive experience in this matter.

3. The BBC Standards as an Example of Media Self-Regulation in Covering Topics Related to Children

Informing, educating, and entertaining a young audience is among the main priorities of the main British broadcaster. Therefore, BBC employees work directly with children and young people as program participants, actors or performers, viewers of shows and other events, as well as when visiting the TV channel [5]. Anyone dealing directly with children on behalf of the BBC must follow the editorial Child Protection Policy, Code of Conduct and Guidelines for Working with Children at the BBC.

In Great Britain, the rules for broadcasting programming and informational content of programs taking into account the protection of the rights and interests of children (so called persons under the age of 18) are legislated in the Communications Act 2003 (sections 3(4)(h) and 319(2)(a)) and (f), in Article 27 of the Audiovisual Media Services Directive, Article 10 of the European Convention on Human Rights Self-regulation is through The Ofcom Broadcasting Code and the BBC Charter and Agreement) and other instructions of the broadcaster itself.

In the main document - "BBC Editorial Guidelines", two main points were traditionally recorded regarding the correct treatment of children involved in one way or another in programs and the safety of television and radio content for children's audiences: "We will always strive to preserve the well-being of children and young people, who participate and are featured in our materials, regardless of where in the world we operate. We also must place material that may not be suitable for children in the right places in the schedule" (http://www.bbc.co.uk/ editorial guidelines). After a series of investigations and reports in 2015-2016 into the activities of the BBC, a decision was made to change the guidelines and the actual management of the British Broadcasting Corporation. In addition, BBC TV channels have repeatedly appeared in the reports of the Office of Communications on the investigation of complaints against broadcasters.

The Office of Communications (Ofcom) is the UK's television, telecommunications, and postal regulator. It became the BBC's first external regulator in 2017, after 94 years of self-regulation by Britain's largest and oldest broadcaster. Among Ofcom's main functions in relation to the BBC, apart from those of governance, is to regulate the content standards of the BBC's television, radio, and commissioned programmes, in accordance with standards and codes of fairness.

So today, thanks to many years of experience of the BBC, including negative ones (such as the scandals of the early 2010s with former TV presenters Jimmy Savile, Stuart Hall and others), as a result of public, governmental, parliamentary discussions, through cooperation with The Office of Communications has developed a clear editorial policy on the protection and protection of children's rights, and created a number of documents that guide British and foreign BBC journalists covering children's issues.

Among them: "Child Protection and Safeguarding Policy", "The editorial guidance on working with children on the BBC", "Code of conduct aimed at for the protection of the child". In particular, the "Code" formulates ten golden rules for the interaction of BBC em-ployees with children and young people under the age of 18:

1. Always prioritize your child's safety and well-being.
2. Always act within professional boundaries - ensure that all contact with children is essential to the program / project / activity you are working on. You must always use BBC equipment when interacting with children as the use of personal phones or cameras is not permitted.
3. Remember that they are children first, and then program participants.
4. Never give out your personal contact information, "friend" or "follow" children you work with on social networking sites.
5. Do not take responsibility for the child in practical care situations, for example, taking the child to the toilet even in case of urgent need. If the child needs care, notify the parent or guardian.
6. Never lose sight of the fact that you are with children - behave appropriately and use appropriate language at all times.
7. Listen to children and respect them at all times, do not patronize them and avoid favoritism.
8. Treat children and young people fairly and without prejudice or discrimination.
9. If you observe children getting involved in an argument or other situation that may put them at risk, you must report this to the Children's Adviser.
10. Finally, if you have any concerns about the welfare of a child or if you feel that someone is behaving inappropriately towards children, you have a responsibility to report your concerns to your children's adviser [6].

The Child Protection and Safeguarding Policy highlights five key points: 1.5 Program producers have a responsibility to take care of the children involved in the creation of our content and follow the Office of Communications' Broadcasting Code and the BBC's Editorial Guidelines. Editorial policy should be further discussed when there is a risk of harm to children through participation in the program, or if a child is the subject of the program.

1.6 In addition, where there is a risk of harm to children or there is a threat to the

safety of a child, further agreement with the BBC's Head of Safeguarding is also required. These discussions will help content producers to ensure that robust measures and procedures are in place to reduce the risks to children resulting from their participation and to ensure that follow-up actions are agreed.

1.7 Whether your concern is something a child or other person said to you, you saw or heard something that made you uncomfortable, or you became aware of a policy violation, you should share your concern. Regardless of how you found out or how the child contacted the BBC.

1.8 If you have concerns about the behavior of an adult towards a child, be it a manager, colleague, friend, carer, you should speak to your Children's Adviser or, if you prefer, you can speak to any member of the Child Protection Team , including with the Head of Environment, Health and, in exceptional circumstances, you can email your concern using the Child Protection link. You can be sure that you will not suffer any personal harm because of it.

1.9 If you have any online safeguarding concerns about online grooming or inappropriate images, you should report them to the BBC's Head of Safeguarding Children immediately [4].

In recent years, Ofcom and the management and employees of the television and radio corporation have made every effort to create a safe and comfortable environment for children's audiences, provided mechanisms for accepting complaints (on the BBC website there is a section with clear instructions for submitting a complaint and clarification about complaints, which have been received since 2012 https://www.bbc.co.uk/helpandfeedback/corrections_clarifications), Occom's annual bulletin also contains a list of complaints received, detailed consideration and analysis of offending programs (Ofcom Broadcast Bulletin). It is appropriate in the context of the conversation about the standards of coverage of children's topics to consider scenarios from the media practice of the British public broadcaster.

4. Media Representation of Children's Topics in BBC Television Programs

An example of a socially important media project of the BBC, where children's topics are constantly articulated and analyzed, is the "Panorama" program. Dedicated to current events on a British and global scale, it pays attention to the problems of childhood too. Journalists, using the methods of interviews, investigations, storytelling, problem reporting, study of archives, attracting statistical data, hidden filming, creating infographics, expose urgent problems of British society, including children and youth, in the age of global, informational, worldview challenges.

The analysis of the programs gives reason to talk about the following thematic scenarios of coverage of children's problems:

- Children's health (mental and physical health of children) - "Kids in Crisis"

(03.10.2018), "Please Don't Take Our Child" (07.09.2014) , "The Truth about Pills and Pregnancy 07/06/2013";

- Problems in the field of education (violation of children's rights in private schools, Muslim schools in the British education system, preschool education, problems of security in schools, school reforms) - "Profit is more important than students?" (Profits before Pupils? 02.10.2018), "British Schools - Islamic Rules" (British Schools, Islamic Rules 22.11.2010), "The Cost of raising Britain" (27.02.2012);
- Child abuse and bullying - "Teenage Prison Abuse Exposed 11.01.2016";
- Sexual violence and grooming – "Scandal in the Church of England" (29.04.2019), "Stolen Childhoods: The Grooming Scandal" (16.03.2015), "Child Abuse" (When Kids Abuse Kids 25.01.2018);
- Children and crime - "Knives in the Classroom" (09.09.2019), "Murder on the Streets" (03.09.2018), "Hate on the Street" (12.10.2017);
- Children and gender issues - "Trans Kids: Why Medicine Matters" (Trans Kids: Why Medicine Matters, 12.06.2019).

It is obvious that the program covers quite sensitive children's topics that require special delicacy and ethics. Therefore, not only journalists and presenters are involved, but also representatives of the Child Protection Group, the Adviser on Work with Children, as well as heads of some departments, for example, health care, environment, etc. In the absence of the child's or parents' consent, their faces do not appear in the programs, animation is used to visualize the old life situations of the program's characters. Children's psychologists, doctors, teachers, school principals, government representatives and parliamentarians are involved in the programs as experts.

In the example of the Panorama program, we see due care being taken regarding the physical and emotional health and dignity of people under the age of 18 who participate or are otherwise involved in the program, a balance between the public interest and the child's right to non-interference in personal life.

In addition to working with children both on and off-screen, the BBC provides information on crisis management and child abuse. In particular, on the website of the program there is a tab for each issue with useful contacts, including the coordinates of the "Children's Line" (a helpline for children), the "National Association of People whose rights were violated in childhood", RACE (Parents Against Child Sexual Exploitation), the "Victim Support" organization and many others.

Thus, using the example of the BBC Panorama program, we are convinced of the effectiveness of the complementary action of legislative (international and national) and self-regulatory mechanisms to ensure the rights and interests of children in the media space. In our opinion, a clear editorial policy on the protection and protection of children's rights at the BBC, the main documents "Policy on protection and protection of children", "Guidelines for working with children and young people – par-ticipants in programs", "Code of conduct aimed at for the

protection of the child" need further research and consideration in domestic media practice.

5. Ukrainian Media Practices in the Field of Representing Child Issues

In addition to the current legislation - international and national, in Ukraine the observance of children's rights in the media space is carried out by the Ombudsman. Since 2013, the Ombudsman of the Verkhovna Rada of Ukraine has initiated the issue of creating a safe information space for and about the child [1].

The challenge is to act in the best interests of the child. It is not about the fact that someone will forbid journalists to use a child as a participant in a talk show or report. It is necessary to find a balance that will allow, on the one hand, to protect the interests of the child and, on the other hand, to maintain freedom of speech.

Children need special attention regarding the protection of their personal data, as children are less aware of the relevant risks, consequences and safeguards, as well as their rights regarding the processing of personal data. Principles of presentation of issues related to children in Ukraine are the following:

- it is necessary to respect the honor, dignity and rights of every child under any conditions;
- when interviewing and preparing informational materials about children, special attention should be paid to ensure the right of each child to privacy and con-fidentiality, to ensure that children's opinions are heard, to participate in deci-sion-making that affects them, and to protect against violence and abuse, including potential violence and abuse;
- it is necessary to protect the basic rights and interests of children, which are more important than any other considerations, including the need to promote and facilitate the establishment of children's rights;
- trying to best protect the rights and interests of the child, it is necessary to take into account the points of view of the children themselves and take them into account in accordance with the age and maturity of the children;
- it is necessary to consult about the possible political, social and cultural consequences of each report about children with those who best understand the situation of children and can most objectively assess it;
- don't publish a story, article or photo that could put a child, siblings or peers at risk, even if you change their name, hide their face or don't share their name at all.

Before the full-scale invasion of the Russian Federation, a large number of social projects were produced on the leading Ukrainian channels, in particular on the "Inter" and "STB" channels. Despite the total commercialization and dominance of various types of infotainments, through which negativity is often broadcast in the form of on-screen propaganda of violence, cruelty, instilling an undemanding taste, there are many positive examples of programs and projects of a humanistic orien-

tation on the air of these television channels. These are, in particular, the programs "Wait for me", "The heart will tell", "Applies to everyone" ("Inter"), "Honey, we’re killing the kids", "Save our family", "House for dad" (“STB”).

In the spring of 2012, the social project "The heart will tell..." was launched on the "Inter" TV channel. The program is devoted to the adoption of children. It is led by the Olympic champion Lilia Podkopaeva. During the project "Heart will tell..." 10 pupils of orphanages - children aged 7-13 - were able to choose their parents. The channel gives orphans the opportunity to spend a certain amount of time with foster families and then decide who they want to stay with. Each program is dedicated to one child. It has a plot about a small hero, communication with him in the studio of the program presenters and guests. Each program features two families, each of which wants to adopt that particular child. The audience is shown a plot about how the child spent the weekend with each of the families. At the end of the program, the hero himself chooses the parents with whom he would like to live.

While the child makes a choice, guests in the studio discuss important issues related to the arrangement and adaptation of orphans in foster families. Opinions are shared by experts, directors and teachers of orphanages, volunteers, representatives of charitable foundations, foster parents, graduates of boarding schools and invited guests. A total of 11 episodes of the "Heart will tell..." project were broadcast. The duration of each is 60 minutes.

This and other programs show that the participation of the "Inter" TV channel in social projects related to the search for missing relatives and friends, the search for parents for orphans, participation in the lives of adults and children who have problems and efforts to involve the public in solving them - all this makes this TV channel a guide of humanistic values in an indifferent society.

On the TV channel STB, talk shows and reality shows are most relevant to the coverage of children's topics. Although some researchers and media critics completely deny their social significance, noting that the characters of reality shows present to the viewer the moral pathology of their personal relationships as a norm, and sharply criticize this genre, which programs the viewer to manifest lower instincts: "Let's eat, lose weight, wait and we will dance", because the secret of the success of the TV format is expressed in the formula KISS - Keep it simple, stupid [2], some consider their social benefit to be undeniable. It is the second group that includes the STB TV projects "House for dad", "Save our Family" and "Honey, we’re killing the kids".

The show "Honey, we're killing the kids" is a reality project based on the British format with the same name. The heroes of the show are families in which both children and their parents lead a wrong way of life. The presenter shows parents a terrifying visual forecast of what their children will look like in 40 years if they do not change their family's lifestyle. The purpose of the show is to show that it is not easy to raise healthy and happy children and be the same, but this is the key to a strong family and a confident future for children.

In the project, families are helped by psychologists, nutritionists, experts in physiology and physical culture. Using an individual approach, they help the heroes to improve their lives, structure and systematize relationships in the family, remind parents that children need their attention, remind parents that they parents and they cannot have free time from their children.

This project presents the materials that one can review, analyze, and understand how to use the received advice in your own home, to properly build relationships with children. The project helps to find the golden mean in relationships, gives the project heroes and viewers the opportunity to change their lives with their own hands. The project shows that parents often hide behind their children, because they are sure that they have bad children, not seeing the problem in themselves, but sometimes parents need to change first of all, because children completely repeat the behavior of their parents.

An important fact of the project "Honey, we're killing the kids" is that each episode is completely different from the previous one, thus the viewer gets to know ordinary Ukrainian families and their lives. In the process of getting to know the characters of the project by the audience, what is important is their appearance, the house where the family lives. Having received these two pictures, the viewer is guided by his own stereotypes and ideas. In order to meet the needs of the audience, the directors of the project from the first minutes focus on small things, so the viewer finds himself in a different life, one might say, becomes a friend of the family for a while.

"House for dad" is an own project of STB, which has been on the air of the TV channel since April 2012. Each program shows the story of a family consisting of a father, mother, one or more children. Among the problematic questions that are solved in the program are the following: "Are you tired of everyday life? And your husband does not help and does not appreciate your work? Does he pay not enough attention to the children and prefers to spend all his time not with you, but with the TV or computer? Especially for such families, the TV channel STB created a unique project "Daddy's House", which started airing in April 2012 and already has an army of supporters - mothers who dream of having at least a little rest".

Each program is the story of one family, where there is a father, a mother and children. In this project there are no actors, fakes, and deception. Everything is real: characters, feelings, emotions. According to the terms of the project, a mother tired of many years of household duties goes on vacation for a week and does what she always dreamed of, or what she did not have enough time for. For example, she jumps with a parachute, or scuba dives, or enjoys spa procedures and a relaxing massage - in short, she does whatever she wants. Meanwhile, the father stays at home with the children, performs all parental and domestic duties, as well as certain tasks of the wife. Dad must prove that he can arrange a life, become a different and real father for children. And most importantly, dad should change and understand how much he loves his wife and underestimates her work. Serious tests await the hero. He will receive mandatory tasks, and if he completes them all, he

will receive 30 thousand hryvnias. If he fails to do at least one thing, he will lose everything. Dad can also ask for help from an expert by pressing the red button. The task will be completed, but the winning amount will decrease by five thousand hryvnias.

For two seasons, the "House for Dad" project has changed the lives of many families which took part in it. Men began to understand what hard work lies on the shoulders of their wives, and even help in every possible way. Many families not only changed their situation, improved their relationships, but thanks to the winnings, they were able to realize some of their dreams. For this purpose, in both projects - "Honey, we are killing our kids" and "Save our family", families are assigned a psychologist who monitors what is happening, with whom the trend and dynamics of the family are discussed. These projects have one thing in common - people do not know how to negotiate with each other, they do not know how to be open to each other.

As you can see, the projects of the TV channel STB are aimed at establishing dialogue in families and society and perform an important social role. The editorial concept of all the analyzed programs of these TV channels is to achieve understanding in the family and society, participation of viewers in the fate of the heroes of the programs, harmonization of their inner world, establishment and presservation of mental balance, development of own attitudes and value guidelines.

However, the problems of coverage of children's topics in Ukraine include the following: there is no regulatory and legal document that would protect children at the legislative level from the harmful effects of publicly available information; norms of self-regulation do not work to their full extent, and legislation in the field of protecting children from harmful media information is of a general nature. This is exactly what broadcasters who are not afraid of punishment use. For example, the National Television and Radio Broadcasting Council issued only a warning to the TV channel for the broadcast of the talk show "Applies to Everyone" ("Inter") about a 12-year-old woman in labor. Also, the decision of the District Administrative Court of the city of Kyiv, which canceled UAH 1.6 million fine of the Natio-nal Council for the TV channel STB for showing content that can harm children (talk shows "House for Dad", "One for All", "Battle of Psychics", "Masterchef").

The Ombudsman of the Verkhovna Rada of Ukraine participates in the working group on the creation of children's protection rights in the media, which works under the National Council of Ukraine on Television and Radio Broadcasting. In recent years, the following documents have been created: "Protection of a sexually abused child when involved in media production", joint act of agreement No. 1 of representatives of the media industry ("1+1 Media", "Media Group Ukraine", "StarlightMedia ", Independent Association of Broadcasters), "Media coverage of the topic of suicide", joint agreement No. 2 of representatives of the media industry ("Media Group Ukraine", "StarlightMedia", Independent Association of Broadcasters), etc. [1].

6. Conclusions

Comparative analysis of European and Ukrainian legislative and regulatory framework of children issues coverage in media makes it possible to assert that observance and protection of the rights and interests of children in media is regulated at several levels: international legislation (UN and EU documents), national legislation (British and Ukrainian laws) and the journalistic community at the level of codes, declarations, rules, etc. (self-regulation).

The article analyzes international and national self-regulation. At the international level, self-regulation develops according to the standards and guidelines of the International Federation of Journalists ("Putting Children in the Right - Guidelines for Journalists"), UNICEF documents. In Britain self-regulation develops through the Ofcom Broadcasting Code, BBC Charter and Agreement and other instructions of the broadcaster itself. In Ukraine, self-regulation is carried out through the Code of Ethics of a Ukrainian Journalist (Article 18), Joint Acts of Agreement from the National Council of Ukraine on Television and Radio Broadcasting, Media Industry and the Public ("Coverage by mass media of the topic of children's participation in armed conflicts" and others). The peculiarity of the Ukrainian information space is that a large amount of human rights work is carried out by the Ombudsman.

The undertaken analysis of the prime examples of socially important media projects (television programs) on the Ukrainian (channels “Inter” and “STB”) and British television (the BBC) led to the following conclusions:

- in the British program "Panorama" children's topics are constantly demonstrated and analyzed, it pays great attention to the problems of childhood. Journalists use the methods of interviews, investigations, storytelling, problem reporting, study of archives, attract statistical data, hide filming, create infographics, identify urgent problems of British children and youth, in the age of global, informational, worldview challenges;
- a clear editorial policy on protection of children’s rights at the BBC, the main documents "Policy on the protection of children", "Guidelines for working with children and young people - program participants", "Code of conduct aimed at protection of the child" help guarantee the safety and rights of children on television;
- on the Ukrainian TV channels in the projects "Wait for me", "The heart will tell", "Applies to everyone" ("Inter"), "Honey, we’re killing the kids", "Save our family", "House for dad" (“STB”) the problems of children are raised and the search for their solution is underway, but the rights of minors are often violated;
- the Ukrainian information space demonstrates the need not only for a declaration, but also for the implementation of international, in particular, European standards and practices in the work of domestic journalists.

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Chapter 6.

The European Child Right Standards for the Protecting the Child's Right in Georgia

Magda Japharidze[6]

Abstract: European standards in the field of child rights refer to the standards established by the Council of Europe and the European Union, based on the European Convention on Human Rights, the European Charter of Fundamental Rights, which were developed by the European Court of Human Rights and the Court of Justice of the European Union. This article is an overview of the practice of Court of Justice of the European Union in the field of children's rights. The article analyzes different categories of cases from the jurisprudence of justice and presents the main arguments as well as independent sources in the interpretation of the legislation of the European Union and member states by the court. In the implementation of the European standards of child rights in Georgia, it is important to study and use court precedents, and this article is also a certain contribution in this direction.

Keywords: Child's Rights; European Standards; Court of Justice of the European Union, Georgia

1. Introduction

According to the legislation, the state of Georgia has positive obligations to protect the rights of the child. Georgia is also a participant in various international agreements in the field of child rights protection. In the process of Europeanization of national law, the implementation of European standards for the protection of the child's right to education is very important. From this point of view, it is also important the research and teaching and using in practice of the precedents of the European courts. Judgments of the European Court of Human Rights are actively used in Georgia, however, after the Association Agreement with the European Union came into effect, the decisions of the Court of Justice of the European Union also gained special importance. In addition to the primary sources of law established by the European Union (EU) - treaties, conventions, secondary legislation, the European law of children's rights also includes court decisions. [1] Together they form the basis of European law on the rights of the child. Adoption of the Charter of Fundamental Rights of the European Union in 2000, entry into force of the Treaty of Lisbon in 2009, created new instruments for the protection of children's rights in the European Union. The Charter, unlike the European Convention, inclu-des detailed references to the rights of the child. [2] From this

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period, the Court of Justice of the European Union (CJEU) interprets the rights of the child also according to the provisions of the Charter. The court decisions interpret specific provisions of legal acts, verifying the correct implementation of EU legislation by Member States in national legislation in the field of children's rights. Decisions of the Court of Justice are binding and are considered sources of EU law.[3] The court decisions are an important source for EU membership candidate countries, including Georgia's in the field of legal approximation with the EU.

The presented study was carried out within the doctoral research grant of the Shota Rustaveli National Science Foundation of Georgia and aimed to analyze the decisions of the European Court of Justice in the field of children's rights. The paper is the first attempt to initiate research in this field, it does not claim to be a comprehensive analysis and presents some initial research results on this topic, which will continue to be explored in the future.

2. Research Method

Qualitative and quantitative research methods are used in the work. By means of the qualitative research method, a hypothesis will be formed, based on which the dissertation research will be carried out. Through the method of quantitative research, the hypothesis formed because of qualitative research will be tested. Historical, systematic, logical, and statistical analysis methods are one of the important research methods for the dissertation, as well as the analysis of court decisions. During the research period, through the search system of the judgments of the European Court of Justice (https://curia.europa.eu), using various search words, the judgments made by the European Court of Justice regarding the rights of the child were searched, thematically sorted, translated, the practice of Georgian children's rights was analyzed, member states study of the practice of its use based on the data of preliminary decisions of the court. The decisions concerned such areas as citizenship, the area of freedom, security and justice, judicial cooperation in civil matters, asylum policy, freedom of movement of armed forces, social policy and fundamental rights, the Charter of Fundamental Rights and fundamental rights, the area of security and justice - judicial cooperation in criminal law issues and more.

In the research process, using the quantitative and qualitative research method, decisions were grouped into the following areas: 1) child abduction; 2) the best interest of the child; 3) workers, employment, maternity leave; 4) family, parental responsibility, 5) housing; 6) Social allowance and assistance (Table 1). Using the method of quantitative research, 78 cases were studied according to the categories of cases, from which, to imagine thematically, the cases will be divided quantitatively into the following issues: child abduction 6, the best interest of the child 2, workers, employment, maternity leave 3, family, parental responsibility, 18, housing 29, Social allowance, assistance 20 cases.

Table 1. Court Judgments by Case Categories

Types of Cases	Number of Cases
International child abduction	6
Best interests of the child	2
Workers, Pregnant workers, Maternity leave	3
family, parental responsibility, Social Issues	18
Right of residence	29
social assistance and child benefit conditions	20
Sum	78

In addition, within the framework of this research, one of the most important cases (total of 5 cases) from all categories of cases was translated into Georgian and used for this scientific article. For the analysis of court cases, we took the decisions, for the selection of which the following keywords "Fundamental rights", "best interest of the child" and "Child Righ" were used. The table includes mainly those cases on which the European Court of Justice made decisions and interpreted the European Charter of Fundamental Rights.

3. Review of Precedent Cases of the Court of Justice of The European Union

3.1. Judgment of the Court (Third Chamber) 13 February 2014.

One of the cases of the European Court of Justice in the field of children's rights that we studied and used for this study is JUDGMENT OF THE COURT (Third Chamber) 13 February 2014. The case specifically concerns to (Social policy - Directive 92/85/EEC - Protection of the safety and health of workers - Pregnant workers and workers who have recently given birth or are breastfeeding - Maternity leave - Maintenance of payment and/or entitlement to an adequate allowance - Directive 96/34/EC - Framework Agreement on parental leave - Individual right to parental leave on the grounds of the birth or adoption of a child - Working and remuneration conditions - National collective agreement - Female workers having taken maternity leave after interruption of a period of unpaid parental leave – Refusal to pay a salary during the maternity leave). Two claims were submitted to the court in this case for a preliminary ruling under Article 267 TFEU from the Työtuomioistuin (Finland), made by decision of 28 September 2011, received at the Court on 3 October 2011, in the proceedings, which merged.

According to the first complaint, request for a preliminary ruling relate, in essence, to the interpretation of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1), Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4) and Directive 2006/54/EC of the European Parliament

and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23).

The second requests has been made in proceedings between, on the one hand, Terveysja sosiaalialan neuvottelujärjestö TSN ry (trade union in the health and social sector; 'TSN') and Terveyspalvelualan Liitto ry (trade union in the health services sector), supported by Mehiläinen Oy ('Mehiläinen') and, on the other, between Ylemmät Toimihenkilöt (YTN) ry (senior officials' trade union) and Teknologiateollisuus ry (Technological industry association) and Nokia Siemens Networks Oy ('Nokia Siemens') concerning the refusal by the respective employers of two Finnish female workers, on the basis of collective agreements applicable to them, to pay their remuneration, as provided for in those agreements during their maternity leave, on the ground that those workers had interrupted unpaid parental leave.

About the legal context, European Union law, the court considers a directive 92/85, The recitals 1 and 17 in the preamble to Directive 92/85 read as follows: 'Whereas Article 118 a of the [EEC] Treaty provides that the Council must adopt, by means of directives, minimum requirements to encourage improvements, especially in the working environment, as regards the health and safety of workers. ასევე Whereas, moreover, provision concerning maternity leave would also serve no purpose unless accompanied by the maintenance of rights linked to the employment contract and or entitlement to an adequate allowance', in addition, Article 8 of Directive 92/85, Article 11 of Directive 92/85, ECLI:EU:C:2014:73 Directive 96/34, ECLI:EU:C:2014:73. On regards the Finnish law, the court based on the Law on employment contracts, The Law on sickness insurance, The applicable collective agreements, ECLI:EU:C:2014:73 5.

Finally, the court of justice said on these request the Court (Third Chamber) hereby rules: Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC must be interpreted as precluding a provision of national law, such as that provided for in the collective agreements at issue in the main proceedings, pursuant to which a pregnant worker who interrupts a period of unpaid parental leave within the meaning of that directive to take, with immediate effect, a maternity leave within the meaning of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Direc-tive within the meaning of Article 16(1) of Directive 89/391/EEC) does not benefit from the maintenance of the remuneration to which she would have been entitled had that period of maternity leave been preceded by a minimum period of resum-ption of work. [4]

3.2. Judgment of the Court (Third Chamber) 12 November 2014

The next case that we have highlighted from the court precedents is judgment of the court (Third Chamber) 12 November 2014 (Reference for a preliminary ruling - Area of freedom, security and justice - Judicial cooperation in civil matters - Jurisdiction in matters of parental responsibility - Regulation (EC) No 2201/2003 - Article 12(3) - Child whose parents are not married - Prorogation of jurisdiction - No other related proceedings pending - Acceptance of jurisdiction - Challenge to the jurisdiction of a court by a party who has made an application to that court)

In this case (In Case C-656/13) was requested a preliminary ruling under Article 267 TFEU from the Nejvyšší soud (Czech Republic), made by decision of 12 November 2013, received at the Court on 12. According to foundations of the request, this reference for a preliminary ruling concerns the interpretation of Article 12(3) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1). The reference has been made in proceedings between Ms L, the mother of the children R and K, and Mr M, the father of those children, concerning the custody of those children, who are with their mother in Austria, whereas their father lives in the Czech Republic.

About the legal context, the court judgment mentions the European Union law, and particularly the court refers to the regulation No 2201/2003, Recitals 5 and 12 in the preamble to Regulation No 2201/2003 state: (5) In order to ensure equality for all children, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding. (12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.' Article 1 of Regulation No 2201/2003 defines the scope of the regulation. It provides: '1. This Regulation shall apply ... in civil matters relating to: (b) the attri-bution, exercise, delegation, restriction, or termination of parental responsibility.

Regarding the Czech law, the court refers to a paragraph 39(1) of Law No 97/1963 on private and procedural international law provides: 'In matters of the upbringing and maintenance of minors and in other matters concerning them, if they are Czechoslovak citizens, the Czechoslovak courts have jurisdiction, even where they live abroad. ...' Paragraph 104(1) of the Civil Procedure Code provides: 'If the conditions for conducting proceedings are not met and the defect cannot be remedied, the court shall discontinue the proceedings. If the matter does not fall within the jurisdiction of the courts or if other proceedings are to come first, the court shall transfer the matter, once the order discontinuing the proceedings has binding force, to the competent body; the legal effects linked to the bringing of the

claim (application to initiate proceedings) shall however be maintained.'

In conclusions, the Court (Third Chamber) hereby rules: 1. Article 12(3) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as allowing, for the purposes of proceedings in matters of parental responsibility, the jurisdiction of a court of a Member State which is not that of the child's habitual residence to be established even where no other proceedings are pending before the court chosen. 2. Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning that it cannot be considered that the jurisdiction of the court seised by one party of proceedings in matters of parental responsibility has been 'accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings' within the meaning of that provision where the defen-dant in those first proceedings subsequently brings a second set of proceedings before the same court and, on taking the first step required of him in the first pro-ceedings, pleads the lack of jurisdiction of that court. [5]

3.3. Judgment of the Court (Fourth Chamber) 9 January 2015

On of the important cases on the child right is judgment of the court (Fourth Chamber) 9 January 2015 (Reference for a preliminary ruling - Urgent preliminary ruling procedure - Judicial cooperation in civil matters - Jurisdiction, recognition, and enforcement of decisions in matrimonial matters and the matters of parental responsibility - Child abduction - Regulation (EC) No 2201/2003 - Article 11(7) and (8)). This case based on the request for a preliminary ruling concerns the interpretation of Article 11(7) and (8) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1: 'the Regulation'). 2. The request has been made in proceedings between RG and SF concerning parental responsibility for their son TE, who has been retained in Poland by SF.

Regarding a legal context, the court refered to the 1980 Hague Convention: Article 3 of the Convention on the Civil Aspects of International Child Abduction concluded at the Hague on 25 October 1980 ('the 1980 Hague Convention') provides: 'The removal or the retention of a child is to be considered wrongful where: 1. (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and 2. (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. In addition, the court refers to Article 12 of the 1980 Hague Convention, Article 13 of the 1980 Hague Convention, ECLI:EU:C:2015:3, ECLI:EU:C:2015:3 5

Regarding Belgium law, the court referred to judgment of 9. 1. 2015 — CASE C-

498/14 PPU RG, Article 1322i of the Belgian Judicial Code, as amended by the loi du 30 juillet 2013 portant création du tribunal de la famille [law of 30 July 2013 on the creation of a family court] ('the Judicial Code'), in addition, 6 ECLI:EU:C:2015:3, Since the father considered that that judgment ratified the wrongful removal of their child to Poland and accorded to that wrongful act a positive legal consequence, the father brought an appeal against that judgment before the cour d'appel de Bru-xelles, seeking, principally, the exclusive exercise of parental authority and primary accommodation rights in respect of the child.

Finally, the court of justice made the following interpretation: On those grounds, the Court (Fourth Chamber) hereby rules: Article 11(7) and (8) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as not precluding, as a general rule, a Member State from allocating to a specialized court the jurisdiction to examine questions of return or custody with respect to a child in the context of the procedure set out in those provisions, even where proceedings on the substance of parental responsibility with respect to the child have already, separately, been brought before a court or tribunal.[6]

3.4. Judgment of the Court (First Chamber) 17 October 2018

Another case that we have selected out for this study from a specific category of cases is judgment of the court (First Chamber) 17 October 2018 (Reference for a preliminary ruling - Urgent preliminary ruling procedure - Judicial cooperation in civil matters - Regulation (EC) No 2201/2003 — Article 8(1) - Jurisdiction in matters of parental responsibility - Concept of 'habitual residence of the child' - Requirement of physical presence - Detention of the mother and child in a third country against the will of the mother - Infringement of the fundamental rights of the mother and child). In this case C-393/18 PPU, was requested for a preliminary ruling under Article 267 TFEU from the High Court of Justice (England and Wales), Family Division, made by decision of 6 June 2018, received at the Court on 14 June 2018, in the proceedings.

The case request was related to a preliminary ruling concerns the interpretation of Article 8 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1). 2. The request has been made in proceedings between UD, the mother of an infant girl born in Bangladesh on 2 February 2017 ('the child'), and XB, the father of that child, concerning applications made by UD for orders, first, that the child be made a ward of the referring court and, secondly, that she return with the child to the United Kingdom in order to participate in the proceedings before the referring court.

Regarding a legal context, the court mentioned recitals 1 and 12 of regulation No 2201/2003 state: '(1) The European [Union] has set the objective of creating an

area of freedom, security, and justice, in which the free movement of persons is ensured. To this end, the [European Union] is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market. (12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular, on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.' In addition, article 1 of Regulation No 2201/2003, entitled 'Scope', specifies the civil matters to which that regulation applies and those to which it does not apply, and Article 2 of the regulation, entitled 'Definitions', is worded as follows: 'For the purposes of this Regulation: (4) the term "judgment" shall mean a divorce, legal separation or marriage annulment, as well as a judgment relating to parental responsibility, pronounced by a court of a Member State, whatever the judgment may be called, including a decree, order or decision, and finally, 6 Chapter II of that regulation, entitled 'Jurisdiction' contains, in Section 2 entitled 'Parental responsibility', Article 8, itself entitled 'General jurisdiction', which provides, in paragraph 1, the following:

Finally, the court interpreted that article 8(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted to the effect that a child must have been physically present in a Member State in order to be regarded as habitually resident in that Member State, for the purposes of that pro-vision. Circumstances such as those in the main proceedings, assuming that they are proven, that is to say, first, the fact that the father's coercion of the mother had the effect of her giving birth to their child in a third country where she has resided with that child ever since, and, secondly, the breach of the mother's or the child's rights, do not have any bearing in that regard. [7]

3.5. Judgment of the Court (Third Chamber) 16 July 2020

One of the cases is related to the judgment of the court (Third Chamber) 16 July 2020 (Reference for a preliminary ruling - Area of freedom, security and justice - Immigration policy - Right to family reunification - Directive 2003/86/EC - Article 4(1) - Concept of a 'minor child' - Article 24(2) of the Charter of Funda-mental Rights of the European Union - Best interests of the child - Article 47 of the Charter of Fundamental Rights - Right to an effective remedy - Children of the sponsor who have reached majority during the decision-making procedure or court proceedings against the decision refusing the family reunification application). This case was merged to the cases C-133/19, C-136/19 and C-137/19. In this case, there was re-quested a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, Belgium), made by decisions of 31 January 2019, received at the Court on 19 February 2019 (C-133/19), and 20 February 2019 (C-136/19 and C-137/19), in the proceedings. These requests for a preliminary ruling

have been concerned the interpretation of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12) and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). 2. The requests have been made in proceedings between B. M. M. (C-133/19 and C-136/19), B. S. (C-133/19), B. M. (C-136/19) and B. M. O. (C-137/19), Guinean nationals, and the État belge (Belgian State) concerning the rejection of applications for a visa for the purpose of family reunification.

Regarding a legal context, the court referred to the European Union law, in particular, recitals 2, 4, 6, 9 and 13 of Directive 2003/86 read as follows: '(2) Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognized in particular in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [signed in Rome on 4 November 1950] and in the [Charter]. (4) Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty. (6) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria. (9) Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children. (13) A set of rules governing the procedure for examination of applications for family reunification and for entry and residence of family members should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as being transparent and fair, in order to offer appropriate legal certainty to those concerned.' The court also referred to the Article 1, Article 4, Article 5 of Directive 2003/86

Regarding the Belgian law, the court used the first subparagraph of Article 10(1) of the loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Law of 15 December 1980 on the entry to Belgian territory, stay, residence and removal of foreign nationals) (Moniteur belge of 31 December 1980, p. 14584), in the version applicable to the facts of the main proceedings, ('the Law of 15 December 1980') provides: 'Subject to Articles 9 and 12, the following persons shall be granted leave to reside in the Kingdom for more than three months as of right: 4° the following family members of a foreign national who, for at least 12 months, has been admitted or granted leave to reside in the Kingdom for an unlimited period, or who, for at least 12 months, has been granted leave to become established there. This 12-month period shall be waived if the marital relationship or the registered partnership existed before the arrival of the foreign national who is being joined in the Kingdom or if they have a common minor child, or if the persons concerned are family members of a foreign national recognized as a refugee or a beneficiary of subsidiary protection status: - his foreign spouse or the foreign national with whom he or she is in a registered

partnership considered to be equivalent to marriage in Belgium, who is coming to live with him or her, provided that both parties concerned are over the age of 21 years. This minimum age shall be reduced to 18 years, however, where the marital relationship or the registered partnership, as the case may be, existed before the arrival in the Kingdom of the foreign national who is being joined; – their children, who are coming to live with them before they have reached the age of 18 years and are unmarried; – the children of the foreign national who is being joined, his or her spouse or the registered partner referred to in the first indent, who are coming to live with them before they have reached the age of 18 years and are unmarried, provided that the foreign national who is being joined, his or her spouse or that registered partner has the right of custody and control of those children and, in the event of shared custody, on condition that the other person sharing custody has given his or her agreement. The court also referred to the Article 10(3), Article 12b.

Finally, in this case, the European Court of Justice interpreted: On those grounds, the Court (Third Chamber) hereby rules: 1. Point (c) of the first subparagraph of Article 4(1) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as meaning that the date which should be referred to for the purpose of determining whether an unmarried third-country national or refugee is a minor child, within the meaning of that provision, is that of the submission of the application for entry and residence for the purpose of family reunification for minor children, and not that of the decision on that application by the competent authorities of that Member State, as the case may be, after an action brought against a decision rejecting such an application. 2. Article 18 of Directive 2003/86, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding an action against the rejection of an application for family reunification of a minor child from being dismissed as inadmissible on the sole ground that the child has reached majority during the court proceedings. [8]

4. Conclusions

In conclusion, it can be said that the Court of Justice of the European Union mainly considers preliminary requests in children's rights cases. Under this procedure, a national court or tribunal applies to the Court of Justice of the European Union for clarification of primary (eg Treaties) or secondary (eg decisions and legislation) EU sources used by the national court or tribunal in the current case.

The Court of Justice of the European Union is relatively limited in considering cases related to children's rights. Until now, the Court of Justice has made decisions related to the rights of the child mainly in connection with the issues of citizenship and free movement of the European Union. Recently, the Court has ruled on children's rights in various areas, such as free movement, EU citizenship, migration, foster care, habitual residence, family life and non-discrimination.

The main approaches of the court of justice were identified from the cases of

differ-rent categories included in the research: area of freedom, security and justice Judicial cooperation in civil matters - Jurisdiction in matters of parental responsibility, child whose parents are not married - Prorogation of jurisdiction, Judicial cooperation in civil matters - recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility and Child abduction, Juris-diction in matters of parental responsibility - Concept of 'habitual residence of the child' - Requirement of physical presence - Detention of the mother and child in a third country against the will of the mother - Infringement of the fundamental rights of the mother and child, Area of freedom, security and justice - Immigration policy - Right to family reunification - Concept of a 'minor child'.

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Chapter 7.

Digital Identity and Legal Rights: the EU's eIDAS Regulation as a Model for Global Digital Trust

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Abstract: This study digs into the European Union's eIDAS regulation, a groundbreaking framework for digital identity and authentication. The study investigates how the eIDAS law can go beyond its regional limits to serve as a global model for building digital trust and protecting legal rights in the field of digital identity. This research aims to study the eIDAS legislation by analyzing major provisions within it, such as those dealing with data consent, electronic signatures, and crossborder recognition of eIDs. Furthermore, it investigates the eIDAS model's potential to address difficulties present in the global digital identification ecosystem, as well as its ability to harmonize digital identity standards across varied jurisdictions. Finally, this research paper positions the eIDAS regulation as a beacon of digital trust and legal rights protection, with the potential to guide global efforts to establish robust digital identity frameworks.

Keywords: Digital Identity; Legal Rights: EU's eIDAS Regulation; Global Digital Trust

1. Introduction

In an increasingly digital world, where online transactions and interactions are commonplace, the demand for safe and reliable digital identities has increased dramatically. The European Union's eIDAS policy, which stands for "electronic Identification and trust services for electronic transactions," is an important model of a comprehensive digital identification policy. Understanding the history and impact of digital identity regulation, such as eIDAS, is critical for understanding the broader global context of digital security and trust.

The eIDAS Regulation and other digital identification legislation play an important role in defining the digital landscape by establishing a legal framework that supports secure, trusted, and convenient online interactions. They help to develop trust, facilitate cross-border transactions, reduce fraud, and stimulate innovation. As the digital world evolves, these standards will become even more important in maintaining the integrity and security of our online identities and transactions [1]. The significance of eIDAS as a system permeates the folds of various tangents

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such as Increasing Digital Trust, Facilitating Cross-Border Transactions [2], Reducing Fraud and Identity Theft, and Fostering Innovation.

2. Exploring the eIDAS Regulation as a Model for Global Digital Trust and Legal Rights Protection

The eIDAS Regulation, which went into effect in 2014, was created in response to these changing needs. eIDAS replaced Directive 1999/93/EC, recognizing the prior directive's obsolete nature in the face of current digital concerns. Although the previous directive established a basic framework for electronic signatures, it did not address the broader issues of digital identity and trust services [3].

In the European Union, eIDAS acts as a legal foundation for electronic identifycation and trust services. It recognizes not only electronic signatures but also electronic seals, time stamps, and other forms of authentication. This rule establishes electronic transactions' legal equivalency to their paper-based counterparts, building trust in the digital arena [4].

The eIDAS serves as a seminal model for establishing global digital trust and safeguarding legal rights. The regulation's robust framework for electronic identifycation and trust services has set a precedent that other regions could emulate to foster a secure and interoperable digital environment.

One of the key strengths of eIDAS lies in its focus on interoperability, which ensures that different digital identity systems can work seamlessly with each other. This is important in a global context, where diverse legal and technological infrastructures exist. A study on designing information privacy for Digital-ID in Namibia highlights the importance of localized trust in a globalized setting, emphasizing the need for interoperable systems that can adapt to various sociocultural contexts [5]. The need for legal acts at different levels to regulate the ever-changing digital space, emphasizing the importance of adaptability is well documented within literature [6]. eIDAS focus on interoperability, standardization, legal recognition, focus on public-private partnerships and adaptability to emerging technologies makes it a viable template for global adoption.

3. Digital Identity and Authentication

3.1. Definition and Importance of Digital Identity.

Digital identity represents an individual or entity's unique digital presence and authentication in the online realm. It serves as the foundation for online security, ensuring authorized access to digital services. Additionally, digital identities enable tailored and convenient interactions online, simplifying tasks like online banking and e-commerce. Most importantly, they underpin trust by facilitating secure digital communication and transactions, fostering a safe, efficient, and trustworthy digital ecosystem [7].

3.2. Challenges in the Digital Identity Landscape

The system where digital identities co-exist presents a multifaceted landscape of challenges. Security risks are ever-evolving, with cybercriminals continually devising new ways to compromise digital identities, leaving individuals and organizations vulnerable to phishing attempts, data breaches, and identity theft. Balancing the demand for digital identity with privacy concerns remains an ongoing struggle, as users worry about the collection and potential misuse of personal information. Additionally, navigating the complex legal and regulatory framework governing digital identities across different locations, industries, and use cases poses a significant compliance challenge [8]

3.3. Role of Authentication in Digital Identity Verification

Authentication is crucial to the security and credibility of digital identities. It ensures that only authorized people or organizations have access to digital resources or services. By making it difficult for unwanted users to mimic genuine users, strong authentication systems improve security.

In the context of digital identity verification, robust authentication is essential for preventing fraud, protecting sensitive data, and upholding the integrity of digital interactions. Striking the right balance between security and user convenience in authentication methods is a key challenge in the digital identity landscape [9].

4. The EU's eIDAS Regulation

4.1. Key objectives and principles of eIDAS

4.1.1. Cross-Border Recognition. It promotes cross-border recognition of electronic identification schemes, enabling EU citizens and businesses to use their native eIDs when accessing services in other EU member states.

4.1.2. Legal Equivalence. eIDAS grants electronic transactions the same legal status as traditional paper-based transactions, providing certainty and legal clarity to digital interactions.

4.1.3. Trust Services. It sets standards for trust services, including electronic signatures, time stamps, and electronic seals, ensuring their security and legal validity.

4.1.4. Interoperability. eIDAS emphasizes the interoperability of electronic identification and trust services, fostering a seamless digital ecosystem within the EU.

4.2. Legal framework and scope of the regulation

eIDAS applies to member states' certified electronic identity schemes as well as trust service providers operating within the EU. One important distinction is that eIDAS is a regulation rather than a directive, making it directly applicable to all EU member states. This streamlines legal compliance and ensures that standards are consistent across the EU. National legislation or agreements for trust services employed within closed systems are not superseded by eIDAS. Furthermore, it does not apply to national or EU legislation governing the validity, form, or other legal duties associated with transactions.

The legislation encourages the use of qualified electronic signatures, which are legally equivalent to handwritten signatures. These signatures must meet high requirements for validity, including unique linking, signatory identification, and data integrity.

By granting certificates for electronic signatures and other trust services, qualified trust service providers play an important role in eIDAS. To ensure the validity of these certificates, they must meet stringent requirements such as financial stability, data security, and adherence to data storage standards [10].

5. Promoting Global Digital Trust

5.1. Comparative Analysis of Global Digital Identity Regulations

In the United States, the National Strategy for Trusted Identities in Cyberspace (NSTIC) was initiated to improve upon the credentials used for online services. Unlike eIDAS, NSTIC is not a regulation but a strategy that encourages the private sector to develop identity solutions. It aims for an "Identity Ecosystem" where individuals can choose from a variety of credential providers [11]. However, NSTIC lacks the regulatory teeth and the universal applicability that eIDAS commands.

India's Aadhaar is another noteworthy system, albeit controversial. Unlike eIDAS, which is designed with the primary aim of facilitating digital transactions, Aadhaar has been integrated into the digital economy using biometric data. However, the lack of a comprehensive legal framework around Aadhaar has led to privacy concerns, potentially violating a core tangent of digital rights [12].

China's approach to digital identity is embedded within its broader Social Credit System. This system is far-reaching and impacts various aspects of social and economic life. Unlike eIDAS, which focuses on transactional trust, China's system is more geared towards social governance [13].

NSTIC in the U.S. lacks regulatory enforcement, Aadhaar in India is mired in privacy issues, and China's Social Credit System extends beyond the scope of digital identity into social behavior. These variances underscore the challenges and complexities in establishing a global standard for digital identity.

5.2. eIDAS as a Benchmark for Fostering Trust in Digital Transactions

The legal underpinnings of eIDAS provide a robust framework for digital transact-tions, ensuring that they have the same legal standing as transactions conducted through traditional means. This has led to its consideration for harmonization with existing digital signature laws in other jurisdictions, such as the Republic of Srpska [14].

eIDAS mandates the mutual recognition of electronic identification schemes, thereby facilitating cross-border transactions. This is particularly beneficial for businesses and citizens who engage in electronic transactions across different EU countries [15]. Overall, eIDAS serves as a robust benchmark for fostering trust in digital transactions through its comprehensive legal framework, trust services, and emphasis on interoperability.

5.3. Advantages of a Standardized Digital Identity Framework for Cross-Border Interactions

One of the most salient benefits is the facilitation of e-government services. A standardized framework allows for seamless interaction between citizens and public administrations across borders. This is particularly relevant in the context of the European Union, where legal and technical frameworks like the Single Digital Gateway Regulation and eIDAS enable cross-border retrieval of user data and authentication [16]. A standardized digital identity framework engenders a heightened level of security and trust. By adhering to a common set of guidelines and protocols, the risks associated with identity theft and fraudulent transactions are substantially mitigated. This is crucial for fostering trust in digital transactions, particularly in cross-border settings where varying regulations can create loopholes [17].

6. Legal Analysis of eIDAS Provisions

6.1. Cross-Border Recognition Of eIDs (Article 8)

The cross-border recognition of the eIDs has been provisioned for in article 8 of the eiDAS whereby a mechanism of acceptance of the eIDs across the EU has been laid down while also mandating the European Commission to set out minimum spe-cifications and procedures for each level, in consonance with relevant international standards and best practices such as ISO/IEC 29115 and ICAO Doc 9303. Article 8 defines three levels of assurance (low, substantial and high) entailing their corresponding requirements for identification schemes issued by Member States. Assurance levels are a determinant of the extent of confidence on part of a service provider regarding the authentication of the person using an eID. These levels in an ascending sequence reflect a stricter degree of risk and trust involved in the authentication process. This mechanism promotes regional integration in the economic realm while reducing costs and administrative burdens for users and providers of eIDs alike. The fundamental rationale behind the provisions of Article 8 has been the principle of mutual recognition meaning thereby that the receiving Member State is barred from imposing assurance levels higher or lower than those of the issuing Member State. The recipient is further bound to

accept the issued eID if it meets the assurance level required by the service provider. The aim underlying this mechanism is more accessible cross-border online services and markets, and increased legal certainty and acceptance of eIDs [18]. Additionally, it reduces costs and administrative burdens for users and eID providers alike [19]. The complete manifestation of the underlying principle is however limited by the exercise of discretion by Member States in issuing notification of their respective eID schemes [20] This mechanism of mutual recognition of eIDS under article 8 has the potential to impact the development of a common framework for digital identification at the global level. This can be achieved by attaining coordination between the EU and other countries or regions having compatible eID schemes [21].

6.2. Legal Effects of Electronic Signatures (Article 25)

Article 25 gives effect to two legal consequences: the comparative legal authority of different types of E-signatures and the consistency of the legal effects of E-signatures across the EU. The eIDAS Regulation defines three types of electronic signature: simple, advanced and qualified. A qualified e-signature (QES) surpasses the other two with the security it provides as it is based on a qualified certificate issued by a qualified trust service provider. Its legal effects and admissibility as evi-dence in legal proceedings is the same as that for handwritten signatures. Thus, there is a certain level of presumption of validity associated with it. Both simple and advanced E-signatures, while lacking a presumption of validity per se, are not deemed inadmissible solely on their non-fulfillment of the requirements to qualify as a QES. This clearly does not exempt such signatures from dismissal as evidence under other grounds such as non-compliance with national law or agreed contractual or procedural conditions. For instance, some Member states such as Germany and France specifically require QES for certain transactions such as real estate contracts and mortgage deeds etc.

Article 25 provides for a legal framework for E-signatures common to all Member States, the national laws which are subservient to the provision currently under analysis [22]. Ideally, in pursuance of the principle of mutual recognition, E-signatures are to be recognised as having the same legal effect across all Member states regardless of the issuer or the technology employed. However, Article 25 narrows down the application of this principle to QES only issued in any member state. This harmonization of the legal effects does not extend to the substantive law that regulates electronic contracts, which is left for the national and private international rules to regulate [23].

7. Challenges and Limitations

One of the primary technical challenges is the integration of existing systems with the new framework. This often requires significant changes to the architecture and functionalities of current systems, which can be both time-consuming and costly. Moreover, ensuring interoperability among different systems across countries adds another layer of complexity. Furthermore, various legal challenges can arise due to

the differences in laws and regulations across countries. For instance, data protection laws can vary significantly, making it difficult to create a one-size-fits-all solution. Additionally, the enforcement of these regulations requires a robust legal framework that may not exist in all countries. The adoption of a new digital identity framework often requires a cultural shift, which can be difficult to achieve.

Public skepticism and concerns about privacy and data security can also hinder the implementation process. The financial burden of implementing and maintaining a new digital identity framework can be substantial. Lastly, cybersecurity remains a pivotal concern. The complexity of ensuring such security measures across multiple jurisdictions adds another layer of difficulty.

7.1 Addressing Privacy Concerns and Data Security Issues

Within the eIDAS Regulation, a comprehensive approach to data security is evident through various measures. Robust data encryption and secure communication channels play a pivotal role, ensuring that data transmitted across borders is shielded from unauthorized access and tampering. Mandating secure data transmission protocols helps diminish the risk of data breaches [24].

Moreover, eIDAS places strong emphasis on user consent and transparency, aligning with the EU's General Data Protection Regulation (GDPR). This entails informing users and explicitly obtaining their consent before data collection or processing, creating a layered approach to data protection and privacy [25].

The concept of Federated Learning is explored for enhanced privacy, allowing data to be kept locally while sharing only model updates. Additionally, data localization requirements ensure sensitive information remains within jurisdiction, adding an extra layer of security [26]. Multi-factor authentication methods are mandated to verify user identity, bolstering data security by making unauthorized access difficult [27].

The Regulation adopts a risk-based approach to data security, requiring regular risk assessments and continuous monitoring to identify vulnerabilities and threats. This proactive approach aids in early detection of potential security breaches, thus enhancing data protection. eIDAS also emphasizes interoperability and standardization, aiming to create a unified digital identity framework across EU member states. Standardization simplifies cross-border transactions and ensures adherence to consistent data security and privacy standards, reducing risks associated with disparate security protocols and systems, ultimately enhancing overall data security.

7.2 Balancing Convenience and Security in Digital Identity Systems

One of the most salient features of eIDAS is its ability to strike a delicate balance between convenience and security, a duality that is often considered to be at odds

in the realm of digital identity management.

In the context of Know Your Customer (KYC) processes, particularly in the banking sector, eIDAS leverages advanced technologies such as machine learning, 5G communication, and blockchain to transform identity verification mechanisms. These technologies not only enhance security but also improve efficiency and customer experience [28].

eIDAS employs Identity and Access Management (IAM) components that propose centralized user management, account management console, and various authentication approaches. This framework allows organizations to monitor digital identities and control exclusive access to information based on user data, thereby maintaining high levels of security [29].

Moreover, eIDAS addresses the challenges posed by the digital transformation, such as the adoption of cloud technologies and remote working conditions. It emphasizes the need for a systematic approach to secure identity management systems and their associated identities. Taxonomies for identity management related to attacks (TaxIdMA) have been proposed to classify existing attacks, attack vectors, and vulnerabilities, thereby improving the security of identity management systems [30]

In essence, eIDAS has been meticulously designed to ensure that the convenience offered by digital identity systems does not compromise security. It achieves this balance by integrating cutting-edge technologies, robust IAM frameworks, and systematic approaches to identity management, thereby setting a new standard for digital identity systems globally.

8. Safeguarding Legal Rights

8.1. Importance of Legal Rights Protection in Digital Transactions

Digital transactions pose unique risks to users' legal rights. The rights at risk largely are consumer protection, data protection, intellectual property and electronic commerce rights. It is pertinent to have in place legal frameworks for the establishment, protection and awareness of these rights. The realm of digital transactions, besides being prone to the challenges mentioned in our analysis under 'Challenges and Limitations' of this paper, is rampant with the risks of data theft, piracy, crypto jacking, ransomware, and supply chain attacks [31]. These threaten the fostering of consumers' privacy, trust, and confidence [32]. It is primarily to ensure that such risks are avoided, that legal frameworks such as the General Data Protection Regulation (GDPR) and The Digital Millennium Copyright Act (DMCA) are enforced.

8.2. Examination of eIDAS Provisions for Legal Rights Assurance

The eIDAS Regulation enshrines several provisions aimed at protection of legal

rights in digital transactions. These provisions include:

8.2.1. Certain standards for electronic signatures to be legally binding. The eIDAS Regulation differentiates between various types of signatures based on the degree of reliability they ensure. It restricts the presumption of validity to the most secure type of signatures (QES). It allows the admissibility of electronic signatures not categorizing as QES as evidence in legal proceedings upon certain conditions. Thereby, the evidentiary value of an electronic signal may not be challenged solely because of a lack of procedural formalities, in absence of national or contractual laws to the contrary.

8.2.2. Issuance of Certificates for website authentication. Website authentication certificates are classified as qualified website authentication certificates (QWACs) and trusted website authentication certificates (TWACs). QWACs are synonymous to QES in terms of reliability and security. These are issued by qualified trust service providers (QTSPs). Hence, they are used to secure the most sensitive websites such as those used for digital banking. Both TWACs and QWACs must meet certain standards such as proper installation on the web server and using the correct domain name. The requirement for this certification is important in protecting users from phishing attacks and in promoting trust in the digital economy.

8.2.3. Registration of trust service providers (TSPs) by a competent authority. The entities providing the eID, E-signature, E-seal or website certification must themselves be registered or supervised by a competent authority in order to ensure that the TSPs security measures, technical capabilities and management team meet the requirements of the eIDAS regulation. This supervision protects users from fraud and abuse and ensures trustworthiness and compliance.

8.3. Jurisprudence highlighting effective safeguard of legal rights through eIDAS

8.3.1 Equating legal value of QES with that of handwritten signatures. In 2021, the European Court of Justice reiterated the provision of article 25 of the regulation and ruled that QES are as admissible as legal evidence as handwritten signatures. Thus, the ECJ jurisprudence supports the legibility of QES to be used to sign legally bin-ding documents [33]

8.3.2 Establishment of identity of website owner through eIDAS qualified website authentication certificates. In 2022, the Italian Supreme Court ruled that these certificates can be effective in preventing phishing attacks and other forms of online fraud [34].

8.3.3 Validity of qualified time stamps. In 2023, the German Federal Court of Justice ruled that eIDAS qualified time stamps have the requisite degree of authenticcity to prove the time of signing of a digital document [35].

9. Implications for Global Digital Identity Regulation

9.1. Lessons from eIDAS for other Regions and Countries

One of the most significant lessons from eIDAS is the importance of adopting a holistic approach to digital identity management. eIDAS integrates various elements such as user consent, data encryption, multi-factor authentication, and risk assessment into a single framework. This comprehensive approach ensures that all aspects of digital identity, from user convenience to data security, are adequately addressed.

eIDAS underscores the importance of interoperability and standardization, especially for facilitating cross-border transactions. By creating a unified framework, eIDAS minimizes the risks associated with disparate security protocols and systems. This lesson is particularly relevant for regions with multiple jurisdictions, such as the African Union or ASEAN, where a standardized digital identity framework could significantly enhance security and user experience.

Another lesson from eIDAS is the focus on user-centric design. The regulation places a strong emphasis on user consent and transparency, ensuring that the end-users have control over their data. This approach not only enhances user trust but also aligns with global data protection standards like GDPR.

eIDAS also offers valuable insights into the importance of regulatory alignment and compliance. The framework is designed to be compatible with other EU regulations like GDPR, thereby creating a cohesive regulatory environment. This lesson is cru-cial for countries looking to develop their digital identity frameworks in alignment with existing laws and international standards.

9.2. Potential for Harmonization of Global Digital Identity Standards

While eIDAS serves as a pioneering framework, its lessons can be extrapolated to foster global harmonization. However, achieving this harmonization is fraught with challenges, including the need to navigate diverse legal landscapes, technological infrastructures, and cultural norms.

One of the key elements that could facilitate global harmonization is the adoption of interoperable systems. Interoperability ensures that different digital identity systems can work seamlessly with each other, thereby simplifying cross-border transactions and enhancing security. The concept of interoperability is not new; it has been discussed in the context of healthcare, where a digital platform was created to gather real-time data and improve the quality of care [36].

Another avenue for harmonization is the standardization of quality indicators and ethical standards. As digital transitions in higher education have shown, a partnership approach that consolidates public efforts and national policies can be effecttive in assuring high-quality and inclusive digital services [37].

Lastly, the global dimensions of digitization, as examined through the lens of the COVID-19 pandemic, indicate that technological transformations are reshaping international market management and sustainable development [38]. This suggests that a harmonized approach to digital identity could also contribute to broader economic and social goals.

The lessons from eIDAS and other regional frameworks provide valuable insights that can guide this complex endeavor.

9.3. Consideration of Cultural, Legal, and Technological Variations

There is a need for observation of critical dimensions, and their influence on the development and implementation of digital identity frameworks across different regions and countries. Cultural factors play a significant role in shaping the acceptance and utilization of digital identity systems. For instance, the concept of privacy varies across cultures, affecting how individuals interact with digital identity platforms. A study on digital futures highlights the importance of understanding cultural imaginaries and moral experiences when implementing technological innovations, including digital identity systems [39].

Similarly, legal frameworks also vary significantly across countries, affecting the governance of digital identity systems. For example, Turkey's corporate cyber security landscape has its own set of legal and institutional infrastructures that influence how digital identity is managed [40].

Technological disparities can also pose challenges since different regions may have varying levels of technological infrastructure, affecting the feasibility of implementing advanced digital identity systems. A study on digital transformation in Pakistan emphasizes the role of technology in enhancing public service delivery and governance, suggesting that technological variations can significantly impact the effectiveness of digital identity frameworks [41].

10. Future Prospects and Recommendations

As we peer into the future of digital identity regulation, the prospects and recommendations surrounding the European Union's eIDAS regulation come into sharp focus. Drawing from past academic literature, it is evident that eIDAS has played a pioneering role in shaping digital identity frameworks [42]. However, the digital landscape is in a state of constant flux, marked by rapid technological advancements and evolving security threats [43]. Understanding how eIDAS can adapt to these changes is paramount. Prior research emphasizes the need for regulatory frameworks that exhibit adaptability and responsiveness to emerging challenges [44].

To understand the future of eIDAS, the recommendations will delve into three crucial aspects of eIDAS' future. Firstly, we will explore its evolution and adaptability

in response to shifting digital terrains, taking into account lessons from past regulatory experiences [45]. Secondly, this research shall discuss plausible strategies for fostering international collaboration on digital identity regulation, informed by successful international regulatory models [46]. Lastly, an examination of the integration of emerging technologies like blockchain and artificial intelligence (AI) into digital identity systems, building upon existing research on their potential to en-hance security and efficiency in identity verification will be taken into account [47].

10.1. Evolution of eIDAS and its Adaptability to Changing Digital Landscapes

The European Union's eIDAS (Electronic Identification, Authentication, and Trust Services) regulation, implemented in 2016, was designed to establish a unified framework for electronic identification and trust services across the EU [48]. Its primary objectives were to facilitate secure cross-border digital transactions and bolster trust in electronic interactions. However, as the digital landscape continually evolves, the efficacy of regulatory frameworks like eIDAS hinges on their ability to keep pace with emerging technologies, threats, and societal demands.

The evolution of eIDAS has been marked by periodic updates and amendments aimed at enhancing its relevance and effectiveness. For instance, the introduction of new trust services, such as electronic signatures and seals, demonstrated the regulation's adaptability to accommodate emerging needs [49]. These changes were pivotal in ensuring eIDAS remained a comprehensive and reliable framework for digital identity and trust services.

For example, the proliferation of mobile devices and the rise of biometric authentication methods like fingerprint and facial recognition have altered the way individuals access and use digital services. EIDAS has had to adapt to accommodate these new methods of identity verification.

Moreover, the digital landscape has seen a significant increase in cyber threats and data breaches. These evolving security challenges necessitate constant updates and enhancements to eIDAS to ensure that it can effectively protect digital identities and transactions in an ever-changing threat environment.

The adaptability of eIDAS is not solely limited to internal amendments but also encompasses its capacity to address broader digital landscape transformations. The regulation has showcased resilience in the face of evolving cybersecurity threats and technological advancements. It aligns with the European Commission's broader digital agenda, emphasizing the importance of robust digital identity and trust services in the Digital Single Market [50]. This adaptability positions eIDAS as a flexible and forward-looking regulatory model that can respond to the ever-changing demands of the digital age.

The evolution of eIDAS and its demonstrated adaptability to changing digital land-

scapes underscore its enduring relevance in a dynamic and technology-driven era. While this analysis has primarily focused on past developments, the regulation's ability to anticipate and respond to future digital challenges will be pivotal in maintaining its effectiveness. As eIDAS continues to evolve, it remains a valuable model for regulatory frameworks seeking to navigate the complexities of digital identity and trust services [51].

10.2. Proposal for International Collaboration on Digital Identity Regulation

Regional organizations, such as the European Union (EU) with its pioneering eIDAS regulation [52], can serve as a precedent in developing digital identity standards interalias the regional state organizations. To put into perspective, the regional groups like the Association of Southeast Asian Nations (ASEAN) and the African Union (AU) can embark on similar initiatives tailored to their contexts. While the ASEAN works on initiatives related to digital identity and cybersecurity, there isn't a unified or comprehensive digital identity regulation like the European Union's eIDAS regulation in place across all ASEAN member states. Similarly, the digital identity landscape in Africa remains extensively diverse, with various countries implementing their own approaches to digital identity management.

Some countries in Africa had initiated digital identity projects for various purposes, such as improving access to services, enhancing security, and promoting financial inclusion. Such as Nigeria which launched the National Identity Management Commission (NIMC) to oversee the implementation of the National Identity Management System (NIMS). The NIMC issues unique National Identification Numbers (NINs) to citizens and residents, which are linked to various government services and identification purposes [48]. It's important to note that the level of implementation and the specific features of these digital identity systems may vary from one country to another. The African Union recognized the importance of digi-tal identity as a tool for development and had been encouraging member states to adopt digital identity systems that are secure, inclusive, and respect privacy and human rights.

These regions can then come together to balance their standards, fostering consistency and interoperability on an international scale. Drawing from the EU's eIDAS experience, they can set precedents for others. International organizations like the United Nations (UN), the International Telecommunication Union (ITU), and the World Bank hold a pivotal role in facilitating dialogue and coordination among countries and regions. The UN, through its Sustainable Development Goals (SDGs), acknowledges the significance of digital identity for global inclusion and development [49]. Their collective efforts can foster a shared understanding of the importance of digital identity on a global scale.

At the national level however, individual states play a vital role in shaping their digital identity policies and regulations. They can actively engage in bilateral and multilateral agreements to coherently align their approaches with neighboring nations and regional blocs. For instance, countries in the Americas can collaborate

through the Organization of American States (OAS) to develop a cohesive digital identity regulation framework that transcends borders. Another tangent of international collaboration can be supported through public-private partnerships, as they can drive innovation and shape industry standards that underpin secure, interoperable digital identity solutions. These partnerships bridge the gap between technology advancements and regulatory frameworks.

International collaboration is the linchpin for the creation of a secure, interoperable, and inclusive global digital identity ecosystem. Regional organizations, international stakeholders, states, and technology industry players each bring distinct strengths to the table. By aligning their efforts, sharing best practices, and fostering cross-border cooperation, these stakeholders can collectively forge a universally recognized and trusted framework for digital identity regulation.

10.3. Integration of Emerging Technologies like Blockchain and AI in Digital Identity Systems

While eIDAS provides a comprehensive legal framework for electronic trust services and digital identity, it does not explicitly mention or address emerging technologies like blockchain and artificial intelligence (AI) as core components of the regulation. However, the absence of AI does not negate the potential relevance and application of these technologies within the broader scope of eIDAS.

In fact, as the digital identity landscape evolves and seeks to address increasingly complex challenges, the integration of emerging technologies becomes a topic of growing interest and exploration. One of which is the Blockchain technology, with its decentralized and tamper-resistant nature, it holds promise for enhancing the security and integrity of digital identity systems. Research has shown that blockchain can be used to create immutable records of identity-related transactions, reducing the risk of identity theft and fraud [55]. By enabling individuals to maintain control over their personal data through self-sovereign identity systems, blockchain aligns with the principles of user-centricity and privacy protection that underlie eIDAS.

Moreso, Artificial intelligence, particularly machine learning algorithms, can be harnessed to improve the efficiency and accuracy of identity verification processes. AI-driven facial recognition and biometric authentication methods are increasingly being integrated into digital identity systems, streamlining access to services while enhancing security [56].

The adaptability of AI, Blockchain or any related emerging technology allows for real-time risk assessment and fraud detection, aligning with the trust and security objectives of eIDAS. While eIDAS may not explicitly detail the integration of these technologies, the regulation's overarching principles of security, privacy, and trust can harmonize with the innovative potential offered by blockchain and AI.

11. Recap of Key Findings and Contributions

Throughout this research, a comprehensive analysis of the European Union's eIDAS Regulation has illuminated its significance as a model for global digital trust and the safeguarding of legal rights. Central to this analysis were specific provisions within the eIDAS text, notably Articles 8 and 25, each contributing distinct dimensions to the Regulation's impact on digital identity and legal rights protection.

Our analysis of Article 8 has shown that this provision, aligned with the EU's General Data Protection Regulation (GDPR), bolsters cross-border recognition of the eIDs, pursuant to the principle of mutual recognition underlying the eIDAS Regulation.

Our analysis also highlighted how article 25 plays a pivotal role in establishing trust in electronic transactions. It not only provides clarity on the legal recognition of electronic signatures but also promotes their cross-border acceptance. This contributes significantly to the Regulation's overarching goal of enhancing digital trust and legal rights protection across EU member states. The findings from our analysis underscore the eIDAS Regulation's multifaceted contributions to the digital trust landscape. Its provisions, including Articles 8 and 25, collectively serve as a testament to the EU's commitment to fostering secure, efficient, and legally sound digital interactions.

11.1. Affirmation of eIDAS as a Significant Model for Global Digital Trust and Legal Rights Protection

There is a growing recognition of the need for standardized and secure digital identity and trust frameworks. Regional organizations, such as the Association of Southeast Asian Nations (ASEAN), Organization of American States (OAS) or the African Union (AU), have the opportunity to draw inspiration from eIDAS. They can establish regional standards for digital identity and trust services, promoting consistency and interoperability among member states. Aligning with principles akin to eIDAS Articles, regional organizations can emphasize the importance of privacy and data protection in digital identity systems while also addressing the legal validity of electronic signatures and transactions, instilling trust in digital interactions.

11.2. Call toAction for Continued Research and Development in Digital Identity Regulation

Digital identity is inherently global. To effectively regulate it, regional organizations and nations should collaborate extensively, sharing insights, best practices, and expertise. A call to action involves fostering international dialogue and cooperation in the development of harmonized standards and principles.

The integration of emerging technologies like blockchain and artificial intelligence holds immense potential in digital identity. A call to action implores regulatory bodies to actively engage with these technologies, conduct research, and establish guidelines to ensure their responsible and secure implementation.

The digital identity landscape is a prime target for cyber threats. Research and development efforts should focus on enhancing the resilience of these systems, employing advanced cybersecurity measures to protect against evolving threats. Regulations should not remain static but evolve with the digital landscape. A call to action encourages regulatory bodies to remain agile, ready to adapt to emerging technologies, and address novel challenges effectively.

12. Conclusions

In conclusion, the European Union's eIDAS Regulation serves as a pioneering model for the governance of digital identity and authentication, providing a robust framework for global digital trust. Anchored in its provisions, eIDAS embodies the principles of security, privacy, and user-centricity, setting a new standard for secure electronic transactions and the protection of legal rights.

As the digital sphere continues to expand beyond geographical borders, eIDAS offers valuable insights into the universal challenges of digital identity and legal rights protection. Its emphasis on standardized frameworks and interoperability underscores the importance of consistency in the increasingly interconnected world of online transactions.

As the digital landscape continues to evolve, eIDAS remains an exemplar of how forward-thinking regulations can make it easier to navigate the complex digital eco-systems, all while safeguarding the fundamental principles of security, privacy, and legal integrity and protecting digital rights. It stands as a testament to the potential of comprehensive digital identity frameworks to shape the future of secure and efficient digital interactions on a global scale.

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Chapter 8.

Freedom of Speech and Expression in Ancient Times and in a Global Society

Ia Makharadze[8]

Abstract: The possibilities of the role of critical observer of free and independent media are an important component of media policy in democratic countries. This paper explores freedom of speech and expression legislation in Europe and Georgia. It's important for democratic media to present the abuse of state power by corrupt or tyrannical governments as the main means of control. The paper argues that the freedom of public expression of opinion and beliefs, however unacceptable to the established authorities, is a defining characteristic of the democratic system – it is the nature, the characteristic, of all media in European countries today. In this context, the paper assesses the importance of the traditional, classical protection of media freedom in the Euro-pean press. In the early 19th century, as the British press fought against stamp duties, liberal thinkers Jeremy Bentham, James Mill and John Stuart Mill wrote in defense of press freedom. They offered a profound analysis of the role of the press in the cultivation of public life. Research has shown that this model of media freedom, this idea, is not a new phenomenon: to embrace differ-rences and thereby enrich the field of knowledge and debate. The actions of rulers and the principles on which rulers' decisions are based. What's new is the sheer size of the modern media industry, which has taken a step toward a global society with major shifts in communication.

Keywords: Media; Democracy; Freedom of Thought; Knowledge and Debate.

1. The introduction

The object of the study the research focuses on the history of free speech and information mobilization, which dates back to ancient times, before digital media established standards that define specific norms for information retrieval and trust. In the paper, the term "freedom of speech and expression" reflects the idea that freedom of speech in the media is not as autonomous as it should be in media theories. Politics, religion, and social relations are always subordinated in different political regimes. Political control over the content of broadcasts has eroded his freedom. That's the traditional function of media, like propaganda. Propaganda is considered by media studies to be one of the most effective tools, and it is largely because of this that it is referred to as the „fourth power ". In authoritarian regimes,

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one-sidedness has been promoted to establish a dominant ideology. In de-mocratic systems, there are many directions and goals. In addition to the above, freedom of speech is as important in the media as it is in education. With the help of the media, the population acquires knowledge about events or issues that are unknown or less known to them. The media is called upon to provide consumers with information, news on current and generally interesting issues: on politics, science, cultural fields, economy, and social life.

This article discusses the following common approaches to freedom of speech and expression: Freedom of speech and the media is based on the freedom of information and the freedom of expression, The historical practice of subordination to the information society is – the theories of freedom of speech and expression in the ancient era and in the global society. In democratic societies, control over the production and dissemination of ideas is concentrated in the hands of those who own the means of production. There is a direct link between media ownership and control over its content. In order to make free speech theories clearer, we need to look at them in their historical context. The hegemonic control of free speech is ideological control, so its function is moral and philosophical leadership, which it can govern through the active consent of the governed. The shift in power and value systems in the media. In the context of free speech in democratic societies, the media shows us that it's not uniform and unanimous; In the context of freedom of speech, the media is characterized by its lack of objectivity, but it is believed that the audience also has the ability to see this lack of objectivity, so the media loses the power to manipulate the masses. The article uses the census method to understand freedom of speech and expression in the ancient era and in the global community in relation to structural and fun-ctional approaches. A pragmatic approach is used, specifically combining the views and approaches of different researchers in the process of forming one's own opinion.

2.The accessibility and Universality of Information in the Democratic Societies of the Ancient Era

The history of mankind is the history of the spread of information and of human communication activity. Information connects social groups, events in the world, and nature. In the process of human historical progress, there is an intermediary between the generations, and in its shrine all the achievements of civilization are transmitted. With the possibility of creating and sharing information, these areas create a different dialectic in society. [1]

Conscious information, in this sense, is the structured, creative, transformative life of a human being, the management of society in many manifestations.[2] The Rosetta Stone, which reads ancient Egyptian hieroglyphics, is a promotional public-cation of that era, informing the Egyptian ruler of the people. The ancient Olympic Games also used propaganda techniques to glorify the athletes' heroic efforts. In Plato's day, public speaking was written in the same way that public speaking is written today. For example, the ancient Athenian knight-errant, sophist, and historian, Cycdice, in his History of the Peloponnesian War, tells the main story of the

Battle of Crete. Year 430 Pericles' eulogy at a memorial service for the soldiers who died for Athens. In the text of the public speech, the orator praises the bravery of the victims of Khotba, as well as the grandeur of the Athenian city-state of Acropolis and the nobility of its political structure. This is called "democracy" – the rule of the majority, where the rights of every citizen are recognized, and everyone is given the respect they deserve.[3]

3. Context of Free Thinking of Ancient Societies with Modern Societies

These facts of the ancient era of speech can be characterized as a period of free thought in society. In a democratic state, all power belongs to the people, and the only source of that power is the people. [4] Human rights are inextricably linked to the development of media, freedom of speech. [5] In most industrial democracies, the origins of ideology can be traced back to the ancient Jewish and Greek civilizations. It's a form of government. In ancient Athens, people developed a political system that is still recognized as one of the most exemplary forms of government. The noble reformer Cleisthenes the Younger year in 508/7, a form of direct rule was established. This reign lasted almost two hundred years. Alexander the Macedonian conquered Athens in 338 B.C.E., and this political arrangement was shattered. In contrast to the established parliamentary (indirect) democracy of today, where the voter sends his representative to the parliament to present legislative initiatives, under the conditions of ancient Athenian "indirect" democracy, the people governed themselves. A citizen who was active (athenaion ho boulomenos, "not forbidden" Athenian) could also take the initiative before an assembly. This status meant a person who had moral values. He was not to be seen in violation of martial law, in the plundering of inherited property, in disrespect for parents, in prostitution. By law, Athenians were not obliged to participate in government. The ideology of democracy required the political activism of citizens. It is noteworthy that the political arena of Athens was dominated by a minority trained in rhetoric. Political majorities have never stepped on the podium for the orator. Athenian citizens were divided into three groups in the context of political activity: The first category – passive citizens – never appeared on the stage and did not participate in public life. The second, the advanced class of citizens, attended the meetings of the council, listened to the speakers, and participated in voting. A third, politically active group, with a small representation of Athenians. They brought in ideas, debated them, and legislated. This category of society belonged to the "political elite" of Athens. [6]

4.The Ideology of Democracy and the Beginnings of Expression of Free Thought in the Ancient Era

The beginnings of industrial democracies in terms of free speech also must be traced to the beginnings of Christianity: its roots are also Jewish and Greek. Man was created in God's image, but he fell when he first sinned. According to this Biblical logic, a person's good or bad reputation in the community is bound up with his rights and obligations. Western civilization has focused on two fundamental traditions of the dual nature of man throughout human development: the creation of

God and the fallen angel. In practical life, they are: Catholic, Protestant, Latin, Anglo-American, Northern European, and Southern European. So the first one requires authoritarian, group solidarity and social stability. [7]The second is liberal, indi-vidual and entrepreneurial. It was the latter that gave birth to modern democracy and industrial civilization. It recognizes the universal values that now permeate the earth: the equality of men, the belief in human progress, respect for the law, and the pursuit of social consensus. People in the historical development of state systems have created the principles and structures characteristic of democracy: holding ge-neral elections; a legislature, a government subordinate to it, an independent judi-ciary, local self-government. The protection of the dignity of the person, freedom of speech, property and other rights guaranteed by the constitution. Democracy, as opposed to dictatorship, is characterized by a plurality of opi-nions. In such a country, everyone is equal, everyone has the right to express his or her own views, which are radically different from those of the official circles. [8]

5. Understanding the Category of "Protected Acts" in the Context of Freedom of Speech and Expression

In the modern media, the doctrine of freedom of expression is often categorized as a "defensive act". Freedom of expression is not subject to restrictions, as is the case with other legal acts. Even in the hardcore version of this doctrine, when deadly acts are committed, they can have harmful consequences. This is usually quite sufficient to justify imposing legal sanctions.[9] These are the facts that define the role of the free speech doctrine, and from this standpoint, the irrationality of his nature. This tendency can be seen most clearly in the argument of the American jurist Oliver Wendell Holmes: [10]``It is logical to be restricted in the expression of one's opinion, if one is not afraid to doubt one's own opinions and the ability to express one's desires within the law and to eliminate all contradictions``[11] In the context of freedom of speech, Holmes' decisions are different. His analytical thought was distinguished by academicism, reasoning, and influence.

The'case of Abrams vs. Holmes laid the groundwork for the future American standard for freedom of expression. Holmes observed: "I think we must be ever vigilant in restraining the expression of thoughts which we find hateful and deadly. Except in cases where the immediate suppression of free speech is essential to the survival of the country. Holmes's assessment is known as the free market of ideas. According to this theory, the best antidote to hurtful speech is to respond with a different opinion, until the truth prevails. In Holmes' view, under certain circumstances this freedom can be limited. In his view, the fundamental criteria for restricting freedom of speech are: ``Could the particular utterances – given the circumstances and the nature – have produced a clear and present danger of causing harmful conse-quences?`` In establishing these standards, Justice Holmes used a phrase that is still quoted in legal and journalistic circles: "Even the strongest defenses of free speech will not exonerate a person who deliberately sets a fire in a crowded theater!" [12] And it causes a panic. The Shenkman decision is one of the most widely cited cases in American legal history.

6. Answering the Accusation of Freedom of Expression Requires Psychological Support

Responding to the accusation of the absurdity of freedom of expression is psychological. Support is the main task. Such an answer needs clear explanation: 1. What constitutes a protected action group; 2. Describe its privileges and grounds; 3. Protecting freedom of expression is always about results. As mentioned above, this form of argument has been used in many high-profile media lawsuits. Certain elements of balancing in court are found in all the notes of the First Amendment to the U.S. Constitution. Philosophical consideration of expression: How do action groups (such as journalists) protect the rights of their sources and audiences in pursuit of their goals? The public wants to know what arguments a journalist defending fredom of expression should use to justify his position, so that the long-term benefits of free discussion of the subject matter outweigh the obvious and possibly negative short-term costs. What level of long-term advantage is calculated depends on the journalist's/author's high values of knowledge and intellectual representation in contrast to other values. [13] The modern ideologues of journalism are characterized by similar visions. For example, the editor of the alternative weekly Westerwald, Pattie Kalun, says, "We declare that a journalist cannot be objective because he has certain tendencies". [14]

7. Logocentrism and the Privilege of Speech in the Expression of Free Speech

But it can indeed search for accuracy, honesty and truth, and that search continues. Truth is found here in the diversity of thought, and totalitarianism is characterized by slavish loyalty. [15] The idea of democracy implies the ability to argue and persuade. [16] A journalist's desire to corrupt the public into believing the truth of information is so strong that it can be considered a natural trait. "In the beginning was the Word" – so begins the Gospel of John. In first-class societies, first-class journalists were always expected to report accurately and truthfully. Clearly, in ancient Athens, political power was based on the art of speech. The Bible does not say that "they will not see the light of the day".

The idea of democracy implies the ability to argue and persuade. A journalist's desire to corrupt the public into believing the truth of information is so strong that it can be considered a natural trait. "In the beginning was the Word" – so begins the Gospel of John. In first class societies, first-class journalists were always expected to report accurately and truthfully. Clearly, in ancient Athens, political power was based on the art of speech. Clearly, political power in ancient Athens was based on the art of speaking. Eloquence was formed as an independent discipline, and the classical division of speech: preamble, narrative, argumentation (in turn, divided into positive, i.e., the expression of one's own point of view and negative, derogatory argumentation of the opponent's position) and conclusion – originates directly in Greek rhetoric.

7.1. Power is the Art of Speaking

The classical divisions of speech: preamble, narrative, argumentation (itself divided into positive, expressing one's own point of view, and negative, denying the oppo-nent's position) and conclusion are directly inspired by Greek rhetoric. At the same time, the politically charged word (demegorikos logos) pronounced in the town hall differed from the one pronounced in the court and took into account its own specificity. The opinion delivered from the legislative tribune was compositionally narrative-free. The content of the speech was less about a legal dispute, which required the presentation of facts to a judge, and more about the political environment that everyone is familiar with. The orator's arguments were also different, he was just defending his position: the speech consisted of the introductory part of the legislative initiative, formulation and justification. Therefore, in the absence of an argument from the opposing side, there was no need to exonerate them. It should be noted that an indefinite number of speakers were allowed to take the stand in the assembly without being pre-recorded and agreeing on the subject to be discussed. However, to speak, cleverness and knowledge of the rules of rhetoric were manda-tory, which did not distinguish many citizens. Thus, the debates were dominated by a small group of professional rhetoricians, known as the rhetoricians of ancient Athens. The main task of the politician-orator was to win the goodwill of the audience. In this respect, rhetoric, or the "art of persuasion", was the main weapon of competition among politicians. Thus the charisma of the orator was valued more than their competence in administrative or financial matters in order to gain power. On the other hand, on the grounds that a perfect democracy could not function without the political activism of individuals, the Athenians encouraged their citi-zens with annual decrees of honor and the awarding of gold crowns. According to Ancient Athenian statesman Aeschines, [17] The process honored the best sons of Athens who had accomplished important things for the people by their words and deeds.

7.2. Methods of Persuasive Expression of Free Thought in Ancient Syracuse and Athens

The term „rhetor" was regarded as an honorific title and Demosthenes [18] in his role as rhetorician also became the political leader of Athens. The discipline of rhetoric and the genre of prose literature – 113omer113113c. Year In the mid-5th century, the twin pillars of Western and Eastern democracy were born in Syracuse and Athens. In ancient times, the link between rhetoric and politics was strong. Political leaders began to learn the craft right away. In ancient Athens, the wandering teachers of political discourse were called sophists (113omer113: "wisdom"). [19] The sophist taught the art of argument, the craft of rhetoric, the methods of convincingly conveying a certain doctrine or belief. For the Sophists, the basic idea of the doctrine was not the content, but the formal apparatus by which even a dubious theory could be un-questioningly presented and believed by the audience.[20] The sophists, by developing the "art of reason", helped to establish the science of logic, the study of the forms of reasoning. They also laid the foundation for the study of the regularity of language. Taking into account the

logical and grammatical side of the expression of free thought in speech, paying attention to the determination of its forms contributed not only to the practical use of the formal side of thought, but also to the development of the theoretical content of thought. So the Sophist movement was a progressive movement. The reflection on the subject, on the human being, is the work of the sophists. It is in this sense that the philosopher-scholar Plato's view of modern scientists concerns the natural capacity of information, the enriching-properties of its world, and the organizing, transforming principle. [21]

7.3. The Organizing Power of Speech and Thought Expression – in the Communication Demands of a Global Society

The power of speech and thought has deepened its practical application since it was introduced into the process of state governance and the socio-political and cultural-economic development of society. More precisely, since man, in parallel with the development of society, has progressively improved It's about the power of mass communication, the power of information, its psychological and organizational characteristics.[22] It's important to mention the interconnected issues here: considering mass media in the context of social subsystems and theories of free expression. The starting points are given in the communication needs of the world community in the structural conditions that we have to acknowledge. This universality of communication makes doctrines and dictatorships more disciplined. It moderates their idiosyncrasies, both in terms of structure and in terms of current statements of relevance. No one is going to overestimate the importance of global public opinion as a political force. But as a forum for self-improvement and measurement of results, it's definitely important. [23]

7.4. "Medium" – Discussion of Ancient Athenian Philosophers, Dialogue Thinking with Plato

An analysis of the history of communications as a whole, dividing it into separate, key periods, was proposed by two prominent Canadian sociologists of the twentieth century, Harold Ince and Marshall McLuhan. Harold Ince attributes the age of writing to the influence of the medium in which that text was written. The medium was the ancient form of verbal communication, the most perfect examples of which we have in the discourse of the ancient Athenian philosophers. Dialogic thinking with Plato begins with a sentence, continues with other sentences that illuminate the pre-vious ones, and finally reaches a sentence that gives the first sentence a new composition.

All these propositions form dialogical thinking: without these propositions there can be no dialogical thinking and without dialogical thinking there can be no propositions. [24] Thinking, which is dialogical thinking, (διαλεγεσθαι) is the selective unification of ideas (including core ideas), it's the act of recalling the forgotten and with it – continuously, processically, because dialogical thinking cannot be defined by statically constructed knowledge.

The paidessons they offered included public speaking techniques or the study of speech structure, argumentation, and style. The Sophists (primarily, Korax, Isocrates, Gorgias) held that, due to the subjectivity of thinking in general, a person's knowledge of truth cannot be unquestionable. And so, their method of rhetoric was to discuss this or that issue from opposite sides of the aisle. The Sophists also believed that language, with its cultural symbolism and emotional charge, could never be an expression of objectivity. So, language is just a neutral tool that the speaker must use to manipulate the audience and get the desired result. After all, the ethical aspect is to be found in the individuality of the speaker and not in the nature of the speech he gives.[25] First of all, it's free thought. Thought forms are intimately connected to political systems. The forms of human history and modern mass thought have been constantly changing with political systems. In some ways, we'll note that in terms of political systems, media scholars have observed that the media is more susceptible to change.

8. Media Reflectivity and Independence as a Variable Category

The media system largely reflects other aspects of the social structure, such as the party system. But there's also strong evidence that the media itself is influencing social institutions. Historically, media reflectivity, or the degree of independent influence, is a variable category. Many media analysts have attributed its growing influence trends, especially with political systems. [26] Each model is based on worldview and ethical values. The four theories of the press are normative. It's not static, and it's a change in historical development. Two of these are democratic, two are undemocratic: the authoritarian, the libertarian, the social responsibility, and the communist concepts The pessimist (with communist and authoritarian thinking) sees man as an inanimate being who has no right to free expression: man needs constant surveillance, restraint, indoc-trination. [27]

These ideas, in the digital world, seem outdated in the face of decisive, historically unrepeatable changes. From the 18th and 19th centuries, the world's communication capabilities were gradually established. [28] The web of political influence and prospects stretched across the globe. And the technical implementations of them have become universally available. Communication and communication has been simplified in many ways, making everyone's feelings and actions synchronized. This means that the outcome: the co-occurrence of all events and the need to co-ordinate with each other, with a common future against a heterogeneous past, has become a worldwide consciousness – and a demand. [29]

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On the other hand, the optimistic theory of social responsibility holds that if people can access information and exchange ideas freely: they can also govern the society in which they live. [33] Freedom of information, in a narrower sense, is defined as the freedom to receive information in a generally available and accessible manner. This is how freedom of information is understood in Sweden and Germany. In America, Australia and some other countries, this concept is understood as the theoretical right of every person to obtain and inspect copies of documents of public importance, documents of government officials and organizations. The right of the people to sign official documents was established in Sweden between 1719 and 1772 of enlightenment of the age. To this day, in Sweden, this right is considered a natural human right and is protected by law. The purpose of the press was to express literary and political ideas in the southern European press of the 19th century. For example, the French writer Honoré de Balzac described the press as "a word adopted to express everything that occurs periodically in politics and literature, and in which evil is judged as the work of those who govern and those who make human destiny a two-way street". [34]

9. The right to Universal Access to Official Information for the Public

9.1. Opinion-Expressing Press – Media Political Organization

In Spain and Italy, a powerful press as a means of expressing opinion developed in the 19th century. He played an important role in the formation of liberal state institutions. The leaders of these processes, the Spaniards Canovas and Canelias, the Italians Cavour and Mazzini, were journalists and politicians. [35]

In the United States, the Supreme Court in the 1980's recognized the right of the public and the press to access court documents and proceedings. In the same period, the European Commission of Human Rights established that freedom of information implies the right of public access to official information. This information shall be obtained in accordance with the established rules. [36] Today, in modern society, these models are judged by how far away they are from the

liberal ideals of a neutral, "theological" press and free state interference. In this regard, the United States has conducted research and comparative analysis of the theory of moder-nization and world press systems against liberal ideal models. [37] The emergence of commercial newspapers and the growth of newspaper circulation in southern Europe began in the 1880s. At the same time, masscirculation newspapers were being printed in northern Europe, the Americas, and eastern Asia. A masscirculation press on a serious scale has never been established in the Mediterranean or in the polarized countries. In France, there has been a rapid rise and fall in the number of readers and freedom of the press. Early in history, the revolution of man and citizen he Bill of Rights became a prerequisite for freedom of the press.

The117omercial press that proclaimed apoliticalism could not replace the opinion-oriented press that existed in countries with a liberal model. By 1914 the opinion newspapers accounted for 80 percent of the Paris press. Although their circulation was less important. [38] For example, to study the history of the British press requires an understanding of the relationship between its powerful owners and the political process. The concentration of owners of the press and other media is not a new phenomenon. What's new is the magnitude of the modern media industry. [39]

9.2. Legitimacy of Restriction of Freedom of Speech in the Digital Age and the System of Society

According to media researchers Davis Helin and Paulo Mancini, the tendency to establish journalism as a "public trust" is an important component of historical development. It should not be perceived as "only an ideology", even more, as a simple altruism. They believe that this is a historically specific conception of the role of journalism in society, which has important implications for both journalistic practice and the media's relationship with other social institutions. The media should respond to cases when citizens are dissatisfied with the services provided. It is effective if the media will voluntarily correct its wrong actions, otherwise legislative intervention is necessary and legitimate``.

This is a media model attempt. To draw attention to, and to create interest in, cu-rrent issues. Involve the citizens in deciding whether or not to discuss a particular issue. The ability to generate discussion is so pervasive that it touches almost every aspect of a journalist's work, from the reporting that a journalist uses to bring the public's attention to a particular event or circumstance. Such journalistic material may contain analysis that predicts expected outcomes. [40] And this is all the more remarkable in the digital age, where some political scientists believe there's a sort of subversion of civil society. The organization and the regionalism that until recently was the hallmark of Western society is now disintegrating. People's interests and connections are becoming global. In the context of the crisis of trust, concepts such as journalistic ethics are becoming increasingly important in the daily work of the media. Journalistic ethics is important not just to journalists, but to consumers who are sensitive. The violation of media ethics is intertwined with the protection

of human rights. [41] Given the fact that these models never existed as pure practical functions, it is acceptable. Even under authoritarian regimes, citizens have always had access to underground or foreign media. In liberal democracies, for example, in the United States, there's a complete consensus among citizens that the media needs to be regulated. [42]

9.3. Feature of Professional Media

A correct use of freedom of communication Media freedom affects not only political events, but also all human opinions. It changes legal frameworks and moral narratives. The primary mission of the professional media is to use the freedom of communication to inform people about their observations of the outside world. This freedom is one of the few absolute rights that are essential to life. Without communication, it is impossible for human societies to exist, and therefore, for the human race to survive. No matter what kind of dictatorship it is, state or theocratic, monarchical, or imperial, military or colonial, bourgeois, or proletarian, it always restricts freedom of speech and freedom of the press. The communist ideology had its selection on every independent opinion. Naturally, in this situation, it was superfluous to think about the practical application of the principle of mass journalism. In free democratic subdivisions, any citizen may establish a newspaper, magazine, radio, or television broadcaster. The editorial staff often selects the editor and other officials themselves. Free journalism has always tried to perfectly represent everyday reality, the hierarchy of truth, to broadly reflect the diversity of public opinion [46]. Hus freedom has become a symbolic factor of democracy. Freedom of the press affects not just political events but all human thought. It changes legal frameworks and moral norms. What's important is the degree to which a free press has shaped civil society, shaped people's minds, and emotions. [43]

Human rights in the modern western media are a priceless achievement in the history of journalism and a core value of democratic states. True, political, and legal developments over the centuries have been inconsistent, but since the Middle Ages, one of the main indicators of democratic development for the world's media has been the degree to which human rights are respected in independent countries. Media justice theorists, media ethics researchers, philosophers, international organizations, human rights institutions, international/regional and national courts, especially emphasize the need for the practical realization of human rights by the media and the dangers of its unjustifiable violation. [44]

It is worth repeating that just as there can be no true freedom without limits, there can be no responsibility without freedom. Professional media needs to be engaged like the state on the part of the media owner. It also requires economic independence: without a proper salary, a journalist will not be able to tempt corruption.

9.4. Human Rights in Modern Western Media

Human Rights in Modern Western Media are an Invaluable asset of the History of Journalism and the Most Important value of Democratic States. It's becoming

increasingly questionable to start from regional communities and see all the world as interdependent. Fact: The global community has become a unified system.

It's only the traditional structures of thought and perception that prevent us from seeing and acknowledging this reality. According to French science theorist Gaston Bachelard, we are dealing with "epistemological obstacles". The unity of society was defined from the perspective of the political sphere SOCIETES CIVILIS – the economic sphere of the old European or bourgeois-Marxist tradition.

10. Conclusions

The philosophical trajectory of the media from Classical Greece to the present day is of paramount importance in the context of free expression; the historically known practice of subordination to the information society, a system of constructing public discourse prepared in the ancient era on the same principles as public speaking is written today. If people have access to information and can freely exchange ideas, they can also govern the society in which they live.

Freedom of the press is defined by freedom of information, which is freedom of opinion and thought. It affects not only politics but also the way people feel. It also involves seeking, receiving, and transmitting information. The unlimited right to your own opinion. This paper defines the influence of free media on the tastes, temperament, and morals of the public in different countries. Hordes

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Chapter 9.

The Plastic Waste crisis in the EU: Options for Action in Context of European Sustainability Policy - a Simulation Game for EU-related Learning and Teaching in Education for Sustainable Development

Ulrich Kerscher, Andreas Brunold[9]

Abstract: As a first step the paper introduces the inherent didactical potential of the sustainability policies of the EU on the plastic waste crisis to synergistically combine EU-related Learning and Education for Sustainable Development (ESD). Adapted for the model game to be introduced, the paper further sketches an integrated competence-model for the two scopes of Civic Education to underline the potential skill and competence-acquisition. As a second step an overview of the plastic waste crisis and the EU-policies aiming at solving this issue is introduced as the setting of the model game. In this context the paper depicts the transformation process of the EU-economy towards a circular economy as the fundamental goal of the European Green Deal. As a last step the paper provides a ready-to-play model game simulating a meeting of stakeholders from politics, the economy, and the public sector. The aim is to find regulations for the future of the European plastic and recycling industry, the export of plastic waste and the involvement of consumers on the way towards a circular economy.

1. Introduction

During the last decades plastic waste generation has exponentially increased and accumulated to nearly 10,000 million metric tons in 2023. It is predicted to further increase to over 25,000 million metric tons by 2050. In terms of CO2-emissions for the production and waste treatment of plastic this adds up to 56 Gigatons of CO2 by 2050. According to predictions in 2050 the plastic lifecycle will be responsible for the equivalent of 615 coal plants concerning emissions (Maurer, 2023). Furthermore, as Frans Timmermans pointed out, there are many more problems connected to plastic and plastic waste:

If we don't change the way we produce and use plastics, there will be more plastics than fish in our oceans by 2050. We must stop plastics getting into our water, our food, and even our bodies. The only long-term solution is to reduce plastic waste by recycling and reusing more. This is a challenge that citizens, industry and gover-nments must tackle together [...]. We need to invest in innovative new technologies that keep our citi-zens and our environment safe whilst keeping our industry com-petitive (EC, 2018a).

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Against this background the paper argues that the sustainability policies of the EU on the plastic waste crisis encompasses the didactical potential to synergistically combine EU-related Learning and Education for Sustainable Development (ESD). To support this claim, a competence model adapted for a model game on the plastic waste crisis is in-troduced and the teaching materials are provided. The simulation was designed follo-wing the best practice approach and was assessed and validated by numerous teaching professionals from secondary and tertiary teaching institu-tions.

2. Relevance of the Plastic Waste Crisis for EU-related Learning and Education for Sustainable Development

An analysis of the transformation process of the economic system of the EU to-wards a circular economy, as well as of the European sustainability policies, reveals that low recycling rates, the excessive production of plastic waste and the resulting pollution of seas and oceans are fundamental environmental issues of the 21st cen-tury. Therefore, the plastic waste crisis has become a socially visible sustainability discourse in Europe. Given the ongoing legislative activities of the EU – solving the plastic crisis is a key goal of the *European Green Deal* by the European Commission – and the societal anchoring of the plastic waste discourse, the model game introduced in this article, offers the didactical potential to combine *Education for Sustainable Development (ESD)* and *EU-related Learning* (Kerscher, 2019a). Plastics and plastic waste play a crucial role for sustainability processes such as the transformation of the EU towards a circular economy. Considering that every individual can either support or undermine this process, the simulation game aims at fostering the awareness for sustainability and the critical reflection of (plastic) consumption patterns among learners. By simulating *solution and future-oriented* negotiations of problems inherent in a linear economic system, such as the low recycling rate in the EU or water pollution, a fundamental under-standing of interde-pendencies among actors in a circular-oriented economy can be created. In this way, the necessity of combining bottom-up and top-down processes for successful sustainable development processes can be conveyed (Kerscher, 2019b).

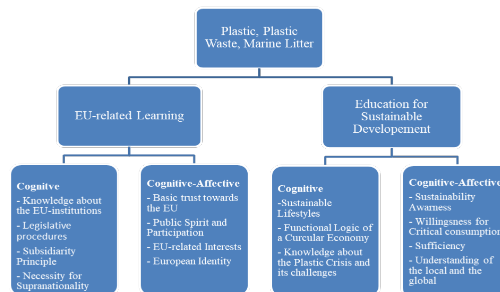


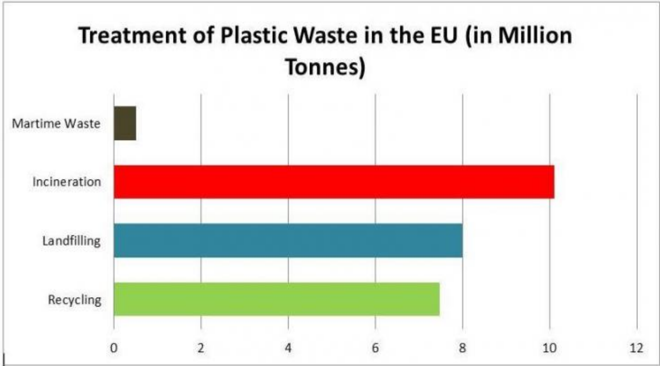
Figure 1. Cognitive and cognitve-affective competence dimensions for the learning field plastic

Moreover, following Oberle and Forstmann (2015), learners should develop a conceptual understanding of the multi-level political system of the EU, legislative procedures, and the principle of *subsidiarity* by simulating the actors or veto-players in the legislative process. Thirdly, by simulating the action and competence-oriented internal perspective of the EU, learners are supposed to nurture EU-related interests, basic trust in EU institutions and a positive evaluation of the EU as a supranational institution for solving transnational problems. On a more abstract level, ideally, the simulation game also promotes the development of a European awareness and a European identity (Oberle & Forstmann, 2015).

3. Plastic and Plastic Waste in the EU

The plastic waste crisis is of a threefold nature. Firstly, there are already approximately 150 million tons of macro- and microplastics in the oceans, with an additional 10 million tons being added each year. This will have serious long-term consequences for the ecosystem and human health. Microplastics, for instance, find their way into the human body through the food chain. Moreover, marine creatures die due to plastic ingestion leading to agonizing deaths. Furthermore, the increasing amount of plastic waste pollutes the air, water, and soil tarnishing the natural landscape (EC, 2018b). Secondly, there is a significant need for improvement concerning waste management, recycling, and the reuse of plastic as a secondary raw material, both within the EU and worldwide. Table 1 summarizes the treatment of plastic waste in the EU:

Table 1. Treatment of plastic waste in the EU in million tons per year



Thirdly, the low recycling rates are rooted in the design and manufacturing processes of plastic products. From an economic perspective, plastic producers lack incentives to ensure the recyclability of their products, as it would involve higher production costs. This reveals the contradiction between economic and ecological goals. During production, plastic is enriched with various chemical substances, allowing for a high degree of design flexibility to meet the aesthetic desires of the market. However, product designs complicate the recycling process, increases waste treatment costs and reduces the quality of recycled plastic. Consequently,

recycling is currently not economically viable in the EU and the recycling industry is discouraged from investing in the modernization of its infrastructure (EC, 2018a).

3.1. Closing the Loop – An EU Action plan for the Circular Economy (2015)

The first strategic initiative to address the issue of plastic waste and marine pollution was presented by the European Commission in December 2015. The main objecttive is to achieve the transformation of the EU towards a circular economy. This initiative also aims at enhancing the competitiveness of the economy of the EU and stimulating sustainable economic growth. The EU-Commission defines a circular economy as a system "where the value of products, materials, and resources is maintained in the economy for as long as possible, and the generation of waste is minimized" (EC, 2015). This definition highlights that a circular economy is not compatible with disposable products and low recycling rates.

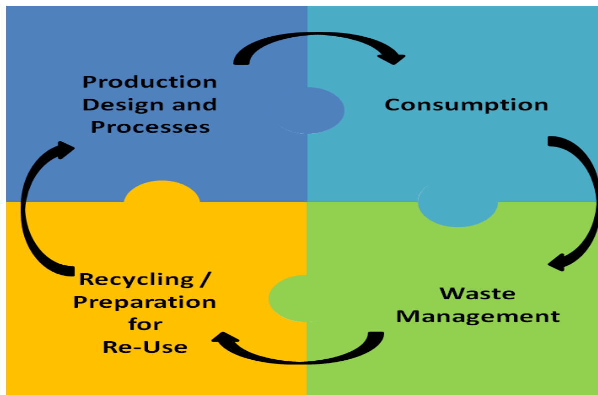


Figure 2. Conceptualization of the circular economy

Both the design phase and the production process have a significant impact on the use of resources, the reusability and recyclability of a product. These early stages of a product's lifecycle determine whether a product is suitable for a circular economy or not. Therefore, products must be designed with the end of the lifecycle – their recyclability or reusability – in mind (EC, 2015). However, the role of consumption is also crucial. Only by achieving further changes towards a more sustainable consumption behaviour can the transition to a circular economy be possible. Thus, it is essential to promote the will-ingness for *sufficiency*, which means refraining from unnecessary consumption, and establish it as a predominant consumption pattern (Kerscher, 2019b). It is the interplay of all phases in a product's life cycle that characterizes the fundamental principle of a cir-cular economy. To enable circularity, all four phases must be aligned with each other (EC, 2015).

3.2. The European Strategy for Plastics in a Circular Economy 2018

On January 16, 2018, the European Commission published another strategy paper to address the plastic issue and lay the groundwork for a new plastic strategy within the circular economy. For an effective transformation of the economy towards a cir-cular economy and the implementation of this strategy, the EU is highly dependent on all stakeholders involved in the lifecycle of a plastic product. The plastic stra-tegy encom-passes the following six areas:

1. Improving the design of plastic products to make them more recyclable and reusable.
2. Strengthening recycling processes and infrastructure to increase the recycling rate and improve the quality of recycled materials.
3. Reducing single-use plastics and encouraging alternatives.
4. Curbing plastic littering and addressing the issue of microplastics in the environment.
5. Promoting voluntary action by the plastic and recycling industry to foster more sustainable plastic production and use.
6. Mobilizing global action to address the international dimension of the plastic problem.

Overall, this strategy aims at different aspects. On one hand, it seeks to reduce the use of disposable plastic products following the *precautionary principle*. On the other hand, it follows an *efficiency strategy* to stimulate growth and innovation, transforming the design, production, consumption, and recycling of plastic products. At the same time, the strategy aims to make the recycling industry more profitable to attract investments from the private sector (EC, 2018a).

As the first step towards implementing the plastic strategy, the European Commission published a directive on reducing single-use plastic on May 28, 2018. As a result, plastic products like plates, cutlery, straws, and cotton buds have been banned since January 2021 (EC, 2018b).

3.3. The Export of Plastic Waste and the 'Plastic Tax'

Approximately half of the plastics collected for recycling in the EU was – and still is - exported to countries outside the EU. As a result, the EU was one of the largest exporters of unsorted plastic waste. Until 2018, EU member states exported up to 87% of all plastic waste to China. Reasons for the export included the European recycling industry's insufficient capacities, technologies, or financial resources to process all the waste within the EU. In 2018, China imposed an import ban on plastic waste from the EU. Since the ban, there has been an increase of plastic waste exports to Southeast Asian countries. For instance, export numbers from Germany show more and more waste being shipped to Malaysia. The country finds itself in a delicate balance between economic interests of their recycling industry and environmental protection efforts. While some companies made significant profits, enormous waste dumps emerged in the country, leading to illegal processing

and incineration of imported plastic waste. As a reaction to the devastating consequences for waste-importing countries, the export of plastic waste is now conducted under the provisions of the *Basel Convention*. Since then, several ships carrying un-sorted European plastic waste have been rejected by the importing countries and sent back to European ports (Perras & Timmler, 2018). Unsorted or contaminated plastic waste that is difficult to recycle is no longer allowed to be traded internationally and shipped, as there are concerns that it may be illegally dumped or incinerated in importing countries (BMU, 2021).

As part of the EU's multiannual financial framework, a plastic levy came into effect in January 2021. Often referred to as the "plastic tax," member states are obligated to pay 80 cents per kilogram of non-recycled plastic. According to this calculation basis, Germany is expected to face an additional burden of approximately 1.4 bi-llion Euros per year (Deutscher Bundestag, 2020).

4. The Model Game: The Sustainability Policy of the EU on the Plastic Waste Crisis – Courses of Actions towards a Circular Economy

The model game was initially designed in the context of a Jean-Monnet-Project at the Chair for Civic Education at the University of Augsburg. The final didactical materials below were then assessed and validated by numerous teaching profession-nals from secondary and tertiary teaching facilities. During this assessment and validation-process the ready-to-play materials were updated and adapted several times. Following the best practice approach the materials now consist of the synthesis of several simulation phases. The reflection phases after the simulations, post-simulation-interviews with the learners and a feedback-questionnaire indicate the actual skill and competence acquisition is in line with the competence model introduced above.

4.1. Context of the Model Game

The model game simulates an informal stakeholder meeting in Brussels focusing on the sustainability policy of the EU addressing the plastic waste crisis. Stakeholder form politics, the economy and the public actors engage in negotiations concerning possible steps to transform the EU's economy towards a circular model. The EU-Commission's objective is to increase recycling rates within the EU without pitting the economic interests of the plastic and recycling industries against each other as both are crucial for a circular economy. Amidst this complex setting, the EU Commission aims at developing an EU directive with majority support, outlining concrete measures to implement the European Green Deal. The selection of individual roles is aligned with the stages of a plastic product's lifecycle. The chosen roles are designed to reflect the economic interests of the two represented industries and the general conflict between economic and ecological objectives, which are expected to be the main focal points during the simulation phase. The role cards directly address the learners to increase the identification with the roles they enact. This is meant to support the process of assuming the perspective of their role.

4.2. Scenario of the Model Game

The European Commission invites various stakeholders from politics, the economy, and the public to a meeting in Brussels. The goal of this meeting is for the participants to agree on a roadmap addressing the plastic waste crisis. As political stakeholders participate the President of the EU-Commission, the German Ministry of the Environment, and a delegation from Southeast Asian countries. Representatives from the economy include members of Plastics Europe, a trade association repre-sentting European plastic producers and the European Recycling Industries Confe-deration (EuRIC), which represents the interests of the recycling industry. Activists from the Rethink Plastic Alliance, a non-governmental environmental organization focused on combating plastic waste, are also present at the negotiations to provide input towards a Zero-Plastic solution. The European Commission expects to take concrete steps towards the implementation of its Plastic Strategy from 2018 during this stakeholder meeting. The starting point for the meeting is that both the European plastic and recycling industries are open in principle to modernizing their sectors, but not at the expense of their economic profitability or jobs. Furthermore, they do not want to bear all the costs of environmentally friendly investments in innovative technologies, as this would go against profit maximization. At the same time, Southeast Asian countries link further plastic waste imports to their partici-pation in this modernization process. Additionally, the Rethink Plastic Alliance makes demands that go beyond the proposals of the Plastic Strategy.

The goal of the European Commission is to develop an EU directive with concrete measures that significantly increase the recycling rate by 2030 and regulate the role of plastic waste exports in a binding manner. The mentioned stakeholders are given the opportunity to participate in the development of this directive. Within the framework of this roundtable discussion, the participating actors must address fundamental questions:

1. How can the recycling rate in the EU be increased while also reconciling the different interests of the plastic and recycling industries?
2. Under which circumstances can the plastic waste export from the EU to Southeast Asian countries continue?
3. How can consumer behaviour be influenced in favour of sustainability?

These questions are crucial to finding a comprehensive solution to the plastic waste crisis and to formulating effective policies that align with the European Green Deal objectives. The stakeholders' active involvement is essential to achieving a consensus that promotes both environmental sustainability and economic viability for the industries involved.

5. Role Card: EU-Commission

As the President of the executive body of European politics you implement the regulations and directives that the Council of the European Union (Ministerial

Council) and the European Parliament have agreed upon. You also ensure that all member states adhere to the decisions that have been made at the European level. Moreover, you are responsible for the future development of the EU. To do so, your institution holds the exclusive right of initiative, which means only the EU-Commi-ssion can draft and propose new laws for the Union.

5.1. Your Challenge

As the host, your role involves leading and moderating the stakeholder negotiations. Your greatest challenge is reconciling the partially conflicting economic interests of the plastic and recycling industries while aiming at ecologically sustainable solutions to the plastic waste crisis. It is essential to strike a balance between these interests while also ensuring that the Southeast Asian countries are constructively engaged as equal partners in the problem-solving process. Given the financial impact of the COVID-19 crisis, your investment options are limited. Therefore, it becomes crucial to prioritize cost-effective solutions that can still drive meaningful progress towards achieving the EU's plastic waste reduction and recycling targets. But you can’t pay for it all.

5.2. Your Position

- You aim at increasing the recycling rate in the EU by improving the recyclability of plastic products. This requires changes concerning product design and the manufacturing process. You try to hold the plastic industry accountable without losing it as an economic partner.
- You aim at an increase of the plastic waste levy, also known as "plastic tax".
- You aim at increasing the profitability expectations of the recycling industry and boosting the demand for recycled plastics to achieve a circular economy.
- One potential instrument for you is setting a minimum percentage of recycled raw materials (recycled plastic) in new plastic products. This would enhance the profit prospects for the recycling industry but could also increase production costs for the plastic industry.
- You aim at shifting the responsibility for influencing the consumption behaviour of EU citizens to individual member states. You propose the establishment of preventive measures such as awareness campaigns for this purpose.
- You aim at continuing the export of waste to Southeast Asian countries, while interpreting the Basel Convention laxly. You want keep the expenses for this objective within limits.
- You aim at ensuring that the plastic levies from member states continue to flow into the EU budget without specific earmarking. You want to decide on its spending.

5.3. Your Strategy

- You particularly use bilateral informal negotiations with other stakeholders and offer possible concessions on other substantive issues. You try to tie several decisions together.

- You use your legislative initiative right as leverage in the negotiations. Especially economic instruments to steer the recycling rate can be used as pressure e.g., the plastic tax.
- You promise a budget for the research and development of innovative technologies for the plastic and recycling industries. However, you are not willing to directly fund the modernization of the recycling industry's infrastructure.
- You point out the necessity for EU-wide regulations to ensure economic prosperity (EC, 2018a).

6. Role Card: German Environment Minister

As the delegate of the *Federal Ministry for the Environment, Nature Conservation, and Nuclear Safety*, you represent the German government and hence you try to pursue national interests at the EU level. You run the German ministry implementting EU guidelines and directives regarding plastic waste and plastic products in Germany. A German veto in the Council of the European Union effectively prevents the adoption of any law at the European level. Generally, your ministry is responsible for promoting sustainable environmental and nature-conservation policies in Germany. Plastic waste currently is a top priority of your ministry's efforts as expressed in your general approach: ‘Less Plastic and More Recycling.’ Overall, your ministry agrees on key points of EU Plastic Strategy.

6.1. Your Position

- You aim at reducing the use of unnecessary plastic products and packaging. You plan to achieve this through alliances with manufacturers and retailers, as well as by implementing bans on single-use items.
- You explicitly support the polluter-pays principle and advocate for the plastic industry to contribute to the costs of plastic waste disposal. You promote this idea at the European level and endorse the EU's plastic levy.
- You intend to influence product design through economic instruments. Well-recyclable products receive financial incentives; poorly recyclable products face financial sanctions.
- You demand that the EU legislation ensures resource efficiency, repairability, and recyclability. Your goal is to extend the product lifecycle.
- You announce your intention to increase the demand for products made from secondary raw materials in public investments to support the recycling industry. You suggest a minimum quota of secondary raw materials in new plastic products.

6.2. Your Strategy

Your primary focus is on sustainable environmental and nature-conservation policies. However, you also need to consider economic interests, particularly in regards to the significant plastic industry in Germany, which provides numerous job opportunities. Additionally, you have to keep in mind the interests of the *Industrial Union of Mining, Chemicals, and Energy*, which represents a significant part of the population. Therefore, you have to take into account the implications if your deci-

sions on the upcoming federal elections.
- You threaten to withhold Germany's approval in the Council of the European Union if the negotiations do not go as planned.
- You advocate for more leeway for national states in the implementation of future EU legislation.
- You insist on using economic measures to influence product design and recycling rates. Voluntary commitments from the industry are not sufficient for you.
- You propose the support of the recycling industry in emerging countries as a reciprocal measure for accepting European waste (BMU, 2018).

7. Role Card: Delegation of Southeast Asian Countries

As representatives of *the Association of Southeast Asian Nations (ASEAN)*, you advocate for the interests of the entire Southeast Asian region. Since China banned the import of plastic waste in 2018, countries in the ASEAN region have become new destinations for (plastic) waste exports from Western countries. Due to the inclu-sion of plastic waste under the provisions of the Basel Convention, the import of sorted and cleaned plastic waste remains lucrative for the ASEAN region. Howe-ver, your willingness to continue importing (plastic) waste is tied to certain condi-tions:

7.1. Your Challenge

As the political representation of Southeast Asian states, you find yourself in a field of tension between the economic interests of your recycling industry and necessary environmental protection efforts in your countries. E.g., in 2018 54 companies from Malaysia actively imported plastic waste generating substantial profits. However, only eight of these companies complied with the existing environmental regula-tions. Consequently, huge waste dumps were created in the country and the impor-ted plastic waste was subject to improper processing and burning. Your main cha-llenge now is to modernize the recycling industry of your countries to continue par-ticipating in the lucrative plastic waste trade. At the same time, you must address the demands of the protesting population for enhanced environmental protection.

7.2. Your Position

- You aim at preventing the emerging economies of the Southeast Asian region from becoming dumping grounds for waste from developed countries.
- You insist on implementing the Basel Convention, which states that only sorted, cleaned, and recyclable plastic waste should be traded.
- Your state that your countries are generally willing to issue new licenses for plastic waste imports.
- You point out that China could act as an alternative partner for the modernization of your recycling industry. Consequently, you are not unilaterally dependent on the EU.

7.3. Your Strategy

- You threaten to send back ships carrying unlicensed plastic waste as a mean to exert pressure on the international community and negotiation partners.
- At the same time, you signal a willingness to potentially issue import licenses for European plastic waste. But you want something in return.
- You attach conditions to these new licenses: you ask for the provision of technology for your recycling industry (technology transfer) and financial payments from the EU.
- As an additional leverage, you can also point out the possibility of expanding cooperation with the Chinese recycling industry at the expense of the EU. In recent years, Chinese waste processing companies have already invested 20 billion Euros in Southeast Asian countries (Global Alliance for Incinerator Alternatives, 2019).

8. Role Card: European Recycling Industry Confederation (EuRIC)

As the representative of the *European Recycling Industry Confederation*, you advocate for the recycling industry of the European Union. You are the spokes-person for the umbrella organization of the recycling industry encompassing over 5.500 companies across Europe. Your economic sector is responsible for recycling numerous materials and hence essential for the realization of a circular economy. Your companies recycle millions of tons of plastic, metal, glass, and paper annually generating nearly 100 billion Euros in revenue. The 300.000 jobs your members provide in the EU, which cannot be outsourced to countries outside the EU, further under-line the significance of your industry. Your primary goal is to promote effective legislative frameworks that support recycling in Europe and ensure the economic competitiveness of the European recycling industry.

8.1. Your Position

- You support the inclusion of plastic waste under the provisions of the Basel Convention.
- You demand a legally defined minimum percentage of recycled materials to pro-duce new plastic products
- You also demand a legally mandated minimum recycling rate for various plastic products. You do not consider voluntary commitments from the plastic industry to be sufficient.
- You declare an increase in demand for recycled materials as a prerequisite for subsequent investments in the modernization and expansion of the recycling industry. Setting non-binding recycling targets alone is not enough.
- You call for financial penalties for plastic manufacturers that do not consider the recyclability und reusability of their products during the manufacturing process.
- You propose economic incentives to increase the use of recycled materials. On measure would be subsidizing secondary raw materials.
- You request European subsidies for the modernization process of the European recycling industry.

8.2. Your Strategy

As the representative of the European recycling industry, you find yourself in a complex situation. On the one hand, the EU strongly depends on your industry to implement the transformation process to a circular economy. On the other hand, the global demand for recycled plastic has declined due to China's import ban, posing a threat to the profitability of your industry, and potentially leading to the loss of tens of thousands of jobs. Therefore, the expansion of the intra-European recycling market is also one of your key necessities.
- You declare a guaranteed minimum demand for recycled raw materials as a prerequisite for future investments in the modernization process.
- You stress the critical role of a well-functioning recycling sector for achieving a circular economy and highlight the dependence of the EU on the recycling industry.
- You call on the EU to provide financial support for the modernization process of the recycling industry. For example, directing the plastic levy towards funding recycling initiatives would be beneficial.
- You urge the EU to ensure the recyclability of plastic products by implementing regulations and standards in the production process.
- You hold the plastic industry responsible for producing recyclable products and advocate for their involvement in covering the costs of waste management Branchendachverband der Recycling- und Entsorgungswirtschaft (BVSE), (n.d. a,b)

9. Role Card: Plastics Europe

As the representative of *PlasticsEurope*, the association of plastics producers, you advocate for the political and economic interests of the pan-European plastic industry. Your organization comprises the companies that produce over 90 percent of plastics in the 27 EU member states and other countries such as Norway, Switzerland and the UK. PlasticsEurope is connected internationally through the *World Plastics Council (WPC)* and the *Global Plastics Alliance (GPC)*. Additionally, you closely cooperate with national plastic associations in Europe and around the world. Prominent members of your organization include BASF, Exxon Mobile Chemical Company, and Total Petrol Chemicals. Your industry sector provides up to 1,5 million jobs in nearly 60.000 companies across Europe. What is more, your members generate over 300 billion Euros in revenue. As the seventh-largest industry sector in Europe, you consider plastics to be the materials of the 21st century. You express scepticism towards EU regulations, instead you advocate for voluntary commitments within your industry.

9.1. Your Position

- You emphasize the positive contribution of single-use items to the quality of life and the preservation of food freshness.
- You call for measures by the EU to raise awareness among consumers regarding plastic recycling. You argue that waste generation primarily originates from consumers and not your industry.

- You emphasise your willingness to engage in voluntary commitments for the elimination of marine litter and the reduction of plastic waste in the future.
- You emphasize that existing regulations and laws are strict enough and only have to be properly implemented by member states. You aim at avoiding specific new laws.
- You stress the importance of waste reprocessing and recycling and call for the expansion of related infrastructure.
- You reject Extended Producer Responsibility (EPR) in the form of payments or the introduction of a plastic tax. You warn that this could prevent innovations in the plastic industry.
- While you generally support the use of recycled materials, you reject the legal introduction of minimum proportions for the usage of secondary resources for the production of plastic products. You seek to increase the use of secondary raw materials through dialogue between the plastic and recycling industries. Voluntary self-commitments are the way to go.

9.2. Your Strategy

As a representative of the European plastic industry, you find yourself in a complex situation. On the one hand, the EU strongly depends on your industry to implement the transformation process to a circular economy. On the other hand, you need the prevent the EU from setting strict regulations that could negatively impact the profitability of your companies.
- You warn against the potential loss of jobs in the plastic industry if the EU were to introduce a mandatory minimum share of recycled materials in the production of plastic products or a plastic tax.
- You emphasize the critical role of a profitable and innovative plastic industry for facilitating the transition to a circular economy.
- You call on the EU to provide financial support for the modernization process of the recycling industry (PlasticsEurope, 2017).

10. Role Card: Rethink Plastic Alliance

Rethink Plastic is a transnational coalition of leading European NGOs with thousands of active regional groups and supporters across Europe. They are part of the global network *Break Free From Plastic*, which is a coalition of over 1.000 NGOs with millions of supporters. In general, your aim is to influence European legislation towards a future without plastic waste. With the ability to generate critical public awareness, you see yourselves as equal stakeholders for the roundtable.

10.1. Your Position

Your supranational NGO identifies three main problem areas: the manufacturing processes of plastic products, consumer behaviour and the recycling of plastic for reuse or as a secondary raw material.
- You call for the unconditional reduction of plastic waste to decrease the plastic footprint. This can be achieved through incentives for the recycling industry and

consumers, restrictive legislation concerning plastic production and promoting sustainable plastic consumption.
- You advocate for increasing the plastic levy and introducing a minimum share of recycled materials in new plastic products.
- You demand a redesign of plastic products to extend their lifespan and improved recyclability to enable the use of recycled materials.
- You demand the plastic industry to contribute to the costs of plastic waste disposal.
- You call for improved waste treatment in Europe, including ending landfilling and incineration of plastic waste.
- You urge emerging countries to stop importing plastic waste and follow China's example.
- You promote the implementation of a meaningful plastic tax to influence consumer behaviour and internalize the damages caused by plastic products.
- You advocate for comprehensive educational programs to increase critical consumption practices.

10.2. Your Strategy

As a representative of a supranational NGO without direct competencies in the legislative process and without the possibilities and influence of an entire economic sector, you rely on the public visibility of the plastic issue. You are dependent on being able to persuade other stakeholders of your positions through informal negotiations.
- You highlight your potential to generate critical public awareness through social media campaigns and active protests on the streets.
- You try to act as a moral compass for other stakeholders.
- You announce that you have indirect influence on legislation due to your connection to the Green Party fraction in the European Parliament.
- As a last resort, you threaten direct actions such as occupying plastic manufacturing facilities, recycling centres and ports to generate media attention and cause economic repercussions to the negotiating parties.
(Rethink Plastic Alliance, n.d.)

11. Conclusions

Recent studies show that there is a lack of knowledge about the EU among the population of the EU member states. Moreover, EU-scepticism especially among youths and young adults has been increasing. Therefore, it is a necessity to strengthen EU-related learning at primary, secondary and tertiary teaching facilities (Brunold / Kerscher 2020). By combining EU-related learning and Education for Sustainable Development, the model game depicted provides an approach to convey knowledge about the EU, support the transformation process towards a circular economy and constitute a positive evaluation of the EU. What is more, the competence future and subject-oriented learning processes of the model game help students to develop the ability to participate in political decision-making-processes on the European level. Additionally, by negotiating different solutions for the plas-

tic waste crisis learners recognize the EU as a supranational institution as a key political player for solving this issue. At the same time, students are prepared for dealing with global issues and challenges.

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Chapter 10.

The Emergence of a Fair Process and the Differences in the Long-Term Delivery of EU Green Policies and Targets

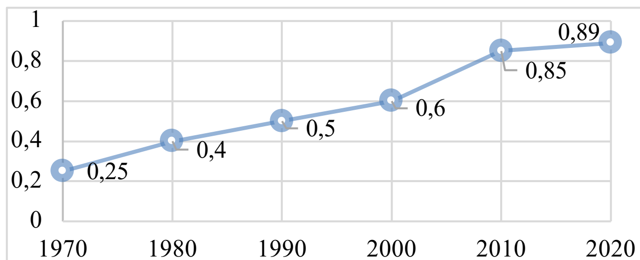
János Varga and Ágnes Csiszárik-Kocsir [10]

Abstract: The European Union has set very ambitious targets for 2050, which we call the green transition, and the series of treaties that go with it the European Green Deal. This agreement requires EU member states to do more than ever to achieve a carbon neutral economy. This requires Member States to set standards, obligations, new regulations, and other legislative changes. The study addresses the question of the extent to which these directives will be translated into practice by EU countries. While we say that EU law takes precedence over national law, in some cases the directions adopted by the EU may not be so easy to implement in a Member State. And there may be reasons for this not only in law, but also in society and, even more so, in the economy. The study focuses on the fact that economic differences and lags can cause very significant problems in transposing EU directives related to the green switchover into practice.

1. Introduction

Climate change poses a serious threat and is forcing nations to work together to implement greener policies and sustainable practices. Climate change refers to long-term changes in global or regional climate patterns, often characterised by changes in temperature, precipitation, and other atmospheric conditions. The average temperature of the Earth has increased significantly since the Second World War. While it rose by only 0.25 degrees Celsius in the 1970s, it will reach 1.89 degrees Celsius by the early 2020s. Such a rise in such a short period of time is unprecedented in our history.

Figure 1. Changes in the average temperature of the Earth [1]



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As average temperatures rise, the Earth's population is also rising rapidly. With more and more people living on Earth, the increased demand on environmental resources is not surprising, nor is the impact of humanity on the environment.

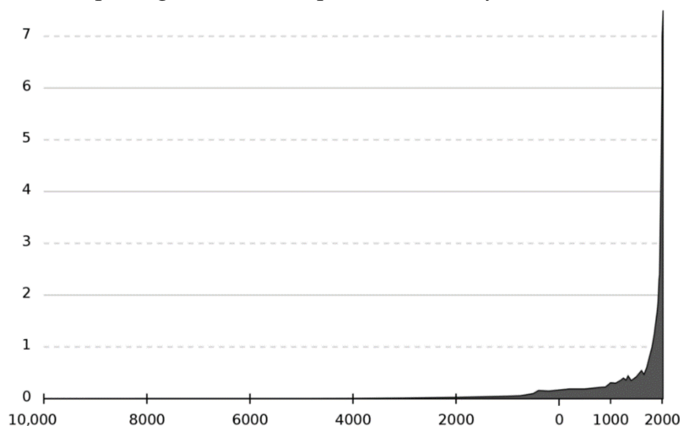

Figure 2. Population Changes on Earth from 10,000 BC [1]

The consequences of climate change are extremely damaging, mainly due to the accumulation of greenhouse gases in the Earth's atmosphere. These gases (methane or carbon dioxide) trap heat from the sun, causing the warming known as the greenhouse effect. This phenomenon has been greatly amplified by human activity, in particular the burning of fossil fuels (coal, oil and natural gas) for energy, defo-restation, industrial processes or inappropriate agricultural practices [1]. Rising temperatures affect the polar climate, melting ice sheets and rising sea levels. This could lead to flooding and some land areas where people used to live could be per-manently submerged. People will have to leave these areas. Extreme weather events, natural disasters, adverse weather events may follow one another, with ace-lerating intensity and frequency. Cyclones, floods, rains, forest fires and droughts could become a mass phenomenon, damaging not only people's homes and infras-tructure, but also destroying agricultural production and making the envi-ronment unlivable. Ocean acidification, resulting from increased carbon dioxide levels, continues. The oceans also absorb carbon dioxide accumulated in the atmos-phere, which changes the water quality of the oceans and seas.

This change in water quality damages marine ecosystems and makes habitats uni-nhabitable for species. This is of particular concern for species with calcium carbonate-based shells and skeletons, with corals and shellfish being the primary species at risk. Endangered species can easily be pushed to the brink of extinction, leading to changes in biodiversity (biological diversity). Changing climate patterns can affect agricultural productivity, with changes in temperature and precipitation affecting crop yields and livestock health. Climate change can exacerbate health problems such as heat-related illnesses, respiratory problems from poor air quality and the spread of diseases spread by insects such as mosquitoes. Efforts to tackle

climate change will require both mitigation and adaptation strategies. International agreements already represent measures that have been taken that can set the way forward towards a sustainable and greener world. The aim is to limit warming to as low a temperature as possible and avoid further catastrophic impacts of climate change. This includes the Green Deal, which aims to achieve a fully climate-neutral European Union by 2050.

2. The Green Agreement

Europe recognized in time that the environment and climate change posed an existential threat to its existence, but first they recognized that energy dependence could be a problem for the economy and competitiveness. The main objective of the agreement is to transform the European Union into a modern, resource-efficient, competitive and environmentally conscious economy in the shortest possible time [2]. The agreement aims to achieve two major objectives. On the one hand, to reduce the EU's energy dependency and promote energy security for EU Member States and, on the other hand, to root solutions in everyday life and the economy that do not have a negative impact on the environment. On the one hand, greenhouse gas emissions must be reduced, and net zero emissions achieved by 2050 [3]. On the other hand, resource independence must be promoted. EU policies and mea-sures, but also the budget plans for each year, must be consistent with the targets set in the agreement. Most grants and tenders are linked to the way in which the operator can achieve green objectives in addition to the original ones. To achieve these targets, the Commission has pledged to mobilise at least €1 billion for sustainable investment over the next decade. This amount of support will enable the transformation that can lead to a sustainable and energy-efficient economy. It has earmarked 30% of the EU's multiannual budget (2021-2027) and the EU's Next Ge-neration EU (NGEU) instrument for recovery from the Covid-19 pandemic for green investments. EU countries are required to allocate at least 37% of the €672.5 billion of funding received under the Recovery and Adaptation Facility to inves-tments and reforms that support climate objectives [3].

Table 1. Breakdown of the multiannual financial framework between the main strategic priorities [4]

Sustainable growth/natural resources	39%
Economic and social cohesion	34%
Competitiveness for jobs and growth	13%
Administration	6%
Global Europe	6%
Defence and security	2%

The table shows the importance the EU attaches to achieving green targets. The largest shares are for sustainable growth and natural resources. At the same time, the green transition is being planned not just for a specific period but for the longer term. The multiannual financial framework has been a concept in the European

Union since 1988. Its adoption sets out the planning and structure of each budget year, the ceilings on the amount of money the EU can spend, and the rules that describe how spending is financed [5][6]. Another argument in favour of a multi-annual framework is that investment and investment programmes are by their na-ture more sensible to plan for the long term [7][8]. The 2014-2020 multi-annual framework had a budget of €1.082 billion. For the period 2021-2027, this amount is slightly higher: €1.134 billion. This amount is spread over the seven years of the budget, according to the respective strategic priorities. These priorities are suppor-ted by policies, so cohesion policies, for example, have an important role to play in achieving the objectives of the Green Agreement.

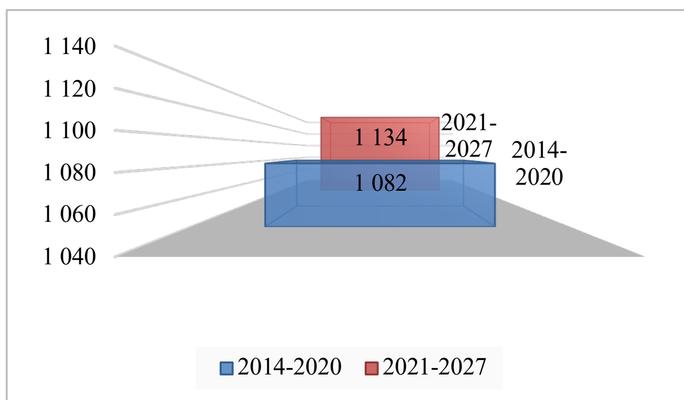

Figure 3. Budget of the long-term financial framework, current and past [5]

The EU's cohesion policy helps EU countries, regions, local authorities and cities to make major investments that contribute to the goals of the Green Deal. It will mobi-lise significant investment over the period 2021-2027 to support citizens in the re-gions most affected by the transition. The other major pillar is the Invest EU prog-ramme, which will mobilise significant private and public funding to provide long-term financing to achieve the green goals. The Invest EU Regulation requires that the Invest EU fund as a whole targets at least 30% of investments contributing to climate objectives. The European Commission has adopted a package of proposals to ensure that its climate, energy, transport, and tax policies are capable of achieving at least a 55% reduction in net greenhouse gas emissions by 2030 compared to 1990 levels. The Green Deal would also oblige economic operators to adopt greener solutions, reduce emissions and cut subsidies for polluting activities. For example, the Green Deal will make it impossible for operators using fossil fuels to receive EU subsidies. The agreement will bring many benefits in the future if member countries can comply with its provisions. These would include fresh air, clean water, biodiversity, and good quality soils, modern and energy efficient buildings, healthy and affordable food, efficient, profitable and carbon neutral public transport, clean green energy and innovative technologies, long-life products that can be repaired, recycled and reused, green jobs and competitive education, and globally competitive and resilient industry. All this requires Member States to

act together to achieve these goals and to harmonise national economic policies under the Green Deal. The Agreement has been signed by all member countries, thus accepting its importance, and acknowledging its relevance. All that remains now is to implement it.

3. Implementation of the Agreement

The Green Agreement has been signed and adopted by the member countries. This treaty will determine economic policy, industrial development, and consumer habits in society for the next decades up to 2050. This agreement will bring about huge changes if the Member States manage to transpose it properly into national law and introduce provisions and measures that can really help to achieve climate protection goals. There is no question that the leaders of the Member States have agreed with the ideas of the Green Agreement and have collectively stood behind the objectives of the Agreement. They have accepted its importance and want to subordinate the next decades to a higher goal that they have set for the Agreement. Fair play can be applied in this respect. Fair trial is a familiar term in jurisprudence. It is intended to express and explain why legal entities voluntarily submit to the provisions of the law and why they also voluntarily comply with rules or agreements. It is not diffi-cult to see that without rules and law, society would be a disorderly system in which, in the absence of principles of order, chaos would prevail. Law ensures that order and orderliness are established in society. If the members of society submit to these rules, the system of rules, which is accepted by all, creates the principles of order based on which society as a system can function properly. Law affects almost every aspect of our lives. It regulates our civic relations, shapes our business environment or even our international cooperation. The latter is even more important, as in many cases very different legal systems must be harmonised. The relationship between EU and national law is a prime example of this. There will be both facilitators and barriers to the adoption of the Green Agreement and its transposition into national law. Everyone recognises that it is important to work together, to do something together to achieve the goal and that only by bringing society as a whole together can we achieve results. If the Green Deal does not result in legislation and provisions in national law for each Member State, there is a risk that countries will take different approaches to green targets. There will be countries that will achieve better results, and there will be countries that will not achieve any-thing at all. It is important to coordinate economic policies and to prioritise the objectives of the Green Deal everywhere. It is easier for members of society to accept new legislation if we set clear expectations.

Fairness also means that we are more likely to accept legislation if we know what is expected of us in terms of compliance, if it is explained why the rule was made and why it must be respected, and if we can build commitment to the objectives the legislation is intended to achieve. To achieve the agreement objectives, we need to achieve results in these three elements at the societal level. Roles and respon-sibilities must be clarified, and the place and role of each actor in the socio-economic process must be clarified. Clarification of expectations reduces uncer-

tainty, fear and anxiety, and allows people to be more free and open towards each other and towards the tasks at hand. Help and guidance should be provided to actors on how to better comply with the legal provisions. The most obvious way to clarify expectations is through ongoing communication and information on changes in the legislative environment.

The importance of the Agreement needs to be better communicated, its content and objectives promoted, and its supporters mobilised as widely as possible. If people and businesses see their role in the process, they may better understand and accept the way the rules are enforced. In addition, of course, it is crucial to understand why the rules are being adopted. If we want actors to comply voluntarily with certain regulations or rules, we need to make them understand the purpose for which they are made. Explanation is the second major pillar of the fair process, and continuous information is another means of achieving this. We must reduce the lack of information and mistrust among the players, while continuing to try to make them understand the importance and significance of the Agreement. Everyone needs to understand what climate change means and what the long-term consequences will be if we do not change this. If we can get everyone to understand this, they will have a different attitude to the adoption of new legislation. Fairness also raises the issue of commitment. If we believe that a piece of legislation or an agreement can help us achieve our goals, or if we believe in the creative power of cooperation and collaboration, we will be more successful in achieving our goals. People all over the world are already feeling the adverse effects of climate change, so perhaps it is not necessary to explain to them why there is a need for a Green Agreement and for new legislation to be created from it. It is another matter that many people are not fully aware of the details and content of the Agreement. Many are also not fully aware of what they need to do to better meet the green targets.

Above all, they need to change. But there is an even more serious problem that could make it more difficult to achieve the Green Deal and the 2050 climate targets. This is mainly due to the economic situation. Member States have very different economic and development indicators. These will make it doubtful that all will be able to follow the same path towards meeting the green targets. The economic and development gap will mean that some countries will have to make much greater sacrifices and efforts, while facing more economic difficulties. Member States are not starting from the same starting point, and it is a big question whether we will all reach the target we have set ourselves by 2050 at the same time. For the time being, it looks as if we will not even be able to meet the sub-target for 2030, which was to cut emissions by 55% (the 'Towards 55%' programme). The European Climate Change Roadmap makes it a legal obligation to meet the EU's climate target of reducing EU emissions by at least 55% by 2030. The Green Deal was launched in 2019, but confidence in it has already waned over the past few years. The results of the latest Green Deal Barometer show that sustainability experts' confidence in the EU institutions' ability to deliver has declined. Nearly half of respondents say it is unlikely that the EU will be able to cut greenhouse gas emissions by at least 55% by the end of the decade, and only

20% think the EU has made meaningful progress towards a clean energy system. But perhaps the biggest question is how to bridge the significant economic and development gaps between EU countries to ensure that the vision of the Agreement is realised. Member States do not start on an equal footing, and it is difficult to achieve a common goal when one is at a considerable competitive disadvantage.

Table 2. The factors that most help and hinder the Green Agreement, according to the study authors

Contributing factors **(+)**	Barriers **(-)**
Recognition of the importance of collaboration	Lack of information
Support from Member States	Unclear and still unknown tasks
Ratification of the Green Deal	Differences in national legal systems
Awareness of the problems by all	Major economic and development disparities

4. Divergent starting stones

The Green Deal is one of the European Union's (EU) most ambitious and comprehensive initiatives to tackle climate change, pollution and sustainable development. Launched in december 2019, this landmark policy framework sets out a roadmap for transforming the EU into a climate-neutral, green, and socially just area by 2050. It takes climate neutrality seriously in the truest sense of the word. This means that the EU can be the first region in the world to reduce emissions to 0%. Based on the recognition of the need to combat the effects of climate change, the Green Deal sets out a holistic approach that covers a range of sectors from energy and transport to agriculture and industry. These few lines alone give a good sense of the far-reaching changes that this agreement will require of our daily lives, of industry, of business, of everyone. Entire industries will have to be transformed, while we will have to fundamentally change consumer habits. Whether everyone will be able to do this will depend to a large extent on how ready each country is now for the green transition. The more backward someone is, the more difficult and hopeless it may be to achieve the goals. Not everyone will face insurmountable obstacles to transforming their economy, while for others it will be an almost impossible task. The difference is that countries have very different economic, developmental and, ultimately, financial situations, and it makes a difference whether we must build something from scratch or build on a foundation that is already there. One of the biggest issues in the green transition is the management of waste. One of the main waste streams is municipal waste, which is the everyday waste collected and treated by local authorities, mainly from households.

The extent of this is illustrated by the fact that municipal waste accounts for 27% of all waste generated in the EU [8]. The Green Agreement has also set basic targets for municipal waste. The aim is to increase the waste recycling rate to at least 60% by 2030. The following table shows how some EU Member States are performing in terms of recycling rates for municipal waste. The table does not include all countries, but if we look at the recycling rates of all EU countries, we see that only four countries meet the 60% target by 2030. These countries - Austria, Germany, Slovenia, and Bulgaria - have already met the 2030 target.

Many countries are close to 60%, but there are also countries that are significantly below the target.

Table 3. Recycling rate of municipal waste in the EU [9]

EU-27	49,6%	Portugal	30,5%
Austria	62,3%	Slovenia	60,0%
Luxembourg	55,3%	Slovakia	48,9%
Denmark	34,3%	Italy	51,4%
Belgium	53,3%	Lithuania	44,3%
Germany	71,1%	Spain	36,7%
Cyprus	15,3%	Latvia	44,1%
Ireland	40,8%	Croatia	31,4%
Malta	13,6%	Sweden	39,5%
Finland	37,1%	Hungary	35,0%
Czech Republic	43,3%	Bulgaria	65,5%
France	45,1%	Estonia	30,3%
Greece	21,1%	Poland	40,3%
Netherlands	57,8%	Romania	11,3%

European Union documents show that recycling, incineration, and waste export are among the main ways of managing waste. The average recycling rate is 49.6%, which is not bad at EU level. It is realistic to reach an average of 60% in the next few years. The question is rather whether countries with low rates can catch up sufficiently, for example Cyprus or Romania. The practice of landfilling has now almost disappeared in countries such as Belgium, the Netherlands, Sweden, Denmark, Finland, Germany, and Austria. Here, incineration is used in addition to recycling. Lithuania, Latvia, Ireland, Italy, France, the Czech Republic, Slovakia, and Poland also use incineration and landfill one third or less of their waste. The proportion of landfills in the EU has decreased from 24% in 2017 to 18% in 2020 [9]. In line with the EU Landfill Directive, Member States are required to reduce the amount of municipal waste sent to landfills to 10% or less of total municipal waste generated by 2035. However, some of this waste will be exported, up to 33 million tonnes in 2021. This is a significant increase compared to 2004. The main destinations for waste exports are Turkey, India, and Egypt. In 2021, EU countries will export 14.7 million tonnes to Turkey, 2.4 million tonnes to India and 1.9 million tones to Egypt. In addition, Switzerland, the United Kingdom, Norway, Pakistan, Indonesia, Morocco, and the United States also "import" waste from EU countries. The main destinations for EU waste in 2021 were the countries listed above.

One of the key objectives of the Green Deal is to reduce CO2 emissions. The European Union is the world's third largest emitter after China and the United States, followed by India and Brazil. Within the EU, Germany is the largest emitter with more than 900 million tonnes. The EU infographics show that carbon dioxide is only one of the greenhouse gas components. In terms of greenhouse gas proportions, carbon dioxide accounts for the largest share (80%), while methane accounts for 11%, nitrous oxide 6% and hydrofluorocarbons 2%. Other greenhouse gases account for the remaining 1%. It is also worth highlighting which sectors were

most responsible for greenhouse gas emissions. The energy sector stands outin this respect as of 2019, accounting for 77.01% of greenhouse gas emissions. Industrial processes and product use were responsible for 9.1%, agriculture for 10.55% and waste management for 3.32%. The following graph shows the total greenhouse gas emissions by Member State based on 2019 results (in tonnes) [9].

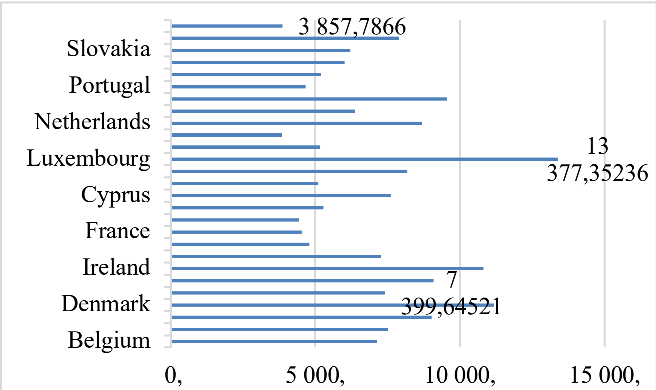

Figure 4. Greenhouse gases emissions from production activities, 2021 [Eurostat] (Y axis - EU Member State, X axis - tonnes)

Greenhouse gas emissions are linked to several things for a given country. On the one hand, higher emissions are correlated with population, since a country with five million inhabitants does not consume the same amount as a Member State with, say, 80 million inhabitants. In addition, differences in economic performance can also be observed, with industrialised and less industrialised countries within the EU. The environmental impact of industrial production is not the same in all countries. International comparisons can be further developed by examining the Environmental Performance Index. The 2022 Environmental Performance Index (EPI) provides a summary assessment of the state of sustainability worldwide. The EPI uses 40 performance indicators in eleven thematic categories and ranks one hun-dred and eighty countries on climate change performance, environmental health and ecosystem vitality. These indicators show, at the national level, how close countries are to meeting their environmental targets. The EPI highlights the leaders and laggards in environmental performance and provides practical guidance for countries wishing to move towards a sustainable future. The EPI indicators provide an opportunity to identify problems, set targets, monitor trends, understand results, and identify best policy practices. Their overall rankings show which countries are best placed to address the environmental challenges that all nations face. The ranking based on the 2022 indicator is as follows.

Table 4. EPI Index values for 2022 for 33 countries [10]

Denmark	1	France	12	Italy	23
Great Britain	2	Germany	13	Ireland	24
Finland	3	Estonia	14	Japan	25
Malta	4	Latvia	15	New Zealand	26
Sweden	5	Croatia	16	Spain	27
Luxembourg	6	Australia	17	Bahamas Islands	28
Slovenia	7	Slovakia	18	Greece	29
Austria	8	Czech Republic	19	Romania	30
Switzerland	9	Norway	20	Lithuania	31
Iceland	10	Belgium	21	Seychelles Islands	32
Netherlands	11	Cyprus	22	Hungary	33
Another 147 countries from around the world					

The EPI index is a multidimensional indicator that assesses countries in terms of climate status and climate impact, environmental values and health, and ecosystem vitality. These include, of course, greenhouse gas emissions, recycling, waste management, wastewater use, biodiversity, and species conservation. In the context of meeting green targets, it is worth looking at the recycling rate and resource productivity. The circular material use rate (CMR, %) measures the proportion of materials recovered and returned to the economy as a proportion of total material use. The following graph compares EU countries based on the CMR indicator.

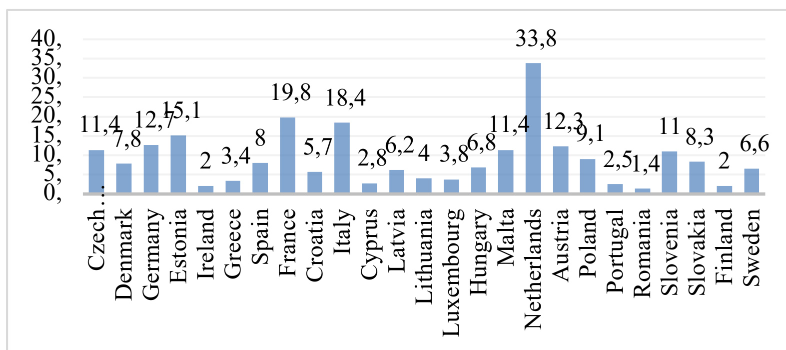

Figure 5. Evolution of the CMR indicator in 2021 in EU Member States [Eurostat]

Achieving green targets requires that the proportion of materials recovered and returned to the economy is as high as possible. Countries such as the Netherlands and France are already well on the way. However, there is a striking gap with Romania, Ireland and Finland. Another indicator of the circular economy is the so-called resource productivity. Resource productivity can be calculated as GDP divided by domestic material use. Domestic material use can be defined as domestic extraction + (exports - imports). The following graph compares resource productivity in 2021 and 2022 for each EU country.

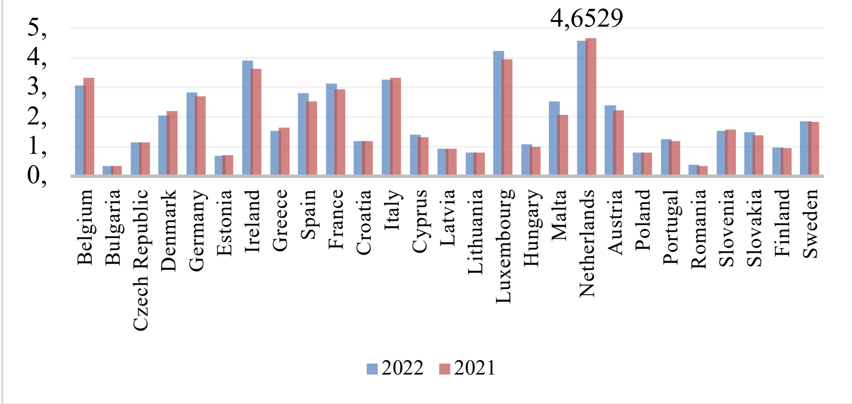

Figure 6. Resource productivity developments in 2021 and 2022 in the EU [Eurostat]

In environmental terms, the indicator is a measure of the environmental impact of the use of materials in the national economy, where materials are considered throu-ghout their life cycle, regardless of whether the environmental burden occurs within the country or in the country from which the product is imported. The interpretation of the indicator is as follows: In the Netherlands in 2021, 1 kilogram of resource use contributed €4.6529 to the gross domestic product, while the same value in 2022 was €4.5753. This indicator shows whether it is really worthwhile to maxi-mize the input of resources into production. If we can see that increasing resource use does not lead to GDP growth, the question of efficiency arises very strongly. If resources are to be integrated into the economy, it should at least make economic sense, otherwise we will see a waste and wastage of resources. Once again, the comparisons show which countries have a more favourable indicator and which countries have a lower indicator. Achieving green objectives may require invest-ment and innovation from economic actors. For the EU countries, the extent to which each country has a high or low level of investment in promoting green objec-tives can also be examined. The following graph shows the level of private inves-tment associated with green economy sectors.

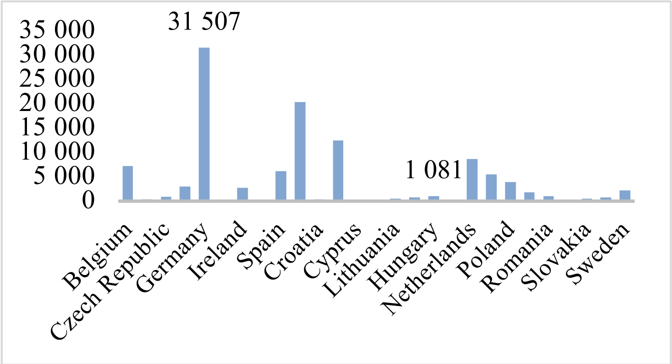

Figure 7. Investment volume in circular economy sectors in the EU in 2021

[Eurostat] (Y axis - in EUR million)

It is clear from the above graph that Germany, France, and Italy are the countries investing the most in investments that are linked in some way to green economy sectors. However, the achievement of sustainability and green goals depends mostly on the attitude of individuals, households or society at large towards the issue of conscious consumption [11]. As the following figure shows, some countries have an ecological footprint that is significantly larger than the 2010 baseline (the black line represents the change compared to the 2010 baseline; those above it have a higher ecological footprint than in 2010).

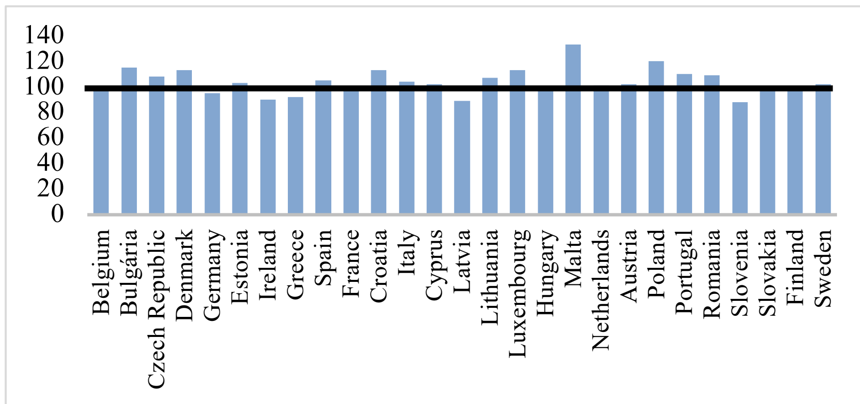

Figure 8. Evolution of the ecological footprint of consumption in EU countries, 2021 [Eurostat]

Highlighting the differences is completed in this scientific paper by comparing international competitiveness through the innovation system. Competitiveness is a general measure of an economy's ability to adapt to changing environmental conditions, i.e. to cope with the current competitive environment. The IMD Competitiveness List can be used to help assess this. The IMD, the International Institute for Management Development, has published the World Competitiveness Yearbook without interruption since 1989. The IMD ranks countries according to their ability to manage their capabilities to be more competitive, based on more than 300 criteria (333 in the 2022 report). The Yearbook stresses that the understanding of the competitiveness of nations should not be reduced to GDP or productivity alone, and therefore also looks at the political, environmental, cultural, and social dimensions. One of the most important pillars in the competitiveness ranking is the extent to which sustainability has been more recently reflected in economic sectors. According to the IMD, competitiveness is a complex system and reflects the fact that strengthening competitiveness is not only an economic issue, but also a social and environmental one. The IMD provides excellent evidence of this, stating in its report that national economies compete not only through their products and services, but also through their education and value systems. As countries evolve, so do their values [12]. The IMD analyses how national economies can create and

maintain an environment in which businesses can compete and achieve their ambitions and goals. According to the IMD, the competitiveness of nations is a fundamental area of economic knowledge that analyses the facts and policies that shape the competitiveness of nations (and hence of economic agents). The bottom line in this framework is that a nation needs to create and maintain an environment that can provide more opportunities for its businesses to create value, which will ultimately affect the quality of life of its people. The differences arise precisely because some countries are more supportive of competitiveness (putting more inputs into it), thus creating an environment that is more conducive to the competitiveness of economic actors and encourages long-term sustainability [12]. The Competitiveness Report is produced by collecting primary and secondary data. It uses a wide range of macroeconomic and other economic statistics, covering not only the state of the macro-economy but also social and sustainability indicators and values.

Table 5. Rankings of some EU countries on the IMD 2022 list [12]

Country name	Competitiveness position in the IMD 2022 list
Sweden	9.
Finland	16.
Denmark	6.
Netherlands	4.
Germany	15.
Hungary	47.
Bulgaria	48.
Romania	49.
Number of all countries on the list	63.

5. Conclusions

This scientific paper deals with one of the most crucial and topical issues of our time. Sustainability and the preservation of environmental values are now important, not only because we are having to deal with an increasing amount of waste. There are visible and tangible changes taking place in our environment that affect the lives of all people. The change in the average temperature of the Earth is just one of the changes that are affecting our environment. Many countries have recognised that without the right level of cooperation, we cannot be effective enough to tackle the adverse effects of climate change. The Green Deal adopted by the European Union aims to minimize our negative impact on the environment. However, it is not enough to adopt it at integration level.

From here, much more attention will have to be paid to implementation, in particular to the way in which the Member States can transpose the green directives into national law. How well can Member States meet these challenges and, in particular, to what extent will economic operators be able to adapt to these requireements? The fair procedure has been used to show that cooperation is desirable and important for everyone, who has voluntarily accepted the provisions of the Green

Agreement. There is no question that the importance of the objectives is recognized by all, while the Treaty itself has been signed by all the Member States. However, implementation depends not only on a common will but also on the conditions for implementation. In this respect, however, the Member States do not present the same picture. They are in very different economic, social and income situations. This will affect how much each country can devote to meeting green targets, how much green investment it can make and how effective it can be in promoting the green transition.

The study found significant differences between EU countries in a number of indicators that give an excellent indication of how much more some countries will need to do to promote the green transition. Many are significantly lagging in terms of innovation, development and even competitiveness. Not to mention the fact that not all of them have sufficient financial resources to fully meet these targets. One of the most important steps towards achieving the green goals would be to reduce the disparities between Member States. There should not be such huge economic and development gaps that create unequal competition between countries. The EU must provide a broader support policy for countries that are characterized by these gaps and that do not currently have sufficient resources to achieve the green objectives. Without targeted assistance, there is no chance of meeting the targets or sub-targets of the European Green Deal. Already, there are growing voices of scepticism. There is also a growing number of people in the European Union who do not really believe that the 55% reduction by 2030 can be achieved. The differences presented in the study also tend to show that, given the gaps between Member States, the chances of this happening seem slim.

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Chapter 11.

The Problem of Financial Exclusion in the 21st Century based on the Results of a Hungarian Primary Research

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Abstract: Some organizations are at the forefront of digitization, and the same can be said of some individuals. But we must not forget those who are lagging in terms of digitization. Particular attention should be paid to households and individuals who, because of their location or level of education, are unable to cope with this system or have limited opportunities. Access to the internet is not uniform across a municipality, country or even continent. People living in less developed areas are excluded from many of the opportunities offered by the Internet because of limited access, which is needed everywhere, as is declared by regulations, agreements, and legislation. Another achievement of the 21st century is the massive digitalization of finance. People who fall into the above category have limited or no access to information and are at a disadvantage in financial matters. Financial exclusion therefore harms disadvantaged groups. This leads to further problems in terms of their inclusion and in the fight against poverty. The aim of this study is to present the general problem of financial exclusion based on the results of a questionnaire survey conducted in Hungary. Our aim is to present the phenomenon of financial exclusion and compare it with the expectations and challenges that can be addressed.

Keywords: Financial exclusion; Digitalization; Legislative Support, Financial Socialization

1. Introduction

Financial exclusion is one of the increasingly researched issues of our time. Financial exclusion and financial inclusion are not new concepts. However, digitalisation and the changing world it brings, as well as the ever-widening range of storage options, are not a positive outcome for all people. People and groups of people are missing out on these positive effects because they do not have the knowledge, skills, tools or even infrastructure to take advantage of the positive changes. Financial exclusion stems in part from this cycle of problems. There are many aspects of financial exclusion, so we can identify several causes and motives behind it. One of these is inadequate financial socialization, which can occur at school, in the family and at work. This inadequate socialization exacerbates the issue of financial exclusion, which needs to be addressed through awareness-raising.

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2. Literature Review

In an accelerated, digitally driven and highly determined world, many countries have recognized the problem of financial exclusion and are seeking to address it through a variety of means [1]. Financial exclusion in our current society is a source of many problems: it causes income inequalities, increases the marginalization of disadvantaged groups, deepens poverty, and makes individuals and groups vulnerable, thus exacerbating economic, social, and political inequalities [2]. The digitalisation wave of the 21st century, with the new impetus of the crown virus epidemic that will escalate in 2020, has raised further questions about financial exclusion. Digital payment solutions, internet-based money transfer systems through digital platforms, and the possibilities offered by mobile phones have made almost the entire range of banking services more convenient and accessible. It is also a fact that the world is increasingly moving towards digital payment solutions because of their convenience, speed, and simplicity [3]. Several researchers agree that financial digitalisation and the resulting flow of information and better access to information can contribute to poverty reduction and ensure a more financially inclusive society [4]. Individuals and households who are not financially excluded are able to increase their savings, invest in the education of family members, start businesses, and empower women [5]. By reducing the number of financially excluded, the pillars of a sustainable economy can be strengthened.

Financial exclusion is a multidimensional issue. The concept of financial exclusion was first attempted to be defined in the early 1990s, when it was understood as limited access to banking services due to bank closures [6]. The concept thus came into focus and was complemented by other elements such as education, financial literacy, and the analysis of exclusion due to financial background. There is no single definition of financial exclusion. FINCA [7] defines financial exclusion as individuals and groups who have no or limited access to financial services. This raises further issues - because they do not qualify to open a bank account, they cannot access credit, which limits their options, both as individuals and as entrepreneurs. The definition of the European Union also seeks to define the concept in terms of access to financial services. According to this definition, people or groups of people cannot access financial services that are intended to meet basic financial needs and enable people to lead an adequate life in the society to which they belong [8]. Blake and Jong [9] define the problem in a similar way. It refers to people who cannot or do not use appropriate financial products and services.

One of the main determinants of financial exclusion is the financial situation of the individual or group. Poorer people are excluded from many financial products, which creates additional problems. But there is a deeper dimension to this situation, which is financial socialisation. Children and young people acquire financial knowledge, skills, and attitudes through financial socialisation [10], the main arenas of which are family, peers, education and, in the digital age, the media. Financial socialization is the process by which people learn financial knowledge, skills, and abili-ties from their environment and through which they shape their

own behaviour. A large body of research has shown that poor financial habits acquired in childhood and young adulthood lead to financial problems later in life [11]. A very important segment of the financial socialisation population are the young people *of generation* Z and alpha whose parents were strongly affected by the 2008 series of events. The parents of the current generation Z and alpha children have experienced first-hand the difficulties that are now only available in the form of articles. Furthermore, it should be pointed out that these young people, and the generations to come, are already active participants in the world of the internet, they are almost born into the digital age and use various IT tools at a skill level [12]. On the one hand, the skill level of using IT tools is positive, as they can get the necessary information almost immediately, whether it is any basic knowledge for making financial decisions. On the other hand, the unrestricted flow of information is also a disad-vantage, as it reaches them unfiltered and uncensored, which can often convey false and misleading data, opinions, and knowledge. The various actors that call them-selves opinion formers may not always be conveying wellfounded information, which, when dressed up as 'trendy', can do enormous damage to young people's decision-making [13].

A large body of research shows that the most important arena for financial socialisation is the family, and within that, parents and, in some cases, grandparents. Parental financial socialisation has been shown to have a positive impact on children's openness to financial education. The OECD study [14] also supports the above findings that young people tend to bring with them from home the patterns and principles that will guide their decisions later in life. Parents provide role models, teach children the right behaviour and inform them, guiding them in the right direction [15]. It can be argued that the family is the primary arena for financial socialisation. Rather, financial education aims at dee-pening and putting into practice concepts and contexts that enable individuals to develop a deeper financial knowledge base. This suggests that there are three different arenas of financial socialisation: family (i), school (ii) and workplace.

3. Material and Method

The primary research presented in this paper is the result of a pre-tested, standardized questionnaire. The sample was collected using a snowball method, resulting in the present paper based on an evaluable sample of 3515 respondents. The data collection was conducted between March and May 2022 in the form of an online survey, with full anonymity of respondents ensured. The results of the questionnaire presented in this paper were obtained using SPSS 22.0 software. The primary data presented in this study after the literature review, which is considered as secondary research, were evaluated based on the respondents' previous participation in finan-cial education and their generational group. The study seeks to answer the question of what are the hidden dimensions of financial exclusion, where to look for them and what are the financial socialisation arenas responsible for financial exclusion. For the questions examined in this study, respondents selected the measure that most closely resembled their own using a four-point Likert scale. The lowest point on the scale represented total disagreement and the

highest point represented total agreement. Analysis of variance was used in the study, using ANOVA analysis. The sample composition is shown in Figure 1:

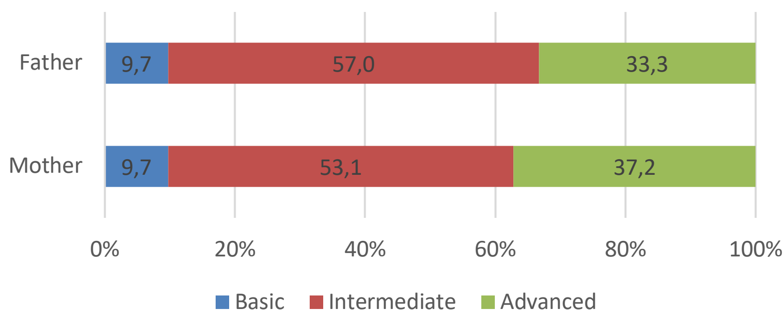

***Figure 1**. Distribution of educational attainment of respondents' parents*
Source: own research, N = 3515, 2022

4. Results

As a first step, we look at the average perception of the statements made. As can be seen, the average perception of all the statements asked is above 2, i.e. they range from 2.656 to 2.112. This shows neither total agreement nor total disagreement with the statements. When the mean scores are ranked, it can be seen that the statements related to school and school education had the highest mean scores, indicating that school financial education was not at all effective in terms of financial socialisation. This means that, unfortunately, schools are currently unable to compensate for the effects of inadequate family financial socialisation, which can be interpreted as a significant factor of financial exclusion. The company of friends, the wider environment, is also inadequate in terms of financial socialisation, according to the responses received. The statements at the end of the list are related to family, which is a positive message because their inverse nature shows that family is very supportive. Inversely, the statements imply that family members (mostly parents) deal with financial issues, give advice, deal with financial issues, and help in decision making for the sample respondents.

Table 1. Effect of the educational level of the sweetener on the perception of the claims (ANOVA table)

	Average	Std. dev.
I am not interested in financial products.	2,278	0,969
I was not taught anything about financial products in school.	2,656	1,093
My parents are not familiar with a wide range of financial products.	2,408	1,030
We don't talk about financial products at home.	2,385	1,029
We don't talk about finance among friends.	2,426	1,017
We don't talk about financial products at school.	2,525	1,089
I cannot ask my parents for financial advice.	2,241	1,110
I cannot ask my teachers for financial advice.	2,520	1,116

I cannot ask my family for financial advice.	2,112	1,028
I cannot ask friends for financial advice.	2,191	1,004
My parents have not made me aware of the importance of financial education.	2,164	1,064
My friends have not made me aware of the importance of financial literacy.	2,385	1,049
My family has not made me aware of the importance of financial literacy.	2,158	1,035
My teachers have not made me aware of the importance of financial literacy.	2,388	1,081

Source: own research, N = 3515, 2022

Next, we also wanted to know how much the respondents' mother's education influenced their perception of the statements. The results of the analysis of variance below show that this factor influences the judgements of the vast majority of statements, with a significance value below 0.05. This implies that parental education has an impact on each dimension of financial socialization, thus influencing the issue of financial exclusion.

Table 2. Influence of mother's education on the perception of the statements (ANOVA table)

		Sum of Squares	df	Mean Square	F	Sig.
I am not interested in financial products.	Between Groups	4,362	2	2,181	2,324	0,098
	Within Groups	3296,634	3512	0,939		
	Total	3300,997	3514			
I was not taught anything about financial products in school.	Between Groups	0,703	2	0,351	0,294	0,745
	Within Groups	4194,768	3512	1,194		
	Total	4195,471	3514			
My parents are not familiar with a wide range of financial products.	Between Groups	103,183	2	51,592	50,028	0,000
	Within Groups	3621,794	3512	1,031		
	Total	3724,977	3514			
We don't talk about financial products at home.	Between Groups	25,682	2	12,841	12,201	0,000
	Within Groups	3696,289	3512	1,052		
	Total	3721,970	3514			
We don't talk about finance among	Between Groups	13,917	2	6,958	6,748	0,001
	Within	3621,379	3512	1,031		

friends.	Groups					
	Total	3635,296	3514			
We don't talk about financial products at school.	Between Groups	7,006	2	3,503	2,955	0,052
	Within Groups	4163,566	3512	1,186		
	Total	4170,572	3514			
I cannot ask my parents for financial advice.	Between Groups	181,297	2	90,649	76,693	0,000
	Within Groups	4151,085	3512	1,182		
	Total	4332,382	3514			
I cannot ask my teachers for financial advice.	Between Groups	31,617	2	15,808	12,781	0,000
	Within Groups	4343,719	3512	1,237		
	Total	4375,336	3514			
I cannot ask my family for financial advice.	Between Groups	80,530	2	40,265	38,916	0,000
	Within Groups	3633,753	3512	1,035		
	Total	3714,283	3514			
I cannot ask friends for financial advice.	Between Groups	28,247	2	14,123	14,115	0,000
	Within Groups	3514,043	3512	1,001		
	Total	3542,290	3514			
My parents have not made me aware of the importance of financial education.	Between Groups	103,564	2	51,782	46,927	0,000
	Within Groups	3875,375	3512	1,103		
	Total	3978,939	3514			
My friends have not made me aware of the importance of financial literacy.	Between Groups	8,560	2	4,280	3,896	0,020
	Within Groups	3858,100	3512	1,099		
	Total	3866,660	3514			
My family has not made me aware of the importance of financial literacy.	Between Groups	57,748	2	28,874	27,350	0,000
	Within Groups	3707,621	3512	1,056		
	Total	3765,368	3514			
My teachers have not	Between Groups	15,043	2	7,521	6,456	0,002

made me aware of the importance of financial literacy.	Within Groups	4091,879	3512	1,165		
	Total	4106,922	3514			

Source: own research, N = 3515, 2022

In the following, the average values for each educational group are examined in relation to the statements made. In each case, it can be seen that the highest mean values were detected in the groups where the mother had only primary education. This shows that family education has a strong influence on the issue of financial socialization. The lower the mother's education, the greater the possibility of financial exclusion, which can lead to further problems, imprudent financial decisions and misguided financial actions. As these are inverse statements, children of mothers with tertiary education had the lowest mean scores on the statements.

Table 3. Mean Values for Statements Based on Mother's Education

I am not interested in financial products.	Basic	2,360	1,008
	Intermediate	2,289	0,978
	Advanced	2,240	0,945
	Total	2,278	0,969
I was not taught anything about financial products in school.	Basic	2,696	1,144
	Intermediate	2,656	1,087
	Advanced	2,645	1,087
	Total	2,656	1,093
My parents are not familiar with a wide range of financial products.	Basic	2,769	1,111
	Intermediate	2,478	1,007
	Advanced	2,213	1,002
	Total	2,408	1,030
We don't talk about financial products at home.	Basic	2,471	1,103
	Intermediate	2,446	1,017
	Advanced	2,274	1,018
	Total	2,385	1,029
We don't talk about finance among friends.	Basic	2,570	1,019
	Intermediate	2,446	1,015
	Advanced	2,358	1,015
	Total	2,426	1,017
We don't talk about financial products at school.	Basic	2,661	1,097
	Intermediate	2,509	1,083
	Advanced	2,512	1,095
	Total	2,525	1,089
I cannot ask my parents for financial advice.	Basic	2,789	1,137
	Intermediate	2,303	1,110
	Advanced	2,008	1,040
	Total	2,241	1,110

I cannot ask my teachers for financial advice.	Basic	2,787	1,133
	Intermediate	2,524	1,110
	Advanced	2,445	1,109
	Total	2,520	1,116
I cannot ask my family for financial advice.	Basic	2,447	1,067
	Intermediate	2,167	1,034
	Advanced	1,945	0,979
	Total	2,112	1,028
I cannot ask friends for financial advice.	Basic	2,427	1,033
	Intermediate	2,205	1,008
	Advanced	2,109	0,980
	Total	2,191	1,004
My parents have not made me aware of the importance of financial education.	Basic	2,643	1,084
	Intermediate	2,172	1,075
	Advanced	2,026	1,006
	Total	2,164	1,064
My friends have not made me aware of the importance of financial literacy.	Basic	2,512	1,047
	Intermediate	2,395	1,057
	Advanced	2,338	1,036
	Total	2,385	1,049
My family has not made me aware of the importance of financial literacy.	Basic	2,474	1,038
	Intermediate	2,190	1,049
	Advanced	2,029	0,993
	Total	2,158	1,035
My teachers have not made me aware of the importance of financial literacy.	Basic	2,576	1,088
	Intermediate	2,387	1,092
	Advanced	2,340	1,059
	Total	2,388	1,081

Source: own research, N = 3515, 2022

The sample is further analyzed according to the educational attainment of the father. As well as the mother's education, the father's education also significantly influenced the respondents' opinions on the statements. Thus, based on these results, we can conclude that parental education and awareness has a significant impact on the perception of financial exclusion issues and statements based on the significance values.

Table 4. Influence of Father's Education on the Perception of the Statements (ANOVA table)

		Sum of Squares	df	Mean Square	F	Sig.
I am not interested in financial products.	Between Groups	3,127	2	1,563	1,665	0,189
	Within Groups	3297,870	3512	0,939		
	Total	3300,997	3514			

I was not taught anything about financial products in school.	Between Groups	3,490	2	1,745	1,462	0,232
	Within Groups	4191,981	3512	1,194		
	Total	4195,471	3514			
My parents are not familiar with a wide range of financial products.	Between Groups	71,184	2	35,592	34,211	0,000
	Within Groups	3653,793	3512	1,040		
	Total	3724,977	3514			
We don't talk about financial products at home.	Between Groups	14,692	2	7,346	6,959	0,001
	Within Groups	3707,279	3512	1,056		
	Total	3721,970	3514			
We don't talk about finance among friends.	Between Groups	3,705	2	1,853	1,792	0,167
	Within Groups	3631,590	3512	1,034		
	Total	3635,296	3514			
We don't talk about financial products at school.	Between Groups	12,651	2	6,325	5,343	0,005
	Within Groups	4157,921	3512	1,184		
	Total	4170,572	3514			
I cannot ask my parents for financial advice.	Between Groups	118,920	2	59,460	49,561	0,000
	Within Groups	4213,463	3512	1,200		
	Total	4332,382	3514			
I cannot ask my teachers for financial advice.	Between Groups	26,524	2	13,262	10,710	0,000
	Within Groups	4348,812	3512	1,238		
	Total	4375,336	3514			
I cannot ask my family for financial advice.	Between Groups	50,890	2	25,445	24,393	0,000
	Within Groups	3663,393	3512	1,043		
	Total	3714,283	3514			
I cannot ask friends for financial advice.	Between Groups	9,107	2	4,554	4,526	0,011
	Within Groups	3533,183	3512	1,006		
	Total	3542,290	3514			
My parents have not made	Between Groups	45,580	2	22,790	20,349	0,000

me aware of the importance of financial education.	Within Groups	3933,359	3512	1,120		
	Total	3978,939	3514			
My friends have not made me aware of the importance of financial literacy.	Between Groups	10,776	2	5,388	4,907	0,007
	Within Groups	3855,884	3512	1,098		
	Total	3866,660	3514			
My family has not made me aware of the importance of financial literacy.	Between Groups	42,239	2	21,119	19,922	0,000
	Within Groups	3723,130	3512	1,060		
	Total	3765,368	3514			
My teachers have not made me aware of the importance of financial literacy.	Between Groups	20,751	2	10,375	8,917	0,000
	Within Groups	4086,171	3512	1,163		
	Total	4106,922	3514			

Source: own research, N = 3515, 2022

The father's education is a similar determinant as for the previously examined criterion. However, it is important to note here that in many cases, respondents where the father had a secondary education gave the lowest average value to each statement. It is therefore not clear that the children of respondents with a father with at least a tertiary education are more aware of financial exclusion, but that they are more aware of the rating of each statement even if they have a secondary education.

Table 5. Mean Values for Statements Based on Father's Education

		Average	Std. dev.
I am not interested in financial products.	Basic	2,289	0,932
	Intermediate	2,300	0,985
	Advanced	2,236	0,952
	Total	2,278	0,969
I was not taught anything about financial products in school.	Basic	2,608	1,099
	Intermediate	2,639	1,103
	Advanced	2,699	1,072
	Total	2,656	1,093
My parents are not familiar with a wide range of financial products.	Basic	2,690	1,049
	Intermediate	2,465	1,023
	Advanced	2,229	1,005

	Total	2,408	1,030
We don't talk about financial products at home.	Basic	2,506	1,027
	Intermediate	2,413	1,039
	Advanced	2,301	1,008
	Total	2,385	1,029
We don't talk about finance among friends.	Basic	2,503	0,980
	Intermediate	2,434	1,020
	Advanced	2,389	1,022
	Total	2,426	1,017
We don't talk about financial products at school.	Basic	2,673	1,063
	Intermediate	2,481	1,096
	Advanced	2,558	1,081
	Total	2,525	1,089
I cannot ask my parents for financial advice.	Basic	2,670	1,143
	Intermediate	2,290	1,116
	Advanced	2,032	1,045
	Total	2,241	1,110
I cannot ask my teachers for financial advice.	Basic	2,781	1,081
	Intermediate	2,504	1,120
	Advanced	2,471	1,109
	Total	2,520	1,116
I cannot ask my family for financial advice.	Basic	2,409	1,005
	Intermediate	2,136	1,044
	Advanced	1,983	0,987
	Total	2,112	1,028
I cannot ask friends for financial advice.	Basic	2,339	1,048
	Intermediate	2,186	0,996
	Advanced	2,155	1,002
	Total	2,191	1,004
My parents have not made me aware of the importance of financial education.	Basic	2,477	1,096
	Intermediate	2,169	1,075
	Advanced	2,062	1,017
	Total	2,164	1,064
My friends have not made me aware of the importance of financial literacy.	Basic	2,550	1,026
	Intermediate	2,358	1,051
	Advanced	2,385	1,048
	Total	2,385	1,049
My family has not made me aware of the importance of financial literacy.	Basic	2,477	1,003
	Intermediate	2,150	1,045
	Advanced	2,079	1,011
	Total	2,158	1,035
My teachers have not made me aware of the importance of financial literacy.	Basic	2,614	1,071
	Intermediate	2,348	1,086
	Advanced	2,392	1,069
	Total	2,388	1,081

Source: own research, N = 3515, 2022

5. Conclusions

Financial exclusion, as you can see, is one of the most striking problems of our time. One ramification of the root of financial exclusion can certainly be found in financial socialization. The results of the research show that both the mother's and the father's education, i.e. literacy and awareness, clearly determine attitudes to financial issues. The lower the educational level of parents, the more the negative impact of financial exclusion is felt. This again confirms the claim made by several researchers. Financial exclusion deepens poverty and raises awareness, which must be improved. This research clearly confirms previous studies. Therefore, it is very important that education plays a more prominent role in raising financial awareness, so that any negative patterns brought from home can be eliminated in the future and financial exclusion as a phenomenon can be eradicated over time in modern society.

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Chapter 12.

The Social and Economic Foundations of Pauline Action

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Abstract: This article explores the historical evolution and contemporary significance of the Pauline action in safeguarding creditors' rights. Tracing its origins from ancient Roman practices to modern legal frameworks like the Modernized Civil Code, it elucidates the pivotal role of this mechanism in shielding creditors from debtors' obstructive actions. The Pauline action, designed to counteract fraudulent dispositions by debtors to third parties hindering creditor claims, is analyzed in the context of balancing interests among creditors, debtors, and third-party contractors. Emphasizing the intricate interplay of these interests, the article underscores the delicate equilibrium necessary for equitable outcomes. It highlights the imperative of discerning interests deserving of protection in different scenarios - gratuitous versus tortious acts - while considering the impact on the civil circuit. Ultimately, the article emphasizes a nuanced approach to the Pauline action, aiming to restore balance, foster trust, and deter fraudulent behavior within civil legal relations.

1. Introduction

Throughout history, the enforcement of creditors' rights has been an integral aspect of societal governance, evolving alongside the progression of human civilization. This article delves into the intricate understanding of creditor-debtor relationships, tracing its origins from ancient civilizations like Rome to contemporary legal frameworks. Central to this exploration is the Pauline action, an essential legal recourse designed to safeguard the rights of creditors against detrimental acts by debtors and third-party contractors.

By examining the historical evolution of creditor remedies within commodity-money relations, particularly in Ancient Rome, this article highlights the transition from harsh physical repercussions for non-paying debtors to the development of structured legal mechanisms such as venditio bonorum. The emergence of solutions like actio Pauliana and interdictum fraudatorium in Roman law laid the foundation for the practical application of the Pauline action, emphasizing a nuanced analysis of social values and interests.

Furthermore, this article investigates the contemporary relevance of the Pauline action, drawing parallels between modern legal regulations and the jurisprudential

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roots in Roman law. It scrutinizes the delicate balance between protecting creditors' rights and respecting the acquired rights of third-party contractors, analyzing the legal landscape's intricacies in differentiating between gratuitous and tortious acts. Ultimately, this exploration aims to unravel the complexities surrounding the Pauline action's application, emphasizing the need for a harmonized approach that safe-guards the civil circuit while upholding the principles of good faith and equitable distribution of patrimonial values. Through a comprehensive analysis of historical precedents and contemporary legal interpretations, this article seeks to shed light on the practical significance and delicate nuances of the Pauline action within the realm of creditors' rights.

Therefore, understanding the intricate evolution and practical application of creditor's rights, particularly through the lens of the Pauline action, necessitates a comprehensive analysis rooted in historical context and contemporary legal frameworks. This article aims to delve into the multifaceted landscape of creditor-debtor relationships, employing a structured examination bolstered by historical insights and contemporary legal perspectives.

2. Data and Methodology

The research entails an in-depth investigation into historical legal texts, Roman jurisprudence, and scholarly works discussing creditor-debtor relationships. It relies extensively on primary sources detailing Roman legal mechanisms such as venditio bonorum, actio Pauliana, and interdictum fraudatorium. Additionally, it integrates interpretations from renowned legal scholars and practitioners specializing in civil law and debtor-creditor relationships.

This research embraces a multifaceted approach, amalgamating qualitative analysis to dissect historical evolution and contemporary legal interpretations. It employs several methodologies:

2.1. Analysis and Synthesis:

a) Analysis: Segmentation of the subject into cohesive sections referencing legal doctrines from Ancient Rome and the contemporary Modernized Civil Code. This involves dissecting the transition from personal to patrimonial liability and the emergence of praetorian solutions.

b) Synthesis: Identification and comparison of social values and interests within historical legal precedents and modern legal interpretations, emphasizing practical applications within the Pauline action.

2.2. Deduction and Classification:

c) Deduction: Formulating conclusions grounded in historical insights and legal principles, presenting personal perspectives on the evolution and application of the Pauline action.

d) Classification: Categorization of distinct legal concepts and doctrines within Roman law and their impact on contemporary legal frameworks, facilitating a detailed exploration of each aspect.

Analogy and Observation:

e) Analogy: Drawing parallels and distinctions between creditor remedies in Ancient Rome and their relevance to modern legal mechanisms, discerning similarities and differences.

f) Observation: Examining historical trends and legal adaptations over time, tracking the evolution of debtor-creditor relationships and legal remedies.

Comparison and Evaluation:

g) Comparison: Contrasting the historical foundations of the Pauline action within Roman law with contemporary interpretations, evaluating the adaptability and practicality of ancient legal mechanisms in modern legal contexts.

This comprehensive methodology aims to present a nuanced understanding of the social, economic, and legal underpinnings of the Pauline action, drawing from historical precedents and contemporary interpretations. Through this methodical exploration, it seeks to illuminate the evolution and practical significance of the Pauline action within the realm of creditor-debtor relationships, fostering insights for legal scholarship and contemporary legal practice.

3. Literature Review

The realization of creditors' rights is a vital social imperative, which was established with the advanced social organization, characterized by commodity-money relations. This type of relationship, preceded by the gift economy [1], is a direct consequence of the appearance of money. Failure to fulfill obligations takes on new connotations within commodity-money relations. The „personal" liability of the debtor for his obligations has been well known since ancient times. In Ancient Rome, most debtors were poor plebeians, who acquired credit through an original legal mechanism called nexum, which consisted of the personal pledge of the debtor and his family members. The very harsh „remedies" of the creditors of that period, who could even physically divide the body of the bad-paying debtor among themselves, are well known [2].

However, these „remedies" were not exactly convenient for the creditors and the community in general, because their foundation seems to be more a revenge than the intention to realize the debt right that was not executed by the debtor. Thus, Roman law knows a long evolution of insolvency proceedings (venditio bonorum), which already during the period of Justinian's codifications is based on the idea of patrimonial, and not just personal, liability for non-execution of obligations. Thus, the venditio bonorum procedure begins with the application of the general seizure (missio in bona) on the debtor's patrimony, who was thus deprived of the right to dispose his assets. Obviously, with the abandonment of the idea of personal liability for obligations, debtors who risked being subject to enforcement proceedings were tempted to hide their assets from pursuing creditors. These fraudulent actions could be taken in advance, before the application of the missio in bona, or

even after the application of this measure. For this purpose, Roman debtors resorted to the establishment or transmission of real rights over their assets, the establishment of various obligation relationships.

Ovbiously, debtors' frauds forced creditors to identify legal solutions to counteract them. Thus, in the Praetorian way, the actio Pauliana, the interdictum fraudatorium and the actio in factum were instituted [3]. These represent actions granted by the praetor to the creditor who cannot realize his claim, mainly due to the legal acts of disposition concluded by the debtor with third parties. Therefore, these actions were directed not only against the debtor but also against the acquirer of the debtor's assets. However, the liability of the acquirer was conditioned by the knowledge of the debtor's intention to harm his creditors, in which case he was obliged to remove all the adverse effects for creditors of the fraudulent legal act concluded with the debtor [4]. Acquirers in good faith were liable only in the case of gratuitous legal acts.

The Praetorian genesis of Pauline action involves the crystallization of applicative solutions specifically from a practical perspective. So, the named solutions are specifically justified by reasons of a practical nature, or, in other words, by the detailed analysis of the values and social interests targeted by the solution of the Pauline action.

The modern regulations of the Pauline action essentially represent takeovers, more or less detailed, of the solutions identified by the Roman jurisconsults. However, in the contemporary specialized literature, the social and economic foundations of the Pauline action, with some exceptions, are treated very lapidarily and superficially or are not treated at all. But precisely these foundations (interests and social values) form the entire construction of the institution of Pauline action. Consequently, the correct and fair practical application of the Paulian action is only possible by prior complex analysis of the interests of the subjects involved in the Pauline process, namely the debtor, the creditor, and the third-party contractor, as well as the general interests.

4. Legal Framework and Implications of the Pauline Action

Similar to the functions of the Pauline action in Roman law, currently, from the content of art. 895 para. (1) Modernized Civil Code, the reason for the establishment of this institution can be deduced, namely the protection of creditors against legal acts concluded by debtors with third party contractors to their detriment, manifested by „preventing the full satisfaction of the creditor's rights vis-à-vis the debtor”. Thus, the first issue that arises in this context is regarding the rationale and importance of defending the creditor's right of claim. Attention is drawn to the fact that the protection of the creditor's right to claim against fraud is the object of a distinct method of defense of subjective civil rights, either the Pauline action is precisely a method of defense of the subjective rights of creditors [5]. Obviously, this fact denotes the major importance for the legal order of the compliant realization of the creditor's right to claim. Therefore, we can affirm that the entire

society is co-interested in the full and compliant realization of the named rights of creditors, as well as in their defense against legal acts that prevent their realization.

The explanation of the increased interest of the whole society, represented by the legislator, in realizing the debt rights resides in the idea of the civil circuit and the need to protect it [6]. In the specialized literature, it has been rightly stated that the civil circuit is the only source of all the goods and services that society needs [7]. In essence, bi-or multilateral (syntagmatic) legal acts represent the cells that make up the entire fabric of the civil circuit. Therefore, non-performance of the obligation represents a „break" in the civil circuit, so it has a destructive effect on the whole „fabric". The Pauline action is intended for the creditor who has executed his own obligation but cannot obtain the realization of his own claim from the debtor because of the legal act concluded by the latter with the third-party contractor. So, the Paulian creditor is the embodiment of the civil circuit, or his service performed for the benefit of the bad-paying debtor is, as a rule, a taxable deed. The conside-ration for the good transferred (the service rendered) to the debtor by the creditor is to be „secured" to him including through coercive methods, the Pauline action being one of these methods. In this context, we note that the creditor who himself has not performed his own obligation towards the debtor will be deprived of the right of action in a material sense. In this case, the unexecuted legal act is not part of the civil circuit, and the general interest in the protection of the parties to such a legal relationship is reduced. The contracting third party will be able to oppose this defense to the Paulian claimant within the limits of non-execution. The basis for such a defense will be the lack of „damage to the creditor", which is an essential condition for the admission of the Pauline action in accordance with art. 895 paragraph (1) Modernized Civil Code.

Another important issue is the status of the third-party contractor. According to art. 895 para. (1) Modernized Civil Code, the object of the Pauline action are „legal acts concluded by the debtor to the detriment of the creditor". The legal regulation of the Pauline action and the judicial practice of its application, represents that as a rule, these legal acts are bilateral, which implies the existence of the obligatory relationship between the debtor and a third party named by the legislator of the modernized Civil Code as „third party contractor". Therefore, the contracting third party is also a creditor of the debtor, a quality that he acquired precisely on the occasion of the signing of the harmful legal act. But this means that the previous observations regarding the need to protect the creditor's claim also apply to the third-party contractor. Moreover, unlike the Pauline creditor, the third-party contractor is a creditor who has already realized his claim. From the economy of art. 898 para. (1) Modernized Civil Code, results that the admission of the Pauline action generates, in the person of the Pauline creditor, the right to pursue the benefit received by the contracting third party (beneficiary) from the debtor based on the harmful legal act. In other words, the common law Paulian action has the effect of reversing the roles between the Pauline creditor and the contracting third party : the Paulian creditor realizes his right of claim, and the contracting third party, although he initially realized his own right of claim, receiving the benefit from the debtor, in in the end, he is left with an unrealized claim against the debtor and with no chance

of realization, precisely because of the insufficiency of the debtor's patrimony[8]. Therefore, the correct application of the rules governing the Pauline action depends on the perception of the legislator's option to protect the original creditor by granting the possibility to realize his right of claim from the account of a subsequent creditor (third party contractor), by appropriating the amounts obtained from the pursuit of the benefit obtained by the third party contracting from the debtor. It goes without saying that the admission of the Pauline action can only be justified by exceptional circumstances, in which the protection of the right of claim of the Pauline creditor is more beneficial from the perspective of the defense and development of the civil circuit, than the defense of the acquired rights of the contracting third party as a result of signing and execution of the harmful legal act. From this point of view, the Pauline action represents the legal algorithm by which the court is called to resolve the conflict between two creditors of the same debtor, a conflict that leads to the exclusive realization of the right of claim from the account of a patrimonial asset. And the solution to the Pauline action will have to reflect the creditor's interests, which are more worthy of legal protection [9]. Additionally, the admission of the Pauline action clearly represents an interference with the right to respect the property of the contracting third party, the enforced execution over the property of the contracting third party leads to the loss of this right [10]. Thus, starting from the provisions of art. 46 par. (1) and 54 par. (2) of the Constitution of the Republic of Moldova, the provisions of art.1 of Protocol no.1 to the European Convention of Human Rights, the resolution of the Pauline action must be limited to the conditions of legality, pursuit of a legitimate objective and proportionality between the means and the pursued objective [11]. From this point of view, the legal pro-visions governing the Pauline action are to be strictly interpreted.

5. Significance and Role of the Pauline Action

Establishing interests worthy of protection in the context of Pauline action is a very delicate matter. This involves a thorough study of all the factual circumstances of the case and their assessment in accordance with the principles of legality and proportionality. In the case of gratuitous legal acts, the task of the court is expressly facilitated by the legislator. The Paulian creditor will only have to prove, from the point of view of the burden of proof, that the debtor knew or should have known the harmful nature of the gratuitous legal act. In other words, the debtor realized that after the execution of the gratuitous legal act, he would no longer have sufficient patrimonial assets to execute his obligation towards the creditor. Objectively speaking, the acquirer of gratuitous title is clearly less worthy of protection in relation to the Pauline creditor, who performed a certain service for the benefit of the debtor. In Romanian doctrine, it is stated that between the interest of the creditor, which is to avoid a damage - argued by damno vitando -, and the interest of the third party to preserve an enrichment - argued by lucro captando - the creditor's interest must be preferred [12]. In this situation, the interference is necessary in a democratic society and under the aspect of the imperative to protect the civil circuit. Gratuitous legal acts do not generate surplus value, they are animated by the intention to gratify - animus donandi – a characteristic of close personal relationships, such as those of kinship, family, affinity, and similar ones. And in

this case, the contracting third party will no longer be able to defend himself by invoking good faith, in the legislator's view this being irrelevant. The explanation of such an approach resides in the general view of the legislator on free title: a) the claim is always admissible in relation to the acquirer with free title, good faith being irrelevant (art. 523 par. (2) in conjunction with art. 582 Modernized Civil Code); b) exclusion of the right to demand forced execution in nature of a pre-contract of donation (art. 1200 Modernized Civil Code); c) the donor who is in delay, is not obliged to pay late interest or, as the case may be, penalties (art. 1205 Modernized Civil Code); the right to revoke the donation for ingratitude, in case of need, as well as for other valid reasons (art. 1210-1212 Modernized Civil Code).

The consistent application of the principles of legality and proportionality admit some substantive defenses of the contracting third party. In the following situations, the contracting third party is worthy of protection, even if it was acquired in an gratuitous manner. First, it is about the situation in which the Pauline creditor is himself a beneficiary of the insolvent debtor, his claim arising from a legal deed with a gratuitous title concluded with the debtor, but which has not yet been executed. The rule established in art.1200 para. (3) Modernized Civil Code, also speaks in favor of this solution, which excludes the right to demand forced execution in kind of a pre-contract of donation. Also, the third-party contractor will be able to successfully defend himself in the situation where the Pauline creditor has not performed his obligation towards the debtor. Another defense of the third-party contractor, applicable in all cases, would be the counterclaim action in the declaration of simulation, if there are doubts regarding the title of the Pauline creditor's claim. Hypothetically speaking, situations are possible in practice in which the legal act between the creditor and the debtor is simulated, the alleged execution of the creditor's obligation towards the debtor being staged specifically with the aim of possibly creating premises for the promotion of the Pauline action in the future. The use of the Pauline action for the purpose of dispossessing the third-party contractor of the asset received from the debtor is a pathogenic situation, in which the purpose of the Paulian action is clearly diverted. In all these cases, the third party's defenses are based on the absence of the condition regarding the existence of the damage.

In contrast to the case of gratuitous harmful acts, establishing interests worthy of protection in the case of tortious acts is much more difficult. Practically, the court is put in the position of choosing the less destructive solution for the civil circuit. In this case, several interests are at stake, including general interests in the protection of trust and good faith in civil legal relationships, as well as the need to promote appropriate standards of care. It is obvious that the third-party contractor will be responsible for the damage suffered by the creditor only in exceptional conditions, or there is no reason to sacrifice his interests. In this sense, the legislator established restrictive conditions in the content of art. 895 par.(2) Modernized Civil Code, established for the creditor the burden of proving the facts that: a) the contracting third party or the beneficiary of the deed knew or should have known that the legal deed would harm the creditor or that it was concluded with the intention of damage to the creditor; or b) if the legal act was signed before the

appearance of the creditor's right, the contracting third party or the beneficiary of the legal act knew the debtor's intention to harm the creditors in general. Without a bit of exaggeration, we can say that the interpretation of these norms given in judicial practice will determine the stability of the civil circuit in terms of the extent of the phenomenon of non-execution of obligations. Thus, the assessment of the propor-tionality of the solution to admit the Pauline action will have to be based on clear standards of diligence in civil legal relations and on the require-ements of the prin-ciple of good faith. Regarding standards of diligence, we note the lack of a console-dated jurisprudence of the national courts in which they would be reflected. There-fore, we consider that the Pauline action represents a potential risk for the stability of the civil circuit.

In order to overcome the indicated risks, the courts must thoroughly study the relevant facts in each determined case and establish the reasonableness and sufficiency of the diligence of the third-party contractor. In our view, the imputation of knowledge of the harmful character of the legal act from an objective point of view must be related to the reasonable measures that an average participant in the respective civil legal relations would have adopted. It is very dangerous to institute increased due diligence measures, or this would mean the need for extensive research and verification of the patrimonial status of the potential contractor, research that involves time and money. In such conditions, legal subjects will be demotivated to contract, and the Pauline action will turn into an obstacle and a risk factor for the civil circuit. In situations where the creditor will be able to demonstrate the effective knowledge by the contracting third party of the harmful nature of the legal act signed with the debtor or even complicity in fraud, the risks for the civil circuit are much lower. In these situations, another issue already comes to the fore, namely that of probation standards. In conclusion, the resolution of the Pauline action in the case of onerous acts depends on the coordinated application of divergent principles and interests in this context, namely the stability of the civil circuit and the protection of good faith. This is only possible by establishing appropriate standards of diligence and probation. And the admission of the Pauline action can only be ordered in cases where the third party can reasonably be accused of a lack of diligence manifested by the omission of obvious facts regarding the debtor's patrimonial status in the context of his obligations towards other creditors. In the case of actual knowledge or that of complicity in fraud, the applicative problem resides in the establishment of appropriate standards of probation in order to avoid the possibility of misappropriation of the purpose of the Pauline action. In the case of the anticipated intention to harm the creditors, the named demands must be even higher.

Finally, we can say that the practical application of the Pauline action cannot be reduced to the mechanical application of the civil norms that configure it as a legal institution. In essence, the Pauline action is intended to correct the inequitable and irrational distribution of patrimonial values. For these reasons, it is necessary to take into account the interests of all „actors" involved in the process: debtor, creditor and third-party contractor. In addition, it is necessary to investigate in detail the circumstances of each case in terms of two great general interests that

converge, namely the protection of the civil circuit, which was embodied both by the Pauline creditor and by the third-party contractor, and on the other hand, the need to protect the good-beliefs and the deterrence of fraud in civil legal relations.

6. Conclusion and Recommendations

Social and economic foundations configure and explain the entire construction of the institution of Pauline action. The protection of the creditor's claim against fraud is the object of a distinct method of defense of subjective civil rights. The Pauline action is precisely that method of defending the subjective rights of creditors. That issue goes beyond personal interest, it becomes of general interest from the defense point of view. The company is co-interested in the full and compliant realization of creditors' rights, as well as in their defense against legal acts that prevent their reali-zation. From the point of view of proportionality, the solution to admit Pauline's action will have to be based on clear standards of diligence in civil legal relations and on the requirements of the principle of good faith. The Pauline action represents a potential risk for the stability of the civil and economic circuit in general. In order to overcome possible risks, the courts, emerging from the social function of the economy, constitutionally enshrined, should thoroughly study the relevant facts in each determined case and establish the reasonableness and sufficiency of the dili-gence of the third-party contractor.

Therefore, the research emphasizes the pivotal role of creditors' rights throughout historical and modern legal frameworks. It traces the evolution of debt enforcement mechanisms from ancient Rome's harsh punitive measures towards debtors to the establishment of insolvency proceedings focusing on patrimonial liability. Moreover, it sheds light on the Pauline action's origins in Roman law and its contemporary relevance, emphasizing the need for a comprehensive understanding of its socio-economic foundations.

One prominent conclusion is the societal significance of safeguarding creditors' rights, rooted in the function of the civil circuit as the primary source of goods and services. Disruptions to this circuit through non-performance of obligations necessitate legal tools like the Pauline action to restore balance and ensure fair execution, aligning with broader societal interests.

The Pauline action introduces a conflict between creditors, prioritizing the realization of the Pauline creditor's claim over that of the contracting third party. Its application demands a delicate equilibrium between conflicting interests, requiring strict adherence to legal principles and constitutional rights, such as proportionality and property rights.

Differentiating between gratuitous and tortious acts becomes pivotal in determining the liability of third-party contractors. While gratuitous acts may be seen as less deserving of protection, tortious acts involve a more intricate balance of interests, demanding meticulous evaluation of facts and adherence to standards of diligence and good faith.

Ultimately, the practical application of the Pauline action transcends a mere application of legal norms. It serves as a corrective instrument to rectify unjust asset distributions, calling for a comprehensive examination of case-specific circumstances. Ensuring the protection of the civil circuit, deterring fraud, and upholding principles of equity and rationality in distributing patrimonial values are vital conclusions drawn from this research.

In summary, the research underscores the historical evolution and significance of creditors' rights, focusing on the evolution from punitive measures to insolvency proceedings and the origins and contemporary relevance of the Pauline action. It emphasizes the societal importance of safeguarding creditors' rights, the need for balance between conflicting interests, and the corrective nature of the Pauline action in rectifying unjust asset distributions.

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