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Quo Vadis EU Security?

A Constitutional Perspective on Migration, Transnational Crime, Fundamental Rights and Values

Goce Delcev University
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CIP - Каталогизација во публикација
Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

341.43:314.14(497.7:4-672ЕУ)(082)
341.43:314.14(496.5:4-672ЕУ)(082)
343/.7:(4-672ЕУ)(082)

QUO vadis EU security? [Електронски извор] : a constitutional perspective on migration, transnational crime, fundamental rights and values / edited by Teresa Russo ... [и др.]. - Stip : University "Goce Delcev", 2025

Начин на пристапување
(URL): https://pf.ugd.edu.mk/c/publikacii-i-proekti/. - Текст во PDF формат, содржи 148 стр. - Наслов преземен од екранот. - Опис на изворот на ден 29.09.2025. - Фусноти кон текстот. - Други уредници: Ana Nikodinosvska Krstevska, Niuton Mulleti, Olga Koshevaliska. - Библиографија кон трудовите

ISBN 978-608-277-121-2

а) Европска унија -- Безбедност б) Меѓународно право -- Миграции -- Македонија -- Европска унија -- Зборници в) Меѓународно право -- Миграции -- Албанија -- Европска унија -- Зборници

COBISS.MK-ID 67014917

Preface

The conference "*Quo Vadis EU Security. A Constitutional Perspective on Migration, Transnational Crime, and Fundamental Rights and Values*", held at Goce Delcev University in Stip (North Macedonia) on May 27th was the first final conference of the Jean Monnet Chair "*Promoting Public Awareness on Enlargement Policy, EU Values and the Western Balkans' Accession*" (EUVALWEB).

The aim of the conference was to assess the adaptation of the accession States' legal systems to the membership criteria, addressing the Union's security in the sphere of cooperation in Justice and Home Affairs (JHA).

Migration, asylum, the fight against transnational crime, and the promotion and protection of fundamental rights and values of the Union were chosen as the research focus, as parts of the EUVALWEB Legal Observatory.

We considered the implications for the efficacy of the Union legal system of the security-focused approach to regulating these sectors, which includes a somewhat strict implementation for accession States in comparison to Member States.

The collected works highlight the main critical issues encountered in these sectors, primarily in North Macedonia, but also in Albania and Serbia.

A conclusion emerged: the process of EU enlargement, often inconsistent with the provisions of arts. 2, 49 and 21 TEU, cannot be a strategic tool unless it slowly erodes the principle of integration that underpins the entire European construction.

Securing the identity, values, and "originality" of one's own legal system ("*a new legal order*") entails, first and foremost, beginning with the current Member States. However, it also means that the law of the Treaties must be applied without discriminatory institutional and procedural practices, rather than making endless promises of membership.

My heartfelt thanks go to my colleagues of the conference, and specifically to my loving friends Olga Koshevalisha, Elena Maksimova and Ana Nikodinovska Krstevska, as well as Niuton Mulleti, to the colleagues and professionals of the Chair's teaching staff, to the national, international, Balkan, and other EU experts for their invaluable contribution, to the students of my courses at the Departments of Legal Sciences and of Management & Innovation Systems of the University of Salerno, and to the Albanian, Montenegrin, North Macedonian, and Serbian students who attended my lectures in these years.

Grazie – Благодарам.

Fisciano- Stip, September 21, 2025

Teresa Russo

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CONSTITUTIONAL PERSPECTIVES ON MIGRATION

THE EXTERNALISATION OF EU MIGRATION AND ASYLUM POLICY: ASSESSING THE 2023 ITALY-ALBANIA PROTOCOL ON MIGRATION

by Niuton Mulleti[*]

1. Introduction

The European Union's (EU) migration policies have undergone significant transformation since the 1990s, with the 2015 refugee crisis exposing systemic weaknesses in border management and asylum processing. In response, the EU has increasingly pursued externalisation strategies, delegating migration control to third countries through readmission agreements, border security funding, and offshore processing schemes[1]. The Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania "*On Strengthening Cooperation in the Area of Migration*" (2023 Italy-Albania Protocol on Migration) signed in November 2023 by the Prime Ministers of both countries represents a novel and controversial iteration of this approach, establishing a framework for Italy to process asylum claims on Albanian soil while retaining jurisdictional control.

This Chapter critically examines the Protocol's legal and ethical implications, focusing on:

a) the creation of a dual legal regime and its impact on asylum-seekers' rights;
b) the Albanian Constitutional Court's 2024 ruling and its interpretation of sovereignty and jurisdiction;
c) the broader risks of migration externalisation for EU candidate countries and the global asylum system.

By analysing these dimensions, the study contributes to debates on extraterritorial asylum processing, EU enlargement conditionality, and the erosion of refugee protections.

The externalisation of migration and asylum policies has become a central feature of the EU's approach to managing irregular migration and refugee flows. Externalisation refers to the process by which the EU shifts migration control responsibilities to third countries, often through agreements, funding, and capacity-building initiatives. The concept of externalisation is rooted in theories of migration governance and border studies. Lavenex introduced the idea of "*remote control*" of migration, arguing that States seek to manage migration beyond their territorial borders through cooperation with transit and origin countries[2]. Similarly, Guiraudon and Lahav discuss the "*externalisation of migration control*" as part of a broader strategy to deter migration through extraterritorial measures[3]. More recently, Casas-Cortes *et al*. have framed externalisation as part of the EU's "*border externalisation complex*", where migration control is outsourced to third countries through a mix of aid, diplomacy, and coercion[4]. This

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[1] T. GAMMELTOFT-HANSEN, J. HATHAWAY, *The Outsourcing of Refugee Protection*, 2015.

[2] S. LAVENEX, *Shifting Up and Out: The Foreign Policy of European Immigration Control*, in *West European Politics*, Vol. 29, No. 2, 2006, pp. 329-350.

[3] V. GUIRAUDON, G. LAHAV, *A Reappraisal of the State Sovereignty Debate: The Case of Migration Control*, in *Comparative Political Studies*, Vol. 33, No. 2, 2000, pp. 163-195.

[4] M. CASAS-CORTES, S. COBARRUBIAS, J. PICKLES, *Riding Routes and Itinerant Borders: Autonomy of Migration and Border Externalization*, in *Antipode*, Vol. 47, No. 4, 2015, pp. 894-914.

perspective highlights how the EU leverages its economic and political influence to enforce migration management beyond its borders.

Bilateral and multilateral agreements, capacity-building and border securitisation as well as development aid and conditionality represent the key mechanisms of EU Externalisation Policy. A significant body of literature examines the EU's reliance on agreements with third countries to curb migration. The EU-Turkey Statement (2016) is a prominent example, where Turkey agreed to prevent irregular crossings into the EU in exchange for financial aid and visa liberalization. Critics argue that such deals undermine asylum rights by trapping migrants in precarious conditions[5]. Similarly, partnerships with North African countries, such as Libya, have been scrutinised for enabling human rights abuses[6]. According to Médecins Sans Frontières, EU-funded Libyan coastguards have intercepted migrants at sea, returning them to detention centres where they face exploitation and violence[7].

With regard to capacity-building and border securitisation, the EU provides funding and training to third countries to strengthen their border controls under frameworks like the European Neighbourhood Policy (ENP) and the Trust Fund for Africa. In this context, Andersson critiques this as "*outsourcing sovereignty*", where African nations become gatekeepers for Europe, often at the expense of local governance priorities[8]. Frontex, the EU's border agency, also plays a crucial role in externalisation by supporting joint operations in non-EU States[9]. However, research by Pallister-Wilkins suggests that such interventions often prioritise security over humanitarian concerns[10].

Some scholars argue that the EU uses development aid as leverage to enforce migration control. Bøås and Strazzari highlight how the Emergency Trust Fund for Africa links aid to cooperation on migration, raising ethical concerns about coercive diplomacy[11]. Hernández i Sagrera also examines the Migration Partnerships Framework (MPF), showing how the EU pressures third countries to readmit deportees under threat of reduced aid or trade restrictions[12].

A growing body of literature critiques the human rights implications of externalisation by pointing out that the principle of *non-refoulement* (prohibiting returns to unsafe countries) is frequently violated in externalisation deals[13]. In addition, Mountz argues that externalisation fosters a system where migration is treated as a security threat rather than a humanitarian issue[14], whereas legal scholars like Moreno-Lax highlight the lack of accountability when migration control is delegated to third countries with poor human rights records[15]. This review highlights the complex interplay between migration control, sovereignty, and human rights in

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[5] S. CARRERA, L. DEN HERTOG, J. PARKIN, *The EU-Turkey Deal on Migration: A Bad Precedent for the EU's Relations with Third Countries?*, in *CEPS Policy Brief*, No. 349, 2016.

[6] Human Rights Watch, *EU: Time to Review and Remedy Cooperation Policies Facilitating Abuse of Refugees and Migrants in Libya*, 28 April 2020

[7] Médecins Sans Frontières, *Libya: MSF Teams Providing Medical Care to Detained Refugees and Migrants*, 13 December 2016; Amnesty International, *Libya's Dark Web of Collusion*, 2017.

[8] R. ANDERSSON, *Illegality, Inc.: Clandestine Migration and the Business of Bordering Europe*, Berkeley, 2014.

[9] S. LEONARD, *FRONTEX and the Securitization of Migration in the EU: Challenges for Human Rights*, in *European Security*, Vol. 29, No. 3, 2020, pp. 325-343.

[10] P. PALLISTER-WILKINS, *Humanitarian Borderwork*, in *European Journal of International Relations*, 23(2), 2017, pp. 391-413.

[11] M. BØÅS, F. STRAZZARI, *The Politics of International Development Aid: A Study of the Emergency Trust Fund for Africa*, London, 2020.

[12] R. HERNÁNDEZ I SAGRERA, *The EU's Migration Partnerships Framework: Downsizing the EU's Ambition to Externalize Migration Control*, in *International Migration*, Vol. 55, No. 4, 2017, pp. 176-191.

[13] T. GAMMELTOFT-HANSEN, N.F. TAN, *The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy*, in *Journal on Migration and Human Security*, Vol. 5, No. 1, 2017, pp. 28-56.

[14] A. MOUNTZ, The Death of Asylum: Hidden Geographies of the Enforcement Archipelago, Minneapolis, 2020.

[15] V. MORENO-LAX, *The EU Humanitarian Border and the Securitization of Human Rights: The 'Rescue-Through-Interdiction/Rescue-Without-Protection' Paradigm*, in *Journal of Common Market Studies*, Vol. 56, No. 1, 2018, pp. 119-140.

EU externalisation policies. Overall, the literature demonstrates that EU externalisation policies have effectively reduced irregular arrivals but at significant ethical and legal costs.

2. The Italy-Albania Migration Protocol: Structure and Objectives

The Italy-Albania Protocol on Migration represents a controversial bilateral effort to externalise Italy's migration management by establishing asylum processing centres in Albania. Modeled after similar offshoring schemes (*e.g.*, UK-Rwanda, EU-Turkey), the signing of the Protocol came as a result of the endeavours by the Italian government led by the hard-right Giorgia Meloni's Fratelli d'Italia party to curb immigration. Meloni had campaigned on a strong anti-immigration platform and the protocol represented a fulfillment of her promise to reduce migrant arrivals. Italy had previously relied on Libya and Tunisia for migration control, but political instability and human rights concerns made these deals unreliable. The EU's New Pact on Migration and Asylum also faced delays, forcing Italy to seek bilateral solutions. On the other hand, the Albanian government aimed at further strengthening its cooperation with Italy viewed as a strategic partner in Albania's EU accession path. The fact that the Albanian Prime Minister, Edi Rama, had established a strong working relationship with Meloni also facilitated the agreement.

The Protocol will remain in force for five years and will be automatically renewable for a further five years, under which Italy will pay for the construction and maintenance of two centres in Albania to receive migrants rescued by the Italian navy in international waters and who wish to apply for asylum in Italy. Hence it only applies to migrants rescued by Italian authorities, not those arriving independently. It envisages the establishment of two centres in the District of Lezhë in northwestern Albania namely the Reception and Screening Centre in the Shëngjin Port on the Adriatic Sea where the initial processing of asylum claims is envisaged to be carried out, and the Detention and Deportation Centre located in the nearby Gjadër Military Base which is meant to provide housing for rejected applicants pending removal. The centres will be able to process up to 3,000 migrants at a time, with a projected 36,000 processed annually. According to the protocol, the centres will be under Italian legal jurisdiction, constructed and maintained at Italy's expense[16]. The estimated cost concerning the operation of the said centres amounts to €650 million over five years, fully funded by Italy[17].

Concerning jurisdictional arrangements, the Protocol provides for the extraterritorial application of Italian law whereby asylum procedures follow Italian and EU rules, but Albania handles criminal offenses within centres[18]. At the same time, while Italy operates the centres, Albania retains formal control, raising legal ambiguities[19].

The Protocol applies only to migrants from "*safe countries*" rescued in international waters and it does not concern women, children, elderly, families and other vulnerable individuals[20]. Through the processing of asylum claims in Albania, the Protocol aims at reducing irregular migration to Italy by deterring Mediterranean crossings[21]. The expedition of asylum and deportation procedures represents another principal objective of the Protocol by ensuring faster

[16] Government of the Italian Republic and Council of Ministers of the Republic of Albania, *Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania "On Strengthening Cooperation in the Area of Migration*, 2023.
[17] *Italy to Pay €650 Million for Migrant Centers in Albania Under New Deal*, in *Reuters*, 6 November 2023.
[18] Ministry of Interior of Italy, *Operational guidelines for the implementation of the Italy-Albania Migration Protocol*, 2023.
[19] European Council on Refugees and Exiles, *ECRE Preliminary Comments on the Italy-Albania Deal*, 9 November 2023.
[20] Government of the Italian Republic and Council of Ministers of the Republic of Albania, *Protocol*, cit.
[21] E. GIORDANO, *Meloni's Albania Gamble: Will It Stop Migrants?*, in *Politico*, 6 November 2023.

processing and detention of rejected applicants to increase deportation rates[22]. Shifting the processing of asylum claims to Albania is also expected to ease pressure on overcrowded facilities like Lampedusa in mainland Italy[23]. The Protocol also carries other political motivations fitting the EU's trend of externalising border control[24], and enabling Albania to seek support from Italy and other EU Member States on its EU accession process in return[25].

Since the announcement of its signing by the Prime Ministers of Italy and Albania, the Protocol has raised important legal, ethical and political concerns. In fact, the Protocol was negotiated in a total lack of transparency whereby negotiations were not publicly debated in Albania, and the general public was informed by the media about its content only on the day of the signing ceremony. Criticism particularly focuses on the risk that the Gjadër facility may violate the prohibition of indefinite detention under art. 5 of the European Convention of Human Rights (ECHR), thus amounting to arbitrary detention, and may inhibit due process by providing limited access to legal aid and appeals[26], and that asylum seekers might not have effective access to lawyers and appeals[27]. Fast-track deportations envisaged by the Protocol also risk returning migrants to unsafe countries thus potentially leading to violations of the *non-refoulement* principle[28]. Critics also point out that in the context of extraterritorial jurisdiction, it is unclear whether EU asylum laws (*e.g.*, Dublin Regulation) fully apply[29], and also highlight potential immunity issues for Italian officials operating in Albania[30].

Experts have also raised questions about the overall effectiveness and feasibility of the Protocol by point out its limited impact whereby the expected 3,000 asylum applications to be processed on a monthly basis represent only a fraction of more than of 160,000 annual arrivals in Italy[31]. Albania's weak asylum system has also come into the spotlight where the lack of experience by Albanian authorities raises fair procedure concerns[32]. The Protocol sets a dangerous precedent for bypassing refugee protections thus normalising offshore detention.

The 2023 Italy-Albania Protocol on Migration has been met with strong opposition by Italian left-wing and centrist parties, as well as criticism from human rights organizations and legal experts. The leader of the centre-left Democratic Party (PD), Elly Schlein, denounced the Pact as "*illegal, inhumane, and ineffective*", being in violation of international and European law, and as a propaganda move that would not have any tangible impact in deterring crossings in the Mediterranean. The PD argued that outsourcing asylum procedures to Albania breaches the Geneva Convention and EU asylum laws[33]. The PD also pointed out to the high costs of the Protocol arguing the funds should instead go toward Italy's reception system. Former Prime Minister and leader of the Five Star Movement (M5S), Giuseppe Conte, called the Protocol a "*farce*", arguing that Albania lacks the infrastructure to process asylum claims, and that the Protocol is just a way for Meloni to look tough on migration[34].

The Pact also faced fierce opposition by the Albanian political opposition, with the largest centre-right opposition party the Democratic Party of Albania (DP) calling the pact a "*violation*

[22] Human Rights Watch, *Outsourcing Abuse: The Italy-Albania Migration Deal*, 15 January 2024.
[23] P. KIRBY, *Italy Faces Big Setback over Migrant Camps in Albania*, in *BBC*, 18 October 2024.
[24] N. NIELSEN, *EU Backs Launch of Albania-Italy Migrant 'Offshoring' Deal*, in *EU Observer*, 2 August 2024.
[25] *Italy's Albania Migrant Plan Hits Legal Stumbling Block*, in Deutsche Welle, 19 October 2024.
[26] Amnesty International, *The Italy-Albania Agreement on Migration: Pushing Boundaries, Threatening Rights*, Report No. EUR 30/7587/2024), 19 January 2024.
[27] European Council on Refugees and Exiles, *ECRE preliminary comments*, cit.
[28] UNHCR, *Statement on Externalization and Refugee Rights*, 20 November 2023.
[29] *Legal Analysis of Extraterritorial Asylum Processing*, in *Statewatch*, 5 December 2023.
[30] *The Albania-Italy Deal and the Limits of Constitutional Review*, in *EJIL:Talk!*, 10 January 2024.
[31] International Organization for Migration, *Annual Report on Migration in Italy: 2023*, 2024
[32] Human Rights Watch. *Outsourcing Abuse: The Italy-Albania Migration Deal*, cit.
[33] *Schlein, accordo con Albania viola diritto internazionale*, in *ANSA*, 7 November 2023.
[34] A. JAKHNAGIEV, *Accordo Italia-Albania, Conte attacca il governo: "Una deportazione di massa temporanea che ci costerà tantissimo*, in *Il Fatto Quotidiano*, 9 November 2023.

of Albania's sovereignty" and "*a dangerous precedent*" with the DP leader and former Prime Minister Sali Berisha stating that the agreement turns Albania into Italy's migrant camp[35]. In response to criticism by the opposition parties and civil society organisations, Prime Minister Rama declared that the agreement is not about hosting migrants but about strengthening ties with the EU[36].

Overall, it can be stated that the Italy-Albania Protocol on Migration represents a legally contentious and ethically dubious attempt to outsource migration management. While it may partially relieve Italy's reception crisis, its human rights risks, legal uncertainties, and limited capacity undermine its viability. The Protocol reflects a broader EU trend toward externalisation, raising fundamental questions about State responsibility under international refugee law.

3. The Protocol Faces Legal Review: The Rulings of the Albanian Constitutional Court and Italian Courts

In its ruling of January 2024, the Constitutional Court of the Republic of Albania upheld the constitutionality of the Italy-Albania Protocol on Migration concluding that in the two areas on Albanian territory where the provisions of the Protocol apply, the Albanian law will be applied, besides the Italian law by underlining that the international law binding on the Republic of Albania, which is related to migration and asylum issues, is also applicable by the Italian authorities due to the ratification of international agreements also by the Italian Republic. Furthermore, the Albanian Constitutional Court concluded that a dual jurisdiction applies concerning human rights and freedoms, which means that the Italian jurisdiction in the two areas in question does not exclude the Albanian jurisdiction thus Albania retains human rights jurisdiction, ensuring compliance with international law[37].

This ruling represented a pivotal moment, allowing the controversial agreement to proceed given that in December 2023, the Albanian Constitutional Court had accepted the request submitted by over a quarter of Members of Parliament representing the opposition parties to check the constitutionality of the Protocol thus leading to the automatic suspension of the ratification process in the Albanian Parliament until the Constitutional Court dealt with the merits of the Protocol. However, departing from standard practice, the President of the Albanian Constitutional Court rushed to give an interview to the Italian newspaper "Corriere della Sera" immediately after the adoption of this decision where she emphasised that the Court had not yet dealt with the merits of the Protocol[38]. This was perceived by a general section of the Albanian general public as trying to convey a message both to both Italian and Albanian authorities about the eventual upholding of the Protocol. As a consequence, the January 2024 ruling itself came soon to be regarded as controversial also due to the fact that it was adopted by a thin margin (five votes to four) in a pattern replicated also in other politically sensitive cases where the Court upheld the constitutionality of acts adopted by the Parliament dominated by the centre-left Socialist Party which has been in power since 2013. This further raised questions about the ability of the Albanian Constitutional Court to maintain its independence in front of an increasingly powerful executive.

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[35] *DP's Berisha says the Agreement for Immigrants Between Albania and Italy Is Unconstitutional*, in *Argumentum*, 8 November 2023.
[36] *Italy to Pay €650 Million for Migrant Centers in Albania Under New Deal*, cit.
[37] Constitutional Court of the Republic of Albania, Decision No. 2 of 29 January 2024, Case V-2/24, *on the Italy-Albania Migration Protocol*.
[38] *Pezullimi i paktit Rama-Meloni, kryetarja e Kushtetueses: Intervistë*, in *Pamfleti*, 10 November 2023.

The ruling has faced significant criticism on legal, procedural, and human rights grounds. The Court ruled that the Protocol does not violate Albania's sovereignty because the centres remain under formal Albanian jurisdiction. It held that the deal aligns with art. 123 of the Albanian Constitution, which permits international agreements if they serve the national interest. The Court also accepted that Italy will apply its own laws within the centres but argued this does not undermine Albania's constitutional order. Furthermore, the ruling stated that the Protocol includes safeguards to ensure compliance with the ECHR[39].

However, the ruling fails to resolve critical issues such as determining which State is responsible for rights violations, whether rejected applicants can be deported directly from Albania and whether asylum-seekers in Albania will be able to receive the same protections as those in Italy. In this context, legal scholars warn that such hybrid jurisdictions create enforcement loopholes[40].

One of the main criticisms directed towards the ruling is related to the fact that it did not provide an in-depth examination of detention conditions by failing to scrutinise whether the Gjadër detention facility meets ECHR standards particularly with regard to the prevention inhuman treatment and arbitrary detention[41]. Furthermore, the ruling seemed to ignore risks related to the principle of non-refoulment as it did not assess whether fast-track deportations could breach art. 3 ECHR[42]. The fast-track approval process represented another area of criticism whereby the Albanian Parliament was deemed to have ratified the deal without public consultation and the Court having rubber-stamped a politically sensitive agreement[43]. The Court also failed to consider potential challenges in front of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). In this context, it has been argued that since Italy is applying EU asylum laws extraterritorially, the deal could conflict with the Dublin III Regulation[44] and the Asylum Procedures Directive[45]. Furthermore, given that the 2012 ECtHR ruling found Italy's pushbacks to Libya illegal, similar risks exist if Albania enforces unlawful deportations[46].

In addition, given the high probability for this agreement to be replicated as a model it could contribute to normalising offshore detention by encouraging similar EU deals with countries such as Tunisia and Libya. The agreement could also contribute to the erosion of refugee rights by setting a dangerous precedent for circumventing international protections if asylum procedures in Albania are flawed.

Overall, it can be argued that the 2023 Italy-Albania Protocol on Migration has created in effect an ad-hoc extraterritorial regime with the potential of undermining crucial human rights safeguards and accountability for violations, thus resulting in a differentiated treatment between those whose asylum applications will be examined and processed in Albania and those for whom this will happen in Italy. The ruling of the Albanian Constitutional Court greenlighted the migration deal but left major legal and human rights questions unresolved, thus exposing the Protocol to future legal battles in European courts.

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[39] Constitutional Court of the Republic of Albania, *on the Italy-Albania Migration Protocol*, cit.
[40] M. MILANOVIC, *Extraterritorial Asylum Processing and International Law*, 2024.
[41] Amnesty International, *op. cit.*
[42] *Italiens Deal mit Albanien: Kein Modell für Deutschland*, in *Pro Asyl*, 12 October 2024.
[43] European Council on Refugees and Exiles, *Italy's "Detention Deal" Gets Approval from Albanian Constitutional Court*, 2 February 2023
[44] Regulation (EU) 604/2013 of the European Parliament and of the Council, *establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*, of 26 June 2013, in OJ L 180, of 29 June 2013.
[45] Directive 2013/32/EU of the European Parliament and of the Council, *on common procedures for granting and withdrawing international protection*, of 26 June 2013, in OJ L 180, 29 June 2013.
[46] Human Rights Watch, *Outsourcing Abuse: The Italy-Albania Migration Deal*, cit.

The European Commission has maintained a cautious stance on the 2023 Italy-Albania Migration Protocol. When the signing of the Protocol became public, the spokesperson of the European Commission stated that any EU Member State's migration agreements must fully comply with EU law, including the right to asylum and fundamental rights. On the other hand, the 2023 Italy-Albania Protocol has attracted strong international interest, with European Commission President Ursula von der Leyen endorsing the project as "*out-of-box*" thinking to deal with the number of migrants seeking refuge in the EU and several European countries, including Germany, which has inquired the possibility of launching similar off-shore migrant detention centres[47].

The Commission has not issued a formal legal opinion, but officials – including Commissioner Ylva Johansson – have highlighted potential conflicts with the EU Asylum Procedures Directive since extraterritorial processing in Albania could violate geographical limitations on asylum claims, as Italy remains legally responsible under the Dublin Regulation as well as *non-refoulement* obligations as envisaged by art. 19 of the EU Charter of Fundamental Rights. Other concerns have been raised over whether Albania can guarantee access to fair asylum procedures and prevent chain deportations to unsafe countries as well as whether the detention of migrants in Albanian centres may breach EU standards on reception conditions as envisaged by the Reception Conditions Directive[48].

Since its outset, the Protocol faced legal setbacks and the centres in Albania have remained empty after Italian courts repeatedly struck down detention orders, challenging the designation of certain countries as "*safe*" and referring the cases to the CJEU. On 18 October 2024, a special immigration court in Rome ruled that 12 male migrants held in Albania – who originally came from Bangladesh and Egypt – had the right to be taken to Italy due to the impossibility of recognising the States of origin of the detained persons as "safe countries"[49]. The judgment was founded on a recent verdict by the Court of Justice of the European Union, which on 4 October 2024, ruled that the EU law does not permit countries to be categorised as "*partially safe*" for the purpose of deciding on deportations stating that a country could only be considered safe if "*generally and consistently no persecution (...) no torture or inhuman or degrading treatment or punishment*" is resorted to[50].

These individuals had only been transferred to Albania's Gjadër facility on 16 October 2024, where they were undergoing accelerated border assessment procedures as outlined in the Italy-Albania pact, and they were returned to Italy one day after the ruling[51]. This represented the first legal setback for the Protocol and the Italian Prime Minister Giorgia Meloni reacted by calling the ruling as "prejudiced" and that it was up to the government and not to courts to determine which countries are safe. Meloni also stated that she had been given a clear mandate by the Italian voters to stop illegal crossings though the Mediterranean and that the Italian government would draft new rules to address the issue[52]. In fact, the Italian government

[47] *Italy's Albania Migrant Plan Hits Legal Stumbling Block*, cit.
[48] Directive 2013/33/EU of the European Parliament and of the Council, *laying down standards for the reception of applicants for international protection*, of 26 June 2013, in OJ L 180, of 29 June 2013.
[49] A. KAZMIN, G. RICCOZZI, *Italian Court Rejects Meloni Plan to Hold Asylum-Seekers in Albania*, in *Financial Times*, 18 October 2024.
[50] CJEU (Grand Chamber), Judgment of 4 October 2024, Case C-406/22, *CV v. Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, par. 68.
[51] *Migrants Return From Albania To Italy After Court Ruling*, in *Radio Free Europe/Radio Liberty*, 19 October 2024.
[52] *Italy's Albania Migrant Plan Hits Legal Stumbling Block*, cit.

reinstated its "safe countries" list via an emergency decree rather than through a ministerial decree[53].

During the same week, EU leaders agreed that returns of irregular migrants should be speeded up and the European Commission President Ursula von der Leyen reiterated to them her commitment to find "*innovative ways*" to deal with irregular migration, thus pointing out to outsourcing deals. She also gave her support for the old idea of "*return hubs*": centres in non-EU countries to which failed asylum-seekers would be sent as they awaited deportation, and she clearly stated that the 2023 Italy-Albania Protocol would provide lessons in that regard[54] by also confirming that new proposals were being worked on whereby migrants in need of protection could have that protection in "safe third countries". Besides Germany, the 2023 Italy-Albania Protocol was being closely watched elsewhere in Europe with the British Minister Sir Keir Starmer stating he had discussed the "*concept*" of Italy's deal with Meloni, and the Dutch government contemplating a migrant plan of its own, involving a so-called return hub for rejected asylum seekers to be eventually established in Uganda[55]. When eight more deportees from Bangladesh and Egypt arrived in Albania on November 08, 2024, the Civil Court of Rome declined to rule on their detention and referred the matter to the CJEU, citing potential violations of EU law[56].

In another blow to the pact and after two groups of migrants had been returned to Italy based on the respective rulings of courts in Rome and Bologna since the opening of centres in October 2024, on 19 December 2024, Italy's Court of Cassation (High Court) ruled that courts could disregard government-designated "safe country" rules if they clearly conflict with EU criteria. This ruling came after a July 2024 referral from the Rome Court, which questioned whether judges could independently assess a country's safety or rely on government safe country designations. Therefore, it concerned the framework preceding Meloni's October 2024 "safe third countries" decree, which upgraded the former list of migrant's safe country of origin to primary law, strengthening its enforceability. While the Italian government took this step in October 2024 to protect the migrant deal from judicial challenges, the new ruling confirmed that the judiciary still has the right to review whether the government's "safe country" designation complies with EU law, leaving room for action despite Meloni's decree[57].

After these legal setbacks and pending the ruling of CJEU on its safe third country policy, in March 2025, the Italian government revised the Italy-Albania Protocol, enabling the transfer of migrants with validated or extended detention orders for repatriation from Italy to Albania, thus turning the Gjadër centre in Albania into a fully-fledged "repatriation detention centre" (PCR in Italian)[58]. This move tried to ensure the use of centres which had remained almost empty since October 2024 mostly due to the Italian court rulings giving rise to criticism from the Italian opposition and civil society organisations which accused the government of wasting public money for populist purposes.

This revision of the Protocol is also in line with the recent stance of the European Commission which in March 2025, unveiled its controversial proposal on "return hubs", a euphemism for deportation centres. According to the European Commission, only 20% of people with a deportation order are effectively removed from EU territory, and it presented the

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[53] Law Decree 23 October 2024, No. 158, *Disposizioni urgenti in materia di procedure per il riconoscimento della protezione internazionale* [Urgent provisions on international protection attribution procedures], in OJ of the Italian Republic No. 249, of 23 October 2024.

[54] *Out of Sight, Out of Mind? Italy Starts Outsourcing Its Migrant Crisis to Albania*, in *The Economist*, 16 October 2024.

[55] P. KIRBY, *op. cit.*

[56] M. ZAMBONI, *The Italy-Albania Protocol before the Court of Justice of the European Union – Hearing of the CJEU*, in *EU Law Analysis*, 19 March 2025.

[57] N. IONTA, *Meloni's Italy-Albania Deal Faces Another Judicial Setback*, in *Euractiv*, 21 December 2024.

[58] A. PERETTI, N. IONTA, *Meloni Tries to Save Albania Migration Centres, Again*, in *Euractiv*, 31 March 2025.

"European System for Returns" in Strasbourg as a potential solution. The proposal aims to set a standard for all 27 Members of the bloc and allow national authorities from one country to enforce the deportation order issued by another. Such rules were missing from the EU's migration and asylum pact approved in 2024 and which will enter into force in 2026[59].

4. Albania's Dual Role: EU Candidate and Migration Partner

Albania filed its application for EU membership in 2009 and was accepted as a candidate country in 2014. For almost a decade the EU accession process mostly stalled with enlargement fatigue being considered as the main cause of this stagnation principally stemming from the problems encountered after the accession of Bulgaria and Romania in 2007, the effects of the 2008-2009 global financial crisis accompanied by the eurozone crisis in 2010-2011, the 2015-2016 migrant crisis accompanied by the rising influence of populist, nationalist and hard-right/far-right political parties in many EU countries as well as the effects of Brexit and Covid-19 pandemic.

In the wake of Russia's invasion of Ukraine in February 2022, the EU started to explicitly emphasise the increasing geostrategic and geopolitical features of EU enlargement thus creating a new momentum in the EU accession process of Western Balkan countries, including Albania. EU enlargement emerged as a new front in the geopolitical struggle and competition between the West and Russia (on Ukraine, Moldova and most probably also Georgia) besides NATO enlargement. In this context, Albania together with North Macedonia formally started accession negotiations in July 2022.

As an EU candidate country, Albania is under the obligation to ensure alignment and eventual full harmonisation with the EU acquis in the areas of border management, migration and asylum. Under art. 80 of the Stabilisation and Association Agreement (SAA) which represents the current legally binding agreement in force between Albania and the EU, "*The Parties shall cooperate in the areas of visa, border control, asylum and migration and shall set up a framework for cooperation, including at a regional level, in these fields, taking into account and making full use of other existing initiatives in this area as appropriate*"[60]. Cooperation in the matters referred to in art. 80 of the Stabilisation and Association Agreement shall be based on mutual consultations and close coordination between the Parties and shall include technical and administrative assistance for:

a) the exchange of information on legislation and practices;
b) the drafting of legislation;
c) enhancing the efficiency of the institutions;
d) the training of staff;
e) the security of travel documents and detection of false documents;
f) border management.

According to art. 80 SAA, cooperation shall focus in particular in the field of asylum on the implementation of national legislation to meet the standards of the 1951 Geneva Convention and the 1967 New York Protocol, thereby ensuring that the principle of *non-refoulement* is respected as well as other rights of asylum seekers and refugees, as well as in the field of legal migration, on admission rules and rights and status of the person admitted[61].

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[59] *The EU Wants to Increase Deportations and Supports 'Return Hubs' in Third Countries*, in *Associated Press*, 11 March 2025.
[60] *Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part – Protocols – Declarations*, in OJ L 107, of 28 April 2009.
[61] *Ibidem*.

However, despite the progress Albania has achieved in controlling its borders and improving the asylum-processing procedures and facilities, it still has important shortcomings concerning asylum and reception with in particular, a limited capacity to handle asylum claims under EU standards, also due to the fact that it is not an EU member or part of the Common European Asylum System (CEAS). Albania has adopted a new law on asylum[62] and ratified key treaties (*e.g.*, Geneva Convention), nevertheless it has weaknesses concerning the full and proper implementation of legislation due to limited capacity to process claims, inadequate reception conditions, and lack of integration measures. It should also be pointed out that Albania remains a transit country for irregular migrants towards the EU[63]. Albania also suffers from a lack of trained asylum caseworkers and judicial safeguards for appeals.

Albania was the first non-EU country to sign a Frontex Status Agreement in 2018, allowing joint operations on Albanian territory. Based on this agreement, which was ratified in 2019, Frontex supports Albanian border guards with personnel, equipment, and intelligence but cannot exercise executive powers[64]. In this context, under the EU's New Pact on Migration and Asylum[65], Frontex has deployed over 100 officers in Albania to curb irregular migration via the Western Balkans route by monitoring land borders with Greece and North Macedonia[66]. In carrying out its mission, Frontex uses drones, patrol vehicles, and biometric systems[67] and provides intelligence on smuggling routes and document fraud trends[68] In terms of capacity-building, Frontex trains Albanian border guards with regard to fundamental rights compliance as well as the use of EU databases such as SIS and Eurodac[69].

With the start of accession negotiations, Albania's asylum system remains a benchmark for EU membership negotiations under Cluster 4 – "*Justice and Fundamental Rights*". Key challenges in this regard remain the alignment with CEAS which requires full transposition of EU directives and the need for stronger border cooperation with Frontex in the fight against smuggling[70].

Besides being a transit country, Albania also represents a source of migrants and asylum seekers to the EU. In particular, after the visa liberalisation to the Schengen area granted to Albanian citizens in 2010, there was an increase in the number of Albanian asylum-seekers culminating in 2015-2016.

Year	Applications	Recognition Rate	Top Destination Countries
2013	5,200	<1%	Germany, France
2014	8,100	<1%	Germany, Belgium
2015	66,000	1.2%	Germany, Hungary
2016	35,400	0.8%	Germany, France
2017	23,800	0.5%	France, Italy

[62] Law of 1 February 2012, No. 10, *on Asylum in the Republic of Albania*.
[63] Commission Staff Working Document, *2023 Albania Report*, of 8 November 2023, SWD(2023) 690 final.
[64] *Status Agreement between the European Union and the Republic of Albania on actions carried out by the European Border and Coast Guard Agency in the Republic of Albania*, of 5 October 2018, in OJ L 46, of 18 February 2019. See also, *Agreement between the European Union and the Republic of Albania on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania*, of 15/09/2023, in OJ L, of 5 October 2023.
[65] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *on a New Pact on Migration and Asylum*, of 23 September 2020, COM/2020/609 final.
[66] Frontex, *Annual report on the deployment of standing corps in Albania (2022–2023)*, 2023
[67] Frontex, *Operational data: Western Balkans border surveillance*, 2023.
[68] Frontex, *Quarterly risk analysis: Western Balkans route trends (Q4 2023)*, 2023.
[69] *2023 Albania Report*, cit.
[70] Council of the European Union, *Council conclusions on Enlargement*, of 12 December 2023, Doc. 16707/23, paras. 46-64 on Albania's accession.

2018	15,200	0.4%	France, Greece
2019	12,500	0.3%	France, Germany
2020	7,900	0.2%	France (Covid-19 drop)
2021	9,300	0.3%	Germany, France
2022	12,100	0.4%	Germany, France
2023	14,700	0.5%	Germany, Italy

Table 1: Annual Asylum Applications by Albanian citizens (2013–2023). Source: Eurostat.

The data show Albania remains one of the top Western Balkan sources of asylum applications, though with extremely low recognition rates due to its EU-designated "safe country" status. In fact, the vast majority of these asylum applications represent a disguised form of labour migration hence the high rejection rate. During the 2013-2023 period, the average rejection rate amounts to 98% with rare approvals for vulnerable individuals such as Roma, LGBTQ+, or political activists[71]. Nevertheless, it should be pointed out that, according to Eurostat, during this decade Albanians were the seventh largest asylum-seeking group in the EU (after Syrians, Afghans, Iraqis, *etc*.) and the largest in the Western Balkans which underlines the persistence of strong push factors for migration from the country stemming mainly from the still low economic convergence of Albania with the EU average. On the other hand, the presence of a large Albanian diaspora in many EU countries serves as an important pull factor since would-be migrants can rely on extensive family and social networks in order to settle in the respective countries. Hence it can be stated that being a source country for migration to the EU in addition to a transit route complicates Albania's role as a partner in migration containment.

It is clear that the Italy-Albania deal exacerbates concerns about EU law compliance and practical readiness. A particular risk associated with the regime established by the 2023 Italy-Albania Protocol on Migration is related to the fact that those asylum seekers residing in the two areas on Albanian territory defined by the protocol whose applications will be refused by the Italian authorities, will still have the right to claim asylum in Albania, thus potentially overwhelming the still developing Albanian asylum system. If the Protocol is fully applied, Albania risks becoming a "buffer zone" for EU migration control. This dynamic mirrors broader trends where EU neighbours (*e.g*., Turkey, Libya) are incentivised to block migration in exchange for political and financial rewards[72]. In turn, this carries the risk of politicising the EU enlargement process and creating linkages with the EU migration and asylum policy whereby candidate countries come under pressure to provide concessions on externalisation in exchange of the speeding up of their EU accession process.

5. Conclusion

The Italy-Albania Protocol on Migration exemplifies the EU's shift toward externalised migration governance. This agreement sets a precedent for normalising externalisation carrying potential consequences of undermining the 1951 Geneva Refugee Convention whereby the offshoring of processing risks weakens protection standards. The regime established by the Protocol has the potential to serve as a model to be replicated by other EU countries. The Protocol risks also creating a domino effect through which other EU States may seek similar

[71] European Union Agency for Asylum, *EUAA annual asylum report 2024*, Report No. EUAA/2024/AR-EN, June 2024.
[72] E. COLLETT, *The EU's Migration Partnerships: A New Era of Externalisation?*, in *Migration Policy Institute*, 2023.

deals with Western Balkan or North African countries thus further jeopardising the European and global system of international protection.

The establishment of such regimes in EU candidate countries will make this model more attractive and acceptable by the authorities and general pubic of EU Member States. It will also create greater linkages between the EU's enlargement and its migration and asylum policies thus leading to an increased politicisation of the enlargement process. In conclusion, it can be stated that if replicated, such models may systematically erode asylum rights while outsourcing EU responsibilities. As the EU refines its migration strategy, upholding refugee rights must remain paramount – lest these policies unravel the very protection frameworks they claim to preserve.

ABSTRACT

Migration and asylum policies have occupied a central position in the European Union's political agenda since the 1990s, gaining even greater prominence after the 2015 refugee crisis. This crisis exposed critical vulnerabilities in the EU's external border management and placed significant strains on the Schengen system. In response, the EU has increasingly turned to the externalisation of its migration and asylum policies, shifting responsibility to third countries through cooperation agreements, readmission deals, and incentives for border control. The Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania "On Strengthening Cooperation in the Area of Migration" (2023 Italy-Albania Protocol on Migration) represents a striking example of this approach, establishing a framework for Italian authorities to process asylum claims on Albanian territory. While presented as a pragmatic solution to migration pressures, this arrangement raises serious legal and ethical concerns, particularly regarding human rights protections and accountability. The Protocol creates a unique extraterritorial jurisdiction, where Italy retains authority over asylum procedures while operating within Albania's borders. In its controversial January 2024 ruling, the Albanian Constitutional Court sought to clarify the legal framework, asserting that both Italian and Albanian laws – along with relevant international obligations – apply in the designated zones. The Court also emphasised that Albania retains jurisdiction over human rights matters, even as Italy processes asylum claims. However, critics argue that this dual legal regime creates ambiguity and risks weakening safeguards for asylum-seekers. There are fears that individuals processed under this system may face discriminatory treatment compared to those applying in Italy, with reduced access to legal recourse. Albania's status as an EU candidate country adds another layer of complexity. While it has made progress in aligning its migration policies with EU standards, its asylum system remains underdeveloped. A surge in applications – particularly from those rejected by Italy but still eligible to seek protection in Albania – could overwhelm local capacities. Moreover, Albania is not merely a transit route but also a source country for migration to the EU, complicating its role as a partner in migration containment. The broader implications of this agreement are concerning. If replicated by other EU States, such externalisation models could undermine the global asylum system, normalising the offshoring of protection responsibilities to less-equipped countries. This approach also risks creating a domino effect, where EU candidate and neighboring countries are increasingly pressured into hosting migration control mechanisms as a condition of closer ties with the bloc. Over time, this could erode fundamental refugee rights while further politicising the EU's enlargement process. Ultimately, the Italy-Albania Protocol exemplifies the EU's growing reliance on externalisation as a migration management tool. While it may offer short-term political benefits for EU governments, its long-term consequences – including diminished accountability, strained international protection systems, and heightened risks for vulnerable migrants – demand critical scrutiny. As the EU continues to refine its migration

strategy, ensuring compliance with human rights standards must remain a priority, lest these policies lead to a systemic weakening of refugee protections.

KEYWORDS
EU Enlargement, Externalisation, Extraterritorial jurisdiction, Italy-Albania Protocol on Migration, Migration and Asylum Policy.

THE PACT ON MIGRATION AND ASYLUM AND ITS POSSIBLE IMPLICATIONS ON NORTH MACEDONIA POLICIES AND LEGAL FRAMEWORK

by Teodora Kjoseva Kostadinovska[*]

1. Introduction

The adoption of the European Union's (EU) Pact on Migration and Asylum has introduced significant changes to the overall migration policies and management at the EU level and beyond[1]. North Macedonia, as a part of the so-called Western-Balkan route, with a longstanding aspiration to join the EU, is a country to which the Pact might significantly affect its policies and legal framework, especially if the current proposed changes are adopted. On the other hand, North Macedonia, as a candidate country to join the EU, continues to align its national policies and legal frameworks with EU standards and EU *acquis* as a precondition to becoming part of the EU.

According to the European Commission, the Pact is considered a set of rules that will help to manage arrivals in an orderly way, create efficient and uniform procedures, and ensure fair burden sharing between Member States. As emphasized in the Pact, the people not entitled to stay in the EU shall be returned through a humane procedure.

When it comes to the migration policies on returns, currently, proposals are introduced by the European Commission, but the central attention is turned on the proposed Regulation on the return of illegally staying third-country nationals (TCNs), commonly referred to as the Return Regulation[2], dating from March 2025. This Regulation forms an integral component of the broader Asylum and Migration Management Regulation (AMMR). The essence of the returns is already established in the Asylum Procedure Regulation adopted in May 2024, which is a common framework for processing asylum applications in the EU, aiming to ensure fair and efficient procedures for international protection[3].

The current proposal for Return Regulation seeks to establish a harmonized, efficient, and enforceable system for returning TCNs who lack legal grounds to remain within the Union. While the European Commission presents the Regulation as a pragmatic and necessary response to the inefficiencies of the current fragmented return systems among Member States, where only approximately 20% of individuals issued a return order actually leave EU territory, its implementation raises a lot of concerns. In particular, the Regulation broadens the scope of

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[1] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *on a New Pact on Migration and Asylum*, of 23 September 2020, COM/2020/609 final.

[2] Proposal for a Regulation of the European Parliament and of the Council, *establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC*, of 11 March 2025, COM(2025) 101 final.

[3] Regulation (EU) 2024/1348 of the European Parliament and of the Council, *establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, of 14 May 2024, in OJ L, of 22 May 2024.

countries to which TCNs can be forcibly returned. Under this new framework, return destinations may include transit countries, countries the individual is entitled to enter, or countries deemed "safe" under the Asylum Procedures Regulation (APR). Furthermore, returns may occur to third countries with which the EU or its Member States have concluded agreements or arrangements, either legally binding or informal, on readmission and migration cooperation.

This proposed expansion of return destinations carries significant implications for third countries such as North Macedonia, both in terms of their legal obligations and their broader geopolitical positioning. Increasingly, the EU is introducing the establishment of so-called "*return hubs*", which will represent facilities or mechanisms located in non-EU countries that would receive individuals returned from EU territory. North Macedonia, due to its geographic location being part of the Western-Balkan route and political ambition to integrate into the EU, may have been identified as a potential partner in these efforts. The concept of return hubs, however, raises legal, ethical, and human rights concerns, particularly regarding the safeguards available to individuals subjected to such transfers and the compliance of such arrangements with international human rights and refugee law[4].

The conversation in North Macedonia today reflects on the sensitivity and complexity of this issue. Public opinion varies, but many people worry that the country will be pushed and conditioned to receive people in order to join the EU, without having the tools, resources, or protections in place to handle such a role. At the same time, the thought of using return arrangements, agreements that often lack transparency or legal safeguards, raises a serious question: who is actually responsible when things go wrong, especially if someone is returned to a place where their safety isn't guaranteed?

North Macedonia stands at a crucial moment to align its national laws with the newly adopted legal reforms at the EU level, carefully structuring the migration and asylum system, which may navigate differently compared to the current policies and laws.

This paper takes a closer look at what the EU Pact on Migration and Asylum might mean for North Macedonia, not just in theory, but in practice. It explores the already existing and the newly proposed provisions made according to the Pact, how the country's laws may need to change and adapt to the new situation, what aligning with EU rules would involve, how human rights commitments might be affected, and to what extend the country should prepare for this responsibility.

2. Background on North Macedonia and Legal Framework

North Macedonia has dealt with several crises in the past thirty-five years**.** The country has hosted refugees since its independence in 1991, with the arrival of refugees from Bosnia and Herzegovina (BiH) and Croatia. A significant influx of large-scale occurred in 1999 as a result of the conflict in Kosovo, when temporary humanitarian protection was granted to 400,000 refugees from the region, of whom 360,000 were from Kosovo.

In 2015 and 2016, North Macedonia and the countries of the region faced a massive influx of refugees passing through the so-called "Balkan route" primarily from the Middle East, Asia, and Africa. In 2016, the borders were closed, and in response, the Government declared a state of crisis, which was established on the North and South borders that continues to this day, making it the longest continuous state of crisis since the country's independence. Refugees and

[4] ECRE, *Comments on the proposal for a regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing directive 2008/115/EC of the European Parliament and the Council, Council directive 2001/40/EC and Council decision 2004/191/EC*, 19 June 2025.

migrants continued to transit, and some of them decided to seek international protection. However, even before the crisis, North Macedonia has always been considered a transit country, both for the people on the move and the Government itself.

Although State authorities, with support from the Macedonian Army, and foreign police officers deployed from several EU Member States under bilateral agreements, starting from 2023, Frontex as well, intensified border monitoring and control, a substantial number of refugees and migrants continue to transit the country using irregular routes. Many of them used smuggling networks, exposing themselves to many risks, including threats to their health, safety, and personal liberty. Most individuals did not intend to remain in the country for a longer period of time, but instead viewed it as a place to rest, and then to reach more prosperous EU Member States.

Apart from the fact that people have not remained for a longer period of time on Macedonian soil, the State has taken an active role to regulate the procedures related to asylum and international protection according to the ratified international convention such as the Convention on the status of refugees from 1951 and its Protocol[5], other international instruments and regional legal documents. Considering these repeated crises and its strategic geographic position, North Macedonia has taken notable legislative and policy steps to align its migration and asylum systems with European standards as well.

In 2013, the Government adopted a comprehensive Law on Asylum and Temporary Protection[6], which represented a positive step toward separating asylum regulation from broader legislation on foreigners. The Law introduced an expanded set of rights for forcibly displaced persons and clarified procedural and technical aspects of international protection. However, as part of the country's broader strategy to harmonize its legal framework with the EU *acquis* and considering its candidacy status for EU membership, in 2018, the Law on International and Temporary Protection was adopted[7]. This law, which remains in force today, replaced the earlier legislation and now functions as the *lex specialis* covering all matters related to asylum and international protection in North Macedonia. This law was aligned with four relevant EU directives. This Law comprehensively regulates the procedures for granting asylum, codifies the rights and obligations of asylum seekers and beneficiaries of protection, and explicitly upholds key international legal principles, including *non-refoulement*, the best interests of the child, and the right to family unity. It also establishes the institutional and procedural framework for the examination of asylum claims and the administration of temporary protection status. It is particularly important to note that the law also incorporates the concepts of "*safe country of origin*", "*safe third country*", and "*first country of asylum*", which are important concepts to the broader EU framework on asylum procedures with the new Pact and regulations.

In parallel, North Macedonia enacted the Law on Foreigners in 2018[8], which entered into force in 2019, further expanding the national legal framework concerning migration management. This Law addresses irregular migration, sets out rules regarding entry, stay, and removal of foreign nationals, and provides for the national safeguards and mechanisms necessary to manage cross-border mobility in accordance with human rights standards and international obligations.

Taken together, these legislative measures reflect North Macedonia's dual imperative: to responsibly manage migration in a complex regional context while simultaneously pursuing legal and institutional harmonization with the EU. As the country seeks integration with the

[5] The Convention and its Protocol were ratified by North Macedonia in 1994.
[6] Law on Asylum and Temporary Protection, in Official Gazette of Republic of North Macedonia nos. 49/2003, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016.
[7] Law on International and Temporary Protection, in Official Gazette of Republic of North Macedonia no. 64/2018.
[8] Law on Foreigners, in Official Gazette of Republic of North Macedonia no. 97/2018.

EU, including through the implementation of the EU Pact on Migration and Asylum, it continues to balance its role as a transit country with its aspirations to uphold international protection standards and contribute meaningfully to regional migration governance. Taking into account the development of migration management policies on the EU level, in September 2025, the formal process of amending the Law on International and Temporary Protection will be started, which is a crucial moment of aligning the Macedonian legal framework with the newly developed EU Pact and regulations. At the same time, this will be a crucial moment to intervene in the law and monitor the adoption of the amendments, avoiding any potential violations or impediments.

3. The Pact and the Safe Third Country Concept

Over the past decade, the EU's asylum and migration systems have been severely tested by several major events, including the 2015-2016 migrant crisis, the Covid-19 pandemic, and recent tensions at the EU's eastern border.

To address these challenges, in 2020, the European Commission proposed a Pact on migration and asylum, a comprehensive legislative framework designed to streamline and harmonize the reception of asylum seekers in the EU. The Pact was adopted by the European Parliament and the Council in December 2023 and published in May 2024. This landmark agreement, heralding significant reforms, consists of 10 legislative acts that bring together policies on migration, asylum, integration, and border management. Its core objectives are to foster greater responsibility sharing, solidarity, and effective border management among the EU Member States.

The plan also identifies key milestones on the way to establishing the necessary legal and operational frameworks that would allow Member States to start applying the Pact by mid-2026. Despite the adoption of the ten legislative acts, support for them is not homogeneous across the Member States. Additionally, there is pressure for further changes, and the migration debate has been increasingly politicized. Experts and stakeholders have highlighted key challenges and potential scenarios for the implementation of the pact and raised doubts as to whether the new rules will be able to tackle the complexities of migration while also protecting fundamental rights[9].

Also, a key concern is whether the reforms will effectively tackle the deep-seated structural issues that have hindered the effectiveness of the common European asylum system. Some crucial aspects to consider include striking a balance between solidarity and responsibility, rethinking the roles and responsibilities of key institutions, and assessing the impact of the new regulations on fundamental rights.

Several of the reforms comprising the New Pact on Migration and Asylum are linked to the so-called external dimension of the EU's migration policy. Due to the uncertainty regarding the functioning and effectiveness of the newly introduced solidarity mechanism, reducing irregular arrivals and facilitating returns are framed by the European Commission and Member States as a promising strategy to achieve a more stable EU migration and asylum system. In this context, the EU and Member States will likely seek to strengthen partnerships with third countries even further. The efficiency presented in the Pact requires a border procedure and swift decision-making. In the Pact, it is stated the following: "*For those whose claims have been rejected in the asylum border procedure, an EU return border procedure would apply immediately. This would eliminate the risks of unauthorised movements and send a clear signal*

[9] European Parliamentary Research Service, *Implementation of the EU Pact on Migration and Asylum*, February 2025.

to smugglers. It would be a particularly important tool on routes where there is a large proportion of asylum applicants from countries with a low recognition rate. The Asylum Procedures Regulation would also establish an accessible, effective, and timely decision-making process, based on simpler, clearer, and shorter procedures, adequate procedural safeguards for asylum seekers, and tools to prevent restrictions from being circumvented. A greater degree of harmonisation of the safe country of origin and safe third country concepts through EU lists, identifying countries such as those in the Western Balkans, will be particularly important in the continued negotiations, building on earlier inter-institutional discussions"[10].

Additionally, according to the Pact, a common EU system for returns is needed, which combines stronger structures inside the EU with more effective cooperation with third countries on return and readmission. It should be developed by building on the recast of the Return Directive and effective operational support, including through Frontex.

According to a paper issued by Amnesty International and signed by several organizations, this cause is not fully accepted, stating that the overriding objective of the Pact is clear: an increase in the number of people who are returned or deported from Europe[11].

The European Parliament stresses that the EU's return policy has two main dimensions: an internal dimension – concerned with common rules and procedures on return implemented by the Member States – and an external dimension, covering cooperation between the EU and third countries on return and readmission[12]. Highlighted by the EU, the problematic issue is that, according to Eurostat data, only about one in three people who are ordered to leave the EU27+area2 are effectively returned to a third country. Most of them disappear or remain at unknown locations, so this poses a real challenge for the EU Member States' authorities, making it difficult to follow the movements and the individual cases at stake.

One of the concepts in the new EU regulations is the safe third country (STC) concept in the Asylum Procedure Regulation. Within the EU asylum *acquis*, the concept of a STC assumes that certain non-EU countries can be designated as safe for applicants seeking international protection, under specific conditions. The recently adopted Asylum Procedure Regulation provides for broader applicability of safe country clauses. This particularly concerns four aspects: *i*) the evaluation of safety when applying the STC concept; *ii*) the interpretation of the connection requirement for readmitting an applicant to a designated STC; *iii*) the option to designate a third country as safe with territorial limitations or to exclude certain vulnerable groups from such designation; and *iv*) the creation of a common EU list of STCs in addition to national lists[13].

The safe third country concept allows Member States to reject an asylum application as inadmissible (*i.e.*, without examining its merits) when applicants could have sought and received international protection in a third country other than their country of origin. The Geneva Convention and the European Convention on Human Rights (ECHR) do not preclude the application of the STC concept. The UNHCR has provided recommendations on conditions for a country to be deemed "safe", while emphasizing that "*transfers to third countries should be aimed at enhancing burden and responsibility-sharing and international/regional cooperation and not be burden shifting*"[14]. Similarly, the Council of Europe provides guidelines on the application of the concept, and the European Court of Human Rights (ECtHR) case law

[10] COM/2020/609 final, cit., pp. 4 and 5.
[11] ECRE, *The Pact on Migration and Asylum: To Provide a Fresh Start and Avoid Past Mistakes, Risky Elements Need to Be Addressed and Positive Aspects Need to be Expanded*, October 2020.
[12] European Parliamentary Research Service, *Common Approach on Return Policy*, October 2024.
[13] European Parliamentary Research Service, *Safe Third Country Concept in the EU Pact on Migration and Asylum*, December 2024.
[14] UNHCR, *Legal Considerations Regarding Access to Protection and a Connection Between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries*, April 2018.

emphasizes the importance of safeguards for asylum seekers when applying the concept. The primary requirements of the STC concept under the APR are 1) the provision of "*effective protection*" in the third country (which is a requirement for considering the country as "*safe*" and the criteria of which are aligned with international law), and 2) the existence of a "*connection*" between the asylum seeker and the third country (which is necessary for applying the concept).

Safe country concepts, which consist of a safe country of asylum, a safe third country, and a safe country of origin, are central to understanding the implications of the New Pact reforms for the external dimension of EU migration policy. Within asylum procedures, "safe country of asylum" or STC concepts are used to declare an asylum application inadmissible and assign protection responsibilities to a State different from the one where the applicant has applied for asylum. The use of "safe country of origin" clauses instead allow for a swift examination of asylum applications through accelerated procedures when the applicant's country of origin is considered safe. The idea behind these concepts is to swiftly finalize the processing of claims to return asylum applicants arriving from third countries where their lives and freedoms are not at risk. This is meant to avoid burdening national asylum systems and make it possible to concentrate efforts and resources on the processing of other claims.

International refugee law does not bar agreements assigning responsibility for refugees between States, as long as there are sufficient safeguards to guarantee effective access to protection from direct and indirect refoulement and other threats. The overall aim is to encourage States to work together to protect refugees, ensuring a fair balance and division of responsibilities within the international community.

Under the APR, both the safe country of asylum and the STC concepts can only be applied on an individual basis, allowing applicants to challenge the assumption that a third country is safe for them, in continuity with previously applicable rules under the APD. However, the Asylum Procedure Directive required third countries to have ratified the 1951 Refugee Convention or be able to provide comparable levels of protection. The APR instead introduces the concept of access to effective protection. Under this new provision, a country can be considered a safe country of asylum or a safe third country if, in addition to protection from persecution, serious harm, and refoulement, it complies with basic human rights standards, namely access to means of subsistence, essential healthcare, and education. These are lower standards compared to the Refugee Convention, which also foresees access to housing and employment, freedom of association, and property rights, among other guarantees. Furthermore, the APR allows Member States to presume that these requirements are fulfilled when there is an agreement between the EU and a third country, providing that readmitted migrants will be protected in accordance with the relevant standards and the principle of *non-refoulement*. This is a significant legal change, considering the EU's efforts to sign agreements of this kind with third countries in recent years, which could render it easier to apply safe country clauses.

Transfers are allowed only if "*there is a connection between the applicant and the third country in question on the basis of which it would be reasonable for him or her to go to that country*". The Regulation, therefore, leaves it to the Member States to define the specific connection requirements in their national law. According to the recitals in the Asylum Procedure Regulation, the connection may be deemed established, particularly if the applicant's family members are present in that country, or if the applicant has previously settled or stayed there. Here, the Court of Justice's judgment in C-564/18 remains highly relevant, as it has interpreted the current Directive 2013/32/EU to mean that a short-term transit is not sufficient[15].

[15] Court of Justice of the European Union, Judgment of 19 March 2020, Case C-564/18, *LH v Bevándorlási és Menekültügyi Hivatal*, para. 47.

According to experts, the application of "*stay*" could, if interpreted loosely, potentially encourage Member States to consider passing through a country for a limited period as sufficient for the connection requirement to be met. The Asylum Procedure Regulation allows Member States to exclude specific groups when designating a third country as generally safe. It also mandates a case-by-case evaluation to determine whether transferring unaccompanied minors is in the best interests of the child, taking into account the availability of protection in the third country. If the individual assessment determines that the child should not be transferred to a specific third country, a standard asylum procedure must be carried out in the EU. In a joint release, UNHCR, IOM, and UNICEF urge the Governments to ensure mitigation of child protection risks and involve national child protection authorities in return procedures, in order to make sure that those do not aggravate vulnerabilities or lead to child rights violations[16].

From a legal perspective, the expansion and possible use of safe country clauses will create incentives to form new partnerships with countries of origin or transit or strengthen existing ones. While the EU and its Member States may pursue cooperation with a variety of actors, if partnerships are brought forward without thorough human rights scrutiny, the new provisions risk incentivizing the selective recourse to agreements with autocratic third countries that do not guarantee proper protection for asylum seekers or even adequate reception standards.

4. Return Hubs Introduced with the Proposed Return Regulation

The new proposed Return Regulation[17], in its art. 4, gives a definition to terms used in the regulation, among which the meaning of "country of return" is described very broadly, such as:

> "'*country of return' means one of the following:*
> *(a) a third country that is the country of origin of the third-country national;*
> *(b) a third country that is the country of formal habitual residence of the third-country national;*
> *(c) a third country of transit on the way to the Union in accordance with Union or Member States' readmission agreements or arrangements;*
> *(d) a third country, other than the one referred to in points (a), (b), and (g), where the third-country national has a right to enter and reside;*
> *(e) a safe third country in relation to which the application for international protection of a third-country national has been rejected as inadmissible, pursuant to Article 59(8) of Regulation (EU) 2024/1348;*
> *(f) the first country of asylum in relation to which the application for international protection of a third-country national has been rejected as inadmissible, pursuant to Article 58(4) of Regulation (EU) 2024/1348;*
> *(g) a third country with which there is an agreement or arrangement on the basis of which the third-country national is accepted, in accordance with Article 17 of this Regulation*".

As evident from the relevant provisions, several potential return destinations may apply in a single case. However, art. 17 of the proposed Regulation offers a more specific legal basis for returns to third countries with which the EU has concluded either a formal agreement or a

[16] *IOM, UNHCR and UNICEF advocacy messages Implementation of EU Asylum and Migration Pact*, 14 April 2025.
[17] Proposal for a Regulation *establishing a common system for the return of third-country nationals staying illegally in the Union*, cit.

more flexible arrangement. This provision forms the foundation for the possible establishment of so-called "*return hubs*" serving as facilities in third countries to which individuals subject to return decisions may be transferred, with exceptions made for unaccompanied minors and families with children.

Importantly, such agreements or arrangements can only be concluded with third countries that uphold international human rights standards and abide by international law, including the principle of *non-refoulement*. Despite this requirement, the safeguards outlined in the first paragraph of art. 17 are general in nature and arguably insufficient given the significant implications of returns. The provision further details what these agreements or arrangements should contain: procedures for transferring third-country nationals without legal stay from EU territory; the terms of their stay in the third country; the respective responsibilities of both the Member State and the third country; options for onward return to the country of origin or another destination; and the measures to be taken in cases where return is not feasible. Additionally, the agreements should specify the role of independent monitoring bodies, set out consequences for violations, and address changes in the third country's situation that could undermine the agreement's viability.

Specific safeguards for minors are also included. The Regulation emphasizes that the best interests of the child must be a primary consideration in all return-related procedures. Unaccompanied minors must be appointed by a trained representative to act on their behalf, and the child must be heard, either directly or through the representative, prior to any return decision being implemented.

In light of these developments, several civil society organizations and human rights bodies have raised significant concerns. The European Council on Refugees and Exiles (ECRE), for example, has criticized the reliance on informal arrangements, arguing that they provide a weak legal foundation for actions that carry serious human rights implications. ECRE notes that such arrangements are often used to bypass the formal procedures for concluding international agreements, effectively limiting judicial oversight and weakening both the rule of law and democratic accountability within the EU and in the partner countries. In addition to legal ambiguity, these arrangements often lack transparency, limiting public scrutiny and curtailing opportunities for meaningful opposition. According to ECRE, the establishment of return hubs under these informal frameworks risks undermining key principles of EU law and international human rights obligations[18].

Further concerns have been raised by the EU Agency for Fundamental Rights (FRA). In its February 2025 position paper, FRA points out that both EU Member States and Frontex remain accountable for potential rights' violations, even after individuals are transferred to return hubs. This is different from the situation in which an individual is handed over to third-country authorities under a standard readmission agreement, after which the Member State ceases further involvement.

FRA acknowledges that EU law allows for the creation of return hubs but insists that strict conditions must be met to ensure fundamental rights are respected. Such facilities must not become legal grey zones or be used to sidestep State responsibilities. A formal international agreement is essential, incorporating strong protections against arbitrary detention, inhuman or degrading treatment, and legal uncertainty. Effective monitoring by independent human rights bodies must be guaranteed, and individuals must have access to legal remedies. The final return destination must also be clearly specified. Where EU funds are used to support these hubs, additional safeguards are required[19].

[18] ECRE, *Comments on the proposal for a regulation*, cit.
[19] FRA, *Planned Return Hubs in Third Countries: EU Fundamental Rights Law Issues*, February 2025.

FRA outlines two possible scenarios: in one, the Member State sending returnees also administers the return hub; in the other, returnees are transferred to facilities operated entirely or in part by the third country. In the latter case, primary responsibility lies with the host country for ensuring returnees' basic rights and services are respected.

From a gender perspective, the implications of art. 17 are particularly concerning. While the provision excludes unaccompanied minors and families with children, other vulnerabilities may go unrecognized. For example, dependent adult children risk being separated from their families, undermining family unity. Women who face gender-based violence, persecution (including domestic violence, FGM, or trafficking), or who are survivors of exploitation may be returned through procedures that fail to assess any gender-specific risks. Without proper safeguards, these individuals are at high risk of being trafficked again, of sexual exploitation, or other forms of abuse in return hubs or transit centers – spaces where such violations have been widely documented.

Moreover, according to ECRE, in many cases, returned women lack legal status in the receiving country, which increases their vulnerability and increases the possibility of being exploited. When externalization measures allow for transfers without individual assessment or to countries with inadequate protection mechanisms, there is a serious risk that trafficking victims will go unidentified or re-victimized. This may amount to a violation of art. 4 of the European Convention on Human Rights, which obliges States to protect individuals from inhuman treatment and ensure access to justice and assistance.

Given these concerns, it is evident that the new provisions on returns, particularly those involving third-country arrangements, carry significant risks. There is no clear obligation to inform affected individuals in writing about decisions or to provide access to legal remedies. Transparency is lacking in how compliance with human rights standards will be monitored or enforced. Moreover, any monitoring envisioned under these arrangements appears limited to assessing formal implementation rather than the actual treatment of individuals or the protection of their rights after returning.

In summary, while the proposed regulation introduces new mechanisms for managing returns, it also raises fundamental questions about legality, accountability, and the protection of human rights. Without clearer safeguards, there is a real danger that EU Member States may pass on their legal responsibilities to third countries, with insufficient oversight and little guarantee that the rights of returned individuals will be respected. What should be thoroughly addressed are the specific safeguards in these procedures for everyone affected by a return from a Member State and access to an effective remedy in case of violation due to the sensitive content of the proposed regulation. Also, a crucial issue is to what extent the country will be responsible for the well-being of the people, as well as the procedures conducted on their territories.

5. Potential Scenarios for North Macedonia as a Third Country Being Part of the Western Balkan Route

Amid the European Union's ongoing efforts to reform its migration and asylum system, Western Balkan countries, including North Macedonia, are increasingly viewed as strategic partners in external migration management. As part of the EU's broader attempt to externalize certain migration responsibilities, these states are being considered for bilateral return arrangements with individual Member States, positioning them not only as transit countries but also as possible sites for processing or returning migrants. In return, these arrangements are often linked, either explicitly or implicitly, to progress EU accession.

A notable example of this dynamic is the Italy-Albania agreement, which has been interpreted as a political signal reinforcing Albania's EU aspiration. Similarly, recent developments involving North Macedonia suggest a growing interest in such partnerships. The country recently signed a strategic cooperation agreement with the United Kingdom (UK), although its full content remains undisclosed. Speculation about potential provisions to host migrants has raised public concern. In response, North Macedonia's Prime Minister publicly stated that no agreement to that effect exists or is being negotiated[20]. Still, this agreement is widely perceived as part of broader efforts to mitigate secondary migration flows through the Western Balkans to EU countries and the UK.

Comparable efforts by the UK in Albania, such as the proposal to establish "return hubs"[21], have drawn parallels to its controversial Rwanda policy, reinforcing concerns about the externalization of asylum responsibilities. Within this context, cooperation with North Macedonia may include enhanced intelligence-sharing mechanisms and deployment of UK-funded surveillance equipment (*e.g.*, drones) aimed at intercepting smuggling routes across the region.

To date, no similar bilateral returns arrangements between North Macedonia and EU Member States have been made public under the framework of the new EU Pact on Migration and Asylum. Nonetheless, given the political direction of the Pact and the EU's strategic interest in the Western Balkans, it is plausible that North Macedonia could be considered a partner for such agreements. This would potentially position the country as a key player in future regional migration governance models.

Two pressing legal and policy questions arise from this trend. First, will North Macedonia be designated, or *de facto* treated, as a "safe third country" for individuals transiting through its territory before reaching the EU and subsequently being returned? Second, could North Macedonia serve as a "return hub" for individuals whose asylum claims have been rejected or who cannot be returned directly to their countries of origin due to ongoing risks, conflict, or lack of cooperation?

If either scenario materializes, North Macedonia will face considerable challenges stemming from this new and complex form of burden-sharing with the EU. Meeting these demands would require the country to significantly upgrade its legal and institutional framework, including laws on international protection, procedures for returns, and systems for receiving and processing individuals in line with EU and international standards.

A central legal concern is the potential application of "safe country" concepts included in Macedonia's *Law on International and Temporary Protection* to returnees. As stated above, this law envisions the safe third country concepts, the first country of asylum, as well as the safe country of origin. If national authorities apply these concepts to individuals returned from EU countries, serious risks of *chain refoulement* may emerge, whereby a person is returned to a supposedly "safe" State that may, in turn, return them to a country where they face persecution or harm. Here, it is important that, in case of implications of these provisions, an extensive assessment of whether a return to a person to one country might negatively affect their well-being is made. Another question arises on the responsibility if anything goes wrong because it is up to the State to decide on the safe countries and other connected criteria.

Should North Macedonia become integrated into the broader EU migration system, it will need to address several critical priorities. First, its legal framework must be aligned with international and EU standards to ensure that the rights of returnees are upheld at every stage,

[20] S. JAKOV MARUSIC, *North Macedonia-UK Deal Sparks Concerns About Hosting Migrant Hubs*, in *Balkan Insight*, 19 May 2025.
[21] A. HOXHAJ, *Starmer Announces Migration 'Return Hubs' on Albania Visit, but Albania Doesn't Want Them – What's Going On?*, in *The Conversation*, 16 May 2025.

from entry and reception to the right to seek asylum, return, and potential detention. Care must be taken to clarify the legal status, rights, and protections available to individuals transferred to the country temporarily pending final return decisions. This is especially urgent given the longstanding failure to regulate both the legal status of people accommodated in transit centers in North Macedonia and the institutional status of the centers themselves, an issue that has persisted for over a decade.

Second, institutional capacity must be significantly enhanced. North Macedonia would need to invest in reception infrastructure, personnel training, and expanded administrative services, especially within the Ministry of Interior's asylum and border police departments. Also, specific preparation should be done within the social workers' team working on sensitive cases, including children and families. While the current number of asylum seekers remains relatively low and manageable, a large-scale increase would likely overwhelm existing structures. Currently, the country operates with only two transit centers on the north and south border (still not legally recognized and regulated), and one reception center for asylum seekers with a capacity to accommodate 150 asylum seekers, all of which are insufficient in case of a massive influx of people arriving in the country[22].

Third, national legislation on return procedures and protection must be further harmonized with current EU law to ensure both procedural fairness and compliance with *non-refoulement* principles. Moreover, effective monitoring mechanisms must be established, not only to oversee the implementation of bilateral or multilateral agreements but also to supervise the actual conditions of reception, procedural conduct, and return operations. Such mechanisms should be empowered to assess the treatment of individuals at all stages and hold responsible institutions accountable, thereby ensuring transparency and respect for fundamental rights.

Finally, North Macedonia should seek to enhance and streamline return procedures by continuing to negotiate and sign readmission agreements, as well as implementing protocols with EU countries. While North Macedonia already maintains a readmission agreement with the EU, it has also concluded implementing protocols with Austria, the Czech Republic, and the Benelux countries, among others. Additionally, bilateral readmission agreements are in place with a broad range of European countries[23]. However, expanding and strengthening these legal frameworks and agreements will contribute to more effective and rights-compliant management of returns.

Lastly, North Macedonia is currently experiencing significant labor shortages, largely attributable to ongoing brain drain. To address these gaps, in some areas the country has started to rely on labor migrants from countries such as Bangladesh, India, Nepal, and others. Within this context, an important opportunity arising from the overall EU migration policies is for North Macedonia to develop a stronger integration strategy and policy framework for foreigners engaged in the labour market. Such a framework would facilitate the safe and regulated inclusion of individuals returned from other countries, with adequate procedures applying in their case, at the same time helping to address labor market deficiencies. This approach requires careful shaping and implementation, taking into account the prevailing public discourse and the broader socio-political conditions of the State. Nonetheless, it presents a valuable opportunity to mobilize available human capital effectively, strengthen labor market

[22] More on the Transit and Reception centers can be found in T. KJOSEVA KOSTADINOVSKA, *State of Asylum Report for 2023 for North Macedonia*, report for the Macedonian Young Lawyers Association, Skopje, January 2025, https://myla.org.mk/wp-content/uploads/2025/01/THE-STATE-OF-ASYLUM-2023.pdf; and MYLA, *Field Report for 2023*, Skopje, May 2024, https://myla.org.mk/wp-content/uploads/2024/05/Field-Report-2023-ENG-1.pdf.

[23] These countries include: Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Denmark, France, Germany, Hungary, Iceland, Italy, Moldova, Montenegro, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, and Croatia.

capacities, and enhance the overall efficiency of migration and integration processes. This may present a two-way process in which both the country and the people will benefit, especially those vulnerable ones who are afraid or cannot go back to their countries of origin.

6. Conclusion

The EU Pact on Migration and Asylum signals a possible change in the overall context of migration and asylum in North Macedonia. This evolving system presents both opportunities and significant challenges for this country. The potential designation of North Macedonia as a "safe third country", whether it will be decided or agreed on EU level or individually by the Member States, or the EU Member States will propose the establishment of return hubs on its territory, would in any way impose legal and operational responsibilities. If people are returned to their home countries from North Macedonia, a specific set of safeguards should be established, requiring financial support too. North Macedonia may potentially be engaged in larger operations, preventing people from continuing ongoing movements to Europe.

To respond adequately, North Macedonia must reform the current migration and asylum system in almost all parts, such as legal, institutional, and infrastructural, if it is assigned to operate with the returns and the reception of the people. This includes further aligning national laws with EU standards and policies, ensuring fair and effective asylum and return procedures, and building the institutional capacities necessary to manage larger migration flows while safeguarding fundamental rights. If North Macedonia is assigned only to provide technical support and won't operate with centers, procedures, *etc*., it would need to carefully determine the provided support according to standards and procedures, preventing violations of crucial national and international legal frameworks. Here, the legal status and the rights of the people should be comprehensively explained.

To manage these changes properly, if any scenario occurs, North Macedonia needs clear and transparent laws that will define the treatment of people, their legal status, and the rights and protections they have during the process. It's especially important to avoid unclear rules that could result in people being sent back to places where they might be in danger, or where vulnerable individuals don't get the protection they need.

At the same time, cooperation with the EU and other countries through readmission agreements and shared procedures needs to be strengthened. These partnerships should not only help with the organized return of migrants but also ensure that human rights are respected through proper monitoring and accountability.

There's also a potential benefit to this new migration system. By including returned individuals in the workforce, North Macedonia could help fill labor shortages and ease some of its economic and demographic problems, while also meeting its humanitarian responsibilities. In any case, this would require a well-planned integration policy for foreigners that respects people's rights and dignity.

North Macedonia is at an important crossroads. Its future role in Europe's migration system will depend on how well it can make fair, practical reforms, strengthen its institutions, and work as a reliable partner in the region.

ABSTRACT

In May 2024, the European Union (EU) adopted the newly designed strategic document for integrating key EU policies on migration, asylum, border management, and integration. The Pact on Migration and Asylum is a comprehensive framework for managing migration and establishing a common asylum system. The Pact includes new rules designed to normalize

migration in the long term and is set to take effect in June 2026. The Pact was followed by a new set of regulations and changes in the legal framework that shaped the rules designed for people on the move, as well as those seeking asylum. The Pact shall be directly mandatory for Member States. On the other hand, the EU has opened accession negotiations with North Macedonia, which currently holds the status of a candidate country; this does not preclude its involvement in future planning and policy considerations within the field of migration and asylum. When it comes to migration, North Macedonia is generally observed as a transit country, both by the Government and by the people on the move. However, the cooperation with the EU to tackle the smuggling of migrants (with the Anti-Smuggling Operational Partnerships) and manage borders is expanding from year to year. The EU is establishing tailor-made comprehensive partnerships with key partner countries focusing on several areas of cooperation, such as economy, trade, green energy, and digital, as well as migration management and security, including North Macedonia as a Western Balkan country. In addition, with the Anti-smuggling partnership, there are measures to increase cooperation and respond to challenges related to migrant smuggling and trafficking in human beings and irregular migration towards Europe from transit countries. Despite these facts, one articulated addition is the so-called cooperation on readmission plans to non-EU countries, mainly transit ones, such as North Macedonia. A new paradigm based on comprehensive partnerships is being developed with many of the countries of origin and transit to the EU, including recent initiatives with Tunisia, Mauritania, and Egypt. Under this new approach, migration is embedded into close cooperation with partner countries alongside other key areas (Western Balkans as well). Considering various dimensions of current EU policies and the present status of North Macedonia, the Pact may substantially influence the country's position, policies, and obligations, despite possible efforts to downplay its impact in public discourse. This paper seeks to offer a comprehensive analysis of the EU's plans and policies regarding the Pact on Migration and Asylum as they pertain to third countries, the existing circumstances and challenges facing North Macedonia, the potential risks and opportunities that may arise, and the potential implications on policies and legal framework. In doing so, it aims to shed light on how the Pact could shape the national migration system and redefine North Macedonia's future trajectory within the EU accession process.

KEYWORDS
European Union, North Macedonia, Pact on Migration and Asylum, Partnerships, Western Balkans.

MIGRANTS AND TRANSNATIONAL ORGANIZED CRIME FROM THE PERSPECTIVE OF THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

by Mirjana Lazarova Trajkovska[*]

1. Introduction

Migration and transnational organized crime area complex issues. The protection of migrants in Europe from the perspective of human rights is different compared to other parts of the World. "*Europe is the only continent where migrants have access to an international Court which has jurisdiction, in respect of almost all States, to decide on alleged human rights breaches by national authorities*"[1].

The case-law of the European Court of Human Rights (ECtHR) highlights a nuanced, human rights-based approach to migration and transnationally organized crime. It underscores that migrants, regardless of their legal status or alleged criminal involvement, enjoy protection under the European Convention on Human Rights (ECHR). States must balance crime prevention and migration control with fundamental human rights. Violations can occur not only through action but also through inaction.

Nevertheless, the approach of the ECtHR is criticized by some authors in context that ECtHR "*should find the courage to veer in a direction that is more protective of the migrant applicant, thereby ensuring that the expression 'human rights of migrants' does not increasingly become nothing more than empty words in its jurisprudence – a particularly disturbing result for a court established to defend human rights*"[2]. Other authors are criticizing "*the ECtHR's case-law as a whole, including the more progressive cases with findings of a human rights violation" as "structurally conservative at a deeper level in that it legitimates the foundations of European border regimes through its reasoning*"[3]. The ECtHR has addressed the intersection of migration and transnational organized crime through its jurisprudence primarily by interpreting States' obligations under the European Convention on Human Rights.

Our focus here is on migrants and transnational organized crime from the perspective of the case law of the ECtHR. We will present the approach of the ECtHR on human rights of migrants in Europe from the perspective of jurisprudence, the principle of *non-refoulement*, protection from human trafficking, positive obligations of the States and the importance of inter-State cooperation. Therefore, we start with the standards and principles under art. 4 of Protocol No. 4, arts. 2 and 3, arts. 5 and 6 as well as art. 14 in conjunction with art. 8.

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[1] *Reception of Migrants: Material and Procedural Guarantees for Settled Migrants*, Intervention by Christoph Grabenwarter at the Opening of the Judicial Year – Seminar – 27 January 2017, ECHR, Strasbourg.

[2] M. DEMBOUR, *The Migrant Case Law of the European Court of Human Rights Critique and Way Forward*, 2022.

[3] J.T. THEILEN, *Framing Migration in Human Rights: How the Reasoning of the European Court of Human Rights Legitimizes Border Regimes*, in *European Journal of Migration and Law*, Vol. 27, No. 1, 2025, pp. 66-93.

2. The ECtHR on Migrants and Jurisdiction of the State

First, I would like to stress that in line with the case law of ECtHR, the States have the right, as a matter of well-established international law and subject to their treaty obligations, to control the entry, residence and expulsion of nonnationals. Nevertheless, based on the principle of *non-refoulement* there are certain limitations on the right of the States to turn someone away from their borders. On general procedural guarantees, we should first remember that, in principle, migrants and citizens enjoy the same level of protection, including in the field of procedural guarantees. Therefore, art. 14 also applies in conjunction with arts. 5 and 6 of the Convention, and it protects migrants against discrimination irrespective of their nationality and regardless of whether they belong to a minority or not[4].

The Court has dealt with returns of individuals at sea, at land borders and shortly after entry into the territory. It has done so under different Convention provisions. In the leading case of *Hirsi Jamaa and others v. Italy*, the Court dealt with an interception by the coastguard of the respondent State on the high seas, on events on board of military vessels and concluded that "*those actions constitute an exercise of extraterritorial jurisdiction by a respondent State within the meaning of Article 1, also engaging that State's responsibility are under Article 4 of Protocol No. 4*"[5].

There is a long line of cases that are concluding that actions by the respondent State's border guards or police officers at a land border fall within the territorial jurisdiction of a State[6]. In the case of *A.A. and Others v. North Macedonia*, the Court was dealing with the actions by soldiers of the respondent State on the respondent State's territory, including the police officers from other States had come to help the authorities of the respondent State in managing a mass influx of migrants[7].

The Court notes that "*expulsion, extradition or any other measure to remove an alien may give rise to an issue under Article 3 of the Convention, and hence engage the responsibility of the expelling State under the Convention, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving Country. In such circumstances, Article 3 implies an obligation not to expel the individual to that Country*"[8]. In this type of cases, the Court is called upon to assess the situation in the receiving Country in the light of the requirements of art. 3 and the direct consequence of the exposure of an individual to the risk of proscribed ill-treatment[9].

When the presence of the applicants on the respondent States territory and their alleged removal was disputed, it must be ascertained whether the applicants furnished prima facie

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[4] Reception of Migrants: Materials and Procedural Guarantees for Settled Migrants, Intervention by Christoph Grabenwarter at the Opening of the Judicial Year – Seminar – 27 January 2017.

[5] European Court of Human Rights, Judgement of 23 February 2012, Application no. 27765/09, *Hirsi Jamaa and Others v. Italy*, paras. 76-82 and 169-182.

[6] European Court of Human Rights, Judgement of 13 February 2020, Applications nos. 8675/15 and 8697/15, *N.D. and N.T. v. Spain*, paras. 104-111; European Court of Human Rights, Judgement of 11 December 2018, Application no. 59793/17, *M.A. and Others v. Lithuania*, para. 70; European Court of Human Rights, Judgement of 23 July 2020, Applications nos. 40503/17, 42902/17 and 43643/17, *M.K. and Others v. Poland*, paras. 129-132; European Court of Human Rights, Judgement of 8 July 2021, Application no. 52146/17, *D.A. and Others v. Poland*, paras. 33-34.

[7] European Court of Human Rights, Judgement of 5 April 2022, Applications nos. 55798/16 and 4 others, *A.A. and Others v. North Macedonia*, paras. 57-64.

[8] European Court of Human Rights, Judgement of 11 July 2000, Application no. 40035/98, *Jabari v. Turkey*, para. 38, ECHR 2000-VIII; and European Court of Human Rights, Judgement of 11 January 2007, Application no. 1948/04, *Salah Sheekh v. the Netherlands*, para. 135.

[9] European Court of Human Rights, Judgement of 28 February 2008, Application no. 37201/06, *Saadi v. Italy*, para. 126.

evidence in support of their version of events. If that is the case, the burden of proof should be shifted to the Government[10]. The problems will arise in more complex form when the migrants are involved in national or transnational crime.

3. Migrants in the Context of Transnationally Organized Crime

Under art. 1 of the Convention, the undertaking of the Contracting States is to "secure" to everyone within their "jurisdiction" the rights and freedoms defined in Section I of the Convention.[11] Therefore, the exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention.[12]

In this direction, Boister[13] is rightly pointing that "transnational" in "transnational organized crime" refers to the simple fact that this form of crime crosses State borders, and that the criminal enforcement response necessarily engages questions of public international law – most specifically, those issues covered by the body of law usually referred to as "*transnational criminal law, which encompasses those norms through which States cooperate to suppress crimes of mutual interest*". According to data of the UN, the hallmarks of transnational organized crime – a multi-billion-dollar illegal industry that operates across borders, exploiting vulnerable people and undermining global security are slavery, drugs, weapons, corruption. Transnational organized crime is based on criminal networks that engage in a wide range of illicit activities, including money laundering, the illegal trade in firearms, and trafficking in humans, organs, drugs, natural resources, wildlife, and even waste. "*The billions lost to illicit financial flows represent missed opportunities, lost livelihoods, and deepened poverty. For example, migrants smuggling across international borders for financial gain is a lucrative criminal enterprise. The demand for smuggling services is particularly pronounced among refugees fleeing conflict or persecution and desperate to reach safety. Although most smuggled migrants are young men, the vulnerability of unaccompanied and separated children is of particular concern, as they are at increased risk of exploitation and abuse*"[14].

When discussing migrants as part of transnational organized crime, it is important to distinguish between migrants as victims of transnational organized crime and migrants as perpetrators or participants in transnational organized crime activities. The ECtHR has mostly dealt with migrants as victims. Nevertheless, in some cases, the legal principles also touch upon situations where migrants are implicated in organized crime, such as smuggling, drug trafficking, or gang-related offenses. The ECtHR evaluates whether State actions or omissions in dealing with transnational organized crime particularly in relation to migrants are compatible with human rights.

In many cases, the ECtHR has stressed that migrants are in a vulnerable situation. In that context, the vulnerability of migrants is mentioned in the case of *M.S.S. v. Belgium and Greece*, in which by pointing out the "*the vulnerability inherent in his situation as an asylum-seeker*"

[10] European Court of Human Rights, *N.D. and N.T. v. Spain cit.*, paras. 85-88, and European Court of Human Rights, Judgement of 18 November 2021, Applications nos. 15670/18 and 43115/18, *M.H. and Others v. Croatia*, paras. 268-275.
[11] European Court of Human Rights, Judgement of 7 July 1989, Application no. 14038/88, *Soering v. the United Kingdom*, para. 86; European Court of Human Rights, Judgement of 12 December 2001, Application no. 52207/99, *Banković and Others v. Belgium and Others*, para. 66.
[12] European Court of Human Rights, Judgement of 8 July 2004Application no. 48787/99, *Ilaşcu and Others v. Moldova and Russia*, para. 311.
[13] N. BOISTER, *An Introduction to Transnational Criminal Law*, Oxford, 2018.
[14] United Nations, *What Is Transnational Organized Crime?*, https://www.un.org/en/peace-and-security/transnational-crime.

the Court found violations on the prohibition of torture, inhuman and degrading treatment, "*because of the applicant's living conditions in Greece and because Belgian authorities, in removing him from Belgium to Greece, had knowingly exposed him to these conditions*"[15].

4. The Caselaw of the ECtHR on Removal of Migrants to a Third Country

The ECtHR is approaching with due diligence whenever there are cases linked with removal of migrants to a third Country by means of deportation or any other form in the third Country. In its judgment *Ilias and Ahmed v. Hungary,* the Court set out the general principles for cases concerning the removal of asylum-seekers to third intermediary Countries, without an assessment, by the authorities of the removing State, of the merits of the asylum claim. It is the duty of the removing State to examine thoroughly whether or not there is a real risk of the asylum-seeker being denied access, in the receiving third Country, to an adequate asylum procedure, protecting him or her against *refoulement*, namely, against being removed, directly or indirectly, to his or her Country of origin without a proper evaluation of the risks he or she faces from the standpoint of art. 3 of the Convention[16]. If it is established that the existing guarantees in this regard are insufficient, art. 3 implies a duty not to remove the asylum-seeker to the third Country concerned[17]. The ECtHR is stressing in many cases that the removal of asylum-seekers to a third Country may be in breach of art. 3 because of inadequate reception conditions in the receiving State or because they would not be guaranteed access to reception facilities adapted to their specific vulnerabilities, which may require that the removing State to obtains assurances from the receiving State to that end[18].

In situations, where applicants can arguably claim that there is no guarantee that their asylum applications would be seriously examined by the authorities in the third Country and that their return to their Country of origin could violate art. 3 of the Convention, the respondent State is obliged to allow the applicants to remain with its jurisdiction until such time that their claims have been properly reviewed by a competent domestic authority and cannot deny access to its territory to persons presenting themselves at a border checkpoint who allege that they may be subjected to ill-treatment if they remain on the territory of the neighboring State, unless adequate measures are taken to eliminate such a risk[19].

It is clear from the case law of the ECtHR based on art. 5, para. 2 and art. 6, para. 3, let. a) ECHR, that everyone who is arrested or charged with a criminal offence has the right to be informed promptly "*in a language that he understands*". The Court has developed detailed case-law which considers on the one hand, the severity of the consequences for the applicant, and on the other the extent of State officials' duty to ensure the precision of the request for translation[20].

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[15] European Court of Human Rights, Judgement of 21 January 2011, Application no. 20696/09, *M.S.S. v. Belgium and Greece*, paras. 264 and 368.

[16] European Court of Human Rights , Judgement of 21 November 2019, Application no. 47287/15, *Ilias and Ahmed v. Hungary*.

[17] *Ibidem*, paras. 130-138.

[18] European Court of Human Rights, *M.S.S. v. Belgium and Greece* cit., paras. 362-368; European Court of Human Rights, Judgement of 4 November 2014, Application no. 29217/12, *Tarakhel v. Switzerland*, paras. 100-122; European Court of Human Rights, Judgement of 4 October 2016, Application no. 30474/14, *Ali and Others v. Switzerland and Italy*; European Court of Human Rights, Judgement of 14 March 2017, Application no. 64724/10, *Justice OJEI v. the Netherlands*.

[19] European Court of Human Rights, *M.K. and Others v. Poland*, cit., paras. 178-179.

[20] *Reception of Migrants: Materials and Procedural Guarantees for Settled Migrants*, Intervention by Christoph Grabenwarter Opening of the Judicial Year – Seminar – 27 January 2017.

5. Migrants Involved in Transnational Organized Crime and *Non-Refoulement*

In some situations, some migrants may be involved in transnational organized crime either willingly or under pressure, in activities such as drug trafficking, human smuggling, document fraud, gang-related crime in cybercrime or economic crime networks. In such cases, States often attempt to deport or extradite them, invoking national security or public safety. Even if a migrant is involved in transnational organized crime, they cannot be deported to a Country where they would face torture, inhuman treatment, or death.

Namely, migrants accused of transnational organized crime activities may not be deported if there is a credible risk of torture or fear of death in their home Country. The ECtHR has consistently held that prohibition of torture and inhuman or degrading treatment is absolute, meaning no one can be expelled or extradited to a Country where there is a real risk of such treatment – even if they are involved in organized crime. In the case of *Chahal v. the United Kingdom,* the person suspected of terrorism could not be deported to India due to the risk of torture, despite serious concerns about national security[21]. In *Othman (Abu Qatada) v. the UK,* the Court found that even with diplomatic assurances, the applicant's deportation would violate right on fair trail due to the trial based on torture-obtained evidence[22].

Misusing their vulnerable position, in many transnational organized crime networks, migrants are forced into criminal acts by traffickers. These individuals in first look may appear to be "perpetrators" but they are victims of trafficking. Therefore, States must distinguish between criminals and victimized migrants coerced into crime. In case of *V.C. v. Slovakia,* the ECtHR established that coerced illegal activity can be a sign of exploitation, not criminality. Even when migrants are involved in transnational organized crime, States must investigate whether the migrant is a victim of coercion or trafficking[23].

Migrants who participate in transnational organized crime present a complex legal challenge also from the perspective of right on private life. The ECtHR often considers whether deportation would disproportionately interfere with their right to private and family life. For example, in the case of *Üner v. the Netherlands*, the ECtHR was analysing the facts of the case with a migrant-perpetrator and did not find a violation of right on private life. The Netherlands, as a State of residence withdraws his residence permit and imposed a 10-year expulsion order because of which the applicant was separated from his partner and two children. The explanation was based on the nature and seriousness of the applicant's offences. Namely, he was convicted for manslaughter and assault and the national courts took account on his previous convictions[24]. On the basis of this case, the ECtHR introduces the Üner criteria, based on proportionality and applicable in cases where migrant faces deportation and he or she is raising the application in line with the protection of private life.

The relevant criteria for the proportionality assessment include: the nature and seriousness of the offence committed by the applicant; the length of the applicant's stay in the Country from which he or she is to be expelled; the time elapsed since the offence was committed and the applicant's conduct during that period; the nationalities of the various persons concerned; the applicant's family situation; whether the spouse knew about the offence at the time when he or she entered into a family relationship; whether there are children of the marriage, and if

[21] European Court of Human Rights, Judgement of 15 November 1996, Application no. 22414/93, *Chahal v. UK*.
[22] European Court of Human Rights, Judgement of 17 January 2012, Application no. 8139/09, *Othman (Abu Qatada) v. UK*.
[23] European Court of Human Rights, Judgement of 8 November 2011, Application no. 18968/07, *V.C. v. Slovakia*.
[24] European Court of Human Rights, Judgement of 18 October 2006, Application no. 46410/99. *Üner v. the Netherlands*.

so, their age; the seriousness of the difficulties which the spouse is likely to encounter in the Country to which the applicant is to be expelled.

By contrast, in the Grand chamber case of *Maslov v. Austria*, the Court found a violation of art. 8 because the expulsion order was made on account of convictions for largely non-violent offences committed when the applicant was still a minor[25]. Additional criteria in *Maslov* relate to "*the solidity of social, cultural and family ties with the host Country and with the Country of destination*", which may have impact to certain extent to the economic and social deprivation, too. Where expulsion measures against a juvenile offender were concerned, the obligation to take the best interests of the child into account included an obligation to facilitate his reintegration[26].

6. Migrants and Human Trafficking

Even in the 21st century, the problem of human trafficking is a great global problem. These phenomena do not avoid the States in Europe. States must proactively combat human trafficking, a major aspect of trans organized crime, and protect vulnerable migrants who are often victims. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (well known as "the Palermo Protocol") and the Council of Europe Convention on Action against Trafficking in Human Beings are result of the increasing recognition at international level of the prevalence of trafficking and the need for measures to combat it. In this line, art. 4 of the ECHR prohibits slavery and forced labor, and the Court has interpreted this in a manner to include a duty to prevent human trafficking, protect victims, and investigate incidents effectively. In case of *Rantsev v. Cyprus and Russia*, the Court was dealing with the transnational organized crime and problem of trafficking in human beings. The *focus* was on the failure by the authorities in Cyprus to establish suitable framework to combat trafficking in human beings or to take operational measures to protect victims and on a side of Russia, the failure to conduct effective investigation into recruitment of a young woman on its territory by traffickers. This case mirrors the failure to conduct effective investigation, in particular, as regards securing relevant evidence abroad under the international convention for mutual assistance[27].

The ECtHR noted that trafficking in human beings as a global phenomenon had increased significantly in recent years. By its very nature and aim, trafficking in human beings was based on the exercise of powers attached to the right of ownership. It treated human beings as commodities to be bought and sold and put to forced labor, often for little or no payment, usually in the sex industry but also elsewhere. It implied close surveillance of the activities of victims, whose movements were often circumscribed and involved the use of violence and threats against people who lived and worked under poor conditions.

There could be no doubt that trafficking threatened the human dignity and fundamental freedoms of its victims and could not be considered compatible with a democratic society and the values expounded in the Convention. In the case of *Rantsev*, in the view of its obligation to interpret the Convention considering present-day conditions, the ECtHR considered it

[25] European Court of Human Rights, Judgement of 23 June 2008, Application no.1638/03, *Maslov v. Austria*.

[26] Recommendation Rec(2000)15 of the Committee of Ministers to Member States, *concerning the security of residence States,* adopted in 2000, art. 4, let. c): "*long-term immigrants who are minors may in principle not be expelled" and that "long-term immigrants born on the territory of the member State or admitted to the member State before the age of ten, who have been lawfully and habitually resident, should not be expellable once they have reached the age of 18*".

[27] European Court of Human Rights, Judgement of 7 January 2010, Application no. 25965/04, *Rantsev v. Cyprus and Russia*.

unnecessary to identify whether the treatment about which the applicant complained constituted "slavery", "servitude" or "forced and compulsory labour".

The most important message from the ECtHR considering trafficking in humans is that where migrants are victims or vulnerable to transnational organized crime, States have positive obligations to identify and protect victims, conduct effective investigations and provide appropriate remedies. Migrants accused of involvement in transnationally organized crime must receive a fair trial. The ECtHR is very clear on the admissibility of evidence, quality of interpretation services, and effective legal representation. At the same time, States must ensure that deportation or extradition does not lead to unfair criminal proceedings abroad. Cases involving extradition or deportation where criminal proceedings in the receiving State would not meet fair trial standards can result in violations of principles on fair trial.

The provisions of the Palermo Protocol and the Anti-Trafficking Convention are based on the philosophy that the Contracting States had formed the view that only a combination of measures could be effective in the fight against trafficking. That is why the core element of fighting trafficking in humans gave rise to positive obligations for the States, to introduce measures to prevent trafficking, to protect victims and potential victims and to prosecute and punish those responsible for trafficking. In this direction, inter-State cooperation is one of the most important aspects for successful fight against trafficking.

7. Inter-State Cooperation on Migrants and Transnational Crime

In the connections between migrants and trafficking of human beings in most situations, victims were often trafficked from one State to another. Therefore, it is of no surprise that relevant evidence and witnesses could be in more than one State. For this reason, in addition to the obligation to conduct a domestic investigation into events occurring on their own territories, Member States were also subject to a duty in cross-border trafficking cases to cooperate effectively with the other States concerned in the investigation, to ensure a comprehensive international approach to trafficking in the Countries of origin, transit and destination.

In the case of *Rantseva*, Russian authorities had been best placed to conduct an effective investigation into her recruitment, which had occurred on Russian territory. No investigation had taken place, a failing that was even more serious in the light of Ms. Rantseva's subsequent death and the unknown surrounding the circumstances of her departure from Russia.

Account must also be taken of any relevant rules and principles of international law applicable in relations between the Contracting Parties and the ECHR should so far as possible be interpreted in harmony with other rules of international law of which it forms part[28]. In addition to the obligation to conduct a domestic investigation into events occurring on their own territories, Member States of the ECHR are subject to a duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories. Such a duty is in keeping with the objectives of the international agreements on mutual legal assistance.

A central place in the suppression of transnational organized crime occupies the treaty mechanisms that provide for cooperation between States, most notably along the lines of extradition, mutual legal assistance and policing cooperation. In several cases the ECtHR pointed out that the policy goal behind the transnational criminal law regime has been the

[28] European Court of Human Rights, Judgement of 21 November 2001, Application no. 35763/97, *Al-Adsani v. the United Kingdom*, para. 55; European Court of Human Rights, Judgement of 29 January 2008, Application no. 13229/03, *Saadi v. the United Kingdom*, para. 62.

suppression of crime, and States have resisted injecting human rights protections into the system. While there are encouragements in this regard stemming from the case law of the ECtHR it will take time to change the generalized and hard norms.

8. Conclusions

Let me conclude by stressing that the human rights perspective in the treatment of migrants and transnational organized crime requires a balanced, cooperative, and humane approach. Migrants are often vulnerable to exploitation by criminal networks involved in human trafficking, smuggling, and other illicit activities. To fight these threats, it is crucial for governments to enhance international collaboration, strengthen border management, and invest in intelligence-sharing. At the same time, protecting the rights and dignity of migrants must remain a priority. By promoting legal migration pathways, improving socioeconomic conditions in origin Countries, and holding criminal organizations accountable, the international community can reduce the drivers of irregular migration and dismantle the structures that fuel transnational organized crime. A comprehensive and coordinated response is essential to ensure both global security and human rights.

ABSTRACT

The contribution addresses the topic of the conference on the Constitutional Perspective on Migration, Transnational Crime, and Fundamental Rights and Values from the perspective of the case law of the European Court of Human Rights. For that purpose, it examines first the normative framework of the European human rights law on migrants and transnationally organized crime. The focus is on the international legal regime on migrants and fighting transnational organized crime set up by States of the Council of Europe and its European Convention on Human Rights. In the second step, we review the human rights protections for individuals subject to criminal investigation and prosecution due to their suspected involvement in Transnational Organized Crime. We outline the protection of the accused's rights during criminal investigations and address the complexities of safeguarding these rights when inter-State cooperation mechanisms are involved. Namely, States have duties to respect, protect and fulfil minimum standards on human rights regarding the procedural rights of the accused. States that are party to human rights treaties must provide procedural rights to accused individuals during investigation, arrest, trial, or sentencing in cases involving organized crime. It is a part of the positive obligation of the States to use criminal law to actively protect human rights, especially those of victims. States must prevent serious crimes and respond effectively to gross violations of individual rights. In this regard we examine the part of the case law of the ECtHR. In its third step, the contribution will focus on migrants and their treatment from the perspective of human rights in the context of transnational organized crime. Human trafficking is a violation of human rights. Trafficking intersects with international human rights law, international criminal law, and transnational criminal law. We will use the relevant case law of the ECtHR to demonstrate it. In the final reach of the contribution, we will discuss Inter-State Cooperation in combating transnational criminal law. The treaty mechanisms enable States to cooperate in extradition, mutual legal assistance, and policing. Here it is important the way the human rights of the accused are, can or should be protected.

KEYWORDS
Caselaw of the European Court of Human Rights, Human Rights, Migrants, Transnational Organized Crime.

CONSTITUTIONAL PERSPECTIVES ON THE FIGHT AGAINST TRANSNATIONAL CRIME

THE STRUCTURAL CHALLENGES OF THE HARMONIZATION OF NORTH MACEDONIA'S CRIMINAL LEGISLATION AND CONSTITUTIONAL FRAMEWORK WITH EU STANDARDS IN COMBATING TRANSNATIONAL ORGANIZED CRIME

by Olga Koshevaliska[*]

1. Introduction

The fight against transnational organized crime poses a significant challenge for the Republic of North Macedonia as it strives to align its legal framework with the European Union's standards and requirements. As part of its efforts to achieve EU membership, North Macedonia must demonstrate considerable progress in adopting and implementing legal measures aimed at combating organized crime, by the EU *acquis*[1]. For a candidate country like North Macedonia, aligning domestic legislation with the EU *acquis* is not only a formal obligation but a foundational reform priority.

Transnational organized crime, by its very nature, is a complex threat that transcends national borders, demanding a coordinated and harmonized legal response. Although North Macedonia was assessed to have one of the lowest criminality levels[2] and highest resilience levels[3] among the Western Balkan countries rated in the 2023 Global Organized Crime Index, it has many high-scoring criminal markets, such as financial crimes, human smuggling, and the trade in cannabis, heroin, and synthetic drugs[4]. In the case of North Macedonia, illicit financial flows are largely shaped by the country's geographic position as a transit corridor for the movement of people and goods between Asia and Western Europe. Its strategic location not only facilitates significant flows of legitimate goods, people, and capital, but also makes the country vulnerable to irregular migration and the smuggling of migrants, trafficking in human beings, drug trafficking, *etc*[5].

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[1] National Convention on the European Union in North Macedonia, *Policy paper: Strategic recommendations for educational development in North Macedonia*, 2024.

[2] 93rd place out of 193 countries in the world, 18th place out of 44 countries in Europe, 11th place out of 17 countries in Central & Eastern Europe, https://ocindex.net/country/north_macedonia.

[3] 73rd place out of 193 countries, 30th place out of 44 countries in Europe, 7th place out of 17 countries in Central & Eastern Europe, https://ocindex.net/country/north_macedonia.

[4] Global Initiative Against Transnational Organized Crime, *Illicit Financial Flows in North Macedonia*, 2024.

[5] O. KOSEVALISKA, E. MAKSIMOVA, A. NIKODINOVSKA KRSTEVSKA, *Виктимизација на мигрантите и бегалците во Република Северна Македонија во кривични дела, со посебен акцент на трговијата со луѓе и криумчарењето мигранти*, in *Proceedings of the 9th International Scientific Conference "Social Changes in the Global World"*, Vol. 9, no 2, 2022, pp. 211-234; O. KOSEVALISKA, E. MAKSIMOVA, *Transnational Crime Innovation: How Human Trafficking Networks Adapt to Migration Policies – North Macedonian Response During the Everlasting European Migrant Crisis*, Conference presentation at the Endicott Global Education Conference:

Corruption and abuse of power emerge as the primary predicate crimes driving these financial flows. Funds are often transferred from North Macedonia into offshore accounts located in tax havens or jurisdictions known for financial secrecy, low taxation, and minimal transparency regarding account ownership. According to Transparency International's Corruption Perceptions Index (CPI), North Macedonia's CPI was 40 in 2022[6], improved to 42 in 2023[7], but declined back to 40 in 2024, ranking 88th globally[8].

For the Republic of North Macedonia to effectively combat corruption, reduce the prevailing perception of impunity, and advance toward compliance with European Union standards, it is imperative to ensure the existence of a professional, independent, and efficient judiciary. This includes both the courts and the public prosecutor's office, which must demonstrate genuine commitment, institutional enthusiasm, and solid determination in addressing cases of organized crime and corruption. The success of any anti-corruption framework is deeply contingent upon the credibility and proactivity of these core judicial actors. Without visible results in high-profile cases, citizens' trust in justice remains fragile, and the reform narrative risks appearing performative rather than transformative. Equally crucial is the stability and consistency of the criminal legal framework itself. North Macedonia must develop and preserve a coherent criminal code that resists ad hoc political interference and legislative manipulation.

The amendments to the Criminal Code of the Republic of North Macedonia (Criminal Code, 1996) adopted in September 2023[9] serve as a cautionary example of how legal uncertainty – triggered by controversial and poorly justified revisions – can severely undermine ongoing investigations, enable the expiration of criminal cases, and compromise the long-term integrity of the justice system. A depoliticized and transparent approach to criminal law reform, grounded in broad expert and institutional consensus, is therefore essential not only for aligning with the EU *acquis* but also for building durable domestic resilience against organized crime and corruption. Several judges of North Macedonia's Constitutional Court publicly assessed that the 2023 amendments to the Criminal Code represent a serious setback in the country's fight against organized crime and corruption. In a rare public address, they emphasized that the revisions undermine judicial credibility and weaken institutional accountability[10]. However, at the time of writing this paper, the Constitutional Court has not officially initiated proceedings to assess the constitutionality of these amendments[11].

In this context, this paper offers a comprehensive analysis of North Macedonia's criminal legislation and constitutional framework in the context of preventing, investigating, and prosecuting transnational organized crime, with particular emphasis on the country's alignment with European Union standards. The examination is situated within the broader framework of the EU accession process, focusing specifically on Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Security and Freedom). The analysis critically engages with

International Security, Justice, and Civil Participation, Endicott College, Beverly, MA, United States, 21-24 April 2025.

[6] Transparency International, *Corruption Perceptions Index 2022*, January 2023.

[7] Transparency International. *Corruption Perceptions Index 2023*, January 2024.

[8] Transparency International. *Corruption Perceptions Index 2024*, January 2025.

[9] Law on Amendments and Supplements to the Criminal Code, in Official Gazette of the Republic of North Macedonia no. 188/2023.

[10] S.J. MARUSIC, *North Macedonia Parliament Ordered to Correct Damaging Criminal Code Changes*, in *Balkan Insight*, 13 February 2025.

[11] The decision by the Constitutional Court to review the controversial September 2023 amendments has been widely criticized as belated, with concerns that many cases already dismissed cannot be reversed – even if the amendments are ultimately invalidated. Thus, while setting a constitutional precedent, the delayed timing significantly limits the practical impact of any annulment on restoring judicial accountability or overturning expired criminal proceedings (Nova Makedonija, *In front of the Constitutional Court: The 2023 Criminal Code Amendments*, 12 February 2025).

recent developments that have raised concerns about the state of the rule of law in the country, including the controversial amendments to the Criminal Code from September 2023, ongoing institutional dysfunction within the Judicial Council, persistent ethical dilemmas in the justice system, and questions surrounding the effectiveness and independence of the public prosecution service.

In addition to assessing the structural and normative aspects of criminal law reform, the study explores how core constitutional principles – such as the rule of law, separation of powers, and the protection of fundamental rights – can be reconciled with the imperative for strong law enforcement and cross-border cooperation in combating organized crime. By identifying gaps and inconsistencies in the current legal framework, the paper offers recommendations aimed at fostering greater harmonization with the EU *acquis*, while promoting institutional transparency, accountability, and professionalism across the justice and security sectors.

In addition to the legislative misuse illustrated by the controversial amendments to the Criminal Code, the inefficiency of North Macedonia's justice system is further exacerbated by the persistent dysfunction of key institutional bodies – namely, the Judicial Council and the Council of Public Prosecutors. These two bodies, which are intended to safeguard judicial independence and ensure professional accountability, have been repeatedly criticized for their lack of transparency, political susceptibility, and failure to exercise effective oversight – issues that are further addressed in the following sections of this paper. The problem is the chronic understaffing of the judiciary, both in terms of appointed judges and qualified administrative personnel. The backlog of cases and delays in proceedings are often attributed to the high number of judicial vacancies and the limited human and material resources allocated to courts, which ultimately undermines the right to a timely and fair trial. The European Commission[12] and GRECO[13] have both noted with concern the delays in filling judicial and prosecutorial posts and the resulting institutional stagnation. These structural deficiencies, when combined with politicized legal reforms and weakened institutional oversight, contribute significantly to the overall ineffectiveness and declining public trust in the rule of law in North Macedonia.

2. Methodology

This study employs doctrinal legal analysis to critically examine the applicable constitutional provisions, substantive and procedural criminal legislation, and international legal instruments relevant to the Republic of North Macedonia, particularly in the context of combating transnational organized crime. Special attention is given to the alignment of national legal norms with the *acquis communautaire* of the European Union, as part of the country's accession obligations.

The primary sources used in the analysis include the Constitution of the Republic of North Macedonia (with its respective amendments), the Criminal Code, EU legal instruments (directives, framework decisions, and recommendations), as well as official reports and evaluations issued by EU institutions, international organizations, and domestic bodies.

Secondary sources encompass peer-reviewed academic literature, legal commentaries, and comparative legal studies that explore the harmonization of national criminal justice systems with European standards. The analysis is organized thematically into several key areas: a

[12] Commission staff working document, *North Macedonia 2023 Report*, of 8 November 2023, SWD(2023) 693 final,

[13] GRECO, *Fifth Evaluation Round – Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies*. *Second Evaluation Report on North* Macedonia, GrecoRC5(2023)1.

systematic examination of constitutional guarantees relevant to organized crime; an evaluation of the substantive and procedural criminal law framework; an assessment of the harmonization process with EU law; and an analysis of the Judicial and Prosecution Councils' capacities, identifying normative and institutional gaps.

3. Constitutional Framework for Combating Transnational Organized Crime in North Macedonia

The Constitution of the Republic of North Macedonia (Constitution), adopted in 1991 and amended multiple times since, establishes a strong legal and institutional framework for the establishment and enforcement of criminal legislation aimed at combating transnational organized crime. Relevant constitutional provisions establish the supremacy of the rule of law, protection of fundamental rights, and adherence to international standards, all of which are integral to the harmonization process with EU law.

Among its foundational provisions, art. 8 enshrines the rule of law, the separation of powers, and the protection of internationally recognized human rights as fundamental values of the constitutional order. These principles provide the normative backbone for building institutional integrity, particularly within the criminal justice system. The presumption of innocence and the right to a fair and public trial within a reasonable timeframe, as guaranteed under art. 13, are essential safeguards in the prosecution of complex criminal cases and ensure alignment with international human rights standards.

The independence of the judiciary is explicitly protected under art. 98, which affirms that judges decide based on the Constitution and applicable laws and are shielded from political interference. Similarly, art. 106 establishes the Public Prosecutor's Office as an autonomous institution mandated to prosecute criminal offenses, thus reinforcing impartiality and legal accountability. Significantly, art. 118 grants ratified international agreements primacy over domestic legislation, allowing for the direct application of key international instruments such as the United Nations Convention against Transnational Organized Crime and EU legal acts relevant to organized crime. The procedure for ratifying such international treaties is detailed in art. 119, enabling the country to align its national efforts with international and regional standards. Additionally, art. 25 guarantees the protection of personal dignity, physical integrity, and privacy, explicitly prohibiting torture and inhuman or degrading treatment – safeguards that are especially relevant in the context of the State's prosecutorial and investigative powers.

Together, these constitutional provisions not only ensure the internal coherence of domestic criminal law with international standards but also create the legal foundation for implementing comprehensive legislative and institutional responses to transnational organized crime. By embedding core human rights principles alongside operational mandates for judicial and prosecutorial bodies, the Constitution of North Macedonia lays the groundwork for a criminal justice system that is both effective and rights-respecting in the face of complex, cross-border criminal threats.

While North Macedonia has established a formal institutional framework to combat corruption, the core problem remains the systemic ineffectiveness of law enforcement in prosecuting corruption and organized crime. Although institutional structures exist on paper, their operational capacity is frequently undermined by inconsistent application of the law and insufficient judicial independence. This gap between form and function has been worsened by legislative interventions that weaken the very foundation of the justice system.

4. Criminal Law Framework for Combating Transnational Organized Crime in North Macedonia

North Macedonia's primary legislative instrument in the fight against transnational organized crime is its Criminal Code. North Macedonia's Criminal Code provides a comprehensive and largely EU-aligned legal framework designed to prosecute a broad spectrum of transnational organized crime and corruption offenses, including human trafficking, money laundering, cybercrime, hate crimes, and the illicit trade of narcotics and contraband[14]. The Criminal Code has evolved in recent years to reflect international best practices, such as explicit criminalization of hate motivations, gender-based violence, and online sexual exploitation[15]. As Kosevaliska and Maksimova note, the law has been further refined to address emergent threats, highlighting its adaptability to novel forms of organized criminal activity, including trafficking networks that exploit migration routes[16].

The Criminal Code has been subject to several amendments aimed at enhancing compatibility with EU directives and recommendations. Furthermore, North Macedonia has adopted various specialized laws and strategic documents aimed at combating organized crime, such as the Law on Prevention of Money Laundering and Financing of Terrorism, and National Strategies for Countering Organized Crime.

5. Erosion of Anti-Corruption Mechanisms: The Impact of the 2023 Criminal Code Amendments

In September 2023, the Parliament of North Macedonia adopted far-reaching amendments to the Criminal Code that significantly reduced penalties for high-level corruption and organized crime offenses. Specifically, art. 353, which concerns abuse of official position and authority, lowered the minimum prison sentence from three years to one year, while art. 394, addressing criminal association, reduced the maximum prison sentence from ten to just three years[17]. These changes triggered immediate and widespread criticism, as they enabled the statute of limitations to take effect in several high-profile cases – such as "Target-Fortress", "Titanic", "Talir", and "Trajectory" – originally prosecuted by the now-defunct Special Public Prosecutor's Office. Legal and civil society actors noted that these amendments facilitated impunity and retroactively benefited individuals implicated in serious corruption and organized crime[18].

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[14] Resolution adopted by the General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, of 25 September 2015, A/RES/70/1; https://ocindex.net/country/north_macedonia.

[15] A/RES/70/1, cit.; I. ZEJNELI, V. RATKOCERI, *Overview of Preventing and Combating Organized Crime*, in *Perspectives of Law and Public Administration*, Vol. 11, no. 2, 2022, pp. 241-245; S.M. STOJANOVSKI, G. LAZETIC, *A Comparative Analysis of Special Investigative Measures in the Light of the Amendments to the Criminal Procedure Law of the Republic of North Macedonia*, in *Macedonian Review for Criminal Law & Criminology*, Vol. 31, 2024, p. 45 ff.

[16] O. KOSHEVALISKA, E. MAKSIMOVA, *op. cit.*

[17] A. DRAKULEVSKI, A. TRENDAFILOVA, *The Confiscation of Property and Property Benefits in Criminal Proceedings versus the Confiscation of Property in Civil Proceedings in Macedonian Law*, in *Macedonian Journal for Criminal Law & Criminology*, Vol. 31, 2024.

[18] S. TASEVA, *Anti-Corruption Strategies in the Western Balkans and North Macedonia*, in R.I. ROTBERG, F. OSLER HAMPSON (eds.), *Grand Corruption*, London, 2024, pp. 88-104.

The European Commission (2024), in its most recent progress report, expressed serious concern regarding the substance and manner of these legislative changes, noting their detrimental impact on the prosecutorial framework and the broader fight against corruption. By accelerating the expiration of criminal procedures and enabling key cases to lapse without resolution, the amendments were seen as weakening the rule of law and undermining the credibility of judicial institutions. The National Convention for the European Union in North Macedonia echoed these concerns, highlighting that the amendments raise critical questions about executive accountability in shaping criminal justice policy – particularly when those policies result in adverse consequences for judicial efficiency and public financial interests[19].

Adding to the controversy was the use of the "European flag" legislative procedure, which is normally reserved for laws harmonizing national legislation with EU law. In this case, however, the procedure was applied to amendments that bore no direct relevance to EU harmonization, thereby bypassing public consultation, parliamentary debate, and expert review. Media outlets denounced the move as politically motivated and harmful to legal integrity[20]. The President of the Constitutional Court at that time, Dobrila Katsarska, publicly expressed surprise and disapproval over both the substance of the amendments and the lack of transparency in the legislative process[21].

These developments have prompted broader public and institutional reflection on the status of democratic governance and judicial independence in the country. Several urgent questions have emerged, such as whether the separation of powers among the legislative, executive, and judicial branches remains functionally intact, whether citizens maintain confidence in public institutions, and whether the judiciary is sufficiently capable of ensuring legal certainty and impartial enforcement of the law. These are not abstract theoretical concerns but concrete challenges that directly shape public trust in justice and the legitimacy of anti-corruption efforts. As the fallout continued, estimates suggested that nearly 800 individuals may have avoided prosecution due to the legal revisions[22]. In response, the Constitutional Court is thinking of initiating proceedings to assess the constitutionality of the amendments[23]; however, legal scholars remain divided on whether cases that have already been closed or dismissed can be reopened. Meanwhile, the Ministry of Justice has drafted a new Criminal Code, which has been submitted to the European Commission for review and is intended to address previous criticisms and better align national legislation with EU standard[24].

6. Harmonization of Criminal Legislation with EU Law: Strategic Reforms and Structural Challenges

The harmonization of North Macedonia's legal framework with the European Union *acquis* remains a fundamental priority in the country's EU accession process, particularly within Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom, and Security). This alignment process involves the transposition of EU directives, framework decisions, and international standards into domestic criminal legislation. Despite completing the screening

[19] National Convention on the European Union, *Fourth Book of Recommendations*, 2025.
[20] *Измените на Кривичниот законик и „европското знаменце"*, in *360Stepeni*, 2023; *Критики за КЗ*, in *Radio Slobodna Evropa*, 2023.
[21] *Кацарска за измените без јавна расправа*, in *MAKFAKS*, 2023.
[22] *Околу 800 ослободени по измените*, in *Nezavisen Vesnik*, 2023.
[23] *Уставен суд и правна неизвесност*, in *Sakam Da Kazham*, 2023.
[24] Ministry of Justice of North Macedonia, *Judicial Development Strategy 2024-2028*, 2023.

process and adopting key strategic documents, including the *Strategy for Judicial Reform 2024-2028* and a dedicated roadmap for Chapter 23, progress remains limited and uneven[25].

Several structural challenges continue to impede effective harmonization. First, the abovementioned controversial amendments to the Criminal Code adopted in September 2023 – particularly those reducing sanctions for high-level corruption and organized crime – have drawn criticism from the European Commission for undermining the prosecutorial and institutional framework for combating corruption[26]. Second, the ongoing crisis within the Judicial Council and concerns over its independence, transparency, and capacity to perform its constitutional role highlight the need for urgent institutional reforms[27]. The government's declared intention to dissolve the Judicial and Prosecution Councils has raised alarms over potential threats to judicial independence.

The 2024 Report also emphasizes deficiencies in the fight against financial crime and money laundering. While some progress was noted in asset recovery legislation and institutional structures, North Macedonia continues to exhibit a weak track record in processing complex organized crime cases. The need for parallel financial investigations, enhanced digital tracking mechanisms, and a functional confiscation framework remains acute[28]. Efforts under Chapter 24 have also been directed toward police reform, digitalization of investigative procedures, and better alignment with Frontex agreements and EU counterterrorism frameworks. However, these reforms are often impeded by limited resources, insufficient inter-agency cooperation, and politicization of key appointments.

Furthermore, harmonization efforts under the anti-corruption framework (relevant to Chapter 6) include commitments to enhance transparency, strengthen conflict-of-interest regulations, and implement digital tools to reduce discretion in public administration. Still, no meaningful progress has been made in enforcing these frameworks, and the use of expedited legislative procedures, such as the "European flag" mechanism, has been criticized for bypassing public consultation and legal scrutiny[29].

In sum, while strategic frameworks and formal commitments are in place, the practical implementation of EU-aligned legal reforms in North Macedonia continues to face institutional, political, and operational obstacles. The upcoming challenge will be to translate these frameworks into measurable outcomes, including increased prosecutorial efficiency, judicial integrity, and public confidence in the legal system.

7. Overview of the Capacity of North Macedonia's Criminal Justice System

North Macedonia's criminal justice system possesses a formal institutional architecture capable of addressing organized crime, comprising a specialized court, the Public Prosecutor's Office for Organized Crime and Corruption (PPO-OCC), the Financial Police Office within the Ministry of Finance), and special units within the Ministry of Interior. The PPO-OCC, established as a specialized prosecutorial body, plays a central role in initiating and managing complex investigations into high-profile corruption, drug trafficking, human smuggling, and illicit financial flows. However, its effectiveness has often been undermined by limited

[25] Commission Staff Working Document, *North Macedonia 2024 Report*, of 30 October 2024, SWD(2024) 693 final.
[26] *Ibidem*.
[27] *Ibidem*, p. 28.
[28] *Ibidem*, p. 40.
[29] *Ibidem*, p. 5.

prosecutorial autonomy, resource constraints, and insufficient inter-agency coordination[30]. Adjudication of such cases falls primarily under the jurisdiction of the criminal department within the Basic Court Skopje I. However, this court is often overwhelmed by caseloads that exceed its human and material capacity, resulting in significant delays and limited procedural efficiency[31]. These challenges are compounded by broader structural and resource-related deficiencies across the judiciary. According to the European Commission's 2024 Progress Report, the judiciary employs only 425 judges and 159 public prosecutors to serve a population of nearly two million, with an annual budget of approximately €50 million[32]. Delays in recruitment, an aging judicial workforce, and unequal distribution of cases have led to growing backlogs and further inefficiencies. Although the Judicial Council and the Council of Public Prosecutors are responsible for managing appointments and professional oversight, their functioning remains hindered by political influence and procedural inertia[33].

Moreover, the system suffers from a shortage of qualified support staff such as court clerks, IT personnel, and legal assistants, who are essential to ensuring smooth judicial operations. The slow pace of digitalization and the incomplete implementation of case management systems continue to hamper judicial transparency and efficiency. The Judicial Development Strategy (2024-2028) offers a strategic framework to address these systemic gaps, emphasizing professional development and institutional strengthening; however, its success will depend heavily on political will and adequate financial resources[34].

Complementing the prosecutorial and judicial institutions is the Financial Police Office, which plays a pivotal role in detecting and investigating financial crime. In its 2025 operational report, the FPO reported uncovering over €30 million in financial crimes during just the first nine months of the year[35]. While these figures point to the agency's growing capacity, persistent structural and operational challenges – such as limited staffing, lack of specialized forensic expertise, and insufficient inter-agency cooperation – undermine its overall effectiveness. Complex financial investigations are frequently delayed due to technical constraints and poor coordination with the PPO-OCC and the Financial Intelligence Unit. Nonetheless, the increasing detection rate underlines the need for greater institutional investment and clearer legislative mandates to support the FPO's investigative scope and ensure the successful prosecution of financial crimes.

In sum, although the legislative framework – centred around the Criminal Code – provides a solid legal basis for combating organized crime and corruption, the operational and institutional weaknesses of the justice sector remain a serious impediment. For a candidate country like North Macedonia, aligning domestic criminal justice structures with the EU *acquis* is not only a formal obligation, but a foundational reform priority, especially within Cluster 1 – Fundamentals of the screening process.

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[30] *Ibidem*; *Разрешувањето на Дамева од Судски совет е незаконско, реагира Блупринт групата*, in *Nezavisen*, 27 April 2023.
[31] *Judicial Development Strategy 2024-2028*, cit.
[32] *North Macedonia 2024 Report*, cit.; O. KOSHEVALISKA, *Капацитетите и Предизвиците на Македонското Правосудство за Навремено и Професионално Постапување*, in *IX Охридска Школа за Природно Право, Ману „Зајакнување на националната отпорност кон корупцијата: транспарентност, отчетност и одговорност"*, 1-6 June 2024.
[33] *Околу 800 ослободени по* измени, cit.; O. RISTOVA, *The Challenges of the Rule of Law: New Horizons for Old Issues*, in M. GJUROVSKA (ed.), *Fourth Book of Recommendations: New Perspectives on Long-standing Reform Dilemmas*, 2025, pp. 10-17; O. VANGELOV, *Stabilizing Without Integrating: Ethnopolitical Cartelization and Power-Sharing in Post-Ohrid Macedonia*, in *Center for Open Science*, 2025.
[34] *Judicial Development Strategy 2024-2028*, cit.
[35] Nova Makedonija, *op. cit.*

8. Institutional Challenges and Reform Needs of the Judicial and Prosecutorial Councils in North Macedonia

8.1. Judicial Council

The integrity and functionality of North Macedonia's judiciary are deeply intertwined with the performance of two central bodies: the Judicial Council and the Council of Public Prosecutors. Both institutions are constitutionally mandated to safeguard the independence, professionalism, and accountability of the judiciary and prosecution, yet in recent years, they have been at the centre of institutional crises, credibility erosion, and calls for fundamental reform. Despite ongoing alignment efforts with EU standards under Chapter 23 of the *acquis*, these bodies remain susceptible to political influence, operational imperviousness, and internal fragmentation.

The Judicial Council, established under art. 104 of the Constitution, is entrusted with the selection, promotion, and discipline of judges. However, its composition – partly elected by Parliament and the President – has rendered it vulnerable to political compromise. Numerous domestic and international reports have criticized its internal dynamics, citing politicized decision-making, lack of transparency in disciplinary proceedings, and insufficient public reasoning behind appointments and dismissals. The latest analysis of the work of the Judicial Council in the context of the dismissal of judges shows the many flaws in the dismissal of judges from Judicial cases, and a great number of judges were working on high-profile cases connected with organized crime[36].

8.2. Council of Public Prosecutors

Despite its constitutional role in ensuring the independence and accountability of the prosecutorial system, the Council of Public Prosecutors of North Macedonia has been persistently criticized for its passivity and inconsistency, particularly in the context of high-level organized crime. Annual reports published by the Council demonstrate a pattern of administrative activity but lack substantive analysis of strategic cases or progress in tackling systemic corruption[37]. Civil society organizations and legal scholars have noted that the Council often avoids initiating disciplinary action or public scrutiny against prosecutors who fail to act on politically sensitive cases. This institutional inertia contributes to a broader perception of selective justice and impunity for the politically connected. Furthermore, the Council rarely provides detailed justification for its decisions, which limits transparency and undermines public trust. In its latest report, the European Commission emphasized the need for legal and structural reform of the Council to strengthen prosecutorial independence and restore credibility to the justice system[38].

To further illustrate the institutional disparities and overlapping challenges faced by North Macedonia's judicial and prosecutorial governance structures, Table 1 provides a comparative overview of the Judicial Council and the Council of Public Prosecutors**.** This comparison is

[36] Coalition of Citizens' Associations "All for Fair Trials", *Monitoring report on the Judicial Council and the Council of Public Prosecutors for 2024*. Skopje, 2024.
[37] See the annual reports 2021-2024 by the Public Prosecutor's Office of the Republic of North Macedonia, https://sjorm.gov.mk/category/godishni-izveshtai/.
[38] *North Macedonia 2024 Report*, cit.

necessary to highlight the structural and functional limitations that continue to hinder the independence, transparency, and effectiveness of these two key bodies. By outlining their constitutional and legal mandates, composition, current weaknesses, and reform trajectories, the table serves as an analytical tool to identify where systemic inconsistencies and institutional shortcomings persist. It also underscores the need for synchronized reforms to strengthen both judicial and prosecutorial oversight as part of North Macedonia's broader alignment with EU standards under Chapter 23 of the *acquis*.

Criterion	**Judicial Council of North Macedonia**	**Council of Public Prosecutors of North Macedonia**
Constitutional Basis	Art. 104 of the Constitution	Law on Public Prosecutors (not a constitutional body)
Function	Guarantees the independence and autonomy of the judiciary	Ensures the autonomy and professionalism of public prosecutors
Composition	15 members (elected by judges, the President, and the Parliament)	11 members (elected by prosecutors, the President, and the Parliament)
Key Competences	Selection, promotion, and dismissal of judges; disciplinary proceedings	Selection, promotion, and dismissal of public prosecutors; disciplinary proceedings
Current Issues	Political influence, lack of transparency, internal conflicts	Political influence, selective justice, and passivity in high-profile cases
Public Trust	Low (below 20%)	Very low (below 15%)
Political Influence	Party-aligned judicial appointments	Evident in the appointments of the Chief Prosecutor and senior positions
Accountability Mechanisms	Weak, insufficiently transparent	Inadequate, no obligation for public explanation of decisions
International Criticism (EU/EC)	Need for thorough reform, especially in judicial appointments and oversight	Insufficient prosecution of high-level corruption; enhanced autonomy needed
Ongoing Legal Reforms	Yes – amendments to the Law on the Judicial Council	Yes – amendments to the Law on the Council and the Law on Public Prosecution
Key Scandals	Dismissal of the president, public accusations among members	Collapse of the SPO, suspicious prosecutor appointments
Reform Recommendations	Change in composition, transparency, depoliticization	Improved selection, accountability, effective prosecution of corruption

Table 1: Comparative Analysis: Judicial Council vs. Council of Public Prosecutors

9. Conclusion and Recommendations

North Macedonia's progress toward aligning its criminal justice system with the standards and requirements of the European Union, particularly in the realm of transnational organized crime, remains uneven and fraught with systemic and institutional challenges. While the country has adopted a broad range of legislative instruments, strategies, and reforms – including a largely harmonized Criminal Code and constitutional guarantees for the rule of law and human rights – gaps between formal alignment and practical implementation persist. These are particularly evident in the handling of high-level corruption cases, the politicization of judicial institutions, and the weakening of prosecutorial and judicial accountability. The amendments to the Criminal Code adopted in September 2023 stand as a stark illustration of legislative regression, undermining the credibility of anti-corruption efforts and eroding public trust in the justice system. Moreover, the persistent dysfunction within the Judicial Council and the Council of Public Prosecutors – two of the most pivotal institutions in maintaining judicial integrity – highlights the urgent need for institutional depoliticization, operational transparency, and structural reform.

To fulfil its obligations under Chapters 23 and 24 of the EU accession framework, North Macedonia must go beyond formal compliance and engage in meaningful and transformative legal reform. This includes not only revising laws but also reinforcing the independence, efficiency, and professionalism of judicial and prosecutorial bodies. As the European Commission (2024) and GRECO (2022) have both noted, progress in combating organized crime and corruption must be measured by results, not intentions. This necessitates an active, accountable judiciary and prosecution service that is insulated from political interference and empowered with sufficient human, technological, and financial resources.

Based on the findings of this study, the following key recommendations are proposed:

1. *Criminal Law Reform*: Speed up the procedure with the new Code, and until then, the Ministry of Justice must adopt changes that restore adequate sanctions for corruption and organized crime offenses and aligning with international best practices. Any reform process must be transparent, inclusive, and led by independent legal experts.
2. *Judicial and Prosecutorial Independence*: Reform the composition and functioning of the Judicial Council and the Council of Public Prosecutors. Selection criteria should emphasize integrity, expertise, and independence while minimizing the influence of political actors. The last versions of the new Laws for the Judicial Council and Prosecutorial Council must be adopted as soon as possible.
3. *Institutional Capacity Building*: Address chronic understaffing in the judiciary and prosecution services by accelerating merit-based appointments, improving working conditions, and investing in continuous professional training through the Academy for Judges and Public Prosecutors.
4. *Digitalization and Case Management*: Strengthen digital infrastructure across the judiciary, including case tracking systems and e-justice platforms, to enhance efficiency, transparency, and data-driven monitoring of judicial performance.
5. *Transparency and Public Engagement*: Increase the transparency of judicial and prosecutorial decisions, mechanisms for public scrutiny and civil society oversight must be formalized to restore public confidence in the rule of law.
6. *Enhanced Financial Crime Framework*: Promote the institutionalization of parallel financial investigations and mandatory asset confiscation procedures. Specialized units in financial forensics and anti-money laundering must be adequately resourced and integrated into the fight against transnational organized crime.

7. *Monitoring and Conditionality*: Link reform progress to specific benchmarks and make use of EU conditionality as leverage to ensure implementation. Regular evaluation by EU and domestic watchdogs is necessary to measure impact, not just output.

Only through sustained political will, cross-institutional coordination, and genuine commitment to reform can North Macedonia overcome the entrenched obstacles facing its legal system. By operationalizing its constitutional guarantees and aligning its criminal justice system with EU standards in both form and substance, the country can build a resilient legal framework capable of effectively countering transnational organized crime and advancing toward full EU membership.

ABSTRACT

The fight against transnational organized crime represents a significant challenge for the Republic of North Macedonia as it strives to align its legal framework with the standards and requirements of the European Union. As part of its efforts to achieve full EU membership, North Macedonia must demonstrate substantial progress in adopting and implementing legal measures aimed at combating organized crime, following the EU acquis*. Transnational organized crime, by its very nature, poses a complex threat that transcends national borders, demanding a coordinated and harmonized legal response. This paper aims to analyse North Macedonia's criminal legislation and constitutional framework concerning the prevention, investigation, and prosecution of transnational organized crime, with particular emphasis on harmonization with European Union standards. The analysis is conducted within the broader framework of the EU accession process, focusing on Chapter 23 – Judiciary and Fundamental Rights and Chapter 24 – Justice, Security and Freedom. Recent developments, including the controversial amendments to the Criminal Code of 7 September 2023, the crisis within the Judicial Council, ethical dilemmas in the justice system, and concerns regarding the effectiveness of public prosecutors' offices, are critically examined. The study will also examine the constitutional principles that underpin the fight against organized crime, including the rule of law, protection of fundamental rights, and the separation of powers. Additionally, the paper will explore how these principles are reconciled with the need for effective law enforcement and international cooperation. Ultimately, the paper seeks to identify potential gaps in the current legal framework and provide recommendations for further harmonization with EU standards, thereby enhancing North Macedonia's capacity to combat transnational organized crime. The study aims to provide a comprehensive understanding of the challenges and opportunities facing North Macedonia in its pursuit of EU integration, with particular regard to the alignment of its criminal legislation and constitutional framework with EU standards for combating transnational organized crime. Recommendations are provided to enhance compliance with EU requirements and promote greater institutional accountability, transparency, and professionalism within the justice and security sectors. The methodology employed in this paper involves a doctrinal legal analysis, focusing on the relevant constitutional provisions, criminal legislation, international conventions, and reports of the European Commission, to identify potential gaps and areas for improvement*.

KEYWORDS

Constitution, Criminal Code, North Macedonia, European Union, Transnational Organized Crime.

THE FIGHT AGAINST ORGANISED CRIME RELATED TO FRAUD ON THE FINANCIAL INTERESTS OF THE EUROPEAN UNION, WITH SPECIAL EMPHASIS OF THE NATIONAL LEGISLATION OF REPUBLIC OF NORTH MACEDONIA IN THE ANTI-FRAUD AREA OF THE FINANCIAL INTERESTS OF THE UNION

by Nina Madjovska Naumovska[*]

1. Introduction

It is evident that organized crime represents perhaps the most cancerous element within State systems globally. In other words, there is no country that is immune to this form of criminal activity today, and this requires no extensive analysis. This assertion is supported by the fact that the consequences of organized crime are now clearly visible and recognizable in all segments of society.

Organized crime weakens a country's social and economic progress, seriously damages people's confidence in government institutions and puts the foundation of the rule of law at risk. It leads to major economic problems for the State and creates deeper social issues, like growing inequality among members of society. This represents a direct threat to fundamental human rights and freedoms. Given the multidimensional nature of the consequences caused by organized crime and considering that hardly any system remains unaffected, it is unsurprising that a global consensus has emerged for a coordinated fight against organized crime. This consensus has been reinforced through numerous regulations and legal provisions that define its characteristics, phenomenology, manifestations, and common measures for combating it. Taking into account the effects of globalization and overall technological advancement, the transnational element of organized crime is now one of its defining features. As already emphasized, countries across the globe are implementing systems for the active prevention and suppression of organized crime. In this context, it can be concluded that the European Union is not immune to this form of crime either.

This paper will focus specifically on the impact of organized crime on the financial interests of the European Union and the efforts for its combating, particularly through the harmonization of national legislation, the obligations of EU Member States and those of candidate countries seeking accession to the EU. The aim is to ensure alignment of national legal frameworks with EU standards in the field of protecting the Union's financial interests.

Special attention will be given to the situation in the Republic of North Macedonia, as a candidate country for EU accession and to the commitments it has undertaken in the context of

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protecting the EU's financial interests as a beneficiary of European funds. This will be highlighted through an analysis of the legal and institutional framework designed to combat organized crime and fraud in relation to the EU's financial interests in North Macedonia, including a constructive analysis of the provisions of the Directive (EU) 2017/1371 on the Fight Against Fraud to the Union's Financial Interests by Means of Criminal Law (hereinafter: PIF Directive)[1]. and its transposition into North Macedonia's national legislation. Additionally, the paper will examine the cooperation between national institutions and EU bodies in the field of protecting the Union's financial interests and combating organized crime, as well as the cooperation between Member States and candidate countries through mechanisms of international cooperation in criminal matter.

2. Protection of the Financial Interests of the European Union, by the Meaning of Criminal Law (Directive (EU) 2017/1371 on the Fight Against Fraud to the Union's Financial Interests by Means of Criminal Law)

With the adoption of the PIF Directive a significant step has been taken toward the codification of criminal offenses against the financial interests of the European Union. By establishing a legal framework that clearly defines the incrimination, the specific acts constituting these offenses, and the corresponding sanctioning parameters, the Directive represents for the first time at the European level, a formal initiative aimed at the harmonization of criminal law in this area. The objective is to ensure an effective and coordinated response to combat fraud affecting the Union's financial interests. The PIF Directive provides a clear legal framework for defining the offense of fraud through precisely determined acts of commission or omission (*i.e.*, an offense by omission). Harm to the financial interests of the European Union is criminalized not only through the specific offense of fraud involving EU funds, but also through a broader set of incriminations, categorized into five groups of criminal offenses. A key feature emphasized by the Directive is that these offenses must be committed intentionally. In this respect, whether the criminal conduct is carried out through action or omission, the *actus reus* of the perpetrator must be directly linked to the specific acts of commission or omission and to the resulting consequences.

A notable characteristic of the PIF Directive is its establishment of a framework for penal policy, particularly regarding the imposition of the highest sanction-imprisonment through the so-called minimum-maximum sentencing scheme. Under this scheme, more serious forms of the relevant criminal offenses are to be sanctioned with a maximum penalty of at least four years of imprisonment. In outlining penal policy, the Directive clearly states that prescribed penalties must be proportionate and effective. The methodology for applying the minimum-maximum model[2] involves the determination of a maximum sanction (with imprisonment being the most severe), which must be no less than four years. As previously mentioned, the minimum-maximum sanctioning approach is applicable to aggravated forms of the criminal offenses, such as when the offense results in significant property damage or when substantial unlawful financial gain is obtained.

For the offenses identified in the Directive, Member States are required to adopt legislative measures ensuring that such acts are punishable under their national criminal laws, with imprisonment being provided as the highest form of sanction. Regarding the more serious forms of these offenses, especially when they result in significant unlawful gain or damage,

[1] Directive (EU) 2017/1371 of the Parliament and of the Council, *on The Fight Against Fraud to the Union's Financial Interests by Means of Criminal Law*, of 5 July 2017, in OJ L 198, of 28 July 2017.

[2] H. SATZGER, *The Harmonisation of Criminal Sanctions in the European Union. A New Approach*, in *eucrim*, No. 2, 2019, pp. 115-120.

Member States are obliged to impose a maximum prison sentence of at least four years. Unlike the Criminal Code[3] of the Republic of North Macedonia, the PIF Directive defines "significant damage or gain" as exceeding 100,000 EUR, or in the case of VAT-related revenue crimes, as causing damage of at least 10,000,000 EUR. If the damage or gain is less than 10,000 EUR, Member States may provide for administrative or non-criminal penalties under their national legislation.

3. Protection of the Financial Interests of the European Union, by the Meaning of criminal Law in Republic of North Macedonia, Through the Aligning of the National Criminal Code with the Directive (EU) 2017/1371 on the Fight Against Fraud to the Union's Financial Interests by Means of Criminal Law

A detailed analysis of the current Criminal Code reveals that fraud committed against the financial interests of the European Union is criminalized under art. 249-a[4], titled "Fraud to the Funds of the European Union". This provision emphasizes the commission of the criminal offense through the act described in para. 1: "*Anyone who, by using or presenting false, inaccurate, or incomplete statements or documents, or by failing to provide information, unlawfully appropriates, retains, or causes damage to the funds, assets, or resources of the European Union, or funds, assets, or resources managed by the European Union or on its behalf, shall be punished with imprisonment from one to ten years*". Subsequent paragraphs of art. 249-a also provide for criminal liability in cases of misuse of EU funds, as well as for the unlawful reduction of the assets and resources of the European Union. The provision further establishes criminal liability for legal entities that act as perpetrators of the offense of "*fraud to the detriment of the funds of the European Union*". It is important to note that the incrimination of this criminal offense in art. 249-a is consistent with the PIF Directive. The Directive sets out so-called minimum standards or rules related to the definition of criminal offenses and the corresponding sanctions in the fight against fraud affecting the financial interests of the EU. However, it does not seek to define the relevant offenses in detail, rather it provides minimum standards intended to guide EU Member States and candidate countries in harmonizing their criminal legislation, penalties, and legal institutions in line with EU *acquis*. The expression "minimum rules" refers to the option given to States to enact stricter provisions in their national legislation than those prescribed by the Directive, thereby indicating that the Directive only establishes the minimum required level of harmonization, without imposing a maximum range on the extent of criminal penalties or other legal measures related to these offenses.

As previously stated, the PIF Directive emphasizes the need for harmonization and transposition of its provisions, particularly in the alignment of relevant criminal offenses concerning the protection of the EU's financial interests. In addition to the primary offense-fraud to the detriment of the EU's financial interests the Directive also calls for the harmonization of other related criminal acts that may harm the EU budget. This includes money laundering, bribery (both giving and receiving), misappropriation, tax and customs fraud, falsification and destruction of accounting records, as well as harmonization of definitions such as "public official", the liability of legal persons and their penalties, attempt to commit a criminal offense, aggravating circumstances, statute of limitations and cooperation between

[3] Criminal Code of Republic of North Macedonia, consolidated text available on https://legislationline.org/sites/default/files/documents/67/fYROM_CC_2009_am2018_en.pdf

[4] Law on Amendment of the Criminal Code of Republic of North Macedonia, in Official Gazette of Republic of North Macedonia No.36/23.

Member States, the Commission (OLAF), and other Union institutions, bodies, offices or agencies

With the amendments to the Criminal Code adopted on February 17, 2023[5], significant alignment with the PIF Directive has been achieved. Specifically, in the context of transposing the Directive's provisions, changes have been introduced regarding penal policy, including increased sanction for imprisonment sentences for crimes in this area. This indirectly aligns the provisions on the punishment of attempted offenses which may harm the EU's financial interests. For offenses where the prescribed prison sentence does not reach a maximum of five years (a condition for the attempt to be punishable), the attempt is explicitly criminalized in a separate paragraph. This is fully in accordance with the Directive, which stresses the need to criminalize attempts to commit offenses that may affect the EU's financial interests.

Moreover, these criminal offenses now include aggravated forms, such as cases involving the acquisition of significant unlawful material gain or causing substantial damage. Additional amendments related to the harmonization of the Criminal Code with the PIF Directive are mostly terminological, particularly concerning the description of the criminal acts themselves. It should also be emphasized that the national criminal legislation, specifically, the provisions of the Criminal Code, prescribe penalties that are, in many cases more severe than those required by the PIF Directive. This is consistent with the Directive itself, which explicitly allows Member States to adopt stricter rules.

In accordance with the analysis presented above in this text and also according to the North Macedonia 2024 Report[6], the national legislation of Republic of North Macedonia is largely harmonized with the Directive (UE) 2017/1371, which is an essential step forward in the fight against organized crime, related to the fraud of the EU funds, especially in times when not all of the Member States has finished the process of aligning the national legislation with the respective Directive.

4. Cooperation of the National Authorities with the European Anti-Fraud Office and the European Public Prosecutor's Office-the Main Players in the Area of Combating Fraud and Protection of the Financial Interests of the European Union

The European Public Prosecutor's Office (EPPO) is an independent public prosecution body of the European Union, tasked with investigating and prosecuting perpetrators and accomplices of criminal offences affecting the financial interests of the Union, as defined the PIF Directive and with the Regulation (EU) 2017/1939[7]. From the perspective of substantive jurisdiction, the EPPO is authorized to act in cases of criminal offences that cause or are likely to cause damage to the financial interests of the European Union. More specifically, the EPPO is competent to investigate and prosecute so-called "PIF crimes" as outlined in the PIF Directive, which include:

- Cross-border VAT fraud involving total damages of at least EUR 10 million;
- Fraud concerning expenditures and customs;
- Corruption that harms or is likely to harm the EU's financial interests;
- Misuse of EU funds or property by public officials;

[5] Law on Amendment of the Criminal Code of Republic of North Macedonia, in Official Gazette of Republic of North Macedonia No.36/23.

[6] Commission Staff Working Document, *North Macedonia 2024 Report*, of 30 October 2024, available at https://enlargement.ec.europa.eu/document/download/5f0c9185-ce46-46fc-bf44-82318ab47e88_en?filename=North%20Macedonia%20Report%202024.pdf.

[7] Council Regulation (EU) 2017/1939, *Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutor's Office ("the EPPO")*, of 12 October 2017, in OJ L 283, of 31 October 2017.

- Money laundering and
- Any other criminal offences that are inextricably linked to the aforementioned categories.

Furthermore, the EPPO is also competent to prosecute conduct related to participation in a criminal organization, where such conduct is defined as a criminal offence under the PIF Directive. Regarding the determination of its structure, functions and competences, the primary legislative act governing the EPPO is Regulation (EU) 2017/1939 (hereinafter: EPPO Regulation). According to this Regulation, the EPPO is organized at two levels: central level and a decentralized (national) level.

Thus, the EPPO represents the first supranational body at the EU level that is competent to investigate and prosecute criminal offences. However, practice shows that establishing such a supranational prosecution authority and making it operational is a complex endeavor, particularly because certain Member States (such as Hungary, Poland, Sweden, Denmark, and Ireland) have opted out of the EPPO mechanism. This situation supports the assertion that criminal law remains one of the most complex areas to harmonize at regional and European levels, primarily due to its close connection with national legal systems and the exclusive competences of domestic prosecutorial and judicial authorities.

Namely, Hungary remains the most vocal opponent of the European Public Prosecutor's Office (EPPO) among the European Union Member States. Hungary's decision not to participate in the EPPO is largely motivated by so-called "political concerns", rooted in apprehension about sharing national sovereignty with the Union in such a sensitive area[8]. Until recently, this position was also shared by Poland and Sweden, which, however, changed their stance in December 2024 and decided to join the enhanced cooperation framework among EU Member States through the establishment of the EPPO.

Specifically regarding Sweden, the Swedish Parliament was among the national legislatures that opposed the European Commission's proposal for regulations on the EPPO, arguing that the principle of subsidiarity had not been respected. The Swedish Parliament's objection was based on the lack of clarity as to why the Commission considered that only the creation of the EPPO would ensure effective prosecution of crimes affecting the EU budget. Denmark, also an EU Member State, is excluded from the EU's Area of Freedom, Security, and Justice and is allowed to join the EPPO framework at a later stage[9].

However, as of today, Sweden and Poland are members of the EPPO, following the decision adopted on 12 December 2024[10]. Meanwhile, Denmark and Hungary have signed cooperation agreements with the EPPO[11], committing themselves to cooperate with the Office both strategically and operationally in criminal matters. This implies that Member States not

[8] F. GIUFFRIDA, *The Relations Between the European Public Prosecutor's Office and the Member States that Do Not Participate in the Enhanced Cooperation*, in *New Journal of European Criminal Law*, Vol. 14, No. 1, 2023, pp. 80-99.

[9] E. HERLIN-KARNELL, *Denmark and the European Area ofFreedom, Security and Justice: A Scandinavian Arrangement*, in *Amsterdam Law Forum*, No. 1, 2013, pp. 95-106.

[10] Council of the European Union, Press Release, *EU Public Prosecutor's Office (EPPO): Council Appoints European Prosecutors for Poland and Sweden*, of 12 December 2024, available at https://www.consilium.europa.eu/en/press/press-releases/2024/12/12/eu-public-prosecutor-s-office-eppo-council-appoints-european-prosecutors-for-poland-and-sweden/#:~:text=The%20Council%20today%20appointed%20two%20new%20European%20prosecutors,for%20Poland%20and%20Mr%20Martin%20BRESMAN%20for%20Sweden.

[11] T. WAHL, *Working Arrangement with the Danish Ministry of Justice*, in *eucrim*, 9 October 2023, available on https://eucrim.eu/news/working-arrangement-with-danish-ministry-of-justice/; Prosecutor General of Hungary/EPPO, *Working Arrangement on Cooperation Between the office of the Prosecutor General of Hungary and the European Public Prosecutor's Office ("EPPO")*, of 26 March 2021/6 April 2021, available at https://ugyeszseg.hu/en/wp-content/uploads/sajto54/2021/04/hu-eppo-english.pdf.

participating in the EPPO are nevertheless obliged, through their national authorities, to inform the EPPO of criminal offenses falling within its jurisdiction that are being investigated on their territory, specifically crimes causing harm to the EU budget. These agreements, like the cooperation agreement with our country, regulate collaboration with the EPPO from a strategic perspective and establish liaison points between national public prosecutors and the EPPO.

Taking into account both the territorial and personal principles of jurisdiction, art. 23 of EPPO Regulation facilitates its implementation by avoiding reference to other legal instruments. The Regulation prioritizes the territorial principle over the principle of national jurisdiction.

Under the personal principle, the EPPO's jurisdiction extends to criminal offences listed in art. 22 of the Regulation when committed by nationals of Member States, provided that the Member State has jurisdiction over such offences when committed outside its territory[12]. This general framework is supplemented by specific provisions concerning EU staff and employees, which include identical procedural requirements.

In terms of jurisdiction *vis-à-vis* Member States, the EPPO enjoys a supranational status. The Regulation stipulates that European Delegated Prosecutors must be integral parts of the EPPO and, as such must act exclusively on behalf of the EPPO when investigating and prosecuting offences under its competence, within the territory of their respective Member State. This supports the thesis that Delegated Prosecutors have a functionally and legally independent status distinct from any classification under national law.

Nevertheless, while acting on behalf of the EPPO, Delegated Prosecutors possess the same prerogatives and powers as national prosecutors. It is noteworthy that an European Delegated Prosecutor may also continue to perform their functions as a national prosecutor, provided that doing so does not conflict with their responsibilities within the EPPO.

On the other hand, the European Anti-fraud Office (OLAF) is an institution of the European Commission, established in 1999[13] with a singular purpose: to ensure an effective fight against fraud affecting the financial interests of the European Union. This is pursued through the imposition of effective and efficient sanctions and measures against all unlawful activities that cause harm to the Union's financial interests.

The principal mechanism through which OLAF operates in safeguarding the EU's financial interests is the conduct of so-called "administrative investigations"[14]. From the very outset, the unique nature of this *sui generis* body within the European Commission becomes apparent. The term "administrative investigations" underscores the administrative character of the institution itself. Although the terminology refers to its power to conduct "investigations", it is important to note that these investigations do not carry the same meaning or legal weight as investigations conducted within the scope of criminal proceedings. Rather, they are more accurately characterized as administrative in nature comparable, within the spirit of national legal systems such as ours to inspection procedures rather than criminal inquiries. It is important to emphasize that OLAF conducts administrative investigations and does not hold investigative powers in the sense of criminal procedure[15]. Nor is it competent to prosecute perpetrators of criminal offences. OLAF compiles the outcomes of its investigations in so-

[12] M. JIMENO BULNES, *The Public Prosecutor's Office, Further Competence in Near Future?*, in *eucrim*, No. 2, 2024, pp. 146-152.

[13] Regulation (EU, Euratom) 883/2013 of the European Parliament and of the Council, *Concerning Investigations Conducted by the European Anti-Fraud Office (OLAF) and Repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999*, of 11 September 2013, in OJ L 248, of 18 September 2013.

[14] C. SCHARF-KRÖNER, J. SEYDERHELM, *OLAF Investigations Outside the European Union. Practical and Legal Aspects*, in *eucrim*, No. 3, 2019, pp. 209-218.

[15] K. BOVEND'EERDT, *Learning Lessons. Reflecting on Regulation 883/2013 Through Comparative Analysis*, in *eucrim*, No. 4, 2017, pp. 188-192.

called "final reports", and where appropriate, issues financial, judicial, disciplinary, and/or administrative recommendations to the competent authorities. Regarding OLAF's territorial jurisdiction, it is evident that given its primary mandate to protect the financial interests of the European Union, it represents an authority which is generally confined to EU territory. However, its mandate as established under art. 325 of the Treaty on the Functioning of the European Union (TFEU) and Council Regulation No. 2185/96[16] on on-the-spot checks and inspections carried out by the Commission, also allows OLAF to operate beyond the borders of the Union.

In practical terms, OLAF's authority extends to any country receiving EU funds. Consequently, its jurisdiction to conduct investigations, including checks and inspections, encompasses non-EU countries. This *sui generis* institutional model – without parallel in other European or candidate countries – adds another layer of complexity to establishing and exercising OLAF's powers within pre-accession States.

Building on Regulation 2020/2223[17] concerning cooperation with the European Public Prosecutor's Office (EPPO) and the effectiveness of investigations carried out by the European OLAF, it is important to emphasize that, although OLAF plays an essential role in combating fraud and protecting the financial interests of the European Union, the sanctioning of individuals potentially involved in criminal offences remains dependent on the national authorities of the relevant Member State or the candidate country seeking EU accession.

From this perspective, the establishment of the EPPO through the Regulation (EU) 2017/1939 represents one of the most significant steps in enhancing the protection of the Union's financial interests. Considering the respective mandates of EPPO and OLAF in this area, Regulation 2020/2223 underscores the importance of EPPO "*establishing and maintaining a close relationship with OLAF based on mutual cooperation within the scope of their respective competences and on the exchange of information. The aim is, in particular, to ensure that all available means are used to protect the financial interests of the European Union through complementarity and OLAF's support of the EPPO*".

In line with this objective, Regulation No. 883/2013 (hereinafter: OLAF Regulation) was amended by Regulation (EU, Euratom) 2020/2223 to ensure the highest level of protection of the Union's financial interests through joint action by the EPPO and OLAF. This amendment aimed to enhance close cooperation, information exchange, complementarity in their actions and to avoid any overlap in their respective areas of competence.

To further detail and substantively regulate the cooperation between OLAF and the EPPO, a working arrangement was concluded between the two institutions on 5 July 2021[18]. This agreement, between the two key EU bodies in the fight against fraud involving Union funds, places strong emphasis on mutual cooperation and assistance within their respective mandates in the field of protection of the Union's financial interests.

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[16] Council Regulation (Euratom, EC) 2185/96, *Concerning On-The-Spot Checks and Inspections Carried Out by the Commission in Order to Protect the European Communities' Financial Interests Against Fraud and Other Irregularities*, of 11 November 1996, in OJ L 292, of 5 November 1996.

[17] Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council, *amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations*, of 23 December 2020, in OJ L 437, of 28 December 2020.

[18] OLAF/EPPO, *Working Arrangement Between the European Anti-Fraud Office ("OLAF") and the European Public Prosecutor's Office ("EPPO")*, of 5 July 2021, available at https://www.eppo.europa.eu/sites/default/files/2021-07/Working_arrangement_EPPO_OLAF.pdf.

5. The EPPO and the Cooperation with EU Candidate Countries

As noted earlier, the establishment of the EPPO via Regulation 2017/1939 significantly elevated the protection of the EU's financial interests. Art. 4 of the Regulation provides that: "*The EPPO shall be responsible for investigating, prosecuting, and bringing to judgment the perpetrators of, and accomplices in, criminal offences affecting the financial interests of the Union, as defined in Directive (EU) 2017/1371 and as determined by this Regulation. To that end, the EPPO shall undertake investigations, carry out prosecutions, and exercise the functions of prosecutor in the competent courts of the Member States until the case has been finally disposed of*".

The Regulation also imposes obligations on Member States to protect the financial interests of the Union. However, the European Commission maintains that maximum efforts in combating fraud affecting the Union's financial interests must also come from beneficiary third countries. The Republic of North Macedonia, as a candidate country for EU accession is a recipient of EU funds through various instruments and funding mechanisms. North Macedonia has assumed the obligation to establish an effective system for protecting the EU's financial interests, as demonstrated by numerous agreements signed in the context of implementing EU-funded programs. These agreements entail not only commitments to proper implementation, but also to the establishment of control systems and oversight mechanisms. For a fully operational system to combat fraud effectively, harmonization of both substantive and procedural aspects of national criminal law with EU standards is essential.

Although the EPPO's mandate is limited to Member States, art. 104 of Regulation 2017/1939 prescribes provisions for cooperation with third countries. This cooperation includes the exchange of strategic information and the establishment of contact points to facilitate operational collaboration. The EPPO may also, in agreement with the competent authorities of third countries, to designate liaison officers to enhance cooperation based on operational needs.

The importance of strengthening cooperation between North Macedonia and the EPPO has been recognized in the European Commission's 2021 Progress Report on North Macedonia[19]. In October 2022, the Public Prosecutor's Office of the Republic of North Macedonia signed a working arrangement[20] with the EPPO. This agreement defines mutual obligations, including regular meetings at operational and technical levels, joint training programs, and the exchange of best practices and experiences in investigating financial crime and corruption. It also establishes a national contact point within the North Macedonian Public Prosecutor's Office. Additional provisions address communication protocols and the handling, protection, and responsibility for personal data.

Nevertheless, from the perspective of criminal law protection of the EU's financial interests, it must be emphasized that cooperation between the EPPO and third countries must go beyond strategic partnerships to include effective operational collaboration, as allowed by the legal frameworks. Given the EPPO's limited jurisdiction, options for cooperation should also include channels such as EUROJUST.

Strengthening cooperation between national authorities and the EPPO also requires clear rules regarding the evidentiary value of materials obtained through EPPO investigations and

[19] Commission Staff Working Document, *North Macedonia 2021 Report*, of 19 October 2021, available at https://enlargement.ec.europa.eu/document/download/724722a9-240b-4001-abce-648e0c96f88b_en?filename=North-Macedonia-Report-2021.pdf.

[20] Public Prosecutor's Office of Republic of North Macedonia/EPPO, *Working Agreement Between the Public Prosecutor's Office of Republic of North Macedonia and EPPO*, of 24 October 2022, available at https://jorm.gov.mk/wp-content/uploads/2022/10/dogovor-evropsko-obvinitelstvo-sken.pdf.

their admissibility before national courts, as well as mechanisms for judicial review of EPPO actions.

In the context of EU enlargement and candidate countries, art. 104 of EPPO Regulation states that the EPPO may request legal assistance in criminal matters from authorities of third countries in specific cases within its material competence. It also provides that when extradition is required, the European Delegated Prosecutor may request the competent authority of their Member State to issue an extradition request in accordance with applicable agreements and national legislation. However, such cooperation must always align with national rules governing international cooperation in criminal matters.

In conclusion, while the EPPO Regulation clearly defines the structure and competences of the Office, it is evident that the EPPO has limited jurisdiction regarding criminal offences under the PIF Directive when it comes to candidate countries. This is paradoxical: the EU provides financial assistance to third countries, yet if fraud or misuse occurs, the EPPO which is responsible for criminal-law protection of EU financial interests has no jurisdiction outside EU borders.

This paradox underscores that, despite the EPPO's potential interest in extending its competence to a candidate country's territory, such a move depends heavily on the consent of the third country involved. Since candidate countries are not parties to the EPPO Regulation, the only viable path to cooperation would be through mutual agreements, which must be accepted by all Member States[21]. However, not all Member States support the EPPO concept or are parties to its founding Regulation, making the establishment of direct operational cooperation through bilateral or multilateral agreements highly complex and nearly impossible.

6. European Anti-Fraud Office and Cooperation with EU Candidate Countries

The Republic of North Macedonia has also undertaken the obligation to cooperate with the European Anti-Fraud Office (OLAF) in the area of protecting the financial interests of the European Union. The country actively provides assistance to OLAF inspectors during on-the-spot checks within its territory, also an Anti-fraud Coordination Unit has been established and regularly reports of irregularities related to the implementation of IPA (Instrument for Pre-accession Assistance) funds, in accordance with the Framework Agreement[22] has been issued.

However, in order to achieve the highest level of cooperation with OLAF and in line with the recommendations of the European Commission it is necessary to take further steps toward identifying appropriate legal solutions. This include addressing the evidentiary value of OLAF's final reports, particularly in the context of judicial proceedings, ensuring access to banking information without violating national legal norms and enabling checks or inspections of private devices that are the subject of OLAF investigations.

The resolution of all the above-mentioned open issues from the perspective of effective cooperation with OLAF which leads to the efficient protection of the Union's financial interests is of mutual benefit. In other words, what serves the financial interests of the Union simultaneously serves the national interest. This is particularly relevant in light of the Framework Agreement on IPA, which stipulates that if national authorities and structures responsible for the recovery of allocated implementation funds fail to retrieve those funds from

[21] N. FRANSSEN, *Judicial Cooperation Between EPPO and Third Countries*, in *eucrim*, No. 3, 2019, pp. 198-205.
[22] Republic of North Macedonia/European Commission, *Framework Agreement between the Republic of North Macedonia and the European Commission on the Arrangements for implementation of Union financial assistance to the Republic of North Macedonia under the Instrument for pre-accession assistance (IPA) III*. See more at https://enlargement.ec.europa.eu/enlargement-policy/overview-instrument-pre-accession-assistance/north-macedonia-financial-assistance-under-ipa_en.

the economic operator in cases where irregularities or fraud are established, the Union reserves the right to recover the funds directly from the budget of the IPA beneficiary country.

Therefore, effective cooperation with OLAF will directly contribute to the efficient protection of EU funds, which in turn will have a direct and positive impact on the national budget of the Republic of North Macedonia.

7. Case Study

The case is retrieved directly from the official web-page of the European Public Prosecutor's Office, of the part dedicated to "Convictions in EPPO Cases: April – July 2022"[23] and will serve for presenting a positive example of established an effective cooperation between the EPPO and the national authorities, which have resulted with efficient protection of the financial interests of the Union and the budget of Republic of Latvia.

"*The District Court in Riga, Latvia confirms an agreement between the EDP (European delegated Prosecutor) and accused persons punishing them for procurement fraud of over €100,000. In the case at issue, three Latvian citizens manipulated the procurement process by pre-coordinating prices so that they were able to receive subsidies from the European Agricultural Fund for Rural Development. The accused pleaded guilty; two were sentenced to 2.5 years of imprisonment and a fine of €2500, the other has to pay a fine of €2500. It is the first conviction in Latvia after the operational start of the EPPO in 2021*"[24].

In the overview[25] of the case, it is in detail described the *modus operandi* of the committed offense, defined and qualified as fraud. Namely, three Latvian citizens have been convicted for fraud committed in a procurement process for the construction of two high tunnel greenhouses, subsidized by the European Agricultural Fund for Rural Development (EAFRD). As prescribed, a group of persons arranged for a company they controlled to win a procurement project supported by the EAFRD, by pre-coordinating the price. Documents containing false information were submitted to Latvia's Rural Support Service, based on which the service took the decision to disburse financing of €104 030. The case was submitted by the European Public Prosecutor's Office to court procedure against the three for having acquired by deceit, in a group of persons according to a prior agreement, the project supported by the EAFRD, as well as for imposing a coercive measure on a legal entity. The accused persons admitted their guilt and exercised their right to cooperation under criminal procedural law by selecting the simplest form of proceedings in accordance with the Law of Criminal Procedure. That means that the European Delegated Prosecutor and the accused persons agreed on guilt and sentencing, and sought conviction and imposition of deprivation of liberty for 2.5 years and a fine of €2 500 for two of the accused, and a fine of €2 500 for the other accused. €5 000 was confiscated from the company's bank account. The unlawfully obtained EU funds were fully repaid by the accused and the company. On 14 June 2022, the court confirmed it had reached agreement. As a conclusion in the above-mentioned case, it can be stated that the successful closure of the case and the final result – conviction with confiscation represents a successful and positive example of coordination and cooperation between the European Public Prosecutor's Office and the national authorities in the country, in this case Criminal Police Department of the Latvian State Police.

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[23] T. WAHL, *Convictions in EPPO Cases: April – July 2022*, in *eucrim*, No. 2, 2022, p. 96.
[24] *Ibidem*.
[25] EPPO, News: *First Conviction in EPPO Investigation in Latvia: procurement fraud of €100 000*, 20 June 2022, available at https://www.eppo.europa.eu/en/media/news/first-conviction-eppo-investigation-latvia-procurement-fraud-eu100-000.

8. Cooperation Between OLAF, EPPO and European Union Agency for Law Enforcement Cooperation, European Union Agency for Criminal Justice – The Main Anti-Fraud Structure Against Organised Crime with EU Funds

As it stated in the Analysis of the Serious and Economic Crime[26] – "*Serious and organised crime is primarily driven by financial gain, and as such also drives the development of financial crimes. Corruption and money laundering are bridges between the licit and the illicit world, threatening to erode trust in authorities, in the rule of law and in the general functioning of society itself*". The protection of the financial interests of the European Union, as reflected in the provisions of the PIF Directive, is clearly emphasized in art. 8. It states that any criminal offense outlined in the Directive which causes harm to the financial interests of the Union, if committed within the framework of a criminal organization, must be treated by Member States as an aggravating circumstance, in accordance with their national legislation.

According to the 2024 Report of EPPO[27], the Office placed a particular focus on investigations related to organized crime targeting the financial interests of the European Union. The report highlights that these criminal networks are involved in multiple areas of criminal activity, both within the EU territory and in third countries. For this reason, cooperation among the aforementioned institutions: OLAF, EPPO, the European Union Agency for Law Enforcement Cooperation (EUROPOL) and the European Union Agency for Criminal Justice (EUROJUST) is essential, not only among EU Member States but also with third countries.

Through its analysis of these criminal networks, EPPO underscores the phenomenon of "forum shopping"[28], whereby criminal organizations deliberately choose to operate in countries where national authorities are less trained, have weaker capacities to combat organized financial crime, and where there is a higher likelihood of going undetected and unpunished.

According to the report, 6.07% of the criminal cases investigated by the EPPO involve offenses against the financial interests of the Union, as defined in the PIF Directive and were committed within the framework of organized crime structures.

Therefore, there is an undeniable need for full harmonization in the fight against fraud involving EU funds, not only among Member States but also among candidate countries seeking to join the Union especially in cases where such offenses are committed by organized criminal groups or associations. In this regard, considering the complexity of these criminal networks which often involve individuals of various profiles and frequently include a transnational element, operating across the territories of multiple countries and involving perpetrators who are nationals of different States coordinated cooperation among multiple international institutions in this field is essential.

In this regard, it shall be noted that the cooperation between EUROJUST and the EPPO in this area was concluded with the Working agreement[29] between the EPPO and the EUROJUST, signed in 2023. In accordance with this Agreement, "*Eurojust supports and cooperates closely with the EPPO, based on trust and respect for each other's mandates and competences and on the development of operational, administrative and management links*". Also, in the provisons

[26] EUROPOL, *European Financial and Economic Crime Threat Assessment 2023 - The Other Side of the Coin: An Analysis of Financial and Economic Crime*, Publications Office of the European Union, 2023.
[27] EPPO, *Annual Report 2024*, 2024, available at https://www.eppo.europa.eu/sites/default/files/2025-03/EPPO%20Annual%20Report%202024_0.pdf.
[28] *Ibidem*.
[29] Eurojust/EPPO, *Working Arrangement the European Public Prosecutor's Office ("EPPO") and Between the European Union Agency for Criminal Justice Cooperation ("EUROJUST") and*, of 4 February 2021/11 February 2021, available at https://www.eurojust.europa.eu/document/working-arrangement-between-eurojust-and-eppo.

of the Eurojust Regulation, the cooperation between the EUROJUST and EPPO is outlined more specifically as it describes the cooperation and exchange of information between these two important European institutions. The Regulation is highlighting the regular meeting between the President of EUROJUST and the European Chief Prosecutor for discussing issues of common interests, the support in the request from EPPO, exchanging the requested information through the EUROJUST national coordination system, including the data from third countries, the indirect access to information of each other's case management system and the possibility for EUROJUST to provide EPPO with services of common interests and support and resources of the administration of EUROJUST. The cooperation with EUROJUST is especially important for EPPO in the area of combating organized crime with transnational element, when a third country is involved. This, because of the fact that through the national coordination system of EUROJUST, the EPPO can access the necessary data, not only of the Member states, but also of the third countries.

Also, OLAF and EUROJUST has signed a Working agreement[30] which have replaced the Practical Working agreement from 2008 and which prescribes provisions for enhancing the institutional, strategic and operational cooperation between these two institutions. According to this agreement, both parties shall establish liaison teams to serve as contact points and coordinate cooperation between the two agencies and to prepare the annual high-level meetings between OLAF's Director-General and Eurojust's President. OLAF and EUROJUST agree to exchange information of strategic nature and collaborate with regard to training, workshops, seminars, and conferences.

Not less important is the established cooperation between EUROPOL and EPPO. In 2021 the EPPO and EUROPOL has signed Working agreement[31] which regulates the cooperation between the two European institutions in the areas of the use of exchanged information, the secure processing of personal data, the use of information and the assessment of the reliability of the source of the information and the information itself, in the area of protection of the financial interests of the European Union.

The cooperation between OLAF and EUROPOL is in detail prescribed in the Working arrangement[32], signed between these two institutions in 2020. The working arrangement prescribes the cooperation between OLAF and EUROPOL in the area of protection of the financial interests of the European Union related to the exchange of information, including operation information, cooperation through joint operations, exchange of expertise, reports, exchange of information on criminal investigation procedures and on crime prevention methods, training activities and support concerning the use of technical tools/equipment.

In regard of the above-mentioned, the effective protection of the European Union's financial interests requires strong and coordinated action against organized crime targeting EU funds. In this context, the cooperation between OLAF, EPPO, EUROPOL, and EUROJUST is crucial. Each institution plays a distinct yet complementary role, as following: OLAF conducts administrative investigations, EPPO leads criminal prosecutions, Europol provides criminal intelligence support and Eurojust ensures judicial coordination across Member States and Third Countries. Together, their joint efforts form the backbone of the EU's anti-fraud architecture, enabling a more robust, efficient, and unified response to complex, cross-border financial crimes.

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[30] OLAF/EPPO, *Working Arrangement*, cit.

[31] Eurojust/EPPO, *Working Arrangement Establishing Cooperative Relations Between the European Public Prosecutor's Office and the European Union Agency for Law Enforcement Cooperation*, of 18 January 2021/11 January 2021, available at https://www.eppo.europa.eu/sites/default/files/2021-01/EPPO%20_Europol_Working_Arrangement.pdf.

[32] T. WAHL, *OLAF and Europol Cooperation on New Footing*, in *eucrim*, 8 December 2020, available at https://eucrim.eu/news/olaf-and-europol-cooperation-new-footing/.

9. Conclusion

The fight against organized crime affecting the financial interests of the European Union demands a coordinated and multilayered response, particularly given the growing complexity, transnational character, and adaptability of criminal networks. Institutions such as the EPPO, OLAF, EUROPOL and EUROJUST form the backbone of the EU's anti-fraud architecture, each contributing with distinct but complementary mandates ranging from administrative investigations and intelligence gathering to criminal prosecution and judicial coordination.

For candidate countries like the Republic of North Macedonia, aligning national legal frameworks with EU standards is both a political obligation and a strategic necessity. North Macedonia's efforts, including the establishment of national coordination structures, legal harmonization with the PIF Directive and cooperation agreements with the EPPO and OLAF demonstrate a clear commitment to protecting EU financial interests. However, the limitations of the EPPO's jurisdiction outside EU Member States reveal a critical gap in enforcement that must be addressed through stronger bilateral cooperation and international legal instruments.

Moreover, enhanced collaboration between national authorities and EU bodies facilitated through mechanisms like mutual assistance, shared training programs, and regular exchanges of operational information remains essential. Special attention should be given to resolving practical issues, such as the evidentiary value of OLAF reports, access to financial data and cross-border investigative capacities.

Ultimately, reinforcing cooperation between OLAF, EPPO, EUROPOL and EUROJUST alongside national institutions, not only strengthens the EU's internal fight against fraud but also safeguards the financial integrity of candidate countries and ensures the efficient use of pre-accession assistance. Protecting the Union's financial interests is therefore, a shared responsibility and its success hinges on a comprehensive, cooperative and coherent approach across borders and institutions.

ABSTRACT

As is generally recognized, organised crime presents a significant threat to the European Union (EU), especially when it comes to fraud linked to the financial interests of the Union. In this regard, the aim of this speech is to present an in-depth analysis of the organised crime related to fraud of the financial interests of the European Union and the urgent necessity of the so-called harmonization of the process in this area. This speech will further discuss the importance of the harmonization of the national legislations of the Members States and candidate States as beneficiaries of EU funds under Directive (EU) 2017/1371 of the European Parliament and of the Council, of 5 July 2017, on the fight against fraud to the Union's financial interests by means of criminal law (hereinafter PIF Directive), recognized as a first step for improving the effective and coordinated cooperation against criminal acts affecting the budget of the European Union. Special emphasis will be given to the fight against organised crime in the anti-fraud area with regard to protection of the financial interests of the Union. Taking in consideration the fact that beneficiaries of the European Union budget are also the candidate States (this status implicates the Republic of North Macedonia, too), the obligation for undertaking effective and proportional measures for protection of the financial interests of the European Union remains as their essential commitment. The speech will outline its main objective – the examination of the legal and institutional framework designed to combat organized crime and fraud in relation to EU financial interests in

North Macedonia. It will provide a constructive analysis of the provisions of the PIF Directive and its transposition in the national legislation of the Republic of North Macedonia as a candidate country for accession in the European Union. On the other side, the effective collaboration in the area of international cooperation in criminal matter in the area for protection of the financial interests of the European Union among Member States and between Member States and the candidate States, regarding the criminal offences with transnational element, defined as organized crime which are directly damaging the Union's financial interests, will be elaborated. The analysis will be realized through methods of conducting a normative analysis of the relevant EU legislation and policy documents, national legislation of the country related to anti-fraud policy of EU funds and the annual reports of the European Commission. Also, a comparative analysis between the EU and the national legislation will be realized in order to identify differences and gaps in the legal framework. Data analysis shall be also included as information of cooperation between the national authorities and the institutions of the European Union in the cases of fraud committed to the financial interests of EU funds. In this speech, review of EU-level cases of fraud against its financial interests will be conducted in order of determining methods of detection, investigation, and the cooperation between national and EU authorities in the Member States. As an example, in this research it will be taken in consideration a case for fraud against EU funds of an EU Member State, which is closed and finalised with a court verdict. The analysis of the cross-national collaboration shall not be excluded, especially in the area of cooperation between the national authorities of Republic of North Macedonia as a candidate State, the national authorities in the Member States and the EU institutions. This will contribute to mapping the mechanisms between North Macedonia and EU bodies in addressing crimes committed against the financial interests of the European Union, including the exchange of information and joint investigations. This speech will further contribute to the process of mapping the gaps and differences in the national legislation compared to the EU legislative, which will have an impact on enhancing the legal framework development in order to address emerging challenges in the field. The harmonization of the legal framework of the respective areas will contribute to enhancing the effective cooperation of the national authorities and the EU institutions in the fight against organised crime linked to fraud on the financial interests of the European Union.

KEYWORDS

Anti-fraud Structure, European Union, Financial Interest, Fraud, Organized Crime

CONSTITUTIONAL PERSPECTIVES OF NORTH MACEDONIA ON THE FIGHT AGAINST TRANSNATIONAL CRIME *FUTURUM INCERTUM, FINIS CERTUS*?

by Lenche Ristovska[*]

1. Introduction

With the increase of the economic globalization and increased openness in trade, finance, travel, and communication, not only the economic growth has been facilitated and the living standards improved, but vast opportunities for criminals to extend their operations and increased their illegally gained assets were created. Organized crime has become more diverse, transnational, and economically significant: illegal products are produced in one continent, transported through another, and sold in a third. Criminals move across the borders and exploit the legal boundaries countries have in order to circumvent the law and avoid legal repercussions. Thus, when faced with the challenge of effective fight against transnational organized crime, countries are faced with the challenge of adopting legal rules that will make sure that individuals cannot evade justice simply by crossing borders.

One of the basic principles that are recognised to be able to fit this purpose is the principle "extradite or prosecute" (in Latin: *aut dedere aut judicare*) that designates the alternative obligation concerning the treatment of an alleged offender. It seems that the existing treaty practice, significantly enriched during the last decades, especially through various conventions against terrorism and other crimes threatening the international community, has already created a sufficient basis for considering the extent to which the obligation to extradite or prosecute, so important as a matter of international criminal policy, has become a matter of concrete legal obligation[1].

This paper will explore the position of Macedonian legislation regarding effective fight against transnational crime and try to address the following dilemmas: is the effective fight against transnational crime a goal by itself or is it just a benchmark in EU integration process? Moreover, is not having legal constitutional obstacles enough or should we step forward and create a culture of accountability, adopting legislation that will enable, independently of the EU accession process, a more efficient and effective fight against transnational crime?

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[1] International Law Commission of the United Nations (UN), *The Obligation to extradite or persecute* (aut dedere aut judicare), Final Report of the International Law Commission, A/CN.4/571, of 7 June 2006, available at https://legal.un.org/ilc/documentation/english/a_cn4_571.pdf p.226.

2. Constitutional and Legislative Efforts for Aligning with EU *acquis* in Area of Extradition

The position of the Constitution and the legislation of North Macedonia towards extradition can be divided in two periods – prior 2011 and after 2011.

The Constitution of North Macedonia[2] was adopted in 1991. At that time, the question of extradition on EU level was regulated by the European convention on Extradition[3] and the Constitution of North Macedonia followed the principles mentioned in the Convention.

According to the Constitution of 1991, "*the citizens of the Republic of North Macedonia have citizenship of the Republic of North Macedonia. A citizen of the Republic of North Macedonia may not be deprived of his or her citizenship, nor may he or she be expelled or extradited to another state*"[4]. So, at this point the Constitution of the Republic of North Macedonia accepted the nationality exemption rule when it comes to extradition. Also known as non-extradition of national's rule, this legal principle was leading principle in most bilateral and multilateral international cooperation instruments[5]. As a matter of State policy, every State that prescribes this principle states an obligation not to extradite its own nationals or contains a provision that extradition of nationals is forbidden, or some other provision that in final instance, as a result, has the implementation of nationality exception rule. This principle provided possibility for Macedonian citizens not to be extradited for crimes they committed abroad.

However, in light of the *aut dedere aut judicare* doctrine, the non-extradition of nationals' principle prescribed in the Constitution was complemented with the active personality principle that gave the national law an extraterritorial competence by providing opportunity for prosecuting Macedonian nationals for crimes committed abroad. According to the Criminal code, the criminal legislature was applicable to a citizen of the Republic of North Macedonia when he commits a crime abroad, if he finds himself on the territory of the Republic of North Macedonia or is extradited[6]. So, in case the authorities of North Macedonia refused extradition of a person due to the fact that this person was national of North Macedonia, they could prosecute this person for the crimes committed abroad.

The extradition procedure itself, including grounds and conditions for extradition were regulated in the Criminal procedure code. The first condition that the law required for a person to be extradited was that the person for whom extradition is being requested is not national of Republic of North Macedonia[7]. This solution was logical since it followed the Constitutional provisions on non-extradition of nationals. Later a new law was adopted – Law on international legal assistance in criminal matters[8], that regulated

[2] The Republic of North Macedonia official name was Republic of Macedonia until 12 of February 2019. Thus, up to this date in all national legal documents the country was referred as Republic of Macedonia. In order to avoid any confusions, this text uses the name of the country that is official at the moment of drafting, regardless the name that is mentioned in the national legal documents.

[3] European Convention on Extradition, adopted by Council of Europe, 12 December 1957.

[4] Art. 4 of the Constitution of the Republic of North Macedonia from November 1991.

[5] The European convention on Extradition in its art. 6 provides that "*contacting parties have right to refuse extradition of their nationals*"; the Benelux treaty on extradition and mutual legal assistance in criminal matters provides "obligation not to extradite".

[6] Art. 118 of the Criminal Code (Official gazette of North Macedonia No.37 from 29 July 1996). Crimes for which universal jurisdiction was provided were excluded for implementation of active personality principle.

[7] Art. 560 para. 1, line 1, of the Criminal Procedure Code (OJ of Republic of North Macedonia 15/97, 44/2002, 74/2004).

[8] OJ of North Macedonia No.124/2010, 20 September 2010.

the extradition procedure and other forms of mutual legal assistance. The legal solution that one of the conditions for granting extradition is that the person for whom the extradition is being requested is not a national of Republic of North Macedonia was kept in this law as well[9].

On EU level in the period that followed the Convention on Extradition between Member States of the EU[10] was adopted. This Convention makes attempt to reverse the traditional regime relating to the nationality exception rule, stating in art. 7 that extradition may not be refused on the ground that the person claimed nationality of the requested Member State within the meaning of art. 6 of the European Convention on extradition. Demonstrating hesitant move away from the nationality exception rule this convention aimed at rendering the non-extradition of nationals an exception in the European extradition.

The Convention was later replaced in most cases by the Framework Decision on the European Arrest warrant and the Surrender procedures between Member States[11] (EAW). The EAW still mentions nationality as a ground for refusal of execution of the warrant (art. 4, para. 6) but as an optional ground for refusal of the extradition and may be invoked only under certain conditions, making the non-extradition of nationals exception, not a rule. The article gives the possibility to the executing Member State to refuse execution of the EAW if the requested person is staying in or is national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law. The logical consequence of this article is that if local laws do not permit enforcement of the sentence in the State of nationality and the undertaking referred to cannot be given, the execution of the EAW may not be refused. From non-less importance for the subject is art. 5, para. 3, which permits Member State to condition the execution of an EAW to the fact that the person surrendered – being a national or a resident of the executing Member State – is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

These provisions influenced the constitutional changes in North Macedonia. Namely, the amendment XXXII of the Constitution[12] provided that "*a citizen of the Republic of Macedonia may not be deprived of his or her citizenship, nor may he or she be expelled from the Republic of Macedonia. A citizen of the Republic of Macedonia may not be extradited to another state, except on the basis of a ratified international agreement, by a court decision*". So, according to these constitutional amendments citizens of North Macedonia can be extradited on basis of a ratified international agreement.

Moreover, the Criminal code, despite being amended multiple times, has kept the active personality principle, enabling criminal proceedings against nationals of North Macedonia for crimes committed abroad.

In addition to the Constitution and the Criminal code, as mentioned before, the extradition procedure and the grounds and conditions for extradition were regulated with the Law on mutual legal assistance in criminal matters. Since harmonization was needed with EU legislation, the current law was replaced by new one[13]. The new law provided

[9] Art. 52 of the Law on mutual legal assistance in criminal matters

[10] Adopted by the Council of European Union, drawn up on the basis of art. K.3 of the Treaty on the European Union, *relating to the extradition between Member States of the European Union*, of 27 September 1996, in OJ C 313/12, of 23 October 1996, pp.12-23.

[11] *Ibidem*.

[12] Official Gazette of North Macedonia No.49/2011 from 12 April 2011.

[13] The new Law on international legal assistance in criminal matters aimed at harmonizing with the Council Decision 187/2002/JHA, *establishing EUROJUST with a view to reinforcing the fight against serious crime*,

that one of the conditions for granting extradition was that the person for whom the extradition is being requested is not a national od Republic of North Macedonia, except in cases provided for in a ratified international agreement[14], thus aligning with the constitutional provisions.

This overview of the constitutional and legislative amendments shows that Macedonian legislation adopts fully the doctrine *aut dedere aut judicare* by providing both – the possibility to extradite nationals on bases of a ratified international agreement and possibility to prosecute nationals for crimes committed abroad. So, it looks like no legal obstacles stand in a way of criminal justice. By enabling either prosecution of criminals or their extradition, there are legal grounds to push for accountability and to fulfil the goals of the criminal justice system.

3. Effectiveness of the Legal Provisions Regarding Fight Against Transnational Crime

Despite been mainly harmonized with EU law in terms of providing mechanisms for fight against transnational crime, Macedonian legislation has one big deficiency – it does not recognize nor EU law, nor EU institutions as such. From a point of view of fight against transnational crime, the current situation creates setbacks and can lead to deeper legal issues and practical challenges.

3.1. Providing Mutual Legal Assistance to EU Institutions

Mutual legal assistance in criminal matters in North Macedonia is regulated with the Law on international cooperation in criminal matters. One of the questions it addresses is the question to whom the mutual legal assistance can be given.

According to the national legislation of North Macedonia, international cooperation shall be provided to all proceedings related to criminal offenses where criminal prosecution is in jurisdiction of the judicial authority of the Requesting State. Also, international cooperation shall be provided in the proceedings before the European Court for Human Rights, the European Court of Justice, the International Criminal Court, and pursuant to an International Agreement, and in regard to a membership of the Republic of North Macedonia to other International Organizations. The Law further defines the terms "Foreign Competent Authority" and "Requesting State". Foreign Competent Authority shall be the authority of a foreign State, that in accordance with the legislation of the foreign State, *i.e*., according to an International Agreement, holds competence for

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of 28 February 2002, in OJ L 63, of 6 March 2002; Council Decision 659/2003/JHA, *amending Council Decision 187/2002/JHA of 28 February 2002 establishing EUROJUST with a view to reinforcing the fight against serious crime*, of 18 June 2003, in OJ L 243, of 29 September 2003, pp. 44-45; Council Decision 426/2009, *on the strengthening of EUROJUST and amending Council Decision 187/2002/JHA of 28 February 2002 establishing EUROJUST with a view to reinforcing the fight against serious crime*, of 16 December 2008, in OJ 138, of 4 June 2009, pp. 14-32; Council Decision 2007/845/JHA, *on cooperation between the Asset Recovery Offices of the Member States in the field of tracing and identifying proceeds from crime or other property related to crime*, of 6 December 2007, in OJ L 332, of 18 December 2007, pp. 103-105; Council Decision 976/2008/JHA, *on the European Judicial Network*, of 16 December 2008, in OJ L 348, of 24 December 2009, pp. 130-134; and Council Framework Decision 783/2006/JHA, *on the application of the principle of mutual recognition to confiscation orders*, of 6 October 2006, in OJ L 328, of 24 November 2006, pp. 59-79.

[14] Art. 51, para. 1, line 1, of the Law on international cooperation in criminal matters.

international cooperation. Requesting State shall mean the Republic of North Macedonia or a foreign State, where the competent authority submitted a Request for an International Cooperation in Criminal Matters in the field of transfer of criminal proceedings, extradition, enforcement of foreign criminal judgements, and transfer of convicted persons.

Under the mentioned provisions, the national legislation of North Macedonia only recognizes the institutions and legislation of foreign States or international organizations that are specifically mentioned in the Law or international organizations to which North Macedonia is a member. Having in mind the EU is supranational legal entity that is not defined as a "foreign State", nor is specifically mentioned in the Macedonian national legislation nor North Macedonia is a member of the EU, it is questionable whether Macedonian authorities can provide international legal assistance to institutions representing EU, the European Public Prosecutor's Office specifically.

The European Public Prosecutor's Office (the EPPO) was established as a separate body of the Union with Council Regulation (EU) 2017/1939 of 12 October 2017[15]. The Regulation entered into force on 20 November 2017 and at the moment of establishment 22 Member States have chosen to participate in the project[16].

According to this Regulation, the EPPO shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union which are provided for in Directive (EU) 2017/1371 and determined by the Regulation (PIF offences)[17]. In order to be able to achieve its goals, the EPPO is entitled to undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States, until the case has been finally disposed of.

However, the protection of the financial interests of the EU encompasses a significant external dimension in the sense that money originating from the EU's financial instruments is not just spent within the territory of its Member States or perhaps their overseas territories but equally in countries outside the EU (third countries). As a consequence, investigations concerning fraud, corruption, and any other illegal activity affecting the financial interests of the Union (EU fraud) should not stop at its external borders. In fact, even PIF offences committed within the EU itself may bring the need to undertake investigatory acts outside the EU[18].

Art. 23 of the Regulation provides competence for EPPO for acting outside the Member States of the EU, defining the EPPO's extraterritorial jurisdiction. EPPO is competent to act in cases of PIF offences committed in the territory of one or several Member States[19] but also with respect to offences committed:

- by a national of a Member State, provided that the Member State has jurisdiction for such offences when committed outside its territory[20];

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[15] Regulation (EU) 2017/1939 of the Council of the European Union, *implementing enhanced cooperation on the establishment of the European Public Persecutor's Office ('the EPPO')*, of 12 October 2017, in OJ L 283, of 21 October 2017, pp. 1-71.

[16] Denmark, Hungary, Ireland, Poland, Sweden, and the United Kingdom decided not participating in the EPPO after the Resolution entered into force. Currently, Denmark, Hungary and Ireland are not participating in the EPPO.

[17] Art. 2 of the Regulation (EU) 2017/1939.

[18] N. FRANSSEN, *Judicial Cooperation Between the EPPO and Third Countries, Chances and Challenges*, in *EUCRIM*, Vol. 3/19, 2019, pp.198-205, available at https://eucrim.eu/articles/judicial-cooperation-between-eppo-and-third-countries/#docx-to-html-fn1.

[19] Art. 23, let. a), of Regulation (EU) 2017/1939.

[20] Art. 23, let. b), of Regulation (EU) 2017/1939.

- outside the territories (of one or several of the Member States) by a person who was subject to the Staff Regulations or to the Conditions of Employment at the time of the offence, provided that a Member State has jurisdiction for such offences when committed outside its territory[21].

In other words, the EPPO has competence in PIF offences in relation to EU nationals and EU officials. In order to be able to effectively exercise that competence in relation to third countries, the EPPO will need to resort to the use of mutual legal assistance (MLA).

When it comes to international cooperation in criminal matters with judicial authorities from third countries, the EPPO may alternatively use one of the following legal bases[22]:

- agreements concluded by the European Union on cooperation in criminal matters with the EPPO;
- agreements concluded by the European Union or to which the European Union has acceded for which the EPPO is notified as the competent authority[23];
- multilateral agreements to which the participating Member States are party, of which the EPPO is notified by these Member States as the competent authority[24];
- the European Delegated Prosecutor in charge of the investigations may make use of his/her powers as a national prosecutor to request legal assistance in criminal matters from authorities of non-EU countries, if accepted, on the basis of international agreements concluded by his/her Member State or applicable national law;
- international courtesy and reciprocity.

Moreover, according to the art. 99 of the Regulation, in so far as necessary for the performance of its tasks, the EPPO may establish and maintain cooperative relations with the authorities of third countries and in this light may conclude working arrangements with them. Those working arrangements shall be of a technical and/or operational nature, and shall in particular aim to facilitate cooperation and the exchange of information between the parties thereto. The working arrangements may neither form the basis for allowing the exchange of personal data nor have legally binding effects on the Union or its Member States. This means that the operational agreements will not deal with legal bases and other legal issues, but only with operational and technical details that will enable effective cooperation. An operational agreement of this type was concluded between the Public Prosecution Office of North Macedonia and EPPO on 22 October 2022.[25]

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[21] Art. 2, let. c), of Regulation (EU) 2017/1939.

[22] The cooperation with third countries is covered in art. 104 of Regulation (EU) 2017/1939.

[23] See as examples: Trade Agreement between the European Union and the European Atomic Energy Community, of one part, and the United Kingdom of Great Britain and Northern Ireland, on the other part, of 12 December 2020, in OJ L 149, of 30 April 2021, pp. 10-2539; Resolution 58/4 of the United Nations General Assembly, *Convention Against Corruption (UNCAC)*, adopted by, on 31 October 2003, UNDoc. A/58/455; Resolution 55/25 of the United Nations General Assembly, *Convention Against Transnational Organized Crime and the Protocol thereto*, of 15 September 2000, UNDoc. A/RES/55/25.

[24] See as examples: Council of Europe, *European Convention on Mutal Assistance in Criminal Matters*, of 20 April 1959, ETS No. 030, and its two additional Protocols, *Additional Protocol to the European Convention on Mutal Assistance in Criminal Matters*, of 17 March 1978, ETS No. 099, *Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters*, of 8 November 2001, ETS No. 182.

[25] See European Public Prosecutor's Office, *Working Arrangement on the cooperation between the European Public Prosecutor's Office (EPPO) and the State Public Prosecutor's Office of the Republic of North Macedonia*, of 24 October 2022, availabe at https://www.eppo.europa.eu/sites/default/files/2022-

Having in mind this complex legal landscape, a dilemma arises of what will happen if the EPPO issues mutual legal assistance request to North Macedonia? More precisely, can the requested mutual legal assistance be provided to the EPPO?[26]

The legal basis that the EPPO is most likely to use in the cooperation with North Macedonia are the European Convention on Mutual Assistance in Criminal Matters with its additional protocols, or the powers of the European Delegated Prosecutor in charge of the investigations as a national prosecutor to request legal assistance in criminal matters. The latter is not questionable at all, since the mutual legal assistance request will be issued by the European Delegated Prosecutor acting as national prosecutor in the name of his/her country, using the legal bases his/her country has in relation to North Macedonia. Thus such mutual legal assistance would be no different than any other mutual legal assistance request and the Macedonian authorities will be able to provide the requested assistance.

However, when it comes to mutual legal assistance issued by the EPPO on bases of the European Convention on Mutual Assistance in Criminal Matters, it would be questionable whether the national authorities of North Macedonia will recognise the EPPO as competent authority for issuing such mutual legal assistance requests. Two aspects are of interest here: in the name of which country EPPO will act as a competent authority and how the mutual legal assistance request issued by the EPPO will be communicated with North Macedonia.

It is undisputable that all Member States that support the EPPO have recognized the EPPO as a competent judicial authority for the purpose of issuing requests for mutual assistance in accordance with the European convention on Mutual Assistance and its Protocols, as well as for the purpose of providing, on request of another Contracting Party in accordance with the Convention and its Protocols, information or evidence which the EPPO has obtained already or may obtain following the initiation of an investigation in the area of its competence. The EPPO shall also be deemed to be a judicial authority for the purpose of receipt of information in accordance with art. 21 of the Convention, in respect of offences within its competence[27]. Having in mind that each of the EU Member States that support the EPPO has provided separate declaration to the European Convention on Mutual Assistance in Criminal Matters recognizing EPPO as competent judicial authority, when issuing mutual legal assistance request the European Prosecutor that investigates the case will have to declare in the name of which country EPPO acts when issuing the MLA request, in order for Macedonian authorities to be able to accept such mutual legal assistance request and act upon it. In contrary, not been recognised as a separate legal entity that has its own competence to request mutual legal assistance on bases of international agreements obliging North Macedonia, the EPPO's requests could not be accepted by the Macedonian authorities due to lack of legal basis for acting upon such a request from EPPO.

Dispute the fact that the working agreement between the EPPO and the Public Prosecution Office of North Macedonia provides the widest form of international legal assistance, including freezing of assets and forming joint investigation teams, this

10/Working%20Arrangement%20on%20the%20cooperation%20between%20the%20EPPO%20and%20North%20Macedonia.%20English%20version.pdf.

[26] It should be noted that Macedonian legislation does not recognize the European legal instruments arising from EU Directives and other EU Law, European investigation order being one of them. Thus in case where evidence needs to be obtained from North Macedonia, a mutual legal assistance request based on international instruments that oblige North Macedonia needs to be issued.

[27] Council of Europe, *the reservations and declarations for Treaty No.030, European Convention on Mutual Assistance in Criminal Matters* (ETS No. 030), available at https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=030&codeNature=0.

operational working agreement does not address the legal basis for providing the requested mutual legal assistance. Thus, when issuing an MLA request to North Macedonia EPPO cannot use this agreement as bases for cooperation and must make sure the legal grounds for issuing an MLA request exist. Moreover, as explained above it must provide explanation on behalf of which EU Member State it acts, so Macedonian authorities would be able to recognize it as a competent judicial authority of that State. Consequently, a big challenge will be forming a joint investigation team between the EPPO and North Macedonia, without presence of another EU Member State as JIT party.

Having in mind that there is no central authority to transmit the EPPO's MLA requests to North Macedonia, the question on how this MLA requests will be sent needs to be addressed. Under art. 1, para. 4, of the European Convention on Mutual Assistance in Criminal Matters requests for mutual assistance, in particular, requests for investigation preliminary to prosecution, may be communicated directly between the judicial authorities. This means that EPPO can directly approach the public prosecutor's office competent for providing assistance in executing the MLA request. According to the working agreement between the EPPO and the Public Prosecution Office of North Macedonia, on operational level a direct cooperation is established[28].

Moreover, in the process of transmission and execution of the judicial cooperation requests and decisions, EPPO closely cooperates with Eurojust and can make use of Eurojust national cooperation system, as well as its relations with third countries, including Eurojust's Liaison Magistrates[29]. Having in mind that also under the national legislation of North Macedonia the requests for mutual legal assistance can be sent and received via Eurojust[30], EPPO can use Eurojust as transmitting channel.

3.2. Providing Mutual Legal Assistance on Bases of EU Law

According to Macedonian national legislation the international cooperation shall be carried out in accordance with the provisions of the Law, unless otherwise provided for by an international agreement ratified in accordance with the Constitution of the Republic of North Macedonia or by a legal act regulating the criminal proceedings of an international court whose jurisdiction is recognized by the Republic of North Macedonia[31]. So, a challenge arises when national authorities need to act upon instruments issued by EU Member States that are based on EU law.

3.2.1. European Arrest Warrant

One of the instruments that is issued on the basis of EU law is the European Arrest Warrant (EAW). As mentioned before, the EAW is a simplified cross-border judicial surrender procedure for the purpose of prosecution or executing a custodial sentence or

[28] Art. 13, European Public Prosecutor's Office, *Working Arrangement on the cooperation between the European Public Prosecutor's Office (EPPO) and the State Public Prosecutor's Office of the Republic of North Macedonia*, cit.

[29] Art. 8 of the Working Arrangement between Eurojust and the EPPO, available at https://www.eurojust.europa.eu/document/working-arrangement-between-eurojust-and-eppo; and art. 50 of Regulation (EU) 2018/1727 of the European Parliament and of the Council, *on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA*, of 14 November 2018, OJ L 295, of 21 November 2018, pp. 138-183.

[30] Art. 7 paragraph 6 of the Law on international cooperation in criminal matters.

[31] Art. 2 of the Law on international cooperation in criminal matters.

detention order. An EAW issued by one EU country's judicial authority is valid in the entire territory of the EU. The mechanism is based on the principle of mutual recognition and therefore operates via direct contacts between judicial authorities. An EAW may be issued by a national judicial authority for 1) prosecuting a person when the offence for which the person is being prosecuted is punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months; or 2) the execution of a custodial sentence or detention order when the sentence passed is of at least 4 months[32].

The challenge occurs in practice when a person for whom an EAW is being issued is being temporary detained by Macedonian authorities.

According to the Macedonian national legislation, authorized officials from the Ministry of Internal Affairs may deprive the person of its liberty on bases of previously issued international arrest warrant through INTERPOL or an extradition request[33]. So in the case of the EAW two main obstacles are present: first, the EAW is not issued on the basis of international instrument recognized by the both sides: North Macedonia and the issuing EU Member State, but on the basis of the Framework Decision on the EAW and the Surrender procedures between Member States and second, the national legislation does not provide possibility a person to be deprived of liberty on the basis of the EAW. Thus, being an international instrument recognized only by the EU Member States and not by Macedonian legislation, the EAW could not produce any legal effect in North Macedonia. So, if EAW is issued for some person, the only available option for Macedonian authorities is to act according to national procedures regarding detaining of persons and inform the authorities of the issuing country that the person is detained in North Macedonia.

According to the national legislation, without a court order a person can be detained no longer than 24 hours[34]. After this deadline has expired, if the detained person is not brought up in front of a judge, then he/she should be liberated. In order for the pre-trial judge to be able to order detention for extradition purposes against the person whose extradition is requested, several conditions need to be met: a competent public prosecutor must submit a proposal to the pre-trial judge; the proposal must be based on issued international arrest warrant or on extradition request and there are circumstances indicating that the person whose extradition is requested will hide or flee[35]. Thus, the national legislation of North Macedonia recognizes only two legal bases for ordering detention for extradition purposes: issued international arrest warrant or extradition request. Being neither of both, the EAW cannot clearly serve as a legal ground for detaining a person.

In practice it has happened that persons for whom an EAW was issued are detained when attempting to enter or leave the borders of North Macedonia. In cases like this, the prosecutors authorized the detaining of such persons for the time period of up to 24 hours and attempted to inform the issuing authorities for the fact that the person of interest is being detained. Also issuing authorities were being informed that under the Macedonian national legislation, the EAW is not considered legal basis for further detention and if the issuing country has interest in obtaining the detained person, than an international arrest warrant must be issued before expiration of the 24 hours of the temporary detention of

[32] European Commission, *European arrest warrant*, available at https://commission.europa.eu/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/european-arrest-warrant_en.
[33] Art. 59 of the Law on international cooperation in criminal matters.
[34] Arts. 69 and 161 of the Criminal Procedure Code.
[35] Art. 63 of the Law on the international cooperation in criminal matters.

the person. In some cases there has been prompt reaction by the issuing State and an international arrest warrant was issued, enabling Macedonian authorities to seek and obtain detention for extradition purposes. However, this was not always possible and there were cases when high value targets were liberated due to existence of legal obstacles that prevented their detention.

The situation would be even more complex if the EPPO is the issuing authority of the EAW. In cases like this, it is the European Delegated Prosecutor that would need to issue international arrest warrant using its powers as national prosecutor or ask its national authorities to issue such warrant. However, it is questionable whether this can be covered in 24 hours.

3.2.2. The European Confiscation Order

One more instrument based on EU Law is the European confiscation order. The European Parliament and the Council adopted a regulation on the mutual recognition of freezing orders and confiscation orders[36], aiming at making the freezing and confiscation of criminal assets across the EU quicker and simpler.

The major "innovation" is that, for the first time, the EU legislator chose a Regulation and not a Directive to govern future cooperation in an area mutually enforcing Member States' orders. Against the opposition of several Member States (including Germany), which favoured a Directive, the provisions of the Regulation will be directly applicable, thus hindering Member States from implementing the EU instrument into their national legal orders[37].

The Regulation is based on the general principle of mutual recognition, meaning that all judicial decisions in criminal matters taken in one EU country will normally be directly recognised and enforced by another EU country. There are only a limited number of reasons for non-recognition and non-execution[38].

To harmonize the procedure and allow quicker and more efficient freezing and confiscation actions, a freezing certificate was introduced as a manner for transmission of the freezing orders and a confiscation certificate as a manner to transmit the issued confiscation orders[39]. Also, short deadlines for the recognition were introduced – a deadline of 45 days for the recognition of a confiscation order and, in urgent cases, a deadline of 48 hours for the recognition and 48 hours for the execution of freezing orders, with possibility to postpone these limits only under strict conditions[40].

Under national legislation of North Macedonia, one form of international legal cooperation is the providing of the international legal assistance[41]. The international legal assistance understands, among other things, temporary securing of objects and assets related to criminal offenses, temporary freezing, seizure and securing of a bank account

[36] The Regulation replaces the provisions of Framework Decision 2003/577/JHA as regards the freezing of property and Framework Decision 2006/783/JHA as of 19 December 2020. It should be noted, however, that the existing framework continues to apply to Denmark and Ireland, which are not bound by the new Regulation.
[37] T. WAHL, *Regulation on freezing and confiscation orders*, in EUCRIM, Volume 4/18, 2019, pp.201-202, available at https://eucrim.eu/news/regulation-freezing-and-confiscation-orders/.
[38] Arts. 8 and 19 of Regulation (EU) 2018/1805, of the European Parliament and the Council, *on the mutual recognition of freezing orders and confiscation orders*, in OJ L 303, of 28 November 2018, pp. 1-38.
[39] *Ibidem,* arts. 6 and 14.
[40] *Ibidem,* arts. 9 and 20.
[41] Art.4 of the Law on international cooperation in criminal matters.

transactions or assets arising from criminal offenses and confiscation of assets[42]. And for providing mutual legal assistance in criminal matters a specific request needs to be drafted and sent to the Macedonian authorities. Thus, it is clear that any freezing and confiscation certificates issued under the Regulation (EU) 2018/1805 are not recognized and cannot serve as a legal basis for providing mutual legal assistance to EU Member States. In cases like this the EU Member States would need to send an MLA request to Macedonian authorities requesting freezing, seizure or confiscation of assets.

3. Conclusion

The national efforts of North Macedonia for aligning with the EU law in the area of fight against transnational crime have started more than decade ago. Significant reforms, including constitutional amendments and the adoption of new legislation, have eliminated many formal legal barriers that could enable impunity. Today, the legal system provides mechanisms for either extradition or prosecution of nationals, in line with the *aut dedere aut judicare* principle. This alignment reflects both a commitment to international cooperation and a readiness to engage more fully with European standards.

However, legal harmonization on paper does not always translate into effective enforcement. A critical gap remains in the recognition of EU law and institutions, particularly in relation to instruments based on EU secondary legislation and the role of the EPPO. North Macedonia's current legal framework does not explicitly acknowledge the EU as a legal entity capable of issuing mutual legal assistance requests, nor does it recognize instruments such as the EAW or EU regulations on asset confiscation. These limitations create significant obstacles in practice, especially in cases where swift cross-border cooperation is required to prevent suspects from escaping justice or to secure assets.

This reality gives rise to a deeper dilemma: Is the effective fight against transnational crime a self-standing national goal, or is it merely a milestone within the EU integration process? And, more importantly, is the absence of constitutional obstacles sufficient, or should North Macedonia take a proactive approach in developing a culture of accountability that transcends the accession agenda?

North Macedonia's EU path, initiated with the Stabilization and Association Agreement in 2001, has been marked by prolonged delays and political complications – many beyond its control. Despite repeated recommendations by the European Commission to open accession negotiations[43], progress has stalled. In this context, the

[42] *Ibidem,* art. 15.

[43] The second recommendation was given on 1 November 2010, the third on 1 October 2011, the fourth on 01 October 2012, the fifth on 01 October 2013, the sixth on 01 October 2014. In 2015 and 2016, the recommendation was made conditional on the continued implementation of the Pržino agreement and substantial progress in the implementation of the "*Urgent Reform Priorities*". In light of the progress achieved, the Commission repeated its unconditional recommendation to open accession negotiations in April 2018 (Seventh recommendation), followed by the eight recommendations from May 2019. In March 2020, the members of the European Council endorsed the General Affairs Council's decision to open accession negotiations with North Macedonia. In July 2020 the draft negotiating framework was presented to the Member States. In July 2022, the Intergovernmental Conference on accession negotiations was held with North Macedonia. In July 2022, the Commission started the screening process and in July 2023, the European Commission submitted to the Council the screening report on Cluster 1 – Fundamentals, including benchmarks for opening accession negotiations on this cluster.

rule of law and the fight against organized crime must not be seen as conditional obligations, but as essential components of State integrity and public trust.

Unfortunately, recent legislative changes – including the reduction of penalties for criminal association and abuse of office[44] – cast doubt on the country's true commitment to justice reform. These setbacks have raised concerns over impunity, diminished accountability, and weakened efforts to combat high-level corruption. The continued presence of fugitives and low success in asset recovery further erode confidence in the criminal justice system.

The future direction North Macedonia chooses – whether driven by uncertain EU prospects or a firm national commitment to justice – will determine whether the fight against transnational organized crime becomes a sustainable reality. It is imperative that future reforms go beyond formal alignment with the EU *acquis*. They must actively recognize EU instruments and institutions, strengthen domestic capacities for cooperation, and foster a legal culture rooted in accountability, mutual trust, and operational efficiency. Only then can North Macedonia ensure that its criminal justice system is not just legally compatible with EU norms, but functionally equipped to combat the complex threats posed by transnational crime.

ABSTRACT

The Republic of North Macedonia, as a candidate country for European Union membership, is undergoing a constitutional and legal transition to align with EU criminal justice norms. By elaborating the historical and current legal position of extradition and the legal position under domestic legislation of the European Arrest Warrant (EAW) and the European Confiscation Order (ECO) as key EU instruments in the fight against transnational crime, this speech explores the following dilemma: is, despite the uncertain nature of the EU accession process, the North Macedonia's goal in the fight against transnational crime certain?

The country's EU integration path had significant influence on the ongoing constitutional and legislative reforms in the criminal justice area. In particular, Art. 13 of the Constitution has been amended to permit the extradition of nationals where required by international treaties – a notable deviation from conventional sovereignty protections, signalling a constitutional openness to deeper international cooperation in criminal matters. Art. 12 continues to provide key guarantees related to due process and protection against arbitrary detention, harmonizing it with human rights standards. Currently, North Macedonia relies on bilateral and multilateral treaties, such as the European Convention on Extradition (1957), to manage cross-border criminal cases. Although these conventional mechanisms are often slow and inadequate, they struggle to respond to the complex realities of contemporary transnational crime. The EAW, by contrast, offers a more efficient and standardized system based on mutual trust and judicial cooperation within the EU. As North Macedonia is still in the process of becoming an EU member, it currently does not recognize the EAW or similar EU instruments, including the European Confiscation Order (ECO) within its legal order. Designed as a critical legal tool that facilitates the mutual recognition and enforcement of asset freezing and confiscation orders across EU jurisdictions, the ECO framework would substantially strengthen North Macedonia's capacity to dismantle the financial infrastructure of organized crime, especially if the existing procedural safeguards and proportionality standards are further refined and aligned with EU legal norms. Thus, a major challenge for North Macedonia

[44] Law on amendments on the Criminal Code (Official gazette of North Macedonia No.188/23).

is developing legislative pathways and domestic mechanisms that would enable its judicial authorities to acknowledge and act upon these instruments prior to full EU membership. In parallel with legal reforms, institutional capacity-building is imperative. Efficient fight against translational crime requires strong and competent institutions. Thus, enhancing judicial and law enforcement capabilities, expanding training on EU instruments and stimulating better information and evidence sharing are crucial. Special attention should be given to the collaboration with EU agencies such as Europol, Eurojust, OLAF, and the European Public Prosecutor's Office (EPPO). In conclusion, North Macedonia has made significant advancements toward legal and constitutional alignment with EU norms. However, additional reforms are needed to recognize and apply EU instruments like EAW and ECO. These developments, apart from being vital for advancing EU accession goals and enhancing the State's resilience in the fight against transnational crime, will clearly demonstrate if North Macedonia's goal in the fight against transnational crime is certain.

KEYWORDS

EPPO, European Arrest Warrant (EAW), European Union, European Confiscation Order (ECO), Mutual Legal Assistance.

TRANSNATIONAL ORGANIZED CRIME AND CHALLENGES FOR THE REPUBLIC OF SERBIA IN THE EU ACCESSION PROCESS-CONSTITUTIONAL ASPECTS

by Miloš Stanić[*]

1. Introduction

The key characteristics of organized crime which determine more a proactive approach of States in its suppression are: limited number of members in criminal organization, hierarchical structure, durability of criminal organization, monopolistic character and – what is the key characteristic of organized crime – its non-ideological character. Namely, the organized group does not have ideological, political goals as their key motives and goals are money and power[1]. Fight against organized crime is a proactive, strategically oriented activity of all contemporary, democratic States, both nationally and at the international level. Transnational organized crime refers to criminal activities that span multiple countries and are carried out by criminal organizations that operate across borders. These crimes include drug trafficking, human trafficking, arms smuggling, money laundering, cybercrime, and terrorism. From a constitutional perspective, addressing this type of crime involves balancing national sovereignty, human rights, international cooperation, and the rule of law. Therefore, the set limits of more efficient suppression of the most serious crimes are the result of active reforms of national normative frameworks, ratified international documents, but also intensive professional cooperation between countries in the field of detecting, combating and prosecuting organized crime. Security threats, which are extremely high when it comes to organized crime, would be difficult to combat without adequate international cooperation between democratic States[2].

As a matter of fact, organized crime represents a great threat to contemporary, democratic States, but it also sets the standards for the necessary improvement of the normative framework aiming at detecting, proving and prosecuting organized crime more effectively. In its decadeslong presence in Europe, organized crime has been characterized as having a special type of network structure, especially when it comes to international organized crime, which does not recognize the authorities of various police and judicial bodies. These facts support the argument that the use of regular methods of detecting and proving these crimes is not enough and that it is important for countries, including Serbia, to take up new steps to fight even more effectively to suppress this form of crime. These requirements do not arise only from the aforementioned fact, but also from ratified international documents and the process of Serbia's accession to the European Union,

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[1] D. ČVOROVIĆ, *Suppression of Organized Crime and Serbia's Accession to the European Union*, in *Bezbednost*, Vol. 64, No. 1, 2022, pp. 5-32, in part. p. 6.

[2] *Ibidem*, p. 5.

which through fundamental rights and procedural guarantees, requires a reform of the regulatory framework with the aim of more efficient action of specialized bodies[3].

2. Constitutional Aspects of Combat Against Transnational Organized Crime

We should emphasize that the constitutional aspects of transnational organized crime are complex and multi-layered, involving a delicate balance between national security, international cooperation, human rights, and sovereignty. The development of effective legal frameworks often requires constitutional amendments or reinterpretations to address the evolving nature of global crime, ensuring that State powers are exercised responsibly and that individuals' rights are protected within the broader effort to combat criminal organizations operating across borders. The European Union has faced the problem of organized crime since its creation in the 1990's and it has become an ever-increasing threat to the security of Member States, and thus affects European Union's activities and policies. As the risk from organized crime had become greater, the Member States developed a stronger response to organized crime. The integrated approach guiding the action of the European Union extends from prevention to law enforcement, including cooperation of Member States, especially the law enforcement agencies, the exchange of information, cooperation between joint work groups, etc. The legal framework of the European Union against organized crime plays the most important role. In addition, the European Union is a pioneer in developing an all-inclusive criminal justice response to organized crime, and through its instruments has to a great extent contributed to the global fight against organized crime. In that sense many standards and policies have been adopted, in particular with the aim of harmonizing the international framework and legal regulations of Member States in the fight against organized crime. The basic instruments of the European Union that deal with the problem of combating organized crime will be presented in the paper, including The Stockholm Programme (2010) and The Action Plan (2010-2014), The Framework Decision of the European Union on the Fight Against Organized Crime (2008) and other decisions (2002, 2003, 2005, 2006, 2007, 2008, 2009), as well as strategies (2000, 2003, 2005, 2010), joint action (1996, 1998), action plans (1997, 2000), conventions (1995, 2009), resolutions (1996, 1998) and EU communications (2000, 2004, 2005, 2007)[4]. Also, the relationship between international organized crime and EU accession is a complex and critical issue. Candidate countries seeking to join the European Union are required to meet strict political and legal criteria, one of which includes the ability to effectively combat organized crime[5].

Many constitutions permit or require their governments to enter into international treaties and conventions to combat transnational organized crimes. These treaties often establish frameworks for extradition, mutual legal assistance, and the exchange of information between countries to track criminal activities and apprehend offenders. For example, Interpol, Europol, and other international law enforcement bodies play crucial roles in facilitating cooperation. The Constitutional limits on such agreements can vary depending on the nation, with some requiring legislative approval before entering into

[3] *Ibidem*, p. 6.

[4] A. IVANOV, R. RAJKOVCHEVSKI, *The European Arrest Warrant. A Legal Instrument to Counter Transnational Crime in the EU. Zbornik radova sa naučno-stručnog skupa sa međunarodnim učešćem-Suzbijanje kriminala u okviru međunarodne policijske saradnje*, Beograd-Tara, 2011, pp. 127-137; M. ŠIKMAN, *Pravni okvir Evropske unije protiv organizovanog kriminaliteta*, in G. MARKOVIĆ (ed.), *Однос права у региону и права Европске* уније, Vol. II, Sarajevo, 2015, pp. 388-407, in part. p. 388.

[5] V.D. STANKOVIĆ, *Institucionalni mehanizmi Evropske Unije u suzbijanju organizovanog kriminala i obaveze Republike Srbije u procesu pridruživanja. doktorska disertacija*, Belgrade, 2020.

international treaties that affect national laws or sovereignty. A country might also require that certain constitutional rights be protected even in the context of international agreements. This system is dominated by sovereignty, effective law enforcement and the objectification of individuals as criminals. There is little express protection of human rights within the suppression conventions. The conventions rely primarily on existing domestic protection of human rights and secondarily on general international human rights law. The problem is that the conventions are adopted at the international level, and then applied at the national level, but human rights only come into play, if at all, at the national level, reactively rather than proactively. Moreover, the conventions encourage a "law and order" attitude from State parties which may cause them to go further than strictly obliged to, with negative consequences for individual rights. At this point, constitutional order should be the last line of defense for human rights.

3. International Public Law and Transnational Organized Crime. Constitutional Aspects

The "suppression conventions", crime control treaties concluded with the purpose of suppressing harmful behaviour provide, through a range of complex provisions for the criminalization by State parties in their domestic law of certain offences, for severe penalties, for extra-territorial jurisdiction, and for a variety of procedural measures. The use of treaty law to establish these regimes is not a recent development. International society responded to the globalization of harmful conduct by beginning to develop suppression conventions in the 19th century, and this approach has steadily become more significant[6]. Anyway, the relationship between international law and national legal systems is a foundational issue in both legal theory and practice. It determines how international obligations are adopted, interpreted, and enforced within States. This relationship varies from country to country depending on constitutional structures, legal traditions, and judicial interpretation. The relationship between the norms of international law and those of domestic law is still understood in terms of concepts developed one hundred years ago: monism and dualism. According to the principle of monism, international and national legal systems are part of a single legal order. Contrary, the fundamental premise of the dualistic theory is the existence of two fully separate and independent systems that can influence one another but cannot overlap[7]. Namely, one legal act can exist, be in force and have a legal effect in one system (be it in the domestic or international one), while being "unknown" in the other. Because they exist as two independent and separate legal orders, the question of conflict or pre-eminence should not, or cannot, be asked. Here, it should be noted that dualism leans on the issue of the nature of international law, and primarily the dogma of the absolute sovereignty of States. By negating the objective legal nature of international law, thus qualifying domestic law not only as primary, but also as perfect and the legal model for international law, a State had to explicitly State that it accepted a certain rule of international law, otherwise, a specific rule would not bind it. The relationship and subordination of these two legal orders, according to dualism, is impossible, as between them there is a distinction between the source of law, the subject to the law and the different relationships[8].

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[6] N. BOISTER, *Transnational Criminal Law?*, in *European Journal of International Law*, No. 14(5), 2003, pp. 953-976, p. 955.
[7] M. RAJOVIĆ, *Odnos unutrašnjeg i međunarodnog prava prema Ustavu Crne Gore*, in *Glasnik Advokatske komore Vojvodine*, No. 95(1), 2023, pp. 46-105, p. 77.
[8] *Ibidem*, p. 78.

If one compares the contemporary situation with that of one hundred years past, almost every relevant element has changed: the nation-state's evolution in tandem with the process of globalization; the gradual elaboration of international law; the emergence of general constitutional adjudication; and, above all, positive constitutional provisions on the role of international law within domestic systems. As theories, monism and dualism are today unsatisfactory. As doctrines, they are likewise unsatisfactory since they do not help in solving legal issues. A convincing theoretical account of how to "reconstruct" the pyramid will probably be based on a theory of legal pluralism. The concept of legal pluralism does not imply a strict separation between legal regimes. Rather, it promotes the insight that there is an interaction among the different legal orders. This concept has far-reaching consequences for the understanding of constitutional law: any given constitution does not set up a normative *universum* anymore but is, rather, an element in a normative *pluriversum*[9].

Comparatively, today, the dualistic theory is, mostly, abandoned, although it is present in, for example, art. 10 of the Constitution of the Italian Republic. The new theory, monism, comes into existence as a reaction to dualism. Qualifying these two laws as segments of a unique legal system, monism's starting point is the unity of law. Namely, a concrete relationship can be regulated in different ways, so the questions of which law should be given precedence within the framework of a legal system is asked – international or domestic. In constitutional systems, monism ranges from qualifying international law as a part of domestic law (*e.g.*, art. 6, para. 2 of the Constitution of the United States of America), over the primacy of international law over State law (*e.g.*, art. 25 of the Constitution of the Federal Republic of Germany), to the absolute dominance of domestic law (*e.g.*, art. 8 of the Constitution of the Republic of Belarus)[10]. Regarding our country, in the Serbian constitution is clearly stipulated that the foreign policy of the Republic of Serbia shall be based on generally accepted principles and rules of international law. Generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly. Ratified international treaties must comply with the Constitution (art. 16)[11].

4. Human Rights and Transnational Organized Crime

Even in the context of transnational organized crime, constitutional human rights protections are paramount[12]. At the beginning of the part on human rights, Serbian Constitution sets out the fundamental principles, which are of particular value in the constitutional system of Serbia. They are direct implementation of guaranteed rights, the purpose of constitutional guarantees, restriction of human and minority rights, prohibition of discrimination and protection of human and minority rights and freedoms. These principles maintain the attitude of the constitution-maker on the importance of human rights, and together with constitution principles, above all the principle of the rule of law, constitute the constitutional framework for the implementation of human rights. The principle of direct implementation of guaranteed rights implies that human and minority

[9] A. VON BOGDANDY, *Pluralism, Direct Effect, and the Ultimate Say. On the Relationship Between International and Domestic Constitutional Law*, in *International Journal of Constitutional Law*, No. 6(3-4), 2008, pp. 397-413, p. 399-401.
[10] M. RAJOVIĆ, *op. cit.*, p. 77.
[11] D. ĐUROVIĆ, *Odnos unutrašnjeg i međunarodnog prava u pravnom poretku Republike Srbije*, in Анали Правног факултета у Београду, Vol.. 57, No. 2, 2009, pp. 338-353.
[12] A. BULATOVIĆ, *Ljudska prava u savremenoj politici borbe protiv transnacionalnog organizovanog kriminala. doktorska disertacija*, Belgrade, 2016.

rights guaranteed by the Constitution should be implemented directly. The Constitution guarantees, and as such, directly implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws. The direct implementation of guaranteed rights means that the law is not a necessary mediator between the constitutional norm and its practical application. This principle applies to all holders of the constitutional authority, but it is primarily aimed at ensuring human rights in relation to the legislature[13].

The law may prescribe the manner of exercising these rights only if explicitly stipulated in the Constitution or necessary to exercise specific rights owing to its nature, whereby the law may not under any circumstances influence the substance of the relevant guaranteed right. Provisions of human and minority rights should be interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation (art. 18, para 3). This means that when interpreting human rights provisions, the attitudes of the European Court of Human Rights and the United Nations contracting bodies should be taken into account, which is very important, when it comes to the combat against transnational organized crime. Constitutional guarantees of human rights have the purpose of preserving human dignity and exercising full freedom and equality of each individual in a just, open and democratic society based on the principle of the rule of law[14].

Given that the provisions on human and minority rights are interpreted in favor of promoting the values of the democratic society, in accordance with the applicable international standards of human and minority rights, as well as the jurisprudence of international institutions, domestic courts are in position to interpret the Constitution in accordance with European standards, especially with the European Court of Human Rights. In addition to this general clause, the Serbian Constitution explicitly foresees the reasons for restricting certain rights. These reasons are contained in the chapter on human rights and freedoms, specifically within the provisions determining the notion and content of the particular right. The Constitution regulates the special regime of human and minority rights in the state of emergency and the state of war. When proclaiming the state of emergency or state of war, the National Assembly may prescribe the measure which shall provide for derogation from human and minority rights guaranteed by the Constitution. Derogations from human and minority rights are permitted only to the extent deemed necessary. Measures providing for derogation should not bring about differences based on race, sex, language, religion, national affiliation or social origin[15].

The core of the national system of human rights protection consists of the courts, which are expected to submit the largest 'burden' in terms of protecting human rights. Judicial protection is the primary and the most important form of human rights protection[16]. The Constitutional Court of Serbia, established by the Constitution of 2006, has received a number of new competencies and has become one of the pillars of the constitutional system, which has the great responsibility in terms of preserving the principles of constitutionality and legality and with regard to the protection of human rights. The protection of human rights in the proceedings before the Constitutional Court

[13] M. NASTIĆ, *The Constitutional Protection of Human Rights in Serbia. Challenges and Perspectives*, in *Proceedings of the International Scientific Conference "Social Changes in the Global World"*, Vol. 1, No. 5, 2018, pp. 421-437, in part. p. 422.
[14] *Ibidem*, p. 423.
[15] *Ibidem*, p. 425.
[16] *Ibidem*, p. 427.

is exercised in the procedure of constitutional review and in the constitutional appeal procedure[17].

In the constitutional appeal procedure, direct protection of the constitutional rights is ensured. From the aspect of human rights, special constitutional law protection of fundamental rights confirms their high rank and their superiority in relation to ordinary legislation. The constitutional appeal may be filed against individual acts or actions of State authorities or organizations vested with the public authority that violate or deny human and minority rights and freedoms guaranteed by the Constitution, when other legal remedies are exhausted or are not prescribed or where the right to their judicial protection has been excluded by law (art. 170 of the Constitution). The constitutional appeal has the status of an extraordinary legal remedy, which can be stated only after all available legal remedies have been used. Deciding on constitutional appeals, the Constitutional Court acts as a special instance of citizens' appeals on the principle of *inter partes*, which is an exception to the general *erga omnes* rule. By establishing the jurisdiction of the Constitutional Court to decide on constitutional appeals, the Republic of Serbia became part of a large "family" of European States led by Austria and Germany. Namely, the constitutional appeals appear as the last legal remedy to be used before the eventual address to the European Court of Human rights[18].

5. Strengthening the Judiciary in Serbia

The Europeanization of Serbia's legal order, which encompasses the European integration process as well as membership of other European and regional organizations, such as the Council of Europe (CoE) and the Organization for Security and Co-operation in Europe (OSCE), has had a strong influence on the re-modeling of the constitutional and legal order. Henceforth, the dedication to European values as well as the fulfillment of the membership criteria in the European integration process shapes the existence and adapt the future of the core components of rule of law as a meta-principle, such as an independent and properly functioning judiciary[19]. The Republic of Serbia, as a candidate country for EU membership, is in the process of (re)building its political reality and is also undergoing the democratic transition of its political and legal systems. Accordingly, the discourse on the constitutional transformation of the Republic of Serbia was intensified after the latest amendments to the Constitution adopted in 2022[20]. Serbia should particularly strengthen the independence, accountability, professionalism and overall efficiency of the judicial system. One of the first steps, in order to fulfill this aim, was to exclude the National Assembly from the process of electing court presidents, judges, public prosecutors and deputy public prosecutors, as well as members of the High Judicial Council and the State Prosecutorial Council[21].

When it comes to the new set of constitutional amendments, from a substantive point of view, they indeed brought about some key changes and improvements in the judiciary. This is especially the case when it comes to the election of judges, which is one of the most controversial issues in the field of the judiciary in Serbia. With the aim to

[17] *Ibidem*, p. 430.
[18] *Ibidem*, p. 430-431.
[19] V. DABETIĆ, *New Constitutional Amendments in the Field of Judiciary in Serbia. A Step Towards Europe?*, in *Contemporary Southeastern Europe*, Vol. 10, No. 2, 2023, pp. 22-38, in part. p. 23.
[20] *Ibidem*, p. 22. See also I. PEJIĆ, *Constitutional Referendum and Judicial Reform in Serbia*, in *Зборник радова Правног факултета у Нишу*, No. 94, 2022, pp. 75-92, in part. pp. 80-87.
[21] M. NASTIĆ, *op. cit.*, p. 429.

depoliticize the process of appointing new judges, the composition of the High Judicial Council was changed. Now, the National Assembly appoints four members by a 2/3 majority compared to the previous eight members. In addition, the Minister of Justice is no longer an *ex officio* member of the Council. The Council has 11 members: 6 judges elected by judges, 4 prominent lawyers elected by the National Assembly, and the President of the Supreme Court. The goal of such a solution is to at least partially maintain a connection with the Assembly, which embodies popular sovereignty, but to prevent the politicisation of the election of these members and ensure their maximum independence and impartiality. The standard of the Venice Commission on the balanced composition of the judicial council, which will not comprise judges alone, but in which "*judges and lawyers and the public will be adequately represented*", is completely fulfilled. Members are elected to the Council for five years, and re-elections are not allowed. The Council has a President and Vice President. The President is elected by the Council from among members who are judges, and the Vice President from among members elected by the National Assembly, for five years. By these means, the possibility of politicization of judicial appointments was reduced, especially in the process of selecting judges in courts of lower jurisdiction. Secondly, the jurisdiction of the Council was expanded, being now the only judicial body authorized to appoint judges, court presidents and the president of the Supreme Court. The exclusive right of this judicial entity to appoint judges guarantees to a much greater extent selection based on objective and substantive criteria, instead of political criteria and motivations. This fulfils another standard of the Venice Commission, the independence of the body responsible for the status of judges and related issues. Finally, the three-year trial period for appointments was abolished, and now judges are considered appointed until they reach the end of their working life[22].

The constitutional amendments from 2022 seek to find a balance between political and judicial authorities. It concerns the old aspiration to find a balance between partocracy and sudocracy, without damaging the system of constitutional democracy. Politics is withdrawn from the election of judges. However, the withdrawal is not absolute as judges judge operate in the name of the people, and every power, including the judiciary, has its source in the people. Therefore, the judiciary, which is independent, cannot entirely spring from or respond to itself. Absolute independence, without mechanisms of mutual influence negates responsibility. A constitutional democracy is unthinkable without a clearly established and constitutionally achievable principle of responsibility. The constitutional amendments determined that judicial power belongs to independent courts[23].

A far more demanding part of the road follows. Now we should think about the experience of European countries that entered the European Union significantly before Serbia. All of them, just in different ways, constantly face the challenges emanating from the independence, efficiency, and responsibility of the judiciary and the rule of law as a fundamental principle and value standard of the functioning of a constitutional democracy. In an era that many perhaps lightly call a somewhat pathetic "crisis of democracy and the rule of law" in the world, Serbia, a country with an especially rich constitutional and political history, has achieved positive developments through the legal organisation of its State and society. Every step in the process, especially in light of the extremely delicate conditions at present, must be carefully thought out and undertaken with a clear and just vision that respects the international realm for the preservation and

[22] V. DABETIĆ, *op. cit.*, p. 30; V. PETROV, *Judicial Reform in Serbia in Light of "*The Venetian Concept*" of the Rule of Law*, in *Central European Journal of Comparative Law*, Vol. 4, No. 2, 2023, pp. 233-257, in part. pp. 245-248.
[23] V. PETROV, *op. cit.*, p. 243.

development of real (national) identity law. It is neither about State and national egoism, nor about a policy of self-isolation. It is about building State and national self-respect, which is a prerequisite for rational respect, not irrational fear of other States and international institutions[24].

6. Combat Against Transnational Organized Crime. State of Play in the Republic of Serbia

Serbia joined the regional project on trial monitoring of organised crime and corruption cases[25] and is yet to finalise ongoing work to align its legal framework on organised crime with the EU *acquis*. The Prosecutor's Office for Organised Crime and the Special Prosecutor's Office for Cybercrime lacks sufficient human, material, and technical resources to carry out their tasks. The police services still require a shared case/workflow management system, connecting all institutions and giving them access to a common database. Serbia should continue to work towards ensuring a fully operational national criminal intelligence system and should take relevant steps to make the Asset Recovery Office fully operational, including by ensuring access to all relevant databases. Serbia's legal framework on police cooperation and organised crime is not fully aligned with the EU acquis. The new Law on internal affairs will have to address both this issue and the recommendations of the Committee for the Prevention of Torture (CPT). Amendments to the Law on organisation and competence of State authorities in suppression of organised crime, terrorism and corruption should be adopted to improve the institutional set up in the fight against organised crime. A clear separation needs to be made between the remits and regulations for criminal investigations and those for security purposes. Serbia continued to implement the action plan for the strategy against money laundering and financing of terrorism (2020-2024) in a satisfactory manner. Amendments to the Law on the seizure and confiscation of the proceeds of crime are still pending. In March 2024, Serbia adopted the programme for the fight against human trafficking (2024-2029) and action plan for 2024-2026. A new National Coordinator for the fight against human trafficking was appointed in September 2023. The Council for Combating Trafficking in Human Beings was re-established in July 2023, and held a first meeting in December 2023. Serbia continued to implement the action plan for the strategy for the control of small arms and light weapons (2019-2024)[26].

The strategy and action plan for the fight against cybercrime expired at the end of 2023. The Criminal Code and the Criminal Procedure Code are not yet harmonised with the Second Additional Protocol to the Council of Europe Budapest Convention on Cybercrime. In December 2023, Serbia adopted a new SOCTA (Serious and Organised Crime Threat Assessment) to set operational priorities for fighting serious and organised crime for 2024-2027. In 2023, whilst there was a significant increase in the number of individuals indicted for organised crime (251 compared to 132 in 2022), there was a decrease in the number of individuals convicted and of individuals under investigation. The number of cases in final rulings was the same in 2023 as in 2022 at 189, while the number of new investigations remained stable (29 in 2023 compared to 31 in 2022). The use of plea agreements needs to be carefully balanced against the need to avoid any impression of impunity in serious and organised crime cases. The number of proactive

[24] *Ibidem*, p. 254.
[25] European Commission, *Serbia 2024 Report*, of 30 October 2024, SWD(2024) 695 final, p. 6.
[26] *Ibidem*, p. 43.

investigations, based on intelligence-led policing, focusing on high profile cases aiming at dismantling big and international criminal organisations should be increased[27].

7. Conclusion

We have seen that the combat against transnational organized crime, when looking at the constitutional aspect, is layered. In fact, and in accordance with the very nature of the constitution, it provides only a general framework in this matter. But that framework is very important, because it concerns the strengthening of the entire State apparatus, international conventions, and the protection of human rights. It goes without saying that the normative framework is further elaborated by appropriate norms of a sub-constitutional nature. However, we must keep one thing in mind when it comes to the fight against transnational organized crime. Simply, it takes time to strengthen institutions, to implement appropriate solutions. Therefore, we always have to separate two, often temporally unrelated parts, the creation of an appropriate legal framework and its implementation. In this sense, the Republic of Serbia is unequivocally on its way to the European Union, meeting the appropriate standards in this area. But we must be aware of the fact that it has a long way to go in this area, even when it becomes a member of the European Union, because the fight against transnational organized crime is a never-ending process. This applies not only to Serbia, but to all countries in the world.

ABSTRACT

Transnational organized crime is present in almost all spheres of life and work. The European Union has faced that problem since its creation in the 1990's (The Maastricht Treaty) and it has become an ever-increasing threat to the security of Member States, and thus affects European Union's activities and policies. As the risk from organized crime had become greater, the Member States developed a stronger response to organized crime. The integrated approach guiding the action of the European Union extends from prevention to law enforcement, including cooperation of Member States, especially the law enforcement agencies, the exchange of information, cooperation between joint work groups, etc. The Republic of Serbia, as a candidate country for EU membership, is expected to continually improve its national legislative and administrative framework, as well as to develop a comprehensive strategic overview of organized crime in the country. Therefore, regarding constitutional aspects, we should bear in mind few connected issues. These are, when we have in mind Serbia: relationship between constitutional order and international public law, human rights protection, strengthening judicial system through Constitutional amendments. At the very end, before the conclusion, the author provides an overview of the state of play in the fight against transnational organized crime in Serbia, based on the annual report of the European Union.

KEYWORDS

Constitutional Aspects, EU Accession Process, Republic of Serbia, Transnational Organized Crime.

[27] *Ibidem*, p. 44.

CONSTITUTIONAL PERSPECTIVES ON THE PROTECTION OF EU FUNDAMENTAL RIGHTS AND VALUES

BETWEEN PROTECTION AND PROTOCOL: REFUGEE RIGHTS IN ALBANIA'S CONSTITUTIONAL ORDER

by Heliona Bellani[*]*, Bojana Hajdini*[**]

1. Introduction

The bilateral Protocol on Migration Cooperation between Albania and Italy was formally established on February 22, 2024, when Albania ratified Law No. 20/2024, on the ratification of the Protocol between the Council of Ministers of the Republic of Albania and the Government of the Italian Republic on strengthening cooperation in the field of migration, Law of 2024, Pub. L. No. 20/2024. Italy is permitted by this Protocol to set up and run two sizable migrant reception and processing facilities on Albanian soil, namely close to Shengjin and Gjadër. With regard to Albania's territorial sovereignty and jurisdiction, this agreement raises intricate and original constitutional issues.

The Protocol grants Italy exclusive operational control and jurisdiction over the designated zones, severely limits the involvement of Albanian authorities, and protects Italian personnel and infrastructure from Albanian law. These provisions raise serious constitutional concerns in light of the four main articles of the Albanian Constitution: the obligation of the Albanian armed forces to uphold sovereignty and constitutional order (art. 12), the procedural safeguards for treaties affecting national territory (art. 121, para. 1, let. a), the guarantee of territorial integrity (art. 3), and equal enjoyment of rights by citizens and non-citizens under the Albanian Constitution (art. 16).

Before the ratification of the Protocol, a group of thirty opposition deputies filed a case before the Albanian Constitutional Court, challenging its constitutionality. They argued that the agreement violates international human rights obligations under the European Convention on Human Rights (ECHR), and the 1951 Refugee Convention, and that it impacts Albanian territory and fundamental rights, necessitating both parliamentary legislation and presidential assent under art. 121, para. 1, let. a) and b) of the Albanian Constitution. But in Decision No. 2/2024, which was published on January 29, 2024, the Constitutional Court dismissed these arguments and maintained the Protocol's constitutionality, enabling the ratification process to move forward.

This article critically analyses whether the Italy-Albania Migration Protocol and the ratified Law No. 20/2024 are consistent with Albania's constitutional framework or if

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they constitute a legal overreach that compromises the Republic's sovereignty and core values. This analysis is driven by the main research question: How well does the Italy–Albania Migration Protocol, as approved by Law No. 20/2024, adhere to the territorial sovereignty, constitutional order, and human rights obligations clauses of the Albanian Constitution?

To answer the research question, the Chapter adopts a doctrinal legal research methodology, grounded in the analysis of primary and secondary legal sources. It employs a qualitative, interpretive approach to examine the constitutional and international legal dimensions of the Italy–Albania Migration Protocol, ratified by Law No. 20/2024, in light of Albania's national legal framework and its obligations under refugee and human rights law. The research is structured around a case study, the Decision No. 2/2024 of the Constitutional Court of Albania, which serves as the focal point for assessing the Protocol's compatibility with the Albanian Constitution and international commitments. This approach allows for a detailed exploration of how domestic constitutional norms interact with treaty law, supranational legal frameworks (the EU *acquis*), and international human rights obligations. The research also engages in comparative and critical analysis, situating the Albanian experience within the broader context of European migration governance and assessing the implications of outsourcing asylum procedures on State sovereignty, jurisdiction, and the rights of asylum seekers. This multifaceted approach enables the authors to explore legal tensions arising from the Protocol and to evaluate the adequacy of Albania's legal and institutional responses from both a constitutional law and human rights perspective.

2. Territorial Integrity and Treaty Ratification

2.1. Constitutional provisions

Art. 3 of the Albanian Constitution establishes that "*the independence of the state and the integrity of its territory (...) are bases of this state, which has the duty of respecting and protecting them*"[1]. This provision situates territorial integrity as a foundational constitutional principle, linked intrinsically to State sovereignty and non-transferability of national territory.

From a procedural standpoint, art. 121, para. 1, let. a) of the Constitution mandates that any international agreement affecting Albanian territory be ratified by law, thereby subjecting such treaties to parliamentary scrutiny. Furthermore, art. 121, para. 1, provides that international agreements involving "territory" or matters of "political and military character" must be approved by the Assembly through law[2]. These procedural safeguards reflect a constitutional intent to closely regulate sovereignty-affecting international arrangements[3].

In the case of the Italy–Albania Protocol on migration cooperation, these constitutional requirements were formally satisfied through the enactment of Law No. 20/2024**,** which ratified the agreement via an ordinary legislative act. While the Protocol does not transfer territorial title, it authorises Italian authorities to exercise exclusive

[1] Art. 3 of the Constitution of Albania, Law No. 8417/1998.
[2] Art. 121, para. 1, of the Constitution of Albania.
[3] L. OMARI, A. ANASTASI, *E drejta kushtetuese*, Tirana, 2017, p. 57.

jurisdictional and enforcement powers within two designated zones on Albanian soil. Despite the breadth of these powers, the Protocol's ratification via law complies with the procedural threshold of art. 121, as no permanent territorial cession is contemplated, and the sovereign title remains with Albania.

Thus, from a constitutional law perspective, the legislative ratification of the Protocol through Law 20/2024 is procedurally valid under art. 121, para. 1, even though the agreement's functional implications for sovereignty and jurisdiction have prompted broader constitutional and public law debate.

2.2. The Concept of Territorial Integrity in International Law

Territorial integrity is a foundational principle of international law that safeguards the unity, wholeness, and sovereignty of a State's territory, including its land, territorial sea, and related subsoil. As a legal and political norm, it prohibits external interference, partitioning, or any arrangement that deprives a State of effective control over parts of its territory or subjects it to the sovereign authority of another State without its freely given consent. This includes the prohibition of foreign States exercising legislative, judicial, or enforcement powers within the territory of another State, absent lawful agreement[4]. Closely linked to the principle of political independence, territorial integrity serves as a core pillar of State sovereignty, providing the legal basis for international recognition of a State's autonomy and the legitimacy of its control over territory free from foreign domination[5].

While temporary arrangements between consenting States, such as military bases or refugee processing centers, may not automatically violate territorial integrity, the degree of jurisdictional and functional transfer remains a critical criterion. When assessing the legally ratified Italy–Albania Protocol, the distinction between formal sovereignty (title) and effective control (exercise of sovereign powers) is especially pertinent[6].

According to Puto[7], there is a conceptual distinction between sovereignty and independence. While independence refers primarily to the absence of external political subordination, that is, a State's freedom from dependence on or control by another entity, sovereignty encompasses a broader and more substantive dimension. Sovereignty not only implies independence but also entails the positive authority to issue binding, unconditional commands within a territory**,** and the right to reject external authority or commands from any higher power. In this sense, sovereignty includes both freedom from domination and the capacity for autonomous legal and political decision-making**.**

[4] Art. 4, Charter of the United Nations and Statute of the International Court of Justice, 1945; International Court of Justice, Judgement of 27 June 1986, *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Merits, paras. 202, 227.
[5] C. MARXSEN, *Territorial Integrity in International Law – Its Concept and Implications for Crimea*, in *ZaöRV*, Vol. 75, 2015, pp. 7-26.
[6] On the ratification of the Protocol between the Council of Ministers of the Republic of Albania and the Government of the Italian Republic on strengthening cooperation in the field of migration, Law of 2024, Pub. L. No. 20/2024.
[7] A. PUTO, *E Drejta Ndërkombëtare Publike I*, Tirana, 1999, p. 126.

2.3. Substantive Concern: Territory

The core issue is whether granting Italy exclusive control (including law-making and enforcement) within the two zones effectively abridges Albania's territorial integrity or sovereignty.

The guarantee of art. 3 in the Albanian Constitution is absolute; no part of Albanian territory may be altered or foreign-administered without respecting sovereignty[8]. In common terms, an arrangement that allows a foreign State to treat parts of Albanian territory "as if they were its own" could be seen as ceding territory or jurisdiction. The Protocol does *not* redraw Albania's borders: the zones remain physically within Albania. These zones are intended for the hosting and processing of asylum seekers arriving from third countries and are regulated by a series of provisions that effectively vest Italy with extensive functional control.

Most notably, the Protocol confers exclusive jurisdiction to Italian authorities over both the migrant processing facilities and the individuals housed within them[9]. Within these zones, Italian and European Union law apply directly, displacing Albanian legal norms in all relevant matters[10]. The responsibility for internal security is also vested exclusively in Italian authorities, while access by Albanian officials is restricted and conditional, requiring prior consent from Italian representatives[11].

Furthermore, the Protocol exempts Italian construction projects from Albanian planning and permitting laws, effectively removing them from the scope of domestic administrative control[12]. Italian personnel operating within the zones enjoy immunity from Albanian legal jurisdiction for any acts carried out in the exercise of their official functions[13], reinforcing the exclusive character of Italy's authority. Lastly, the Protocol imposes strict measures to ensure that migrants remain confined within the designated zones and are prevented from circulating in the rest of Albanian territory, thereby placing them entirely under the administrative and legal control of Italian authorities[14]. Together, these provisions construct a legal and operational regime that has been widely interpreted as resembling a functional enclave under foreign jurisdiction, raising important constitutional and international law questions regarding territorial integrity and State sovereignty[15].

An analysis of the Protocol's ratification process confirms that, despite establishing a notably asymmetrical framework of control within Albanian territory, the Italy–Albania Protocol does not, in formal legal terms, amount to a violation of territorial integrity. This conclusion is based on the fact that Albania ratified an international protocol in compliance with its constitutional procedures, thereby agreeing to the arrangement. Law No. 20/2024, which formalised the Protocol, was adopted following the Albanian Constitution's arts. 78, 121, let. a), and 131, let. b), which specifically allow for the ratification of international treaties by law. As such, the agreement is legally binding and constitutionally valid within the domestic legal framework.

However, while formal legality is maintained, the Protocol introduces a qualitatively distinct model of control that raises deeper concerns regarding effective sovereignty.

[8] Art. 3 of the Constitution of Albania Law of 1998, cit.
[9] Art. 4, para. 2, of the Italy-Albania Migration Protocol.
[10] *Ibidem*, art. 4, para. 2.
[11] *Ibidem*, art. 6, para. 3.
[12] *Ibidem*, art. 5, para. 1.
[13] *Ibidem,* art. 7.
[14] *Ibidem,* art. 6, para. 5.
[15] T.H. IRMSCHER, *Enclaves*, in *Oxford Public International Law*, 2007; E. VINOKUROV, *A Theory of Enclaves,* in *Munich Peronal RePEc Archive*, pp. 9-12.

Although Albania retains legal title over the territory in question, the agreement vests exclusive and independent operational authority in Italy within the designated zones. This shift significantly diminishes Albania's ability to exercise effective control, a core attribute of sovereignty under both domestic and international law[16].

In practice, this means that Italian law applies within the zones, superseding Albanian legal and judicial systems[17]. Access by Albanian authorities is restricted and contingent on prior Italian consent[18]. Moreover, Italian personnel are granted immunity from Albanian jurisdiction for acts undertaken in their official capacity[19], and Italian courts possess exclusive jurisdiction over disputes arising within the zones[20]. This complex of powers creates a structure that approaches de facto extraterritoriality, challenging the limits of what may be deemed permissible under the principle of territorial integrity[21].

Several specific provisions of the Protocol amplify these concerns. Art. 4, para. 2, for instance, grants Italy full and exclusive jurisdiction, prompting questions about Albania's residual authority over its own territory. Art. 5, para. 1, removes Italian infrastructure projects from the scope of Albanian administrative law, thereby bypassing essential regulatory oversight. If accepted as a legitimate model of inter-State cooperation, this arrangement could set a precedent for future functional cessions of sovereign powers, gradually weakening the constitutional and international understanding of territorial integrity (Law No. 20/2024).

In summary, the Protocol has strong procedural foundations, but its substantive implications are much more nuanced. Albania enters a system that resembles a functional derogation of sovereignty[22] when it grants a foreign State sole authority over its laws, enforcement, and judiciary. Although this does not constitute a *de jure* cession of territory, it clearly limits Albania's ability to carry out essential sovereign duties, making it more difficult to distinguish between the erosion of constitutional autonomy and international cooperation.

3. Sovereignty, National Security, and Restricted Albanian Authority

3.1. Constitutional provisions

The Constitution of Albania places clear limitations on foreign military presence within national territory, reflecting the broader commitment to preserving sovereignty, territorial integrity, and constitutional order. According to art. 12, para. 1, the armed forces of Albania are charged with the duty to "*guarantee the independence of the country, and protect its territorial integrity and constitutional order*"[23]. More significantly, art. 12, para. 3, imposes a constitutional bar on foreign military deployment, stating that "*no*

[16] N. ILIEVSKI, *The Individual Sovereignty: Conceptualisation and Manifestation*, in *Journal of Liberty and International Affairs*, Vol. 1, 2015, p. 11 ff; J. NÚÑEZ, *State Sovereignty: Concept and Conceptions*, in *International Journal for the Semiotics of Law – Revue internationale de Sémiotique*, Vol. 37, 2024, pp. 2131-2150.
[17] Arts. 4, paras. 2 and 5 of the Italy-Albania Migration Protocol.
[18] *Ibidem*, art. 6, para. 3.
[19] *Ibidem,* art. 7, para. 4.
[20] *Ibidem,* art. 4, para. 2.
[21] C. RYNEGAERT, A. PARRISH (eds.), *Introdution to Research on Handbook on Extraterritoriality in International Law*, Cheltenham, 2023, pp.1-3.
[22] H. DEDERER, *'Responsibility to Protect' and 'Functional Sovereignty'*, in P. HILPOLD (ed.), *The Responsibility to Protect (R2P)*, Leiden, 2014, pp.156-183.
[23] Art. 12, para. 1, of the Constitution of Albania Law.

foreign armed force may be placed or pass through Albanian territory… except by a law adopted by the majority of all members of the Assembly". This provision establishes a strict legal threshold, requiring explicit legislative approval for any foreign military presence, even when conducted under the framework of cooperation.

The Italy-Albania Protocol, ratified by Law No. 20/2024, raises substantial concerns in this regard. The agreement grants Italian authorities exclusive control over public order and security within the designated zones, with Albanian forces allowed access only with prior consent from Italian officials, except in emergencies[24]. Migrants in the zones fall entirely under Italian jurisdiction, with Italian personnel managing detention, health, and internal security structures[25]. This arrangement effectively delegates core security responsibilities to foreign actors within Albania's borders.

Since Law No. 20/2024 was passed by the Assembly, it may meet the procedural requirements of art. 12, para. 3, but it does not specifically permit the presence of foreign armed forces. It ratifies a migration agreement instead, and it could be argued that a more precise legal mandate would be needed for any deployment of Italian military or heavily armed personnel. Relying on an expansive interpretation of the law to justify such presence risks undermining the clarity and constitutional intent of art. 12, para. 3.

Furthermore, the substantive limitations imposed on Albanian forces, such as the inability to operate freely in parts of Shëngjin's port or the Gjadër zone, raise serious questions about whether Albania can still fulfil its constitutional obligation to guarantee national security and protect territorial integrity. If the armed forces must rely on foreign consent to act within national territory, this may conflict directly with art. 12, para. 1, and weaken the internal coherence of Albania's constitutional order.

These constitutional concerns become even more pressing when viewed through the lens of Albania's EU integration commitments. According to the European Commission's 2024 Report, while Albania has largely implemented previous recommendations, it is now expected to strengthen its enforcement capacity and ensure full alignment with the EU's Common Foreign and Security Policy (CFSP), particularly in enforcing restrictive measures across all international fora[26]. However, the Protocol's security framework, by limiting Albania's control over security and enforcement within part of its own territory, raises doubts about whether the country possesses the autonomous institutional capacity to meet such alignment and enforcement expectations effectively. This underscores a deeper tension between international cooperation and constitutional sovereignty, one that may compromise both Albania's internal legal obligations and its external commitments as an aspiring EU Member.

3.2. Constitutional Court's Approach

Constitutional Court Decision 2/2024 did not explicitly address art. 12 of the Albanian Constitution in detail, but its reasoning is illuminating[27]. The Court noted that the Protocol calls for Albanian forces to handle "*order and security in the external perimeter" and*

[24] Art. 6, para. 3, of the Italy-Albania Migrant Protocol.
[25] *ibidem,* arts. 4 and 6, para. 5.
[26] European Commission, Commission Staff Working Document, *Albania Report 2024*, Accompanying the document, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committe of the Regions*, *2024 Communication on EU enlargement policy*, of 30 October 2024, SWD(2024) 690 final.
[27] Constitutional Court Decision No. 2, of 29 January 2024 (V-2/24) available at https://www.gjk.gov.al/web/Vendime_perfundimtare_100_1.php.

"health services … not covered by Italian authorities"[28]. It observed that Albania retains jurisdiction over "external security" and ancillary tasks, while Italy handles internal security in the zones. By splitting responsibilities, the Court inferred that Albania has not *entirely* yielded sovereignty: its forces still control the approach to the zones and support Italian efforts. Nonetheless, the Protocol does limit Albanian authority inside the zones. The Court effectively accepted this as a temporary arrangement consistent with Albania's consent.

From a constitutional standpoint**,** the Italy-Albania Protocol introduces an exceptional departure from the standard framework governing the exercise of public authority within Albanian territory. Traditionally, only Albanian law enforcement and administrative bodies are empowered to operate domestically. Art. 12 of the Albanian Constitution embodies this principle, affirming that the Armed Forces are entrusted with safeguarding national independence, territorial integrity, and the constitutional order, and stipulates that no foreign armed force may enter or be stationed on Albanian soil except pursuant to a law adopted by the majority of all members of the Assembly [29].

The Protocol's terms invert this foundational norm by granting Italian police, and potentially military forces, exclusive authority within the designated migrant processing zones, thereby restricting Albanian institutional access and subordinating local oversight to the consent of Italian officials[30]. Such an arrangement, in isolation, could be construed as an unconstitutional delegation or cession of sovereign powers, incompatible with the framework of art. 12, which envisions Albanian forces as the ultimate guarantors of internal security**.**

Nonetheless, the Protocol is framed as a bilateral cooperation mechanism rather than an act of occupation or permanent jurisdictional transfer by the government's legal justification, which the Constitutional Court implicitly accepted in Decision No. 2/2024. Under this reasoning, Albanian authorities maintain control over the broader territory surrounding the zones and retain ultimate jurisdiction, particularly over non-migrant individuals or any spillover effects[31]. While Italian law applies within the zones, Albanian courts remain the final adjudicators**,** particularly in cases involving constitutional rights, jurisdictional conflicts, or enforcement beyond the Protocol's limited operational scope.

Importantly, the zones are defined as closed transit and processing centers**,** inaccessible to the general public, and with a limited functional purpose. This framing appears crucial to the Court's acceptance of the Protocol as a permissible exercise of treaty-making power under art. 121 of the Constitution. It reflects a balancing act between the constitutional commitment to territorial sovereignty and the State's discretionary power in international cooperation**,** particularly in migration management, a field increasingly shaped by transnational enforcement arrangements[32].

Still, from a doctrinal perspective, this remains a close and unresolved constitutional question. While the Court has thus far declined to invalidate the Protocol, the degree of foreign operational control it permits arguably pushes the boundaries of what art. 12 tolerates "by law". If similar agreements are expanded in scope or duration, the constitutional framework may require re-evaluation or stricter legislative specificity to preserve the balance of sovereignty and cooperation that the Constitution aims to maintain.

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[28] Art. 4, para. 6 of Italy-Albania Migration Protocol.
[29] Arts. 12, paras. 1-3, of Constitution of Albania Law.
[30] Art. 6, para. 3, of Italy-Albania Migration Protocol.
[31] *Ibidem*, art.4, para. 2.
[32] P. SLOMINSKI, F. TRAUNER, *Reforming me softly – how soft law has changed EU return policy since the migration crisis*, in *West European Politics*, Vol. 44, No. 1, 2021, pp. 93-113.

4. Law No. 20/2024 and Its Compatibility with Refugee and Human Rights Law

The ratification of the Italy-Albania Migration Protocol through Law No. 20/2024 has provoked critical debate concerning its compliance with international and domestic legal obligations in the field of refugee protection and human rights. While Albania's Constitutional Court upheld its legality in Decision No. 2/2024, several provisions of the Protocol remain problematic when assessed against the 1951 Refugee Convention, the 1967 Protocol, and Albanian Law No. 121/2014 on Asylum, on Asylum in the Republic of Albania Law of 2021, Pub. L. No. 10/2021.

4.1. Jurisdictional Challenges and Legal Vacuum

One of the core issues concerns the jurisdictional configuration established by the Protocol. Migrants intercepted by Italian authorities outside Albanian territory are transferred to reception centers on Albanian soil, yet they remain exclusively under Italian jurisdiction[33]. Albania assumes no role in the processing of asylum claims and does not apply its own asylum procedures. This structure contradicts art. 2 of Law No. 10/2021, which guarantees every individual present in Albanian territory the right to seek asylum, regardless of entry status or location. As a consequence, the Protocol creates a legal vacuum whereby individuals physically present in Albania are denied access to the Albanian asylum system, in violation of territorial principles of refugee protection[34].

4.2. Non-Refoulement *and the Risk of Indirect Violations*

Closely linked to the jurisdictional issue is the principle of *non-refoulement*, enshrined in art. 33 of the 1951 Convention and art. 11 of Law No. 10/2021. The Protocol lacks robust safeguards ensuring that rejected applicants will not be returned to countries where they face a real risk of persecution or inhuman treatment. In failing to guarantee individual assessments or appeals prior to removal, Albania risks complicity in indirect *refoulement*, a practice the ECtHR has condemned in multiple rulings[35]. In *Khlaifia and Others v. Italy*[36], the Court found that *de facto* detention of migrants without legal remedies and access to asylum procedures violated arts. 3 and 5 ECHR despite being conducted in the context of emergency migration management. A similar risk emerges in the Italy–Albania Protocol, where migrants may be confined in closed centres without full procedural guarantees or access to either country's judicial review mechanisms.

Although framed as "reception centres", the Protocol's facilities resemble closed and guarded compounds, raising serious concerns of arbitrary detention. If migrants are

[33] Arts.4-6 of the Italy-Albania Migration Protocol.
[34] G. GOODWIN-GILL, J. MCADAM, E. DUNLOP, *Determination of Refugee Status. Analysis and Application*, in G. GOODWIN-GRILL, J. MCADAM (eds.), *The Refugee in International Law*, Oxford, 2021, pp. 54-159.
[35] European Court of Human Rights, Judgement of 21 January 2021, Application no. 30696/09, *M.S.S. v. Belgium and Greece*.
[36] European Court of Human Rights, Judgement of 15 December 2016, application no. 16483/12, *Khlaifia and others v. Italy*.

denied freedom of movement, held without individual assessment, or punished for irregular entry, the arrangement may violate art. 31 of the 1951 Convention and art. 28 of the Albanian Constitution, which protects liberty and security of person.

The ECtHR in *Khlaifia* case ruled that automatic and blanket detention of migrants, without judicial control or individualized assessment, violated art. 5 ECHR. The Protocol risks replicating these conditions by creating zones where basic liberties are suspended without adequate legal safeguards or judicial oversight.

5. Procedural Remedies and Due Process Gaps

Art. 13 ECHR and the Albanian law on Asylum[37] affirm the right of asylum seekers to effective legal remedies, including access to courts, legal aid, and judicial review. However, the Protocol establishes a legal grey zone: Albanian institutions have no authority within the zones, while Italian legal remedies are uncertainly available to migrants held physically in Albania.

The *Khlaifia* case is instructive here. The ECtHR underscored that physical presence under the control of a State, even outside its national territory, triggers Convention obligations. Accordingly, if migrants are denied meaningful access to judicial mechanisms while under Italy's *de facto* jurisdiction but within Albania's *de jure* territory, both States could be held accountable under arts. 5 and 13 ECHR.

The Protocol represents a novel model of externalised migration control, effectively outsourcing asylum responsibilities to a Third State. While the 1951 Convention does not prohibit bilateral cooperation, it demands that such models uphold the substantive rights and procedural guarantees outlined in the Convention. Art. 6 of Law No. 10/2021 further obliges Albania to cooperate fully with UNHCR, respecting its supervisory mandate. Yet, the implementation mechanism of the Protocol is not subject to direct UNHCR oversight, nor does it ensure that international standards are fully embedded in daily operations. This raises the broader concern that migration management under international pressure may compromise State obligations, eroding the protective architecture of refugee law and human rights norms[38].

While the Italy-Albania Protocol may be procedurally lawful under Albanian constitutional mechanisms, it poses serious challenges to the principles of refugee protection, *non-refoulement*, and procedural fairness. Drawing on jurisprudence from the ECtHR, particularly *Khlaifia and Others v. Italy*, the Protocol risks enabling indirect human rights violations through jurisdictional outsourcing and inadequate procedural safeguards. Its implementation must therefore be monitored carefully, and any future agreements should incorporate stronger legal protections, clear oversight mechanisms, and alignment with Albania's obligations under both domestic and international law.

6. Conclusion

The ratification of Law No. 20/2024 marks a significant moment in Albania's constitutional and legal development, particularly in the sensitive domain of migration

[37] Arts. 47-48 and 54–61 of the Italy-Albania Migration Protocol.
[38] S. CARRERA, A. GEDDES, *The EU Pact on Migration and Asylum in light of the United Nations Global Compact on Refugees: International Experiences on Containment and Mobility and their Impacts on Trust and Rights*, 2021, pp. 1-25.

governance. While Albanian constitutional law does not explicitly prohibit foreign presence or international cooperation, it firmly protects State sovereignty, territorial integrity, and national control, as safeguarded in arts. 3, 12, and 121 of the Constitution.

The Italy-Albania Migration Protocol, by granting Italy quasi-sovereign operational control within Albanian territory, pushes these constitutional boundaries. Although art. 12, para. 1, let. a), requires that such agreements be ratified by law, and Law 20/2024 formally complies with this requirement, the deeper question concerns the substantive limits of permissible delegation. Under Decision No. 2/2024, the Constitutional Court concluded that the Protocol does not alter Albania's territorial integrity and falls within the permissible bounds of treaty-making power. The Court adopted a restrictive reading: while the Protocol affects the jurisdictional use of territory, it does not impact its physical integrity, and Albania retains final legal control, at least in theory.

From a broader perspective, however, the Protocol introduces unprecedented constraints on Albanian sovereignty. Provisions that limit the access of Albanian police to certain zones without Italian consent, that establish exclusive foreign jurisdiction, and that exempt Italian personnel and infrastructure from Albanian legal oversight amount to the outsourcing of core State functions. These elements approach a constitutional red line, potentially undermining the very notion of sovereignty protected by art. 3 and the role of Albanian forces under art. 12. Yet, the Constitutional Court has so far chosen to defer to the executive and the democratic legitimacy of the parliamentary ratification, framing the Protocol as a foreign policy choice made within constitutional bounds.

Simultaneously, the Protocol poses serious challenges to Albania's compliance with international and domestic refugee protection standards. By enabling a regime in which asylum seekers are processed exclusively by Italy, with limited or no access to Albanian asylum procedures or legal remedies, the arrangement risks violating core guarantees under the 1951 Refugee Convention, its 1967 Protocol, and Law No. 121/2014. Particularly concerning are the potential breaches of the principle of *non-refoulement*, access to justice, and humane reception standards. While the Protocol may not formally conflict with the text of these instruments, its practical implementation could erode their effectiveness, placing Albania in a position of indirect international responsibility.

As Albania continues on its path toward European Union accession, this case reveals deep tensions between national constitutional identity and supranational legal expectations. Decision No. 2/2024 reflects the Court's attempt to balance executive flexibility in migration diplomacy with constitutional fidelity, but it also leaves unresolved key questions about jurisdiction, accountability, and the enforceability of human rights within foreign-managed spaces.

Ultimately, the Italy-Albania Protocol sets a complex and contested precedent. It underscores both the possibilities and risks of treaty-based cooperation in sensitive sovereign domains, and it illustrates the Constitutional Court's pivotal role in mediating between national legal order and emerging European norms. As such, its legacy will likely shape Albania's constitutional development and international reputation for years to come.

ABSTRACT

This Chapter examines the constitutional implications of Albania's evolving migration governance framework in light of its aspiration for European Union accession, with a specific focus on Decision No. 2, dated 29 January 2024, of the Constitutional Court of the Republic of Albania. The decision, which concerns the review of the Italy–Albania Migration Protocol, offers a critical opportunity to assess the extent to which Albania's

constitutional order aligns with EU law and international human rights standards, particularly in the field of migration and asylum. The analysis engages with three core dimensions emerging from the decision. First, it explores the alleged violations of the constitutional rights of migrants and asylum seekers, including the rights to freedom of movement, education, access to justice, and protection from discrimination, as guaranteed under arts. 16, 27, 42, and 40 of the Albanian Constitution. Second, it investigates the potential breach of the principle of non-refoulement *and the prohibition of collective expulsion, reflecting both domestic constitutional guarantees and obligations under the European Convention on Human Rights and EU secondary legislation. Third, the Chapter discusses the implications of the Protocol's jurisdictional arrangement – whereby Italy exercises operational control within Albanian territory – on State sovereignty and constitutional accountability. Through this case study, the Chapter argues that constitutional adjudication plays a vital role in safeguarding national legal identity while fostering gradual alignment with the Union's acquis and foundational values. It concludes that the Constitutional Court's reasoning highlights both the potential and the challenges of constructing an EU-compatible migration governance system within the Albanian constitutional context*.

KEYWORDS
Asylum Seekers, Fundamental Human Rights and Freedoms, Sovereignty, Territorial Integrity, Italy-Albania Migration Protocol.

CONSTITUTIONAL SAFEGUARDS AND EU ASPIRATIONS: ADDRESSING GENDER-BASED VIOLENCE IN NORTH MACEDONIA

by Elena Maksimova[*]

1. Introduction: Why GBV Should be Considered a Constitutional Issue

Gender-based violence against women and girls is one of the most prevalent and pervasive human rights violations in the world, with 1 out of 3 women having experienced it in their lifetime. It is rooted in gender inequality, systemic discrimination, and unequal power relations between women and men[1]. Gender-based violence (GBV) should not only be seen as a pervasive social and criminal issue, but also as a profound constitutional concern. GBV constitutes one of the most pervasive violations of human rights and dignity globally, transcending geographical, cultural, and socio-economic boundaries. It is rooted in structural inequalities and sustained by discriminatory social norms, power imbalances, and institutional neglect. GBV disproportionately affects women and girls, but it also targets individuals across the gender spectrum who deviate from dominant gender norms. GBV is a violation of human rights because it seriously threatens the safety, health, and life of an individual. It is an umbrella term for any harmful act that is perpetrated against a person's will and that is based on socially ascribed (*i.e.*, gender) differences between males and females[2]. If we consider that gender difference is the constitutive experience of the human relationship, the asymmetries and hierarchies between the sexes represent the paradigm on which all asymmetries and hierarchies of society are forged[3]. This systemic nature of GBV demands not only reactive legal responses but also proactive structural and cultural reforms that dismantle the root causes of inequality.

Gender-based violence represents a triple challenge to the founding values of constitutional democracy: 1) as violence; 2) as an expression of a hierarchical conception of society; 3) and, finally, as an extreme form of silencing and marginalizing the most peaceful component of society[4]. It infringes upon several core constitutional rights: the

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[1] United Nations, *Gender-based violence against women and girls, OHCHR and women's human rights and gender equality*.

[2] O. KOSHEVALISKA, E. MAKSIMOVA, *The Efforts of the Republic of North Macedonia In Improving The Fight Against Gender-Based Violence By Harmonizing the National Legislation With International And European Standards,* in *EUWEB Legal Essays Global & International Perspectives*, No. 1 2025*,* 2025, p. 39.

[3] T. GROPPI, *Gender-Based Violence as a Challenge To Constitutional Democracy, Igualdadrs,* in *Centro De Estudios Políticos Y Constitucionales*, 2020, p. 464.

[4] *Ibidem*, p. 466

right to life and personal integrity, the right to human dignity, and the prohibition of discrimination. These rights are protected under the Constitution of the Republic of North Macedonia and are further reinforced by the State's commitments under international law and its aspirations for European Union (EU) integration.

Gender-based violence constitutes a direct affront to fundamental constitutional rights. At its core, GBV infringes upon the right to life and personal integrity, the right to human dignity, and the principle of non-discrimination, all of which are pillars of constitutional democracies and enshrined in international human rights law.

First and foremost, the right to life and personal integrity is violated by GBV through physical and psychological harm, often culminating in femicide or lasting trauma. Constitutional systems typically guarantee the inviolability of human life and bodily integrity, and States have a duty not only to refrain from violating these rights but also to protect individuals from violence perpetrated by non-State actors. The European Court of Human Rights has established that failure to prevent foreseeable acts of domestic violence can amount to a breach of art. 2 (right to life) and art. 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights[5].

GBV profoundly undermines the right to human dignity, a fundamental value protected by both constitutional frameworks and international law. Acts of GBV reflect and reinforce gender hierarchies and patriarchal norms that devalue women and marginalized groups, because they represent a system of dominance and not merely a matter of individual misconduct[6]. Such violence systematically deprives individuals of their dignity, autonomy, and equality – values that constitutional systems are bound to uphold.

The prohibition of discrimination is central to understanding GBV as a constitutional issue. GBV disproportionately affects women and girls due to deeply entrenched gender stereotypes and social inequalities. Thus, State inaction or inadequate response to GBV may amount to gender-based discrimination, as recognized by the Committee on the Elimination of Discrimination against Women (CEDAW)[7]. This principle demands that States implement proactive measures to prevent GBV and ensure equal protection under the law.

In sum, addressing GBV requires not only criminal justice interventions but also constitutional engagement. Ensuring accountability, protection, and equality requires recognizing GBV as a structural human rights violation that undermines the foundational commitments of constitutional democracies.

2. Macedonian Constitutional Provisions on Human Rights and Gender Equality

The Constitution of the Republic of North Macedonia is the highest legal act and was adopted on November 17, 1991, by the Assembly of the Republic of Macedonia. The Constitution of the Republic of North Macedonia establishes a robust normative foundation for the protection of human rights and gender equality, thereby providing a legal and constitutional basis for addressing gender-based violence. By incorporating international human rights standards into its core provisions, the Macedonian

[5] European Court of Human Rights, Judgement of 9 June 2009, Application No. 33401/02, *Opuz v. Turkey*.
[6] C. A. MACKINNON, *Toward a Feminist Theory of the State*, Harvard, 1989, p. 161.
[7] Committee on the Elimination of all Forms of Discrimination, *General Recommendation No. 19: Violence against Women*, para. 6, A/47/38, 1992, available at https://www.refworld.org/sites/default/files/legacy-pdf/en/1992-0/453882a422.pdf.

Constitution affirms the State's obligation to prevent and combat GBV as both a legal and social imperative.

The Constitution's Preamble underscores a commitment to basic freedoms, the rule of law, and civil society, laying the groundwork for a just and democratic society founded on equality and dignity. One of the five goals stated in the Preamble is that the Constitution "*guarantees human rights, civil liberties, and national equality*"[8]. Although the guarantee of protection from gender-based violence is not directly stated, the very fact that equality is at the very essence of the need for protection from this type of violence, and that it represents several violations of basic human rights, is enough to conclude that this is a democratic constitution that protects against gender-based violence in a generic way. The fundamental freedoms and rights established by the Constitution of the Republic of North Macedonia, which also derive from the standards of international law, have a common attribute of equality for the citizens and people of our country, regardless of gender, race, skin color, national and social origin, political and religious beliefs, property and social position. The proclaimed equality of the citizens of our country before the Constitution and the laws is an affirmation of the concept and meaning of law, otherwise it would lose the meaning of equal legality of all people in terms of the enjoyment of fundamental freedoms and rights, without restrictions, based on certain personal characteristics and properties. In this regard, inequality as a discriminatory element would have a strong negative impact on the realization and enjoyment of fundamental freedoms and rights, both on civil and political freedoms and rights, as well as on the economic, social and cultural rights of citizens, and of course on democratic processes and the social development of freedoms and rights in general[9]. The Constitution not only establishes the fundamental rights of man and citizen, such as civil and political freedoms and rights, as well as economic, social, and cultural rights, but also guarantees the enjoyment of all those rights, which are regulated by special laws for those areas.

Art. 8 of the Constitution of the Republic of North Macedonia articulates the fundamental values of the constitutional order, establishing a normative framework that grounds the protection of human rights, including protection from gender-based violence. While the provision does not explicitly mention GBV, its principles implicitly provide a legal basis for State obligations to prevent and address such violence in both public and private spheres[10]. The fundamental values of the constitutional order are: the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution; the free expression of national identity; the rule of law; the division of State powers into legislative, executive and judicial; political pluralism and free, direct and democratic elections; the legal protection of property; the freedom of the market and entrepreneurship; humanism, social justice and solidarity; local self-government; proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development; and respect for the generally accepted norms of international law.

At the core of art. 8 is the recognition of basic freedoms and rights of the individual and citizen, aligning domestic constitutional law with international human rights instruments. This clause serves as an umbrella under which protection from GBV is situated, given that GBV constitutes a violation of several fundamental rights, including the right to life, bodily integrity, equality, and dignity. The reference to rights "recognized in international law" integrates key treaties such as CEDAW and the Istanbul Convention, both of which identify GBV as a form of discrimination and mandate State intervention

[8] Preamble of the Constitution of the Republic of North Macedonia.
[9] Citizens' Association Institute for Human Rights Skopje, *Praven Dijalog*, No.28, 2023, p. 7.
[10] Art. 8 of the Constitution of the Republic of North Macedonia.

for its prevention and redress[11]. Moreover, the principle of the rule of law, another cornerstone listed in art. 8, imposes an obligation on the State to ensure that anti-GBV measures are not only adopted but also effectively implemented through legislative, judicial, and administrative means. The value of humanism, social justice, and solidarity provides an ethical and political lens for addressing GBV, emphasizing the social responsibility of the State to protect vulnerable groups, particularly women, from systemic and interpersonal violence. This commitment supports the development of affirmative action policies, survivor-cantered services, and inclusive public awareness campaigns[12]. Furthermore, the mention of respect for generally accepted norms of international law reinforces the constitutional obligation to harmonize domestic practice with evolving international standards on violence against women. This includes a duty to criminalize acts of GBV, provide adequate protection mechanisms, and ensure non-discriminatory access to health, housing, legal aid, and support services. In sum, art. 8 serves as a constitutional gateway through which GBV is understood not only as a criminal or social issue but as a violation of constitutional values and rights. Its broad, value-based approach enables a dynamic interpretation that supports proactive and systemic responses to gender-based violence within a democratic and rights-based framework.

Civil and political rights are addressed explicitly in several articles. Art. 9 guarantees equality before the law "regardless of sex", thus providing a constitutional guarantee of gender equality[13]. This provision is essential in judicial review and legislative compliance with anti-discrimination principles. It provides a direct constitutional guarantee of gender equality and as such, forms a critical legal foundation for the prevention and elimination of gender-based violence. Art. 9 plays a pivotal role in shaping State obligations to ensure equal protection and equal access to justice for all citizens, particularly for women and girls. By constitutionally prohibiting discrimination based on sex, art. 9 aligns with international human rights standards, particularly arts. 2 and 15 CEDAW, which obligate States to pursue policies eliminating discrimination in law and practice[14]. It also echoes the Istanbul Convention, which identifies structural inequality as the root cause of violence against women and requires States to eliminate legal and practical barriers to equality[15]. In the context of GBV, equality before the law requires that legal protections and remedies be accessible, effective, and non-discriminatory. This includes not only criminalizing acts of domestic and sexual violence but also ensuring that women have equal standing in court, access to restraining orders, legal aid, and mechanisms for redress. Furthermore, the principle of equality enshrined in art. 9 supports the adoption of affirmative measures, including shelters, education programs, and specialized services for survivors, which are necessary to address the historic and systemic disadvantage faced by women. Constitutional recognition of gender equality thus reinforces the legitimacy and necessity of targeted anti-GBV policies. This article is not only a declarative affirmation of equality but also a normative instrument of transformation**,** obliging the State to

[11] Committee on the Elimination of All Forms of Discrimination against Women, *General Recommendation No. 35 on Gender-based Violence against Women, updating general recommendation no. 10*, CEDAW/C/GR/35, 2017, available at https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based; Council of Europe, Convention on Preventing and Combating Violence Against Women and Domestic Violence, 2011.

[12] H. CHARLESWORTH, *What Are 'Women's International Human Rights'?*, in R.J. COOK (ed.), *Human Rights of Women: National and International Perspectives,* 1994, pp. 58–84.

[13] Art. 9 of the Constitution of the Republic of North Macedonia.

[14] Convention on the Elimination of All Forms of Discrimination Against Women, 1979, arts. 2 and 15.

[15] Preamble and art. 4 of the Convention on Preventing and Combating Violence Against Women and Domestic Violence.

eliminate the conditions – legal, institutional, and social – that enable or tolerate gender-based violence.

Art. 10, which enshrines the protection of life, is critical in GBV cases involving femicide, domestic violence, and threats to life based on gender. While the text of art. 10 primarily reflects a commitment to the inviolability of life and the abolition of the death penalty, it also has significant implications for the State's responsibility to protect individuals from gender-based violence. In the broader context of constitutional and international human rights law, the right to life is not only a negative obligation (to refrain from arbitrary deprivation of life), but also a positive obligation, requiring the State to take active measures to safeguard life, particularly for those at heightened risk. In GBV contexts, this includes the duty to prevent femicide, intimate partner violence, and other gender-related threats to life. The European Court of Human Rights (ECtHR) has repeatedly emphasized that State inaction in the face of known threats can constitute a violation of art. 2 of the European Convention on Human Rights (ECHR), which mirrors the constitutional guarantee in art. 10[16]. Applied to North Macedonia, art. 10 imposes a constitutional obligation on State authorities – legislative, executive, and judicial – to prevent foreseeable threats to life, especially in situations of known domestic abuse or systemic violence against women. This duty extends to implementing protective legislation, issuing and enforcing restraining orders, ensuring timely police response, and holding perpetrators accountable. The State's failure to act diligently in this regard could be interpreted as a breach of its constitutional obligations under art. 10. Thus, art. 10, when read within the framework of both national constitutional values and international human rights obligations, clearly supports a rights-based approach to GBV prevention. It emphasizes the State's duty to protect life, particularly in circumstances where gender-based harm is foreseeable and preventable.

Following the right to life, art. 11 protects personal integrity, prohibits torture and inhuman or degrading treatment – a provision often invoked in cases of sexual violence, trafficking, and abuse, where physical and psychological integrity is compromised. This provision enshrines the right to personal integrity and protection from abuse, placing a constitutional barrier against practices and acts that compromise the dignity, bodily autonomy, and psychological well-being of individuals. In the context of GBV – which includes sexual violence, domestic abuse, trafficking, and other gender-specific harms – art. 11 plays a crucial role in defining such acts as violations of constitutional rights, not merely criminal offenses. From a constitutional perspective, GBV constitutes a direct infringement of physical and moral integrity, particularly when it is tolerated, inadequately addressed, or trivialized by State institutions. The constitutional language aligns with international human rights instruments such as art. 3 ECHR, which prohibits torture and inhuman or degrading treatment. In *Aydin v. Turkey*, the European Court of Human Rights held that the rape and beating of a woman by security forces constituted torture, affirming that sexual violence falls under the scope of art. 3 protections[17].

This interpretation is also supported in international feminist legal theory, which argues that violence against women is a form of State-sanctioned inequality when ignored or inadequately punished. Catharine A. MacKinnon famously observed that "*torture is routinely what is done to women in their beds at night, and it is called something else*"[18]. This framing helps expose how domestic and sexual violence – when normalized or systemically unaddressed – can amount to cruel, inhuman, or degrading treatment under

[16] European Court of Human Rights, *Opuz v. Turkey*, cit.
[17] European Court of Human Rights, Judgement of 25 September 1997, Application No. 23178/94, *Aydin v. Turkey*.
[18] C. A. MACKINNON, *Are Women Human? And Other International Dialogues*, Harvard, p. 21.

constitutional and international law. Furthermore, art. 11's protection of psychological integrity is particularly important in GBV cases. The emotional and psychological trauma caused by coercive control, stalking, and intimate partner violence has been increasingly recognized in international legal doctrine. The Istanbul Convention explicitly identifies psychological violence as a distinct form of GBV that States are obligated to criminalize and address[19]. This article is a powerful constitutional tool in the fight against GBV.

Importantly, the Constitution also includes *economic, social, and cultural rights.* art. 42 mandates the protection of women and mothers, including those in vulnerable positions, offering a direct constitutional foundation for affirmative measures and anti-GBV policies. This provision reflects a rights-based approach that incorporates social vulnerability as a factor in legal protection[20].

Art. 42 establishes a social rights provision that mandates affirmative State action to protect groups in vulnerable positions, particularly women and mothers. While the article's language is rooted in a welfare-based approach, it can and should be interpreted within the broader human rights framework to encompass protection from GBV. By explicitly referring to "women" and "mothers," the Constitution acknowledges the gendered dimensions of vulnerability and therefore establishes a constitutional obligation to address systemic risks and harms disproportionately affecting women. In practice, this includes protection from domestic violence, sexual abuse, workplace harassment, and other forms of GBV, which undermine women's safety, autonomy, and dignity. This is aligned with international legal standards, particularly the Istanbul Convention, which obliges States to take a "gender-sensitive" and preventive approach to violence against women, especially in the context of family, motherhood, and caregiving roles[21]. Academic scholarship supports this interpretation. Substantive equality requires recognizing difference and disadvantage and enabling institutions to respond with targeted support. Equality may require accommodation of difference rather than identical treatment, especially when dealing with caregiving roles or violence that disproportionately affects women[22]. Art. 42 offers a constitutional mandate to implement such inclusive and responsive public policies. Moreover, art. 42's protective scope includes pregnant women and new mothers, who face particular risks of GBV, such as reproductive coercion, psychological abuse, or economic violence during maternity. Research has shown that violence during pregnancy is not only prevalent but significantly harmful to both maternal and infant health[23], making this constitutional protection especially urgent in practice.

Finally, art. 118 elevates international agreements[24]. This article establishes the constitutional supremacy and direct applicability of international treaties, positioning them within the hierarchy of domestic legal norms. In this matter, in the hierarchical position of the legal norms, international agreements take precedence over domestic

[19] Art. 33 of the Convention on Preventing and Combating Violence Against Women and Domestic Violence.

[20] Art. 43 of the Constitution of the Republic of North Macedonia.

[21] Arts. 12-18 of the Convention.

[22] S. FREDMAN, *Discrimination Law, Oxford University Press, 2011*, pp. 15-17.

[23] K. M. DEVRIES, S. KISHOR, H. JOHNSON, H. STÖCKL, L. J. BACCHUS, C.GARCIA-MORENO, C. WATTS, *Intimate partner violence during pregnancy: analysis of prevalence data from 19 countries,* in *Reproductive Health Matters,* Vol. 18, No. 36*,* 2010, pp. 158-170.

[24] A. CEKOV, *The Rule of Law in Macedonia, Assessment based on the Rule of Law Checklists developed by the Council of Europe* (The Venice Commission), 2018, available at https://www.crpm.org.mk/wp-content/uploads/2018/12/The-Rule-of-Law-in-Macedonia.pdf.

laws[25]. It affirms that once ratified, international human rights instruments become not only binding but integral to constitutional interpretation and implementation. In the context of gender-based violence (GBV), art. 118 plays a transformative role by anchoring global legal standards – such as CEDAW and the Istanbul Convention – into the Macedonian legal order. For example, the previous articles – 8, 9, 10, 11, and 42 – collectively form the normative and protective architecture within the Macedonian Constitution for addressing GBV. Art. 8 defines the fundamental values that are deeply aligned with the purposes of the Istanbul Convention, which calls for a systemic, human rights–based response to GBV. Art. 9 guarantees equality before the law, and explicitly prohibits discrimination based on sex, which is a principle of substantive equality in CEDAW, particularly arts. 2 and 5. Art. 10 enshrines the right to life, which in GBV contexts applies to the State's duty to prevent femicide and life-threatening abuse - it corresponds with obligations under the European Convention on Human Rights (ECHR), particularly art.2, *etc*.

Through art. 118, the Macedonian Constitution internalizes the binding force of these international instruments. Thus, the Istanbul Convention (ratified in 2018) and CEDAW are not external reference points but part of the domestic constitutional framework. This integration obligates State authorities – including courts, ministries, and local governments – to interpret constitutional rights considering international GBV standards, and to ensure that legislation, policy, and practice reflect the evolving doctrine of international women's rights law.

The Constitution of the Republic of North Macedonia does not directly address gender-based violence; however, it provides a strong normative and legal foundation for its prevention and redress through provisions on equality, dignity, the right to life, and integrity, as well as the incorporation of binding international human rights instruments into the domestic legal order.

3. EU Legislation and Gender-Based Violence

The need for constitutional protection of women and girls from discrimination and violence is further accentuated considering North Macedonia's EU integration process. Chapter 23 of the EU *acquis communautaire*[26] places emphasis on judicial reform, fundamental rights, and protection from discrimination – areas where effective responses to GBV are pivotal. North Macedonia, as a candidate country for EU membership, has made significant normative progress in aligning its legal framework on GBV with European Union standards, particularly by ratifying the Istanbul Convention and harmonizing national laws with the EU acquis on gender equality and victim protection[27]. However, important gaps remain in implementation, institutional coordination, and victim support services. The State's ratification of the Istanbul Convention in 2018 obliges it to prevent violence, protect victims, and prosecute perpetrators by both constitutional principles and European standards. In this context, framing GBV as a constitutional issue is not merely a normative stance, but a strategic legal and political

[25] T. KARAKAMISHEVA, *Human Rights in the Republic of Macedonia, Seen Through the Lens of the Constitution and the Practice of Democracy,* in *Revus - Journal for Constitutional Theory and Philosophy of Law,* No. 11*,* 2009, pp. 151-166.

[26] European Commission, *Chapters of the acquis*, available at https://enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en.

[27] See more about Macedonian harmonization of national legislation with international and EU standards at O.KOSHEVALISKA, E. MAKSIMOVA, *op. cit.,* p. 39.

imperative. It reinforces the necessity for robust institutional mechanisms and legal reform aimed at ensuring that the rights enshrined in the Constitution are not theoretical but effectively enjoyed by all citizens, especially women and marginalized groups.

The EU's journey to address gender-based violence has evolved significantly over the decades. Initially, efforts within the European Community were primarily focused on promoting gender equality in employment and economic rights. By the late 20th century, the need to address violence against women was emphasized, and it became a critical human rights issue[28]. The EU legal framework contains several legal instruments that indirectly address GBV. Directive 2004/113/EC on equal treatment between men and women in the access to and supply of goods and services. It prohibits discrimination in areas outside the labour market[29].

Directive 2006/54/EC on equal opportunities and equal treatment of men and women in matters of employment and occupation. It covers direct and indirect discrimination, harassment, pregnancy/maternity rights, and positive action. Art. 29 says "*Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive*"[30].

Directive 2012/29/EU[31] establishing minimum standards on the rights, support, and protection of victims of crime, among which are also GBV victims. Among other specific categories of victims that expressly fall within the scope of the Victims' Rights Directive, victims of gender-based violence are placed at the very heart of the protection offered by the latter. In the absence of a specific legislative text which would reflect an EU vision and harmonized approach towards preventing and combating violence against women in Europe, the Victims' Rights Directive is hailed as one of the main EU instruments addressing the issue of gender-based violence within its Member States[32].

Directive 2011/99/EU on the European Protection Order aims to protect victims of GBV across EU Member States[33]. Directive 2010/41/EU on equal treatment of self-employed workers and assisting spouses extends protections for women in self-employment, including during maternity leave. It says that the Member States shall actively take into account the objective of equality between men and women when

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[28] A. KUMBISEK, B. EMANUELI, M. AFRIDI AND R. KEENAN, *An Analysis of the EU's Directive on Combating Violence Against Women and Domestic Violence*, 2025, available at https://esthinktank.com/2025/02/24/an-analysis-of-the-eus-directive-on-combating-violence-against-women-and-domestic-violence/.

[29] "*Discrimination based on sex, including harassment and sexual harassment, also takes place in areas outside of the labour market. Such discrimination can be equally damaging, acting as a barrier to the full and successful integration of men and women into economic and social life*". Directive 2004/113/EC of the Council, *implementing the principle of equal treatment between men and women in the access to and supply of goods and services*, of 13 December 2004, in OJ L 373/37, of 21 December 2004.

[30] Directive 2006/54/EC of the European Parliament and of the Council, *on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)*, of 5 July 2006, in OJ L 204/23, of 27 July 2006, art. 29.

[31] Directive 2012/29/EU of the European Parliament and of the Council, *establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, of 25 October 2012, in OJ L 315/57, of 14 November 2012.

[32] Questions and Answers on Directive 2012/29/EU, cit., available at https://www.endfgm.eu/editor/files/2016/10/FINAL_Q_A_Victims__rights_directive_End_FGM_European_Network.pdf.

[33] Artemis, *Promoting the right of protection of women through the application of the EC Directive 2011/99/EU and the European Protection Order D36 – Final Research Report, Mediterranean Institute of Gender Studies,* 2021, available at https://medinstgenderstudies.org/wp-content/uploads/2021/06/D36_ARTEMIS-Final-Research-Report_FINAL_edited_CLEAN.pdf.

formulating and implementing laws, regulations, administrative provisions, policies, and activities in the areas referred to in this Directive[34].

However, the adoption of Directive (EU) 2024/1385[35] marks a landmark moment in the European Union's commitment to combating violence against women and domestic violence. It establishes legally binding minimum standards for prevention, protection, criminalization, and victim support. As a candidate country for EU membership, North Macedonia's alignment with this Directive is both a legal obligation and a constitutional opportunity grounded in art. 118, which integrates ratified international agreements into the domestic legal order. The Directive (EU) 2024/1385 is a groundbreaking legal document that aims to prevent and combat violence against women (VAW) and domestic violence. It highlights the European Union's objectives to achieve equality between women and men, as outlined in the Treaties, including arts. 2, and 3, para. 2, TEU, arts. 8, 10, 19 TFEU, as well as arts. 21 and 23 of the Charter of Fundamental Rights, which represent the fundamental values of the EU. The Directive also aligns with the EU Gender Equality Strategy 2020-2025, which includes the objective of eliminating gender-based violence[36].

The Directive introduces EU-wide criminalization of specific forms of gender-based and online violence, including female genital mutilation, forced marriage, non-consensual sharing of intimate images, cyberstalking, and cyber harassment, as well as measures to support and protect victims before, during, and after judicial proceedings. It reinforces the principle of consent as central to the legal definition of sexual violence – a key element of feminist legal reforms throughout the EU

For the Republic of North Macedonia, which is a signatory to the Istanbul Convention and has been making strong efforts in recent years to change its legislation in order to align it with the norms of the Convention, it is important to examine what extent these two acts overlap. The EU signed the Convention in 2017, and the accession process was concluded in June 2023 with the deposit of the instrument of accession to the Council of Europe. The Convention entered into force on 1 October 2023, binding the EU, with regard to institutions and the public administration of the Union, as well as matters related to judicial cooperation in criminal matters, asylum, and non-refoulement. The EU's accession to the Istanbul Convention is considered a milestone in the EU's efforts to realise gender equality, because it shows the EU's commitment to stepping up actions against gender-based violence across the Member States and in support of all victims of violence against women and domestic violence[37]. The Istanbul Convention and the EU Directive share similar goals. But there can be some important distinctions in their scope and enforcement. The Istanbul Convention applies to all Council of Europe Members and focuses on broad principles of prevention, protection, and prosecution. While comprehensive, the Convention does not address specific forms of digital violence, such as cyberstalking or the non-consensual sharing of intimate images, due to these crimes being less frequent a decade ago. In contrast, the EU Directive explicitly includes these

[34] Art. 12 of Directive 2010/41/EU of the European Parliament and of the Council, *on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed and repealing Council Directive 86/613/EEC*, of 7 July 2010, in OJ 180/1, of 15 July 2010.

[35] Directive 2024/1385/EU of the European Parliament and of the Council, *on combating violence against women and domestic violence*, of 14 May 2024, in OJ L series, of 24 May 2024.

[36] C. KASIM, *Advancing Gender Equality: The EU`s Landmark Directive 2024/1385 on Violence Against Women*, in *EU Law Analysis*, 2024, available at: https://eulawanalysis.blogspot.com/2024/06/advancing-gender-equality-eus-landmark.html?m=1.

[37] European Commission, *Ending gender-based violence*, available at https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/ending-gender-based-violence_en.

offences, reflecting its commitment to tackling emerging threats in the digital era, responding to the growing rates of cyber violence targeting women. Furthermore, the EU Directive benefits from the enforcement mechanisms of the European Commission, allowing for stronger monitoring and penalties for non-compliance – a feature absent in the Istanbul Convention[38].

Taking all this into account, we will conduct a comparative analysis of the Macedonian Constitution and legislation, which have been partially amended following the ratification of the Istanbul Convention, in comparison with this directive. This analysis aims to identify the achievements and shortcomings that our country must address to harmonize with EU postulates.

4. Comparative Analysis: North Macedonia Legislation vs. Directive (EU) 2024/1385

The legal landscape of the European Union concerning gender-based violence has undergone a significant transformation with the adoption of the above-mentioned Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence. For the first time, the EU has established a binding legal instrument specifically dedicated to addressing violence against women, thereby marking a paradigmatic shift from previously fragmented policies toward a harmonized and rights-based legislative framework.

The Directive introduces a comprehensive and coordinated legal response to GBV, incorporating minimum standards for the prevention, criminalization, protection, and support of victims of violence. It responds to the long-standing calls from scholars and human rights bodies to recognize violence against women not merely as a social or private issue, but as a structural violation of fundamental rights, including dignity, equality, bodily autonomy, and life itself.

In particular, the Directive mandates: the criminalization of specific acts of gender-based and online violence, including female genital mutilation, forced marriage, cyberstalking, and non-consensual sharing of intimate images; the establishment of specialized support services, including shelters, helplines, and trauma-informed psychological support; obligations for early risk assessment and protection measures; rights for victims to access legal aid, justice, and compensation; institutional reforms such as training of professionals, coordinated national action plans, and standardized data collection mechanisms[39].

These measures are not only a legislative milestone but also a reflection of the EU's commitment to fulfilling its obligations under international human rights law, including the Council of Europe Istanbul Convention, CEDAW, and the Charter of Fundamental Rights of the European Union. For candidate countries like North Macedonia, the Directive serves as a benchmark for legal harmonization and institutional reform. While the country has aligned itself with the Istanbul Convention and introduced domestic legislation on GBV, the Directive introduces a higher threshold of protection, particularly in areas such as online violence, coordinated policy enforcement, and the rights of victims. Below, we are going to do a short analysis that compares key provisions of the Directive with North Macedonia's domestic legal and constitutional framework,

[38] A. KUMBISEK, B. EMANUELI, M. AFRIDI AND R. KEENAN, *An Analysis of the EU's Directive on Combating Violence Against Women and Domestic Violence*, in *European Student Think Tank*, 2025, available at https://esthinktank.com/2025/02/24/an-analysis-of-the-eus-directive-on-combating-violence-against-women-and-domestic-violence/.
[39] Directive (EU) 2024/1385.

assessing convergence and gaps in areas such as criminalization, victim support, institutional coordination, and integration of international standards.

4.1. Legal Framework and Constitutional Grounding – North Macedonia's Legal and Constitutional Basis

North Macedonia addresses GBV primarily through the Law on Prevention and Protection from Violence Against Women and Domestic Violence[40]. This law builds upon the ratification of the Istanbul Convention and is reinforced constitutionally by provisions that guarantee the right to life (art. 10), physical and moral integrity (art. 11), equality before the law (art. 9), and special protection for women and mothers (art. 42). Furthermore, art. 118 from the Constitution incorporates international treaties into the domestic legal order, as we already explained above. The Law introduced a definition of rape based on lack of consent; defines stalking and sexual harassment; and regulates reintegration of women victims of violence.

However, the Macedonian Constitution does not explicitly define or mention gender-based violence, leaving much of the protective infrastructure to statutory law. This differs from EU developments, where GBV is increasingly being understood as a structural form of discrimination requiring explicit legal recognition. Directive (EU) 2024/1385 introduces minimum standards for all Member States and candidate countries, structured around five pillars: 1) criminalization of key offences; 2) victim protection; 3) access to justice; 4) prevention; and 5) Coordinated implementation and data monitoring. These pillars are rooted in rights enshrined in the EU Charter of Fundamental Rights[41], especially arts. 1 (human dignity), 3 (physical integrity), and 21 (non-discrimination).

4.2. Criminalization and Legal Definitions, EU Directive Requirements and Macedonian Law

The Directive mandates the criminalization of: female genital mutilation (FGM), forced marriage, psychological violence, cyberstalking, cyber harassment, and non-consensual sharing of intimate images, Incitement to gender-based violence (arts. 3-9). It also emphasizes a consent-based definition of rape, in line with feminist legal thought which views the absence of consent – not force – as the defining element of sexual violence.

North Macedonian law criminalizes physical, psychological, sexual, and economic violence, and incorporates a general definition of domestic violence. The Macedonian Criminal Code was amended in February 2023[42]. Gender-based violence against women was defined, and a lot of incriminations were amended, and new ones were introduced, like female genital organ stalking and sexual harassment. Directive introduces a significant normative advancement by explicitly requiring the criminalization of cyberstalking, cyber harassment, non-consensual sharing of intimate or manipulated images, and online incitement to gender-based violence, thereby addressing a rapidly growing form of abuse with gendered implications[1]. These forms of violence are not clearly defined nor uniformly penalized in North Macedonia's Criminal Code, and

[40] Law on Prevention and Protection from Violence Against Women and Domestic Violence, in Official Gazette of the R.M, No. 24 of 29 January 2021.
[41] Charter of Fundamental Rights of the European Union, in OJ C 326/391, of 26 October 2012.
[42] Law to Amend and Supplement the Criminal Code, Official Gazette of R.M. No. 36/2023, of 17 February 2023.

institutional awareness of digital abuse remains low, as highlighted by recent Group of Experts on action against Violence against Women and Domestic Violence (GREVIO) assessments[43]. Also, in North Macedonia, psychological violence within and outside the domestic sphere is not criminalised as a dedicated criminal offence, although several provisions of the Criminal Code may cover certain aspects of this form of violence: coercion (art. 139); threatening the safety (art. 144); threatening with a dangerous tool during a fight or a quarrel (art. 133); extortion (art. 258); or blackmail (art. 259). For this, GREVIO considers that such general offences often do not capture the harm experienced by victims of psychological violence, and without a criminal offence adequately covering psychological violence, law enforcement agencies are ill-equipped to respond to this type of violence.

4.2. Victim Protection and Access to Justice – Directive Provisions and Macedonian Practice

The Directive guarantees: free legal aid, psychological support, protection orders, trauma-informed procedures, and child-sensitive approaches in custody and visitation cases. It also enshrines the principle of non-retaliation and protects victims from secondary victimization in judicial and police procedures. It requires Member States to ensure victims have access to support services, legal assistance, and protection measures, with a focus on a victim-centered approach.

North Macedonia's 2021 Law provides for temporary protection orders, access to shelters, psychosocial counselling, and legal assistance. The 2021 Law on Prevention and Protection from Violence against Women and Domestic Violence emphasizes victim protection, including provisions for temporary shelters, psychological counselling, financial assistance, and employment support. So we can proudly say that the foundational elements for victim protection are present in North Macedonia's legislation, and it is in alignment with the Directive. However, GREVIO reports highlight inconsistencies in service provision, especially outside urban areas, and note that women from marginalized groups (*e.g.*, Roma, rural, and disabled) face systemic barriers to accessing justice. Furthermore, coordination among police, prosecutors, and social services remains fragmented[44]. Also, although in 2018 North Macedonia opened three referral centres for victims of sexual violence and rape with funds from donors, research conducted by the National Network showed that a very small number of women and girl victims of sexual violence received complete services, particularly among victims who reported sexual violence in police stations. The Ministry of Health is not fulfilling its legal obligation to fund the centres. Services for victims of GBV and DV managed by the Ministry of Labor and Social Policy, including counselling centres, shelters, and crisis centres, do not follow clear standards and are inefficient in operation. Professionals working at the counselling centres for victims of GBV and DV lack specialized skills to work with victims[45].

[43] GREVIO, *Baseline Evaluation Report: North Macedonia*, Council of Europe, 2023.
[44] *Ibidem*.
[45] The Advocates for Human Rights and National Network to End Violence Against Women and Domestic Violence, *Gender-based violence against women and domestic violence*, in *Universal Periodic Review*, 2024, available at https://www.theadvocatesforhumanrights.org/Res/North%20Macedonia%20UPR%20Information%20Gender-based%20Violence.pdf.

4.3. Prevention and Institutional Coordination, North Macedonia's Preventive Measures vs. EU Standards

The EU Directive obligates States to develop national action plans. Also, to provide training for professionals, raise awareness through public campaigns, and collect disaggregated data on GBV cases. These measures reflect the preventive turn in EU gender policy, which emphasizes structural and cultural change over reactive prosecution.

The 2021 Law includes provisions for preventive measures and awareness campaigns. However, the effectiveness of these measures is contingent upon the development and implementation of specific programs and protocols, many of which are still pending[46]. North Macedonia has adopted a *National Action Plan for Gender Equality* (2022-2024)[47], but lacks a unified national GBV strategy. mandatory training for law enforcement and judiciary and a centralized data system for monitoring GBV trends. The implementation of the NAP was behind schedule and incomplete, and more than 50% of planned activities were not implemented. These activities include public awareness campaigns, integration of teaching contents in education, and capacity building for professionals, including service providers, working on GBV and DV, everything that the prevention is all about. Since the implementation of the Istanbul Convention, we have had an improvement, but not in all sectors and not as much as needed. Reports that give data from the survey about the State's progress in the implementation of the Action Plan for the implementation of the Istanbul Convention[48] until December 2023 indicate that we have the least progress in the prevention of gender-based violence and family violence.

So, although the country's legislative provisions for prevention and awareness are in place, the absence of concrete programs and finalized protocols limits the practical implementation of preventive measures.

4.4. Other Aspects of Alignment of Macedonian Legislation with the Directive

Directive (EU) 2024/1385 is consistent with CEDAW, the Istanbul Convention, and the jurisprudence of the ECtHR. While North Macedonia has ratified these instruments and incorporated them through art. 118 of its Constitution, effective implementation and judicial reliance on international standards remain weak.

A crucial element of any comprehensive strategy to combat GBV is the availability of accurate, disaggregated, and systematically collected data. Reliable data not only enhances visibility of the scope and nature of violence but also enables evidence-based policymaking, resource allocation, and institutional accountability. In this regard, Directive (EU) 2024/1385/EU introduces a mandatory obligation for Member States to collect, process, and report data on violence against women and domestic violence. The Directive specifically requires national authorities to disaggregate data by sex, age, relationship to the perpetrator, and type of violence, and to coordinate reporting efforts with EU bodies such as Eurostat and the European Institute for Gender Equality (EIGE).

[46] *Ibidem*.
[47] Assembly of North Macedonia, *National Action Plan on Gender Equality,* available at https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/116975/MKD-116975.pdf
[48] *Summary Report on the Progress of R. North Macedonia for the Implementation of the National Action Plan for the Implementation of the Istanbul Convention, cit.*

In contrast, while North Macedonia's Law on Prevention and Protection from Violence Against Women and Domestic Violence (2021) acknowledges the importance of statistical monitoring, the law lacks concrete mechanisms for the systematic, disaggregated, and centralized collection of data on GBV incidents. Reports by international observers conclude that there is an absence of a unified database, and the fragmentation of data across police, health, and judicial institutions significantly hamper the State's ability to assess patterns of violence and develop responsive policy interventions[49]. Additionally, current data often fail to capture the experiences of marginalized groups – such as Roma women, persons with disabilities, or LGBTQ+ individuals – thus limiting the inclusiveness of State interventions.

This reveals a clear implementation gap: while the principle of data collection is recognized, the infrastructure and coordination needed to meet the standards of Directive (EU) 2024/1385 remain underdeveloped. Data is not simply neutral information, but a tool of structural accountability[50]. Without comprehensive data, State efforts risk becoming reactive rather than preventive.

Closely related to data collection is the requirement under the Directive for each Member State to adopt National Action Plans (NAPs) and to establish coordinating bodies responsible for overseeing the implementation of GBV policies. The Directive outlines that such plans must include strategic objectives, dedicated resources, monitoring indicators, and the meaningful participation of civil society and survivors. North Macedonia adopted the mentioned National Action Plan for the Implementation of the Istanbul Convention (2018-2023), demonstrating its normative commitment to structured policy action. However, as noted by The Advocates for Human Rights and GREVIO, this NAP lacked dedicated funding, failed to establish functional monitoring and evaluation mechanisms, and suffered from insufficient institutional ownership. The absence of a permanent and empowered coordinating body, tasked with cross-sectoral oversight, further undermines the NAP's effectiveness. This stands in contrast to the Directive's call for mandated institutions to lead, evaluate, and report on national GBV strategies.

In sum, North Macedonia aligns in principle with the Directive's strategic goals, particularly through its adoption of national plans and recognition of data's importance. However, the operational mechanisms, funding frameworks, and evaluative structures required for full compliance remain insufficiently developed. To harmonize with Directive (EU) 2024/1385, North Macedonia must urgently prioritize the institutionalization of data governance and strategic oversight in its fight against gender-based violence.

Directive (EU) 2024/1385 Requirement	**North Macedonia Status**	**Alignment**	**Gap**
Criminalization of offenses	Partially aligned	✓	Cyber violence provisions need enhancement

[49] Gender Equality Platform, *Shadow Report on the Implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in North Macedonia*, 2022, pag.27, available at https://rm.coe.int/shadow-report-grevio-2022-gender-equality-platform/1680a64ae6.
[50] S. FREDMAN, *Discrimination Law*, Oxford, 2011, pp. 84-85.

Victim protection and support	Legislated but under-implemented	⚠	Pending bylaws and protocols
Prevention and awareness	Legislated but under-implemented	⚠	Lack of concrete programs
Data collection and monitoring	Recognized but insufficient	⚠	Need for systematic data mechanisms
National action plans	Existing but under-resourced	⚠	Insufficient funding and monitoring

Table 1: Summary of Alignment between Macedonian Legislation and Directive (EU) 2024/1385

5. Conclusion

The constitutional and legal architecture of the Republic of North Macedonia provides a strong normative foundation for the protection of human rights, including gender equality and human dignity. However, considering the recent adoption of Directive (EU) 2024/1385 on combating violence against women and domestic violence, a deeper alignment between domestic and European legal standards has become imperative.

North Macedonia's constitutional framework – characterized by its rigid nature, reinforced human rights focus, and the model of parliamentary democracy – offers significant potential for transformative legal harmonization. Its rigidity ensures that fundamental values such as the right to life (art. 10), physical integrity (art. 11), and equality before the law (art. 9) are protected from political volatility. At the same time, art. 118 of the Constitution mandates direct incorporation of ratified international treaties, thereby requiring the domestic legal system to comply with evolving EU norms and obligations, including those under the Istanbul Convention and Directive (EU) 2024/1385.

Importantly, the Macedonian Constitution does not need to enumerate every aspect of gender-based violence in detail. Instead, it establishes a constitutional obligation to adopt laws, policies, and practices that give effect to its core human rights commitments. As feminist legal scholars have emphasized, constitutions serve as living documents that guide legislative adaptation in response to changing international legal environments and social realities. The reinforced human rights orientation of North Macedonia's constitutional order is, therefore, a critical entry point for embedding more comprehensive and specific protections against violence, including cyber violence, sexual harassment, and institutional neglect.

In practical terms, North Macedonia must address key implementation gaps to fully align with the Directive, like criminalizing forms of cyber violence, institutionalizing coordinated and well-funded national action plans, and developing systematic, disaggregated data collection frameworks. These are not only legal obligations under EU accession conditions, but essential components of a democratic system committed to the protection of its most vulnerable citizens.

Ultimately, the Macedonian constitutional framework, while not exhaustively prescriptive, establishes clear mandates of compliance, reinforcing the principle that the State must proactively safeguard against gender-based violence. The country's aspiration for EU integration further elevates this imperative, placing it at the intersection of national identity, human rights enforcement, and democratic governance.

Looking ahead, it is essential to emphasize the proactive role that constitutional courts and public institutions in North Macedonia can play in bridging the gap between formal guarantees and practical protection from gender-based violence. Constitutional interpretation should not remain static; instead, courts should adopt an evolutionary and harmonizing approach, aligning domestic constitutional provisions – particularly arts. 8, 9, 10, 11 and 42 – with the normative requirements of Directive (EU) 2024/1385 and the Istanbul Convention. Public institutions, including ministries, ombuds institutions, and parliamentary committees, should actively use international standards as interpretative tools and benchmarks when drafting or reviewing laws, issuing policies, or monitoring implementation. This approach would not only fulfil the obligations under art. 118 of the Constitution, which integrates ratified international treaties into domestic law, but also reaffirm the judiciary's role in advancing gender equality and ensuring that constitutional rights are not abstract promises but enforceable and evolving protections.

ABSTRACT

As North Macedonia moves forward on its path toward European Union accession, the imperative to harmonize its constitutional and legal framework with EU fundamental rights and values has gained renewed importance. Among the most pressing human rights challenges facing the country is gender-based violence (GBV), which continues to disproportionately affect women and girls, despite ongoing legislative reforms and international commitments. This presentation examines the constitutional aspects of GBV in North Macedonia, evaluating the effectiveness of the country's supreme legal framework in addressing the issue and its alignment with the broader normative framework of the European Union.

The Constitution of the Republic of North Macedonia incorporates the principles of equality, human dignity, and the right to life and security. However, in practice, the protection afforded to victims of GBV remains inconsistent and often inadequate. High levels of underreporting, lack of specialized support services, insufficient training among law enforcement and judiciary actors, and cultural stigmas all contribute to a persistent gap between constitutional guarantees and the lived reality of women facing violence.

This presentation analyses the interplay between constitutional provisions and the State's obligations under international and regional human rights instruments, with particular emphasis on the Istanbul Convention, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the EU Charter of Fundamental Rights and the EU Gender Equality Strategy 2020–2025. The focus is placed on whether constitutional norms are sufficiently actionable to ensure prevention, protection, and prosecution in cases of GBV, and how EU integration serves as a framework for reform. Further attention is given to the institutional and legal reforms undertaken by North Macedonia in recent years, including amendments to legislation and their constitutional implications. The presentation argues that addressing gender-based violence through a constitutional lens is not only a legal necessity for harmonization with EU standards but also a vital step toward building a more just, equal, and democratic society.

In conclusion, the paper underscores the need for a more proactive constitutional commitment to combating GBV – one that goes beyond symbolic guarantees to ensure

real, enforceable rights for women. As North Macedonia aspires to join the European Union, the constitutional entrenchment of gender equality and the protection of women from violence must be seen not merely as accession criteria, but as a foundational expression of European values and democratic resilience.

KEYWORDS
Constitution, European Union, Gender, Legislation, North Macedonia, Prevention, Protection, Violence.

JUDICIAL IMPLEMENTATION AND MONITORING CHALLENGES OF FUNDAMENTAL RIGHTS IN NORTH MACEDONIA'S PATH TOWARDS EUROPEAN INTEGRATION

by Elena Trajkovska[*]

1. Introduction

Ensuring effective and comprehensive protection of fundamental rights has always been a priority not only for individual States but also for the international community. Since gaining its independence in 1991, North Macedonia has clearly demonstrated its strategic commitment to the European Union, pursuing full membership over the past two decades. The fact that European integration remains one of the country's main strategic objectives has raised a series of questions related to the harmonization of national legislation and the institutional framework with the *acquis communautaire* of the European Union.

Among the key areas that directly affect North Macedonia's progress in the European integration process is the functioning of the judicial system, which must guarantee independence and efficiency in decision-making, with strict adherence to constitutional and legal provisions. These aspects are regulated and monitored through Chapter 23 of the EU *acquis*, which encompasses fundamental rights, judicial reforms, and the fight against corruption. The continuous evaluation of progress in these areas constitutes an essential part of the accession process to the Union.

This paper analyzes the development of North Macedonia's European integration process with a particular focus on aligning the judicial system with European standards, emphasizing the need for continuous efforts to overcome existing challenges. The analysis is based on reports from the European Commission, statistical data from Freedom House, the Balkan Barometer, and the annual reports of the Ombudsman of the Republic of North Macedonia, which together provide a comprehensive overview of the progress achieved and the areas where further reforms are needed.

To substantiate the findings presented, the case of *Mitrinovski v. North Macedonia* is included as a case study, representing a significant example of the role of the European Court of Human Rights in monitoring judicial independence and protecting fundamental rights. As will be demonstrated later in the paper, true alignment with European standards does not merely entail the formal adoption of laws, but also their consistent implementation in practice, which is a prerequisite for effectively strengthening the rule of law and creating the conditions necessary for full membership in the European Union.

2. Methodological Framework

Considering the existing challenges related to the effective implementation and

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monitoring of the realization of fundamental rights, with particular emphasis on the role of the judiciary – challenges faced not only by candidate countries but also by European Union Member States – this scholarly paper applies a methodological framework based on a qualitative approach to the available scientific and legal resources, a normative method with special focus on relevant constitutional and legal provisions concerning fundamental rights, as well as a case-based analysis of judicial decisions, aiming to identify legal and institutional gaps in the Republic of North Macedonia.

The methodology in this paper relies on three main approaches: normative, content analysis of secondary sources, and case-based analysis. The normative analysis, starting from the premise that this type of analysis addresses not only the question "What is the law?" but also "How is it properly applied?", seeks to ensure the fair application of the rule of law. Through analytical examination of existing laws in North Macedonia, including the current legislative and legal framework of the European Union, and by analyzing the postulates upon which fundamental rights are founded and implemented, this study aims to provide a clearer picture of the existence and application of fundamental rights as one of the core principles of European law.

The importance of using secondary data derived from official reports and analyses produced by reputable institutions, such as reports from the European Commission, Freedom House, the Ombudsman, and the Balkan Barometer, lies in the fact that these sources provide systematic and comparable information essential for assessing the state of fundamental rights and judicial independence.

Additionally, to strengthen the argumentation of this research and gain deeper insight into the practical implementation of standards for the protection of fundamental rights, a case-based analysis of the existing judgment in *Mitrinovski v. North Macedonia* is employed. This analysis enables the identification of shortcomings within the Macedonian judicial system, leaving room for improving judicial practice and aligning it with European standards on the rule of law and the protection of fundamental rights.

3. Interpretation of Fundamental Rights Within the European Integration

The idea of a united Europe has appeared throughout history in various forms, envisioned by influential thinkers and visionaries. One of the world's most significant philosophers, whose impact remains profound today, Immanuel Kant (1724-1804)[1], author of numerous important works[2] and founder of so-called *critical idealism*[3], believed in the institution of a "federation" to such an extent that he confidently asserted that the only true guarantee for lasting peace among nations lies in establishing a federation of free "republican" States[4]. From a historical perspective, European integration began as a mission to establish peace and economic cooperation across the European continent, ultimately leading to the creation of the enduring project of the European Union, which continues to

[1] Immanuel Kant was a German philosopher, considered a central figure in modern philosophy. For more see https://plato.stanford.edu/entries/kant/.

[2] G. WHALEN, *Immanuel Kant and Critical Idealism. Pt XII: The Post-Enlightenment Period, Ideas and Institutions of Western Man*, Gettysburg, 1958, pp. 53-69.

[3] In every significant work by Kant, there was an element of critical thought, also known as critical philosophy. This type of philosophy is generally not associated solely with a negative component, but also contains a constructive or positive element. Nevertheless, Kant's works are interpreted as radically critical, especially toward dogmatists, people who believe too strongly that their personal opinions or beliefs are correct.

[4] I. KANT, *Perpetual Peace: A Philosophical Essay*, 2003.

this day. The creation of the European Union[5], especially attractive to candidate countries[6] and those aspiring to European unification, has symbolized economic and political stability since the founding of the original Communities, further motivating European States to align their integrative development with European standards. A major turning point in European unity occurred with the introduction of the Maastricht Treaty. This treaty was designed to bring the peoples of Europe closer together by establishing a three-pillar structure, which was subsequently abolished with the latest amending treaty, the Lisbon Treaty (2009). The three pillars – including the European Communities (EC pillar)[7], the Common Foreign and Security Policy, and Police and Judicial Cooperation in Criminal Matters – aimed to define the scope and methods of joint action within and beyond the Union. Generally, the first pillar was treated as a supranational method, while the second and third pillars were based on intergovernmental cooperation, intended to coordinate and approximate the legal systems of the EU Member States for potential harmonization[8].

Given the nature of this paper, the question arises: where does the Maastricht Treaty find its place in the integration process for the protection of fundamental rights? The answer can be found in art. 6, para. 2, which states: *"The Union shall respect fundamental rights,* (…) *and as they result from the constitutional traditions common to the Member States, as general principles of Community law*". However, regardless of how much the importance of the Maastricht Treaty is emphasized – considered by some authors as a turning point for the protection of fundamental rights, particularly because it was the first to explicitly mention them in the treaties – it is undeniable that the European Court of Justice had already underscored these rights in the 1960s through its case law, striving to affirm their significance as general principles of Community law. This is especially evident in two landmark judgments, *Stauder* (29/69)[9] and *Internationale Handelsgesellschaft* (11/70)[10], which were crucial for the development of fundamental rights protection within the legal order of the Communities. These two rulings established a legal foundation for guaranteeing fundamental rights as general principles, obliging the institutions of the European Communities to respect them, thereby creating space for solid guarantees for the protection of rights. This process culminated in the adoption of the Charter of Fundamental Rights of the European Union in 2000.

The Charter represents the first attempt to create a comprehensive catalogue of fundamental rights, encompassing a wide range of actors, including European institutions, national governments, and civil society, with the aim of crystallizing the rights considered essential in the EU's constitutional order. As a legal instrument, the Charter sets clear standards for their protection[11]. Adopted by the EU institutions, it seeks to strengthen and make the protection of fundamental rights more visible within the EU legal system,

[5] The official name "European Union" was adopted in 1993 with the ratification of the Maastricht Treaty, also known as the Treaty on European Union.

[6] At present there are nine official candidate countries for membership of the European Union, including Bosnia and Herzegovina, Montenegro, Moldova, North Macedonia, Georgia, Albania, Serbia, Türkiye and Ukraine.

[7] The first pillar included the three European Communities, known collectively as the Communities, comprising the European Coal and Steel Community, the European Economic Community, and the European Atomic Energy Community, established in the 1950s.

[8] A. KACZOROWSKA-IRELAND, *European Union Law*, III ed., Abington-New York, 2013.

[9] Court of Justice of the European Communities, Judgement of 12 November 1969, Case 29/69, *Stauder v. City of Ulm – Sozialamt*.

[10] Court of Justice of the European Communities, Judgement of 17 December 1970, Case 11/70, *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*.

[11] S. PEERS, T. HERVEY, J. KENNER, A. WARD, *The EU Charter of Fundamental Rights: A Commentary*, 2nd ed., London, 2021.

highlighting the civil, social, economic, political, and cultural rights that must be respected not only by all Member States but also by the institutions of the Union[12].

The significance of the Charter's role increased notably during the drafting of the Constitution for Europe[13] through the Constitutional Convention[14] Following the unanimous recommendation of Working Group II[15], which concluded that the Charter (together with the European Convention on Human Rights) should acquire binding legal, that is, constitutional status, the Convention (the forum) in June 2003 agreed on draft arts. 1-7 of the proposed EU Constitution. This provision anticipated that the Charter would become an integral part of the Constitution and enable the Union, as a party, to accede to the European Convention on Human Rights.[16] In this way, the rights enshrined in the EU Charter of Fundamental Rights would become legally binding on all EU institutions and Member States. Moreover, the EU was granted the possibility to accede to the European Convention on Human Rights (ECHR) as an official signatory party to this international convention, which would further strengthen the European legal system by aligning it with the Council of Europe's standards for human rights protection – an idea that developed with the adoption of the Nice Treaty, which incorporated the Charter of Fundamental Rights as a political declaration.

Recognizing the importance of the Charter, it is crucial to note that before the Lisbon Treaty entered into force in 2009, the Court of Justice of the European Union determined the scope of fundamental rights protection based on several key sources[17]:

- the common constitutional traditions of the EU Member States,
- the European Convention on Human Rights (ECHR), and
- other international conventions ratified by the Member States.

Furthermore, from the moment the Lisbon Treaty entered into force, the Charter of Fundamental Rights became a primary source of EU law, attaining the same legal value as the founding treaties and their amendments, and being interpreted as part of the EU's supranational law. Through art. 6, para. 1, of theTreaty on European Union (TEU), it was granted legally binding effect "*with the same legal value as the Treaties*". However, this does not mean that the Court of Justice[18] is limited exclusively to applying the Charter when acting in the area of rights protection. According to art. 6, para. 3, TEU, the Court may also refer to the European Convention on Human Rights (ECHR) and the common constitutional traditions of the Member States, in order to ensure consistency in the development and application of European human rights standards by all Member States within the Union.

[12] A. KACZOROWSKA-IRELAND, *op. cit.*, pp. 221-228.
[13] The Constitution of the European Union failed as a proposal following referendums in France and the Netherlands in 2005. To stabilize the situation, the Treaty of Lisbon was drafted and adopted just two years later, entering into force in 2009. The Treaty of Lisbon is the most recent treaty adopted and ratified by the EU Member States and remains in force today.
[14] The Convention on the Future of Europe was a European forum for drafting the EU Constitution, which began in February 2002 and lasted until July 2003.
[15] Council of the European Union, *Report by the Working Group on the Legal and Technical Aspects of the Charter of Fundamental Rights*, of 22 October 2002, CONV 354/02, available at https://data.consilium.europa.eu/doc/document/CV%20354%202002%20INIT/EN/pdf.
[16] S. PEERS, T. HERVEY, J. KENNER, A. WARD, *op. cit*., p.16.
[17] A. KACZOROWSKA-IRELAND, *op. cit.*
[18] P. CRAIG, G. DE BÚRCA, *EU Law: Text, Cases, and Materials*, VII ed., Oxford, 2020.

4. Normative Standards for the Protection of Fundamental Rights Within the Macedonian Judicial System

The need for a legal analysis of judicial enforcement and monitoring regarding the protection of fundamental rights through the spectrum of Macedonian normative mechanisms is indispensable, especially considering that this is a key segment for assessing the alignment of Macedonian standards with European standards from multiple perspectives, including the issue of the rule of law, which is addressed in Chapter 23[19] of the EU *acquis*. For North Macedonia, as a candidate country for EU membership, the European Commission officially launched the screening process in 2022[20]. After a long period of 17 years since obtaining candidate status, this represented a step towards positive change, bringing hope that the European integration process would accelerate[21]. Given that since the country's independence as a democratic State[22], North Macedonia's strategic objective from the very beginning has been membership in the European Union, there is a clear need for an in-depth examination of the constitutional and legal provisions that guarantee fundamental rights and their effective implementation. Such analysis enables the identification of institutional mechanisms for their enforcement, as well as the detection of existing challenges that could potentially be overcome in the future. Therefore, the aim of this chapter is to present the legal framework and judicial practice in North Macedonia, assessing the progress made in aligning with the European standards[23], proclaimed by the Union over the past decades[24].

The existence of a solid normative framework for the protection of fundamental rights represents an essential foundation for the functioning of any democratic and rule-of-law State. It reflects the degree of the State's commitment to the advancement of fundamental human rights, an inseparable component of the rule of law. However, the question arises as to how the Constitution and the laws of North Macedonia guarantee adequate protection of these rights? According to art. 8, the fundamental values of the constitutional order are established, ensuring the rule of law, the separation of legislative, executive, and judicial powers, as well as the fundamental freedoms and rights of individuals and citizens recognized by international law[25] and the Constitution of the Republic of North Macedonia, adopted on the basis of art. 443. In addition to the fundamental values guaranteed by the Macedonian constitutional legal act, the Constitution refers specifically to the basic freedoms and rights, particularly emphasizing that "*Every citizen can invoke the protection of the freedoms and rights established by the Constitution before the courts and before the Constitutional Court of the Republic of Macedonia in proceedings based on the principles of priority and urgency*"[26] This normative framework is further strengthened through art. 54, para. 3 of the Constitution, which unequivocally states that

[19] European Commission, *Chapters of the* acquis, available at https://enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en.
[20] European Commission. North *Macedonia – Enlargement Policy*, available at https://enlargement.ec.europa.eu/enlargement-policy/north-macedonia_en.
[21] Kanal 5, *Влада: Завршиот скрининг процесот, патот за успешна евроинтеграција на Македонија е трасиран*, 8 December 2023.
[22] For more, see https://www.sobranie.mk/sobranieto-i-eu.nspx.
[23] Venice Commission, *European Standards on the Independence of the Judiciary – A Systematic Overview*, of 3 October 2008, CDL-JD(2008)002-e), available at https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JD(2008)002-e.
[24] R. MAŃKO, *Council of Europe Standards on Judicial Independence – A Systematic Overview*, EPRS Briefing, PE 690.623, European Parliamentary Research Service, 2021.
[25] Art. 8, Constitution of the Republic of North Macedonia No. 08-4642/1, adopted by the Assembly of Macedonia on 17 November 1991.
[26] *Ibidem*, art. 50, para. 1.

the restriction of freedoms and rights cannot apply to "*the right to life* (…) *prohibition of torture, inhuman or degrading treatment or punishment, or the legal certainty of criminal offenses and penalties*".

From this, it can be concluded that the Macedonian Constitution provides a strong formal protection of fundamental rights, which the European Union has treated as general principles since the early years of the European Communities, as proclaimed by the Court of Justice of the EU. Nevertheless, their effectiveness depends on the consistent application of laws, the independence of judicial bodies and public institutions more broadly, and the continuous monitoring and improvement of mechanisms for the protection of human rights, especially in the context of alignment with European standards and values. This is particularly relevant given that the European Commission issues annual progress reports on North Macedonia's advancement in the EU integration process, analyzing the performance of institutions, the government, the implementation of laws, and the degree of fulfillment of the Copenhagen criteria.

In the Republic of North Macedonia, there are several key laws that are of crucial importance for the proper and unhindered functioning of the judiciary in carrying out their duties, as well as for the enforcement of law and justice. The protection of human freedoms and rights[27] is one of the primary obligations of the Macedonian courts, guaranteed by law, bearing in mind that the European Commission confirms that the legal framework regarding fundamental rights is generally aligned with European standards[28]. Additionally, the law aims to ensure the impartial application of justice regardless of status, guaranteeing equality, equity, and legal certainty based on the rule of law[29]. Despite the fact that political organizing[30], activities, and influence in the work of the judiciary[31], are prohibited by law, the Commission regularly notes the existence of political influence[32], which constitutes an obstacle to achieving full independence of the judiciary in North Macedonia. Furthermore, it is emphasized that the political situation remains polarized, which affects the proper functioning of democratic institutions[33]. According to the latest Balkan Barometer report for 2024, survey results on trust in judicial authorities in North Macedonia showed that 83% of all respondents expressed a lack of trust in judicial institutions, making North Macedonia stand out with the lowest percentage of public trust compared to all other Western Balkan countries[34].

[27] Art. 2, para. 2, Law on Courts, in Official Gazette of the Republic of Macedonia No. 58/2006, of 11 May 2006 (amended in Official Gazette Nos. 62/2006, 35/2008, 61/2008, 118/2008, 16/2009, 150/2010, 39/2012, 83/2018, 198/2018, 96/2019).

[28] Commission Staff Working Document, *North Macedonia Report 2022*, of 12 December 2022, SWD(2022) 337 final, pp. 16–24.

[29] Art. 3, Law on Courts, cit., *supra* note 32.

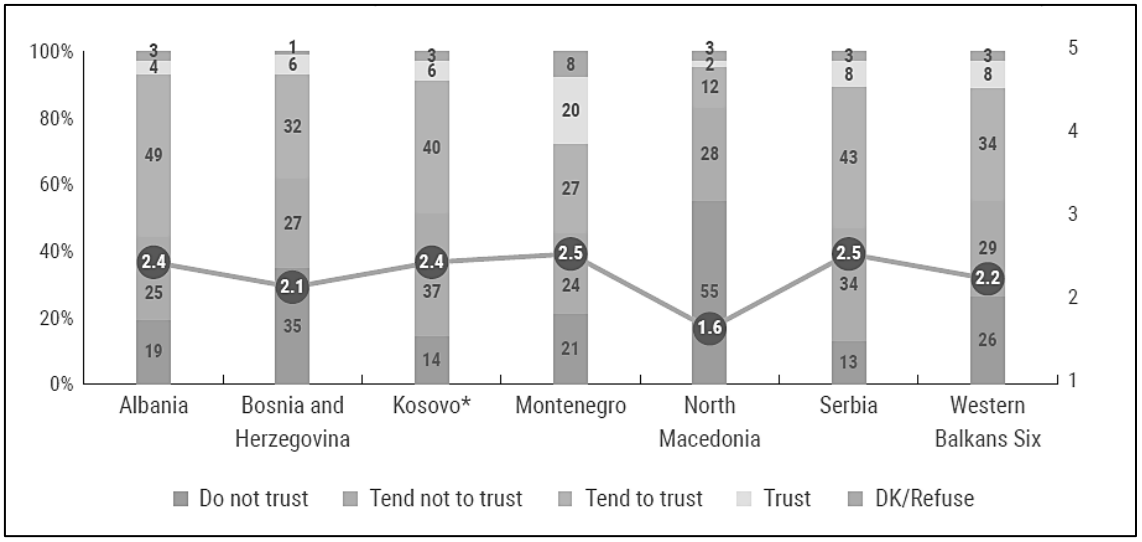
[30] Art. 3, para. 1, Law on the Judicial Council of the Republic of North Macedonia, in Official Gazette of the Republic of North Macedonia No. 102/2019, of 22 May 2019 (amended in Official Gazette No. 51/2023).

[31] *Ibidem*, art. 3, para. 3.

[32] Commission Staff Working Document, *North Macedonia 2024 Report*, of 30 October 2024, SWD(2024) 693 final.

[33] Commission Staff Working Document, *North Macedonia 2023 Report*, of 8 November 2023, SWD 2023 693 final, p. 3.

[34] Balkan Barometer Balkan Barometer is an annual survey of public opinion and business sentiments in six Western Balkans economies (including North Macedonia, Montenegro, Serbia, Albania, Bosnia and Herzegovina and Kosovo) commissioned by the Regional Cooperation Council (RCC).



Picture 1. Source: Regional Cooperation Council, Balkan Barometer 2024: Public Opinion Analytical Report, Sarajevo, 2024, p. 76

According to the latest *Nations in Transit 2024* report by Freedom House, North Macedonia scores 3.79 out of 7.00 in the area of judicial independence. Regarding corruption, the score decreased from 3.25 to 3.00, attributed to numerous corruption allegations against high-ranking officials, as well as amendments to the Criminal Code that reduced penalties for corruption and led to the dismissal of cases against former and current government officials. As a consequence of these factors, the overall democracy score for the country dropped from 3.86 to 3.79[35]. The score for the judicial framework and independence, expressed on the same 1.00 to 7.00 scale, reflects an analysis of constitutional and human rights protections, the degree of judicial independence, and the extent to which court decisions are respected and enforced. This positions the country within the category of a "Transitional or Hybrid Regime"[36].

5. Monitoring Mechanisms and Challenges

The structure of the monitoring system for the protection of fundamental rights within North Macedonia's institutional framework can be observed through two types of mechanisms: horizontal and vertical mechanisms. Specifically, when referring to the horizontal mechanism, *i.e.*, cooperation, it implies coordination among independent bodies and agencies, such as the Commission for Prevention and Protection against Discrimination[37], the Ombudsman[38], as well as civil society organizations, which play an essential role in monitoring the human rights situation by observing court proceedings and providing direct assistance to victims of rights violations. Regarding the vertical dimension, it involves all levels of State authority, including both central and local levels, which are obliged to implement legal norms and ensure the practical protection of rights. However, in addition to domestic institutions, international organizations and international legal instruments ratified and implemented in Macedonian legislation, most

[35] O. VANGELOV, *North Macedonia – Nations in Transit 2024*, in *Freedom House*, 2024.
[36] *Ibidem*.
[37] For more, see https://kszd.mk/.
[38] For more, see https://ombudsman.mk/.

notably the European Convention on Human Rights, the primary instrument of the European Court of Human Rights[39] play an undeniably significant role and exert considerable influence in monitoring and safeguarding rights. As a Member State of the Council of Europe[40], North Macedonia is obliged to implement the decisions rendered by the Strasbourg Court, thereby demonstrating to the international community its readiness to adhere to international standards for the protection of fundamental rights. This obligation stems not only from membership[41] in the Council of Europe but also from North Macedonia's aspiration for integration into the European Union, where the rule of law and effective protection of human rights are key criteria in the negotiation process.

In the latest report of the Ombudsman of the Republic of North Macedonia, in the section dedicated to the judiciary, it is emphasized that there remains a need to improve the conditions regarding the duration of court proceedings, particularly before the administrative courts. It has been observed that in a significant number of cases, decisions are not made on the merits, and, as in the previous reporting year, the Administrative Court does not adhere to the legally prescribed deadlines for issuing decisions[42]. Nevertheless, the report indicates a decrease in the number of complaints submitted in 2024 compared to 2023, when a total of 478 complaints were filed in relation to proceedings before Macedonian courts. For a more detailed overview of these complaints, a table is provided below showing the categories and number of complaints submitted by citizens.

These findings clearly point to the need for systemic reforms and the continuous improvement of the efficiency and transparency of judicial proceedings, which are key prerequisites for strengthening the rule of law, as well as consolidating the European integration process and achieving full membership in the European Union, one of North Macedonia's highest priorities.

Area/Category	**Number of Complaints**	**Remarks**
Proceedings before enforcement agents	196	Highest number of complaints
First-instance civil proceedings	39	
Second-instance proceedings	31	
Administrative Court of North Macedonia	22	Lengthy proceedings, failure to meet deadlines
First-instance criminal proceedings	21	
Higher Administrative Court of North Macedonia	11	
Judicial Council of North Macedonia	4	
Third-instance proceedings	2	
Proceedings before other authorities	16	
Other	18	

[39] For more, see https://www.echr.coe.int/.
[40] For more, see https://www.coe.int/en/web/portal.
[41] North Macedonia became a full Member State of the Council of Europe in November 1995. For more, see https://www.coe.int/en/web/about-us/our-member-states.
[42] Ombudsman of the Republic of North Macedonia, *Annual Report 2024*, 2025, available at https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Godisni%20izvestai/GI-2024/GI-2024.pdf.

Total complaints in judiciary	360	Decrease of 128 compared to the previous year

Table 1

It is important to emphasize in this paper that the comprehensive strengthening of monitoring structures and the effective implementation of international standards remain key prerequisites for the genuine protection of fundamental rights in North Macedonia, as one of the essential guarantees for maintaining a European perspective. Only through a commitment to reforms, improved coordination, and accountability of institutions can the rule of law be ensured and citizens' trust in the judicial system increased.

6. Case Study: *Mitrinovski v. The Former Yugoslav Republic of Macedonia*

On 7 October 2015, the European Court of Human Rights delivered its judgment in the case of *Mitrinovski v. the Former Yugoslav Republic of Macedonia*. The case was initiated by application no. 6899/12, submitted to the European Court of Human Rights in Strasbourg under art. 34 of the Convention on 27 January 2012, by the Macedonian national Mr. Jordan Mitrinovski[43].

In 2010, the applicant, as President of the Judicial Council, in a second-instance procedure, upheld an appeal by a detainee by accepting the proposed guarantee, thereby replacing the detention measure with house arrest in criminal case no. 537/2010. Three days after the court's decision was issued, the public prosecutor requested its annulment before the Supreme Court of North Macedonia and for the case to be remanded for reconsideration. The Supreme Court accepted the prosecutor's request, arguing that the Court of Appeal had no legal basis to decide on the merits of the appeal and was instead legally obliged to determine the appeal as inadmissible. One day after the prosecutor's request, the Supreme Court, sitting in a panel of six judges, concluded that the applicant, in handling case no. 537/2010, had acted unprofessionally. At the request of one of the Supreme Court judges, a Commission was established to examine the applicant's alleged professional misconduct, initiating proceedings for his removal from judicial office.

Despite the applicant's oral arguments presented before the Commission, no questions were posed by the judge who had initiated the proceedings, even though he was present as a member of the Commission. The applicant exercised his right to legal remedy by submitting an appeal to the ad hoc Appeals Commission within the Supreme Court, composed of nine members. Before this ad hoc Commission, the applicant argued that there was a conflict of interest because the judge who requested his dismissal later also voted for it as an ex officio member of the Judicial Council. Additionally, the applicant claimed that the position of the judge who initiated the dismissal procedure allowed him to influence the other judges of the court.

On 13 September 2011, the Appeals Commission rejected the appeal and upheld the decision of the Judicial Council, thereby dismissing the applicant from his judicial position. The request for the recusal of the judges involved was denied.

After exhausting all domestic remedies, the applicant initiated proceedings before the European Court of Human Rights, invoking the European Convention on Human Rights, specifically art. 6, para. 1, on the grounds that the Judicial Council, which had dismissed him from office, did not constitute an "*independent and impartial tribunal*". This was due

[43] European Court of Human Rights, Judgement of 7 October 2015, Application No. 6899/12, *Mitrinovski v. the Former Yugoslav Republic of Macedonia*.

to the fact that the President of the Judicial Council, who had been a member of the Commission handling his case, and the President of the Supreme Court, at whose request the contested proceedings were initiated, both subsequently participated in the Judicial Council's decision dismissing the applicant from his judicial post. This resulted in a situation where the same member of the Judicial Council "*both initiated the proceedings and decided on the judge's dismissal*" creating a dual role incompatible with the principle of a fair trial.

Under these circumstances, the Court found that the applicant had legitimate grounds to fear that Judge J.V., the individual who initiated the proceedings against Mitrinovski before the Commission, already held a personal conviction that the applicant should be dismissed for professional misconduct. The European Court of Human Rights found a violation of art. 6, emphasizing that the judge who initiated the dismissal proceedings against the applicant did not meet the objective and subjective standards of independence and impartiality required under the Court's established case law.

With this judgment, the European Court of Human Rights sent a clear message that disciplinary mechanisms for judges must be transparent, objective, and independent of the executive and legislative branches, and that national authorities have a duty to ensure that the judicial function is protected from political or institutional influence. Furthermore, the case of *Mitrinovski v. the Former Yugoslav Republic of Macedonia* (no. 6899/12) serves as a clear illustration of the importance of monitoring judicial independence and ensuring the right to a fair trial as a fundamental right guaranteed by both domestic and international legal norms.

7. Concluding Remarks

North Macedonia's progress on the path toward full membership in the European Union is inextricably linked to the substantial reform of its judicial system and the provision of effective protection of fundamental rights. Although the European Commission's annual reports indicate that legal standards for the protection of fundamental rights have been established, insufficient implementation in practice remains an ongoing issue that has hindered the country's European integration process for years. Additionally, these reports over the past three years highlight systemic weaknesses, including lengthy court proceedings, political influence over judicial institutions, and a significantly low level of public trust in the judiciary among Macedonian citizens. These problems present serious obstacles to the realization of the rule of law, which is a key element of the Copenhagen criteria.

Analyses by Freedom House and the Balkan Barometer further confirm the need for greater commitment by institutions to strengthen the rule of law and increase public confidence in the judiciary. Moreover, the latest annual report of the Ombudsman of the Republic of North Macedonia points to specific cases of violations of citizens' rights, especially due to excessively prolonged proceedings before administrative and civil courts.

To strengthen the arguments presented in this paper, a detailed analysis of the case *Mitrinovski v. North Macedonia* before the European Court of Human Rights clearly demonstrates that the mere formal alignment of legal norms with European standards is not sufficient. It shows that true strengthening of judicial independence requires transparent and impartial disciplinary mechanisms, free from any political or institutional influence.

Therefore, it can be concluded that through institutional cooperation among the Commission for Prevention and Protection against Discrimination, the Ombudsman, and judicial institutions, a strong coordinated system of protection can be established. Furthermore, by enhancing the capacities of civil society to monitor judicial processes and introducing clear and transparent procedures for the disciplinary accountability of judges, independent of the executive and legislative branches, North Macedonia will be able to meet the European Union's standards and advance toward full membership, ensuring the effective protection of the fundamental rights of its citizens.

ABSTRACT

North Macedonia, as a candidate country for accession to the European Union, is progressively aligning its legal framework with EU law through the ongoing accession process, which began in 2005. The fundamental rights are an integral part of the general principles of EU law, as guaranteed by art. 6, para. 3 of the Treaty on European Union. This is especially relevant given that judicial independence and the right to a fair trial are core pillars of fundamental rights, the non-negotiable values in the EU accession process and key components of the "Copenhagen Criteria" concerning the rule of law and human rights.

The European Commission's annual reports from the past three years (2022–2024) highlight the significant challenges North Macedonia faces in effectively implementing and monitoring fundamental rights, underlining that judicial independence is not merely a legal principle, but a practical and structural issue.

This paper provides a detailed analysis of the gap between formal standards and actual practice, emphasizing that good legislation alone is insufficient without effective monitoring tools. To gain a more complete picture in the context of fundamental rights, the paper examines how European law is applied by national courts by focusing on the case Mitrinovski v. North Macedonia. *This case illustrates that the lack of effective judicial safeguards and independent oversight mechanisms continues to undermine the enforcement of fundamental rights, despite formal legal alignment with EU standards. The outcome reflects the ongoing challenges and underscores the need for strengthened institutional capacity and the development of transparent, rights-based monitoring systems as essential foundations for credible alignment with the EU Charter of Fundamental Rights and core EU values.*

KEYWORDS

Case Study, EU Standards, Euro Integration, Fundamental Rights, North Macedonia.

EPILOGUE

A CROSS-CUTTING APPROACH TO EU SECURITY VIA ENLARGEMENT AND ALIGNMENT WITH EUROPEAN IDENTITY AND VALUES

by Teresa Russo[*]

1. Introductory Remarks

Following Russia's aggression against Ukraine, it became evident that enlargement is not only a challenging task of adding new members to the Union's membership, but also – and this has been emphasised by European institutions themselves – a geostrategic investment in the Union's future[1]. Enlargement has been utilised to strengthen economic integration and security cooperation, stabilise neighbouring regions, and expand the EU's geopolitical influence[2]. Each previous EU enlargement, in particular the significant enlargement to Central and Eastern Europe, has been accompanied by strategic concerns. Today, however, enlargement has considerable geopolitical implications as it clashes with a severe lack of regional security, waning US backing for European stability, a full-scale conflict, and a more general change in the international system marked by instability and great-power struggle. Thus, the biggest difference from previous enlargements is unquestionably the geostrategic context in which the EU negotiations for membership are conducted[3].

In this context, the debate on the topic of "*Quo vadis EU Security*" is crucial. Indeed, it is meant to be a continuation of considerations already conducted on the combination of solidarity and the rule of law as a new dimension of EU security[4]. The goal of today's discussion, however, is to make clear how such a combination is inadequate unless it is coupled with a significant overhaul of the constitutional legal orders of both newly admitted States and those that are already members, as well as the provision of internal mechanisms for the effective application of art. 2 TEU protection. In order to examine how EU security has affected migration management, the fight against transnational crimes, and the protection of fundamental rights and values in these nations, the conference proceedings sought to consider the important issues that have surfaced at the

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[1] According to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *New Growth Plan for the Western Balkans*, of 8 November 2023, COM(2023) 691 final: "*Russia's war of aggression against Ukraine illustrates once again the need for a determined geostrategic investment in a stable, strong and united Europe. The war has had a significant impact on our Western Balkan partners, putting further pressure on their economies and societies and creating risks to their stability. The need to bring them closer to the EU and to accelerate their accession process, based on EU-related reforms in the countries, has never been clearer than it is today*".

[2] See T. RUSSO, *Allargamento e Membership dell'Unione europea*, Napoli, 2024.

[3] Thus, P. EKMAN, B. LUNDQVIST, A. MICHALSKI, L. OXELHEIM, *Reconsidering the Depth and Size of the EU in View of Enlargement in a Time of War*, in P. EKMAN, B. LUNDQVIST, A. MICHALSKI, L. OXELHEIM (eds.), *The Depth and Size of the European Union in a Time of War*, Cham, 2025.

[4] See T. RUSSO, A. ORIOLO, G. DALIA (eds.), *Solidarity and the Rule of Law. The New Dimension of EU Security*, Berlin, 2023.

State and supranational levels in the alignment to EU *acquis*. To what degree constitutional and acquis-based legislative measures should influence the constitutional identities of the candidate nations and their alignment with the identity and values of the European Union is a crucial question. The protection and promotion of values of art. 2 TEU are under risk, as Member States "*negate one or more of the values enshrined in*"[5].

However, with regard to the candidate countries, the same values have several meanings and are given far more weight than they are for the existing Member States. This is because the enlargement process is influenced by their regard at every stage, which determines whether it advances, slows down, or stagnates. In actuality, obtaining membership status is the result of a convoluted intergovernmental and interinstitutional process that is not governed by the Treaties[6]. It consists of several stages that have evolved in practice and have gradually made the Union's values the so-called backbone of enlargement: adherence to these values informs the political and economic requirements for becoming a Member State. Therefore, national legal systems must be able to adapt to the Union's standards and values through long-term modifications that guarantee the proper and efficient implementation of Union law. Since adaptation to the criteria does not address the States' actual competence to enact appropriate policies to transfer and implement a Union acquis that has grown so big and complicated, the most significant obstacles have arisen precisely here, at the national level. For this reason, this essay seeks to consider the cross-cutting approach to the Union's security through enlargement, which cannot alone ensure the democratic stability of the Union. Although it is essential for the process of accession, alignment with the Union's identity and values – have become increasingly significant, particularly in relation to the Western Balkans[7] – does not ensure the "holding" of EU legal order once new States have joined, thus requiring a rethinking of the concept of security in the light of the Union's fundamental values.

2. Enlargement as a Strategic Tool for EU External and Internal Security

Thus, enlargement is not simply the accession of new Member States but has progressively established itself as a policy with a transversal dimension in external action, becoming a strategy for the future of the European Union and its neighbourhood[8]. This link, dating back to the enlargement of the Eastern European countries, has become clearer with specific reference to the Western Balkans, where the Union has integrated foreign policy with intergovernmental mechanisms and instruments aimed at their stabilisation and association, regional cooperation and the promotion of good neighbourly relations. In this sense, enlargement has played a transversal role as a strategic instrument that helps the EU to export stability and democratic norms beyond its borders through a political-economic process with implications for external and internal security. Candidate countries must meet the Copenhagen criteria, which include democratic governance, the protection of human rights and a market economy, by implementing reforms of their

[5] In this sense, see Court of Justice, Opinion of the Advocate General Ćapeta, delivered on 5 June 2025, Case C-769/22, *Commission v. Hungary (Valeurs de l'Union)*, in part. para. 237 ff.
[6] See K. INGLIS, *Evolving Practice in EU Enlargement. With Case Studies in Agri-Food and Environment Law*, Boston-Leiden, 2009.
[7] See B. FERREIRA COSTA, *Challenges and Barriers to the European Union Expansion to the Balkan Region*, 2022.
[8] In general, see K.A. WOJTASZCZYK, T. WALLAS, P. STAWARZ (eds.), *The Future of European Union*, Berlin, 2023.

national systems[9]. It also requires candidate countries to have robust legal systems to fight organised crime and ensure the independence of the judiciary, all of which strengthen the EU's internal security. Accession processes also include alignment with the Schengen acquis and EU policies on external borders, contributing to the management of migration, asylum and human trafficking networks. In particular, the area of freedom, security and justice has acquired decisive weight by imposing the Justice and Home Affairs (JHA) *acquis* on new members, thus emphasising the "hierarchical" conditionality linked to the stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities[10].

More specifically, the alignment of the national legal systems of the candidate countries with the values of the Union pursuant to art. 2 TEU is one of the conditions of admissibility that informs all the political, economic and legal conditions of admissibility of the enlargement process pursuant to art. 49 TEU[11]. Even more, the enlargement policy has progressively dictated the conditions of alignment with the values of the Union, considering that such alignment was a guarantee of internal-external security because it was suitable for shaping the legal systems of the States in the process of adhering to their own identity, common to that of the Member States. However, this approach has highlighted the limitation of looking only at the present with little or no prospect for the future and above all of adapting to the ever-new emergencies of the current geopolitical context. Consequently, it has developed with excessive flexibility in adding rules/criteria and conditions to be respected, which have expanded according to security needs, and which could expand further. The effect has been a general security-based approach to enlargement, which through the constant call for rigorous respect for EU values, has asked for more and more while obtaining much less. Chapters 23 and 24 of the acquis are central not only because they represent the foundations of the Union, but because they are the expression of a clear political choice to join the Union, identifying with the common identity to be protected and promoted[12]. So much so that enlargement has influenced the political choices of the Member States mainly in some key sectors not without contradictions, such as the management of migration with the disproportionate sacrifice of the protection of human rights and, therefore, of their own fundamental values. The European Union's externalization policies for migration management have not adequately assessed the capacity of national systems in transformation to support migrant flows, but even more so their capacity to implement effective legislative reforms that respect fundamental human rights. Externalization cannot mean *sic et simpliciter* transferring the responsibility for management to third countries through cooperation agreements, readmission agreements and incentives for border control, because it ends up encouraging or legitimizing de-responsibilization. The Italy-Albania agreement on strengthening cooperation on migration has not simply externalized but has applied the theory of extraterritoriality to migration management, creating a precedent that could be followed

[9] In particular, see C. HILLION, *The Copenhagen Criteria and Their Progeny*, in ID. (ed.), *EU Enlargement: A Legal Approach,* Oxford-Portland, 2004, pp.1-22.
[10] See T. RUSSO, *Justice and Home Affairs Cooperation (JHAC) in the Perspective of Enlargement*, in *Freedom, Security & Justice: European Legal Studies,* n. 2, 2025, pp. 211-227.
[11] Through the various phases of rapprochement, association, pre-accession, negotiation, the acceding States should arrive at the transformation of their national constitutional systems in compliance with political (and not only) conditionalities aimed at guaranteeing the "democratic" stability of the Union. C. HILLION, *EU Enlargement*, in P. CRAIG, G. DE BÚRCA (eds.), *The Evolution of EU Law*, Oxford, 2011, pp.188-215.
[12] In critical sense, see A. NĘDZIAK, *No, I Am Not European: European Identity in Times of an Integration Crisis,* in K.A. WOJTASZCZYK, T. WALLAS, P. STAWARZ (eds.), *op. cit.*, p. 39 ff.

by other States, with repercussions on respect for human rights[13]. Furthermore, the security-oriented, procedural-acceleration and hotspot approach of the legislations adopted with the Pact on Migration and Asylum does not take national systems into account, ending up normalizing the denial of legal protection for migrants[14].

Similarly, the fight against transnational crimes also records an expansive trend with the use of criminal law, even within the Common Foreign and Security Policy, whereby the violation of the Union's restrictive measures becomes a crime. Consider, for example, Directive (EU) 2024/1226 which aims to facilitate the investigation and prosecution of violations of European Union sanctions (restrictive measures), or the proposal of the High Representative of the Union for Foreign Affairs and Security Policy (CFSP), with the support of the Commission, for a CFSP regulation on anti-corruption, for the establishment of an EU sanctions regime against the most significant cases of corruption, wherever they occur, which seriously harm (or risk harming) the fundamental interests of the Union and the objectives of the CFSP itself[15]. As stated by the European Commission, alignment with the CFSP is a more significant signal than ever in terms of shared values and strategic orientation in the new geopolitical context. Accession is a strategic choice by which partners must firmly and unequivocally adopt and promote the Union's values. However, the 2025 Commission work programme states that: "*Geopolitical instability and Russia's war of aggression against Ukraine have significantly reshaped Europe's security landscape. Illegal migration continues to be an issue that raises concerns, with people needing to trust that their governments and institutions to effectively manage the situation, while acknowledging the need to address skills shortages also through labour migration* (…). *The core values on which our Union is founded, including our democracy, are under attack, with clear evidence of campaigns of foreign interference*"[16].

Therefore, the integration of States into the EU is also seen as a tool to reduce the geopolitical influence of rival powers (for example, Russia in the Western Balkans), making the region safer for both new and existing members. However, the difficulties encountered by the Union in the current escalation of war in the Middle East and Ukraine highlight the difficulty of reconciling strategic needs with normative competences[17].

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[13] In a recent ruling, the Italian Court of Cassation analysed the protocol, highlighting its critical issues not only with the Constitution, but also with international law and EU law.

[14] With a focus on expediting the processing of applications submitted at the border or in transit zones, particularly for applicants from safe nations, the 2024 Directive on Accelerated Border Procedures brings about substantial reforms to the European asylum system. Together with Regulation (EU) 2024/1349, this directive seeks to harmonise and expedite border return processes, with a detrimental effect on the protection of human rights and the exercise of the right to asylum.

[15] In May 2023, the Commission presented an Anti-Corruption Package or Anti-Corruption Strategy. This is based on Joint Communication to the European Parliament, the Council and the European Economic and social Committee on the fight against corruption, which reviews existing legislation and policy in the field and highlights how corruption is an integral part of almost all organised crime activities, with 60% of organised crime using it to infiltrate the public or private sector. The anti-corruption package includes also a proposal for a Directive on the fight against corruption, which provides for the criminalisation of corruption offences and harmonisation of definitions and sanctions across the Union; which will replace both the Framework Decision and the Convention against corruption involving EU or Member State officials and will amend the Directive (EU) 2017/1371 of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law. Furthermore, it included also a Proposal for a regime of specific CFSP sanctions to combat corruption where acts of corruption seriously harm or threaten to seriously harm the fundamental interests of the Union and the objectives of the CFSP, as set out in art. 21 of the Treaty on European Union.

[16] See the 2025 Commission work programme, *Moving forward together: A Bolder, Simpler, Faster Union*, Strasbourg, of 11 February 2025, COM(2025) 45 final.

[17] "*The third set of negotiations among EU member states involves a restructuring of the European security architecture. A Union that enlarges to countries that are incapable – individually or collectively – of*

Furthermore, the Union's dilemma increasingly concerns its internal security and the stability of its legal system which would require a greater effort of "political cohesion". The European Union is a union of States, in which the political and intergovernmental dimension is still too decisive in the current post-Lisbon Union model. However, it is also a union of peoples which finds its main form of "self-protection" in the effective application of its law in the Member States.

3. The Need to Rethink EU Security in the Light of Founding Values

As a result, the Union's security must first be rethought internally. As the Court of Justice has often remarked, it is now widely accepted that the European Union is based on a set of values that are shared by all of its Member States as specified in art. 2 TEU and that embody its constitutional identity[18]. The Union's internal and external goals include promoting these values, as stated in art. 3, paras. 1 and 5[19]. Furthermore, according to art. 21 TEU, these are the values/principles that have inspired its own creation, development and enlargement and that the Union seeks to further globally and in relations with

defending themselves from military aggression is clearly not a political option. In the past, this risk was avoided through parallel assessions to the EU and the North Atlantic Treaty Organisation (NATO – the "North Atlantic Alliance"). Offering the same scheme and division of labour today appears much more complex, not least given the current unwillingness of the United States to provide the same level of engagement in European security as it has in the past. Thus, the level of success attainable by the EU's enlargement policy also crucially depends on Europeans' capacity to find agreements for sharing the burdens and responsibilities of their own security and defence. This ought to be done both within NATO and through strengthened European, EU and national defence structures, contributing to shaping the complexity that characterises the European security architecture". Thus, M. BONOMI, R. MASTROROCCO, *Negotiating EU Enlargement: Scenarios for Future Integration*, Rome, 2024, available at https://www.astrid-online.it/static/upload/9788/9788893683395.pdf.

[18] In its 2014 opinion on accession to the ECHR, the Court of Justice specified that the States are mutually bound because each Member State shares with all the other Member States, and recognises that they share with it, a series of common values on which the Union is founded, as specified in art. 2 TEU. In the Court's view, this is a premise that implies and justifies the existence of mutual trust between the Member States as regards the recognition of these values and, therefore, "*respect for the Union law implementing them*". It is in this context, according to the Court, that it is up to the Member States – in particular, by virtue of the principle of sincere cooperation set out in art. 4, para. 3, first subparagraph TEU – to ensure, in their respective territories, the application of and compliance with Union law and to take, to that end, any measure, whether general or particular, to ensure fulfilment of the obligations arising from the Treaties or resulting from the acts of the institutions of the Union. The characteristics of Union law, the Court recalls, have given rise to a structured network of principles, rules and mutually interdependent legal relationships, which reciprocally bind the Member States and the Union, as well as the Member States among themselves, establishing mutual trust in the common respect for the values referred to in art. 2 TEU. Court of Justice, opinion 2/13 of 18 December 2014, *Adhésion de l'Union à la CEDH*, paras. 168 and 191-192, on which see, among others, C. BARNARD, *Opinion 2/13 on EU Accession to the ECHR: Looking for the Silver Lining*, in *EU Law Analysis*, 16 February 2015; L. BESSELINK, *Acceding to the ECHR Notwithstanding the Court of Justice Opinion 2/13*, in *Verfassungsblog*, 23 December 2014; J.C. BONICHOT, M. AUBERT, *Les limites du principe de confiance mutuelle dans la jurisprudence de la Cour de justice de l'Union européenne: comment naviguer entre Charybde et Scylla*, in *Revue Universelle des Droits de l'Homme*, No. 1-6, 2016, p. 1 ff.

[19] According to art. 3, para. 1, TEU: "*The Union's aim is to promote peace, its values and the well-being of its peoples".* Par. 5 states: *"In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter*".

neighbouring States[20]. However, despite the proclaimed promotion, these values are unable to be adequately protected because of the increasing complexity and variety of challenges the Union must deal with[21]. The shift from purely military threats to hybrid threats – like cyberattacks, disinformation, economic pressure, migrant instrumentalization, and foreign meddling in elections and democratic processes – led to a reconsideration of security as a comprehensive strategy grounded in Union values. Furthermore, some Member States' democratic backsliding undermines the Union's legitimacy abroad, erodes public confidence, and jeopardises internal unity. The EU's fundamental values are not merely idealistic; they serve as useful instruments to direct a new security framework that, based on solidarity, successfully guarantees an equitable distribution of duties among Member States and genuine European collective action that respects human rights.

Therefore, a values-based security approach ought to place a high priority on upholding the rule of law, transparency, and democratic institutions. Thus, in order to protect the fundamental values of the EU, in the last European legislature the European Commission presented a Communication on pre-enlargement reforms and strategic reviews[22]. The Communication articulates the approach to the issue of EU reforms in the context of the enlargement process, placing respect for the fundamental values of the EU first, followed by: the strategic review of the main EU policies involved in the next enlargement; reforms to the Multiannual Financial Framework; the governance of both the EU institutional and decision-making system and the enlargement process itself. However, while Member States consider that the tool available for respecting the rule of law are adequate and could be used to their full potential[23], the European Parliament considers it necessary to strengthen the mechanism for protecting the rule of law and the fundamental values of the EU, by reforming the procedure under art. 7 TEU: end of unanimity in Council decisions; setting a clear timetable; Court of Justice as arbiter of violations.

As a result, the issues related to the changes to the procedure for the protection of values under art. 2 TEU are even more relevant today in the face of serious and systematic violations of several values by some Member States, which would require the effective implementation of art. 7 TEU. In particular, in the infringement procedure initiated by the Commission against Hungary, Advocate General Tamara Capeta in her conclusions proposed that the Court declare a separate violation of art. 2 TEU, regardless of the technique of the combined provisions with other provisions to which the Court has

[20] According to art. 8, para. 1, TEU: "*The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation*".

[21] See REUNIR, *Working Paper on the Origins and Evolutions of the EU's Enlargement and Neighbourhood Policies in the Area of Security*, June 2024, available at https://reunir-horizon.eu/wp-content/uploads/2025/04/REUNIR-D2.1-SECURITY.pdf-1.pdf.

[22] See Communication from the Commission to the European Parliament, the European Council and the Council, *on Pre-Enlargement Reforms and Policy Reviews*, of 20 March 2024, COM(2024) 146 final, that states: "*Enlargement is in the Union's own strategic interest. This does not mean that enlargement comes without challenges. That is true for the candidate countries and potential candidates, which will need to carry out substantive political, institutional and policy reforms to be ready for membership, and it is also true for the Union, which will have to deal with, inter alia, increased heterogeneity, the need for new resources, further complexity of decision-making processes and the need to maintain undisputed respect for and continued application of the EU's core values*".

[23] They agreed on the need to clarify the procedure of art. 7 TEU, in particular regarding the timing and possible suspension of rights.

repeatedly resorted, such as in the case of the rule of law with reference to art. 19 TEU[24]. Regardless of the criticisms levelled at the Advocate General's conclusions[25], it is believed that her proposal arises from the intent to overcome the impasse due to the political nature of the sanctioning mechanisms under art. 7 TEU which require the unanimity of the States. It is believed, in fact, that while declaring an independent violation of art. 2 TEU, the Court would still find itself having to motivate it by referring to other provisions of Union law or to art. 49 TEU which establishes the conditions of membership[26]. In this sense, the Court has already had the opportunity to clarify, in the judgments on the Conditionality Regulation, that art. 2 TEU does not constitute a mere statement of orientations or intentions of a political nature, but contains values that are embodied in principles that entail legally binding obligations for the Member States and that constitute the fundamental premise on which the entire Union legal system is built. The Court's judgements identify the membership of the Union, in terms not only of accession, but also of the permanence of the States which base their mutual trust on that community of values[27].

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[24] See for example, Court of Justice, Judgement of 27 February 2018, Case C-64/16, *Associação Sindical dos Juízes Portugueses v.. Tribunal de Contas*, on which see, among others, M. BONELLI, M. CLAES, *Judicial Serendipity: How Portuguese Judges Came to the Rescue of the Polish judiciary: ECJ 27 February 2018, Case C-64/16, Associação Sindical dos Juízes Portugueses,* in *European Constitutional Law Review*, No. 3, 2018, pp. 622-643; S. MENZIONE, *Case Note: Anything New under the Sun? An Exercise in Defence of the Reasoning of the CJEU in the ASJP Case*, in *Review of European Administrative Law*, No. 2, 2019, pp. 219-236.

[25] See G. DI FEDERICO, M. LANOTTE, *Le conclusioni dell'AG Ćapeta in Commissione c. Ungheria e l'uso a sé stante dell'art. 2 TUE*, in *Eurojus*, n. 2, 2025, pp. 347-359.

[26] Specifically in the case *Repubblika v. Il-Prim Ministru*, the Court recalls again how art. 49 TEU provides for the possibility for any European State to apply to become a member of the Union, bringing together States that have freely and voluntarily adhered to the common values and (adding) that respect those values and are committed to promoting them, as provided for by art. 2 TEU. See Court of Justice, Judgement of 20 April 2021, Case C-896/19, *Repubblika v. Il-Prim Ministru*, paras. 61-62, on which see, *inter alia*, M.E. BARTOLONI, *Limiti* ratione temporis *all'applicazione del principio della tutela giurisdizionale effettiva: riflessioni in margine alla sentenza Repubblika c. Il-Prim Ministru*, in *Osservatorio europeo DUE*, 4 maggio 2021; V. ELIA, *Affirmation du principe de non-régression dans le respect de l'état de droit et des valeurs de l'Union européenne*, in *Centre d'études juridiques*, 28 aprile 2021; A. ŁAZOWSKI, *Strengthening the Rule of Law and the EU Pre-Accession Policy: Repubblika v. Il-Prim Ministru*, in *Common Market Law Review*, No. 6, 2022, pp. 1803-1822; M. LELOUP, *Repubblika: Anything New Under the Maltese Sun? The ECJ Rules on the System of the Appointment of Judges in Malta*, in *Verfassungsnlog*, 21 April 2021. See also Court of Justice, Order of 11 July 2019, Case C-619/18, *European Commission v. Poland*, paras. 42-43.

[27] The Regulation in question, in fact, introduces into European legislation a protection mechanism against systemic violations of the obligation to respect the rule of law that compromise or seriously risk compromising in a sufficiently direct manner the sound financial management of the Union budget or the protection of the financial interests of the Union (art. 4), the Commission and the Council being able to go as far as the total or partial suspension of payments (arts. 5 and 6). The case also shows that the mechanism in question is considered by the European institutions and by some Member States as a "*horizontal conditionality*", connected to the value of the rule of law contained in art. 2 TEU, which must be respected in all areas of Union action (para. 123). Furthermore, it emerges again from the combined provisions of arts. 2 and 49 TEU, that respect for values is a precondition for the accession of any new member, but also that when a candidate State becomes a Member State it adheres to a legal construction which is based on the fundamental premise that each one shares with all the other Member States, and recognises that they share with it, the common values contained in art. 2 TEU, as provided for in recital 5 of the contested Regulation referred to by the Court itself (paras. 125 and 143). In this sense, Court of Justice, Judgement of 16 February 2022, Case C- 156/21, *Hungary v. European Parliament and Council*, paras. 125-129; Court of Justice, Judgment of 16 February 2022, Case C-157/21, *Poland v. European Parliament and Council*, points 143-147, on which see, *inter alia*, J. ALBERTI, *Adelante, presto, con juicio. First considerations on the judgments of the Court of Justice establishing the legitimacy of the "Cross-compliance Regulation"*, in *Eurojus*, No. 2, 2022, pp. 30-36; M. BUCCARELLA, *The judgments of the Court of Justice on the new*

Therefore, the Court could affirm a violation of art. 2 TEU also for violation of the sincere cooperation that binds the Union and its Member States, as it has already done[28]. The point, however, is that, even though the Court's decision to this effect would be disruptive with respect to its prior rulings, its decision, even of condemnation, would not produce the sanctioning effects attributable to the mechanism of art. 7 TEU whose implementation would demonstrate the clear political will of the States to sanction the conduct of another Member State. The importance of art. 7 TEU lies in its nature as a political sanction that should be able to find application regardless of further regulatory instruments and judicial interventions when a State puts at risk the common identity of the EU membership. In this sense, the lack of political cohesion is evident, which, by weakening the Union internally, is reflected in its external action and in particular in relations with future Member States.

4. Conclusions About the Unresolved Issue of the Implications of Enlargement on EU Security

In conclusion, the use of enlargement as an instrument of external and internal stability of the Union has not produced the desired results[29]. In terms of political security (democracy and rule of law), the admission of countries with fragile institutions has imported instability, corruption and organised crime into the Union. It is recalled that Bulgaria and Romania were subjected to the cooperation and verification instrument and still suffer from problems in this area[30]. In terms of economic security, the proposals on

horizontal financial conditionality mechanism: the legitimacy of Regulation 2020/2092 in the name of administrative transparency and a (re)affirmed European identity, in *DPCE online*, No. 2, 2022, pp.1279-1296; A. HOXHAJ, *The CJEU Validates in C-156/21 and C-157/21 the Rule of Law Conditionality Regulation Regime to Protect the EU Budget*, in *Nordic Journal of European Law*, No. 1, 2022, pp. 131-147; R. MAVROULI, *The Dark Relationship Between the Rule of Law and Liberalism. The New ECJ Decision on the Conditionality Regulation*, in *European Papers*, No. 1, 2022, pp. 275-286; L. PECH, *No More Excuses: The Court of Justice Greenlights the Rule of Law Conditionality Mechanism*, in *Verfassungsblog*, 16 February 2022; S. PROGIN THEUERKAUF, M. BERGER, *ECJ Confirms Validity of the Rule of Law Conditionality Regulation*, in *European Law Blog*, 11 March 2022.

[28] For example, see *supra* note 16.

[29] According to REUNIR, *op. cit.*: "*In contrast, the EU enlargement, a policy response to the uncertainty that followed the end of the Cold War, both transformed the Union itself – it became larger, more diverse, and took on some of the character of a security community – and brought a degree of security to its new Member States. This is perhaps the clearest demonstration of the EU's protean power in the security field. The subsequent extension of membership prospects to countries from the Western Balkans and Eastern Partnership have not (yet) had the same transformative effect on the EU itself. In fact, the EU has done its utmost to avoid the costly institutional and policy adaptations necessary to prepare for future rounds of enlargement. In this sense, it has missed an opportunity to continue the protean momentum generated by its enlargement to central and eastern Europe. This has fuelled suspicions about the real intentions behind its accession promises, with would-be members questioning the genuine interests of the current Member States in enlarging the Union. In this way, the EU has lost some of its attraction for accession aspirants, thus undermining its protean power in the WB and EN regions. The revival of EU enlargement policy in the aftermath of Russia's invasion of Ukraine has raised hopes about a faster accession track for some candidates from the Western Balkans, but this has not translated into a concrete enlargement timetable yet. The development of the C(E)SDP may also be seen as a demonstration of protean power*".

[30] The reference is to the Commission Decision 2006/928/EC, *establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption*, of 13 December 2006, OJ L 354, of 14 December 2006, and Commission Decision (EU) 2023/1785, *repealing Decision 2006/929/EC establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime*, of 15 September 2023, in OJ L 229, of 18 September 2023. Both decisions are no longer in force as of 8 October 2023. Nevertheless, see, Case T-1126/23: Action

the gradual integration of candidate countries that consider that the single market should become the fundamental instrument for the enlargement process, in particular through the early extension of its benefits to candidate countries, allowing them to reap the benefits of specific elements of the single market well before full accession, require that gradual economic integration remains aligned with political integration based on shared values, thus avoiding the perception by candidate countries that the EU represents primarily economic integration[31]. In terms of strategic-military security, enlargement as an instrument of EU foreign policy sees the inclusion of countries such as the Western Balkans or Ukraine as a geopolitical necessity in response to Russian aggression; a way to increase strategic autonomy and resilience; a tool to strengthen collective defence and security cooperation, especially in coordination with the North Atlantic Treaty Organization (NATO). However, alignment with EU foreign policy has a major missing piece represented by Türkiye, with which the Union has suspended negotiations even though it remains among the candidate countries for membership and a strategic partner for the Union[32]. Furthermore, over-reliance on enlargement to solve security problems can backfire if deeper issues, such as foreign interference, are not comprehensively addressed.

With the current geopolitical dynamics, the EU has pushed for an acceleration of some security-related dimensions of enlargement, such as pre-accession integration into the CFSP, access to EU defence funds and training missions, early participation in cybersecurity frameworks and resilience to disinformation[33]. However, the security of its legal system is not strengthened, indeed the enlargement has affected the unity within the Union, giving rise to divergent opinions and vetoes on new candidates and nationalist/populist movements opposing further integrations. Therefore, the EU uses enlargement as an instrument to shape a safe, stable and value-based European order, in accordance with the provisions of the Treaties (arts. 3 and 21 TFEU). Nevertheless, it has highlighted all its precariousness once the States have joined the Union. Consequentially, the issue is not to stiffen the accession procedures, already long and complex, but to strengthen the protection of EU values and its identity[34]. The promotion and protection of

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brought on 28 November 2023, *Asociația Inițiativa pentru Justiție v. Commission*, in OJ C, of 22 January 2024.

[31] See Enrico Letta's Report, *Much More Than A Market. Speed, Security, Solidarity, Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens*, April 2024, available at https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf.

[32] See M. DE LA CÁMARA, *Turkey and The European Union: A Difficult but Critical Relationship*, in *CIDOB notes internacionales*, September 2021, available at https://www.cidob.org/sites/default/files/2024-06/256_MANUEL%20DE%20LA%20C%C3%81MARA_ANG.pdf. Due to concerns over human rights, the rule of law, and other issues, the European Parliament recommended in 2019 that accession negotiations between Turkey and the EU be formally suspended, essentially freezing them since 2016. Although the talks haven't been formally ended, they haven't advanced in a number of years.

[33] See G. GRESSEL, N. PAPESCU, *Strength in Members: How to Rally EU Enlargement for Defence*, 2 April 2025, available at , that outlines how defence cooperation by expanding the EU's enlargement methodology or by creating tailored roadmaps that would help candidate countries align with EU security standards and contribute to collective defence efforts. Furthermore, see Joint Communication to the European Parliament and the Council, *The European Union's Strategic Approach to the Black Sea Region*, of 28 May 2025, JOIN(2025) 135 final.

[34] It is indisputable that some policies and some of the current EU Member States will be more exposed than others to the impact of the enlargement process, an enlargement solidarity instrument should be foreseen, based on an *ex ante* assessment of the data on the costs of enlargement and its impact on the single market and which should compensate for any imbalances, ensuring a gradual accession process for both candidate countries and Member States; the issue of the EU's absorption capacity of candidate countries should be addressed in a pragmatic way. In particular, beyond the availability of funds, it will be crucial to ensure that candidate countries have the institutional and administrative capacities to use European funds

the Union's values must go hand in hand both inside and outside the Union: only in this way it will be possible to have a real political union that is not uniform, but homogeneous and able to be a single voice[35].

ABSTRACT

The current epilogue aims to illustrate that, in a world that is changing due to conflict, instability, and declining U.S. support, EU enlargement is now a geostrategic tool rather than a technocratic procedure. In addition to internal unity and the rule of law, the focus is on whether the legal and constitutional frameworks of current and potential Member States can support and align with EU values (art. 2 TEU). Compared to current members, candidate countries face more scrutiny on EU values, revealing inconsistencies and calls into question how well EU identity and security are preserved after membership.

KEYWORDS

Enlargement, European Union, Identity, Security, Values.

in an optimal way; innovative solutions will be needed to facilitate the gradual integration (before their formal entry) of candidate countries into the EU institutions and decision-making processes, in particular in areas where their integration into the internal market is progressing more intensely, so as to promote a sense of belonging to the EU community (according to some proposals, formulated by some observers, candidate countries could for example participate as observers in meetings of the Council of the EU in the formations relating to policies to which they have started to be associated); a complex system of safeguard clauses and transition periods will have to be designed to anticipate, and mitigate, potential adverse effects and economic shocks, both for Member States and candidate countries; full respect for the rule of law by candidate countries will have to be guaranteed, as a foundation on which mutual trust is based, ensuring that fundamental freedoms and the principle of mutual recognition are effectively respected within the European Union. See again the Enrico Letta's Report, cit., *supra* note 31.

[35] See, for example, the Action brought on 27 April 2023, *European Commission v. Hungary*, (Case C-271/23), in which the Commission claims that the Court should declare that, by not following the European Union's position, at the reconvened sixty-third session of the Commission on Narcotic Drugs of the United Nations Economic and Social Council, in respect of amending the scheduling of cannabis and cannabis-related substances, Hungary has failed to fulfil its obligations under Council Decision (EU) 2021/3, which was binding on Hungary in accordance with art. 218, para, 9, TFEU, in conjunction with the fourth paragraph of art. 288 TFEU; interfered in the exclusive external competence of the European Union laid down in art. 3, para. 2, TFEU; and breached the principle of sincere cooperation enshrined in art. 4, para. 3, TEU. See also Court of Justice, Opinion of Advocate General Medina, delivered on 27 February 2025, Case C-271/23, *European Commission v. Hungary*, para. 124, who affirms: "(...) *failure to comply with Decision 2021/3 may call into question the unity and consistency of the European Union's external action and undermine, inter alia, the value of the rule of law on which the European Union is founded, in accordance with Article 2 TEU*".

ISBN 978-608-277-121-2