Mihaela Daciana Natea, Simion Costea (coordinators)

EU Law and Politics at the Crossroads: Navigating the Complexities of AI, Digitalization, Data Protection, Security, and Radicalization

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Argument

In the ever-evolving landscape of European Union law and politics, the profound impact of artificial intelligence, digitalization, data protection, security challenges, and radicalization is reshaping the foundations of governance and legal frameworks. This insightful volume, titled "EU Law and Politics at the Crossroads: Navigating the Complexities of AI, Digitalization, Data Protection, Security, and Radicalization," serves as an intellectual compass, guiding readers through the intricate and interconnected challenges that define the contemporary European context.

EU Law: From Innovation to Regulation forms the initial segment of this anthology, offering a deep dive into the transformative role of technology within legal paradigms.

Giorgi URTMELIDZE explores the conceptual landscape of legal technology, while Mattia MORRESI navigates the ethical challenges posed by autonomous weapon systems (AWS). Ruxandra Andreea LĂPĂDAT critically examines the potential replacement of legal professions by artificial intelligence, and Daniela DUȚĂ investigates responsible innovation with a focus on confidentiality, privacy, and data protection. Ana KOIAVA sheds light on the legal aspects of vulnerability disclosure, and Marta TERLETSKA contributes insights into post-mortem privacy within the context of the latest GDPR legislative shifts. Vlad BĂRBAT delves into the roots of Natural Law and its applicability in the future of European law, while Marieta SAFTA addresses security challenges from the unique perspective of constitutional courts' vulnerabilities.

Irina-Cristina APOSTOLESCU concludes this section with a thought-provoking examination of traditional notariat in the face of blockchain technology.

The second section, *EU Security and Politics Highlights: Navigating Turbulent Waters*, amplifies the exploration by focusing on the intersection of security concerns and political dynamics.

Dr. Hedi SAIDI initiates this segment with an insightful sociological analysis of radicalized youth, probing into the factors that attract young individuals to radicalization. Sabina CENOLLI and Ulpian HOTI contribute an in-depth exploration of performance management in Albanian public administration, highlighting the interplay of work-life balance, work-family conflict, and family-work conflict with employee performance. Ana BUHALJOTI and Mirela MERSINI prioritize security awareness strategies in the Fourth Industrial Revolution, while Irina NICOLAESCU examines the solidarity of the international trade union movement in the post-COVID-19 era. Andreea-Romana BAN evaluates the impact of digital transition on education, offering critical insights into the evolving educational landscape. Dr. Mihaela IVĂNESCU and Dr. Luiza-Maria FILIMON dissect the campaign trends of national parties during European elections, providing an invaluable understanding of political dynamics. Marcu-Andrei Solomon concludes this section with a compelling analysis of the European integration of the Republic of Moldova, exploring the existential stake and opportunities presented by this process.

As coordinators of this anthology, we extend our gratitude to each esteemed contributor whose scholarly endeavors have enriched this volume. This collaborative effort represents a diverse array of perspectives and disciplines, contributing to a nuanced and comprehensive exploration of the intricate challenges faced by the European Union. It is our hope that this publication serves as a valuable resource for scholars, policymakers, legal professionals, and all those interested in the dynamic intersection of law and politics within the European context.

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Coordinators

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EU Law: From Innovation to Regulation

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Legal Technology: Concepts and Opportunities

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Abstract: *Legal technology is commonly defined as the use of technology and software to assist individual attorneys, law firms, and medium- and large-sized businesses with practice management, document automation, document storage, and legal research. The paper examines the concept of legal engineering and the application of legal tech tools in legal practice. As technology advances, LegalTech methods such as artificial intelligence, machine learning, and automation are transforming many aspects of the legal profession. This paper focuses on the benefits of LegalTech, such as faster legal processes, improved document management, and increased legal research accuracy. It also investigates the potential stumbling blocks and ethical considerations associated with the usage of LegalTech. Legal technology startups have drawn significant investment around the world. According to Grand View Research, the worldwide tech industry was worth $17.02 billion in 2020 and is expected to grow to 39.6 billion by 2028. In short, LegalTech promotes technological innovation while offering up new prospects in the legal profession.*
Keywords: *EU, Legaltech, Legal technology, LegalTech Start-up*

INTRODUCTION

Legal technology is the operation of technology and software to the provision of legal services and the support of the legal sector. Although the sundries of Legaltech may appear to be new, Shepard produced a citation indicator grounded on the codification that applied to civil trial judgments in the United States as beforehand as 1873. The history of Legaltech spans several decades, starting with the colonist legal exploration databases similar as Westlaw and LexisNexis, which were introduced in the early 1970s. Initially, they offered digital access to legal cases and statutes. In the 1990s, after two decades, case management software was introduced, which helped lawyers organise case-related information. Only after 2010 did cloud-based platforms become popular, enabling secure storage, collaboration, and remote access to legal documents and data, which brings us to the present. Nowadays, Legaltech is continuing to grow rapidly with the help of AI[2], and it is important to mention three stages of Legal Technology, which are indicated in the proposal by O. Goodenough.[3]

LegalTech 1.0 refers to software and technology supporting drafting, online services, and expert systems such as online communication with the courts, video conferencing, etc. These solutions are implemented within the context of existing procedures and the typical legal work process. The only difference is the mode of communication.

LegalTech 2.0 relates to more advanced technology, which offers solutions in many different activities, such as fact assessment, automatic document drafting, and claim drafting. Smart contracts or tokenization of processes are also counted among the solutions belonging to this category.

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[2] See *e.g.*: Joamets, K.; Chochia, A. (2020). Artificial Intelligence and its Impact on Labour Relations in Estonia. Slovak Journal of Political Sciences, 20 (2), 255−277. DOI: 10.34135/sjps.200204; Joamets, K.; Chochia, A. (2021). Access to Artificial Intelligence for Persons with Disabilities: Legal and Ethical Questions Concerning the Application of Trustworthy AI. Acta Baltica Historiae et Philosophiae Scientiarum, 9 (1), 51−66. DOI: 10.11590/abhps.2021.1.04.; Chochia, Archil; Sicat, Eden Grace Niñalga (2023). Ethics and Modern Technologies: Example of Navigating Children's Rights in an AI-Powered Learning Environment. In: Ramiro Troitiño, D.; Kerikmäe, T.; Hamuľák, O. (Ed.). Digital Development of the European Union. (129−141). Springer, Cham. DOI: 10.1007/978-3-031-27312-4_9.

[3] Oliver R. Goodenough, 'Legal Technology 3.0' (HuffPost, 2 April 2015) accessed 19 November 2020; see also Oliver R. Goodenough, 'Legal Technology 3.0' (HuffPost, 2 April 2015) accessed 19 November 2020.

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Lastly, in LegalTech 3.0, decisions refer to using AI and advanced algorithms, where decisions will be made by a system, on the basis of independently acquired data. Smart contracts are also included in LegalTech 3.0 as they are based on AI-based oracles.

The explosive growth in the volume of documents (mostly emails) that must be reviewed for litigation cases has also greatly accelerated the adoption of the technology used, with the incorporation of elements of machine language, artificial intelligence, and cloud-based services by law firms.

CHAPTER 1. IMPORTANCE AND CATEGORIZATION OF LEGAL TECHNOLOGY

The legal tech sector is made up of law firms that provide legal services through technology as well as suppliers who create and offer technological solutions to such businesses. Apart from Legaltech, new concepts such as Fintech, Regtech, and Insurtech have emerged. They are tied to the use of information technology in their respective industries[4].

Only 19% of in-house legal teams, according to Gartner, are well-positioned to support enterprise digital ambitions.[5] Law firms perform even worse; according to the 2018 Georgetown Report, "most are still fighting the last war." Digital transformation is not only Tech but it also refers to a business paradigm shift that enables customers easier access, transparency, speed, and cost-effectiveness.

Figure 1. [6] Reason for using advanced technology:

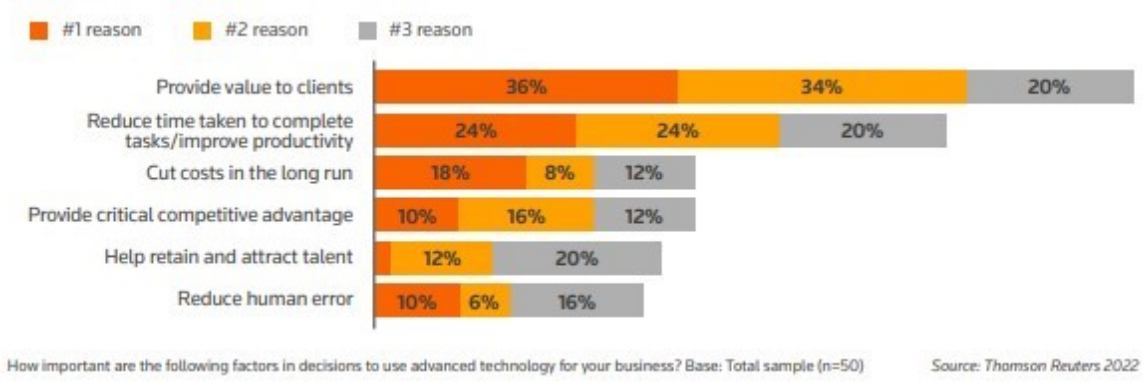

Figure 1 shows statistics on the reasons why law firm CEOs use advanced technology. It is important to acknowledge that for 70% of respondents, providing value to clients was their first – or second- ranked reason. Furthermore, 48% of respondents identified increased productivity as a primary or second-ranking factor. This demonstrates that advanced technology is more than just deploying technology; it is also satisfying clients' needs and increasing productivity.

Lawyers nowadays must deal with the challenges of changing markets, data overload, and the rising complexity of information while satisfying clients' expectations and remaining productive. Most of the challenges stem from the fast-changing regulatory environment. A perfect example of

[4] Salmerón-Manzano, E. (2021). Legaltech and Lawtech: global perspectives, challenges, and opportunities. *Laws*, *10*(2), 24.

[5] Cohen, M. A. (2018, December 20). Law Is Lagging Digital Transformation -- Why It Matters. Retrieved from https://www.forbes.com/sites/markcohen1/2018/12/20/law-is-lagging-digital-transformation-why-it-matters/

[6] 1. Thomoson Reuters. (n.d.). *2022 Law Firm Business Leaders Report Optimism, challenges, and the need for careful strategy*. Georgetown Law. Retrieved from https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2022/11/2022-Law-Firm-Business-Leaders-Report

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this are the recent regulations in the European Union affecting digital services, like GDPR and DSA. In addition to European Union regulations, national content monitoring laws like the German NEtzDG generate further legal obligations for tech organisations. It is important to point out that the regulatory burden has increased across industries in the past couple of decades.

In order to resolve a legal question, we may need to study thousands of pages of legal information if we evaluate EU-level legislation alongside national-level legislation in a specific situation. Certain legal responsibilities or procedures (for example, due diligence and compliance investigations) necessitate the evaluation of vast amounts of data by lawyers. As businesses collect more data and use digital tools, the number of documents that must be examined grows inexorably. This is where deploying tech solutions will be more efficient and cost-effective in the long run.

Legal technology is important for a variety of reasons, including:

1. Cost-effectiveness:

● Routine Task Automation: Legal technology applications can automate repetitive and time-consuming operations like document screening, contract analysis, and legal research. These technologies can manage massive volumes of data and execute activities that would normally require significant human effort by employing artificial intelligence (AI) and machine learning algorithms. This automation reduces manual labour expenses while increasing operational efficiency.

● Workflow Streamlining: Legal tech platforms offer streamlined workflows and standardised methods for legal tasks. These platforms frequently include document management, collaboration tools, and project management capabilities, allowing legal practitioners to operate more efficiently and spend less time on administrative responsibilities. Legal technology saves time and costs by eliminating inefficiencies and decreasing the possibility of errors or misinterpretations.

● Legal technology solutions provide comprehensive document management systems that enable efficient organisation, storage, and retrieval of legal documents. Legal practitioners can access vital information more quickly by digitising and centralising records, decreasing the time spent searching for physical files or outdated versions. Improved document management saves money by boosting productivity and lowering the risk of document loss or duplication.

● Remote Work and Collaboration: The COVID-19 pandemic has hastened the adoption of remote work practices, and legal technology has played an important part in easing this transition. Cloud-based platforms and collaboration technologies enable legal practitioners to operate from anywhere, lowering overhead costs associated with physical office space, commuting, and other expenses. Remote work also allows law firms to recruit legal professionals from a larger talent pool without the necessity for physical closeness.

2. Facilitating audits

● Compliance Monitoring: Legal technology solutions can help track and monitor compliance with legal and regulatory standards. These tools assist auditors in determining if an organisation's operations are in accordance with applicable legal obligations by integrating relevant laws, rules, and compliance frameworks.

● Data Analytics: Legal technology includes data analytics capabilities that allow auditors to quickly assess vast volumes of legal data. These technologies can extract important information, discover patterns, and provide insights for audit purposes by utilising machine learning and natural language processing algorithms. E-discovery, contract evaluation, and compliance monitoring are just a few of the applications for data analytics.

3. Increasing efficiency and productivity

● Time and Billing Management: Legal technology platforms frequently offer time tracking and billing features. These applications automate timekeeping, allowing for the correct recording of

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billable hours and expenses. This automation improves the invoicing process and ensures billing transparency, resulting in increased productivity and client satisfaction.

- Legal IT platforms frequently include project management features that assist legal teams in tracking and managing projects, deadlines, and milestones. These solutions increase project visibility, task allocation, and overall workflow optimization, ensuring effective resource usage and project completion on schedule.

Categorization according to Rackwitz and Corveleyen

1. Platform: Access to legal services, given by IT technologies such as Neulexa, Lawkick, the Ask-a-Lawyer component of the Rocket Lawyer website, and LegalZoom.

2. Network: Network providers are great for dealing with a sudden increase in work volume, meeting a need for specific expertise, or temporarily replacing a team member. Their expertise in selecting, preparing, managing, and supporting temporary personnel or managed teams adds value." 2017 (Rackwitz and Corveleyn)

3. Software suppliers can boost efficiency by facilitating and assisting with time-consuming operations such as information access, overview, collaboration, document processing, and document preparation.

4. Know-How: Managing, generating, and disseminating information, as supplied by Bloomberg Law, Thompson Reuters Practical Law Company, or Wolters Kluwer (including their recent acquisition of Smartlaw), which essentially provide tools to legal practitioners to facilitate legal research.

CHAPTER 2. THE LANDSCAPE OF LEGAL START-UPS

- What is a LegalTech startup?

A legal tech startup is an up-and-coming business that focuses on using technology to develop and deliver solutions in the legal industry. These startups create and provide software, platforms, or services aimed at streamlining and improving various elements of legal practice, such as legal research, document management, contract analysis, litigation support, compliance, and more. Artificial intelligence, machine learning, automation, data analytics, and cloud computing are common technologies used by legal tech businesses to change legal procedures, enhance efficiency, and address difficulties encountered by legal practitioners and organisations.

They frequently cater to law firms, in-house legal departments, legal service providers, or even individual clients, delivering innovative tools and services that optimise processes, expand access to legal information, and transform legal service delivery. Legal technology startups are critical to fostering innovation, transforming the legal business, and meeting the changing needs and wants of legal practitioners and clients.

1. The LegalTech Startup Market

Whether the growth is explosive or not, we are seeing an increase in the number of well-funded legal businesses. This, in turn, increases the industry's image and provides additional validation for businesses seeking their first clients in a traditionally risk-averse market.[7] When it comes to knowledge acquisition, the legal services sector has been seen as difficult to penetrate, as liability, and hence costs, can escalate quickly. The introduction of marketplace models and document-focused entities is helping the problem. Increased transparency creates opportunities for startups to compete with more established firms.

In the last decade, there has been a huge increase in the number of legal startups. In April 2012, there were about 400 legal startups listed. According to Tracxn, by January 2022, LegalTech will

[7] Rubin, Basha (6 December 2014)."Legal Tech Startups Have a Short History and a Bright Future". TechCrunch. Retrieved 1 May 2015.

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have over 6,000 startups, including firms that provide technological solutions to law firms and corporate legal departments. LegalTech is one of the most active sectors, with overall funding of USD 10.3 billion.

1. [8]Why are legal startups emerging?

Legal startups have the potential to meet the unmet legal needs of individuals and small businesses. They make legal solutions more accessible and affordable, allowing consumers to manage legal difficulties more efficiently and affordably.

- Self-Service Platforms:

Legal companies create simple systems that enable small enterprises and individuals to fulfil some legal obligations on their own. These systems include templates, guidance, and step-by-step instructions for common legal needs such as contract creation, company formation, and legal document filing. Legal startups save time and money for small enterprises and individuals by empowering users to handle fundamental legal concerns on their own. [9]

Providing an example from Estonia: Avokaado, a LegalTech start-up, which offers lawyers a digital workspace to create dynamic workflows. By automating documents for quick drafting, sharing, and signing, you may collaborate on contracts and legal knowledge with your team and clients.

Legal startups, in general, drive industry revolutions by making legal services more efficient, inexpensive, and accessible to a wider variety of customers.

CHAPTER 3. LEGALTECH IN GERMANY: COURTS AND LAW FIRMS

The phrase "Legal Tech" is frequently used to refer to legal advice delivered by lawyers employing cutting-edge technology. In Germany, legal tech refers to the application of cutting-edge technology such as artificial intelligence and blockchain/DLT to assist the legal professions and the judiciary. [10] Promoting the application of artificial intelligence is also a main emphasis of the German government's agenda. The German government's national AI strategy[11] has three main goals: making Germany and Europe leading centers for AI and ensuring Germany's future competitiveness, integrating AI in society in ethical, legal, cultural, and institutional terms; and encouraging responsible development and use of AI for the good of society.

Specialised programs in the judiciary provide templates for various jurisdictions, such as organising a hearing, inviting witnesses, and text modules for judicial opinions. The use of computerised text modules and calculation algorithms to assist judges in the application of specific legal norms is one of the most essential features of this text. These applications can be used to assess a court's local jurisdiction, and information technology can also make suggestions for substantive legal decisions. However, it is legally questionable to what extent a judge may have automatic decision ideas provided to him by an automated system. Furthermore, due to complex algorithms,

[8] Tracxn. (2022, January 6). Emerging Startups 2022: Top Legal Tech Startups. Retrieved from https://tracxn.com/d/emerging-startups/top-legal-tech-startups-2022

[9] Praduroux, S., de Paiva, V., & di Caro, L. (2016, December). Legal tech start-ups: State of the art and trends. In Proceedings of the Workshop on MIning and REasoning with Legal texts collocated at the 29th International Conference on Legal Knowledge and Information Systems.

[10] Isabelle Désirée Biallaß in Stephan Oryand Stephan Weth (eds) Elektronischer Rechtsverkehr (1st edition, juris Allianz, 2020); Jens Wagner, Legaltech und Legal Robots. Der Wandel im Rechtswesen durch neue Technologien und Kunstliche Intelligenz, (Springer 2020).

[11] Die Bundesregierung, 'Künstliche Intelligenz (KI) ist ein Schlüssel zur Welt von morgen.' (Die Bundesregierung), <www.ki-strategie-deutschland.de> accessed 26 February 2021.

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the suggested decisions are opaque to the judge, which could be interpreted as an attack on judicial independence. The employment of AI-supported programs in court service offices is becoming more frequent in Germany, as it allows judges to justify their decisions without having to resort to proposals given by an opaque AI-supported program.

Automation also benefits judicial officers, particularly when processing register matters. Since 2007, most registry courts have used the "electronic court and administrative mailbox (EGVP)," an encrypted platform with an integrated signature function. Individualized texts can be entered into dynamic document templates by lawyers, who can occasionally assign individual facts to predetermined categories or input answers in selection boxes. Expert systems (Legal Process Automation) assist lawyers in semi-automating recurring legal review steps for the purpose of advising clients, beginning with a simple deadline and fee calculations, and progressing to more intensive subsumption of common case constellations under the appropriate legal norms. Furthermore, legal digital platforms run by firms are expanding in Germany, allowing citizens to have their legal rights evaluated without having any legal knowledge of their own.

Individual legal advice is only permitted under the German Legal Services Act (Rechtsdienstleistungsgesetz) if supplied by a licensed lawyer. The Federal Court of Justice, on the other hand, recently determined that a platform that could be used to compute the allowable amount of apartment rents did not represent an illegal legal service[12]. A working committee of the German Bar Association (DAV) is conducting an in-depth discourse with its 63,000 members, as well as AI suppliers, to examine the existing and potential usage of AI. Changes to the BRAO (Act on the Legal Profession) and the RDG (Legal Services Act) are among the options.

CONCLUSION

Advocates, legal advisers, judges, and prosecutors are all confronting a dramatic revolution in their operations, such as operating law companies, as well as in the substance and legal aspects of the legal help supplied, including court procedures. The transformations are already taking place. For some lawyers, they are evident and noticeable, and they willingly participate in them; for others, they are a problem, resulting in a denial and an attempt to retain the current status quo. Many people do not see the changes coming.

Technology is reshaping industries around the world, changing how businesses work, and paving the way for extraordinary developments. Artificial intelligence and machine learning, as well as automation and data analytics, are transforming industries such as healthcare, banking, manufacturing, and transportation. The integration of smart devices, cloud computing, and the Internet of Things (IoT) has resulted in increased efficiency, productivity, and connectivity, as well as the streamlining of operations and the creation of new opportunities. Technology's ability to collect, analyse, and interpret massive volumes of data enables businesses to make data-driven choices, tailor customer experiences, improve supply chains, and drive innovation. As industries embrace the digital revolution, technology drives them to increased competitiveness, sustainability, and growth in an ever-changing global landscape.

The digital transformation of the legal industry is crucial, while it is not only Tech but the adaptation to satisfy the necessity of customers. LegalTech shall be seen and used as a tool that provides significant help to lawyers who are burdened with various time-consuming tasks, such as document management, contract drafting, and legal research. In addition, as we can see, in Germany, the use of computerised text modules and calculation algorithms can assist judges in the application of specific legal norms.

[12] Judgment of the Federal Supreme Court (BGH) from 27 November 2019, VIII ZR 285/18, NJW 2020, 208.

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In short, as Esther Salmerón-Manzano described: "Legaltech offers us the opportunity and challenge to promote a just and equitable society and to empower individuals. Thus, giving greater access to legal services and the possibility of achieving the goal of universal access to justice."

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The Main Legal And Ethical Challenges Posed By Autonomous Weapon Systems (AWS)

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Abstract: *Current technological developments are paving the way to new and unknown circumstances in which artificial intelligence will carry out functions until now performed by human beings. These evolutions are affecting almost every aspect of our daily lives and that also includes the military domain. The ongoing trend of 'dehumanization' of warfare, intended as a shift in the degree of involvement of real people in the decision-making process leading to the adoption of critical decisions such as life and death, poses vital questions from a legal as well as an ethical perspective. The aim of this paper is therefore that of highlighting the main challenges posed by the potential deployment of Lethal Autonomous Weapon Systems while attempting to further draw the attention of the public opinion on the topic and possibly suggest solutions to the actual deadlock.*
Keywords: *EU, USA, UN, accountability, autonomous weapon systems, ethics, legal aspects of AI.*

INTRODUCTION

Warfare has always been among the most sensitive areas to technological improvements. Countries all over the world are constantly willing to gain strategic advantages over the others as "a core characteristics of warfare was, always had been and is the continuous development of new methods and means of warfare to overwhelm potential enemies with new, unexpected abilities of the military or to keep at least the potential threat level against attacks at is highest possible level".[2]

Over the last few decades technological disruptions have given strong impetus to the debate dealing with the applicability of AI to many different domains that are already now, and will certainly even more in the future, affect nearly every aspect of our lives. Legal as well as ethical concerns are the main pillars of this discussion, and the military field is not exempt from it.[3] The not too abstract possibility of having in a near future the so-called Lethal Autonomous Weapons Systems – also called Autonomous Weapons Systems or even Killer Robots – as the main actors in the battlefield played a pivotal role in bringing to the fore the debate over the potentially legal as well as moral controversial consequences of such deployment. Crucial from this perspective in helping the debate gain momentum has been the increased awareness fostered by multiple NGOs like Human Rights Watch that forced governments to include such argument in their agendas.[4]

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[2] Wolff Heintschel von Heinegg, Robert Frau, Tassilo Singer (2018) Dehumanization of Warfare. Legal implications of New Weapon Technologies, p. 9. Springer Cham. DOI: https://doi.org/10.1007/978-3-319-67266-3

[3] Joamets, K.; Chochia, A. (2020). Artificial Intelligence and its Impact on Labour Relations in Estonia. Slovak Journal of Political Sciences, 20 (2), 255−277. DOI: 10.34135/sjps.200204; Chochia, Archil; Sicat, Eden Grace Niñalga (2023). Ethics and Modern Technologies: Example of Navigating Children's Rights in an AI-Powered Learning Environment. In: Ramiro Troitiño, D.; Kerikmäe, T.; Hamuľák, O. (Ed.). Digital Development of the European Union. (129−141). Springer, Cham. DOI: 10.1007/978-3-031-27312-4_9; Joamets, K.; Chochia, A. (2021). Access to Artificial Intelligence for Persons with Disabilities: Legal and Ethical Questions Concerning the Application of Trustworthy AI. Acta Baltica Historiae et Philosophiae Scientiarum, 9 (1), 51−66. DOI: 10.11590/abhps.2021.1.04.

[4] Kohv, M.; Chochia, A. (2021). Unmanned Aerial Vehicles and the International Humanitarian Law. Case study: Russia. In: Mölder; H.; Sazonov, V.; Chochia, A.; Kerikmäe, T. (Ed.). The Russian Federation in the Global Knowledge Warfare: Influence Operations in Europe and Its Neighborhood. (213−231). Springer. DOI: 10.1007/978-3-030-73955-3_11.

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If from a legal perspective the development of new weapons is not a unique phenomenon, as the existence of broad and abstract norms devised to regulate the emergence of new means of warfare clearly reflect[5] – however inadequate to regulate new challenges they might be – the ethical questions stemming from such advancements are daunting and ask for clear answers. There are at least two points that seem to be particularly problematic: first, is the decision over human life and death something that we can delegate to machines? Second, are AI systems able to act in an ethical/moral manner or it is just a human value/virtue? In other words, would they be able "to replicate the human decision-making process?"[6]

Whether this new kind of weapon should be regulated or banned is the other pillar of the ongoing debate that has developed. While advocates of the ban mainly argue over the concept of human dignity, meaning that no human being should be deprived of its life by the decision of a machine,[7] on the other hand supporters of the deployment of these new weapons ground their arguments on the many benefits that, in their opinion, stems from the application of Autonomous Weapon Systems. Benefits that clearly outweigh the "costs".

LETHAL AUTONOUMUS WEAPON SYSTEMS AND THE MAIN LEGAL AND ETHICAL CHALLENGES

Before entering into any discussion about Autonomous Weapons System (AWS) what is important to do is to frame the issue at hand. To comprehensively understand AWS, it is therefore essential to first define them. Contrary to what one might think, the most important element to consider when defining this new kind of weapon system is not the technology applied. Rather, the definition mostly relies on the role of human operators when it comes to the selection and engagement of targets. In this light is it therefore possible to identify 3 main categories of weapons systems:

- Human-in-the-loop, also known as semi-autonomous systems which are not capable of self-selecting and self-engaging targets. These systems deeply rely on the role of human operators.
- Human-on-the-loop or human-supervised autonomous systems that unlike the previous ones are instead able to select and attack targets even though the human operator is oversighting the activities of the machine with the possibility to override the decisions taken by the machine itself.
- Human—out-of-the-loop or fully Autonomous Weapons systems for which a unique definition is still missing today although they can be broadly defined as systems capable of searching for targets and engaging them without any human supervision.

For the purpose of this paper, we will mostly deal with the last-mentioned category of autonomous weapons systems.

According to a 2023's document devised by the US Department of Defense AWS are "weapon system[s] that, once activated, can select and engage targets without further intervention by a human operator"[8] while the International Committee of the Red Cross defines them as systems able to "independently select and attack targets, i.e., with autonomy in the 'critical functions' of acquiring, tracking, selecting and attacking targets".[9]

[5] Article 36 Additional Protocol I, Geneva Convention on the Protection of Victims of International Armed Conflicts and the United Nations Convention on Certain Conventional Weapons https://ihl-databases.icrc.org/ihl/INTRO/470

[6] Shea, A., *The Legal and Ethical Challenges Posed by Lethal Autonomous Weapons*, 24 Trinity C.L. Rev. 117 (2021) p.4.

[7] Noone, G., P., & Noone, D., C., *The debate over Autonomous Weapons Systems*, Case Western Reserve Journal of International Law, 47(1) p. 8. «In sum, the rise of autonomous weapons is creating understandable concern for the international community as it is impossible to predict exactly what will happen with the technology. This uncertainty has led some to advocate for a preemptive ban on the technology.»

[8] United States Department of Defence, Directive 3000.09, *Autonomy in Weapon Systems*, January 25th, 2023.

[9] International Committee of the Red Cross, *Views of the International Committee of the Red Cross (ICRC)*

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The enhanced capability of these autonomous weapons able to perform decision-making processes that have usually been performed by human beings is the most problematic question from both an ethical and legal perspective around which the whole debate has been revolving. If on the one hand the lack of human feelings such as fear, anger, revenge, frustration and so on seem to be a clear advantage, on the other it is exactly the lack of human qualities and feelings, such as empathy and compassion, that opponents to AWS point to in their argument to prevent the deployment of such weapons.

Although "the concept of AWS is not per se unlawful"[10], from the legal side there are many challenges posed by the development of these weapons which are mostly related to practical questions such as how and to what extent are these new systems able to conform to the existing principle regulating war. Military necessity, proportionality, distinction, and humanity are just some of the main principles traditionally governing the Law of Armed Conflict, also known as International Humanitarian Law (IHL). Until now indeed the practical implementation of all of these principles into the battlefield has relied upon the judgment of human operators that through a context-based evaluation have decided whether a certain action was to be taken or not.[11] As explained by the UN special rapporteur on extrajudicial killings in its 2013's report "while robots are especially effective at dealing with quantitative issues, they have limited abilities to make the qualitative assessments that are often called for when dealing with human life".[12]

According to the military necessity, military force should be used when 'strictly necessary'. For instance, in the case of armed conflicts, to gain an advantage over the enemy, the adoption of certain measures is authorized as long as these actions do not provoke unnecessary suffering. The same goes when dealing with the principles of distinction whose grounds can be retrieved from article 51 of Additional Protocol I of the Geneva Conventions, according to which "the civilian population as such, as well as individual civilians, shall not be the object of attack" meaning that the targets of military attacks can only be military objectives while civilians must always be avoided and protected. As it regards to the proportionality of military attacks, in this case as well, the role of the human operators is fundamental as it is prohibited to unleash a strike expected to create "incidental loss of civilian life, injury to civilians, damage to civilian objects, or combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated".[13]

The substitution of human operators with weapon systems allegedly capable of performing crucial decisions, including distinguishing between civilians and combatants or calculating and understanding the benefits and costs of specific military actions in particular environments, seems to pose a major legal threat either from a practical point of view – as it is not yet clear if such a highly intelligent system will never exists – and from a regulatory perspective – with the adequacy of existing rules designed to regulate human behavior that are questioned.

Subsequently this threat brings along with it another extraordinarily controversial legal issue, somehow inherently bound to the application of AI in almost every domain, which is the accountability question for the violation of existing norms. Suppose that in the future AWS would exist and be deployed in the battlefield, who should be held accountable in the not too unreal case of a violation of one of the above-mentioned principles governing the war? Even though it is yet unclear

on autonomous weapon system, Geneva, April 11th, 2016.

[10] *Ivi,* p.6

[11] See the HRW definition of judgment «Judgment requires human capabilities of reason and reflection to interpret information and formulate an opinion*». Shaking the Foundations, The Human rights implications of Killer Robots*. https://www.hrw.org/report/2014/05/12/shaking-foundations/human-rights-implications-killer-robots

[12] Heyns, C*., Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions,* 9 April 2013. Report of the Special Rapporteur on extrajudicial,.pdf

[13] Article 51(5)b Additional Protocol I.

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who should bear the burden for such a crime in the case it might happen, according to the literature, three seem to be the potentially liable actors within this context:

- The state, which would be held accountable for the misuse of weapons by its own armed forces.
- The commanding-officer who supervises the deployment of the AWS.
- The developer of AWS.

Despite what at first sight might appear to be a clear picture is instead a very blurry one. What is still missing is an agreement over the appropriate liability framework, as many are the difficulties that need to be considered when dealing with each of the above-mentioned entities, so much so that experts are mostly concerned about the possibility of facing what has been defined as "a responsibility gap".[14]

As a result of this 'dehumanization' of warfare, embodied by the diminished role of human being in the crucial decisions and actions of searching and engaging targets in the battlefield, brings along with its multiple implications from a moral perspective as well. What seems to be particularly controversial on this side is the possibility of machines taking over human life, an action that is considered to be disrespectful of the intrinsic dignity of every human being. The main reason for that is "that the person targeted by AWS is reduced to being an object that has to be destroyed, where there is no possibility of appealing to the humanity of the enemy".[15] However a better and deeper explanation is worth to be made.

According to Article 6 of the International Covenant on Civil and Political Rights (ICCPR) "Every human being has the inherent right to life. This right shall be protected by law".[16] Being the right to life a supreme right, since on it depends on all the others, it is easily understandable why being deprived of such a meaningful right by a machine that cannot understand the significance of human life and therefore cannot respect its value is considered to be disrespectful of the inherent dignity of every human being.

Advocates for a ban of AWS find in this reason the crux of their argument as many seems to be the obstacles on the way to the creation of an unmanned system capable of carrying out decision-making processes that do not rely just upon quantitative but also on a more complex situational evaluation that requires proper human qualities.[17]

When dealing with the legal challenges posed by the likely future deployment of AWS, we have already outlined how compliance with existing norms is one of the main difficulties that stems from the development of these systems. These difficulties are due not just to the fact that the rules concerned have been devised well before the development of such systems started, but it is also due to the fact that AI, not matter how powerful it is, will probably always lack the so-called 'situational awareness' to discern a real threat and deescalate potentially dangerous situation in which the employment of human operators would presumably avoid irreversible mistakes leading to different choices. Indeed, when it comes to the application of the various principles that lay at the heart of the IHL to real life this is not just a matter of calculations based on the available data. There are an infinite range of situations that no system developer can think of covering and most of the time the

[14] Shea, A., *The Legal and Ethical Challenges Posed by Lethal Autonomous Weapons*, p.17

[15] Sharkey, A., Springer, 2018, p. 4. See also «Article 22 of the European Union's General Data Protection Regulation (GDPR), which affirms that people "shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her». https://ny.fes.de/fileadmin/user_upload/FES_Chair_summary_v1_-_LAWS_Partnership_VL.pdf

[16] *International Covenant on Civil and Political Rights,* article 6.

[17] According to Sharkey (2018) «Decisions about military advantage and military necessity require 'responsible accountable human commanders, who can weigh the options based on experience and situational awareness».

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application of such principles requires a deeper "understanding of human nature".[18] Bearing this in mind three are the major moral objections:

1. It is almost impossible, at least not in the near future, that we will have robots carrying out the distinctions required by the IHL during armed conflicts.

2. From a value-based approach, it is considered to be inherently and deeply wrong to let robots determine human's life and death decisions.

3. In the case of an accident caused by an AWS who is to be held accountable?

The debate over the morality of AWS is then further fueled by the likely consequences that would arise from their adoption. If we think about a war, it will probably become easier to wage it given the reduced risks both in terms of soldiers' lives and political consequences. Political consequences which would potentially result in a direct threat to the global security and peace.[19]

Moreover, the deployment of AWS would not be limited to an armed conflict. It is indeed obvious that "once available, this technology could be adapted to a range of other contexts that can be grouped under the heading of law enforcement".[20] Over the last few years we have already witnessed how thin is the border between democracies and autocracies, justice, and revenge and from this point of view the deployment of AWS could be another crucially problematic factor to be taken into account.

One of the possible answers to these objections could be the employment of a 'mitigating' concept such as that of 'meaningful human control'.

MEANINGFUL HUMAN CONTROL (HUMAN IN OR OUT OF THE LOOP?) AND THE QUESTION FOR BANNING OR REGULATING AWS

Since 2013, when the debate around AWS started to spread out with the establishment at hands of several non-governmental organizations of the campaign to stop killer robots[21], the question over banning or regulating Autonomous Weapons gained momentum forcing national governments to start thinking about the best approach toward these new technologies. At the diplomatic level discussions started in 2014 within the framework of the United Nations and specifically within the Convention on Certain Conventional Weapons (CCW) whose objective is to limit the use of weapons deemed to provoke "unnecessary or unjustifiable suffering to combatants or to affect civilians indiscriminately".[22] The importance of the question was consequently formalized through the creation of a Group of Governmental Experts (GGE) whose work was eventually resumed in the 11 guiding principles on LAWS.[23]

Notwithstanding the efforts made we are still today a long way from having a proper regulation of these systems and this do not depend just on the ethical and legal challenges already mentioned but it is particularly due to the strategic concerns over the impact of such new weapon since "perceived military value is exceptionally high, and the current geopolitical landscape is not conducive to new arms control breakthroughs". The question is then further exacerbated by the

[18] HRW report, *Shaking the Foundations*, 2014, p. 7

[19] «the use of autonomous weapons denies the equality of persons since combatants using them are removed from physical risk at the same time as their targets are exposed to an increased risk». Sharkey (2018).

[20] HRW report, Shakingathea Foundations, p. 4.

[21] https://www.stopkillerrobots.org/

[22] Amoroso, D., Amoroso, Daniele (2020) Autonomous Weapons Systems and Meaningful Human Control: Ethical and Legal Issues. Springer.

[23] For a deeper view on the 11 Principles see https://www.diplomatie.gouv.fr/en/french-foreign-policy/united-nations/multilateralism-a-principle-of-action-for-france/alliance-for-multilateralism/article/11-principles-on-lethal-autonomous-weapons-systems-laws. For a critical commentary see https://article36.org/wp-content/uploads/2019/11/Commentary-on-the-guiding-principles.pdf

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underlying difficulty of conceptualizing LAWS. It is, indeed, not yet clear how much autonomy it is required in order to classify a weapon as LAWS as it also shows the attempts, made during the early stages of the debate, to exclude defense systems from the autonomy discussion by claiming that, unlike autonomous weapons, they have not too much room for maneuver since they "are designed to merely repeat a few pre-programmed actions in case of incoming munitions".[24]

One of the majors' concerns, as it was previously outlined, with the deployment of AWS is represented by the lack of human control over the crucial decisions and actions it might undertake. Either from a legal and ethical perspective the transfer of the decision-making process from humans to machine is the main argument driving the call for a preemptive ban over this new kind of weapon. Specifically, what seems to be problematic is the implicit requirement of human qualities – from a legal perspective – and feelings – from an ethical one – that lay at the roots of IHL.

This lack is also the main hurdle in the rift between pro-ban and pro-regulation[25] which is still today quite polarized. Even though the debate is a fierce one with most of the involved actors entrenched in their opinions some common grounds on especially important questions can still be found, such as the existing need, for both sides, to eliminate the human error from the battlefield. [26] Despite this common ground however, the tough question over which agreement has not yet been reached.

«If the control of acts and decisions, which have been met originally by humans, are increasingly delegated or transferred to unmanned systems or programs […] the most relevant criterion for a legal distinction becomes human control».

A concept that might be useful from this perspective and which has been developing over the last few years to try to find a compromise, acting as a sort of mitigating factor, between supporters and opponents of AWS is that of "meaningful human control".[27] This principle, that has been devised in 2015 by the NGO Article 36 is meant to reiterate that "humans not computers and their algorithms should ultimately remain in control of, and thus [be] morally responsible for relevant decisions about (lethal) military operations".

Indeed, if everyone's agree that the lessened role of human operators over the vital decisions of searching, assessing and whether attacking or not can be identified as the most challenging issue from either a legal or moral perspective, retaining adequate human control might work as a keystone to overcome existing obstacles to the acceptance of AWS as legitimate weapons.

Holding humans accountable by keeping them as decision-makers is nevertheless not a controversy-free task. The first problem that must be considered relates to the kind of technologies applied. AI is more and more moving from algorithms to deep learning solutions whose understanding is far beyond "the reach of a human brain".[28] As a result this bring along with it other 2 questions:

1. How can humans intervene in the decision-making process if we are not able to understand what are the factors which have determined such a decision? In a few words, the problem here is transparency.

2. The second question is a more practical, even though still an important one. If we allow humans to stay on the loop, what is the advantage of having these systems at all? AWS as all AI

[24] Sauer, F. (2020). "Stepping back from the brink: Why multilateral regulation of autonomy in weapons systems is difficult, yet imperative and feasible. *International Review of the Red Cross, 102*(913), 235-259. doi:10.1017/S1816383120000466

[25] Lewis, J., *The Case for Regulating Fully Autonomous Weapons*, the Yale Law Journal, 2015.

[26] Noone, G., P., & Noone, D., C*., The debate over Autonomous Weapons Systems*.

[27] Article 36, *Key elements of meaningful human control*, April 2016.
https://article36.org/wp-content/uploads/2016/04/MHC-2016-FINAL.pdf

[28] Chehtman, A., *New Technologies Symposium: Autonomous Weapons Systems*, Opinio Juris, 2019.
http://opiniojuris.org/2019/05/08/new-technologies-symposium-autonomous-weapons-systems-why-keeping-a-human-on-the-loop-is-not-enough/

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technologies are able to process big amount of data and therefore reach a decision in less than a few seconds giving a military advantage, how can we expect to have humans scrutinize these complex decisions – that we are not able to understand – in the same amount of time in order to preserve this advantage? It is practically impossible.

Therefore, even if from a regulative point of view this concept might be used to eventually find a common ground upon which a regulatory framework might be designed this is yet to be achieved. Moreover, the concept of meaningful human control is still in its embryonic phase as it shows the fact that the different actors involved understand it in different ways. Which phases should be considered when assessing the level of human control? is the design phase more or less important than the development and deployment ones? Not all the states at the international level agree on which kind of human control should be essential in determining the level of control over AWS.

A major cause for this confusion can be attributed to another key feature of the debate which is its future-orientation. These characteristics together with the strategic relevance of these systems, contribute in a fundamental way in making it difficult, to the actors involved, to formulate appropriate constraints to which then stick and commit.

CONCLUSION

Even though it is not yet clear whether AWS has been already fully developed glimpses of what we might face in the future have been already provided over the last few years. The 2020 Nagorno-Karabakh war that was labelled by many experts as the first automated war and current developments in the Russian war of aggression toward Ukraine are just two examples. These enhanced capabilities of new technologies to perform tasks until now reserved to human operators have contributed to bring to the fore both legal and ethical concerns over their deployment.

On the one hand the development of such systems seems to be a major threat, not just from a legal and ethical perspective but also from a global security one. On the other hand, there is a profound disagreement between the main actors involved, that tend to perceive it in radically different ways.

Disagreements apart, however, the recent rise of the concept of "meaningful human control" was like a ray of sunshine in the darkness of the debate. Indeed, the concept was conceived as a potentially mitigating factor between the different perspectives, since most of the actors seem to agree on the desirability of having, for different reasons, humans rather than robots involved in some phases of the whole process. Despite the initial optimism, the stalemate about what must be done is still here though. The fact is that the US has rejected the call for regulating or banning killer robots calling instead for a "non-binding code of conduct"[29] came as a smoking gun of that.

Given the strategic importance of these systems indeed and the lack of clarity surrounding the debate, formulating appropriate responses to the issue is challenging. Therefore, what we are still missing today is probably the starting point for the regulation of AWS, which consists of a clear and unique definition that wouldn't leave any grey zone.

Another challenge comes from the perspective used to frame the issue, that in turn affects the response. Changing the lens from the military to the humanitarian one would be a good step to overcome the stalemate. Keep reasoning in terms of military gains would in fact do nothing but feed the vicious circle in which we are trapped today. The moving force toward regulation should be the awareness of the disruptive effect that such systems might be able to produce. Only this can drive us to the same outcome that 50 years ago the development of nuclear weapons led us to.

[29] https://www.theguardian.com/us-news/2021/dec/02/us-rejects-calls-regulating-banning-killer-robots

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The phenomenon of legal professions being replaced by artificial intelligence – real danger or just a myth?

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Abstract: *In a world that seems to have moved completely online, the temptation to think that the physical world is abandoned and everything can be done in the virtual environment from now on is obvious. But if we look around the corner, we will still find ourselves, those in physical reality. The illusion of the easiness and practicality of the virtual environment is maintained until the appearance of the first palpable problem, which directly impacts our quality of life. Until the first serious health problem, until the first risky legal process in which we are involved. The need to have an empathetic human contact with a specialist to whom we can confess and who can offer us real and honest solutions will always be present and extremely difficult to replace by a robotic factor. Despite the fact that the existence of an instinct to turn to the advice of some AI at the expense of human contact in such situations is hard to imagine, we have nevertheless carried out a thorough analysis in relation to the mediatized initiatives with the potential to completely replace some legal professions with AI. As a result, we will find that, although we are bombarded with a multitude of scenarios in which these robots are already functional and in current use, we are in the presence of an exacerbation of technological evolution at this time. The way to transfer critical thinking and human-to-artificial intelligence empathy has not been decoded yet, and simple imitations of these exclusively human skills can lead to disastrous consequences.*
Keywords: *digitization, legal professions, ChatGPT, robot*

With the onset of the pandemic, the topic of using the benefits of remote technical means, as well as those involving a certain type of artificial intelligence, has grown in direct proportion with the severity of the consequences of the pandemic. Governments have been forced to quickly adopt solutions that allow a life similar to the one existing before the pandemic, easing the restrictions and their effects generated by a health crisis of proportions.

After the mitigation of the virulence of the pandemic, which at the same time allowed the return to an almost normal life, the technical solutions adopted on the run were kept, moreover, their effects were briefly analyzed, quickly deciding to expand the use and format of these solutions in the future. Today, we are witnessing aggressive marketing on the rapid proliferation of software that could successfully replace various legal professions, as well as on their unsurpassed efficiency. After carefully analyzing these steps, as well as the news that appeared regarding this aspect, I decided to create a realistic X-ray, which goes beyond the superficial layer of a summary information, as well as the sensationalism aimed at by some publications.

In addition to the ethical discussions raised on the side of these initiatives, we will try to shed light including from the point of view of the technical capabilities that an AI possesses, as well as its limitations, at this time. We are also facing a phenomenon of fake news in the legal field, as well as an exacerbation of the speed of the development of artificial intelligence, which does not take into account the global rudimentary level at which the confluence of legal and technical is located, nor the fundamental incompatibility between a humanistic science and a possible translation of it through the lens of an exact science.

We consider the following topics of discussion appropriate:

a) the appearance of robot judges:

A first phenomenon that appeared regarding the integration of AI in the legal field was related to the automatization of the judge's duties, in an attempt to relieve the courts of the increased number of legal requests. Estonia would have been a pioneer in this field, continuing its reputation as a

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European country promoting the digitalization of public services[1], being one of the first countries to support the need to declare Internet access as a human right[2]. So, how does this robot judge implemented in Estonia work, or, at least, how was this aspect speculated online? With a simple online search, we quickly find either articles overflowing with enthusiasm, looking with optimism towards the rapid technological evolution in the judicial sector, culminating in the invention of a robot judge by Estonia, or headlines clearly worried about the future of justice[3]. The articles dating back to 2019 do not provide official sources to substantiate the existence or use of this type of AI in Estonian courts, most of them being consecutive takeovers and reformulations of a single article, probably appearing as a result of a faulty translation. We mention this aspect because the first international article published on this subject seems to be that of the American magazine Wired[4], developed by David Engstrom, an expert in digital governance at Stanford University[5]. However, this article only mentions the intention to develop a "robot judge" that could resolve disputes over claims in court whose damage does not exceed 7,000 EUR (about 8,000 USD), and not that this robot already exists, judging cases.

In the context of an advanced search, however, we find an official statement from the Ministry of Justice of Estonia, which, surprisingly, completely denies this information, stating that they are not developing a robot judge for the small claims procedure, nor general court procedures to replace the human judge, on 16.02.2022.

Specifically, the Ministry of Justice is looking for opportunities to optimize and automate procedural steps in all types of procedures, including procedural decisions, if possible. At this moment, it is mentioned in the official statement that one of the objectives is for all judicial cases to be carried out digitally, and for the processes to be optimized and automated as much as possible. The confusion started in the context of Estonia's plan to automate a national payment order procedure, a simple procedure that is almost fully automated at the moment and could be fully automated in the future.[6]

Following the unmasking of this non-existent robot judge, we continue to investigate other similar initiatives. In this sense, we find another initiative of a robot judge type in China. After a thorough analysis, we find that, indeed, the digitization of the courts seems to reach new heights, without creating a robot judge. Among the relevant aspects found in the online articles, we mention the following aspects:

- an application called "Smart Court SoS" analyzes court cases for references and provides judges with recommendations on both laws and regulations;
- the same application prepares supporting documents for arguing decisions regarding the settlement of cases, an aspect that could prevent errors in the verdicts of human judges;[7]

[1] According to international analyses, the most relevant being represented by the OECD – Government at a Glance 2021 – Country Fact Sheet – Estonia: https://www.oecd.org/gov/gov-at-a-glance-2021-estonia.pdf

[2] Right to access the Internet: the countries and the laws that proclaim it – Diplo, 2011, https://www.diplomacy.edu/blog/right-to-access-the-internet-countries-and-laws-proclaim-it/

[3] Can AI replace a judge in the courtroom?UNSW Sydney, 2021 – https://newsroom.unsw.edu.au/news/business-law/can-ai-replace-judge-courtroom?fbclid=IwAR0EXRAp8pOlJXYt5ZuwUJeqifR1I7i1NRxQnZQKE7PREBeU5Tw878Eg1yo

[4] Can AI Be a Fair Judge in Court? Estonia Thinks So, Wired, 2019, https://www.wired.com/story/can-ai-be-fair-judge-court-estonia-thinks-so/

[5] David Freeman Engstrom, Biography – https://law.stanford.edu/directory/david-freeman-engstrom/

[6] *Estonia does not develop AI Judge*, Ministry of Justice, 2022 – https://www.just.ee/en/news/estonia-does-not-develop-ai-judge

[7] *AI helps judges decide court cases in China,* AI business 2022, https://aibusiness.com/verticals/ai-helps-judges-decide-court-cases-in-china

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● we also learn that, in the event that a judge does not share the AI's recommendation regarding the verdict that should be given in a particular case, he should justify his different decision. This aspect would be attributed to the non-unitary jurisprudence existing on Chinese territory, the Supreme Court issuing an act that obliges the use of this AI to standardize the decisions given in identical cases.

Although the steps really sound initiatory, without entering into the debate of the ethical aspects concerning the use of the existing technical components in the Chinese courts these days, we note the fact that no official source has confirmed the information according to which a human judge should justify a decision different from the recommendation of the AI, subject to the fact that no sources in Chinese were consulted, but only official sources translated into international languages (for example, the website of the Ministry of Justice of the People's Republic of China, as well as the website of the Supreme People's Court[8]).

We highlight the need for detailed and fundamental information about the digitalization initiatives of some legal professions, in order to have a real empirical perspective on the evolution of the integration of technology in the context of the administration of justice. At this moment, there are various initiatives to automate the administrative aspects of judicial procedures, with an emphasis on ODR (online dispute resolution), and more and more advanced methods are being tested to go further and replace or help the judge in the context of decision-making. However, we are far from successfully replacing or automating human critical thinking and making such far-reaching decisions as those in justice. We believe that we are only at the beginning of awareness of the technical limitations and ethical issues raised by the use of AI, as well as the beginning of effective risk analyzes of the use of AI at the lowest level in court, and we will then elaborate the solid legal framework of the functioning and controlled use of AI in justice.

b) replacement of lawyers – legal advice provided by AI

Another profession hit by fake news and a hypothetical early disappearance is the legal profession of lawyers. The first large-scale initiative of this kind appeared in 2016, when a software called ROSS was hired by a US law firm to assist with legal consultancy work in the field of insolvency. Of course, the AI has never done independent work that rivals the capabilities of a human lawyer, largely filling out the necessary legal and doctrinal research work of the already existing team of lawyers in the US firm Baker & Hostetler's cases. Basically, the AI in question reduced the necessary time allocated to a legal research on the applicable legislation and jurisprudence, without making value judgments or interpreting the legal provisions in force. A vital aid in the context of rapid execution of qualitative research, yet remaining a mere technical aid with no intellectual capacity to think up defense strategies for clients or hold pleadings in court.

This approach was succeeded by the robot lawyer initiative created by the American company DoNotPay, which was followed by severe public consequences for the initiator.

Startup DoNotPay, which self-proclaimed inventing "the world's first robot lawyer," intended to use AI in court pleadings, teaching defendants how to respond to assigned judges.

Founder Joshua Browder enthuses that "law is almost like code and language combined, so it's the perfect use case for AI." We believe that nothing could be more false, minimizing the essential human component in the context of the administration of justice.

In addition, the founder mentioned that measures on preventing AI weaknesses were also taken, in order to avoid problems with exaggeration of facts or the existence of an overly polite behavior that responds to everything the judge says – including rhetorical statements. Another effort by the company to encourage the use of this robot lawyer was pecuniary in nature, with DoNotPay agreeing to cover any fines and defendants to be compensated for participating in the experiment.

[8] *The Supreme People's Court in China* – https://english.court.gov.cn/

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What's more, the DoNotPay founder said he would pay anyone with an upcoming US Supreme Court case $1 million to wear AirPods and let his robot lawyer provide legal assistance in that case.[9]

Following the development of this initiative, which was supposed to debut on February 22, 2023, we learn that it has been withdrawn. The reason presented by the CEO would be the pressures carried out by the national bars who would have felt threatened by the capabilities of this invention

We couldn't find any official statement on this, so we don't know if these pressures existed, or if the company realized the multitude of legal and ethical issues it could face in the context of actually using AI in court, so it withdrew the prototype.

The issue of court records was also raised, with the AI using records to function. Thus, DoNotPay's technology could not have been legal in most US courtrooms, as some states require all parties to consent to being recorded, which precludes the possibility of a robot lawyer participating in multiple courtrooms[10].

We wonder, however, whether this initiative can be categorized as a evasion of admission to the legal profession, and thus, practicing without permission? In order to be able to defend citizens in court, however, prior training and a passing exam are required, subsequently acquiring the status of lawyer and the right to practice in the field, which could not be transferred by the persons holding it to an AI. This precedent is also dangerous for the stability of the legal profession, as well as for its prestige.

Despite all the previous news, the main purpose of which was to exaggerate the reality and improve the PR of the company involved. We believe that there is no real danger of replacing lawyers with robots at this time. Ensuring an effective legal defense is a complex process, which starts from an analysis and a correct legal framing of the facts, carried out by the lawyer, facts related most of the time by the client in a simple, informal, unclear, distant language by the wooden legal language. We do not believe that an AI currently possesses this human intellect-like ability to legally frame facts, to develop an optimal defense strategy, to anticipate the other side's defenses and counter them, to correlate with practicalities known only to a lawyer from his past experience, not to mention the impact of a person that can support human empathy and demand a just verdict tailored to a specific situation.

c) ChatGPT phenomenon

ChatGPT (Chat Generative Pre-Trained Transformer) is a chatbot software with artificial intelligence programmed to answer any questions asked by users, in any field, including legal, containing 175 billion machine learning parameters, updated until the year 2021[11].

A chatbot is a software application designed to mimic a human-like conversation based on user cues. It's part of a new generation of artificial intelligence systems that can converse, generate readable text on demand, and even produce novel images and videos based on what they've learned from a vast database of digital books, online writing and other media. The popularity of this software is unprecedented, reaching over one million users in less than a week after its release.[12]

How does this software impact the legal field?

First of all, it has been used since the first day as a tool available for students, for the development of various topics in the context of fulfilling the requirements of the courses they follow (reports, analyses). This aspect can raise long-term problems in the development of personal skills

[9] *DoNotPay says it's pivoting from plans to argue speeding tickets in court with AI*, USA Today Tech – https://eu.usatoday.com/story/tech/2023/01/09/first-ai-robot-lawyer-donotpay/11018060002/

[10] *AI-powered "robot" lawyer won't argue in court after jail threats*, CBS News, 2023 https://www.cbsnews.com/news/robot-lawyer-wont-argue-court-jail-threats-do-not-pay/

[11] *Tech Target,* 2023, https://www.techtarget.com/searchenterpriseai/definition/GPT-3

[12] *ChatGPT Statistics for 2023: Comprehensive Facts and Data*, Demand Sage, 2023 https://www.demandsage.com/chatgpt-statistics/

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that are acquired during university studies and that are vital in the context of carrying out activity in the legal field. We are talking here about building critical thinking, increasing memory capacity through learning an increased amount of information, as well as analytical and research skills, which can be sabotaged by using these tools. In addition, various issues regarding copyright and permission to use the material presented by ChatGPT are also raised. I directly asked the software if its answers were original, and its response clarified the situation from a legal point of view, pointing out that the answers do not belong to it [13]:

Q: Are the content and answers you produce original?

A: No, the content I produce is generated based on patterns in the datasets I have been trained to use and does not come from my own thoughts or experiences. I can provide relevant information and answer questions based on the information I have been trained, but the content I produce is not original in the sense that it is not created from scratch by me.

Also, if we ask ChatGPT to, in the context of developing an answer, insert the bibliographic references on which its compiled answer is based, we will receive a series of references, but we cannot be sure that they are complete or correctly cited, since the references are not highlighted distinctly for each idea taken over. At the same time, the links it presents are not updated, the information being available online until 2021.

On the same line of ideas, the team from the University of Minnesota [14] tested ChatGPT in the context of some exams within the related Faculty of Law, in order to carry out a study on the real capabilities of AI. They chose four separate final exams in the following subjects: Constitutional Law, Labor Law, Tax Law and Torts, to be passed by this software. The results of ChatGPT were anonymized and mixed with the works of real students, being later sent for teacher's evaluation. ChatGPT passed all four exams with minimum passing marks. The authors of the study dedicated a chapter to the study and AI weaknesses, emphasizing among them the lack of coherence in the approach to the cases, as well as the omission of the treatment of some aspects that were not expressly mentioned in the phrasing of the exam subjects. As a conclusion, the authors of the study highlighted an amazing, albeit uneven, performance, suggesting that ChatGPT represents both a promise for the future and a considerable danger, expecting such language models to be important tools for practicing lawyers, such as and a great help to students who use them (legally or illegally) in law exams. Going forward, a study by two experts from the Stanford Center for Legal Technology [15] revealed shocking results regarding AI's future possibility to pass including the U.S. Bar Exam. The authors concluded that AI significantly outperformed the base rate of random guessing, and without any adjustment, currently achieves a passing grade on two subjects on the bar exam, confirming his general understanding of the legal domain.

Second, could it be used as an auxiliary in the work of professionals in the field? In the main, we think so, given the rigorous testing of correctness provided by AI. In this regard, the first news has already appeared with judges testing the use of ChatGPT in the context of court decision-making. We cite the case of the judge in Colombia who stated that he used ChatGPT in the context of a decision about whether an autistic child's insurance should cover all or only part of the costs of his medical treatment[16]. The judge's statement should not be taken out of context, but understood

[13] Research conducted by the authors through direct use of ChatGPT.

[14] The study can be consulted in detail here: https://ssrn.com/abstract=4335905 or http://dx.doi.org/10.2139/ssrn.4335905 – Choi, Jonathan H. and Hickman, Kristin E. and Monahan, Amy and Schwarcz, Daniel B., ChatGPT Goes to Law School (January 23, 2023).

[15] Bommarito, Michael James and Katz, Daniel Martin, *GPT Takes the Bar Exam* (December 29, 2022). Available at the following web page: https://ssrn.com/abstract=4314839 sau http://dx.doi.org/10.2139/ssrn.4314839

[16] *Colombian judge says he used ChatGPT in ruling*, The Guardian, 2023 -https://www.theguardian.com/technology/2023/feb/03/colombia-judge-chatgpt-ruling

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through the prism of a man excited to check the current advances in technology, without extrapolating and feeding the fake news phenomenon that captured the statement. The reality is that the judge did not base his ruling on this software[17], simply giving an interview on a local radio about the fact that, considering the application of Law no. 2213/2022 of Colombia encouraging the use of technological tools in the legal field, it also tested ChatGPT in a case to see if it can provide a fair solution, not the first time it tries to observe the usefulness of AI in the justice system. The solution given by ChatGPT was correct, it applied the law exactly, but the judge had already made this assessment and decided the solution, not being influenced by this application or leaving the final decision up to him.

The AI's interpretation of the legislative provisions can be useful, in the context in which it has an impressive database of doctrine, citing the sources on the basis of which it makes the interpretation. However, we do not understand exactly what kind of compilation and interpretation ChatGPT does. Does it restate information it already has, draw conclusions from it, or offer an original interpretation? If we ask the software, we still get the information that it does not have the ability to interpret the legal provisions, emphasizing that its understanding of this information is limited to the patterns and associations it has learned from this data, being able to provide information about the provisions legal and can answer questions to the extent possible, but cannot provide legal advice or interpretation. Basically, the accuracy of its information depends on how well the information exposed by the user matches the data sets that ChatGPT holds.

Of course, his answers that eliminate the possibility of interpretation [18] they are not to be believed word for word, but we share the same opinion. We believe that at this point, although the software presents very good coherence, an impressive variety of information, as well as a correlation of them beyond expectations, we cannot discuss a specialized AI that will completely transform the legal field as we know it.

Finally, we express our opinion that the danger of using this software also comes from the fact that it is free software, available to anyone who has access to the Internet, the application not being so strong from the point of view of the security of its coding. Some users managed in early December 2022 to crack the initial code of the software that holds certain censorship parameters (for example, censoring information with sexual, violent content), using various techniques to bypass these restrictions. They successfully tricked ChatGPT into giving instructions on how to create a Molotov cocktail or a nuclear bomb, or generate arguments in the style of a neo-Nazi. In addition, ChatGPT was tricked into presenting favorable arguments regarding the Russian invasion of Ukraine[19].

The consequences of these reports are very serious, and may have an echo even in the legal field. There may be situations where individuals may request legal advice from this software regarding the legal or illegal nature of an action they wish to undertake in the near future. If we are not clear what this software will advise a person in general, what do we do if it is diverted from its purpose by advising people to commit crimes? We wonder how we will be able to control this phenomenon in the future, a simple disclaimer that the content generated by ChatGPT does not constitute legal advice is not enough.

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[17] *Colombia Judge Uses ChatGPT In Ruling, Sparks Controversy*, NDTV, 2023 -https://www.ndtv.com/feature/colombia-judge-uses-chatgpt-in-ruling-sparks-controversy-3754717

[18] AI proves that it owns the definition of interpretation in the legal field, providing the following explanation: Interpretation of legal provisions refers to the process of understanding the meaning and intent of laws and regulations. This involves analyzing the language of the provisions and considering how they apply to specific situations. Interpretation of legal provisions is important to ensure consistent and fair application of the law and is usually carried out by legal experts such as judges, lawyers and scientists. Interpretation of statutory provisions can have a significant impact on the outcome of legal cases and can help ensure that the law is applied in a way that is consistent with its intended purpose.

[19] CHatGPT definition, Wikipedia – https://en.wikipedia.org/wiki/ChatGPT

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As a conclusion, we note that this software presents significant developments, which could in the future change the world of justice as we know it today. However, we believe that claims that legal professionals will be replaced by robots are exaggerated, with even ChatGPT noting that it is unlikely that AI will ever be more than high-performance tools to support human resource work[20].

When publicly approaching all these digital initiatives, as well as its capabilities, we recommend caution. Avoiding exacerbating the alleged capabilities of AI at this moment, as well as the conspiratorial promotion of a gloomy future in which justice will be replaced by robots, are vital, in order to stop the weakening of the image of justice, which has already been constantly attacked in recent decades. It is true that we cannot fully know the future, but a dose of realism and correct information about these initiatives will reveal the actuality and the need to respect the ancient principles of law, which have led justice on its uninterrupted path for over 2000 years. At the same time, these initiatives can always be subject to prohibitions, precisely aiming to prevent the situation of completely robotizing society and impacting the labor market at an unprecedented level, as well as the quality of justice offered to people.

[20] ChatGPT's answer to the question of whether AI will replace humans in the future It is unlikely that AI will completely replace humans in the future. While AI has the ability to automate certain tasks and make certain processes more efficient, it is unlikely to fully replace human capabilities in areas that require human creativity, empathy and judgment. Instead, AI and humans are likely to complement each other and work together across industries and domains to achieve common goals. However, the impact of AI on the labor market and the economy is a complex issue and will depend on various factors, such as the speed of technological progress, government policies and societal attitudes towards AI.

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Responsible innovation. confidentiality, privacy and data protection

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Abstract: *In the era of technology, artificial intelligence and digitalization, responsible development and innovation are more important than ever. Confidentiality, privacy and data protection are important aspects of responsible innovation. These refer to individuals' right to protect their personal information and have control over how it is collected, stored and used, starting with the moment of conception and, implicitly, throughout the lifetime of the resulted technological product. To promote responsible innovation, it is important for technology developers to implement appropriate security and data protection measures and to comply with applicable legislation. This can help develop technologies that are beneficial to society and individuals while protecting the fundamental rights and freedoms of users. In addition to complying with data protection regulations, transparency and user's information, security, data minimization/ anonymization and privacy impact assessment, what other aspects should be considered for responsible innovation?*
Key words: *artificial intelligence, confidentiality, privacy, data protection, fundamental rights, security*

1. INTRODUCTION

In the current age of rapid technological advancement, responsible development and innovation are more important than ever. As technology continues to transform every aspect of our lives, it is essential to ensure that this transformation is done ethically and with responsibility. The present research represents an overview of the concept of responsible innovation and its importance in the current era of technology, artificial intelligence and digitalization and the importance of confidentiality, privacy and data protection in responsible innovation.

Increasingly, a large proportion of innovation is taking place in the digital economy. Innovation in business models based on Big Data, deep-learning algorithms and Internet of Things (IoT) is expected to dramatically alter many paradigms such as employment, communication, health and productivity that are fundamental to our lives. Acting responsibly in this area is therefore of primary importance in shaping society and the values of tomorrow.[2]

Confidentiality refers to the safeguarding of personal, sensitive, or private information, by protecting data from unauthorized access, use, or disclosure, and in compliance with contractual or legislative provisions. It is essential to ensure that users have control over how their personal information is collected, stored and used, from the inception of the product through its entire lifecycle.

Privacy is also a vital aspect of responsible innovation, users have the right to control their personal information, and developers must ensure that they are transparent about how user data is collected and used, and users must be able to make informed decisions about whether to share their information.

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[2] Marc Dreyer, Luc Chefneux, Anne Goldberg, Joachim Von Heimburg, Norberto Patrignani, Chris Shilling, Monica Schofield, Responsible Innovation: A Complementary View from Industry with Proposals for Bridging Different Perspectives, Sustainability, 2017; https://doi.org/10.3390/su9101719, Available online: Sustainability | Free Full-Text | Responsible Innovation: A Complementary View from Industry with Proposals for Bridging Different Perspectives (mdpi.com) (accessed on 05.05.2023)

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Data protection is also a critical consideration for responsible innovation, developers must implement appropriate technical and security measures to protect the data subject from unauthorized access, theft, or misuse. This includes data encryption, data minimization/anonymization, secure data storage and access controls, to ensure that only authorized personnel can access the data.

Digital innovation should not be based on algorithms or databases that lead to manipulation of information, infringement of freedom of expression, shortcomings in data protection and privacy or freedom of association. Neither should it negatively affect the right to education and multilingualism, consumer rights and capacity building in the context of the right to economic development.[3]

There are other aspects that should be taken into consideration for responsible innovation such as social responsibility and the potential impact of the products and services on society; the developers must minimize any adverse effects and maximize the social benefits of their innovation, product safety. This can help ensure that technologies are beneficial to society and individuals while simultaneously protecting the fundamental rights and freedoms of users, but these aspects are not the subject of the present research.

Several research methods have been used in documenting the issues under scientific research, analyzed from a legal point of view. Among these, the *comparative method* is used to identify the similarities and differences regarding responsible innovation and the responsibility principle, and the data protection accountability principle. Through the *legal method*, the national and European legislative framework was identified and that could be applicable.

2. APPLICABLE RECOMMENDATIONS, GUIDELINES, AND LAW PROVISIONS

There are several recommendations, guidelines and legal provisions related to the responsible innovation, including:

The Artificial Intelligence Act[4] **–** This proposal imposes some restrictions on the freedom to conduct business (article 16) and the freedom of art and science (article 13) to ensure compliance with overriding reasons of public interest such as health, safety, consumer protection and the protection of other fundamental rights ('responsible innovation') when high-risk AI technology is developed and used. Those restrictions are proportionate and limited to the minimum necessary to prevent and mitigate serious safety risks and likely infringements of fundamental rights[5].

Artificial intelligence is a rapidly developing family of technologies that require novel forms of regulatory oversight and a safe space for experimentation, while ensuring responsible innovation and integration of appropriate safeguards and risk mitigation measures. To ensure a legal framework that is innovation-friendly, future-proof and resilient to disruption, national competent authorities from one or more Member States should be encouraged to establish artificial intelligence regulatory sandboxes to facilitate the development and testing of innovative AI systems under strict regulatory oversight before these systems are placed on the market or otherwise put into service.[6]

[3] Marc Dreyer, Luc Chefneux, Anne Goldberg, Joachim Von Heimburg, Norberto Patrignani, Chris Shilling, Monica Schofield, Responsible Innovation: A Complementary View from Industry with Proposals for Bridging Different Perspectives, *Sustainability* 2017; https://doi.org/10.3390/su9101719, Available online: Sustainability | Free Full-Text | Responsible Innovation: A Complementary View from Industry with Proposals for Bridging Different Perspectives (mdpi.com) (accessed on 05.05.2023)

[4] Proposal for a Regulation of the European Parliament and of the Council laying down harmonized rules on artificial intelligence (ARTIFICIAL INTELLIGENCE ACT) and amending certain union legislatives acts, Brussels, 21.4.2021, COM(2021) 206 final, 2021/0106(COD)

[5] Ibid., Context of the proposal, 3.5

[6] Ibid., para. 71

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The European Declaration on Digital Rights and Principles for the Digital Decade[7] presents the EU's commitment to a secure, safe and sustainable digital transformation that puts people at the center, in line with EU core values and fundamental rights. [8]

Because the digital transformation affects every aspect of people's lives and presents challenges for our democratic societies, our economies and for individuals, the Declaration should serve as a reference point for businesses and other relevant actors when developing and deploying new technologies. Promoting research and innovation is important in this respect.[9] The Declaration aims to promote that:

- People are at the center of the digital transformation in the European Union. Technology should serve and benefit all people living in the EU and empower them to pursue their aspirations, in full security and respect for their fundamental rights ensuring responsible and diligent action by all actors, public and private, in the digital environment.[10]
- Technology should be used to unite, and not divide, people. The digital transformation should contribute to a fair and inclusive society and economy in the EU, making sure that the design, development, deployment and use of technological solutions respect fundamental rights, enable their exercise, and promote solidarity and inclusion.[11]
- Everyone should be empowered to benefit from the advantages of algorithmic and artificial intelligence systems including by making their own, informed choices in the digital environment, while being protected against risks and harm to one's health, safety, and fundamental rights, promoting human-centric, trustworthy and ethical artificial intelligence systems throughout their development, deployment and use, in line with EU values.[12]
- Everyone should have access to digital technologies, products and services that are by design safe, secure, and privacy-protective, resulting in a high level of confidentiality, integrity, availability, and authenticity of the information processed, protecting the interests of people, businesses and public institutions against cybersecurity risks and cybercrime, including data breaches and identity theft or manipulation. This includes cybersecurity requirements for connected products placed on the single market.[13]

The Organization for Economic Co-operation and Development (**OECD) Recommendation of the Council on Artificial Intelligence**[14] identifies five complementary values-based principles for the responsible stewardship of trustworthy AI and calls on AI actors to promote and implement them: a) inclusive growth, sustainable development and well-being; b) human-centered values and fairness; c) transparency and explainability; d) robustness, security and safety; d) and accountability.

Based on the accountability principle, the AI actors should be responsible for the proper functioning of AI systems and for the respect of the above principles, based on their roles, the context and consistent with the state of art.

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[7] European Declaration on Digital Rights and Principles for the Digital Decade 2023/C 23/01, PUB/2023/89 JO C 23, 23.1.2023, p. 1-7

[8] Available online: European Declaration on Digital Rights and Principles | Shaping Europe's digital future (europa.eu), (accessed on 05.05.2023)

[9] Ibid., para. 8.

[10] European Declaration on Digital Rights and Principles for the Digital Decade 2023/C 23/01, PUB/2023/89, JO C 23, 23.1.2023, p. 1-7, Chapter I

[11] Ibid., Chapter II

[12] Ibid., Chapter III

[13] Ibid., Chapter V

[14] OECD, Recommendation of the Council on Artificial Intelligence, OECD/LEGAL/0449

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The UNESCO Recommendation on the Ethics of Artificial Intelligence[15] represents a historic and unique agreement of 193 Member States on the fundamental values, principles and policies that should govern the development of this game-changing technology. It provides concrete pathways, including innovative tools, methodologies, and initiatives to ensure maximizing the positive impact of AI, while addressing the associated risks. The Recommendation is addressed to Member States, but it provides ethical guidance to all AI actors, including the private sector.[16]

According to the UNESCO Recommendation, AI actors and Member States should respect, protect, and promote human rights and fundamental freedoms, (…), assuming their respective ethical and legal responsibility, in accordance with national and international law, in particular Member States' human rights obligations and ethical guidance throughout the life cycle of AI systems, including with respect to AI actors within their effective territory and control. The ethical responsibility and liability for the decisions and actions based in any way on an AI system should always ultimately be attributable to AI actors corresponding to their role in the life cycle of the AI system.[17]

Appropriate oversight, impact assessment, audit, and due diligence mechanisms, including whistle-blowers' protection, should be developed to ensure accountability for AI systems and their impact throughout their life cycle. Both technical and institutional designs should ensure auditability and traceability of (the working of) AI systems to address any conflicts with human rights norms and standards and threats to environmental and ecosystem well-being.**[18]**

White Paper on Artificial Intelligence – A European approach to excellence and trust[19] provides that AI systems – and certainly high-risk AI applications – must be technically robust and accurate to be trustworthy. That means that such systems need to be developed in a responsible manner and with an ex-ante due and proper consideration of the risks that they may generate. Their development and functioning must ensure that AI systems behave reliably and as intended. All reasonable measures should be taken to minimize the risk of harm being caused.

The Ethics Guidelines for Trustworthy Artificial Intelligence[20] prepared by the High-Level European Commission Expert Group on Artificial Intelligence which includes principles such as transparency, accountability, and fairness. It is necessary that mechanisms be put in place to ensure responsibility and accountability for AI systems and their outcomes, both before and after their development, deployment, and use.

Auditability entails the enablement of the assessment of algorithms, data, and design processes. Evaluation by internal and external auditors and the availability of such evaluation reports can contribute to the trustworthiness of the technology. In applications affecting fundamental rights, including safety-critical applications, AI systems should be able to be independently audited.[21]

Minimization and reporting of negative impacts, both the ability to report on actions or decisions that contribute to a certain system outcome, and to respond to the consequences of such an outcome, must be ensured. Identifying, assessing, documenting, and minimizing the potential negative impacts of AI systems is especially crucial for those (in)directly affected. The use of impact assessments (e.g., red teaming or forms of Algorithmic Impact Assessment) both prior to and during

[15] Published in 2022 by the United Nations Educational, Scientific and Cultural Organization (UNESCO), France, adopted on 23 November 2021
[16] Ohchr.org/UNESCO Recommendation on the Ethics of Artificial Intelligence
[17] Ibid., para. 42.
[18] Ibid., para. 43.
[19] White Paper on Artificial Intelligence – A European approach to excellence and trust, Brussels, 19.2.2020 COM(2020) 65 final
[20] The Ethics Guidelines for Trustworthy Artificial Intelligence prepared by the High-Level European Commission Expert Group on Artificial Intelligence, 2019
[21] Ibid. p.19

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the development, deployment and use of AI systems can be helpful to minimize negative impact. These assessments must be proportionate to the risk that the AI systems pose.

The General Data Protection Regulation[22] places obligations on organizations to protect personal data and ensures that individuals have the right to know what information is held about them and to have it corrected or deleted if necessary.

Accountability principles require controllers to actively and continuously implement measures to promote and safeguard data protection in their processing activities and are responsible for compliance of their processing operations with data protection law and their respective obligations.

Also, controllers must be able to demonstrate compliance with data protection provisions to data subjects, the public and supervisory authorities at any time. Processors must also comply with some obligations strictly linked to accountability, such as keeping a record of processing operations and appointing a Data Protection Officer.[23]

OECD also adopted the **Guidelines on the Protection of Privacy and Transborder Flows of Personal Data** that highlighted that controllers have an important role in making data protection work in practice. The guidelines comprise an accountability principle to the effect that a data controller should be accountable for complying with measures which give effect to the principles stated above.[24]

New developments in Artificial Intelligence are transforming the world, from science and industry to government administration and finance. The rise of AI decision-making also implicates fundamental rights of fairness, accountability, and transparency as per the **Universal Guidelines for Artificial Intelligence**[25]**.** The assessment and accountability obligation relate that an AI system should be deployed only after an adequate evaluation of its purpose and objectives, its benefits, as well as its risks and the institutions must be responsible for decisions made by an AI system.

As research evaluates algorithms that could rule our lives, code should be open and auditable. With the general complexity and issue of transparency of design and functionality of deep-learning and big data, this is becoming even more sensitive, and a call that we should establish a framework for algorithm design. One such framework is the Asilomar principles for the design of AI, with the goal of creating beneficial rather than undirected intelligence, using principles, such as transparency in failure, clarity in responsibility, alignment to human values, robustness with respect to security, or respect of privacy[26].

The **Digital Services Act** (DSA)[27] defines clear responsibilities for providers of intermediary services and in particular online platforms, such as social media and marketplaces and mandatory risk assessments and more transparency over algorithms. The DSA includes provisions related to the responsibility of online platforms in ensuring the safety, security, and rights of their users. This includes measures to prevent the spread of illegal content such as hate speech, terrorist content and

[22] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119, 4.5.2016, p. 1–88

[23] Handbook on European data protection law, European Union Agency for Fundamental Rights and Council of Europe, 2018, p. 134

[24] OECD (2013), Guidelines on governing the Protection of Privacy and transborder flows of personal data, Art. 14

[25] Universal Guidelines for Artificial Intelligence, 23 October 2018, Brussels, Belgium, AI Universal Guidelines – thepublicvoice.org

[26] Future of life Institute. Asilomar AI Principles. Available online: https://futureoflife.org/ai-principles/ (accessed on 05.05.2023)

[27] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) PE/30/2022/REV/1, *OJ L 277, 27.10.2022, p. 1–102*

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counterfeit products, as well as requirements for transparency in online advertising and data protection.

The promotion of AI-driven innovation is also closely linked to the Data Governance Act[28], the Open Data Directive[29] and other initiatives under the EU strategy for data[30], which will establish trusted mechanisms and services for the re-use, sharing and pooling of data that are essential for the development of data-driven AI models of high quality.

3. THE ACCOUNTABILITY PRINCIPLE

General Data Protection Regulation and Modernized Convention 108[31] determine that the controller is responsible for, and should be able to ensure, compliance with the data protection principles.[32] Controllers can facilitate compliance with this requirement in various ways, which include:• recording processing activities and making them available to the supervisory authority upon request; • in certain situations, designating a data protection officer who is involved in all issues relating to personal data protection; • undertaking data protection impact assessments for types of processing likely to result in a high risk to the rights and freedoms of natural persons; • ensuring data protection by design and by default; • implementing modalities and procedures for the exercise of the rights of the data subjects; • adhering to approved codes of conduct or certification mechanisms.[33]

Responsibility is a specific principle for personal data processing, as well as setting out an obligation for controllers to demonstrate their compliance with the provisions of the data protection law. This accountability is a continuous obligation. It does not manifest itself only at the end of a data processing operation when something goes wrong; rather, it is a proactive obligation to develop adequate data management in practice. Moreover, in keeping with the idea that individual control over personal data should operate as a default setting, it shift the burden of proof to the organization conducting data processing in many instances and focuses on accountability for responsible data stewardship, rather than mere compliance while ensuring that expectations and protection of privacy is preserved.[34]

Accountability is not an easy task. For the controller to be accountable in today's data driven society, it requires an organization that is able to show a regulator, customer or business partner evidence of having met, and continuing to meet, all of the obligations under the GDPR. This is not just a few documents and a database with records of processing activities. Accountability requires the organization to have a data protection policy, a statement that sets out how an organization protects personal data. It requires transparency about data protection responsibilities across the organization and indeed awareness that everyone in the organization who comes into contact with personal data is partly responsible for compliance with the GDPR.[35]

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[28] Proposal for a Regulation on European data governance (Data Governance Act) COM/2020/767

[29] Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information, PE/28/2019/REV/1, OJ L 172, 26.6.2019, p. 56–83

[30] Commission Communication, A European strategy for data COM/2020/66 final, https://eur-lex.europa.eu/legal-content/EN/TXT/Commission%20Communication,%20A%20European%20strategy%20for%20data%20COM/2020/66%20final.

[31] Modernized Convention for the Protection of Individuals with Regard to the Processing of Personal Data, CM/Inf(2018)15-final, 18 May 2018, Art. 7 (2)

[32] Handbook on European data protection law, European Union Agency for Fundamental Rights and Council of Europe, 2018, p. 134

[33] Handbook on European data protection law, European Union Agency for Fundamental Rights and Council of Europe, 2018, p.135

[34] Orla Lynskey, The foundations of EU Data protection Law, Oxford University Press, 2015, p.260

[35] Leo Besemer, Privacy and data protection based on the GDPR. Undersanding The General Data Protection Regulation, Van Haren Publishing, 2020, p.35

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4. DATA PROTECTION BY DESIGN AND BY DEFAULT

Another proponent of accountability is the implementation of data protection by design and by default. To achieve this, a cultural shift may be required to ensure that data protection is considered at the outset of every new project and for the duration of its life.[36]

Data protection by design requires that controllers put in place measures to effectively implement data protection principles and to integrate the necessary safeguards to meet the requirements of the regulation and protect the rights of data subjects.[37] These measures should be implemented both at the time of processing and when determining the means for processing. In implementing these measures, the controller needs to consider the state of the art, the costs of implementation, the nature, scope and purposes of personal data processing and the risks and severity for the rights and freedoms of the data subject.[38]

Data protection by default requires that the controller implements appropriate measures to ensure that only personal data which are necessary for the purposes will be processed by default. This obligation applies to the amount of personal data collected, the extent of the processing, the storage period and accessibility.[39]

5. PENALTIES

For violating the principle of accountability, I will mention some sanctions applied by the supervisory authorities:

5.1 The Irish DPA (DPC) has imposed a fine of EUR 17 million on Meta Platforms Ireland Limited[40] (former Facebook Ireland Limited) on 15.03.2022. The decision is based on twelve notifications of data breaches that occurred between June 7, 2018, and December 4, 2018. The outcome of the DPC's investigation revealed that Meta had violated Article 5 (2) and Article 24 (1) GDPR. During its investigation, the DPC found that Meta failed to demonstrate that it had taken appropriate technical and organizational measures to protect the data of EU users. The fine proceedings involved cross-border data processing, which is why the decision was subject to the co-decision procedure under Art. 60 GDPR involving all other European supervisory authorities as co-decision-makers.

5.2 Vodafone Italia S.p.A.[41] was fined EUR 12,251,601 on 12.11.2020 for unlawfully processing personal data of millions of customers for telemarketing purposes. The proceedings were preceded by hundreds of complaints from data subjects about unsolicited telephone calls, which led to an investigation by the data protection authority. This investigation revealed several violations of the data protection law, including the violation of consent requirements and the violation of general data protection obligations such as accountability. Moreover, further violations could be found in the handling of contact lists purchased from external providers. Finally, security measures for the management of customer data were also considered inadequate.

5.3 The Danish DPA has imposed a fine of EUR 1.3 million on Danske Bank[42] on 05.04.2022. The DPA opened an investigation against the bank after it informed the DPA that it had

[36] Leo Besemer, Privacy and data protection based on the GDPR. Undersanding The General Data Protection Regulation, Van Haren Publishing, 2020, p.36
[37] General Data Protection Regulation, art. 25 (1).
[38] Handbook on European data protection law, European Union Agency for Fundamental Rights and Council of Europe, 2018, p.183
[39] General Data Protection Regulation, Art. 25 (2).
[40] https://www.enforcementtracker.com/ETid-1094
[41] https://www.enforcementtracker.com/ETid-438
[42] https://www.enforcementtracker.com/ETid-1114

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a problem with the deletion of personal data. During the investigation, the DPA found that the bank had failed to document the rules for deletion and storage of personal data in more than 400 systems. Consequently, the bank was unable to prove that such rules, which are required under the GDPR, existed. The DPA considered this to be a breach of the bank's accountability obligation under Art. 5 (2) GDPR.

6. CONCLUSION

Confidentiality, privacy, and data protection are crucial aspects of responsible innovation, these concepts pertain to individuals' right to safeguard their personal information and have control over how it is collected, stored, and used, starting from the point of the conception and throughout the life of the resulting technological product.

For responsible innovation, in addition to complying with data protection regulations, transparency and user's information, security, data minimization/anonymization and privacy impact assessment, other aspects that should be considered in technical and institutional designs are auditability and traceability of (the working of) AI systems to address any conflicts with human rights norms and standards.

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Legal Aspects of Vulnerability Disclosure: Navigating GDPR and NIS Directive Obligations for Data Protection and Cybersecurity

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Abstract: *The disclosure of vulnerabilities in the context of data protection and cybersecurity raises numerous legal aspects that require careful navigation. This paper examines the legal implications of vulnerability disclosure within the context of data protection and cybersecurity, with a specific focus on the General Data Protection Regulation (GDPR) and the Network and Information Systems (NIS2) Directive. The research problem addressed in this study is the need to understand the legal obligations and challenges associated with vulnerability disclosure under these regulatory frameworks. The research aims to explore the legal requirements, identify conflicts, and provide insights into vulnerability disclosure practices. The study employs a methodology that involves a comprehensive review and analysis of legal documents, guidelines, and scholarly literature. This approach allows for a thorough examination of the legal aspects surrounding vulnerability disclosure. The findings contribute to a better understanding of the legal landscape and provide valuable insights.*
Keywords: *EU, Cybersecurity, GDPR, NIS2D, Vulnerability Disclosure*

1. INTRODUCTION

In today's digital landscape, the discovery and disclosure of vulnerabilities have become critical concerns that require careful attention and adherence to legal obligations. The disclosure of vulnerabilities has been a topic of debate within the information security community for a considerable period. The urgency to address cybersecurity and software vulnerabilities stems from the increasing connectivity of devices and individuals[2]. The General Data Protection Regulation (GDPR) and the Network and Information Systems (NIS2) Directive are two key legal frameworks that aim to safeguard data protection and cybersecurity within the European Union (EU)[3]. Navigating the obligations imposed by these regulations when disclosing vulnerabilities is of utmost importance to ensure compliance, protect personal data, and maintain a secure online environment. These efforts promote accountability, uphold the rule of law, and contribute to a safer digital environment for all while ensuring the protection of personal data[4]. This article examines the legal aspects of vulnerability disclosure and explores the challenges and considerations involved in balancing the requirements of the GDPR and the NIS2 Directive.

The primary focus of this research is the examination of the legal aspects associated with vulnerability. Thus, it is essential to establish a comprehensive understanding of the concept of vulnerability in order to address these legal considerations effectively[5]. Vulnerabilities are typically

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[2] Technology, Policies and Legal Challenges Report of a CEPS Task Force, June 2018, Chair: Marietje Schaake Rapporteurs: Lorenzo Pupillo Afonso Ferreira Gianluca Varisco
[3] Tropp, E.-M.; Hoffmann, T.; Chochia, A. (2022). Open Data – a stepchild in e-Estonia's Data Management Strategy? TalTech Journal of European Studies, 12 (1), 123−144. DOI: 10.2478/bjes-2022-0006.
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[5] *See also:* Mazur, V.; Chochia, A. (2022). Definition and Regulation as an Effective Measure to Fight Fake News in the European Union. European Studies: The Review of European Law, Economics and Politics, 9 (1), 15−40. DOI: 10.2478/eustu-2022-0001.

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defined by three fundamental characteristics. Firstly, they involve the existence of a flaw or weakness within a system, serving as a potential entry point for attackers. Secondly, vulnerabilities possess the capacity for threats, including hackers, to exploit the identified flaw. Lastly, the exploitation of vulnerabilities can result in compromised information security, posing a significant risk to both software and hardware systems[6]. These elements collectively highlight the potential dangers that vulnerabilities pose to the overall security of digital environments.

2. CHALLENGES REGARDING VULNERABILITY DISCLOSURE

Vulnerability disclosure involves the process of identifying, reporting, and resolving weaknesses in software, hardware, or services that have the potential to be exploited[7]. The vulnerability disclosure process presents a range of significant challenges that must be effectively addressed. These challenges include navigating complex legal considerations, as individuals disclosing vulnerabilities may face potential legal threats due to the methods used and the manner of disclosure. The acquisition of vulnerabilities for national security purposes may result in intentional non-disclosure, leaving users vulnerable without a solution. User's failure to implement patches promptly further exacerbates the risks, often due to a lack of understanding or knowledge. Moreover, variations in discoverer motivation, influenced by bug bounty programs and monetary rewards, can impact the disclosure decisions made.[8] To overcome these challenges, it is crucial to carefully consider these factors and establish effective mechanisms that promote responsible vulnerability disclosure, prompt patch implementation, and foster collaboration among all stakeholders involved.

The process of vulnerability disclosure refers to the steps taken to handle the dissemination of software vulnerability knowledge after it has been identified by a user. Responsible vulnerability disclosure aims to minimize the negative impact of vulnerabilities by determining how and when vulnerability information should be shared with the appropriate parties through the appropriate channels[9]. The lack of consensus arises from the fact that vulnerability information has varying relevance to different stakeholders, including the software vendor, software users, and potential hackers. The way vulnerability knowledge is managed, including the sequence and timing of its announcement, can significantly impact the overall cost of the vulnerability to society[10].

The disclosure of vulnerabilities raises significant questions due to the sensitive nature of the information involved. These questions arise from the presence of diverging and conflicting interests among stakeholders, as well as legal constraints on their actions[11]. As digital and software-dependent technologies become more integrated into everyday life, it becomes essential for the economy and society as a whole to establish appropriate procedures for vulnerability disclosure. While it is clear that vulnerability disclosure is necessary from the perspective of end-users such as businesses and home users, important questions remain unanswered. It is essential to address several critical aspects when it comes to disclosure, including identifying the responsible party, establishing the appropriate

[6] Good Practice Guide on Vulnerability Disclosure From challenges to recommendations, November 2015,European Union Agency for Network and Information Security

[7] Vulnerability Disclosure, https://www.enisa.europa.eu/topics/vulnerability-disclosure, 20 May 2023

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disclosure methods, and determining the right timing for making vulnerabilities public. Careful consideration and consensus among stakeholders are vital to safeguard the security of end-users[12].

Vulnerability disclosure entails several important legal aspects that must be considered to ensure responsible and lawful practices. These aspects include adhering to legal rights and obligations, establishing responsible disclosure policies, maintaining confidentiality and non-disclosure agreements, complying with personal data protection laws, coordinating with relevant authorities, ensuring liability protection, and considering public interest implications. It is crucial for individuals and organizations engaged in vulnerability disclosure to navigate these legal aspects carefully and collaborate with researchers, software vendors, security organizations, and legal experts to ensure compliance and protect the rights and interests of all parties involved[13].

It is worth noting that two crucial legal instruments, namely the General Data Protection Regulation (GDPR) and the Network and Information Systems (NIS2) Directive, were implemented to uphold adequate security standards for information technology (IT) and its associated data processing. While both the GDPR and the NIS2 Directive incorporate risk-based security measures, they serve distinct purposes and objectives.[14]

The GDPR is a comprehensive data protection regulation in the European Union that establishes rules and requirements for the protection of personal data. It emphasizes the importance of data security and imposes obligations on organizations to ensure the confidentiality, integrity, and availability of personal data. Vulnerability disclosure is closely tied to data security, and organizations are expected to promptly address and disclose vulnerabilities that may impact the security of personal data[15].

The NIS2 Directive, on the other hand, focuses on the security of network and information systems in critical sectors such as energy, transportation, banking, and healthcare. It sets out requirements for risk management, incident reporting, and cooperation between member states. Vulnerability disclosure is crucial in the context of the NIS2 Directive, as timely reporting and handling of vulnerabilities can help prevent security incidents and mitigate risks to critical infrastructure[16].

NIS2 Directive prioritizes the availability of services, with confidentiality and integrity being secondary considerations. It is worth noting that information security incidents can often impact personal data. While the NIS2 Directive has a broader scope, covering digital data related to network and information systems and their provision and continuity, it is more limited in terms of its applicability, targeting only identified operators of essential services (OES) and digital service providers[17]. These legal instruments work together to establish a comprehensive framework for protecting data and ensuring the security of IT systems. The GDPR focuses on the rights and privacy of individuals, while the NIS2 Directive concentrates on the resilience and security of critical infrastructures[18].

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[12] *Ibid.*

[13] *Ibid.*

[14] Sandra Schmitz-Berndt, Stefan Schiffner (2021) Don't tell them now (or at all) – responsible disclosure of security incidents under NIS Directive and GDPR, *International Review of Law, Computers and Technology*, 35:2, 101-115.

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[16] Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.

[17] Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.

[18] *Sandra Schmitz-Berndt, Stefan Schiffner. Op.cit.,*

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3. REPORTING OBLIGATIONS

This article aims to analyze the reporting requirements prescribed by the NIS 2 Directive and the GDPR, with a focus on highlighting the similarities and differences between these regulatory frameworks. Both directives impose obligations on organizations to report incidents, however, they diverge in terms of their scope. The NIS 2 Directive centers on incidents concerning network and information systems that have an impact on essential services, while the GDPR primarily concerns personal data breaches. By examining these aspects in detail, this study seeks to provide a comprehensive understanding of the incident reporting processes within the purview of both frameworks.

3.1. Data Breach Reporting in Accordance with the GDPR

The issue of data breach reporting under the GDPR is intricately intertwined with vulnerability disclosure and cybersecurity challenges. In the event of a data breach, it is common for the breach to exploit vulnerabilities within a system, resulting in unauthorized access, data leakage, or other security-related incidents.

Under the General Data Protection Regulation (GDPR), organizations are required to report data breaches that pose a risk to individuals' rights and freedoms. This reporting obligation is outlined in Article 33 of the GDPR. Article 33 states that in the event of a data breach, data controllers must notify the supervisory authority without undue delay and, where feasible, within 72 hours of becoming aware of the breach. The notification should include details such as the nature of the breach, the categories and an approximate number of affected individuals, the likely consequences of the breach, and the measures taken or proposed to address the breach and mitigate its effects[19].

In addition, the provision outlined in Article 34 of the GDPR, which mandates the communication of data breaches to affected individuals, serves a crucial purpose in enhancing transparency and accountability in data protection practices. By requiring data controllers to promptly notify individuals of breaches that pose a high risk to their rights and freedoms, the GDPR aims to empower individuals and regulatory authorities with timely information to take necessary actions and mitigate potential harm. The requirement for clear and easily understandable communication ensures that individuals can comprehend the breach and comprehend the recommended steps to safeguard themselves.[20] Nonetheless, challenges arise from subjective risk evaluation, ambiguous reporting timelines, and individuals' limited awareness. Resolving these issues requires clear guidelines to standardize risk assessment and reporting, alongside cybersecurity measures to enhance breach notifications, safeguard individual rights, and minimize harm.

Organizations must prioritize their understanding of the specific requirements outlined in Articles 33 and 34 of the GDPR. They should establish robust processes and procedures to promptly and efficiently handle data breaches. Non-compliance with these reporting obligations can lead to severe penalties and reputational harm for organizations. Hence, taking proactive steps to comply with the GDPR's data breach reporting requirements is essential to safeguard the organization's reputation, maintain regulatory compliance, and protect individuals' rights and privacy.

[19] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Article 33.

[20] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Article 34.

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3.2. Incident Reporting Obligations under the NIS Directive

On the Other hand, NIS Directive 2 (Network and Information Systems Directive 2) is a regulatory framework introduced by the European Union to strengthen cybersecurity measures and protect critical infrastructure and digital services. A significant component of NIS2 is the establishment of a comprehensive framework for coordinated vulnerability disclosure[21]. Under NIS2, key actors are assigned specific responsibilities in handling newly discovered vulnerabilities throughout the European Union. This coordinated approach ensures that vulnerabilities are promptly and responsibly disclosed to relevant parties, minimizing the potential risks they pose[22].

Additionally, NIS2 mandates the creation of an EU vulnerability database, managed and maintained by the EU Agency for Cybersecurity (ENISA). This database serves as a central repository for publicly known vulnerabilities in information and communication technology (ICT) products and services[23]. One of the strengths of this approach is the potential for a centralized and comprehensive database that can streamline vulnerability management efforts. Having a single repository can facilitate efficient identification, tracking, and mitigation of vulnerabilities across various ICT products and services. This can lead to faster patching and improved security measures, reducing the risk of cyber incidents and enhancing overall cybersecurity posture.[24]

NIS2 presents a holistic structure for businesses, comprising 10 essential components that need to be acknowledged and incorporated into their cybersecurity protocols. These components span a range of domains, including incident management, safeguarding the supply chain, handling and disclosing vulnerabilities, and responsibly employing cryptography and encryption.[25]

When it comes to incident reporting, striking the right balance between swift reporting and in-depth analysis is crucial. The new Directive adopts a multi-stage approach to incident reporting. In the event of an incident, companies have a 24-hour window from the time they become aware of it to submit an early warning to the Computer Security Incident Response Team (CSIRT) or the competent national authority. This early warning also enables companies to seek assistance, such as guidance or operational advice on implementing mitigation measures if needed[26]. Following the early warning, companies are required to provide an incident notification within 72 hours of becoming aware of the incident.[27] Finally, affected companies must submit a final report no later than one month after becoming aware of the incident. By adopting this multi-stage approach to incident reporting, NIS2 aims to strike a balance between prompt reporting to prevent incident

[21] NIS Cooperation Group, Retrieved from https://digital-strategy.ec.europa.eu/en/policies/nis-cooperation-group, 20 May 2023

[22] NIS Cooperation Group, Retrieved from https://digital-strategy.ec.europa.eu/en/policies/nis-cooperation-group, 20 May 2023

[23]Coordinated vulnerability disclosure practices in the EU, April 2022, European Union Agency for Network and Information Security

[24] Directive on measures for a high common level of cybersecurity across the Union (NIS2 Directive), Retrieved from, https://digital-strategy.ec.europa.eu/en/faqs/directive-measures-high-common-level-cybersecurity-across-union-nis2-directive 15 May 2023

[25] Directive on measures for a high common level of cybersecurity across the Union (NIS2 Directive), Retrieved from, https://digital-strategy.ec.europa.eu/en/faqs/directive-measures-high-common-level-cybersecurity-across-union-nis2-directive 15 May 2023

[26] Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive), Article 23, 4(a)

[27] Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive), Article 23, 4(b)

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escalation and detailed reporting to extract valuable insights from each incident[28]. This iterative reporting process enhances incident management capabilities, strengthens cybersecurity practices, and contributes to a more resilient and secure digital environment.

Yet, the 24-hour reporting window in the multi-stage incident reporting approach poses challenges. Rushed reporting may hinder thorough incident analysis, understanding of causes, and impact. Balancing speed with accuracy is crucial. Effective implementation relies on capable authorities providing timely assistance. Insufficient resources or expertise may hinder support to organizations. Smaller organizations may struggle to meet reporting requirements promptly, considering limited resources. Addressing challenges for all organizations is important for effective incident reporting systems.

4. BALANCING GDPR AND NIS DIRECTIVE 2

The disclosure obligations in both the GDPR and the NIS2 Directive share some similarities. Both frameworks require organizations to report incidents, although the scope of reporting differs. The differing objectives of the GDPR and the NIS2 Directive can create challenges when it comes to advising on incident notification. The GDPR places a strong emphasis on safeguarding personal data and advocates for immediate notification to enable affected individuals to mitigate potential harm. In contrast, the NIS2 Directive is primarily concerned with restoring and maintaining information security, and incident disclosure under this framework may be limited to cases where public awareness is crucial for preventing or addressing ongoing incidents or when disclosure serves the public interest.

Recital 86 of the GDPR recognizes the challenge of early disclosure and acknowledges the need for prompt communication with data subjects to mitigate immediate risks. However, this justification specifically applies to continuing and ongoing data breaches and does not cover ongoing security incidents in general[29]. As a result, incidents that inadvertently compromise consumer data but lead to ongoing attacks on other critical systems may not be adequately addressed. It is important to note that while Recital 86 provides interpretative guidance, it does not establish legally binding limits on the scope of Article 34 of the GDPR, which governs incident notification. Additionally, when determining administrative fines for non-compliance with Article 34, the effectiveness of incident mitigation and an appropriate NIS response are factors considered[30].

The GDPR does not have explicit regulations that specifically cover incident containment and recovery, or provide exceptions for delaying the notification of data subjects in cases involving law enforcement or other relevant interests. This ongoing disagreement persists due to the absence of such provisions in the GDPR framework[31].

However, the NIS 2.0 Proposal resolves one aspect of the conflict by eliminating the possibility of facing legal consequences for non-compliance under both the GDPR and the NIS instrument[32]. Article 32(2) of the NIS 2.0 Proposal clarifies that if a Data Protection Authority (DPA) imposes an administrative fine, a National Competent Authority (NCA) cannot impose an additional

[28] Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive), Article 23, 4 (c, d)

[29] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Recital 86.

[30] Sandra Schmitz and Stefan Schiffner, 2021 Responsible Vulnerability Disclosure under the NIS 2.0 Proposal

[31] Position Paper – Roadmap NIS-Review Bitkom views concerning the combined Evaluation Roadmap / Inception Impact Assessment, 13 of August 2020

[32] Sandra Schmitz and Stefan Schiffner, 2021 Responsible Vulnerability Disclosure under the NIS 2.0 Proposal

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administrative fine for the same infringement. It is important to note that failing to comply with notification obligations towards the regulatory authority and failing to comply with the notification obligation towards the data subject or service recipient are considered separate infringements[33].

To explore deeply, the division of notification obligations in NIS2 may lead to a fragmented incident reporting approach. Organizations might prioritize fulfilling their duties towards the regulatory authority, potentially neglecting their obligations towards affected individuals or service recipients. This neglect has the potential to compromise the rights and interests of individuals whose personal data is impacted by the incident. Consequently, an entity that informs the DPA and NCA about a security incident involving personal data but fails to inform the data subject without undue delay to handle the incident may potentially face legal sanctions under the GDPR[34].

CONCLUSION

In conclusion, this research has highlighted the legal aspects of vulnerability disclosure in connection with data protection and cybersecurity. The conflicting objectives of the GDPR and the NIS2 Directive create a delicate balance between immediate data protection notification and the need for the delay to address cybersecurity concerns.

It is essential to acknowledge and address the inherent limitations and challenges associated with this research. The dynamic nature of legal frameworks introduces ongoing complexities as regulations and guidelines evolve over time. Furthermore, successfully navigating vulnerability disclosure requires careful management of the intricate interplay between data protection and cybersecurity considerations.

Despite these challenges, this research provides valuable insights into the legal landscape surrounding vulnerability disclosure. By thoroughly understanding the explicit requirements outlined in the General Data Protection Regulation (GDPR) and the Network and Information Security (NIS2) Directive, organizations can enhance their incident reporting practices while ensuring diligent compliance with regulatory obligations.

To thrive in this ever-changing environment, organizations must maintain constant vigilance, continuously monitoring and adapting to changes in legal frameworks. It is of utmost importance to carefully consider and balance both data protection and cybersecurity aspects when disclosing vulnerabilities. Through these measures, organizations can effectively mitigate risks, protect individuals' data, and contribute to the creation of a safer and more secure digital ecosystem.

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[33] Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive), Article 32(2)

[34] *Ibid.*

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Post-mortem privacy and the latest GDPR legislative shifts

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Abstract: *The decision in the LG Berlin Facebook case caused a fierce debate in the field of digital inheritance and became the first in a number of cases throughout Europe on the issue of access to the accounts of deceased relatives by their heirs. On the contrary, the issue of posthumous privacy, which is inseparably interconnected to a digital succession, has not received such comprehensive research, and is lacking it in the context of the civil legal system, and the EU in particular. This study systematises the knowledge about and the right to decide the fate of the assets by a legal predecessor after no longer being in a position to exercise human autonomy and contextualises it within the framework of recent regulatory developments, namely the implementation of GDPR for the protection of post-mortem data and recent relevant case-laws.*
Keywords: *EU, post-mortem privacy, posthumous privacy, digital assets, GDPR post-mortem, social media accounts post-mortem.*

INTRODUCTION: DEFINING POST-MORTEM PRIVACY

Post-mortem privacy is not a legal term or category. At the current stage of legislative development post-mortem, privacy is still a predominantly abstract notion, which in most cases is understood as a right of the person to preserve and control what becomes of his reputation, dignity, integrity, secrets, or memory after death, meaning after no longer being able to exercise human autonomy as an active agent. [2]

Considering the issue from a social perspective, post-mortem privacy is often associated with aspects such as the protection of personality rights, the author's moral rights, dignity, and protection against defamation. [3]

The controversy of the phenomena of post-mortem privacy lies not only in the absence of the right codified but also in the natural controversy of the very idea of posthumous privacy in relation to the fundamental principles and pillars of certain jurisdictions, for example, the maxim of the English law "*actio personalis moritur cum persona*"[4] implying that "a personal right of action dies with the person".

In contrast to the common law system, the idea of posthumous privacy cannot be called foreign and uncharacteristic of the civil law system: although not in the scope of what we understand as modern digital posthumous privacy regulation, the concept-related manifestations and indications can be found in numerous related cases and laws. For example, Malgieri, in his work, considers being such an Application n. 8741/79, 47, in which the Commission admitted that the applicant's wish to have his ashes spread out over his own land" was so closely connected to private life that it fell within the sphere of Art. 8 of the European Convention on Human Rights (ECHR)", correctly

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[2] Lilian Edwards, Edina Harbina. "Protecting post-mortem privacy: Reconsidering the privacy interests of the deceased in a digital world." in *Cardozo Arts & Entertainment Law Journal*, vol. 32, 2013, p. 85.
[3] Edina Harbinja, "Does the EU data protection regime protect post-mortem privacy and what could be the potential alternatives" in *Scripted*. Vol. 10, 2013, p. 19.
[4] Asta Tūbaitė-Stalauskienė, "Data Protection Post-Mortem" in *International Comparative Jurisprudence*, Vol. 4, 2018, p. 98.

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defining it as life-transcending decisional privacy [5] and the Danish Act on Coroner's Inquest, post-mortem examinations and transplantation, which prohibits interference with a corpse of a deceased person without his prior consent in writing.[6]

Of course, there are also many contrary opinions and testimonies.

In particular, under the general practice, Article 8 of the European Convention on Human Rights (ECHR), which is dedicated to the protection of the private and family, home, and correspondence, is limited to the protection of living individuals only unless case concerns very exceptional circumstances constituting an inseparable and direct link between the deceased's privacy and the rights or interests (sometimes economic) of the living individuals.[7]

But even in situations where the objective of protecting posthumous privacy seems entirely legitimate, as for example, in the case of Rb Amsterdam 12 December 2003, KG 2003, 1363 m.nt. GJZ, where the daughter of two Holocaust victims applied to the court to remove her parents' personal information from the Digital Monument to the Jewish Community in the Netherlands, as this identification violates their and her data protection rights and evokes painful memories, other factors often prevail, such as ensuring freedom of expression.[8]

Despite the lack of global legal clarity on the matter, in light of the increasing threats to both our ante-mortem[9] and post-mortem privacy associated with the rapid development of technology and the growing influence of private corporations, many scholars take a firm normative stance supporting and proclaiming the existence and the need to regulate the post-mortem privacy and data justifying it from the different perspectives. The works of Sperling, Smolensky, Harbinja, Buitelaar and many other legal and social scholars constitute a paramount contribution to the theoretical conceptualisation of the posthumous privacy phenomena.[10]

Thus, based on the idea that, although not all, the interests of individuals survive their death and deserve to receive legal protection,[11] this work, without further consideration of the theoretical basis, will proceed to consider the practical aspects of the implementation and regulation of posthumous privacy and data protection.

GENERAL REMARKS AND IMPORTANT CATEGORISATIONS

As was previously stated, the discussion and consideration of the notion of post-mortem privacy in general and in the legal dimensions, in particular, are mainly caused by the increased level of concern both in the ordinary and in the legal discourses about the lack of regulation and

[5] Bart Van der Sloot, "Decisional privacy 2.0: the procedural requirements implicit in Article 8 ECHR and its potential impact on profiling." in *International Data Privacy Law*, Vol. 7(3), 2017, pp. 190-201.

[6] Gianclaudio Malgieri, "RIP: Rest in privacy or rest in (quasi-) property? Personal data protection of deceased data subjects between theoretical scenarios and national solutions. Personal Data Protection of Deceased Data Subjects between Theoretical Scenarios and National Solutions.' in *Data Protection and Privacy: The Internet of Bodies*, 2018, p. 10; European Commission on Human Rights, Application N° 8741/79, déc. 10.3.81, D.R. 24, pp. 140-143

[7] Bo Zhao, "Posthumous Defamation and Posthumous Privacy Cases in the Digital Age" in *Savannah Law Review*, Vol. 3, 2016, p. 4.

[8] Bo Zhao, 2016, *supra nota*, p. 2; Rb Amsterdam 12 December 2003, KG 2003, 1363 m.nt. GJZ (Uitspraakvoorzieningenrechter particulier/Stichting Digitaal Monument Joodse Gemeenschap)

[9] See Jan Buitelaar, "Privacy: Back to the roots" in *German Law Journal*, vol. 13, 2012, pp. 185-187.

[10] See: Daniel Sperling, "Posthumous interests: legal and ethical perspectives" in *Cambridge: Cambridge University Press*, 2008, p.8; Kirsten Rabe Smolensky, "Rights of the Dead" in *Hofstra Law* Review, vol. 37, 2008, pp. 763-803; Lilian Edwards, Edina Harbina, "Protecting post-mortem privacy: Reconsidering the privacy interests of the deceased in a digital world" in *Cardozo Arts & Entertainment Law Journal,* vol. 32, 2013, p. 11; Jan Buitelaar, "Post-mortem privacy and informational self-determination" in *Ethics and Information Technology, vol. 19(2),* 2017, pp. 129-142.

[11] Daniel Sperling, 2008, *Supra nota*, p. 304; Kirsten Rabe Smolensky, 2009, *Supra nota,* p. 765.

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inscrutability of legal elements or their aggregates, usually designated as components or influencing factors of what we understand as digital posthumous privacy within the discourse.

These components, among other fields, include:

- property and essentially succession law: the principle of universal succession is generally governing the posthumous transfer of assets.[12]
- intellectual property law regimes: transferability is usually dependent on the classification of the assets in question.
- contract law: the contract of service is essential for the usage of digital intermediaries` services; it also sets the normative basis for the internal procedures of the assets and data processing activities conducted by the intermediary.
- data protection law: sets standards for data processing, control, and transmission, defining the scope of data subjects` and controllers` (the intermediary/platform service-providers) conduct.

The abovementioned conditional categorisation is primarily based on the observations of issues considered by the civil legal system courts in the event of ruling and substantiating the account-related transfer issues.

There are also various stakeholders relevant to the issues surrounding post-mortem privacy online, namely, internet users, their families, service providers (intermediaries) and society.[13] As the author takes a normative stance and promotes the interests of the users over their family or intermediaries, this work will focus on the practical aspects of the implementation of digital posthumous privacy directly related to the possibility and accessibility of individuals to control the fate of their digital assets in their own interests after death in within the framework of international and national legislation of the EU member states, trying to shed light on their nature, prospects and peculiarities.

POST-MORTEM PRIVACY ON THE EU-LEVEL DATA PROTECTION LEGISLATION

As was already mentioned above, due to the relative novelty of the phenomena in general, the fate of our digital assets and their post-mortem aspects after our death currently remains in the so-called "grey area". Also, no European-wide piece of legislation harmonises or sets explicit standards for either succession of digital assets or posthumous privacy regulation.

According to recital 27 of the General Data Protection Regulation (GDPR), the European GDPR is not applicable to the personal data of deceased persons.[14] However, the Member States were left free to implement their own decisions and regulations regarding the post-mortem data and data subjects' protection. Despite the recommendation's non-mandatory nature, GDPR has stirred a wave of post-mortem property and data regulation that is forcing us to rethink our vision of these phenomena.[15] Legislative responses to the encouragement to self-regulate post-mortem privacy vary widely from MS to MS: non-implementation and various examples of partial implementation. There have also been court proceedings, which in this context, can give us a better understanding of the consequences of these regulations and help form an idea of the potential for harmonisation.

[12] George Pelletier Jr., Michael Roy Sonnenreich, "A Comparative Analysis of Civil Law Succession" in *Villanova Law Review*., vol. 11, 1966, p. 326.

[13] Edina Harbinja, "Post-mortem privacy 2.0: theory, law, and technology" in *International Review of Law, Computers & Technology*, vol. 31(1), 2017, p. 27.

[14] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ (Official Journal of the European Union) L 119/1, recital 27.

[15] Giorgio Resta, "Personal data and digital assets after death: a comparative law perspective on the BGH Facebook ruling" in *Journal of European Consumer and Market Law*, vol. 7(5), 2018, p. 201.

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In the next section, as part of a comparative analysis, the approaches of such countries as Germany, Italy and France will be carefully assessed.

EU MEMBER STATES' NATIONAL LEVEL REGULATION

3.1 *Germany*

Germany, in the context of conditional categorisation, belongs to countries in which the issue of posthumous privacy in the absence of GDPR incorporation for its regulation is considered in the context of **the conflict of contract law, meaning the contract of services between the intermediary platform and the user, and inheritance law.**

The assessment of the right to inherit and the right to access the account within the six instances of the court of the fundamental LG Berlin, 20 O 172/15[16], ("LG Berlin") case – the first major European case on the issues of digital inheritance of social media accounts and, accordingly, posthumous data privacy directly linked to the transfer accompanying it, clearly and in detail demonstrates the logic and specificity of the approach from the position of reaching the objectives of protection of property rights in the context of the principle of universal succession.[17]

LG Berlin concerned the parents' right of access to the Facebook account of their underaged daughter who had committed suicide: the mother tried to log into the account, but the access was restricted, as Facebook transferred the account to a memorialised status in accordance with the internal rules of Facebook and the provisions of "Terms of service", and on the deceased's mother's request for access was refused with reference to internal rules and principles of Facebook. [18]

As part of its arguments in the first instance of the court, Facebook claimed the non-transferability clause in the service contract between the provider and the original owner of the account prevents the heirs from succeeding and accessing the account. The court, instead, declared that this contractual provision has no effect and cannot prevent the inheritance of a service contract, which is the same property as any other. The Berlin Regional Court noted that one of the reasons for the invalidity of the memorialisation and non-transferability clause is the disproportionate and unreasonable disadvantage to the heirs that these regulations cause.

The Berlin Court of Appeal denied the existence of the successor's right to access of account on the basis of the secrecy of telecommunications designed to protect the communications of the legal predecessor of the account and their communication partners.

In turn, the Federal Supreme Court returned the decision of the court of the first instance, emphasising the priority of the principle of universal inheritance over contractual provisions. Also, an essential and fundamental explanation of the rules of inheritance of digital assets was made: according to the Court, digital assets should be equated with physical ones and be inherited accordingly, that is, identically based on this equivalence. The secrecy of telecommunications, which Facebook put forward as an argument for denying access to the account, would not be valid if it was a paper letter communication – thus, messages should be inheritable as well.

This argument quite reasonably raises doubts in the context of the interpretation of the protection of the data of these third parties in the context of the GDPR: at the same time, as the court notes, the right of access to this data of their testator should be extended to the heirs within the framework of Art. 6 GDPR 1 (b), as they are now effectively the beneficiaries and party to the agreement that is the basis of this basis for processing.[19]

[16] LG Berlin, 20 O 172/15, ECLI:DE:LGBE:2015:1217.20O172.15.0A
[17] Ibid.
[18] Ibid.
[19] BGH III ZR 183/17, ECLI:DE:BGH:2018:120718UIIIZR183.17.0 para 72-73.

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Despite the apparent inheritance rights-centred position regarding access to account data and, accordingly, posthumous privacy, which is actually excluded, since the consent given by the legal predecessor to memorialisation was not considered even potentially as an expression of will[20], it is worth noting that, nevertheless, probably, not all factors posthumous personal rights are entirely rejected by the German legislation. A strong argument in support of this is the advisory ban on granting heirs the right to actively use the page[21]: that is, despite the order to provide access to all information from the account and the actual transfer of the account with all rights to it to the hands of the heirs in accordance with the law of universal succession, the court considers it appropriate to limit the right of use such functions as sending messages from the face of the deceased or editing the account.

Mikk and Sein, concluded that such a prohibition may be related to an exception to the principle of universal succession, which excludes rights and obligations of a personal nature, that is, those that are inextricably linked and directly depend on the personality of the owner from the list of "universal inheritance".[22] At the same time, as the court rightly noted, this principle, in accordance with the norms of German law,[23] is difficult to apply to the contractual provisions of General Terms and Conditions due to their lack of personal character.

Despite the undeniable fundamental nature of the case, considering the many subtleties associated with such aspects of it as the age of the original data subject, which directly affects the validity of the consent, the parent's reasons for seeking access, namely suicide, and the procedural flaws in the attempts at contractual regulation Facebook, LG Berlin cannot be considered unequivocally indicative and decisive of the post-mortem privacy in Germany as a whole. Nevertheless, given Facebook's abolition of the memorialisation procedure for German accounts, the prospect of considering the aspect of standardised and non-standardized contractual clauses as a potential way to ensure posthumous privacy in the context of the 1922 BGB anywhere other than in scholarly discourse seems unlikely.[24]

A similar, i.e., primarily based on the principle of universal succession, approach to the regulation of posthumous privacy is likely to be used in most EU countries that have not incorporated or deliberately excluded the potential possibility of incorporating (Sweden) [25] provisions on posthumous data protection into their codes, given prevalence of the principle of the universal succession in European legal systems.[26]

However, to consider this approach the only possible, given the lack of harmonisation in the issue of digital inheritance, would be too presumptuous considering the additional factors of its regulation, in each country countries, such as the definition and classification of "digital assets", the level of their heritability, additional aspects of privacy or the interpretation and weight of contract law. For example, if we proceed from the LG Berlin judgement`s idea of equating the inheritance of digital assets with their material counterparts in the context of Polish legislation, then taking into

[20] Angelika Fuchs, 'What happens to your social media account when you die? The first German judgments on digital legacy" *ERA Forum Springer Berlin Heidelberg*, vol. 22 (1), 2021, p. 3.
[21] Angelika Fuchs, 2021, *supra nota*, p. 5
[22] Tiina Mikk, Karin Sein, "Digital Inheritance: Heirs' Right to Claim Access to Online Accounts under Estonian Law" in *Juridica International*, vol. 27, 2018, pp. 121-122.
[23] MüKoBGB/Leipold (Note 13), §1922 sn. 28
[24] Angelika Fuchs, 2021*, supra nota,* p. 7.
[25] Ondre Hamuľák, Hovsep Kocharyan, Tanel Kerikmäe, "The Contemporary Issues of Post-Mortem Personal Data Protection in the EU after GDPR Entering into Force" in *Czech Yearbook of Public & Private International Law, vol. 11*, 2020, p. 226.
[26] George Pelletier Jr., Michael Roy Sonnenreich, 1966, *supra nota*, p. 326.

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account the Polish rule of the limitation of disclosure of private correspondence to specific categories of people only, the disclosure of the messages would already be assessed differently.[27]

3.2 ***Italy***

Italy is one of the countries that has taken the opportunity to extend some provisions of the GDPR to post-mortem data. Legislative Decree no. 101 of 2018, incorporates Articles 15 to 22 of the GDPR into law in such a way that they can be used by legal successors or a designated person to protect the interests of the deceased in relation to the management of their data.[28]

Also, according to the new decree, it became possible for persons to partially regulate the post-mortem data by means of a direct written will regarding the further fate of digital assets to the address of the data controller, i.e. the service provider in the case of social networks and digital storage, which includes the possibility to prohibit legal successors from using the rights within the framework of the above-mentioned Articles 15-22 of the GDPR. [29]

It is crucial that the law itself neither overrides the fundamental principle of universal succession, nor excludes the factor of "unfair contractual provisions"[30], but only partially models the inheritance process with respect to some of its components, actually expanding freedom of testation to the application on the data, but not directly to the control of the economic-related aspects of the data. It would seem that such an approach can be called consensual from the point of view of the balance of the right of inheritance, the practical and economic interests of the successor and informational self-determination, but despite both the standard contractual conditions, which were recognised as insufficient to protect the will of the predecessor, as well as the possibility of the will to be expressed within the framework of the legislative decree, inheritance and access to data according to universal succession remains the default position.

This pattern is clearly observed in the court case Tribunale Ordinario di Milano, N. R.G. 2020/44578, which can also give us a general idea of the practical side of the procedure for establishing the will of the legal predecessor.

Tribunale Ordinario di Milano, N.R.G. 2020/44578 concerned the request of the deceased man's parents for access to his Apple account to store photos and information from there to "make it easier to cope with the loss". Counting this as a valid reason, after dismissing the non-transferability clause-related counterclaims, the court proceeded to a practical consideration of the will or lack of will regarding providing access to the deceased's information:

«From the correspondence between the appellants and the respondent company, it emerges clearly that Mr. XX has not expressly prohibited the exercise of the rights connected to his post-mortem personal data…»[31]

In general, comparing the Italian and German approaches from the point of view of posthumous privacy, the Italian one, despite the apparent shortcomings, can be considered more beneficial for posthumous privacy, since, unlike the German one, it developed the primary mechanisms for its regulation, thus still incorporating into legislation and developing the adjustment mechanism, even if not a perfect one. The identity of the approach with the principles and

[27] Michal Grochowski, "Inheritance of the social media accounts in Poland" in *European Review of Private Law,* 27(5), 2019, p.1201.

[28] Paolo Francesco Patti, Francesca Bartolini, "Digital Inheritance and Post Mortem Data Protection: The Italian Reform" in *European Review of Private Law*, *Bocconi Legal Studies Research Paper*, 2019, p. 1182.

[29] Decreto legislativo 10 agosto 2018, n. 101: 'Disposizioni per l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2016/679 del Parlamento europeo e del Consiglio, del 27 aprile 2016, relativo alla protezione delle persone fisiche con riguardo al trattamento dei dati personali, nonché alla libera circolazione di tali dati e che abroga la direttiva 95/46/CE'

[30] Paolo Francesco Patti, Francesca Bartolini, 2019, *Supra nota*, p. 1183.

[31] Tribunale Ordinario di Milano, N. R.G. 2020/44578 p.4

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characteristics of what we understand as post-mortem privacy is also evident. Italian law refers to the potential intentions of the predecessor-data subject of the information as a reasonable person to determine its application, emphasising the connection with concepts such as identity, individual autonomy, and dignity, implying that these things are valid and relevant even after the death of an individual.[32]

3.3 ***France***

The French model of protection of posthumous privacy incorporated on the basis of GDPR is considered one of the most complete and detailed in terms of many aspects. What considerably differs it from previous examples is the possibility to leave precise instructions on the desired regulation of the posthumous data – decrees under the responsibility of third parties certified directly by the CNIL[33].[34] As in the previous two cases, the sole consent to the „terms and conditions" cannot be considered such an instruction, and, accordingly, cannot affect the regulation of post-mortem data as it does not contain explicit consent on which the decrees are based, however, as in the Italian example, specific instructions left through direct personal communication with the controller may be such a legal basis.[35]

A particular person can be appointed to activate the execution of left decrees. The law clearly states that if a person was not appointed, or died before being able to fulfil his obligations, the decrees can also be activated by the heirs.[36]

A key factor and a significant feature of the French approach is the actual division of rights related to digital assets into economic rights related to digital goods and personal ones, where the legal predecessor, that is, the deceased, has the right to regulate both the first and the second, and where the second always prevails over the first, which is "actually an absolute form of posthumous privacy".[37]

It would seem that the lack of division into economic and personal aspects of personality rights in approaches to the regulation of posthumous privacy in aforementioned Germany actually leads to the opposite result: personality rights are complementary to economic rights. But is it actually, correct?

In fact, Germany considered the heritability of an account from the point of view of counterbalancing the rights to it within the framework of the contract, defining it as a legal basis covering all the assets in it, while the French classification and approach are based on the idea of judging by the content, not form: assets from the account are formed under the influence of the personality-linked activity of the user and therefore are personality-linked assets, freedom to testate regarding which is considered unlimited.[38]

In the German example, the court put forward the idea that the right to actively continue using the account as it was done by the legal predecessor is not included in the list of inherited rights, which theoretically can also be interpreted as a restriction made on the basis of the deeply personal nature

[32] Tribunale Ordinario di Milano, N. R.G. 2020/44578 p.4. Translated from Italian: «…also in the case in question the legislator – with a view to protecting the same rights to dignity and self-determination (rights that concern both the physical dimension of the person and that which pertains to the relationship with the personal data which express and create a part of the identity of the person himself) has expressly valued the autonomy of the individual, leaving him the choice of whether to leave the right to access his personal data (and exercise all or part of the related rights) to heirs and legitimated successors or deny access to such information to the third parties…»

[33] The French Data Protection Authority.

[34] Malgieri, G. (2018), *supra nota*, p. 15

[35] Ibid.

[36] LOI n° 2016-1321 du 7 octobre 2016 pour une République numérique, art 40.

[37] Malgieri, G. (2018), *Supra nota*, p. 16

[38] Ibid.

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of rights and obligations, for the conditions of which the presence of an individual is necessary, that is, a category of non-inherited rights. Based on this interpretation, the difference between the German and French approaches lies not in the ideological difference of the principles and bases of legal acts concerning posthumous privacy, but in the classification of the type of assets.

ROLE OF THE PLATFORM-PROVIDER PROVIDERS' CONDUCT AND PERSPECTIVES

One of the most important links in matters of posthumous privacy and the transfer of digital assets equally to the legal regulator is the platform service provider. Platforms supplement the general rules on privacy and transfer of assets, by providing the instrumental framework for their application.[39] And as is clear from the standard GDPR application, while the classic law provides the answers to the question of persons liable, private-made rules of the platforms tackle the issue of «how», still constituting a large fraction of control over the data.[40]

In the absence of legal regulation of the issue, the platform is actually the main and only regulator. The lack of legal regulation of post-mortem data opens incredible prospects for platforms whose goal is often profit, which for aspects such as privacy and reputation, and certainly for those connected to the deceased data subject, means a radical increase in the risks of violation of rights and personal boundaries. Malgieri, in particular, attributes to these risks the possibility of obtaining data about friends and relatives from unregulated posthumous data through secondary data processing and exploiting it in attempts to profit from the grief and vulnerability of people related to the deceased through online behavioural advertisements.[41]

Considering these risks, attempts to distance the regulation of post-mortem privacy from service providers within the framework of the French regulatory approach do not appear to be unreasonable, despite the availability of a much easier regulatory method – full delegation of the role of the "post-mortem data controller" to the service provider.

HARMONIZATION ASPECTS

In the conditions of such a little-regulated and little-studied phenomenon as post-mortem privacy, views on the need for an EU harmonisation, identical to that existing for the rest of the provisions of the GDPR, differ to a large extent. For example, Okoro believes, that the call for posthumous privacy will not be welcomed and answered by all Member States "as each state has its own unique history and traditional beliefs upon which its legal system is built and to harmonise them in this regard would be too problematic". [42]

At the same time, Petra raises the quite valid issue of risks associated with non-regulation at the European level, in particular, the possibility of legal fragmentation and legal uncertainty in cross-border matters.[43] Hamuľák, Kocharyan, and Kerikmäe agree that harmonisation is indeed needed, but the "unified hybrid ("consensual") mechanism of post-mortem data protection" created on the basis of the states` best practices should precede the GDPR harmonisation of the matter.[44] Considering the vast dissimilarities in the current EU-Member States' approaches to tackling post-mortem privacy, the author of this work also shares this opinion. It is important that this potential approach should not be one-sided. Posthumous privacy is a multi-category notion that depends on

[39] Grochowski, M. F. (2019), *Supra nota*, p. 1204.
[40] Ibid.
[41] Gianclaudio Malgieri, 2018, *Supra nota*, p. 3
[42] Egoyibo Lorrita Okoro, "Death and Personal Data in the Age of Social Media" in *Tilburg University*, 2019, p. 25.
[43] Petra Schubauer, "Legal Protection of Personal Data Relating to Personality, in Particular Certain Aspects of Post-mortem Privacy," Doctoral dissertation defended in 2021, Károli Gáspár University, p. 15
[44] Ondre Hamuľák, Hovsep Kocharyan, Tanel Kerikmäe, 2020, *Supra nota*, p. 238.

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and, accordingly, affects many different legal fields and subjects. Judging and managing it solely from the point of view of the right of inheritance, or solely from the point of view of contract law, without taking into account privacy, data protection and ethics, or vice versa – to completely eliminate inheritance rights – is the road to nowhere.

CONCLUSIONS

This paper critically discovered the issue of post-mortem privacy in terms of the latest legislative development shifts and legal discourse's reaction to them thus:

- Consolidating and complementing the theoretical basis based on the critical observation of the latest regulatory trends and updates in light of the previous considerations and assumptions.
- Revealing a view of the problem and possible ways to mitigate it from the point of view of an approach that includes consideration of related interdependent areas of law: contract and succession law in the light of review and interpretation of the most recent and significant case law.
- Critically discovering the approaches of the legal regulators in 3 countries representing different stances on the issue and evaluating the probability of the possible EU-level harmonisation and possible harmonisation issues.

This research considers only types of property related to the "personality of the legal predecessor" criteria, thus not taking into account the intellectual property rights regimes' applications towards the goods within certain accounts. The conditional categorisation of the accounts on private and public ones based on the criteria of economic and public value may be sufficient for further research.

The research mainly concentrates on the general conceptualisation of the issues related to post-mortem privacy and its regulations, while slightly touching upon the issues of procedural legal regulator-intermediary conduct and cooperation, which requires more careful consideration and discovery as this factor is key for the practical enforcement aspects.

The direct recipients of the research and its conclusions are assumed to be the legislator, the regulator, and the intermediaries, that is, the service provider, while the users are presumed to be the indirect recipients benefiting from their conduct.

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Inside Pandora's Box, finding the roots of Natural Law. Applicability in the Future of the European Law

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Abstract: *The main purpose of this article is to highlight the importance of a more "deconstructed" Legal European system in which all actions be guided firstly by actions of the natural law and afterwards by the stiff and uneasy legal positivism that dominates the entire European Legal Framework. In this aspect, we would try to investigate why we are still addressing positive Law and following the procedures indicated by natural Law. The article presents the argument that contemporary societies are in the face of increasing overproduction of shocking standards its efficient operation. However, the argument is deconstructed later, especially through comparison (Europe vs. Analysis, note that what is of great concern in this respect of The Atlantic does not seem to be on the other side. The article concludes with some possible remedies – admitting that we are facing a disease –to the current state of overproduction.*
Keywords: *EU, institutional cloaking, legal positivism, primacy of natural law, European Law, normativism, cultural hegemony*

INTRODUCTION

Monday morning, we set our goals straight to buy a car and on the same day a wonderful apartment situated in the heart of our city. We go to the local car dealer and bank in order to get a loan and, bewildered by the amount of sheer paperwork that we have to fill are immediately discouraged to continue any intention. Construction permits, bank evaluation, fluctuations of the bank interests, notary procedures, cadastral assessment and many fees that have to be submitted to the public authorities. Not to mention the intricate roads and unceasing roads from point A to point B, from one institution to the other, yet that is the course of life seen as normality. In this spectrum of continuous pendulum movement gravitates all Legal procedures from one corner to the other and the image designed by this system of super norms drains the essence of all Legal thought.

Whether we discuss political, social, environmental changes within the European member states, the idea of change affects our daily lives and determines our social state. The research will aim an anticipatory effect and will focus on the European rule of law and its struggle to continuously build an equalitarian framework for the member states and the dimensions of maintaining equity within its borders facing the future of a changing society (in interpretation of art.3 (5) TUE). We stress the ongoing power shifts that shape the European continent and how can the European rule of law, throughout its pillars and institutions, protect the integrity of the European Union from endogamous separation movements created by forces stemming the relationship with its member states. Furthermore, our aim would be to identify future perils for the foundations of European Law and proposing solutions to maintaining equity of the rule of lawn in direct relationship with the with the member states without creating the phenomenon of the "supranational state" or the legal and institutional "capture" phenomenon. The research tries to demonstrate that systemic deficiencies affecting the functioning of the rule of law pullulate both horizontally, since they affect relations between the Member States, and vertically, distorting the mechanisms of co-operation between the EU institutions and the member states. ("The Rule of Law and the Future of Europe")

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THE EUROPEAN RULE OF LAW CHALLENGED

The rule of law is being questioned by those who invoke values that are seen as "superior" or at least "equivalent," such as the will of the people, the national interest, the precedence of justice over the law, the idea that all institutions and decision-making bodies should have direct democratic legitimacy, and the requirement that their decisions be effective. The priority of law over power hierarchies is thus rejected where the rule of law is under attack, and a new social order is proposed, stopping the development of European civilization. Second, by reducing democracy to the notion of the majority's democratic legitimacy, the basic foundations of the democratic system—which upholds the rule of law—are being weakened.

The separation of powers and respect for fundamental rights (even against the desire of a democratically elected parliament) are gradually eliminated under this constellation, two key tenets of modern democracy. The emergence of an illiberal democracy is frequently used to characterize such a change to a new political and legal order. Third, under this situation, certain member states openly contest the independent judiciary's function. The requirement (sine qua non) for the protection of all other (basic) rights is the meta-right to effective legal protection. In many several ways, including through more or less direct involvement by the political authorities, the independence of courts is being questioned. This is because there is no single standard for measuring judicial independence; instead, it depends on a variety of factors including the constitutional tradition and established constitutional practice, the tenacity and durability of the democratic practice in the member state, the general level of legal literacy, and the field's historical performance.

ON JUS AND NATURE

The iusnaturalist perspective views law as a value, an ideal, and a finality rather than a positive truth. Not all finalities will embrace the theory in the context of jusnaturalist perspectives. It is necessary to distinguish between utilitarianism, according to which the goal of law is to promote social group pleasures, and the jusnaturalist interpretation, which identifies justice as the finality of law. The scientific phrase for its study is somewhat inadequate because the law does not convert into a positive reality; rather, it is a value that should be sought after and an ideal that directs our social concepts on how we perceive each other and our civilization.[1].

The relationship between the two major doctrines is asymmetrical. The positivists, on the other hand, do not recognize the existence of a natural right, as they deny the possibility of knowing values, the finality, the ideal. Hume[2], for example, denounces naturalistic paralogism, showing that, in most naturalistic doctrines, at a given moment, the discourse slides imperceptibly from the register of factual findings to an abstract one of the ideal. Hume claims that a norm cannot be deduced from a descriptive statement, a prescription from a sentence; what is (is) will never

[1] Fr. Gény, ***Méthode d'interprétation et sources en droit privé positif. Essai critique***, 2e éd., LGDJ, Paris, 1919, t. 2, nr. 162: „Sans prétendre justifier, sous le rapport de la justice absolue, les institutions juridiques de toutes les époques et de tous les lieux, il suffit, pour écarter le scandale de leur diversité, d'observer que, presque toujours, le but a été moins différent que les moyens de le réaliser. Mais, si l'on admet, d'après la raison, l'expérience, et le sentiment intime, l'uniformité de la nature humaine, l'identité constante de sa destinée, et l'existence d'un ordre naturel permanent de rapports entre les éléments du monde, on en conclura nécessairement, que les principes de pure justice, qui ne sont qu'une des faces de cet ordre, conservent, au milieu des variétés et des contingences de leur mise en œuvre, un caractère universel et immuable". ***Adde*** E. Picard, ***Les constantes du droit: Institutes juridiques modernes***, Éd. Ernest Flammarion, Paris, 1921 apud R.Rizoiu, Despre nevoia (realistă) de drept natural, Article published on the Universul Juridic Online Platform, consulted on the 8.09.2023, Link: Despre nevoia (realistă) de drept natural – ESSENTIALS (juridice.ro);

[2] For a complete argumentation, please consult A. Buciuman, *Juridicitatea Obligației Naturale*, in Studia Universitatis „Babeș-Bolyai", No 3/2015, p.68.

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logically tell us what should (ought), therefore ontology or the search for the essential nature of things will never be able to find a system of rules of conduct. The logically irreconcilable distinction between being (*sein*) and having to (*sollen*) is taken over by Kant and generalized with regard to knowledge. Kelsen's entire edifice, so appreciated in the legal world, is built starting from the opposition *sein – sollen*, which he superimposes on the reality – value dualism. Science can only issue propositions, by the axiological neutral hypothesis, about reality[3]. The transition from *sein* to *sollen* can only be made through value judgments, thus leaving the sphere of science.

Insisting on the need for separation between science and politics, advocates for positive legal theory argue that this goal is to protect legal scholarship by separating it from approaches from other fields such as economics, politics, sociology, or psychology that are not related to the study of law but are separate from it[4]. Natural law's speculative nature deprives it of its status as a subject of legal scholars' research. The modification of its shape caused by the dismissal of some "pure" sciences is significant. Regardless of the topic at hand—concept, methodology, or positivist ideologies—rights are reduced to laws, judicial precedents, historical timelines, or contemporary social trends[5].

THE NON-LAW THEORY AND A CONTRASTING IMAGE OF THE FUTURE

The place where the law has retreated or where its abstention is obvious, despite it would have had the theoretical vocation to be there, is essentially what Jean Carbonnier's non-law is characterized by[6]. Natural obligation would appear to follow the same pattern at first glance: an obligation to which the law removes its sanction or fails to impose it implies the same mechanism. The jurist might therefore be inclined to use this idea-metaphor to support the exclusion of natural obligation from the legal system. There is only one clear similarity. We quickly see that the solution to the legal issue of natural obligation is not found once we delve into the theory's depth, which was, by the way, quite cleverly built.

He must first recognize that the idea of non-law is one that is defined in relation to the idea of law. However, this immediately assumes a position on the reference object that is already set in stone. The concept of non-law is defined through the lens of two parameters, and should not be confused with the violation of the law (although, in an accessory way, such behavior can enter the phenomenon of non-law), with anti-law (the unjust law imposed by totalitarian regimes), with sub-law (or infra-legal relations, so-called folkways, socially obligatory manners that are not imposed by public authorities), or with non-contentious law. To counter the *panjurism* premise, which dominates the ideas of dogmatic jurists, there is first a transfer of competence from law to non-law, followed by a sociological vision of law that is reduced to "official" law, characterized by two constants, which thus become criteria of the juridical: coercion (understood as the power to impose, the possibility of forced execution or legalized violence) and eventus *judicii* (the respective social relationship potential to be subjected, in any form).

Additionally, the vast majority of the proposed non-law hypotheses pertain to the official rule rather than the substantive rule of law, more specifically the rule of law established by the legislator and effectively enforced by the authorities. The adage "happy people live as if law does not exist" simply means that they live in accordance with the laws of justice, not that they are exempt from

[3] *Ibidem*.

[4] Bruce P.Frohnen*, The Irreducible, Minimal Morality of Law: Reconsidering the Positivist/Natural Law Divide in Light of Legal Purpose and the Rule of Law,* Saint Louis University Law Journal, Vol.58, No 2/2014, p.481. Article consulted online on the 08.09.2023, Link: The Irreducible, Minimal Morality of Law: Reconsidering the Positivist/Natural Law Divide in Light of Legal Purpose and the Rule of Law (core.ac.uk);

[5] Bruce P.Frohnen*, The Irreducible, Minimal Morality…op.cit,* p.481.

[6] A. Buciuman, *Juridicitatea Obligației..., op.cit*.,p.77;

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the application of the law. Only unhealthy expressions of legal life, not life itself, such as court appeals or government interference. Smaller contracts or those that the parties keep private are nevertheless valid even if they are not presented to the court; what matters is the purpose of the parties to have legal implications, which means to change the existing legal system. There are several legal thresholds, however[7] they are not always used to distinguish between what is lawful and what is not. The legal system exists, even if it is considered latent by the authorities, so that it does not become apparent. The responsibilities of respect, fidelity, moral support, and material support between spouses were not imposed by their legal consecration and even the choosing of friends or life partners are not affected by a disagreement regarding them.

In order to arrive at a new understanding of law, Professor Carbonnier redefines the relationships between the state and society before establishing non-law as a principle of legal policy. As a result, the idea of a less "etatic" society is pushed, with the state serving as merely one of the social order's articulations (along with morality, morals, social conventions, etc.) rather than acting as the society's primary unifying force. The non-right stands in for society's fledgling claim to freedom from a right that is nothing more than a manifestation of state power[8] Non-law is not void, chaos, riot, disorder, or anarchy; rather, it is a constructive phenomenon that frequently takes the law as its model and strives for the same goals of order, harmony, and social peace. Professor Carbonnier[9] believes that the key to a legislative plan is the acceptance of the non-right. The politics of non-law are those of a disengagement from the legal system.

It is with these considerations that we think of what the European society will evolve around the paradigm of change within the system, the European rule of law is considered to have its origin in the formal legality and process[10] Formal legality means that Laws must be universal (applicable to everyone in a similar scenario), given out in advance (no retroactive laws), and made publicly available (promulgated); rule of law, not men: the responsibility of a separate and impartial judiciary must be in charge of enforcing the law, which behaves impartially, without bias or arbitrary judgment, and without any passion the litigants; the court also has the authority to conduct judicial review of other departments of ensuring that the fundamentals of government are regulated by written laws are faithfully upheld. The fundamental elements of the rule of law were outlined by Legality, legal certainty, equality before the law, and other Venice Commission access to justice and nondiscrimination.

THE LACK OF LAWS IN THE FUTURE AS RESULT OF INSTITUTIONAL COMBINATION

As a result of this ultra-ambiguous cluster of norms combination, we get the feeling that there is no sense in anything that we would plan, as the continuous outburst of planned law within the Eu directs us and quantifiers our lives daily. Norms crave new norms and the lack of compliance with the existing ones expresses the need for new increasingly. This need for a continuous afflux will end in the Future, we can imagine the desolation of norm-creating as norms are a desirable kind of social control[11]since a regulation may be beneficial but too expensive for the state to implement in comparison to the advantages. A regulation prohibiting bad table manners, for instance, is hardly

[7] Alina Buiuman, *Juridicitatea Obligației...op.cit.,*p.79;
[8] Judith Hahn, *The Effectiveness of Law- Foundations of a Sociology of Canon Law*, Springer Open Access, Berlin, 2022, pp.160-161.
[9] For a complete analysis, Vincent Forray, Sebastiene Pimont, *Governing globalization through law: The Hypotheses of a New Natural Law, Governing* Globalization, Revue Europeene de Droit, Vol. 2/2021, p.23.
[10] *Ibidem*.
[11] Eric. B. Rasmusen, Richard A. Posner, *Creating and Enforcing Norms, with Special Reference to Sanctions,* Coase-Sandor Working Paper Series in Law and Economics, Nr. 96/2000, p.370. Article consulted online on the 8.08.2023, Link: Creating and Enforcing Norms, with Special Reference to Sanctions (uchicago.edu)

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appropriate for incorporation into the legislation. However, compared to laws, norms have a number of disadvantages. Since no one individual or political group can take credit for the creation of a norm, norms are even more of a public good than laws. Additionally, the expense of imposing penalties for breaking a rule cannot be covered by taxation that is mandated; rather, it must be borne freely by those who uphold the rule[12]. These characteristics of norms make it seem inevitable that they would be underdeveloped.

In this aspect we ask ourselves what would be the efficacy of normative Law in the Future? The European conception of the "rule of law" differs greatly from the Anglo-Saxon model and is correctly referred to as a "État de droit" or "Rechtsstaat," with the State serving as the franchiser of normative authorities or the practically only maker of laws. The connections to the prevailing political theory are evident throughout Europe, whether in the North or the South, on the continent or on an island[13]. The continued importance of legal realism and the scant influence of European political theory in the US unavoidably strengthen a sociological perspective that centers, for good reason, on social norms.

FUTURE SCENARIOS, SOLUTIONS AND CURES (PING-PONG SOFT LAW/HARD LAW)

We are inclined to believe that the European Union is a welfare and that its institutions that continuously assure social ties and solidarity are at a standstill, overcoming the strictly procedural aspects that hold the instruments of law enforcement, (the crisis of the social welfare state, of the welfare state), the forms of the relationship between law and society and the ways of establishing individual and collective identities. The European legal system risks transforming itself from a reparative right, into a business right in which the negotiation has the advantage over the application of the rule, without justice. Therefore, if the rule of law is provoked or challenged, the dominance and primacy of law over all statal forces and hierarchies is rejected, thus diminishing the elements of democracy and its legitimacy within the member states

First, compared to hard law, soft law agreements are simpler to complete and have lower transactional bureaucratic expenses. Second, soft law standards are adopted when little is at risk: the goal is straightforward to achieve; states are reasonably confident that they will not stray from the promised behavior in the future because the issue is not that important. There is no need to spend money on a legally enforceable agreement in those circumstances. Thirdly, and in contrast to the second argument, states are more likely to embrace soft legislation when they have important interests that they do not want to jeopardize[14].

They understand that harsh legislation involves concessions and jeopardizes sovereignty, and that soft law will have less of an impact than strong law, however, it is highly unlikely that the future of the European rule of law will bring forth a complete "delegalization"[15] as there are normative trends issued by the European Commission and Parliament that mandate the need for a stable and clear legislation. In this aspect we can see the actions performed by the European Stability Mechanism to permanently safeguard and assist member states in financial need and assure capital

[12] *Ibidem*.
[13] Vincenzo Zeno- Zencovich, *A Normative Metastasis*? in European Journal of Comparative Law and Governance, No 7/2020, pp, 16-17.
[14] Jean-Marc Sorel, The Role of Soft Law in Global Governance: Heading Towards Hegemonic Influence?- *Governing globalization through law: The Hypotheses of a New Natural Law, Governing* Globalization, Revue, Europeene de Droit, Vol. 2/2021, p. 45.
[15] Andrew T. Guzman, Timothy, L. Meyer, *Explaining Soft Law*, Berkley Law School,2009, p.25. Academic content found on the Escholarship Database. Read online on the 9.09.2023.
Link: Explaining Soft Law (escholarship.org);

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markets stability.[16] Here, we can as well mention, the ongoing desire of the European Parliament to console the powers of the member states with the general interest of the Union. In this sense can we imagine the primacy of a "non-norm" European society and if so, what could be the limits? There are some resolute authors that express a vivid interest in the subject, here we mention Professor Vicenzo Zeno-Zencovich that proposes the insertion of the "sunset clauses": "Explicitly or implicitly introduced in EU normative texts "sunset clauses" convey the idea that legislation is no longer a long-term product but depends on economic and social conditions. When the latter changes, so does legislation. It is doubtful, however, that such clauses determine, after a certain time, the disappearance of norms as if they were degradable materials. Generally, once they have expired, they are subject to a restyling which brings to a wider and more complex intervention. If one follows the metaphor of the sunset one must acknowledge that after a very short night the normative sun rises again, stronger than before[17]."

EUROPEAN INTEGRITY: SUPRA-NATIONALISM VS. NATIONALISM AND IDENTIFICATION OF THE RULE OF LAW

Another aspect that we would have to reflect upon is the exact nature of state identity in the future as the supremacy principle of the European rule of law may become obsolete. In Western political culture it is defined that states are an aggregate of cultures associated with specific territories with a complex mélange of ethnic groups, which is why for instance an apparent "isolated "matter risks to be seen as of "general interest" that may affect the integrity of the supremacy principle. For instance, if we think that polluting the Tisza River that flows in the Danube that on its way to the Black Sea borders Romania, Bulgaria and Ukraine may generate firstly a regional crisis and may escalate in an international crisis. It is therefore that the main integration model proposed by the European framework (the intra -governmental model and the federal model) we observe among other specialists in the field[18] that a unique hybrid model of nation- state is proposed.

The "structural" model of the hybrid model has in the course of the twentieth century suffered substantial modifications (border shifts, status quo political dynamics, Parliamentary groups mélange) and many such political dynamics. In these situations, we are inclined to believe that the European Law is "Law without a State"[19], of course the proportions of analysis have to be maintained as the whole concept of the state has to be defined in outer source of social order, ethnic groups, political identity, of course it will be difficult to define the epitome of social unity outside these objective criteria. As it stands, it will be our purpose in the coming future to guard the European legal framework in terms of legal primacy of the Law for what it is: a commonwealth of high human standards and not the mechanistic perpetuum of norms that generate a blind coherence and obeisance Furthermore, why should the European Rule of Law remain within the public sphere? The growing nationalist movements of Europe In an effort to define legal pluralism from an internal perspective, we often come to an end when we understand that a legal order just cannot afford to hold back from claiming to be a single entity, and as a result a multiple final references on which to base a rule or judgment. Such a hierarchy is unthinkable. The most we have been able to conceive. There is some intricacy in the cohesiveness of a single legal system, such as that it is flexible enough

[16] European Stability Mechanism: Home | European Stability Mechanism (europa.eu), site consulted on the 11.08.2023, 12.01.
[17] Vicenzo Zeno-Zencovich, *A Normative Metastasis? op.cit.*,p.19.
[18] J. Habermas, *Faktizität und Geltung. Beitr¨age zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*. 2. Aufl., Frankfurt a.M., 1992 apud van Roermund, G.C.G.J, Jurisprudential Dilemmas of European Law, Law and philosophy, 16(4),p.363.
[19] Ibidem, p.364.

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to incorporate quite diverse features into one structure. In an effort to define legal pluralism from an internal perspective, we often end when we understand that a legal order just cannot afford to hold back from claiming to be a single entity, and as a result multiple final references on which to base a rule or judgment. Such a hierarchy is unthinkable. The most we have been able to conceive. There is some intricacy in the cohesiveness of a single legal system, such as that it is flexible enough to incorporate quite diverse features into one structure.

WHAT CAN WE CONCLUDE?

The European Rule of Law will be the subject of change along with the entire social institutional structure of the European Union, new policies will be created to adapt its beneficiaries, new Legislative walls will be created, and a fortress of complex procedures adopted once more by the European Parliament as to assure its survival. But has the European Rule of Law forgot that the landmarks of its present and future lie in the actions of man? It may sound redundant, but in the mechanistic future still to be awaited, this concept of Man before the Law and Law for the Man risks becoming obsolete. This can be our greater chance of pleading for soft law, as it will possibly (from our perspective) replace the current self-regulating and ultra-mechanistic Rule of Law. Soft law is the greater creation of natural law, the epitome of human natural behavior- the Norm will transgress the Rule[20] widely seen as impersonal, unpractical, and sterile. Natural behavior throughout natural law will determine a more social responsibility towards society and effectiveness opposing Rule/Regulation – that symbolizes the area of confusion (as it will fail to be regarded as the sole source of social stability).

Another point we would like to stress is the increasing phenomenon of "cultural hegemony" representing the lack of reaction to what makes the world what it is today, better said, common ongoing practices dictated or imposed and integrated into society by one group. Unconsciously (or conscious enough) the everyday cultural domination will be a standard practice in the Future European establishment throughout: Legal consumerism (ultra-normativity without any social purpose), the upheaval of the nation-state vs. federalist unions. In this constellation, the battle will, in the Future, most certainly be taken on the field of Legal reasoning, if societies (implicitly the EU) will be able to adapt to Man's natural state and not construct a Kafkaesque normative paradise.

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Security challenges from the perspective of the constitutional courts' vulnerabilities

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Abstract: *Constitutional justice has gradually been established in Europe and throughout the world. Guarantors of the supremacy of the Constitution, with a consolidated position, including through professional support networks at regional and global levels, the Constitutional Courts have a decisive role in the legislative process, relations between public authorities, the electoral process, and fundamental rights. At the same time, however, the Constitutional Courts are not infallible. They are exposed to pressure factors from various sources, external and internal erosion, with the risk of undermining credibility or turning them into political instruments. The study presents vulnerable elements of constitutional justice, emphasizing, from this perspective, the importance of carefully following the general developments under this aspect and early intervention to avoid slippages and to strengthen constitutional justice as a pillar of the rule of law.*

Key words: *constitutional courts, constitutional review, judges, security challenges*

INTRODUCTION

The most recent Congress of the Conference of European Constitutional Courts, held at the beginning of 2021 in Prague, mostly online because of the restrictions imposed by the pandemic, and under a silent but almost palpable concern in the face of the danger emerging from Russia, concluded with a profound speech of the president of the host Constitutional Court. He addressed the participants, urging them as follows: "*Protect your independence and reputation because it takes years to build and only moments to lose; be loyal only to your constitutional mission and nothing else; support those who are at risk today. If you do not do that today, there will be no one to help you tomorrow*." These words strengthened what he had emphasized since the opening of the Conference, namely that "*a constitutional court is not a decoration of the rule of law. A constitutional court is not a decorative palm at the palace of State power. A constitutional court is an assurance that the State will respect its own constitutional rules. And it must fulfill its role cautiously, uncompromisingly and without regard to other interests."*[1]

Outbreak of war, the impossibility of providing collegial support or correcting anything in such an extreme situation, the risk of the uselessness of the constitutional justice itself when absolute power decides, directed attention and concerns to the more important topic in this context: PEACE. The Congress of the World Conference on Constitutional Justice, which took place in October 2022 in Indonesia, Bali, (the 5th in the history of the World Conference of Constitutional Justice)[2], had as its topic "Constitutional Justice and Peace." One of the panels of the Congress, the only one "with closed doors," referred to the independence and threats to the constitutional courts/justice. The establishment of such a special panel and debates around the independence of the constitutional courts shed light on two closely related aspects: the increasing role of constitutional justice worldwide and the risks of the transformation of the constitutional courts in pure "decoration of the rule of law". Through the status they have acquired, the expansion of their powers, and the

[1] See XVIII Congress of European Constitutional Courts, Recording of the Congress proceedings is available here: https://usoudcz-my.sharepoint.com/:f:/g/personal/david_krev_usoud_cz/EuIYvnC4eEdMlQ8skqXGgRsB8TC2AozTPy9yzYOGdQzjZg?e=UR7EKc; The General Report in English and French is available here.; https://www.cecc2017-2020.org/congress/xviiith-congress/

[2] Congress page – https://wccj5.mkri.id/

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strengthening of the effects of their decisions, the constitutional courts have become fundamental actors of democracy and equilibrium of power within the State. Therefore, when a constitutional court is only a "supplement" of a power, confined to certifying its acts and giving them an appearance of legitimacy, the rationale of such a court (subordinated to the guarantee of the rule of law) becomes grounds against the court. For this reason, a political, constitutional court, obedient or so-called independent but composed of judges whose competence/specialization is questionable, represents a security risk, a real "Trojan horse" of the rule of law.

To avoid the risks, it is necessary to pursue the slippages carefully and identify tools for early prevention and countering any threats to constitutional justice. Within international bodies, as well as the forms of cooperation of the constitutional courts, these developments are closely pursued. We will emphasize specific vulnerabilities of the constitutional courts in an attempt to reveal the complexity of the issues encountered by constitutional justice and the need to identify appropriate and effective solutions for such threats.

CHANGING THE COMPOSITION OF THE CONSTITUTIONAL COURTS AND THE STATUS OF CONSTITUTIONAL JUDGES

1. Appointment of constitutional judges[3]

Perhaps the most debated phenomenon in this context is the so-called "court-packing", understood as "a deliberate change of the composition of a judicial adjudication institution pushed by the government to secure its control"[4]. Court-packing "allows co-opting a court without necessarily modifying its powers" and it is " one of key strategies that illiberal executives implement to destroy democracy.[5]" As was shown[6], "political leaders adopt a plethora of different techniques to help them secure friendly majorities in courts", as in Argentin a, where "three presidents in a row reduced the number of Argentina's Supreme Court justices", as Slovak and Polish political leaders which "repeat-edly thwarted the judicial selection process by refusing to appoint newly elected judges or benched judges from opposing coali tions ", lustration in postcommunist judiciaries, the forced retirement of Polish judges found by the CJUE incompatible with fundamen tal values of constitutional democracies etc. There are extensive studies on this topic, with reference to the court-packing and the role played in the erosion of democracy in Ecuador, Bolivia, Hungary, Poland, Turkey and Venezuela[7]. Also, the Venice Commission emphasized[8] that the changing of the composition of the Constitutional Court and the procedure for appointing judges are among the most important and sensitive questions of constitutional adjudication and argued for the preservation of a credible system of the rule of constitutional law. It is necessary to ensure both the independence of the judges of the Constitutional Court and to involve different state organs and political forces into

[3]See also Marieta Safta – Appointment of constitutional judges. A comparative law perspective, in Jeton Shasivari (ed.) Balázs Hohmann (ed.) Expanding Edges of Today's Administrative Law, Adjuris, the 4 th International Conference Contemporary Challenges in Administrative Law from an Interdisciplinary Perspective 21 May 2021, Bucharest

[4] Benjamin Garcia Holgado, Raúl Sánchez Urribarri, Court-packing and democratic decay: A necessary relationship?, Global Constitutionalism (2023), 1–28, doi:10.1017/S2045381723000011

[5] Ibidem

[6] Kosarˇ, David and Katarína Šipulová. 2020. 'How to Fight Court-Packing'. Constitutional Studies 6. Available at <https://constitutionalstudies.wisc.edu/index.php/cs/article/view/52>. Kosarˇ, David and Katarína Šipulová. 2023 forthcoming. 'Comparative Court-packing' International Journal of Constitutional Law 21. Current version available at <https://justin.law.muni.cz/media/3432458/kosarsipulova_comparative-court-packing-2022.pdf>.

[7] Kosarˇ, David and Katarína Šipulová. 2020. 'How to Fight Court-Packing'. Constitutional Studies op.cit

[8]Venice Comission – CDL-AD(2004)043 Opinion on the Proposal to Amend the Constitution of the Republic of Moldova (introduction of the individual complaint to the constitutional court), paragraphs 18-19; https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)043-e

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the appointment process so that the judges are seen as being more that the instrument of one or the other political force.

Considering the abundance of literature on this subject, we will refer to a related issue that also needs to be analyzed, namely the appointment of judges who are not distinguished by their professional competence. The requirement of "high professional competence" is usually regulated in Constitutions or laws as an appointment requirement of the judges, without being detailed, which makes it difficult to determine and evaluate in practice. This formula aims to ensure that the judges of the constitutional courts have a special, "higher" knowledge.[9] As the Venice Commission emphasized[10], "a lack of professional capacity can often be corrected through training, but it is a strong reason not to recruit a person" (par. 11) In other words, the judges of the constitutional courts are not appointed for such an office with the perspective of "training" and, as far as they are concerned, the constitutional courts are not a place of "professional training". The constitutional judge must, through his/her special professional experience and qualities, be himself, *ab initio*, a "light" for the Court. In any case, the professional profile must take account of the activity that will be carried out during the term of office, as well as the fact that the judges will immediately start the activity, settling the cases referred to the Court. The technical and auxiliary personnel of the constitutional courts ensure and must ensure only the support of the judges' activity.[11] An incompetent court is a court that gradually discredits itself[12], which means the erosion of a fundamental institution of democracy. However, even the will to evaluate the fulfilment of the requirement of high professional qualities is questionable , as long as it remains within the exclusive margin of appreciation of the authority that made the appointment, which cannot be challenged in this respect: "the Court cannot substitute the authority that made the appointment."[13] Of course, not the evaluation of a court of law would be the solution, but the establishment of a transparent and fair prior verification, involving both national and international competence in the field. In addition to the elements of the CV, the transparency and substantial nature of the hearings of the candidates would compete with the fulfilment of the goal of ensuring the selection of judges with high professional competence.

In connection with the appointment of judges, the procedures of the submission of candidacies can be also analyzed. We expressed our opinion regarding the need to ensure a broad selection base, in order to reduce the suspicion of appointing a certain person based on exclusively political criteria. In Romania, entrusting this stage to the exclusive discretion of the parliamentarians and the President[14] (even if it can be supported with certain arguments), creates the premises for a subjective/discretionary restriction of the recruitment. Of course, widening the selection base through voluntary submission of applications cannot, *per se* and of itself, be a guarantee of fair/independent appointments. As was also revealed with regard, for example, to the Croatian

[9] CDL-AD(2017)011 Opinion on the Draft Constitutional Law on the Constitutional Court of Armenia, paragraph 12-13.
[10] CDL-PI(2022)051 Venice Commission Compilation of the opinions and reports concerning vetting of judges and prosecutors, https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2022)051-e
[11] CDL-AD (2008)030 Opinion on the draft law on the Constitutional Court of Montenegro; CDL-STD (1995)015 Protection of fundamental rights by the Constitutional Court, Science and Technique of Democracy
[12] About the importance of the reputation of a Court, see Tom Ginsburg, Nuno Garoupa – Building Reputation in Constitutional Courts: Political and Judicial Audiences, available here https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2441&context=journal_articles
[13] The Venice Commission CDL-AD (2017)001 Opinion on Questions Relating to the Appointment of Judges of the Constitutional Court of Slovak Republic, paragraphs 70).
[14] See Law no. 47/1992 on the organization and functioning of the Constitutional Court, republished in the Official Gazette no. 807 of 3 December 2010

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experience,[15] the effect of this "public recruitment procedure" was that a large number of people repeatedly apply, on their own initiative, although according to parliamentary practice they have no chance of success. Therefore, it is necessary to resort to other guarantees, such as to ensure the transparent selection of candidates who meet the requirements of competence and professional integrity.

Likewise, decision on nominations – statutory majorities is an important factor in the equation of appointing an independent judge. The Venice Commission considers that Germany's example[16], where a two-third majority vote for electing the judges, is a positive one. The majority must reach a compromise with the opposition[17], allowing the process of electing judges to be depoliticized, as it calls for the opposition to have an important role in the appointment process. [18] Consequently, the general constitutional regulation in Romania, which requires that such a decision be adopted by a simple majority of votes, is criticizable. At a future revision of the Constitution, the issue of the majority with which Parliament's decisions are adopted could be reanalyzed.

2. Dismissal and liability and of constitutional judges

Constitutional judges, in exercising their powers, are not the employees of the authorities that appointed them and cannot be dismissed by them. Nor can one imagine an independent judge when **the "sword" of dismissal** would hang over his/her head, forcing him/her to be loyal to the one who appointed him/her. The Constitutions and laws that regulate the status of constitutional judges establish in this regard that judges shall be irremovable, which constitutes a guarantee of their independence in carrying out their term of office. From the moment of taking the oath, judges are independent, irremovable and subject only to the Constitution.[19]

Interesting recent examples provide in this regard the experience of the Constitutional Court of the Republic of Moldova (CCM), faced with regulations intended to lead to the dismissal of constitutional judges. In this regard, CCM held[20] in 2014 (recitals later resumed in the more recent decision) that "*the institution of the constitutional litigation court has the task to examine the activity of the Parliament. The submission of the Court judges to the need of 'confidence ' of the Parliament is obviously contrary to the purpose itself of the constitutional court* ". The Court noted that the liability of the Constitutional Court judged before the Parliament, whose activity they examine, is inadmissible. Such a possibility creates a risk of pressure from the Parliament in certain cases that may appear before the Court, and the liability before the Parliament may put an indirect pressure on a judge, in order for him/her to avoid making unpopular decisions or to make decisions that will be popular for the legislator, so that he/she would not "lose confidence" This "*is likely to create*

[15] Snježana Bagic, Protection of the status of constitutional justices independence. The Croatian example, in Les Cours Constitutionnelles, garantie de la qualite democratique de la societes, including the papers presented at the Colloquium of 12 July 2018 held by the Constitutional Court of Andorra, Collection Grands Colloques, 2019, LGDJ, Lextenso

[16] CDL-AD(2004)043 Opinion on the Proposal to Amend the Constitution of the Republic of Moldova (introduction of the individual complaint to the constitutional court), paragraphs 18-19.

[17] CDL-AD(2013)028 Opinion on the draft amendments to three constitutional provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council of Montenegro, paragraphs 5-8

[18] CDL-AD (2017)001 Opinion on Questions Relating to the Appointment of Judges of the Constitutional Court of Slovak Republic, paragraphs 58-59.

[19] Opinion of the Venice Commission no. 870/2016 regarding the draft law on the Constitutional Court, adopted at its 109th plenary session, on 9-10 December 2016,CDLAD(2016)034, § 26

[20] Resolution no. 18 of 2 June 2014 for the constitutional review of Law no. 109 of 3 May 2013 amending and supplementing certain legislative acts (the Law on the Constitutional Court and the Code of Constitutional Jurisdiction) (judges' status, competences and procedure of the Constitutional Court) (Communication no. 34a/2014), taken from the Communication posted at https://www.constcourt.md/libview.php?l=ro&idc=7&id=551&t=/Media/Noutati/Revocarea-judecatorilor-CCM-de-catre-Parlament-este-neconstitutionala

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suspicion on the impartiality of the judges, who might be at the discretion of a political organ par excellence, whose activity is carried into politics; being created a danger of subordination to the foreign influences of the Court's purpose." The Court found that "*the removal from office of the Constitutional Court judges by the Parliament is a legal nonsense, since it is not the Parliament that appoints all the judges of the Court. Even if the Court judges take the oath before the Parliament plenary, the President of the Republic and the Superior Council of Magistracy, it does not mean that Parliament intervenes as a deciding factor in their appointment, it just has the nature of a solemn ceremonial investiture procedure and of determining the date when the judges' tenure begins*." As a result, the Court decided that "*the removal from office of the Constitutional Court judges by the Parliament is an inadmissible interference in the activity of the Constitutional Court, in other words, a violation of the principle of its independence, and it is contrary to the principles of irremovability and independence of its judges [Articles 134 (2) and 137 of the Constitution].*"[21] The Court found that the interlocutory part of the Parliament Resolution No 73 of annulment by partial withdrawal of the Parliament Resolution No 121 of 16 August 2019 regarding the appointment of a Constitutional Court judge contains, in Article 1, the provision for revoking the tenure of a Constitutional Court judge. Taking account of the meanings of the word "withdrawal", the Court concluded that the Parliament Resolution on annulment by partial withdrawal of the Parliament Resolution No 121 of 16 August 2019 violates the constitutional provisions of Article 137, as it not only seeks to cancel the constitutional guarantee of the immovability of the tenure of a constitutional judge, but also attacks the very essence of the Constitution of the Republic of Moldova, reconfiguring the system of checks and balances. [22]

As for the liability of the constitutional judges, this is also a " hot" topic, as long as the fear of initiating disciplinary and/or criminal proceedings against the judges if they had taken the decisions they considered legal or grounded23 would undermine their independence. It is noteworthy the relatively recent amendment of the organic law of the Constitutional Court of Romania (CCR) in this regard, with the "lights" (stated in the reasoning of the CCR on the matter, but also the "shadows" (stated in the dissenting opinion). Thus, in 201824, Article 66 of Law No 47/1992 was amended, establishing that "(1) The Judges of the Constitutional Court cannot be detained, arrested, searched or indicted for criminal offenses unless the Constitutional Court has approved the same, at the request of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice. (2) The approval as referred to in paragraph (1) shall be expressed based on the vote of two thirds of the number of Judges of the Constitutional Court, after hearing the Judge concerned." The CCR found that "the legislator's option to entrust the Plenum of the Court the power to approve the removal of the constitutional judge's immunity not only does not violate the provisions of Article 1 (4) of the Constitution regarding the principle of separation and balance of State powers, but, on the contrary, it establishes the expression of this principle, the new legal situation being likely to ensure the proper functioning of the Constitutional Court, under conditions of full independence and impartiality."(par.70)25 In the dissenting opinion signed by three judges of the Constitutional Court, it was concluded that "the capacity of Constitutional Court judge cannot, by itself, constitute an objective criterion of differentiation in the matter of the inviolability regime, nor in regard to the

[21] Ibidem

[22] See also Decision for the constitutional review of Parliament Resolution no. 73 of 23 April 2021 regarding the annullement by partial withdrawal of Parliament Resolution no. 121 of 16 August 2019 and Parliament Resolution no. 74 of 23 April 2021 regarding the appointment of a judge at the constitutional court, https://www.constcourt.md/public/ccdoc/hotariri/h_13_2021_92a_2021_rou.pdf

[23] See the Joint Cases C 558/18 și C-563/18, and for the comment as such A.Groza, Some of the lessons of the "reform" of the judiciary in Poland, in the Journal of the judges' forum, no. 1/30 June 2021

[24] Law no. 168/2018, Official Gazette no. 595 of 12 July 2018

[25] Decision No 136/2018, Official Gazette no. 383 of 4 May 2018

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procedure provided by law for approving the measures that are the subject-matter of Inviolability. However, in this situation, the option of the legislator regarding the inviolability of the constitutional judge represents an arbitrary approach, without any rational, objective and reasonable justification, and which gives rise to a privilege. (…) The inclusion of the Plenum of the Constitutional Court in the procedure for removing the immunity of a constitutional judge, including for the criminal acts committed by him/her and which are not related to the exercise of the tenure, violates not only the *constitutional prerogatives of the authorities that appointed the constitutional judges, but implicitly also the principle of the separation of State powers and the purpose of the concept of immunity, an institution of constitutional rank, being practically diverted. On the other hand, this legislative solution is not substantiated from a constitutional point of view, representing the establishment of a sui-generis immunity, a particular, special, unique immunity of its kind, which has no constitutional enshrinement*."

3. **Vetting procedures**

The fight against corruption has brought to the fore in recent years the concept of the vetting of judges. According to the Venice Commission, *"integrity checking and vetting procedures are not explicitly foreseen and regulated by any international instruments. They have however been dealt with, and commented upon, by soft law instruments and by case-law. Most comments relate to the classical lustration-type vetting, which seeks to remove from the public offices, individuals who had close ties to the previous non-democratic regimes and, as such, cannot be trusted to serve the new democratic regime or are found unworthy of representing such a regime."*[26] *The Venice Commission dealt with three categories of national measures: «(i) "prior assessment of candidates' integrity for a specific office"; (ii) integrity checkings that shall be carried out on a regular basis (for example, the obligation to present an annual declaration of assets); (iii) complete integrity assessment procedures».* With reference to these, the Commission considered that although "prior checking" of the candidates and the integrity checkings carried out by examining asset declarations are quite common and, in principle, uncontroversial, the extraordinary control can only be justified in exceptional circumstances".[27]

However, the Commission stated that the assessment/checking process described in the projects couldn't in any case be tantamount to disciplinary procedures. "*[E]valuation and disciplinary liability are (or should be) two very different matters*." Disciplinary liability requires the existence of a disciplinary offense. A negative performance that leads to an overall negative assessment result can be caused by factors other than disciplinary misconduct. Therefore, the proposal that negative overall assessment results should lead to the initiation of disciplinary proceedings raises concerns. At the same time, the Venice Commission upheld that an adequate system can be established in which errors or misconduct by judges – including those discovered during an assessment process – can be assessed and transferred to a disciplinary procedure.[28] Therefore, such an assessment procedure should be pursued with great caution, especially when it occurs during the carrying out of the judge's tenure. According to the Commission, "to the extent that the re-evaluation is a general measure, applied equally to all judges, decided at the constitutional level, and accompanied by certain procedural safeguards and not related to any specific case a judge might have before him/her, the Venice Commission does not see how this measure may be interpreted as affecting the judge's independence to an extent incompatible with Article 6 [of the

[26] CDL-AD(2018)034 Albania – Opinion on draft constitutional amendments allowing vetting of politicians

[27] CDL-PI(2022)051 Venice Commission Compilation of the Opionions and Reports concerning Vetting of judges and prosecutors, par.15

[28] CDL-AD(2022)024 Republic of Moldova – Joint opinion of the Venice Commission and the General Directorate for Human Rights and the Rule of Law (DGI) of the Council of Europe regarding the draft law on the Supreme Court of Justice

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European Convention on Human Rights]. This does not, however, exclude the possibility that the vetting procedure might on a particular occasion be abused in order to influence the judge's position in a particular case: if such allegations were proven, this might require the reopening of that particular case since the judge would not be an 'independent tribunal. " [29]

POWERS OF CONSTITUTIONAL COURTS

As a rule, the powers of constitutional courts are regulated in Constitutions, which is a strong guarantee of independence, as long as Constitutions are, by their nature, more difficult to amend. In this light, entrusting the possibility for the legislator to regulate at the infraconstitutional level the powers of the constitutional courts can be a way of affecting its independence.

In this regard, it should be noted that the CCR ruled in 2003 against the regulation in the Constitution regarding the possibility of acquiring other powers by organic law[30]. The Court held that "*this proposal is to be eliminated in order to preserve the political neutrality of this public authority and to comply with the will of the original constituent power*." The recommendation was resumed in 2011 (Decision No 799/2011) when the CCR noted that, based on the constitutional text that allows such a possibility,*"the powers of the Constitutional Court can be multiplied whenever the interests of the political forces require the amendment or supplement of the Court's organization law. The Court considers that, by removing the constitutional provision (which allows the introduction of new powers by organic law), the independence of the constitutional court is guaranteed, and the will of the original constitutional power is preserved with regard to the limited powers of the Court stipulated only in the Constitution."* As can be seen from reading the current constitutional text, the legislator did not comply with this recommendation of the Court, which allowed the introduction, over time, of two new powers of the CCR, one of which raising some issues in practice, namely the constitutional review of the Parliament's resolutions. Thus, after introducing by organic law the possibility of reviewing the Parliament's resolutions, the legislator "changed his mind", but the subsequent attempt to "withdraw" this last power was sanctioned by the CCR by finding it unconstitutional, being criticized in an opinion of the Venice Commission.[31] Later, on the occasion of another initiative for the revision of the Constitution, in 2014, the CCR recommended the "constitutionalization" of the two powers already introduced by organic law (the constitutional review of the laws revising the Constitution and the constitutional review of the Parliament's resolutions), in the meaning of being taken over in the text of the Constitution itself, with the elimination, for the future, of the possibility of adding new powers by infra constitutional law.[32]

A similar problem (of reducing the powers of the constitutional courts) can also be created by a Constitution that is too "flexible", namely easily amended, by the simple coagulation of a political will that, at a given moment, may turn against the constitutional courts. An example can be the Constitution of Slovakia, compared by certain authors to a "shopping list". Thus, it was shown that "since that day on September 1, 1992, just four months before Czechoslovakia split into two countries, different parliaments and the Constitutional Court adopted 20 amendments to it – and politicians unsuccessfully tried to change it more than 150 times", as well as the fact that "the constitution is not a shopping list to which anyone can add anything just because they don't like

[29] CDL-AD(2015)045 Albania – Interim opinion on the draft constitutional amendment of the judicial system; see also CDL-AD(2016)036 Albania – Amicus Curiae Opinion for the Constitutional Court on the Law on the Transitional Reassessment of Judges and Prosecutors (Vetting Law)

[30] Decision No 148/2003, published in the Official Gazette no. 317 of 12 May 2003

[31] https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)026-e

[32] Decision No 80/2014, Official Gazette no. 246 of 7 April 2014

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something, for example, a ruling by the Constitutional Court".[33] Likewise, such amendments aimed at restricting the powers of the Constitutional Court, such as the power to review the amendments to the Constitution. In a comment on this topic and the perspective it opens up it was noted that "similar proposals to strip courts of the power to review constitutional amendments, unfortunately, prevailed in Hungary, but courts in India, Belize and elsewhere successfully fended off the attack. The Slovak Constitutional Court can rely on domestic and supra-national support structures, such as the Venice Commission that seems to hold the opinion that at least procedural review of constitutional amendments is legitimate."[34] Furthermore, this power is, in itself, controversial, with consistent pro and con arguments, equally relevant to the topic addressed here[35].

ORGANIZATION AND FUNCTIONING OF CONSTITUTIONAL COURTS

In the specialized literature[36] various ways in which the constitutional courts can be subject to pressure, influences and even politically "captured" have been identified.

One such practice is, for example, that of **changing the number of constitutional judges** ("packing the court") to allow the increase in the percentage of those supported, at a given moment, by certain political forces that want to impose their goals/ideology. The appointment of only certain judges "faithful" to the political majority at a given time, by "overwhelming" the number of those who are not "faithful" is another such practice, which leads to the isolation, eventually, in dissenting opinions, of the minority, which it is not often represented/present in the solutions of the politically "faithful" Court. As the doctrine emphasizes[37], this risk is greater where the appointments of constitutional judges can be made by a simple majority of the parliamentarians, and where the voice of the opposition cannot, in fact, be expressed on the occasion of the appointment.

The refusal to appoint new judges upon the expiry of the term of office of the incumbents may constitute a way of affecting the activity and implicitly the independence of the constitutional courts. This may be the result of a political crisis, likely to create the conditions for a deadlock at the level of the appointing authorities, meaning that the majority required for the appointment cannot be obtained or the completion of the appointment procedures is refused, such as taking the oath, as happened, for example, in Ukraine[38].

Finally, an apparently benign topic, circulated from time to time also in the Romanian legal space, that of **the taking over of the constitutional review by the courts of law** (High Court of

[33] Peter Dlhopolec, Slovakia's 'shopping list' constitution marks 30 years, https://spectator.sme.sk/c/22997752/slovakias-shopping-list-constitution-marks-30-years.html

[34] Šimon Drugda: *On Collision Course with the Material Core of the Slovak Constitution: Disabling Judicial Review of Constitutional Amendment, VerfBlog,* 2020/12/03, https://verfassungsblog.de/on-collision-course-with-the-material-core-of-the-slovak-constitution/, DOI: 10.17176/20201203-220021-0.

[35] With specific reference to Slovakia see Marek Domin: *A Part of the Constitution Is Unconstitutional, the Slovak Constitutional Court has Ruled, VerfBlog,* 2019/2/08, https://verfassungsblog.de/a-part-of-the-constitution-is-unconstitutional-the-slovak-constitutional-court-has-ruled/, DOI: 10.17176/20190211-212614-0.; for a general approach see R.Albert, Constitutional Amendments, Making, Breaking and Changing Constitutions, Oxford, University Press 2019

[36] See the Colloquium organized by the Constitutional Court of Andorra – Constitutional Courts: en endangered species? Schnutz Rudolf Durr, în Rousseau, Dominique, ed., Les Cours constitutionnelles, garantie de la qualité démocratique des sociétés?, LGDJ, Lextenso, Issy-les-Moulineaux (2019), pp. 111-136; see also Roznai, Yaniv, Who will Save the Redheads? Towards an Anti-Bully Theory of Judicial Review and Protection of Democracy (November 16, 2019). William & Mary Bill of Rights Journal, Vol. 29, 2020, Available at SSRN: https://ssrn.com/abstract=3488474or http://dx.doi.org/10.2139/ssrn.3488474,

[37] Schnutz Rudolf Durr, cited work

[38] Opinion on possible constitutional and legislative improvements to ensure the uninterrupted functioning of the Constitutional Court of Ukraine, CDL-AD(2006)016, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)016-e

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Cassation and Justice) and the consequent abolition of the constitutional court, also represents a form of pressure and impairment of the independence of the constitutional court[39]. Although harmless at first glance, since in its favor it is argued with the argument of "professionalization" of the constitutional judge, such a change can lead to the drastic restriction of constitutional review and raises questions regarding the approach of this specialized review by a court that applies the law in civil and criminal cases, difficult role to reconcile with that of "judge" of the law in relation to the Constitution. During the debates on this topic, examples of actions by representatives of the Venice Commission were given to stop the transformation/merger of the constitutional court with the Supreme Court (the cases of Georgia or those of the State of Kyrgyzstan)[40]

Changing the procedures, for example by introducing short terms for settlement**,** can be, under the appearance of good intentions, ways to pressure and affect the activity/role of the constitutional courts. According to the CCM[41], for example, "the effectiveness of the Court's action, carried out in accordance with the competence established by Article 135 of the Constitution, as in the case of any litigation or trial, is inextricably linked to the observance of reasonable terms. Otherwise, the constitutional jurisdiction would risk becoming illusory. The reasonableness of the terms is determined according to several factors: the complexity of the case, the behavior of the court, the behavior of the parties, the behavior of other authorities involved." The Court held that the rules concerned "risk short-circuiting the activity of the Constitutional Court, especially in the context in which the Parliament did not provide the necessary resources to support the activity of the Constitutional Court in this regard and their imposition took place without consulting the Court or the society or relevant national and international institutions." Summing up, the Court ruled, as a matter of principle, that "the regulation of the examination terms and the procedures of the Constitutional Court by laws issued by the Parliament violates the principle of the independence of the Court. In the practice of other States, normality consists in the regulatory autonomy of the Court, which has the right to approve its own rules of procedure. (..) the establishment of excessively limited terms *a fortiori* impairs the Court's independence and risks compromising the complete examination of the cases and, respectively, emptying the Court's role as guarantor of the Constitution."

The non-publication or non-enforcement of the decisions of the constitutional courts is also a form of impairing the role and status of the constitutional courts, turning them into ignored and useless institutions, whose voice does not actually matter. This non-enforcement can materialize in "indifference" or vehement criticism of the legislator or the executive, which does not comply with the "unwanted" decisions, or in the refusal of the courts to enforce these decisions. Such a situation of non-publication of decisions was created in Poland, and, on the occasion of the opinion expressed then, the Venice Commission stated, *inter alia*, that "under the rule of law and in particular the principle of the independence of the judiciary, the validity and force of judgments cannot depend on a decision of the executive or the legislature. In particular, refusal to publish the judgments of a Constitutional Tribunal without sanction constitutes a fundamental challenge to the court's authority and independence as the final arbiter on constitutional issues."[42]; "to ignore a decision of the Constitutional Court means to ignore the Constitution and the constituent power, which assigned the Constitutional Court the power to ensure the supremacy of the Constitution. Parliament and the

[39] Schnutz Rudolf Durr, ibidem

[40] Ibidem

[41] Resolution no. 18 of 2 June 2014 for the constitutional review of Law no. 109 of 3 May 2013 amending and supplementing certain legislative acts (the Law on the Constitutional Court and the Code of Constitutional Jurisdiction) (judges' status, competences and procedure of the Constitutional Court) (Communication no. 34a/2014), https://www.constcourt.md/libview.php?l=ro&idc=7&id=551&t=/Media/Noutati/Revocarea-judecatorilor-CCM-de-catre-Parlament-este-neconstitutionala

[42] Poland, Opinion on the act on the Constitutional Tribunal, CDL-AD(2016)026, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)026-e

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executive must comply with the role of the Constitutional Court as the guardian of the Constitution, even if they are not satisfied with a decision or believe that the Court made a mistake".[43]

Reducing the budget of the constitutional court can also be a way of "holding on to respect" the constitutional judges, by allocating inappropriate resources for carrying out the activity. Under the guise of "budgetary difficulties", the authorities that have the "bread and the knife" in budgetary matters, eminently political, can significantly "adjust" the budget allocated to the constitutional court, with consequences on the entire activity it carries out. Considering the importance of this side of the independence of the constitutional courts, the issue of their financing has been the topic of debates at the meetings of the constitutional courts, including the Conference of European Constitutional Courts that took place in 2011 in Romania.[44]

CONCLUSIONS

The topic addressed is highly complex, susceptible to development on all the coordinates emphasized here, as well as the identification of additional coordinates. However, some conclusions are self-evident: "since courts have the capacity to interpret the constitutionality of executive and legislative actions, politicians often try to neutralize and/or co-opt the judiciary using different court-curbing strategies[45]", meaning " formal or informal actions that aim to make it harder for the judiciary to limit the executive and legislative branches". Consequently, the judges of the Constitutional Court and the courts themselves need strong guarantees for their independence.[46] Certain forms of direct "aggression", due to their "visible" nature, result in the immediate reaction of other Courts, of international bodies, the activation of control and protection instruments that have been consolidated over time. Other forms, less visible, that establish insidiously, can "deceive" so that the detection of the threat is late or more difficult to address.

It is also clear that no infallible appointment procedures can be identified, not even with regard to international or supranational courts where "filters" have been established in order to verify the competence of candidates. Thus, it was noticed[47] with reference to the CJEU that "it is true that the treaties require that judges be chosen among persons whose independence is beyond doubt, and the appointment procedure includes the consultation of a special committee, in order to ensure the qualities of the candidates to exercise the offices of a judge to the relevant EU court. However, the very fact that judges can be appointed again could be considered to jeopardize their independence; it could be argued that judges would be more likely to be re-appointed (or at least proposed for re-appointment) if the judgments in which they participated were favorable to the interests of the Member States and even, more precisely, to the interests of the Member State of origin, which traditionally has prerogatives to propose." Likewise, we can add the fact that the selection of candidates, namely the proposals that will reach the special committee, is done at the national level, following more or less transparent procedures, which supports the cited criticism. However, the limitation of mandates in the case of international/supranational courts is, in our opinion, desirable, being supported with exactly the same arguments that support the impossibility of renewing the mandates of constitutional judges at the national level.

[43] https://www.venice.coe.int/webforms/events/?id=3137

[44] Constitutional Justice. Functions and relationships with other public authorities, https://www.ccr.ro/wp-content/uploads/2020/08/raportgeneralro.pdf

[45] Benjamin Garcia Holgado, Raúl Sánchez Urribarr, op.cit.

[46] see Opinion amicus curiae of the Venice Commission no. 967/2019 on the criminal liability of Constitutional Court judges, adopted at its 121st plenary session, on 6-7 December 2019, CDL-AD(2019)028, § 28) [Constitutional Court Ruling no. 9 of 26 March 2020, § 31

[47] Josef. Azizi, Bringing to light the internal decision-making process by the EU courts: a justification for dissenting opinions?, in the Romanian Journal of European (Community) Law, no. 2/30 April 2012

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As concluded at the World Congress in Bali, there is a need for mutual respect between the constitutional courts and other State powers, including the prompt execution of the decisions of the constitutional courts; openness, accessibility and transparency in communication are needed, without losing sight of the need for reserve, to enhance confidence in the constitutional courts and strengthen their status as independent institutions. It is important that constitutional courts can rely on the solidarity of their counterparts, expressed through regional groups and the World Conference, including statements of support when under pressure. The 5th Congress appealed to the judges of the Member Courts of the World Conference to resist the pressure of other State powers and issue their decisions only on the basis of the Constitution. In view of those analyzed here, we consider that the proposal of the President of the Constitutional Court of the Republic of Indonesia to establish a *Constitutional Supremacy Index* (CSI) in order to measure the progress and evolution in complying with the Constitution in each country, in accordance with the principles of constitutionalism[48], is of great interest, so that to have "a universal benchmark or parameter for respect and implementation of the Constitution"[49]. Our proposal would be that the main criterion/section of this specific Evaluation Mechanism should concern the independence of the constitutional courts, without which any other criteria or conclusion appear to be illusory.

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Rousseau, Dominique, ed., Les Cours constitutionnelles, garantie de la qualité démocratique des sociétés?, LGDJ, Lextenso, Issy-les-Moulineaux (2019), pp. 111-136; see also Roznai, Yaniv, Who will Save the Redheads? Towards an Anti-Bully Theory of Judicial Review and Protection of Democracy (November 16, 2019). William & Mary Bill of Rights Journal, Vol. 29, 2020, Available at SSRN: https://ssrn.com/abstract=3488474 or http://dx.doi.org/10.2139/ssrn.3488474,

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The Venice Commission CDL-AD (2017)001 Opinion on Questions Relating to the Appointment of Judges of the Constitutional Court of Slovak Republic, paragraphs 70).

Tom Ginsburg, Nuno Garoupa – Building Reputation in Constitutional Courts: Political and Judicial Audiences, available at https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2441&context=journal_articles

Venice Comission – CDL-AD(2004)043 Opinion on the Proposal to Amend the Constitution of the Republic of Moldova (introduction of the individual complaint to the constitutional court), paragraphs 18-19; https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)043-e

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Le notariat traditionnel face à la blockchain

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La synthèse proposée concerne des textes appartenant à la littérature juridique scientifique et d'actualité. La recherche scientifique couvre les années 2015 – 2020 alors que l'actualité est représentée par des articles et média visuels des années 2019 et 2020. Tous les documents recensés ont été consultés en format électronique. Le thème de la recherche porte sur l'avènement de la blockchain dans la profession notariale et la problématique se posant consiste à percevoir comment devrait se positionner le notariat roumain par rapport à la blockchain, une technologie déjà adoptée globalement dans plusieurs secteurs économiques, y compris dans plusieurs juridictions nationales de droit romano-germanique. Les auteurs des textes sont majoritairement connectés au monde académique, s'intéressent à l'application des nouvelles technologies dans le domaine juridique, des avocats, des notaires, des médecins, mais aussi des journalistes. La lecture de la majorité des documents écrits, et sur lesquels se fonde cette recherche, a été faite dans leurs langues d'origine respectives, à savoir le français pour les textes de provenance notariale ou traitant des sujets liés aux compétences du notaire latin, et l'anglais pour les textes d'analyse économique ou portant sur les *smarts contracts* et les *notaries public* du monde anglo-saxon.

Ceci est un effort personnel d'alphabétisation et de compréhension de ce que la blockchain pourrait amener au notariat roumain, sur les outils dont on devrait se munir pour en préparer et accompagner la transposition dans la pratique, si faisable. Considérant le fait que la blockchain accompagne les notariats du monde depuis très peu, et qu'elle ne pousse pas sur un terrain aride mais fertile en solutions techniques d'avant-garde (l'acte authentique électronique en France, l'acte notarié technologique à Québec, les plateformes d'accompagnement des clients leur offrant une information permanente et accessible sur les actes qu'ils pourraient choisir de parfaire d'eux-même, les prises de rendez-vous en ligne, etc.), la mission du notaire roumain est de s'informer, saisir les métamorphoses subies/exigées par sa clientèle et, dans la mesure du possible, garder la position de premier choix aux yeux de son public actuel.

Dans la première section je présenterai la stratégie de recherche de la littérature scientifique et d'actualité que j'ai parcourues grâce à la formation Nanoprogramme *La chaine de blocs: impacts et enjeux pour votre organisation* de l'Université Laval, Canada. La deuxième partie représente la synthèse de la recherche, montrant la motivation des promoteurs blockchain de pénétrer le marché notarial, mais aussi la capacité de quelques notariats de droit latin à soulever le défi technologique. La troisième section est dédiée à une analyse pragmatique des domaines où l'on pourrait, un jour, intégrer la technologie de la chaîne de blocs, ainsi que les outils et les mentalités à développer ou à modeler en vue d'une approche efficace et durable de l'avancée de la profession. La conclusion concentre le message développé dans les sections antérieures, tout en admettant les limitations de la recherche.

1. STRATEGIE DE RECHERCHE: MOTS CLES ET SOURCES CONSULTEES

1.1. Recherche scientifique

Les bases de données Dalloz, Lamyline, Doctrinal Plus, Factiva, l'outil recherche Sofia de la bibliothèque de l'Université Laval et Google Scholar ont été interrogés sur la période 2015 – 2020 avec les mots clés des deux versions linguistiques française et anglaise: « blockchain », « chaîne de blocs », successivement juxtaposées à « notaire », « notariat » ou « notary », ce qui a produit des

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constructions/parataxes telles: « blockchain + notariat », « blockchain + notary », « chaîne de blocs + notaire », « blockchain notariale»; « blockchain + legal procedure »; « notaire ET nouvelles technologies ET blockchain »; « notaire ET smart contract ».

La raison derrière cette syntaxe plutôt simpliste était la conviction, naïve à l'époque, que cette technologie pointue n'avait pas encore trouvé de place dans le domaine notarial. L'outil à portée de main n'aurait pu en être autre qu'un oxymore (*blockchain notariale*), car je craignais (nourrissait l'espoir?) de vite me retrouver sur un champ vide. Les retours m'ont, en revanche, appris deux leçons à valeur tactique:

a. La vitesse fulminante est de l'essence de cette technologie. Où que l'on se retrouve sur l'échelle de l'évolution technologique et peu importe le penchant traditionnaliste ou progressiste, individus et profession doivent réagir vite, dans le sens d'y prêter attention et de s'informer avant de prendre toute décision engageant leur avenir.

b. La deuxième découverte, aussi révélatrice que la première et qui prédit un bon équilibre entre l'humain et le virtuel, est exactement la preuve qu'il faut préserver cet équilibre et reconnaître à chaque acteur sa juste valeur. Les notariats ayant adopté la technologie ont su mettre en évidence le rôle traditionnellement essentiel du notaire, celui de conseil.

1.2. Recherche d'actualité

Une veille a été mise en place sur Google Alert à partir des mots clé « blockchain and lawyers », « notary blockchain » et les articles retournés ont été retenus comme des références d'actualité. Le site d'informations financière et d'affaires Factiva a reçu des interrogations couvrant la période 2019-2020. Les combinaisons de mots clé « blockchain + notaire » et « blockchain + legal » ont retourné des instantanés de cas d'usage en préparation ou déjà lances, tous revêtus de clarté et de concision, ce qui indique que ces dernières années représentent le moment des premières décisions éclairées.

2. SYNTHESE DE LA RECHERCHE (ASSAISONNEE D'UN GRAIN DE SEL CRITIQUE)

La recherche a révélé la motivation que la blockchain retrouve dans un domaine-cible tel que le notariat (2.1.) ainsi que la réaction de la cible face à ce frappement inattendu à sa porte (2.2.).

2.1. Une technologie motivée …

a. La sensation trainant à l'esprit après lecture est que le notariat du monde, une profession ancienne et heureuse dans son millénaire établissement la revendiquant plutôt des juges que de toute autre profession juridique[1], soit incompatible avec la chaîne de blocs, en tout cas dans sa forme publique.

Tous les documents recensés abondent en définitions captatrices de ce que c'est que la blockchain et tous les auteurs s'accordent à dire que c'est une innovation perturbatrice de la manière traditionnelle de faire, dans tout domaine qui porte de la valeur économique: la blockchain est un échafaudage d'infrastructure (une double cryptographie issue d'une clé prive = labélisation algorithmique de la valeur à y transiger, et d'une clé publique = l'équivalent d'une adresse courriel ou de l'IBAN du participant à la transaction; des nœuds puissants/mineurs capables à résoudre les plus complexes problèmes mathématiques autour de l'admission d'une nouvelle valeur dans le bloc d'informations soumises à validation, les propriétaires ou possesseurs des nœuds, mais qui sont aussi économiquement capables d'investir dans des puissances de calcul considérables; une gouvernance fondée sur le consensus de 51% de la puissance de calcul des nœuds, généralement parlant). Et surtout une quantité énorme de questions et d'inconnues, comme par exemple qu'en est-il du parfait équilibre de la chaîne lorsqu'une personne, protégée par le pseudonymat et l'anonymat

[1] Frison-Roche, Marie-Anne. « Analyse des blockchains au regard des usages qu'elles peuvent remplir et des fonctions que les officiers ministériels doivent assurer » (2019) 25 Defrénois 23.

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caractéristiques, positionne ses capacités de contrôle derrière les 51% des mineurs? La blockchain offre un registre de valeurs/actifs/documents abrité par un réseau décentralisé et immuable une fois le bloc dont ces valeurs font partie est approuvé par consensus.

Ses promesses de sécurité, d'intégrité et de traçabilité s'agrémentent aussi de l'offre des smart contracts, des logiciels intégrés dans l'architecture de la chaîne de blocs au but d'automatiser l'exécution de certaines *commodities*, considérées par les promoteurs de la blockchain comme créatrices d'inefficiences pour le professionnel du droit. La blockchain promet et promeut aussi la désintermédiation des opérations qu'elle abrite (les participants n'ont plus besoin de tiers de confiance pour passer leur contrat de bail, par exemple).

De l'autre côté, le notariat est un monopole d'état octroyé à un juriste hautement qualifié pour être capable d'exercer en toute autonomie sa triple fonction régalienne de vérificateur, auteur et conservateur de l'acte authentique[2]. Ces deux auteurs s'accordent à voir l'avenir du notariat français sous l'angle de l'innovation autant technologique qu'humaine, dont l'un constamment approbateur d'un notariat renouvelé (Mekki) et l'autre plus directe dans son appel à la lucidité et à l'action subtile, surtout par d'autres moyens que les outils technologiques (Tissot). Car le monopole de l'État et, par conséquent, la délégation de pouvoir/décentralisation dont jouissent actuellement les notaires partout dans le monde de droit civil, peuvent disparaître le moment où le même État change de paradigme dans la valorisation du lien propriété – propriétaire et surtout de comment faire pour le défendre: ex ante, c'est à dire plus couteux mais fait à l'amiable, ou ex post, ce qui est moins cher au début, l'atténuation des risques pouvant se régler devant le juge (M.-A. Frison-Roche 2019).

b. Cet antagonisme est pourtant superficiel, car il y a des similarités essentielles entre les deux offres, technologique et notariale: (1) sécurité dans la force probante et le caractère exécutoire de l'acte authentique, mais aussi dans le hachage de l'empreinte numérique d'un acte authentique block-chaîné, une fois reçu par le notaire; (2) intégrité et traçabilité accrues d'un acte authentique dont empreinte numérique logée dans une blockchain privée interinstitutionnelle, par rapport à celui qui n'est déposé qu'aux archives du notaire et au minutier central de la profession; (3) le même client-cible, à savoir le détenteur de valeurs patrimoniales. Ce n'est peut-être que voir les grosses touches d'un tableau plus complexe de ce qu'on pourrait évoquer dans cette synthèse. Pourtant, la substituabilité de certaines fonctions que remplit le notaire peut être parfaitement concevable et pleinement valorisée par les promoteurs de la blockchain.

Mais la motivation la plus poignante est donnée par ces mêmes promoteurs, friands de « rapide, sécuritaire et bon marché », qui sont d'ailleurs les futurs clients du notaire: les *millenials* ou les *digital natives.* En fonction desquels il a l'intérêt de repenser sa propre offre, s'il ne veut pas que leur produit ait complètement raison du sien… selon le principe « celui qui a créé une monnaie peut certifier un document, car plus simple »[3]. En plus, il n'est pas anodin de regarder aux chiffres qui, si l'on croyait à ces jeunes pousses concurrentes, représentent des revenus moyens de notaire importants et surtout pas prêts à concurrencer les avancées technologiques[4].

Ce qui est facile à observer c'est le tournant posé par l'année 2015 dans la psychologie collective, sur la capacité de la blockchain de concurrencer le notaire dans ses fonctions régaliennes.

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[2] Mekki, Mustapha. « Congrès MJN 2017-2018: rapport de synthèse » (2017) 47 JCP Notariale & Immobilière 1313; Mekki, Mustapha. « L'intelligence artificielle et le notariat » (2019) 1 JCP Notariale & Immobilière 1001; Tissot, Nicolas. « Profession notaire: de nouveaux enjeux » (2018) 3 Enjeux numériques 63: http://www.annales.org/enjeux-numeriques/2018/en-03-09-18.pdf

[3] #TECHNOT2019 | Retour sur la 3e édition du Forum Technologies et Notariat – YouTube; Chassaing, Pascal. « 3 questions à: Pascal Chassaing 1er Forum Technologies et Notariat: découvrir, connaître, échanger » (2017) n°26 JCP Notariale & Immobilière; Can blockchain technology send notaries on vacation… For good? | by Stampery Inc. | Medium 4 mai 2015

[4] Livre blanc Sigma Gestion, 2018 (https://www.sigmagestion.com/wp-content/uploads/2018/12/Llivre-blanc-de-Sigma-Gestion-D%C3%A9finition-et-incidences-de-la-blockchain-sur-la-soci%C3%A9t%C3%A9-et-le-secteur-financier.pdf

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Le fait que la blockchain s'est vue dédiée une édition entière dans The Economist, ce magazine fétiche du monde des affaires, est tout simplement créateur de réputation[5]. Se faire présenter comme solution salutaire quelques mois après une chronique négative sur les notaires européens, parue dans le même magazine, est porteur d'une certaine signification[6].

Le notariat a donc de quoi être motivé pour adopter la blockchain lui-même et avant que d'autres joueurs ne s'immiscent dans son territoire authentique[7].

2.2. … motivant le notariat

La recherche que j'ai menée dans le cadre du premier bloc du nanoprogramme a produit certaines évidences sous l'angle de la capacité des notariats à soulever le défi:

a. Premièrement, l'intégration de la blockchain par certains notariats du monde est toute récente (2020) mais elle s'installe dans un contexte riche d'innovations, tant juridiques que technologiques. La grande majorité des textes porte sur l'évolution technologique du notariat français, de l'année d'adoption de la signature électronique par une loi modifiant le Code civil (2000) jusqu'au lancement de la première blockchain notariale française (2020). Dans d'autres pays du notariat latin, la palette technologique compose une ébauche prometteuse du point de vue technologique: l'acte technologique dématérialisé et fait à distance à partir du 27 mars 2020 à Québec; la carte d'identité électronique peut être utilisée pour signer une procuration à distance, accompagné de son notaire en vidéo-conférence, en Belgique, et les exemples s'ensuivent avec l'Estonie – le premier juge-robot mis en place en 2019 pour les requêtes de moins de 7000 Euro[8], et l'Ukraine avec la première vente immobilière par blockchain au monde, en septembre 2017 (mais sans s'être passé de la présence du notaire, de la libération des paiements jusqu'à la validation finale de l'acte). En Chine, le 4 décembre 2020, l'office de notaire de l'Arrondissement Xuhui de Shanghai a organisé une journée portes ouvertes pour tout membre du public désirant apprendre sur l'arrivée de la blockchain dans leur notariat de proximité, capable dorénavant de leur offrir des procédures notariales à distance et sans papier[9].

En France, la blockchain n'est que le sommet de tout un écosystème innovateur rapprochant les deux mondes, celui professionnel et celui technologique. La modification du Code civil en 2000 a permis la signature électronique de l'acte authentique et l'avènement de l'acte dématérialisé[10]. Les articles recensés abondent en exemples d'initiatives collectives, dans le cadre de la profession, ou par des notaires agissant seuls, ayant comme but le mariage indissociable entre plusieurs technologies et le notariat. Les types de technologies adoptées varient des innovations entrepreneuriales (les *legaltech*, des partenaires proposant des solutions aux notaires) aux innovations dans le premier contact avec les clients (la prise de rendez-vous en ligne). Par exemple, la jeune pousse Quai des notaires, créée par un notaire en 2018 pour répondre aux critiques des clients qui considèrent l'acte notarial comme une formalité chronophage, propose des fonctionnalités rapprochant clients et notaires et réduisant le temps de traitement du dossier: « la génération automatique d'avant-contrats; la visio-signature certifiée pour un acte sous seing privé; un coffre-fort numérique ayant une volée blockchain »[11]. Il ne faut pas oublier les deux premières françaises

[5] *The great chain of being sure about things*, The Economist, 31.10.2015

[6] *The Princes of Paperwork*, The Economist, 19.03.2015 (Notaries – The princes of paperwork | Finance & economics | The Economist (cam.ac.uk)

[7] Humbert, Jean-François. « "Il faut oser", Entretien avec Jean-François Humbert » (2018) 45 JCP Notariale et Immobilière 860

[8] 26.03.2019 Estonia is creating an AI-powered JUDGE | Daily Mail Online

[9] 04.12.2020, Blockchain News (blockchain-powered notary services in China) (https://cryptonews.com/news/binance-expects-up-to-usd-1b-in-profits-this-year-more-news-8524.htm)

[10] Tissot, Nicolas. « Profession notaire: de nouveaux enjeux » (2018) 3 Enjeux numériques 63: http://www.annales.org/enjeux-numeriques/2018/en-03-09-18.pdf

[11] Vayr, Jonathan. « La blockchain à portée du notariat » (2019) Les Petites Affiches 6

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en matière de vente immobilière: un hôtel particulier de l'ouest parisien a été complètement « tokénisé » et ensuite transactionné sur la blockchain Ethereum le 25 juin 2019[12]; des fichiers-maquettes d'un projet immobilier sont annexés à l'acte de vente en l'état futur d'achèvement puis échangées en format « natif » grâce à la blockchain mise à disposition par une *legaltech* partenaire du promoteur immobilier. La fiabilité de la blockchain reçoit ainsi un coup de pouce de la part du notaire instrumentant l'acte, car celui-ci n'a pas utilisé les data rooms professionnelles, mais il a préféré la blockchain de ses clients[13].

Il est important de noter que le notariat français semble avoir suivi ses propres conseils, à savoir s'approprier les outils nécessaires pour conserver l'acte authentique, mais aussi se munir de technologies tout en pensant aux clients et non seulement aux notaires (N. Tissot, 2018). L'abstention déontologique de faire de actes inutiles pour les clients s'agrémente de la volonté des notaires de laisser certains actes entre les mains de ceux-ci, prêts à les conclure sous signature privée: Bailmyself, un service en ligne des notaires de France (J.-Fr. Humbert, 2018).

Enfin, la blockchain notariale française a été créée par les Chambres de Notaires du Grand Paris et lancée le 7 juillet 2020[14]. L'annonce de son lancement laisse comprendre une complémentarité entre cette technologie et le reste des outils dont la profession s'est munie ces dernières années. Pourtant, ce produit *tout notaire* n'était applicable (au moment de la recherche, à savoir décembre 2020), que parmi les notaires de l'Île de France, la région la plus peuplée et la plus riche du pays. Douée d'une gouvernance privée, autoportante et bénévole, cette blockchain privée dont les mineurs sont toujours des notaires, a l'air de réagir vite à la concurrence attendue dans le domaine de la sécurisation des documents et des transactions de valeurs, car les premiers projets concernent le transfert de documents volumineux et le mouvement de titres des sociétés non cotées.

b. Le deuxième aspect significatif issu de la recherche est le caractère syndicataire, donc cohésif, que la blockchain paraît avoir par rapport aux autres technologies et même par rapport au droit en général. C'est ce manque de confiance dans l'humain (clamé par la blockchain) qui rétablit une sorte de coopération inhérente, forcée entre l'outil sortant (le tiers de confiance humain, la loi) et la technologie disruptive. Quelques exemples semblent assez révélateurs:

Dans le domaine des transaction *in rem* la blockchain ne peut pas opérer en dehors du cadre règlementaire imposant un tiers de confiance-délégataire de l'autorité de l'État, que ce soit notaire ou registre foncier, dans les pays où l'enregistrement est porteur d'effet constitutif de droit[15].

Dans le domaine de la date certaine, l'horodatage que la blockchain produit ne peut avoir un tel effet juridique que si le document est doué d'une signature électronique qualifiée par un tiers certificateur (condition posée par le règlement eIDAS en vigueur depuis le 1er juillet 2016 portant sur la signature électronique, les tiers de confiance et les documents électroniques au sein du marché intérieur européen). Ce tiers certificateur, dans le cas des notaires européens, est leur ordre professionnel (M. Mekki, 2019).

En ce qui concerne la promesse de désintermédiation que la blockchain professe, là encore la coopération avec un *oracle* de confiance (tiers humain ou logiciel intelligent à introduire les données

[12] 24.06.2020, *Première vente immobilière via blockchain en France* par Gregory Raymond, Capital.fr (https://www.capital.fr/immobilier/premiere-vente-immobiliere-via-blockchain-en-france-1342764)

[13] 29.11.2019, *Entretien. Une technologie qui répond à une vraie demande et procure gain de temps et de sécurité (Vivien Baufumé, Cristophe Carminati, Dominique Legeais),* La Semaine Juridique – Notariale et Immobilière n°48, 29.11.2019; 25.11.2019 Technot 2019 Immobilier 001 (première signature mondiale de vente en l'état futur d'achèvement dont échanges documentaires pré-, durant- et après l'acte ont été sécurisées par la chaîne de blocs) (https://www.youtube.com/watch?v=SHvBwVjD-xQ&feature=youtu.be&t=4884)

[14] 07.07.2020 Présentation de la blockchain notariale. Dossier de presse 7 juillet 2020 2020-07-07 – DP – Présentation de la Blockchain Notariale VF2.pdf (notairesdugrandparis.fr)

[15] Arrunada, Benito. «Blockchain's Struggle to Deliver Impersonal Exchange » (2018) 19:1 Minn J L Sci & Tech 55

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de la météo dans la blockchain) vient détruire un rêve de singularité. Pour l'instant, l'oracle le plus fiable du notariat ouvert vers la blockchain est le notaire.

Même la pratique exige d'une telle coopération, prouvant vraie la prédiction du rapport *Global Blockchain Survey 2019* de Deloitte (page 7): « *la blockchain est, à l'heure actuelle, à la recherche de nouveaux cas d'usage »*. C'est le cas d'usage soigneusement conçu, à l'heure de la recherche toujours théorique, du marché des traductions produites par des traducteurs assermentés en Espagne, avec un œil subtil vers les traductions de textes juridiques. L'auteur de l'étude propose l'établissement d'un system de gestion de la qualité des traductions jugées officielles par la création d'une combinaison technologique de blockchain hybride, logiciels d'intelligence artificielle et standards de qualité ISO. Le but serait de complétement éliminer le papier et de standardiser les traductions juridiques pour qu'elles puissent jouir, dans la langue-cible, de la même pleine force officielle/effet juridique dont les documents originaux sont revêtus dans la langue-source[16]. Pour aller plus loin, la complémentarité entre le domaine des traductions juridiques et celui du notariat servirait au dernier non seulement d'exemple mais surtout comme moyen d'enrichir l'offre de service juridiques spécialisées, voués à se réinventer dans le sillage de la blockchain.

Enfin, même les propos des détracteurs de la blockchain, souhaitant convaincre une audience experte d'un certain caractère insidieux de la technologie, laissent entrevoir le besoin de la chaîne des blocs de s'ancrer, du point de vue langage, dans le jargon juridique afin de mieux convaincre ces adeptes (E. Caprioli, Conférence Cour de Cassation, *De la technologie des algorithmes a la technique juridique,* 2019)[17].

Ces réflexions, dans leur ensemble, constituent un bon départ (vers l'inconnu) pour le notaire qui se considère infaillible, heureux de toujours faire la même chose: l'acte authentique de vente immobilière sur papier.

3. LE NOTARIAT ROUMAIN: CE QU'IL FAUDRAIT FAIRE, VOIRE ABANDONNER POUR ETRE CAPABLE, UN JOUR, D'INTEGRER LA BLOCKCHAIN, SI JAMAIS…

La leçon-clé que j'ai tirée de cette recherche? Ce n'est pas obligatoire de rejoindre les usagers de la blockchain *si* l'on est sûr que ce n'est pas à elle de *nous* adopter.

Chez nous, le mot blockchain ne se trouve pas encore sur les lèvres des notaires, mais les juges ont déjà commencé à se familiariser avec (une petite dizaine de jugements rendu entre 2019 et 2020, surtout concernant le blanchiment d'argent et le trafic de drogues à grand risque).

3.1. Aurait-on des choses à remettre en bon ordre avant de comprendre une technologie qu'on ne connaît pas?

a. Surtout s'informer pour éradiquer la compréhension insuffisante ou inexistante des technologies émergentes, tant au niveau individuel qu'au niveau de l'ordre professionnel (la *blockchain litteracy)* (WEF *Building blockchains for a better plannet*, 2018)[18]. L'arrivée de la blockchain en Roumanie aura le même effet perturbateur que dans tout autre industrie sur la planète. Et l'invariable dite réputation du notaire serait-elle la même que celle décrite par The Economist en 2015 (des *gourmands*) …

[16] Duro Moreno, Miguel. « Translation quality gained through the implementation of the ISO En 17100:2015 and the usage of the blockchain. The case of sworn translation in Spain » Babel 66:2 (2020), pp. 226–253. issn 0521-9744 | e-issn 1569-9668 © John Benjamins Publishing Company

[17] Eric Caprioli, Conférence Cour de cassation, De la technologie des algorithmes à la technique juridique jeudi 7 février 2019 https://www.caprioli-avocats.com/fr/informations/entre-mysteres-et-fantasmes--quel-avenir-pour-les-blockchains---innovation-et-21-311-0.html

[18] World Economic Forum (weforum.org), date du dernier accès 30.04.2023

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b. Être perméable à la culture de l'improvisation, ce qui veut dire encourager les membres de la profession qui ont des passions, des qualifications, et des expériences autres que le notariat, par exemple un notaire-traducteur ou un notaire-programmateur (*improvisation culture*) (D. Nylén, J. Holmström, *Digital innovation strategy,* p. 66*)*[19].

c. Connaître son client. Décrypter la mentalité des clients qui appartiennent à des groupes socio-professionnels et d'âge différents et qui sont assez opposés en préférences (les personnes âgées de plus de 65 ans, en général des propriétaires immobiliers, représentent une catégorie de clientèle qui préfère le touchable au virtuel; les personnes entre 30 et 45 ans préfèrent vivre en location avant leur 50e anniversaire, ils sont mobiles globalement, et le droit de propriété leur paraît plutôt un fardeau qu'un actif patrimonial; ils seront les plus prêts à vendre les propriétés hérités des premiers, a des immigrants intracommunautaire aussi (des transactions in rem), pour se concentrer sur des transaction in personam (des leasing, des locations, des prêts). C'est surtout avec ces derniers qu'on pourrait développer la vision de Betino Arrunada[20] selon laquelle la blockchain se prête plutôt aux transactions in personam car, pour cette catégorie globalisée, ce serait difficile de placer leur confiance à un tiers précis.

3.2. Faudrait-il abandonner?

a. La compétence territoriale exclusive dans certaines procédures notariales (le divorce, les successions, les actes authentiques à comparution à distance, lorsque les parties et leur notaire de confiance se trouvent dans des juridictions locales différentes) et l'interdiction de sortir de sa juridiction – peut-être la faiblesse la plus dangereuse car elle neutralise le besoin de confiance (le *trust,* on n'en aurait pas besoin puisque de toute manière on allait chez le notaire de l'endroit où se trouve l'immeuble, le notaire de son choix n'ayant pas le droit de se déplacer en dehors de son périmètre juridictionnel, celui du tribunal de première instance de la commune de son siège).

b. Le manque, plus ou moins marquant, d'*interprofessionnalité*[21] chez avocats, notaires, comptables, architectes, traducteurs, agents immobiliers – ce qui fait que nous sommes, chaque profession de son côté, seuls devant le besoin d'évoluer dans la technologie, de trouver des clients, d'en garder les anciens et, surtout dernièrement, de résister face au confinement sanitaire qui vient de nous affecter tous.

c. L'impossible passage du statut indépendant à l'emploi sans perdre les privilèges de la profession (un notaire peut se faire embaucher par un employeur, mais en faisant ainsi il devra surtout demander la suspension de son statut de notaire auprès du ministre de la justice, ce qui implique des pertes au niveau de la réputation et de l'ancienneté professionnelles, car être notaire salarié ne vaut pas notaire tout court, et l'ancienneté de 5 ans au minimum pour accéder à l'examen d'entrée dans la profession d'avocat ne recommence à couler qu'après la perte volontaire d'emploi). Ce qui génère un grave déséquilibre personnel, financier et professionnel pour le notaire qui a choisi d'élargir ses expériences professionnelles tout en gardant intactes sa qualité de juriste et sa spécialité. C'est aussi la raison pour laquelle on est imperméables à la culture de l'improvisation (3.1.b. supra).

d. Certaines barrières qui subsistent toujours par rapport aux avantages des parcours interprofessionnels, à savoir les incompatibilités d'exercer toute autre activité lucrative (par exemple, les notaires-linguistes n'ont pas le droit d'exercer en tant que notaire et traducteur juré à la fois que dans des conditions ambiguës et prêtables à des interprétations restrictives). Il est néanmoins vrai

[19] D. Nylén, J. Holmström, «Digital innovation strategy: A framework for diagnosing and improving digital product and service innovation» (2015), Business Horizons (2015) 58, 57-67, http://www.sciencedirect.com/science/journal/00076813

[20] Arrunada, Benito. «Blockchain's Struggle to Deliver Impersonal Exchange » (2018) 19:1 Minn J L Sci & Tech 55; Arrunada, Benito «Market and institutional determinants in the regulation of conveyancers», Eur J Law Econ (2007) 23:93–116 DOI 10.1007/s10657-007-9010-1 Springer Science+Business Media, LLC 2007

[21] Boccara, Valérie. « " Le monde et l'avenir nous appartiennent " » (2018) n°66-67 Petites Affiches 4

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que les deux compétences sont parfaitement compatibles et qu'elles profitent au client mobile d'aujourd'hui.

e. Les échanges avec les institutions de l'État restent insuffisamment dématérialisées[22].

3.3. On est loin de voir la blockchain comme une solution envisageable dans le fonctionnement actuel du notariat roumain. Ce contexte une fois dépassé et les ajustements nécessaires faits, tant au niveau de l'ordre qu'au niveau des autorités publiques, l'adoption d'une blockchain privée serait souhaitable entre l'ordre professionnel des notaires roumains (gardien d'un registre des personnes placées sous protection juridique), l'agence nationale de la lutte contre le blanchiment de l'argent, le ministère des affaires intérieures (gardien de la base nationale de données personnelles liées à l'identité de la personne physique), le ministère de la justice (gardien de la base de données des jugements en matières civile et pénale) et le registre foncier. Le but serait de parvenir à un acte authentique immobilier sécurisé du point de vue de l'identité et de la capacité des parties, mais aussi de la provenance des capitaux. Les institutions-gardiennes des bases de données concernant la personne et son patrimoine inscriraient dans la blockchain, de manière immuable et transparente, toute information qui pourrait déclencher un effet juridique d'indisponibilité ou d'incapacité. Lors de la vérification de l'acte avant l'authentification, toutes ces informations peupleraient automatiquement les champs du document éditable, rendant un acte valide en temps réel et utile. L'acte authentique serait toujours conservé aux archives notariales, sur papier ou en forme dématérialisée, mais son empreinte numérique serait envoyée et gardée dans tous les *nœuds* des institutions participantes dans la blockchain. Toute forme d'intelligence artificielle applicable au contexte juridique (logiciel d'extraction d'articles de lois en vigueur, selon le moment de production du fait générateur d'effets juridiques) pourrait y être ajoutée.

CONCLUSION

Dans cette synthèse j'ai essayé de révéler la perméabilité du notariat par rapport à la blockchain, une technologie apparemment appelée à saisir une partie des fonctions de la profession. Considérant certains caractères de la technologie mais aussi les insuffisants cas d'usage à disposition – car, dans le notariat d'aujourd'hui, les applications restent les mêmes –, la blockchain n'est pas encore prête à tout résoudre toute seule, mais certains domaines complémentaires au notariat (et dont la force créatrice humaine et tout aussi importante) se prêteraient à la régularisation par des technologies déjà existantes et surtout compatibles (les traducteurs jurés d'Espagne). Ce qui n'a pas été exploré dans ce travail est le registre foncier et sa capacite d'intégrer la blockchain, mais en Roumanie il est peu envisageable que cela puisse produire des effets négatifs par rapport à l'acte authentique, car l'enregistrement de la propriété se produit seulement après les vérifications obligatoires de validité et d'efficacité opérées par le notaire dans le cadre de la procédure d'authentification, le registraire n'ayant que de faibles compétences formelles en la matière. Il reste aussi à veiller sur la capacite du *notary* anglo-saxon de générer de la confusion dans les esprits des créateurs de logiciels et, ainsi, avoir un impact sur les notaires de droit civil…Chose certaine, la blockchain est vouée à transformer le notariat tel qu'on le (re)connaît aujourd'hui. La crainte demeure de ne pas être les premiers à se réapproprier la compétence primordiale, si jamais et avant que les progrès technologiques arrivent à conquérir le public consommateur de transactions patrimoniales de tout genre, ainsi que le monde politique. À bon entendeur, salut!

[22] Bourassin Manuella, Corine Dauchez, Marc Pichard. « "Le cyber-notaire au cœur de la République numérique". Entretien avec Manuella Bourassin, Corine Dauchez et Marc Pichard » (2018) 23 JCP Notariale et Immobilière 530

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EU Security and Politics Highlights: Navigating Turbulent Waters

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Sociologie d'une jeunesse radicalisée. Pourquoi certains jeunes sont attirés par cette radicalisation?

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Abstract: *Radicalization is a global phenomenon, it represents a permanent danger that threatens the democratic values of the West. The shock of September 11, 2001 characterizes a new form of terrorism whose objective is not to conquer power but to fight against Western civilization. Identifying people who have been radicalized or are in the process of being radicalized is essential in order to provide them with the support they need, and to prevent any violent action. It is therefore necessary to rely on proven tools and to rely on a structured and professional chain, but also on good analyzes of the mechanisms of radicalization.*

Keywords: *EU, Radicalization, youth, prevention, Islamization, terrorism, support, violence, deradicalization, civilization.*

Résumé: *La radicalisation est un phénomène mondial, elle représente un danger permanent qui menace les valeurs démocratiques de l'Occident. Le choc du 11 septembre 2001 caractérise une nouvelle forme de terrorisme dont l'objectif n'est pas de conquérir le pouvoir mais de lutter contre la civilisation occidentale. Le repérage des personnes radicalisées ou en voie de l'être est essentielle afin de leur apporter l'accompagnement dont elles ont besoin et de prévenir tout passage à l'acte violent.*[2] *Il est donc nécessaire de se baser sur des outils éprouvés et de s'appuyer sur une chaine structurée et professionnelle mais également sur des bonnes analyses des mécanismes de la radicalisation.*

Mots clés: *UE, Radicalisation, jeunesse, prévention, islamisation, terrorisme, accompagnement, violence, déradicalisation, civilisation.*

INTRODUCTION

La radicalisation est un phénomène vieux comme le monde mais c'est surtout après les attentats du *Trade center* qu'il a connu son heure de gloire dans les médias et les analyses des sciences sociales (Khosrokhavar, 2019).Le nombre des livres consacrés à ce phénomène a explosé, on voit des publications dans le monde entier et dans toutes les langues ou presque.

Depuis le 11 septembre 2001, on ne parle que de la poussée islamiste et de la radicalisation de l'islam. En même temps, une querelle est engagée pour l'hégémonie sur l'islamologie en France et la recherche sur la radicalisation. La compétition est assez rude, il faut aussi avoir à l'esprit les enjeux financiers et le pouvoir qui s'y jouent.[3]Ce qui a retenu notre attention ici, ce n'est pas l'intimité de la conscience personnelle, le contenu de la foi musulmane, mais le facteur religieux en tant qu'il a débordé la vie privée comme phénomène social car cette adhésion (à l'islam) comme croyance religieuse a naturellement des effets sur le comportement des fidèles en société.

.La faillite actuelle de l'idéologie marxiste[4] athée et ses variantes a autorisé la réapparition du fait religieux dans des Etats où il était officiellement interdit. Ainsi renaissent au grand jour l'Eglise

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[2] ("Signaler et détecter – Comité Interministériel de Prévention de la...")

[3] -Les derniers attentats ont amené gouvernement et Fondations à débloquer de grandes sommes pour les recherches sur le radicalisme.

[4] -Francis Fukuyama annonçait dans sa formule le « choc des civilisations », la « fin de l'histoire »: la victoire du « monde libre » dans la guerre froide devait assurer le monopole de la démocratie du marché, horizon désormais unique et indépassable.

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orthodoxe en Russie, l'Islam en Asie centrale[5], le luthérianisme en Estonie et Lettonie, le bouddhisme au Cambodge. Seule la Corée du Nord, la Chine et Cuba affichent un athéisme contredit par bien des réalités (venue du pape à Cuba). Mais cette résurrection s'accompagne, à l'échelle mondiale, d'un regain de conflictualité. Non pas que les religions, dans leur essence, sont porteuses d'intolérance, toutefois, force est de constater l'accumulation d'affrontements qui culminent médiatiquement avec les attentats du 11 septembre 2001.

Ainsi depuis 1990, plusieurs pays ont connu diverses guerres civiles ou conflits régionaux comportant un élément religieux ou idéologique: l'ex-Yougoslavie, l'Irak, le Sri Lanka, l'Algérie, Israël, l'Arménie, la Birmanie, le Timor-Oriental, la Tchétchénie, le Tibet, les Philippines, la Syrie, la Lybie. Ces conflits régionaux mettent aux prises des acteurs marqués religieusement, que cette connotation soit consciente et affichée ou qu'elle leur soit attachée inconsciemment [6]

L'après-Seconde Guerre mondiale et la volonté affirmée de mettre à l'index la guerre, suivie de la guerre froide[7] ont donné l'illusion d'un monde sans guerre. Or depuis 1945 à 1989, 160 conflits ont éclaté à la surface de la planète causant la mort de 40 millions de personnes, conflits localisés[8] occultés par l'affrontement des deux superpuissances.

LE RETOUR VIOLENT DU RELIGIEUX PARTOUT DANS LE MONDE.

L'expression « fait religieux » s'est imposée depuis les années 1980 dans le vocabulaire scientifique, scolaire et public. Le fait religieux, quoi qu'on pense de ses origines et de son contenu, est un aspect important de la vie des sociétés contemporaines qui contribue à les spécifier; il a tenu et tient encore une grande place dans l'histoire des sociétés et a entretenu des rapports nombreux et divers, avec les autres composantes de la vie collective (Rémond, 1995). Il participe pleinement à l'histoire de l'humanité. Bergson (1859-1941) n'hésite d'ailleurs pas à qualifier l'homme « d'animal religieux », véritable « machine à fabriquer des Dieux » (Delimeau, 2000). L'homme étant apparu sur terre il y a environ trois millions d'années, on dénote déjà chez ces hommes, une ritualisation de la mort, une transcendance d'une entité supérieure, d'un au-delà avec la mort, avec lesquels ils cherchent à se relier. C'est entre 95 000 et 35 000 av. J.-C. que les hommes ont voulu donner une sépulture à leurs morts, attitude les différenciant ainsi de l'animal. Chaque religion[9] est dans les faits, un « système religieux » (Thual, 2003) qui renvoie à la fois « à un corpus de croyances et à des formes sociologiques et administratives se manifestant par une expression collective du culte elle-même, articulée sur les structures politiques ». Ce système religieux soude tous ceux qui y adhèrent en une « communauté morale » (Durkheim) qui se réfère, et se transmet génération après génération, un discours, une « mémoire collective »(Julliard, 1996) puisque l'acception du verbe polysémique latin *religere* (duquel émane également le vocable religion) signifie remémorer, se souvenir, se recueillir des restes. Avoir foi en une religion, c'est subséquemment adhérer à un dogme, pratiquer et transmettre valeurs et croyances.

[5] -Ex- Républiques soviétiques du Kazakhstan, de l'Ouzbékistan, de Kirghizie, de Turkménistan, du Tadjikistan de l'Azerbaïdjan.

[6] -. ("Le fait religieux, l'islam et la radicalisation"). Ainsi au Kosovo, les Kosovars musulmans ont été aux prises avec les troupes de la République fédérale de Yougoslavie alors que les forces d'interposition de l'ONU (la KFOR) étaient avant tout composées de Chrétiens.

[7] -Où la paix impossible rendait malgré tout la guerre improbable.

[8] -Où l'élément religieux n'est en rien négligeable.

[9] -La religion vient du verbe latin *religare:* elle relie les croyants entre eux, elle soude la communauté des fidèles et fédère cette communauté à l'objet de la croyance.

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Or, en dépit de la montée du scientisme[10], de l'agnosticisme[11], de l'athéisme[12] ou de politiques séculaires depuis le XIXème, force est de constater que le religieux fait son retour sur la sphère privée personnelle et sur la scène géopolitique mondiale. On est désormais loin de « l'imminence radicale de l'homme moderne » (Thomas Altizer) et l'optimisme rationaliste qui appartient au passé (Deumeau, 1996). L'accroissement du nombre des fidèles des grandes religions, des pratiques religieuses, l'instrumentalisation politique de la religion par certains Etats et par certains groupes politiques (terroristes ou non)finissent par opérer une résurgence du fait religieux dans le monde. En ce début du XXIème siècle, l'omniprésence des religions dans la sphère politique ne semble connaitre aucune limite. L'activisme politique du Pape François[13] et la véhémence du wahhabisme saoudien illustre cette évolution dont l'interprétation littéraliste s'est largement diffusée dans le monde islamique grâce à un prosélytisme financé par les milliards des pétrodollars.[14]

Etudier le fait religieux revient, in fine, à analyser des « représentations (croyances, mythes, dogmes), une organisation (mosquées, églises, confréries, sectes) »[15] et des rites (Dumortier, 2002). Ce qui retiendra notre attention ici, ce n'est pas l'intimité de la conscience personnelle, le contenu de la foi (musulmane) mais le facteur religieux en tant qu'il déborde de la vie privée comme phénomène social. Il le fait de plus d'une façon et pour diverses raisons que nous allons tenter expliquer. La croyance religieuse n'est-elle que l'image de l'appartenance sociale, l'expression d'une solidarité avec un certain agencement ou a-t-elle une existence autonome inflexible à d'autres phénomènes? Pourquoi des mouvements terroristes attirent-ils une partie de la jeunesse? Quel avenir pour l'islam dans un pays républicain (comme la France)? Comment passent ces radicalisés, du statut de victime (sociale, économique, politique, psychologique…) à celui de bourreau et d'implacable guerrier d'une utopie mortifère? Comment explique-t-on ce passage initiatique fulgurant?

Faire entrer l'histoire du fait religieux dans l'enseignement, c'est apporter un éclairage circonstancié sur ses incidences, sur l'aventure humaine puisqu'il est un élément essentiel des civilisations. Les croyances et les pratiques religieuses sont bien des faits de civilisation, l'exercice a donc un caractère laïc. Il s'agit de transmettre une culture et non de dispenser un enseignement religieux. Il faut donc aller aux explications théoriques pour mieux cerner ce retour du religieux particulièrement chez les jeunes et non pas les explications journalistiques

LA RELIGION, UNE SOURCE D'INQUIÉTUDE

Partout le fanatisme religieux ruine le « Vivre Ensemble », mine la vie des pays et sabote la laïcité. Ce raz de marée de nostalgie religieuse, qui brouille les cartes et bouscule les démocraties, n'est pas si surprenant que cela.

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[10] -Position philosophique du XIXème siècle qui affirme que la science nous fait connaitre la nature intime des choses et suffit à satisfaire tous les besoins de l'intelligence humaine. Le scientisme se rapproche étroitement du positivisme d'Auguste Comte. L'esprit humain doit se borner à formuler des lois scientifiques entre les phénomènes et l'histoire évolue au grè des stades intellectuels de l'humanité, celle-ci passant de l'état religieux à l'état métaphysique pour aboutir finalement à l'état positif, phase de l'émancipation grâce à la science qui amène le progrès économique et l'évolution des esprits.

[11] -« Doctrine philosophique qui déclare l'absolu inaccessible à l'esprit humain et professe une complète ignorance touchant la nature intime, l'origine et la destinée des choses ».*Grand Larousse universel*, p.195.

[12] -« Doctrine qui nie l'existence de Dieu », *Grand Larousse universel*, p.782.

[13] -Depuis 2013, Le souverain pontife est engagé ans une double offensive: la première consiste à faire jouer l'Eglise un rôle actif dans la remise en cause du système économique globale et les impératifs écologiques. La deuxième vise à réformer son institution interne chose plus incertaine.

[1414] -D'après l'historien et politiste Nabil Mouline, « L'université de Médine destinée à former des Saoudiens et des étrangers à porter la »bonne nouvelle » à travers le monde, a produit plus de 45.000 cadres religieux de 167 nationalités depuis sa création en 1961. L'Arabie Saoudite aurait dépensé plus de 4 milliards de dollars pour soutenir les Moudjahidines en Afghanistan durant les années 1980. *Le Monde Diplomatique, Manière de Voir*, 2005. p.7.

[15] ("CEEOL – Article Détail")

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Les énormes mutations technologiques économiques et géopolitiques que nous vivons depuis plusieurs années portent en elles autant de menaces que de promesses. Mais malheureusement, elles nous précipitent collectivement dans une incertitude, une instabilité, un avenir difficile à maîtriser (Roy, 2008). Dans ces périodes, la tentation est grande de tenter de recréer rêveusement un monde auréolé de toutes les vertus, une nostalgie de l'islam pur et conquérant, son « âge d'or ».

Dans une rupture générationnelle, ces candidats à la mort cherchent à retourner contre leurs parents une « prétendue » vérité islamique que ces derniers auraient trahie et n'auraient pas su transmettre (Roy, 2012).

Des parents qui ne comprennent pas du tout la radicalisation[16] de leurs enfants. Car à l'aube de la deuxième décennie du XXIème siècle, l'odeur de soufre et d'encens, les appels aux meurtres des *koffars* (athées) menacent nos vies. Partout le temps est couvert, couvert de voile, de barbes, de sang, d'interprétations fallacieuses du Coran et de l'Islam.

Des questions auxquelles nous avons tenté de répondre: Quand est ce que tout a commencé? Quelle année, quel jour et en quelle saison les lumières se sont-elles éteintes? Pourquoi les jeunes empruntent-ils le registre de la radicalisation islamique? Comment faire pour désamorcer la bombe sur laquelle nous sommes assis[17]? Comment ces jeunes se sont-ils imposés alors qu'ils étaient faibles?

Cette radicalisation a entrainé un conflit entre les spécialistes et a ouvert un débat de fond dans l'interprétation des causes du djihadisme chez ces jeunes. Deux conceptions vont s'affronter: celle de Gilles Kepel qui met en avant la radicalisation de l'Islam rendue visible par la montée du salafisme, exprimée dans la formule « *radicalisation de l'islam* » et celle d'Olivier Roy qui considère que la radicalisation djihadiste n'est pas la conséquence mécanique de la radicalisation de l'islam. La plupart des terroristes sont des jeunes issus de la seconde génération de l'immigration, radicalisés récemment et sans itinéraire religieux de longue date, ils ne deviennent pas djihadistes à l'issue d'un parcours de radicalisation religieuse. Quand ces jeunes se radicalisent, ils empruntent le répertoire religieux comme les jeunes des années 1970 avaient emprunté l' « action armée révolutionnaire ». Pour O.Roy c'est une révolte nihiliste générationnelle, il l'a exprimé dans la formule « *Islamisation de la radicalité* » Il ne s'agit pas pour nous de trancher ici la question mais de comprendre pourquoi Daech attire ces jeunes et comment lutter contre cette radicalisation qui met en danger le « Vivre Ensemble »?

Si l'Etat islamique recrute aussi facilement, c'est qu'il propose à ses candidats, de vivre ensemble un récit en groupe auquel on peut croire, qui donne sens à leur vie, dans des groupes d'individus prêts à se sacrifier les uns pour les autres, pour des « étrangers » unis par l'idée de l'islam. Les humains ne veulent pas vivre sans grand récit et sans mythe, les inscrire dans un récit historique pour prolonger la flamme religieuse comme au début de l'apparition de l'Islam, c'est la narration (Logier, 2016), vécu par ces gens comme positif et non nihiliste même si ce récit se traduit par des crimes atroces. Pour eux, le fait de se faire tuer ne répond pas à une volonté de mourir mais de vivre « au-delà ». C'est ce qu'a bien compris ce groupe terroriste.

Ils perçoivent leur vie actuelle comme dénuée de sens et dont ils veulent sortir, ces recrus pensent qu'ils sont en train de sauver le monde même si c'est une vision apocalyptique, puisqu'il faut d'abord le détruire. Dans cette approche, la violence constitue un rite de passage vers la libération de soi et de l'humanité (Atran, 2016). Parler de « psychopathes » ou de « fous » empêche la compréhension du phénomène. Comment explique-t-on alors le fait de trouver des sympathisants de Daech dans une centaine de pays hommes et femmes de tous âge, avec des positions sociales diverses? Des jeunes marginalisés en France, des universitaires en Angleterre, des professionnels en

[16] -Tout cela fini par construire une espace de religion du Djihadisme qui devient relativement autonome par rapport aux préceptes de l'islam.

[17] -Est le titre de notre article paru dans le *Huffington Post* en 2015.

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Afrique, des étudiants en Tunisie. Il faut revoir le lien relationnel et social du groupe car beaucoup ont rejoint Daech avec leurs amis, tenter de réparer l'ascenseur social qui est en panne depuis plusieurs années, intégrer les mémoires de l'immigration dans le récit national afin qu'ils ne sentent plus de périphériques à la nation. Avec l'essoufflement de l'utopie politique islamique et d'une civilisation tournée uniquement (avec rigueur) sur le religieux on constate l'apparition depuis des années d'un nouvel islam tissé de compromis pragmatique avec l'Occident et nourri au libéralisme économique. Il est marqué par l'émergence d'une nouvelle classe bourgeoise cosmopolite qui est demandeuse de religion plus mondaine, plus individualiste, plus adaptée à la société française (un islam de France disaient certains) et surtout tournée vers l'économie du marché et le profit alliant Coran et management.

COMMENT DAECH A « SÉDUIT » CERTAINS JEUNES??

La radicalisation, c'est-à-dire la légitimation ou le recours à la violence, touche tous les grands monothéismes (et pas uniquement l'islam) mais aussi le domaine social (« black blocs ») et évidemment la sphère politique (identitaire, séparatistes). Le radicalisme musulman prévoit la fin prochaine du monde, avec comme signe annonciateur la guerre en Syrie.[18] L'adepte entre dans une communauté fraternelle nouvelle en adoptant une idéologie globale répondant à toutes les questions de la vie.

Certains jeunes issus de l'immigration sont attirés par la révolution que porte Daech et par le changement profond de leur vie qu'elle peut leur procurer. Ces jeunes radicalisés se sentent investis d'une mission morale, même s'ils viennent d'un milieu délinquant et même s''il existe une multiplication de motivations et une multitude de profils

Des jeunes, des personnes très diverses sont séduites par Daech. Cette fascination vient du fait qu'elle leur offre la possibilité d'être des super héros, en leur donnant la faculté de décider de la vie et de la mort d'autres personnes et le pouvoir sur les femmes. Parce qu'ils sont à la recherche d'un récit qui donne sens à leur vie que ce mouvement exerce une magie sur eux. Daech cherche à mettre en application une résolution édifiée sur la négation de l'individu et des libertés individuelles[19]. En effet, chacun, est défini uniquement par son appartenance à la communauté musulmane, et tous les musulmans doivent adhérer à ce projet. Cette communauté doit être perpétuellement mobilisée dans une lutte dont l'objectif est fixé par le projet idéologique de Daech. Il cherche ainsi à créer un homme nouveau, il est un soldat d'Allah, il lutte et meurt pour affermir les principes de l'islam.

Daech a bien compris que les discours sur la République et les institutions démocratiques et républicaines, ne mobilise plus, il est bien au contraire source de contestation. Daech va alors développer un marketing qui s'adresse à l'affect, aux émotions, aux tripes et sentiments. Elle va chercher à inscrire ces jeunes dans un récit historico-religieux glorieux, devenant ainsi la « meilleure » organisation sur le marché de la radicalisation.

Dans son approche, la violence constitue un passage obligatoire vers une libération personnelle et même une libération de l'humanité. Elle réussit à leur « vendre » l'idée apocalyptique qu'ils sont en train de sauver le monde puisqu'il faut le détruire en premier. Il faut souligner que Daech consacre beaucoup de temps pour écouter chaque personne qu'elle recrute, en même temps, il trouve les moyens de marier des frustrations intimes avec son grand récit, cette histoire d'un monde nouveau, pur et paré de touts les vertus qu'on cherche à construit ensemble. L'objectif est de provoquer une

[18] -Bataille de l'Armageddon prévue par les prophètes et reprise par le Coran

[19]-Cette situation nous renvoie à « la banalité du mal » qui révèle selon Hannah Arendt l'inconsistance tragique de l'accusé (Eichmann), son incapacité à penser et à juger par lui-même le rend un personnage robotisée n'ayant fait qu'obéir, « dé substantialisé », *Eichmann à Jérusalem,* 1963.

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adhésion totale en allant chercher les ressorts intimes du candidat plutôt qu'un développement de généralités théologiques sur l'Islam et le Coran.

Pour attirer les jeunes dans son giron, le mouvement terroriste Daech propose à ces jeunes ce qu'il y a de « meilleur » ces dernières années sur le marché de la contestation sociétale radicale, appuyée par une visibilité médiatique concoctée avec un récit narratif et des aventures alléchantes. Ces jeunes vont pouvoir ainsi marquer la rupture générationnelle avec leurs parents, ils vont retourner contre ces derniers une « prétendue » vérité islamique qu'ils auraient trahie et pas su transmettre (Roy, 2016).

Mais on peut s'interroger sur la vie religieuse de ces jeunes qui empruntent le registre de la radicalisation islamique. Parmi eux, il y a des jeunes stupides certes, quelques psychopathes également, mais aussi des gens brillants, instruits et intelligents.

Ces jeunes radicalisés ne sont pas pratiquants de longue date, ils croient au paradis (si non, ils ne se feraient pas exploser) et à la mort. Ils se dispensent des obligations rituelles religieuses parce qu'ils se font exploser et que dans leur conception, vis-à-vis de ce genre de sacrifice, Dieu sera plus clément vis-à-vis de la carence de leurs pratiques religieuses telles que les prières, le ramadan et autres obligations religieuses. Ce qu'ils cherchent, c'est cette rédemption finale qui les dispense d'être un bon et vrai pratiquant. La plupart d'entre eux, même s'ils viennent de milieux délinquants voire criminels, se sentent investis sincèrement d'une mission morale.

Ils affichent clairement leur volonté d'établir un califat, mais ils n'évoquent pas la société islamique qui se construirait sous le califat. Ils ne parlent jamais de ce que serait la vie dans une société islamique et n'annoncent pas non plus le futur mais seulement la fin des temps, car vivre ne les intéresse plus. Ces jeunes n'attendent rien du futur, c'est véritablement « no future » et la mort ne peut être que la solution à ce questionnement de mal de vivre. Ce sentiment est nihiliste, qui ne croit plus à la vie, il est celui qui meurt dans la pureté de son acte.

On sous-estime la capacité d'attraction de Daech, l'utopie qu'elle propose et même les valeurs que porte cette organisation terroriste. Pour Scott Atram, anthropologue français, parler de psychopathes ou de nihilistes empêche la compréhension du phénomène. Comment explique-t-on que cette organisation a des sympathisants dans nombreux pays, hommes et femmes de tout âge et de toute catégorie sociale: des jeunes diplômés et marginalisés en Tunisie, des universitaires en France, des salariés en Algérie et en Angleterre. Ils sont attirés par la révolution que propose Daech ainsi que par le changement de vie qu'elle compte leur procurer. Ces jeunes estiment leur vie inutile sans aucun sens et veulent en sortir (Liogier, 2016).

LA MORT EST LEUR DESTIN?

La mort est au cœur du projet des jeunes radicalisés. Leur révolte mortifère se marie parfaitement bien avec le discours apocalyptique de l'organisation terroriste Daech. La biographie des djihadistes passés à l'action dans les mois qui suivent leur reconversion montre qu'ils n'ont pas de pratiques réelles de l'islam et que la mort est au centre de leur projet.

Que sait-on de leur trajectoire sociale?

Une majorité de ces candidats à la mort a pu connaitre des parcours familiaux dysfonctionnel et déstructurés assez estampillés ainsi qu'un parcours scolaire impacté par l'échec. Une enfance imprégnée par l'absence du père, certains sont marqués par des placements en foyers, d'autres par des influences subies. Il est possible qu'ils aient trouvé dans leur adhésion au djihadisme une communauté protectrice, une forme de rédemption. Ils ont connu des interventions des services sociaux et de la justice des mineurs précoces.[20] Les environnements familiaux sont jugés

[20] ("Les chemins de la radicalisation – Le Monde diplomatique")

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inappropriés ou défaillants et les passages en foyer et en famille d'accueil jalonnent l'enfance et l'adolescence de la plupart d'entre eux. La relégation scolaire trouve parfois une compensation dans des sociabilités de rue le monde des bandes- (Laurent Bonelli, 2015) et les petits désordres qui les accompagnent.[21]

Autre constatation, le sentiment puissant d'identification à une communauté d'opprimés, victime d'un supposé acharnement occidental contre l'Islam et les musulmans est dû à une haine viscérale de l'islam triomphant d'après certains d'entre eux. Ce sentiment peut expliquer en partie les raisons de cette radicalisation. Un autre élément qui nous semble intéressant est leurs contacts avec l'étranger et le monde à savoir les réseaux sociaux, les expériences sur le terrain, les vidéos…) qui joue un rôle crucial dans le processus de la radicalisation.

La grande nouveauté avec les attentats de années 1990 c'est la recherche délibérée de la mort alors que ceux des années 1980 et 1990 (comme Khaled Kelkal) cherchaient à vivre, ils organisaient leur fuite.

LE SALAFISME CONDUIT-IL AU DJIHADISME DE CES JEUNES?

Ce mouvement a émergé dans les années 1990 juste après la première guerre du Golfe en 1991. Bien que l'Arabie saoudite a financé les mosquées, il a soutenu Saddam Hussein contre les monarchies pétrolières. Pour regagner les cœurs, les Saoudiens vont envoyer de nombreux prédicateurs et injecter beaucoup de moyens financiers pour rallier la « jeunesse arabe » à leur salafisme. Certains jeunes vont voir dans l'exacerbation de l'identité islamique une occasion de se défendre contre les actes de discriminations qu'ils subissent. Le salafisme propose une séparation et pose des problèmes de séparatisme sociétal (Homme/Femme, pratiquant/non pratiquant, musulmans/autres…). Et même si certains fondamentalistes salafistes ont flirté avec certains thèmes de Daech, et portent une grande responsabilité dans le départ de nombreux jeunes pour faire le Djihad, les salafistes, leur mort n'est pas nécessaire à leur action.

Les salafistes ne préconisent pas la violence, puisqu'ils sont liés au système saoudien et que l'Arabie Saoudite n'a aucune envie de faire la guerre avec ces clients du pétrole. Certains prédicateurs portent une responsabilité politique et morale et fait de la proximité de certains thèmes qu'ils mettent en avant avec ceux de Daech. Ce discours fournit le socle et la fracture cultuelle (Islam/Chrétienté) sur lesquels se construira aisément le passage à l'acte violent lorsque les djihadistes le prêcheront.

Le salafisme vise à construire une identité politico-religieuse qui se concrétise dans sa prétention à représenter l'ensemble des musulmans de la planète (*oumma*). Une stratégie de ghettoïsation qu'ils cherchent à imposer à leurs adeptes composantes de la société française s'exprime à travers des revendications clivantes sans cesse renouvelées (au niveau des comportements, vêtements, alimentation, scolarisation). Ils s'accordent le droit d'excommunier (*takfir*), les enfants refusent l'Islam des parents et vont jusqu'à la rupture avec ces derniers. D'autres musulmans, tels que les Chiites, les Soufis, sont leurs principaux ennemis.

Les salafistes sont sensibles aux questions géopolitiques et ceci s'explique par leur idéologie cosmopolite et par les interventions militaires ratées de l'Occident dans certains pays arabo-musulmans. L'appréciation de ces interventions militaires jugées très violentes par beaucoup des musulmans et leur cortège de morts, celle qui a enfanté en Irak l'Organisation l'Etat Islamique (OEI) et celle qui a conduit la Libye au chaos, ont alimenté un esprit de revanche et une haine antioccidentale. A ces constats nous pouvons ajouter la question palestinienne et la guerre actuelle en Syrie.

[21] -Gérard Mauger, *Les Bandes et la bohème populaire*, Paris, Belin, 2006.

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Le salafisme a réussi à faire de la défense de la *oumma* la nouvelle idéologie tiers- mondiste et à faire adhérer des jeunes à la recherche d'une cause. Ils communiquent avec les moyens technologiques moyens (internet, Facebook,..) des clips et pas du texte. Ils sont engagés dans une guerre planétaire contre l'Occident, mais aussi contre d'autres composantes de l'Islam, Certains salafistes refusent les lois républicaines et légitiment au moins intellectuellement l'usage de la violence qu'ils présentent comme vengeresse.

LA NÉCESSAIRE RÉFORME DE L'ISLAM EN FRANCE[22]. QUELQUES RÉFLEXIONS.

Voilà à notre sens quelques pistes de réflexion afin de faire émerger un « islam des Lumières »[23] en France:

-Les instances religieuses musulmanes ne peuvent plus ignorer que leurs fidèles appartiennent aussi à une Nation et sont par conséquent les citoyens de cet Etat.

- Décréter la guerre sainte dépassée et inutile et refuser toute forme d'intégrisme[24]. Dans le Coran, il y a autant de versets qui prônent la paix que la guerre. Les muftis doivent privilégier les premières: l'ascèse intérieure. Substituer au Jihad, la bataille contre soi, l'approfondissement de la foi, l'amour de l'Autre, en l'absence de clergé en islam il revient par conséquent aux intellectuels musulmans de le faire

-Réévaluer le statut de la femme. Polygamie, répudiation… sont les aspects les plus visibles de l'infériorité juridique de la femme. Comme toujours les fondamentalistes s'appuient sur les textes. Ils les extrapolent exemple: *frappez- la de 100 coups* (Sourate de la Lumière), ce statut est caduc.

-Affirmer la prééminence de l'individu sur la communauté. Pour interpréter les textes, les musulmans doivent se libérer de l'idéologie de la communauté très forte dans cette religion. Puisque l'islam prétend transcender des identités nationales, la *oumma* n'est pas au-dessus de la critique humaine.

Existence des Etats avec des histoires et des cultures différentes et de l'autre côté, l'Homme croyant ou pas, est libre de s'exprimer.

-Rappeler le primat de la politique sur le religieux. L'islam régit la sphère céleste et les affaires terrestres, le domaine privé et l'espace public. Il faut cantonner les imams à la mosquée c'est à cette condition que l'islam pourra se séculariser.

Un islam rénové n'est nullement une menace pour la laïcité, il faut faire valoir un islam des Lumières (Chebel, 2009).

-Favoriser une nouvelle interprétation des textes: Après le questionnement de l'innovation Depuis près de mille ans, l'interprétation s'est figée sur des préceptes qui datent du Moyen Age. Or le coran doit être replacé dans son contexte historique nouveau, il ne nous parle plus de la même manière

-Le fait religieux comporte ordinairement une dimension sociale puisqu'il se vit dans une communauté. La foi est enseignée, reçue, vécue dans une mosquée, église, synagogue, elle s'exprime

[22] -Un Islam en France est un islam qui doit respecter le statut de la femme, les valeurs de la République, la laïcité, l'égalité Homme/femme, in fine il doit séparer le ciel et la terre. Un islam en France est un islam importé d'autres pays (Arabie Saoudite, Afghanistan, Algérie…) qui veulent l'appliquer intégralement sans tenir compte de l'histoire et des spécificités de la société française.

[23] -L'expression est de l'anthropologue Malek Chebel.

[24]- Le terme même d'*intégrisme* a historiquement une origine chrétienne[24]. En 1890, c'est le nom du parti politique espagnol crée par ses prometteurs en vue de la mise en pratique du syllabus, publié par les autorités pontificales, en 1864. Ce texte s'oppose de la façon la plus totale à tout modernisme et préconise une conception fixiste des pensées et des comportements aux différents plans politiques, idéologiques et religieux. Il s'agit en fait, de faire en sorte que rien ne change en quelque domaine que ce soit, toute modernité risquant de remettre en cause l'intégrité des principes éternels de l'Eglise.

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dans un culte célébré publiquement le vendredi. La religion suscite ainsi l'existence d'une communauté musulmane (confessionnelle par nature) à l'intérieur de la société française globale et cette dernière ne peut plus ignorer la présence musulmane et se désintéresser de la présence musulmane dans le pays.

De nombreux musulmans sont en quête d'une spiritualité enfin partageable entre tous, athées, agnostiques et croyants de toutes confessions. Les générations qui arrivent sont mues par cette immense espérance d'une « respiritualisation » du monde (A.Binar, 2016). Leurs ainées sécularisées se battaient pour une société qui soit la plus juste. A ce combat pour le progrès politique, ces nouvelles générations veulent ajouter le progrès à leur religiosité.

Elles perçoivent que les deux sont inséparables, que la transformation personnelle sera demain la condition- l'énergie- de la transformation sociale. Elle refuse le monde d'hier, qui ne donnait plus guère de droit de cité au spirituel, qui mesurait la valeur d'une vie en termes de réussite matérielle, de plaisirs sensibles. En rupture avec ce modèle, cette jeunesse veut éprouver la joie bien exaltante de se sentir vivante, animée par cette sublime source lumineuse décrite par toutes les traditions de sagesse d'Orient et d'Occident. (A.Binar, 2016).

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Measuring Performance Management in Albanian Public Administration

(The relationship of work-life balance, work-family conflict, and family-work conflict with employee performance – the moderating role of job satisfaction)

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Abstract: *This study aims to examine the effect of work life balance and burnout on job satisfaction and its impact on Employee Performance. This study uses explanatory quantitative research on Public Administration in Albania with 35 respondents processed using the SEM-CB approach. The results of the study indicate that work life balance directly influences Job Satisfaction in Public Administration in Albania, burnout directly influences Job Satisfaction, work life balance directly influences employees. The success or failure of employee performance that has been achieved by the organization will be influenced by the level of performance of employees individually or in groups. Performance is the result or level of success of a person as a whole, during a certain period in carrying out tasks compared to various possibilities, such as work standards, targets, or criteria that have been determined in advance and have been mutually agreed upon. This study aims to explore the relationship between work-life balance, work-family conflict and work-family conflict and employee performance perceptions with job satisfaction serving as a moderating variable.*
Keywords: *work life balance, burnout, job satisfaction, employee performance*

INTRODUCTION

Employees are a renewable asset of the organization, they are a key driver of change, especially in a rapidly changing environment. Companies must constantly redesign their work to align with their business strategy and improve organizational performance. In the study of employee or employee performance management, there are things that require important considerations because the individual performance of an employee in the organization is part of the organization's performance and can determine the organization's performance. The success or failure of employee performance that is achieved by the organization will be affected by the level of performance of employees individually or as a group.

The importance of paying attention and developing performance is not only a need for organizations that aim for financial gains, but also a need for non-profit organizations, such as government organizations/institutions that perform various functions of governance and national development. Employees in governmental institutions have a very important role as executors of governmental activities. The Institute of Statistics (INSTAT) asks interested parties to measure the performance of their employees by providing quality statistical data. The provision of data to interested parties is carried out through various statistical activities, be it registration, survey or compilation of administrative data/secondary data which are carried out periodically, continuously or at any time with a predetermined period of implementation. Therefore, the physical and mental conditions of employees must be in good condition in order to achieve qualitative work and work objectives.

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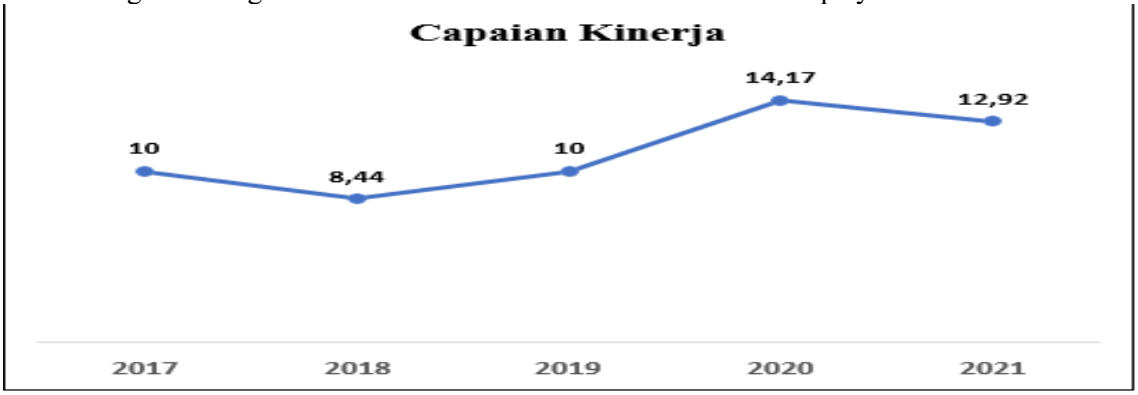
Figure 1.1 Figure of Performance Achievements of INSTAT employees. 2017-2021



The image above shows the components of the performance achievements of INSTAT employees for the period 2017-2021, the results show that there is a decrease in the performance achievements of INSTAT employees in 2021 compared to the previous year. This performance achievement component contains several key performance indicators, including indicators aimed at increasing human resource (HR) capacity and institutional arrangements. In order to maintain the quality and commitment of the employees who are required to achieve the given objectives, in general, many companies are currently implementing Work Life Balance programs. The success of work always depends on teamwork or human resources in the organization. Getting maximum results through maintaining a work-life balance of employees becomes very important for the organization. An organization must recognize that the basic demands of employees and work stress must be balanced so that team members can deliver maximum results without fatigue (Ullah and Durrani, 2011). But if not managed properly, it can be a disaster for the organization, which ultimately, in turn, reduces the performance of the employees. In project management methodologies, work-life balance has become very important, especially in human resource management and organizational behavior studies. In previous research, it has been identified that work-life balance has a very large effect, which has a significant correlation with employees' family life, personal health, organizational responsibility, work performance and loss of efficiency in the workplace (Zheng and Wu, 2018). Discrepancy between the professional life and personal life of employees is a major concern for organizational progress because it directly affects the organizational performance chart (Muhammad Irfan et al., 2021). A person can live a happy, healthy and successful life when there is a work-life balance. Work-life balance is indeed of major concern for those who want to have a good quality of life (Breitenecker and Shah, 2018). In this case, balance is achieved when there is harmony between work and life. (Semlali and Hassi, 2016) Since the last decade, the concept of work-life balance has been seen as important for both organizations and people, and has been proven to contribute greatly to increasing employee productivity, which in turn, has a positive impact on the organization. (Guthrie, 2012). An effective work-life balance policy adopted by the organization allows employees to engage with the community while ensuring that costs and turnover are controlled and productivity is increased (Helmle et al., 2014). Soomro et al, (2017:129-146) in their research titled "The relationship of work-life balance, work-family conflict and family-work conflict with employee performance – the moderating role of job satisfaction". This study aims to explore the relationship between work-life balance, work-family conflict and work-family conflict and employee performance perceptions with job satisfaction serving as a moderating variable. The sample used by the questionnaire was distributed to 280 teaching members as respondents. The results of this study indicate that work-life balance is positively related to employee performance. The coefficient is positive (0.22) and highly significant, as expected. The equation of this research with the research to be conducted is to examine the relationship between work life

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balance variables and employee performance. The difference between this research and the research that will be carried out is in the object and in the data analysis, namely this study uses AMOS 20, while the research that will be carried out uses PLS and in this study job satisfaction as a mediating variable, while the research that will be performed is job satisfaction as an intervening variable. However, it is different from the research conducted by Chiekezie et al., (2016) which does not affect the work-life balance with the performance of the workers because in improving the performance the objective is used. Employees try to meet this goal by any means for fear of losing their jobs. It can be interpreted that employee performance does not depend on work-life balance. Regardless of whether or not there is a work-life balance, workers still strive to work well because they have goals that need to be met. In addition, boredom at work is also highly influential on employee performance. One of the effects of fatigue is the reduction of productivity, if not treated immediately it will damage the institution and the individual himself. According to Rizka (2013), fatigue is a psychological syndrome that will happen to a person when that person performs the same job for a very long time. This condition will cause people to experience prolonged stress in their work. However, it is different from the results of the research conducted by Yoanisa Mahaardiani et al (2013), Hayati and Fitria (2018), which in their research found that there was no significant impact on employee performance because of fatigue. In addition, improving the quality of performance is also influenced by employee satisfaction. Job satisfaction is a positive feeling about one's job, which is the result of an evaluation of its characteristics (Robbins & Judge, 2008). Affandi (2016) who says that job satisfaction causes an increase in performance, so that satisfied workers are more productive at work. Likewise, Wirawan (2013) says that people's positive or negative feelings and attitudes towards their work have implications as for their impact on themselves and the organization. If people are satisfied with their work, they enjoy it and are motivated to perform their work and their performance is high, otherwise if they are not satisfied with their work, they are not motivated to perform their jobs and their performance is low. The results of this study are supported by the research of Ali, Idris and Kalalinggi (2013) which shows that job satisfaction has a significant and positive effect on employee performance. The research of Ali, Idris and Kalalinggi (2013) is consistent with the research conducted by Rosita and Yuniati (2016) and Febriyana (2015) which also shows that job satisfaction has a significant and positive effect on employee performance. To achieve job satisfaction, there are many factors that influence it, including work-life balance and fatigue. The results of a study conducted by Fayyazi & Aslani (2015) said that work-life balance has a significant positive impact on employee satisfaction for company workers in Albania. Supported by research by Amalina et al., (2018), Arif & Farooqi (2014) and Rene (2018) who state that work-life balance has an impact on job satisfaction. Meanwhile, there are differences in the research results of Farha et al., (2017), Hidayatulloh (2019), namely that work-life balance has no effect on satisfaction. This is the basis for making the satisfaction variable a mediating variable for the effect of work-life balance and burnout on the environmental performance of INSTAT employees.

LITERATURE REVIEW

Work-Life Balance

Work-life balance has good content at work and outside of work with minimal conflict (Clark in Fapohunda, 2014), this work-life balance is about how a person seeks balance and comfort at work and outside work. In aligning these two things, there is a need for balance, many employees find it difficult to manage both at work and their own health. This is especially important in the area of human resources where this balance plays an important role in the smooth running and success of employees (Saleem & Abbasi, 2015). Schermerhorn (2013) revealed that Work-Life Balance is a person's ability to balance the demands of work with personal and family needs. According to

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Delecta (2011), Work-Life Balance is defined as an individual's ability to fulfill their work and family commitments, as well as other non-work responsibilities. According to Robbins and Coulter (2012), the work-life balance program includes resources for parent and childcare, employee health and welfare, relocation, and others. Where many companies offer family-friendly benefits, employees need to balance life and work, which include flextime, job sharing, telecommunicating and others. The time needed in the two different roles, if the needs and demands of an employee have been met, it can be said that the employee has a work-life balance. Based on the above definition, it can be concluded that there is a balance between roles in work and outside work where there is minimal conflict between roles within the organization and roles in the employees' lives. Balance is also associated with employees who are able to maintain and feel harmony in life, in the work environment, and roles in the neighborhood. An employee will also achieve success in his personal life as well as in a satisfying work life if the involvement between his time and his role goes well. Burnout is a state of extreme psychological stress so that individuals experience emotional exhaustion and low motivation to work. Burnout can be a result of chronic work stress (King, 2010). Maslach and Leiter (in Rizka, 2013) argue that burnout is a negative emotional reaction that occurs in the work environment, when the individual experiences prolonged stress. Burnout is a psychological syndrome that includes fatigue, depersonalization, and decreased ability to perform routine tasks such as causing anxiety, depression, or even sleep disturbances. Burnout is a situation where employees suffer from chronic fatigue, boredom, depression and withdrawal from work. The stress reaction that is especially common in people with high standards is burnout. Burnout is a state of emotional and physical exhaustion, low productivity, and feelings of isolation, often caused by work-related stress. Burnout is a state of psychological pressure on an employee after being in the job for a certain period of time. So, from the description above, it can be concluded that Burnout is psychological pressure due to emotional exhaustion experienced by employees, so that they are often weak, tired, hopeless and have low work motivation.

JOB SATISFACTION

In working, employees do not just work, but employees will face various situations, for example the relationship with co-workers, the work relationship with superiors, the rewards received, and also promotion opportunities. It can be said that job satisfaction is a predictor in terms of achieving individual welfare and in considering a person's desire or decision to leave his job (Indrasari, 2017).

The following are stated by several experts regarding the definition of job satisfaction, including the following:

1. Robbins and Timothy (2019), said that job satisfaction is a positive feeling towards work, resulting from an evaluation of its characteristics because employees who have high job satisfaction will have positive feelings towards their work.

2. According to A.A Anwar Prabu Mangkunegara (2017), job satisfaction is the feeling of employees who support or not activities related to the work or the condition of the employee, the expression of feelings involving several aspects such as wages or salaries, career development opportunities, relationships between co- workers, placement work, type of work, and organizational structure

3. Robbins (Wibowo, 2016, P.415) Job satisfaction is a general attitude towards a person's job that shows the difference between the number of awards received at work and the amount they believe they should receive.

4. Greenbeg and Baron (Wibowo, 2016, P.415) describe Job Satisfaction as a positive or negative attitude that individuals have towards their work. Meanwhile, Vecchino (Wibowo, 2016:

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415) defines Job Satisfaction as a person's thoughts, feelings, and action tendencies, which is a person's attitude towards work.

3.1 Employee Performance

Performance is the result or level of success of a person, over a certain period, in carrying out tasks compared to various possibilities, such as work standards, targets, targets or criteria that have been determined in advance and have been mutually agreed upon. According to Anwar Prabu Mangkunegara (2013) performance is the result of work in quality and quantity achieved by an employee in carrying out his duties in accordance with the responsibilities given to him. According to Irham Fahmi (2016) performance is the result obtained by an organization, both when the organization is profit oriented and non-profit oriented, which is produced over a period of time. According to Kasmir (2016), performance is the result of work and work behavior that has been achieved in completing the tasks and responsibilities given in a certain period. Meanwhile, according to Edison (2016) performance is the result of a process that refers and is measured over a certain period of time based on pre- determined provisions or agreements. From the various definitions for *performance* above, it can be concluded that performance is the performance or appearance or work of a person or organization in carrying out work to achieve goals and can be measured by standards that have been set for a certain period.

THEORETICAL FRAMEWORK

Pratama and Setiadi (2021) explain in their research that personal life work disorders interfere with personal life with work, increased work life, increased personal life affect employee satisfaction. Through this research, it is hoped that new businesses can benefit from work-life balance policies to increase job satisfaction. Next, Ganapathi (2016) explains in his research that work-life balance has a positive effect on employee job satisfaction. Supported by research by Rondonuwu, et al (2018) that work-life balance affects employee job satisfaction. Research suggests that work-life balance has a positive and significant effect on job satisfaction, burnout has a negative effect on job satisfaction, but the results are not significant. Prianto and Bachtiar (2020) found in their research that burnout has a negative effect on job satisfaction. Gemely and Baharuddin (2020); Khdour (2015); Lu & Gursoy (2013); Mendieta & Cosano-Rivas (2011) explained that burnout has an effect on employee job satisfaction. Bataineh (2019); Irfan, et al (2021); Lely, et al (2022); Metea, et al (2014); Wu, et al (2018); Kurnia and Widigdo (2021) suggest that work-life balance and burnout affect employee performance.

4.1 Methods

This research was conducted on the public administration employees of INSTAT. The researchers chose for this research causal research. Causal research is chosen because it aims to test the hypothesis about influence. The population of this study is infinite; this is because there is no collection of objects or individuals that are the subject of the search known limits or measurements of the total number of individuals included in the study can be made. The population in this study were INSTAT employees. In this study, the sampling technique used was non-probability sampling with a purposive sampling technique. The reason for using purposive sampling is that it is hoped that the sample to be taken meets the criteria of the research to be conducted. The sample used in this study was 100 employees. Data analysis is to interpret and draw conclusions from some collected data. This research uses SEM (Structural Equation Model) to process and analyze the research data. Through SEM software, not only the causal relationship (direct and indirect) in the observed variables or constructs can be revealed, but also the components that contribute to the construct itself

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can be quantified so that the causal relationship between the variables or constructs becomes more informative, complete and accurate.

4.2 Result and Discussion

Based on the results of the feasibility test of the research model, the next analysis is Structural Analysis Equal Modeling (SEM) in a full model. The results of data processing for the full model SEM analysis are explained as follows

Table 1 *Research Model Feasibility*

The Goodness of Fit Index	Cut off Value	Result	Information
Chi-Square	< 149,885	113.221	GOOD
Probability	≥ 0,05	0.113	GOOD
CMIN/DF	≤ 2,00	1.671	GOOD
AGFI	≥ 0,90	0.920	GOOD
GFI	≥ 0,90	0.977	GOOD
TLI	≥ 0,95	0.912	GOOD
CFI	≥ 0,95	0.934	GOOD
RMSEA	≤ 0,08	0.018	GOOD

Source: Primary Data Processed, 2022

The results of the feasibility test of the model presented in Table 1 show that the overall test criteria are in a good category or meet the required evaluation criteria. In the ChiSquare test, a model will be considered good if the results show the calculated Chi-Square value less than the table Chi-Square value. The largest Chi-Square number, which is less than the value of the Chi-Square table, indicates that the better the model means there is no difference between the population estimate and the tested sample. This research model shows that the calculated Chi-Square value is 113.221, while the critical value / Chi-Square table with df = 123 is 149.885. Because the calculated Chi-Square value in this study is less than the critical value, it means that the research model is not different from the estimated population / the model is considered good (accepted).

4.3 Hypothesis Testing

The structural equation model consists of two exogenous variables and one endogenous variable. Table 2 shows that the estimate of standardized effects consists of an estimate of standardized direct effects.

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HIP	Variable			Regression Coefficient	
				Direct Effect	
HO	***Exogen***	***Endogen***	→	***Coef***	***Prob.***
H1	Work-Life Balance	Job Satisfaction Job	→	0.95	0.000
H2	Work-Life	Job Satisfaction Job	→	0.02	0.025
H3	Balance	Employee Performance	→	0.945	0.000
H4	Burnout	Satisfaction Employee Performance	→	0.03	0.037
H5	Job Satisfaction	Employee Performance	→	0.242	0.039

Source: Primary Data Processed, 2022

Table 2, shows that the analysis results illustrate that all paths in the structural equation model have a significant effect (p-value or probability value <0.05). The direct effect of work-life balance on Job Satisfaction is 0.95; burnout on Job Satisfaction is 0.02; work-life balance on employee performance is 0.945; burnout on employee performance is 0.95 and Job Satisfaction on employee performance is 0.242.

DISCUSSION

H1: The Effect of Work Life Balance on Job Satisfaction

Work life balance has a direct influence on job satisfaction, which means that if employees have balance in their work life, their satisfaction will significantly increase. This study supports the results of research by Pratama & Setiadi (2021); Rondonuwu, et al (2018); Paangemanan, et al (2017) state that work life balance can increase job satisfaction

H2: The Influence of Burnout on Job Satisfaction

Burnout has a direct influence on job satisfaction, which means that if employees enjoy their work in the office, their satisfaction will significantly increase. This study supports the results of research by Prianto and Bachtiar (2020); Gemely and Baharuddin (2020); Khdour (2015); Lu & Gursoy (2013); Mendieta & Cosano-Rivas (2011) which state that burnout influence job satisfaction.

H3: The Influence of Work-Life Balance on Employee Performance

Work-life balance has a direct influence on employee performance, which means if employee have balance in their work life, their performance will significantly increase. This study supports the results of research by Bataineh (2019); Irfan, et al (2021); Lely, et al (2022); Metea, et al (2014); Wu, et al (2018); Kurnia and Widigdo (2021) which state that work life balance can increase employee performance.

H4: The Effect of Burnout on Employee Performance

Burnout has a direct influence on employee performance, which means that if employees enjoy work in the office, their performance will significantly increase. This study supports the results of research by Bataineh (2019); Irfan, et al (2021); Lely, et al (2022); Metea, et al (2014); Wu, et al (2018); Kurnia and Widigdo (2021) which state that burnout influence employee performance.

H5: The Influence of Job Satisfaction on Employee Performance

Job Satisfaction has a direct influence on employee performance, which means that if employees enjoy work in the office, their performance will significantly increase. This study supports the results of research by Bataineh (2019); Lely, et al (2022); Metea, et al (2014); Wu, et al

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(2018); Kurnia and Widigdo (2021) which state that job satisfactions influence employee performance

CONCLUSIONS

The results showed that the rise and fall in employee performance and job satisfactions in the organization is influenced by work-life balance and burnout. Based on study of the results, it can be seen that work-life balance has a partial effect on job satisfaction and employee performance, which means that if employees have a balanced work-life ratio, their satisfaction and performance will significantly go up. Also, burnout has an effect on job satisfaction and employee performance, which means that if employees enjoy work in the office, their satisfactions and performance will significantly increase. Job Satisfaction has a direct influence on employee performance, which means that if employees enjoy work in the office, their performance will significantly increase.

Suggestions and Recommendations

The limitation of this study is that the research only focuses on work-life balance and burnout as factors that affects job satisfaction and employee performance. In fact, the factors that affect job satisfaction and employee performance are not only work-life balance and burnout, but their organizational culture, competence, discipline, and so on.

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Prioritizing security awareness in the fourth industrial revolution: strategies and considerations

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***Abstract**: Industry 4.0, which is the fourth industrial revolution, includes the integration of digitized physical objects and key partners into digital ecosystems and production processes to improve industrial processes. Unfortunately, these systems have increasingly become vulnerable to cyber-attacks, and significant security risks exist in the supply chain. As a result, security awareness has become crucial to improve behavior and reinforce good security practices. To identify an effective security awareness strategy, semi-structured interviews were held with security experts in the industrial sector. The study recognized the components of security awareness strategy, including knowledge, motivation, communication, training, and evaluation. The findings emphasize the significance of the industrial culture when implementing security awareness, while the most significant challenges are the rapidly increasing digital threats and the managerial shortage of time and resources.*
***Keywords:** Information security, industry 4.0, digital transformation, awareness strategy, Albania*

INTRODUCTION

The rapid acceleration of internet connectivity has led to increased automation for organizations, such as the Internet of Things (IoT) (Oscarson, 2019). The IoT has enabled the Industrial Internet of Things (IIoT), which improves industrial processes through interconnectivity and real-time control systems (Topping et al., 2021). This shift from traditional mechanical industrial methods to digitalization has been referred to as Industry 4.0 and led to new production and supply chain management methods (Pereira et al., 2017).

However, digitalization has intensified digital threats (Oscarson, 2019), and daily reported hacker attacks on supply chains (Zave & Rexford, 2021; Topping et al., 2021). As industries increasingly connect to external networks, hackers gain access to critical processes on the supply chain (Pereira et al., 2017).

Despite this threat, many organizations still do not prioritize security reinforcements and tend to focus on technical security solutions, even though humans are often the cause of security violations (Oscarson, 2019; Corallo et al., 2022; SANS, 2018;). Therefore, it is crucial to work on security awareness to protect industrial processes. This paper aims to identify the aspects of establishing an effective security awareness strategy applied to the industrial setting of Albania.

THEORETICAL FRAMEWORK

In recent years, the threat landscape for cyber-attacks has become increasingly sophisticated, and businesses need to prioritize their information security measures. (IFSEC Global 2022) Organizations often rely solely on technical solutions to safeguard their systems, without considering the human factor in cybersecurity. Hackers frequently use social engineering tactics to exploit human weaknesses and gain unauthorized access to networks and sensitive information (SANS 2018). To address this challenge, it is crucial for businesses to implement security awareness programs that educate employees on cybersecurity best practices and raise awareness of the risks posed by cyber threats.

Security awareness can be defined as the process of promoting a culture of security within an organization and encouraging employees to adopt safe security behaviors (Ali Zani, Norman & Abdul Ghani 2020). The goal is to create a security-conscious workforce that understands the importance of information security and takes proactive steps to protect against cyber threats.

Effective security awareness programs may include training sessions, simulations of real-world cyber-attacks, regular communication and reminders of security policies and procedures, and incentives for good

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security practices (Légard 2020). By improving employee awareness of cybersecurity risks and promoting a culture of security within the organization, businesses can significantly reduce the risk of successful cyber-attacks. (Wilson & Hash 2003)

Research has shown that there is a need for increased security awareness and strategies for industry 4.0 to prevent security breaches that can cause financial losses. (Corallo et al. 2022, Pereira, Barreto & Amaral 2017) Industrial control system (ICS) are used for critical societal functions like electricity, water supply and transportation. (Knapp & Langill 2015)

Several studies have investigated how to build cybersecurity strategies, such as Legárd (2020), Ponsard & Grandclaudon (2020), Ryttare (2019), and Da viega (2018). However, standards for cybersecurity take time to be updated, and often do not provide advice on behavioral aspects of information security. Leaders' role in ensuring good security awareness levels can affect the entire organization (Hwang, Wakefield, Sanghyun & Kim 2021).

Security awareness review has resulted in the steps of *knowledge, motivation, communication, learning/training, and evaluation* (Oscarson 2019; Legárd 2020).

Different groups within an organization may have different *knowledge* needs regarding cybersecurity. (Oscarson 2019). Besides knowledge, it is important to understand the *motivation* that affects people's behavior, to change their awareness. People are more likely to be engaged and committed to security when they understand not only how to act but also why. (Oscarson 2019). According to Kuppusamy et al., 2019 the most widely used motivation theory in information security behavior studies is the Protection Motivation Theory (PMT). PMT proposes that people's behavior is influenced by two main factors: threat appraisal and coping appraisal. (Kuppusamy et al., 2019)

Threat appraisal refers to individuals' perception of the severity of a potential threat. The more severe the perceived threat, the more motivated individuals are to protect themselves from it. Intrinsic and extrinsic rewards can also influence individuals' motivation to protect themselves.

Coping appraisal, on the other hand, refers to the evaluation of individuals' ability to manage and handle the threat. If individuals believe that the recommended behavior will effectively reduce the threat and they have the skills and resources to implement it, they are more likely to comply with security policies and procedures. (Kuppusamy et al., 2019)

Security policies are sometimes hidden or have very technical language (Oscarson 2019). Studies have shown that information security policies that are written in an easy and clear way are more effective in promoting compliance behavior among employees (Li et al., 2019; Legárd, 2020; Lundgren & McMakin, 2009; Oscarson, 2019). If policies are too technical or difficult to understand, employees may avoid security altogether, increasing the organization's vulnerability to cyber-attacks. A technical background may not always be sufficient to convey complex security concepts to employees who may have little or no technical expertise. As reported by SANS (2019), approximately 80% of security awareness professionals have a technical background but lack adequate communication skills.

According to Lee (2022), dialogic internal *communication* can encourage employees' safety behaviors in the workplace. This can be achieved by engaging employees in two-way conversations to identify and address their concerns. (Men & Yue (2019), Tao, Lee, Sun, Li & He 2022)

Providing practical exercises and real-life scenarios can also help employees understand the importance of security and how to act in a secure manner (Thomas 2014). Moreover, learning and training should not be a one-time event but rather an ongoing process to reinforce security awareness among employees and keep their knowledge up to date.

Oscarson (2019) emphasizes that *measuring* awareness activities is necessary to understand the impact of security awareness on employees' behavior. Measuring only knowledge may not provide an accurate representation of actual behavior, as highlighted by Fertig, Schütz, and Weber (2020). Therefore, organizations should develop customized metrics that align with their specific context and goals (Arabsorkhi & Ghaffari, 2018; Légard, 2020). Programs sometimes lack support from their operations and finance departments and the main reason why transformation fails is internal resistance (Reynolds 2020)

Evaluating security awareness programs is essential to understand their effectiveness, and customized metrics should be developed to align with organizational goals. (Legárd, 2020; Oscarson, 2019)

The literature review indicates a gab in security awareness strategy to increase security for industry 4.0.

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RESEARCH METHOD

The use of interviews as a data collection technique allows for in-depth exploration of participants' perceptions and experiences (Myers, 2020). Semi-structured interviews allowed for a balance between a predetermined set of questions based on the theoretical framework (knowledge, motivation, communication, learning/training, and evaluation) and the ability to explore emerging themes or issues during the conversation.

Five experts were interviewed for their insights and experiences in both the information security fields. All experts were chosen based on their role as security responsible in the industry with knowledge and experience in the security building process.

The data analysis process involved transcribing the recorded interviews and conducting a thematic analysis of the data (Spencer et al., 2014). Thematic analysis is a flexible method that can be used in a range of research contexts and allows for the identification of patterns and themes in the data (Braun & Clarke, 2021). The use of a thematic analysis in this study allowed for the identification of common themes across the participants' responses, which were organized into the five categories of the theoretical framework.

RESULTS

In relation to digital threats, participants mentioned the rapid pace of digitalization, while emphasizing the ransomware attacks and encryption viruses. Legislation and security standards often lag the knowledge of hackers and cybercriminals.

Expert 1: "*There seems to be a perpetual lag in legislation and security standards, and it appears that hackers and criminals are consistently ahead in terms of their knowledge and skills. It's unclear why this is the case, but it's a concerning issue that needs to be addressed."*

The findings support previous studies that digitalization has increased the level of digital threats (Oscarson, 2019)

All of the participants highlighted the lack of security culture in industries.

Expert *5: "The industry is behind. Traditional companies that have been forced to enter digitalization to keep up with the market".*

Expert *4 "We are behind in the security aspects".*

Expert *2: "Industry workers are not out working with computer on a daily basis"*

These results confirm that industrial security is very problematic since security has not been a priority for industrial control systems evolvement.

All security experts mentioned that security is still not prioritized.

Expert 3 expressed that "*changing people's bad security habits is challenging, especially if they consider those habits effective way of working. De-effectivizing their way of working leads to resistance."*

On the other hand, Expert 4 noted that the biggest challenge is the existing noise in the organization. "*It is not just the security department that is trying to communicate to employees, but also other departments such as HR, communication, economy, quality, and environment are competing for their attention."*

The results confirm that organizations need to prioritize security reinforcements.

Knowledge

Concerning which knowledge needs to be taught to employees to become more security aware, all the informants agreed to work with knowledge in different levels. Four experts also mentioned sharing knowledge about security breaks. An example of these results are the following comments:

Expert 1 and 2 mentioned the importance of having a baseline level of security measures in place, but also emphasized that " *there is a need for tailoring security efforts to the specific composition and level of knowledge of the staff group".* They stated that the security measures presented must be relevant and practical for the group being addressed. Drawing a parallel to physical safety, Expert 2 likened this approach to the way fire safety measures are implemented and suggested that security awareness efforts can take inspiration from this approach.

Expert 5 "*we are not good at sharing our own mistakes". "If we are going to get better in this I think that we need to be sector wise and share experiences and knowledge".*

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These results confirm what research is saying, that it is important for organizations to understand threats specific to a sector or organization.

Motivation

Regarding aspects to motivate the employees to become more security aware, three of the informants highlighted the importance of making inclusive and interactive activities.

Expert 2: "I think that the most important motivation is comprehending the reason behind what we are doing".

Expert 3: "If there is a collaboration or interaction, people are more likely to remember and engage."

Expert 4: To promote people's engagement is more effective.

These results emphasize the importance of users recognizing the relevance of the subject to them.

Communication

When asked about who should lead the security awareness work, and what qualities are necessary for them to possess, four informants answered communication.

Expert 1: In my opinion, effective communication is the key to success in this area.

Expert 4 "I think that it is good if the awareness work is led by a central security function

Expert 5"It has a lot to do with communication abilities and conveying a message".

According to three interviewees, "*it is essential to involve leaders in training activities"*. This confirms that leaders have a crucial role in promoting security awareness in organizations, as their behavior and decisions can affect the entire organization.

Learning and training

Regarding how to learn and train information security knowledge, security experts mentioned different types of activities.

Examples are the following comments:

"Attending training courses, workshops or seminars
Discussing security topics with colleagues or peers
Participating in security competitions or hackathons
Sharing knowledge or experiences in communities
E – Learning"

Evaluation

Concerning how to evaluate security awareness, few respondents mentioned techniques to evaluate knowledge or behavior.

The results confirm that measuring awareness is neglected.

Examples are the following comments:

Expert 4: "The evaluation is a challenge and needs to be done among departments."

Expert 5: "I believe that incorporating discussions and understanding of how people work, and whether they are engaged in these topics and groups, should be integrated into daily work."

The evaluation of security awareness should include measurements of knowledge and behavior, while only one respondent recommended assessing soft character traits.

DISCUSSION AND IMPLICATIONS

The research results have shown that one of the biggest digital threats for industries in Albania is the changing industrial processes and that the biggest security awareness challenge is the industrial culture.

The findings suggest that the rapid pace of digitalization poses a significant digital threat, while security measures are not keeping up with the same pace. It is crucial to involve leaders in the security awareness process, as they play a crucial role in influencing employees. However, some of the significant challenges faced by managers include a lack of time and resources, not seeing the value of security awareness, and psychological barriers. In terms of knowledge aspects, it is essential to teach information security knowledge

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at different levels and share it across organizational boundaries. Motivational aspects should also be considered, with interactive and context-specific activities being preferred. Experts suggested making learning and training activities interactive, enjoyable, and encouraging people to learn and share knowledge.

It is also important that managers assess culture changes and evaluate security awareness, knowledge and behavior of employees.

The findings can be applicable to security awareness efforts in other nations, as aligning security awareness strategies with the organization's culture has a significant impact.

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Solidarity of the international trade union movement in the post covid 19 era

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Abstract: *International cooperation is the basis of international solidarity, but international solidarity is not limited to international assistance and cooperation, humanitarian assistance and charity. International solidarity should be understood as a broader concept that includes the sustainability of international relations, the peaceful coexistence of all members of the international community, equal partnership and equal distribution of benefits and burdens, refusal to cause harm or create obstacles to the common good, including within the international economic system and the common ecological system. Solidarity is a fundamental element of the trade union movement and an essential aspect of the work of international trade union organizations. It can take many forms: from simple support to trade unions involved in local disputes, to trade union organizations' massive action to engage affiliates and other trade unions to support federation members in major conflicts. It is critically important to make full use of social dialogue to fight the crisis and support the incomes of the workers in the post pandemic era. The cooperation with trade unions at home or together with other countries, internationally, allows respecting human rights in general and the rights of workers, in particular.*
Key words: *solidarity, trade union, trade union movement, post COVID 19.*

The idea of solidarity became widespread in the late 19th and early 20th centuries. This was due to the objective need to search for new forms of interaction between social actors in the context of the growing class conflict of the bourgeois society, when the former social institutions of traditional society, such as the family, the neighborhood community, and religion, began to lose their significance and strength and there was a threat to the stability of the society. The interpretation of the concept is the identification of the principles of interaction, which implies mutual understanding, consent and cooperation of different subjects of interaction.

The most famous concept among the classics was created by Emile Durkheim. He shared mechanical solidarity, characteristic of early, archaic societies, based on collective ideas, and organic solidarity, characteristic of differentiated societies, associated with the division of labor.[1]

Mechanical solidarity is the social integration of members of a society who have common values and beliefs. These common values and beliefs constitute a "collective conscience" that works internally in individual members to cause them to cooperate. Because, in Durkheim's view, the forces causing members of the society to cooperate were much like the internal energies causing the molecules to cohere in a solid, he drew upon the terminology of physical science in coining the term *mechanical solidarity*.

In contrast to mechanical solidarity, organic solidarity is social integration that arises out of the need of individuals for one another's services. In a society characterized by organic solidarity, there is a relatively greater division of labor, with individuals functioning much like the interdependent but differentiated organs of a living body. Society relies less on imposing uniform rules on everyone and more on regulating the relations between different groups and persons, often through the greater use of contracts and laws.

Solidarity means a community of interests, like-mindedness, unanimity, interdependence, interconnectedness, mutual responsibility, joint responsibility. Thus, solidarity is defined as a principle of social existence, involving the pooling of resources and capabilities of the subjects to

[1] Britannica, The Editors of Encyclopaedia. "mechanical and organic solidarity". Encyclopedia Britannica, 9 Feb. 2010, Accessed on 25.04.2023 https://www.britannica.com/topic/mechanical-and-organic-solidarity.

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achieve common goals, while the interests of each of the subjects are in balance with the interests of the community.

The history of social movements shows that solidarity has been clearly localized over the course of a century and a half. It is a familiar political formula – the solidarity of workers, the solidarity of democratic forces, the solidarity of civil society. For years, even decades, sociologists and political thinkers have been talking about social movements or new types of communities. It is impossible to deny that the solidarity of the members of these social units is a quite obvious, easily observable phenomenon.

Solidarity is one of the main areas of joint work of the trade union movement. Many activities of trade unions such as raising wages and improving working conditions, protecting trade union rights, and combating privatization have common features. Trade unions welcome any form of solidarity that makes them aware that they are not alone and that their actions are part of a common struggle. Any expression of support of its members and other trade union organizations, as well as their protests against the actions of companies, employers and governments, could be an important impetus for the trade unions' own campaigns.

Even a simple expression of solidarity can have a positive effect on the mood of the workers participating in the campaign, as it will allow them to reassure themselves of the support of the entire trade union movement. This may be especially important in countries where union mobilization is particularly difficult. Letters of protest, in turn, can be effective by drawing public attention to employers and governments and thereby bringing a local or national conflict to the international level.

The COVID-19 pandemic has been a test for trade unions in all countries, revealing not only existing weaknesses, but also creating a sense of urgency to mobilize around the protection of members and to mitigate the impact of the pandemic on the labor market.

The global pandemic of COVID-19 has caused a crisis unlike any other in recent history. Millions have been infected and hundreds of thousands have lost their lives worldwide. In addition to the devastating health consequences, this pandemic has resulted in an unprecedented economic downturn that has affected people on a global scale. It is now more important than ever for the international trade union movements to come together in solidarity to protect the working people. The COVID-19 crisis exposed and exacerbated existing challenges, putting increasing pressure on the trade unions. Trade union membership was declining in both developed and developing countries. The future of trade unions depends on their response to pandemics.[2] In the post COVID-19, it will be necessary to promote cooperation, offering basic services in a different way, recovering and creating decent employment through diverse and complementary organizational models of production.

The effects of the pandemic are far-reaching and affect workers from all the sectors of society. Those worst hit include precarious jobs workers who lack access to basic protective measures; informal or casual workers with no job security; migrant workers struggling with inadequate support from governments; young workers facing increased inequalities; women disproportionately affected by unpaid care duties; and retirees at risk due to reductions in pension schemes. The sheer magnitude of this crisis must be addressed through collective efforts and solidarity among unions around the world.

Social, economic, environmental and developmental changes affect the future of trade unions. The shift from manufacturing towards services, environmental change, the informalization of the economy, automation and technological change determine the capacity of trade unions to organize

[2] Post Covid-19: Towards Trade Union Revitalization**.** Accessed on 24.03.2023 https://www.ilo.org/actrav/media-center/video/WCMS_815066/lang--ja/index.htm

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and service workers. Today, legal restrictions and violations of trade union rights, such as the right to organize and to bargain collectively for all workers, are widespread. Not surprisingly, trade union membership is lower where there are violations of trade union rights, but is declining in both developed and developing countries. This, in its turn, also erodes legitimacy in collective bargaining and social dialogue. Such decline in trade union influence has a strong impact on people in non-standard or precarious types of employment, such as temporary and own-account workers or workers in the informal and gig economies. In other words, the changing employment relationship is not only a threat to workers, but also to workers' organizations.[3]

To overcome this challenge, it is essential that international trade unions unite and work together to ensure decent living conditions for all workers, regardless of their location or background. It is important to mention that International Labor Organization had some important conventions and recommendation that was focused on the principle that universal and lasting peace cannot be established or maintained if it is not based on social justice. Crisis situations around the world destroy livelihoods; interrupt business activities, and damage workplaces. Societal institutions stop functioning effectively, countless workers lose their jobs and the rights and social protection they are entitled to. As a result, inequalities and social exclusion are worsened, which leads to a lack of respect for labor standards. Certain population groups, including minorities, children, women, the disabled and the elderly, are particularly affected as well as migrants and populations experiencing forced displacement.

The role of trade unions (as well as employers and governments) in the generation of employment and decent work for the purpose of prevention, recovery, peace, and resilience with respect to fragile environments gained renewed impetus following the adoption of the Employment and Decent Work for Peace and Resilience Recommendation (No. 205) by the International Labor Conference in 2017. This Recommendation replaces the Employment (Transition from War to Peace) Recommendation (No. 71), adopted in 1944, expanding its scope to crisis situations arising from all conflicts and disasters and extending action to prevention, preparedness, reconstruction and recovery.[4] Recommendation No. 205 does not offer solutions – it is only a guide that invites social partners to reflect systematically on the ways in which the world of work can play a more sustained and central role in making the planet a safer and more secure world for everyone.

The pandemic has led to an unprecedented global health and economic crisis. In the face of this crisis, it is more important than ever for the international trade union movement to stand in solidarity with workers around the world.

The COVID-19 pandemic has become only a phenomenon that has been exposing accumulated problems. In the economic sphere, COVID-19 has transformed into a coronavirus recession; in the social sphere, it has revealed the problems of poverty and social justice, which for a long time have been pushed into the background under the pretext of prioritizing market mechanisms in the distribution of the social product. The pandemic has demonstrated that the basis for overcoming the crisis is provided by the primacy of sovereign interests and a reasonable share of national egoism, and that the object of anti-crisis measures is not to unite efforts to jointly resist the crisis, but to save the national economy in order to ensure social well-being of the population. The anti-crisis practice has called into question the prospects of the globalist model of the development of society, at least in the form in which it was presented in the pre-COVID period.[5]

[3] Owidhi George Otieno, Dickson Onyango Wandeda, Mohammed Mwamadzingo, Trade union membership dynamics amidst COVID-19: Does social dialogue matter? in "International Journal of Labour Research", Vol. 10, Issue 1–2, 2021, p. 3

[4] Workers' Guide to Employment and Decent Work for Peace and Resilience Recommendation (No. 205), International Labor Office, ACTRAV, Geneva: ILO, 2019, p. 5

[5] Gennady A. Shcherbakov, Impact and Consequences of the COVID-19 Pandemic:

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The pandemic has exposed the deep inequalities that exist in our societies. It has shown that our economies are not working for everyone, and that our social safety nets are inadequate to protect workers and their families against hardship. By 2030, the number of people living in extreme poverty is projected to rise by another 130 million. The pandemic has hit people in low-paying, low-skill jobs particularly hard, while more skilled workers have been hit the hardest. As a result, the income gap between the poor and the rich, both individuals and countries, will widen significantly in the world.

It should be stated that a crisis of this magnitude could only be solved by states in cooperation with private companies that will support the production of public goods. A coordinated international response will help confront new risks and disasters. The world is interconnected, so only by joint efforts can we cope with the challenges of the crisis. A new type of international cooperation is required to prevent future consequences, study diseases, innovate medical equipment and research, and redirect significant funds accumulated by private entities to general needs. This is a condition for the preservation of peace.[6]

The pandemic has also highlighted the importance of strong and effective unions. Unions are essential to ensuring that workers have a voice in the decisions that affect their lives, and they play a vital role in protecting workers' rights and advocating for better working conditions. We can name the possible impact on trade unions[7]:

- The balance of power between employers and their employees may look one-sided at present, with normal industrial levers like strikes being unrealistic during periods of economic contraction. Counter-intuitively, this could provide a chance for trade unions to grow, as they offer employees an established mechanism through which to apply collective influence in the workplace, for example based on confidence about safety at work, or through active engagement in restructuring processes.
- There is an opportunity for unions who wish to build a more prominent role to do so and to reassert their relevance in the modern workplace. We have already seen this as employers consult with their unions about tactical issues such as furlough, along with more strategic workforce reshaping.
- Trade unions with an eye to the future may see this as a moment to take the initiative and establish or build a stronger position. Their focus may shift quickly to those businesses where we have recently seen evidence of employee activism, including tech businesses and those in the gig-economy

Now, more than ever, the need to stand in solidarity to demand decent work for all workers is gaining momentum, regardless of where they live or what job they do; there is need to fight for a just recovery from this crisis that puts workers and their families first. And the trade unions together with the governments have to build a better future for all workers, wherever they may be.

For the Republic of Moldova, the coronavirus pandemic represented one of the biggest challenges in recent times. However, COVID 19 was more than a health crisis and has had an unprecedented social-economic impact. It was difficult to predict what would come next, but it was

Socio-Economic Dimension in "MIR (Modernization. Innovation. Research).", 12(1):8–22, 2021;. (In Russ.), Accessed 24.03.2023 https://doi.org/10.18184/2079-4665.2021.12.1.8-22

[6] Alexandr N. Sheremet, Pandemic of inequality. socio-economic aspects and consequences of COVID-19 in "Medicine. Sociology. Philosophy. Applied Research", No. 4, 2020. (In Russ.), Accessed 24.04.2023 URL: https://cyberleninka.ru/article/n/pandemiya-neravenstva-sotsialno-ekonomicheskie-aspekty-i-posledstviya-covid-19

[7] Trade unions in the post-pandemic workplace. What should employers be doing now? Accessed on 24.04.2023 https://www.pwc.co.uk/services/human-resource-services/human-resource-management/trade-unions-in-the-post-pandemic-workplace.html

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certain that more measures must be taken not only in that period, but also in the post-COVID period, measures that would reduce the consequences of this pandemic.

The International Labor Organization supported and provided expertise at the beginning of the Covid-19 pandemic. In its analysis the "Impact of the Covid-19 pandemic on the labor market in the Republic of Moldova and political responses to the stages of restrictions, gradual reopening and recovery" the ILO presents a list of recommendations for priority economic and social recovery measures. This document was presented for discussion within the Permanent Council regarding the restructuring and development of the national economy, financial, fiscal and revenue policies of the National Commission for consultations and collective negotiations.[8]

At the same time we should specify the measures in supporting workers, which were previously proposed by trade unions, and which were included in the Labor Code. These relate to the granting of days off to workers who receive vaccinations, allowances for employees with distance learning children and unemployment benefits following the establishment of a state of emergency, siege and war or as a result of restrictions imposed in a state of emergency of public health.

On the other hand, within the society the pandemic situation strained the communication process and relationship. For fear of not being infected, many employees who were physically active, felt stressed and were afraid of contacts with their colleagues. Apart from this, other components were also impacted: empathy, collaboration and direct communication, unity, sense of collective responsibility, trust, safety, stability, intra-organizational solidarity, team spirit, time management problems, initiative, creativity, psycho-emotional involvement, encouragement, exchange of opinions, personality culture, collective integration actions, employee stimulation, direct participation in decision-making activities, etc.

The Republic of Moldova remains among the world leaders in terms of the scale of the migration process for work purposes, as well as in terms of the degree of dependence of the economy on remittance flows. Given that the pandemic caused by the COVID-19 virus has affected all spheres of social life and, in particular, mobility, policies to reduce the impact of the pandemic must take into account the impact of the pandemic on migration processes. The COVID-19 crisis aggravated existing challenges for the Moldovan labor migrants. In March 2020 alone, more than 40,000 Moldovan citizens came back to the country and around 7,000 were seeking help to return home. Most of the workers were employed in Italy, Spain, France and Israel, and they were among those workers that were hit hardest by the wave of factory closures and temporary layoffs as well as the almost complete shut-down of certain sectors, such as tourism, across Europe.[9]

The new dimension that humanity is experiencing is a scary one for some, but also turning into new opportunities of growth and development for others. The unknown and fear increased to some extent solidarity, concern for others, fairness, the ability to communicate, interact, putting the emphasis at the same time on the fact that health is priced the most, something that was often not taken into account. In general, it was concluded that emphasis must be placed on some values which encourages recognition of facts, actions, things that really matters to humanity. They have changed everywhere rules, priorities, hierarchies, social needs.

In conclusion we can say that one of the signs of a democratic trade union is the creation of conditions for the implementation of the principle of freedom of opinion and discussion, respect for

[8] Galina Munteanu, Apel la solidaritate, pentru a ajuta națiunile să se refacă după criza de Covid, in "Vocea poporului", No 38, Noiembrie, 2021. Accesed on 20.04.2023 https://vocea.md/apel-la-solidaritate-pentru-a-ajuta-natiunile-sa-se-refaca-dupa-criza-de-covid/

[9] Anna Andreeva, Trade unions in transformation: Experiences from Europe and Central Asia, ILO/ACTRAV, Bureau of Workers' Activities, August 2022, p. 25

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the interests of each member of the trade union, the right of the minority to defend and clarify their position at the stage of discussing issues. But the basic principle of the union – solidarity – requires unity of action after decisions are made. The pandemic has led to a profound reassessment of how we work, where we work, and even why we work, all of which must be negotiated, and where unions and their members must play a leading role. In the post-pandemic world, there are serious changes in various spheres of society: unemployment increase, the forms of interaction between citizens and with the state change. It takes serious damage for business, which is unlikely to deal with without government support and assistance; digitalization of life continues, including in education. In the foreseeable future, the world is also expecting a serious adjustment (if not a change) in the economic model, which today demonstrates its vulnerability. The coronavirus has become a test of the mobilization capabilities not only of different countries, but also for trade unions and for trade union movement, during which the ability to quickly respond to events and effectively solve momentary problems was tested.

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The impact of digital transition on education

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Abstract: *An area of intense academic focus is the transition from traditional teaching and learning methods to new technologies and the way they contribute to students' creativity and academic performance. Nowadays, information and communication technologies and digital technologies are used on an increasing scale and there are many opportunities for interaction and collaboration in the digital environment, which is leading to new forms of engagement and value creation. The aim of the present paper is to demonstrate how innovation, creativity, and extensive dissemination of scientific and technical knowledge and information enhance the potential for academic growth and competitiveness.*
Keywords: *technology, education, digitisation, evolution, success*

Rezumat: *Un domeniu intens abordat în mediul academic îl reprezintă tranziția metodelor tradiționale de predare și învățare spre noile tehnologii și modul prin care acestea contribuie la dezvoltarea creativității și a performanțelor academice ale studenților. Tehnologiile informației și comunicațiilor, precum și cele digitale sunt utilizate pe o scară tot mai mare și în prezent există numeroase posibilități de interacțiune și colaborare în mediul digital, iar acest fenomen determină apariția a noi forme de implicare și creare de valoare. Scopul lucrării de față este de a demonstra modul prin care inovația, creativitatea, diseminarea largă a cunoștințelor și informațiilor științifice și tehnice sporesc potențialul de creștere și competitivitate academică.*
Cuvinte cheie: *tehnologie, educație, digitalizare, evoluție, succes*

THE NEED FOR INNOVATION IN EDUCATION

New ways of using technology and teaching methods can really help with learning and training, but sometimes they do not work as well as we hope. Some online courses are not completed by a lot of people, and sometimes students do worse when they use computers instead of books. This might be why people have not started using advanced technologies as much. It is harder to know if they can bring good things for students, teachers, and schools, and it is also hard to understand all the risks, costs, and benefits of trying new things.

There continues to be rapid growth in digital learning and the continuously developing technology market, which means it can be difficult to know what is right and what is wrong. Often, the early purchase of infrastructure can be costly before a return on investment is realized. New online learning is also changing the boundaries between formal and non-formal education and training and massively increasing the possibilities for individual learning, but this creates risks for students in terms of how such learning should be validated and by whom.

When someone learns things on their own, it makes us think about how we can be sure that what they learned is true and correct. Nowadays, people are still figuring out how to do this in different parts of the world. People come up with new ways to check if someone really learned something, but it is still important that these new ways are connected to official qualifications that are recognized by the government. Countries that let people learn in their own way and give them chances to prove what they already know might be good at dealing with these new challenges.

A more systematic and interconnected approach is needed to identify the pedagogical costs and benefits of innovation and digital learning technologies and to determine their efficiency and effectiveness. Intermediary structures (new or established on existing ones) are needed that can help coordinate and organize teacher and trainer engagement with new technologies to maximize their benefits and act as knowledge management organizations that can reference good practice.

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The ways we learn and teach are changing because of new ideas and tools. Teachers and trainers play an important role in this process. It can be hard for them because things are different than before, but there are also new and exciting possibilities. Technology helps teachers and trainers work together and plan lessons. Some teachers and trainers are worried that these changes will not be accepted by schools or universities.

Teachers and trainers need skills and approaches to be innovative and, in the face of the scale of change facing vocational education and training, there is now a greater need for effective initial training and continuing professional development. Supportive environments in education can provide clear direction, space and time for innovation. This is provided that teachers and trainers get the support they need. There are many opportunities for virtual and physical learning through blended learning techniques and the development of new forms of social learning through online platforms.

At the same time, the development of networks and communities of practice can enable teachers and trainers to share experiences and expertise on instructional methods, teaching and learning, and digital tools.

Work-based learning is very important in the process of acquiring practical, experiential, and vocational skills to determine how digital tools can best support work-based learning, for example, by making greater use of technologies such as virtual and augmented reality and related artificial intelligence.

Work-based learning, as a form of education and training, is well placed to respond to wider environmental, social, and economic challenges, as it has the potential to meet new skills and provide experiential and practical learning either in schools or in companies or other workplaces, particularly for apprentices. It can therefore support not only technical and job-specific skills but also transversal skills needed for innovation.

A key challenge is therefore to what extent education and training programs should integrate digital learning into their curricula. The Pandemic has shown that there are variations between sectors in the use of digital tools. While they can reduce the unit costs of learning and provide new ways of teaching/training and assessing students, it is questionable how much they can replace real-life practical experiences.

There is the possibility for work-based learning to make more use of digital learning that simulates practical experiences using virtual and augmented reality. In addition, there is also the possibility of improving cooperation and dialogue between education and training providers and companies through the joint use of digital tools for learning and training (especially between teachers and trainers within a company). However, it is important that the pros and cons are carefully weighed and that the optimal mix between real-world and virtual experiences is achieved. Work-based learning with projects helps develop soft skills, and digital platforms can bring people together with different subjects of interest. Overall, digitisation offers an opportunity to rethink the way education and training providers cooperate with businesses, which still have the greatest access to the latest technologies.

REQUIREMENTS OF THE DIGITAL TRANSITION IN EDUCATION

As mentioned above, the last few years have brought major developments in the digitisation of education. More and more companies are offering digitised resources for learning. In addition to interactive platforms and educational games, there are also textbooks in digital format.

This facilitates the teaching process, as the teacher can access hundreds of resources from anywhere, provided they have an internet connection. On the other hand, technology in education can also be used without internet access.

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Accordingly, technology in education can easily become an integral part of teaching and learning. Using simple and accessible applications, teachers can use technology in education to make lessons more interesting and engaging.

SKILLS REQUIRED BY THE DIGITAL TRANSITION

Teachers need to learn about the latest techniques they can use in the teaching process in order to use technology in education. This is not difficult as the internet is full of tutorials and articles that they can use for support and guidance.

Another aspect to be taken into account is the level of students' digital skills. If they are not doing very well, it is not a major problem. Children and young people learn very quickly and are curious about new things. So, when the teacher uses a new method or platform in the teaching process, they will quickly get used to it and be able to use it easily.

Consequently, using technology in education can start from a low level of digital skills, but as time goes by, the desire to learn more will come naturally.

BENEFITS OF TECHNOLOGY IN EDUCATION

Technology in education has the primary advantage of diversifying teaching methods. Through the use of educational presentations, videos, or online games, the teacher gives students the opportunity to learn about the topics discussed in innovative ways that involve them as well. In what follows I will highlight the most important uses of the new technology:

- through different multiplayer games and apps, students can interact with each other. In this way, they will be able to work as a team to achieve the aim of the exercise.
- using technology will make it easier for teachers to create worksheets. Using a computer, they can easily change the structure or phraseology in the assignments they prepare for the students. For example, in the case of changing jobs, the teacher can add or remove jobs from the worksheet to keep up to date with the latest jobs. And, in this way, they do not have to recreate the whole worksheet.
- when solving tasks on an application, they are generally more concise. Namely, they often use grid or short answer questions.
- technology increases student engagement. When technology is included in everyday lessons, students are expected to take more interest in the subjects they are studying. Technology offers various opportunities to make learning funnier and more enjoyable as it presents the same information but in more interactive ways.
- technology can enable more dynamic cooperation between students and between students and teachers, which can be difficult to achieve in a conventional teaching environment.
- technology improves knowledge retention among students. It can help empower dynamic cooperation in the classroom, which, in addition, is a significant factor for knowledge retention and long-term memory improvement.
- different types of technology can be used to diversify learning tasks in the classroom and to choose what works best for students according to their age.
- technology helps develop and improve new skills. By using technology in the classroom, both teachers and students can develop essential skills that are fundamental to the 21st century.
- students can improve the cognitive skills that they will use later in their careers. Modern learning through technology is about working with others, solving complex problems, basic reasoning, creating different types of communication and leadership skills, promoting creativity and improving productivity. Furthermore, the use of technology in education can help create many practical skills, including creating interactive presentations, learning to differentiate between safe and unsafe sources on the internet, composing emails, etc.

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- technology helps students stay up to date with new technological advances. Students who are able to keep up to date with the latest technological advances will be able to improve their knowledge of different areas and develop new skills that they can use in the future. These students will also be more likely to find employment, as they will have a better understanding of recent trends in various fields.
- technology helps students be prepared for careers in the future. In an economy that is increasingly driven by data, algorithms and artificial intelligence, technological literacy underpins many industries and careers, many of which are rewarding. From computer programming and software development to engineering, many jobs require a high level of technological competence.
- technology simplifies education and distance learning. The COVID-19 pandemic has forced many teachers and students to rely on distance learning tools such as Zoom, Microsoft Teams, Blackboard, etc. These and other examples of educational technology tools make distance learning possible no matter where people are at the time.
- technology offers students flexibility and support. Two students sitting at the same desk will not learn in the same way or at the same pace. In a conventional classroom setting, this can result in students being excluded, they are left behind or not challenged enough to pay attention in class. Technology allows teachers to create dynamic and innovative lesson plans combining many activities and topics, from games and interactive presentations to artificial intelligence-assisted learning, worksheets and digital textbooks. By means of new and flexible ways of learning, educational technology can make it easier for teachers to meet the diverse needs of their students.
- when technology is used properly, it has the potential to make lessons more memorable, accessible and enjoyable.

From facilitating distance learning to preparing students for technology-driven careers, these are just some of the benefits that technology in education can bring. Regardless of the taught subjects, the strategic use of educational technology can enhance any curriculum, making it easier and more exciting for students to excel.

DRAWBACKS OF TECHNOLOGY IN EDUCATION

The first disadvantage of technology in education is that in this context children work with certain abstract notions. This is difficult for students up to grade 4 because they have difficulty recognizing a notion that is not concrete, or tangible.

If students were to use their personal phones to complete these tasks, they might be distracted. Because they are used to using that phone for other games and relaxing activities, chances are they will forget that they need to pay attention and start playing games on their phone or doing something else entirely. The solution to this problem would be to use phones or other devices only during class time.

We can see how our society is advancing at an unprecedented pace in the technological field. Just reflecting on the last few years of high-speed internet access, smart mobile phones, smart watches, etc., it is not surprising that the use of technology for training and education purposes has gained more and more importance. In order to adapt to our own modern digital needs, it makes sense to incorporate technology into education. Beyond adaptation, properly used technology can actually lead to more effective learning, preparing young people to face career challenges.

CONCLUSION

All things considered, the use of technology in the educational process has many advantages, especially if we take into account the large percentage it has in our lives. Therefore, teaching and learning through technology can be regarded as a huge benefit.

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Hence, technology in education is valuable because in this way students will be able to use something known in order to learn new and interesting things. It can start from five minutes once a week to embedding online platforms in every course.

In recent times, there has been an increasing emphasis on the need to develop education systems that also train young people in practical skills and competences, as it is insufficient to assimilate a large amount of information that students do not know how to apply and use in their daily lives.

There is now more and more talk about globalisation in all fields, but globalisation in education would mean breaking down barriers between students and opening up new perspectives in teaching practice.

There are students who are open to knowledge and want to learn this field of IT technologies, they use it and prefer it instead of traditional methods, but the way it is used and enhanced depends on the teacher's mastery and the way each teacher knows how to combine methods with teaching resources in the success of the didactic approach.

By using modern technology and e-learning platforms, students benefit from improved skills in graphic organization, writing, reading, accurate calculations, etc. It also gives students flexibility in thinking and organizing working time, helps them to concentrate throughout the lesson, increases students' interest in the lesson, and encourages them to work individually and in groups.

Education can benefit from openness to concrete experiences and projects, new learning tools and materials, and open educational resources. Students can gain more autonomy through online collaboration. Access to and use of digital technologies can help to reduce the learning gap between students from advantaged and disadvantaged socio-economic backgrounds. Personalised teaching techniques increase student motivation by focusing teachers' efforts individually on each student.

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What Do National Parties Campaign on during European Elections? Trends from Romania

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Abstract: *European elections generally arouse less interest from voters compared to national elections, often because during the electoral campaigns the topics of debate of national interest end up receiving more attention than those focusing on the European Union. The discourse on Europe thus becomes marginal and the essence of the European elections is diluted by local debates or driven by inter-party ideological disputes. In Romania, 2019 marked a peak moment in the turnout during the country's fourth European election which saw more than 50% of the voters participate in the polls. However, this should not be confused with a sudden increase in Romanians' interest in European politics. Using discourse analysis, this paper analyzes the political platforms that the main political parties in Romania campaigned on during the 2019 European elections as we attempt to answer the following question: How much did the Romanian parties focus on messages emphasizing the idea of Europe and how much did they cling to the usual national arguments?*
Keywords: *EU, European elections, electoral campaign, European themes, party manifestos, political discourse, Romanian parties*

INTRODUCTION

With a new election cycle at the European level unfolding in 2024, this paper takes the opportunity to observe how national parties view the elections for the European Parliament (EP), using Romania as a case study[1]. In this sense, we analyze the trends exhibited by the Romanian political parties during the 2019 elections, by trying to ascertain if the parties campaigned on topics of interest at the European level such as the EU budget, the multiannual financial framework of the EU, the future EU energy policy, "green" objectives, debates on a European defense policy. Did they include in their political manifestos references to the main EU common policies that are of interest to Romania (agriculture, regional development, transportation)? Or did they more likely stick to the same old domestic inter-party agenda?

For the 32 seats allotted to Romania in the European Parliament, a number of 33 political formations and independent candidates initially registered in the electoral race for the elections held on May 26, 2019. According to Romanian legislation, a minimum number of signatures of support from the electorate had to be obtained first in order to be able to run: 200,000 signatures for political formations and 100,000 for independent candidates. This condition thinned down the field to just half of the initial contenders, with 16 competitors managing to collect the necessary number of signatures of support to be able to run (12 political parties, one alliance, and three independent candidates)[2]. Meanwhile, the electoral threshold dismissed the non-competitive actors and the 32

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[1] For background information about Romania's membership in the EU, see, for example: Simion Costea, *Ideea europeană şi interesele statelor,* Cluj-Napoca, Napoca Star, 2005; Simion Costea, Maria Costea (coord.), *Integrarea României in UE: provocări şi perspective/ Romania's Accession to the EU: Challenges and Perspectives,* Institutul European, Iaşi, 2007.
[2] The electoral offer was reduced compared to the previous elections held in 2014, when a number of 23 political parties and independent candidates participated in the elections (14 political parties, an alliance and 8 independent candidates).

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seats allotted to Romania were split between the six parties that obtained minimum 5% of all the votes cast.

That European elections have often been characterized as second-order electoral competitions is well known, from the classics[3] to some of the more recent reassessments[4], and, in this regard, Romania does not stray too far from this tradition. If 2019 looks like an outlier in terms of turnout, that is because it actually was since what massively contributed to the high turnout was the fact that, at the same time as the European elections, Romanians were called to a referendum initiated by the president and aimed at a topic of maximum interest to the Romanian society: the fight against corruption.

Notably, in 2019, Romanian voters were out of step with the right-wing populist swing that had characterized European electoral trends since the 2014 elections. Their voting preferences erred towards traditional center-right (the National Liberal Party – PNL – won ten seats) and center-left parties (the Social Democratic Party – PSD – won nine seats) or more recent iterations of the center-right borrowing from Western liberal rhetoric (the Save Romania Union – USR – in coalition with the Freedom, Unity, and Solidarity Party (PLUS) won eight seats). When considering which party was the target of the anti-corruption referendum, a point can be made that PSD attracted negative votes, castigated by a prominent category of voters for its record of poor governance and numerous corruption scandals. In the meantime, the emergence of Romania's very own domestic radical right party – the Alliance for the Union of Romanians (AUR) – in September 2019, leads us to believe that the country caught up to the right-wing radical steamroller which for the last decade became a mainstream affair in various others Member States of the European Union[5].

This paper analyzes the party platforms of seven parties from Romania that participated in **the electoral campaign for the European Parliament in 2019** in order to identify what are the prevalent topics that political parties instrumentalize during a period that should be dedicated to European issues. Do their campaigns foster a sense of deeper integration of the state in the EU, seek to bring awareness about European programs and funding opportunities at local, regional, and national levels, or try to showcase how the livelihood of citizens both at home and in the EU can be improved through the institutionalization of European good practices? As the slogans of the main parties indicate – "Romania Deserves Better", "Romania First", "Without Theft We Get Far", "In Europe, with Dignity", "Proud to Be Romanians, Proud to Be Europeans" – the Romanian politicians embrace a national-centered approach, that is unintendedly Eurosceptic in some cases, entirely opaque to European matters in others, and more or less influenced by the ideological orientation of

[3] Karlheinz Reif, Hermann Schmitt, "Nine Second-Order National Elections – A Conceptual Framework for the Analysis of European Election Results", *European Journal of Political Research*, 8, No. 1, March 1980, pp. 3-44; Michael Marsh, "Testing the Second-Order Election Model after Four European Elections", *British Journal of Political Science*, 28, no. 4, October 1998, pp. 591-607; Simon Hix, Michael Marsh, "Second-order effects plus pan-European political swings: An analysis of European Parliament elections across time", *Electoral Studies*, 30, no. 1, March 2011, pp. 4-15; Sara Binzer Hobolt, Jill Wittrock, "The second-order election model revisited: An experimental test of vote choices in European Parliament elections", *Electoral Studies*, 30, No. 1, March 2011, pp. 29-40.

[4] Hermann Schmitt, Alberto Sanz, Daniela Braun, Eftichia Teperoglou, "It All Happens at Once: Understanding Electoral Behaviour in Second-Order Elections", *Politics and Governance*, 8, No. 1, 2020, pp. 6-18; Piret Ehin, Liisa Talving, "Still second-order? European elections in the era of populism, extremism, and Euroscepticism"; *Politics*, 41, No. 4, November 2021, pp. 467-485; Jan-Eric Bartels, "Are European Elections Second-Order Elections for Everyone", *Swiss Political Science Review*, 29, No. 3, September 2023, pp. 290-309.

[5] See: Mihaela Ivănescu, Luiza-Maria Filimon, "Mainstream Fringes or Fringe Mainstream? An Assessment of Radical Right (Re) Alignments in the European Parliament after the 2014 and 2019 Elections", *European Review*, 30, No. 1, February 2022, pp. 96-114; Werner Krause, Denis Cohen, Tarik Abou-Chadi, "Does accommodation work? Mainstream party strategies and the success of radical right parties", *Political Science Research and Methods*, 11, No. 1, 2023, pp. 172-179; Nicolas Bichay, "Come Together: Far-Right Parties and Mainstream Coalitions", *Government and Opposition*, 2023, pp. 1-22.

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the actors involved. However, the draught of EU themes that characterized the election did not stem from an anti-EU animus, but from a recurrent and self-defeating cycle of petty rivalries, flaunting the same wooden language used for the last three decades (and counting) by (most of the) Romanian political elite.

We develop a framework that maps how party rhetoric shapes electoral turnout with respect to the European Union. In this sense, we provide a comparative review of the platforms of European political families and of the national parties and conclude with a discussion on the 2019 European elections from a Romanian perspective. Our analysis seeks to highlight what part of the Romanian example is illustrative of domestic dysfunction and what references a more systemic issue that concerns the European electoral framework as a whole. From a methodological perspective, our research design is based on a discourse analysis framework consisting of two analytical levels: one which analyzes the parties' political manifestos and another focusing on the speeches of party leaders, regarded as electoral vectors, capable of mobilizing turnout.

METHODOLOGY

We analyzed the **electoral manifestos** of the Romanian political parties that participated in the 2019 European elections, with a focus on those that won seats in the EP: PNL, PSD, USR PLUS alliance, PRO Romania, PMP (the People's Movement Party), and UDMR (the Democratic Alliance of Hungarians in Romania). To arrive at a detailed picture of the national political landscape in the context of European elections, we have first examined the themes advanced by the Euro-parties in their manifestos.

Our paper documents the agenda for EU elections of the main political parties from Romania through a discourse analysis approach of party manifestos[6] and political speeches. An additional support document that we referenced was the "Guide for informed Romanian voters" published by Europuls, a Romanian center specialized on European expertise[7]. The research framework will trace the themes identified in order to assess the second-order patterns present in the Romanian case and how the deviations from the SOE model are, at best, a reflection of *pro forma* Europeanization démarches. For these purposes, we have operationalized the research questions into three working hypotheses:

(H1) national parties will promote issues concerning the EU during the campaign for European election.

(H2) national parties will promote issues concerning the EU in accordance with the priorities set by the Euro-parties in their manifestos.

(H3) due to the second-order nature of the EP elections, national parties will campaign on topics concerning internal issues.

In addition to the party manifestos, we also accounted for the position of party leaders during the campaign, since they are representative of a certain party consensus at a given time and, as such, could have an influence not only on the direction of the campaign, but on the voters as well. The 2019 elections provide the best example in this matter, since none other than the president himself, Klaus Iohannis, highjacked the campaign for European elections and turned it, inadvertently, into an electoral vehicle against the ruling party, the Social Democrats. This interference was not limited only to advancing topics critical of PSD, but it involved its very own electoral dimension, since the

[6] See: PNL, „Profesioniști în Parlamentul European – Program politic", 2019, https://www.euractiv.ro/documente/PNL_PROGRAM_POLITIC_20x20_BT_SMALL%20(1).pdf; USR-PLUS, „Obiectivele Alianței 2020 USR PLUS în parlamentul european", http://d3n8a8pro7vhmx.cloudfront.net/themes/5c937a87c29480c51ccbfe06/attachments/original/1554893315/Oferta-electorala-Alianta-2020-USR-PLUS.pdf.

[7] Europuls, „Ghidul alegătorilor români informați – Alegeri europarlamentare, 26 mai 2019", 2019, https://www.europuls.ro/wp-content/uploads/2019/05/Ghidul-alegatorilor-informati-26-mai-2019.pdf.

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president initiated a referendum centered on the fight against corruption that was held on the same day as the European elections. Consequently, an argument can be made, that in this case, the SOE model was vitiated and, paradoxically enough, as Ivănescu argues, the election crossed into national first order territory on account of these extraordinary circumstances:

"If we were to exclude the discussion about the role that the national political events played in the electoral results that those parties obtained at the European elections, it could be argued that this outcome supports the second thesis of the SOE model [authors' note: new or smaller parties register better electoral results]. The contextualization is, however, necessary and it leads us to conclude that, as Hobolt and Wittrock argued, voter choice in the European elections is based more on the national specific preferences (Hobolt and Wittrock, 2011: 30)"[8].

Furthermore, the first order characterization does not result only from the referendum overlap but needs to be considered in light of the fact that presidential elections were going to be organized in November 2019. Arguably, the two elections from May 2019 acted, therefore, as indirect campaigns for the upcoming presidential contest.

PARTIES, POLITICS, MANIFESTOS: EUROPEAN AND NATIONAL PERSPECTIVES

We assess the manifestos of the **Euro-parties** – the European political families populating the EP, which Hix, Noury, and Roland characterize as "the key agenda-setters in the European Parliament"[9]. The same authors characterize them as having quasi-monopoly on the legislative agenda which they shape through various levers, such as overseeing "the allocation of committee positions, finances, speaking time"[10]. Jabot and Kelbel underline that Euro-parties might not be "fully-fledged supranational partisan structures", but they play a significant role in the politicization of the EU[11]. This likely happens through a spillover effect, since their view of the European construction and of its future should trickle down to the national parties and from there, to the voters by way of *Euro*-manifestos. For example, in the elections from 2019, the main political families promoted eleven campaign themes (see Figure no. 1), each initiating different debates, depending on which side of the four divide they were on: (1) left wing – right wing; (2) openness – protectionism; (3) strong Europe – light Europe (meaning pro-European sovereignty versus a union of European nations); (4) progressive Europe – reactionary Europe[12].

These **themes** could be grouped into two categories – "positive" and "controversial". *Abstract* and *personal* would be two other terms that can be associated with this split. In the former case, the themes focused on the future, citing issues that would be better articulated at the European level or in which the EU should play a bigger role. These included: (1) energy, climate, and environment transition-related policies; (2) combating external threats; (3) pursuit of "Social" Europe; (4) an EU tax system; (5) digital Europe; (6) increasing the efficiency of the EU[13]. In the latter group, the "emotionally-charged themes" were driven by past, present, and recurrent crises and contentious issues. They centered on: (1) migration, the closing of external frontiers, and the distribution of

[8] Mihaela Ivănescu, "An Electoral Outlier or Second Order Business as Usual? A Decade of European Elections in Romania (2009-2019)", *Revista de Ştiinţe Politice. Revue des Sciences Politiques*, no. 70, 2021, pp. 160-162.
[9] Simon Hix, Abdul Noury, Gérard Roland, "Dimensions of Politics in the European Parliament", *American Journal of Political Science*, 50, No. 2, April 2006, p. 496.
[10] *Ibidem*.
[11] Clément Jadot and Camille Kelbel, "*Same, same, but different*: Assessing the politicisation of the European debate using a lexicometric study of the 2014 Euromanifestos", *Politique Européenne*, No. 65, 2017/1, p. 61.
[12] Pascal Lamy et al., "The campaign for the European elections: Theme and divides", Policy Brief, 11.02.2019, Jacques Delors Institute, p. 2, pp. 7-12, https://institutdelors.eu/wp-content/uploads/2020/08/ThemesandDivides-Groupedetravailelectionseuropennes-Feb19-1.pdf.
[13] *Ibidem*, pp. 4-6.

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migratory flows; (2) the nature of the European project – technocracy or democracy; (3) continuing or foreclosing on enlargement policy; (4) who pays and who spends the European budget; (5) the economic policy, austerity, responsible decision-making[14].

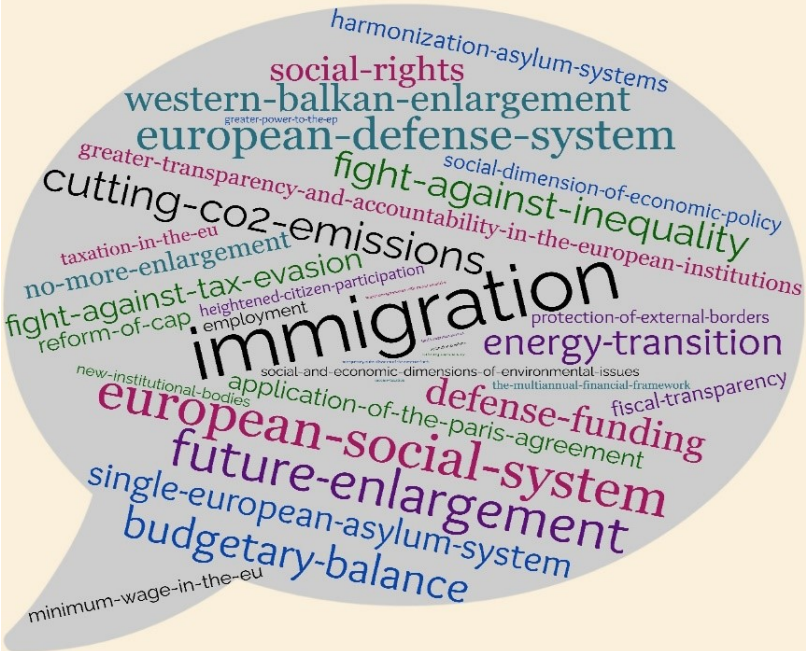

Figure no. 1: Themes advanced by Euro-parties during the 2019 campaign for the EP (Source: Pascal Lamy et al., "The campaign for the European elections: Theme and divides", Policy Brief, 11.02.2019, Jacques Delors Institute, https://institutdelors.eu/wp-content/uploads/2020/08/ThemesandDivides-Groupedetravailelectionseuropennes-Feb19-1.pdf)

Where do the main European parties fall on these topics? Cooper, Dunin-Wąsowicz, and Milanese's analysis of the Euro-groups' manifestos found that the European People's Party focused on security and identity issues with an emphasis on migration, while the Party of European Socialists prioritized the fight against inequality, economic reform, and sustainability. Notably, ideologically related groups of the Big Two campaigned on even more ambitious terms, which would require in-depth reform of certain policy areas: *migration, the Eurozone, and climate change*[15]. In this sense, a brief comparison of the topics promoted by the five largest groups in the EP is illustrative:

(1) The European People's Party (EPP) painted Europe as "**a community of values"**, that has a unified global voice, whose borders are protected, and security is consolidated by pursuing real defense capacity. A strong emphasis on mitigating the migration crisis16.

(2) The Social Democrats (S&D) proposed a "**new social contract for Europe"**, centered on social and ecological progress, quality public services, democracy promotion, social justice, and equality. In the pursuit of creating or consolidating various common policies, we find the idea of more Europeanization through integration[17].

[14] *Ibidem*, pp. 2-4.
[15] Luke Cooper, Roch Dunin-Wąsowicz, Niccolò Milanese, "The dawn of a Europe of many visions. What the European election manifestos tell us about the conflict, paralysis, and progress ahead", London School of Economics – Conflict and Civil Society Research Unit and European Alternatives, May 2019, p. 13, https://blogsmedia.lse.ac.uk/blogs.dir/107/files/2019/05/euro-manifestos-report.pdf.
[16] *Ibidem*, p. 15.
[17] *Ibidem*.

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(3) Alliance for Liberals and Democrats for Europe (ALDE) advocated for "**a more liberal Europe"** that fosters entrepreneurship, prosperity, sustainability, which is rule-based and pro-free trade, which *should play a more global role*. A managerial Europe, in other words[18].

(4) The European Conservatives and Reformists (ECR) envisaged EU **as a community of nations**, predicated on reducing barriers in the Single Market, private enterprise as a driver of positive change, transparency, and accountability of EU institutions. Notably, EPP's stated vision was that "neither federalist fundamentalists nor anti-European abolitionists offer real solutions to the problems faced by Europe today"[19].

(5) The Greens promoted the idea of "**A union that leads the world** by protecting people and the planet"; emphasizing the importance of the environment and the climate policy (the future is Green / Green New Deal); social and labor protections were another core issue. The key idea – doing much more together towards an ever-closer union[20].

In what capacity does the agenda promoted by the families of European parties trickle down at the national level? We see that Europeanization and anti-Europeanization are the driving forces behind most of the themes identified, where the former is understood as what Ladrech defined twenty years ago: the "incremental process re-orienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making"[21]. Since then, studies have further analyzed this phenomenon, determining the role of country characteristics in shaping EU issue voting[22]; assessing the content of political discourses on Europe and European integration[23]; considering the necessity of Europeanized elections and parties[24]; or debating whether Europeanization matters after all[25]. Jurado and Navarrete found that "EU issue voting is more intense in bigger European countries" that have a leading role in the EU not only because of how they act within the supranational institutions, but also because the voters in those Member States are more interested in the European agenda of their national parties[26]. In the case of Romania, we have a situation where the political parties and the citizens have long held pro-European views[27], yet where the process of Europeanization is understood and implemented in a flawed manner, and this, in turn, leaves the national scene vulnerable to radical insurgencies and electoral defections from nominally centrist voters.

PARTY PLATFORMS AND EUROPEAN ELECTIONS: A DISCUSSION ON ROMANIAN TRENDS

The 2019 European election marked the emergence of several concerning trends regarding the state of the party system and of what this spelled for the future of the democratic enterprise altogether.

[18] *Ibidem*.
[19] *Ibidem*, p. 17.
[20] *Ibidem*.
[21] Robert Ladrech, "Europeanization of Domestic Politics and Institutions: The Case of France", *Journal of Common Market Studies*, March 1994, 32, No. 1, p. 69.
[22] Ignacio Jurado, Rosa M. Navarrete, "The Europeanization of national elections: The role of country characteristics in shaping EU issue voting", *Electoral Studies*, 71, June 2021, https://doi.org/10.1016/j.electstud.2021.102286.
[23] Osman Sabri Kiratli, "Political discourses on Europe and European integration in national election manifestos and party programmes", *Cambridge Review of International Affairs*, 29, No. 2, 2016, pp. 636-659.
[24] See chapter on: "The Necessity of Europeanized Elections and Parties", in Dieter Grimm, *The Constitution of European Democracy*, Oxford University Press, Oxford, 2017, pp. 117-130.
[25] Tomaž Deželan, "Does Europeanisation matter? The Case of Slovenian Political Party Electoral Campaign for the European Union", *Politics in Central Europe*, 3, No. 1+2, 2007, pp. 11-25; Jan Kovář, "Europeanisation of EP Election Manifestos: An Application of a New Approach on the Case of Slovak Political Parties", *Czech Journal of Political Science*, No. 2, 2015, pp. 105-126.
[26] Jurado, Navarrete, *op. cit.*, p. 9. As the authors note, this means that in the other cases, "EU issues will remain of second order, whereas in big countries, politicization of European integration will become more decisive in national elections".
[27] Mihaela Ivănescu, Luiza-Maria Filimon, "Do Eastern Europeans Still Believe in the European Union? An Analysis of People's Trust in European Institutions in Romania", *Valahian Journal of Historical Studies*, 22, 2014, pp. 96-117.

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These developments could be labelled as **Non-Enthusiastic Participation** (N.E.P. – Nationalism, Euroscepticism, Politicization).

The appeal to **nationalism** was one trend that made a return after the collapse of smaller, fringe parties in previous years. While in Western Europe, parties waving nationalist tropes were by this point already entrenched on the political arena[28], in Romania, parties coopted the quasi-nationalist rhetoric in the absence of a more policy-oriented alternative.

The other trend was a mild iteration[29] of **Euroscepticism** that did not profess to reject the EU, instead, it was a symptom of the country's rocky integration journey. Twelve years after Romania became a member of the EU, it still was not any closer towards adopting the Euro or being included in the Schengen Area. Meanwhile, the Mechanism for Cooperation and Verification was still in place (and it remained active until September 2023), making Romania, along with Bulgaria, the only two Member States to be subjected to this measure. The national parties (see PSD) could easily blame those internal deficiencies in these policy areas on the arbitrary whims of Brussels' supranational institutions.

Finally, **the (re)politicization of the EU** was the accompanying trend to the nationalist and Eurosceptic undercurrents. The European decision-making process has long been characterized by *de*politicization[30] – a direction that the majority of political parties in the EP had acquiesced to, in a rather proactive manner. The reverse – often framed in critical terms – is defined by De Wilde as "an increase in polarization of opinions, interests or values and the extent to which they are publicly advanced towards the process of policy formulation within the EU"[31]. Similarly, in the case of Romania, the politicization of the EU is, while in an inchoate phase, has manifested under the guise of grievances, with the parties pledging to seek a better deal for the Romanian voters.

The **slogans** are a good entry point to determine how these trends were articulated by the parties during the campaign. The two main government and opposition parties lead the charge with two slogans that centered solely on Romania: "Patriots in Europe. Romania Deserves Better" (PSD) and "Romania First" (PNL). The slogans of two smaller parties, which broke away from PSD and PNL, echoed similar sentiments: "Proud to be Romanians. Proud to be European" (PRO Romania) and "United in Europe" (PMP). Another small party which defected from PNL and was, at the time, the junior coalition partner in government – the Romanian ALDE – campaigned on two slogans that were in the same vein as above: "In Europe with Dignity" and "Romania, Respected in Europe"[32].

There were two exceptions that broke away from this approach: the nominally pro-EU alliance (USR-PLUS) and the Democratic Alliance of Hungarians in Romania (UDMR). However, USR-

[28] Sofia Vasilopoulou, Roi Zur, "Electoral Competition, the EU Issue and Far-right Success in Western Europe", *Political Behavior*, 2022, https://link.springer.com/article/10.1007/s11109-022-09841-y.

[29] When compared to other cases. See: Michael Kaeding, Johannes Pollak, Paul Schmidt (eds.), *Euroscepticism and the Future of Europe: Views from the Capitals*, Palgrave Macmillan, Springer Nature, Cham, 2021; Oliver Treib, "Euroscepticism is here to stay: what cleavage theory can teach us about the 2019 European Parliament elections", *Journal of European Public Policy*, 28, No. 2, 2021, pp. 174-189; Alessandro Nai, Mike Medeiros, Michaela Maier, Jürgen Maier, "Euroscepticism and the use of negative, uncivil and emotional campaigns in the 2019 European Parliament election: A winning combination", *European Union Politics*, 23, No. 1, March 2022, pp. 21-42.

[30] Understood as "the technocratic modes of operation" that govern the EU, Robert characterizes depoliticization as "a way of conducting public policy [that] is, more or less explicitly, likened to a substantial transformation of the issues or activities that it affects, leading them to automatically "lose" their political and conflictual dimension". See: Cécile Robert, "Depoliticization at the EU Level: Delegitimization and Circumvention of Representative Democracy in the Government of Europe", in Claudia Wiesner (ed.), Rethinking politicization in politics, sociology and international relations, Palgrave Macmillan, Cham, 2021, p. 202.

[31] Pieter De Wilde, "No Polity for Old Politics? A Framework for Analyzing the Politicization of European Integration", *Journal of European Integration*, 33, No. 5, September 2011, p. 560.

[32] The party failed to pass the electoral threshold (4.11% < 5%) and did not obtain any seats in the EP. In 2022, it would rejoin PNL.

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PLUS focused on an issue of national interest: "Without Theft We Get Far" (a continuation of an earlier USR initiative "No Criminals in Public Office"). USR's choice was peculiar since the party boasted the most Europeanized membership of all: not only was one of the co-leaders, Dacian Cioloș, a former European Commissioner, but, in the upcoming EP group configuration, he would become the leader of Renew Europe – the group that succeeded ALDE. Meanwhile, UDMR lead with a regional, pro-European slogan: "Prosperous Transylvania, Strong Europe".

Considering these slogans, we looked at the political manifestos to see what was the broader vision that the parties embraced. In the case of PSD, the party did not issue an electoral program for the EP elections, so we derived the themes from electoral materials and the speeches of party leaders or candidates held at electoral rallies. The general theme invoked by the candidates was centered on the need to reduce the differences between Romanian citizens and other European citizens, which was linked to the need to increase the absorption capacity of European funds. Regarding this aspect, Rovana Plumb, the first name on the list of PSD candidates, criticized the European legislation that regulated Romania' access to funds from the EU budget on respect for the principles of the rule of law[33].

Even if the language used in PSD's campaign documents was moderate, during the electoral rallies the speeches of PSD leaders had, at times, a nationalist undertone. The targets were "Europeans" and "multinationals", who, in the view of the party's president, Liviu Dragnea, wanted to destroy Romania and eliminate PSD from political life. On the occasion of an election rally held in Craiova, in April 2019, Dragnea stated that "For too long we have been told that the interests of the EU are more important than the interests of Romania. Every German, Belgian, Dutch person thinks first of all about his country, because that's normal"[34]. Dragnea complained that the European institutions mistreat Romania: "We have seen European officials criticizing us. Did they help this country with anything? They scold us for nothing, for something we didn't do. Why are they not interested in how the PSD government had a positive impact on the people? Maybe they do not like it"[35].

This critical position was paired with the idea of sending to Brussels patriots who would support the interests of Romania and who, according to Rovana Plumb, would "work every day to bring European money for the development of the country"[36]. With another occasion, though, she stressed the pro-European character of PSD[37]. From this, we can observe that, when European themes were mentioned (EU budget, EU funding programs), they were filtered through a national lens that referenced internal politics and government activity, rather than linking them to PES, the Euro-party PSD belonged to (many of the themes promoted by PES would have resonated with the PSD electorate).

In the case of PNL, there was some disconnection between the rather nationalist slogan (a bastardization of Donald Trump's slogan, "America First") and the campaign manifesto which contained mentions to important European issues. PNL's political program, entitled "Professionals in the EP", included a series candidate pledges in support of: Romania's accession to the Schengen

[33] Europuls, *op. cit.,* p. 40.

[34] HotNews, „Video – Mitingul PSD de la Craiova. Liviu Dragnea: „Cineva mi-a zis: chiar dacă te arestează, venim și te scoatem de acolo" / O nouă serie de atacuri la oficialii UE și companiile străine", 12.09.2019, https://www.hotnews.ro/stiri-politic-23084844-livevideo-mitingul-psd-craiova-liviu-dragnea-iubita-lui-irina-facut-baie-multime.htm.

[35] *Ibidem*.

[36] Digi24, „Rovana Plumb: PSD este cel mai pro-european partid, trebuie să trimitem în PE patrioţi", 17.03.2019, https://www.digi24.ro/stiri/actualitate/politica/rovana-plumb-psd-este-cel-mai-pro-european-partid-trebuie-sa-trimitem-in-pe-patrioti-1099229.

[37] Sebastian Pricop, „ Rovana Plumb, la mitingul PSD de la Craiova: „Am adus în doi ani de guvernare miliarde de euro în ţară" (Video)", *B1*, 12.04.2019, https://www.b1tv.ro/politica/rovana-plumb-miting-psd-craiova-271476.html.

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Area and the Eurozone; increasing the amount of European funds that Romania could access; or attracting European funds for the construction of highways and hospitals[38].

The party also touched upon the issue concerning the future of the EU, advocating for the idea of a "single-speed Europe" where Romania would be "part of the core that will advance towards greater EU integration"[39]. On this topic, the PNL also supported the need to initiate debates on the revision of the EU Treaties, "which will lead, by 2024, to a new institutional architecture that will result in a Union stronger and more integrated Europe"[40]. Other EU-adjacent themes included the party's support for the future enlargement of the EU that would include the Republic of Moldova (seen as the highest priority) and the region of the Western Balkans.

A common theme shared by the European political programs of PSD and PNL revolved around the idea of the existing **double standards**, in several areas of the single market, **dividing the citizens of Western and Eastern Europe**. In this sense, PNL dedicated an entire chapter of its political program to this theme, campaigning for the application of the same standards across the EU: "We must reject double standards in the EU; Romanian citizens are not second-class citizens"[41].

The program also included many references to internal politics, ranging from the introduction of electronic voting for the Romanian diaspora and digitalization as a national priority, to investments in education, the energy field, or health services. These priorities might have been closely related to the issue of European funds distribution, but they were the priorities of a future national government and did not directly concern the activity of EP members. Indicative of the emphasis on internal politics are the statements made by the president of the party, Ludovic Orban, at the time of the European elections: "We beat PSD in the collection of signatures and also, on May 26, we will beat PSD in the elections for the European Parliament. I call on all Romanians to come and vote, to express their political option, to use this opportunity to vote for us, because a vote for PNL has the value of a vote for a no-confidence motion against the current government"[42].

Moving to the small parties, the Save Romania Union participated for the first time in the EP elections from 2019, as part of a coalition that also included the Liberty, Unity, and Solidarity Party (USR-PLUS). From a SOE perspective, the coalition proved successful, winning 22.36% of the votes and coming in the third place[43]. As mentioned earlier, the case of USR-PLUS is curious when considering the themes on which they campaigned and the context of the campaign. As the slogan indicated, USR-PLUS focused on addressing national issues such as the fight against corruption and the independence of the judiciary.

This direction is reflected in their electoral program, which encompassed **three main objectives**: (1) a more credible representation of Romania in the EP; (2) the economic development of Romania by attracting investments and European funds; (3) increasing the standard of living for

[38] PNL, „Profesioniști în Parlamentul European – Program politic", 2019, p. 3, https://www.euractiv.ro/documente/PNL_PROGRAM_POLITIC_20x20_BT_SMALL%20(1).pdf

[39] *Ibidem*, p. 10.

[40] *Ibidem*.

[41] In support of this, the program included references about the EU's cohesion policy and the need to eliminate the development gaps between Member States.

[42] Alexandra Loy, „Ludovic Orban, după depunerea semnăturilor pentru alegerile europene: „Votul pentru PNL are valoarea unui vot pentru o adevărată moțiune de cenzură împotriva actualei guvernări și va repune România pe un loc de egalitate între statele membre ale UE"", *Calea Europeană*, 27.03.2019, https://www.caleaeuropeana.ro/liderul-pnl-ludovic-orban-dupa-depunerea-semnaturilor-pentru-alegerile-europene-votul-pentru-pnl-are-valoarea-unui-vot-pentru-o-adevarata-motiune-de-cenzura-impotriva-actualei-guvernari-si-va-rep/.

[43] By comparison, the difference between the second ranked party, PSD, and USR-PLUS was slim: only 0.14% separated them.

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Romanian citizens by providing public services to European standards[44]. Dan Barna, the party's leader, commented on the USR-PLUS' Manifest for the Future of Europe, noting that it contains provisions to improve the livelihood of Romanians and to address the country's position in the EU: "Erasmus scholarships for high school students […], more funds for highways and hospitals, an MCV for all states. We want Romania's position in the European context to be visible, to matter, and the benefits [of membership] to spread to the citizens"[45]. Aside from this, Barna also took the opportunity to criticize PSD for poorly managing the country and for sidelining it to "the margins of Europe"[46]. In conjunction with the referendum, both PNL and USR-PLUS used the European elections in pursuit of national gains.

In addition, a recurrent theme that PSD, PNL, and USR-PLUS had in common concerned the need to protect the rights of Romanian consumers, rooted in the debates about the differences in the production standards of food and non-food items distributed in Western and Eastern Europe.

On the topic of the offshoot parties, Pro Romania Party (PRO) and the People's Movement Party (PMP) were founded by politicians who had previously held governing positions in Romania: the former Social-Democrat, Victor Ponta, had occupied the prime-minister office between 2012-2015, while Traian Băsescu served two terms as President between 2004-2014. In the former case, PRO Romania framed itself as a pro-European party, critical of PSD, as could be seen from their electoral slogan ("Proud to be Romanians. Proud to be European"). Similar to PSD, PRO did not launch an electoral program dedicated to the European elections. From the speeches of the party leaders and candidates, we identified the main themes which focused on the need to increase investments (especially in the field of innovation and IT) and improve the capacity to attract European funds.

PSD was again the predilect target for electoral attacks, which were used as a springboard to campaign on domestic policy positions (corruption, justice, government performance, etc.). In an interview with *Euractiv*, Ponta stated that: "I cannot be on the same table and on the same page with people who every day criticize and demonize the European Union, like the actual leadership of PSD", which he compared to illiberal figures and parties (Viktor Orban, Matteo Salvini, the Polish conservatives, etc.)[47]. In another interview, Ponta addressed his views on the EU, stating that "The current European model is far from being perfect, but it is, without a doubt, Romania's only chance to develop [as a country] and improve the livelihood of its citizens", underlining once again the anti-European rhetoric adopted by the leadership of PSD[48]. On the topic of European elections and why citizens should go to vote when they do not understand the European decision-making process, Ponta framed his answer in anti-PSD terms, arguing that voting for PSD would worsen the lives of Romanians, who would find themselves isolated in Europe[49].

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[44] USR-PLUS, „Obiectivele Alianței 2020 USR PLUS în Parlamentul European", p. 3, http://d3n8a8pro7vhmx-cloudfront.net/themes/5c937a87c29480c51ccbfe06/attachments/original/1554893315/Oferta-electorala-Alianta-2020-USR-PLUS.pdf.

[45] Ioana Ene Dogioiu, „Dan Barna: Pe listele USR-PLUS avem 300 de ani de studii reale. In sondaje, oamenii ne asociaza cel mai des cu speranta. Interviu", *Ziare.com*, 23.05.2019, https://ziare.com/alegeri/alegeri-europarlamentare-2019/dan-barna-s-a-trecut-peste-orice-linie-rosie-societatea-e-mobilizata-simtim-o-mare-responsabilitate-interviu-1562585.

[46] *Ibidem*.

[47] Georgi Gotev, "Victor Ponta: The ruling PSD in Romania is becoming like Fidesz", *Euractiv*, 03.04.2019, https://www.euractiv.com/section/eu-elections-2019/interview/victor-ponta-the-ruling-psd-in-romania-is-becoming-like-fidesz/.

[48] Lavinia Siclitaru, „Victor Ponta (PRO România) – „PRO România crede că locul nostru este şi trebuie să rămână în Europa şi sper ca tot mai mulţi români să aibă încredere în noi şi să ne susţină"", *Ziua de Constanța*, 14.05.2019, https://www.ziuaconstanta.ro/stiri/alegeri-europarlamentare/interviu-victor-ponta-pro-romania-pro-romania-crede-ca-locul-nostru-este-si-trebuie-sa-ramana-in-europa-si-sper-ca-tot-mai-multi-romani-sa-691195.html.

[49] *Ibidem*.

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In the case of PMP, the party issued a Plan for Parliamentary Action for MEPs. The general message promoted by the candidates during the elections was one of unity, which can be analyzed as being directed both towards the future development of the EU and towards one of the key issues promoted by this party, namely the union of Romania with the Republic of Moldova. This two-folded direction was reflected in the party's priorities for the EP: (1) to support the United States of Europe project, therefore embracing a federalist vision for the future of the EU; (2) to support Romanian workers who are employed in EU Member States; (3) to advocate for the union of Romania with the Republic of Moldova.

The candidates' speeches and, in particular, those by Traian Băsescu, also brought attention to other topics, such as: Romania's entry into the Schengen Area, the adoption of the euro currency, or the need to pursue justice reform. However, no concrete solutions were proposed to achieve these objectives. Once again, most of these themes had less to do with the activity of the MEPs, since they were within the purview of the national government. Occupying the first position on the party's list of candidates, Băsescu remarked that the campaign for European elections was centered on the internal dimension instead of focusing on European topics, warning that this lack of transparency in relation to the EU could have dire repercussions in the future, as had happened with the Brexit[50]. On European issues, the former president advanced an anti-immigration rhetoric, describing himself as "an implacable opponent of turning Europe into a mosque"[51]. He stressed that EU needed to adopt "a regulation on migration applicable throughout the EU territory, on the premise that Christianity, European culture, and our customs must be defended"[52].

Taking a more personal approach, Eugen Tomac, the president of the party, appeared to reduce the stakes of the European elections to the figure of Traian Băsescu, stating that the party's aim in the elections is to send the former president to Brussels: "ever since Romania became a member, there has been an immense void [in Brussels]. No one managed to impose their point of view and explain to the Europeans that we might have entered the EU later, but we are a large nation, with a strong culture, with huge resources and we are eager for a better life, for salaries like in Europe, of pensions like in Europe, of a life we deserve"[53].

Finally – the case of ALDE. While the party failed to gain any seats in the EP, we included it in our analysis because they were the junior coalition partner, and their electoral manifesto was relevant to our discussion. The document referenced a series of European themes (cohesion policy, education, or health), with the focus being on the development of these fields in Romania, by accessing European funds. As part of the governing coalition, ALDE shared a theme with PSD: the defamation of the country within the European institutions by politicians from other political parties. In this sense, at the launch of the ALDE candidates for the EP, the leader of the party, Călin Popescu Tăriceanu, declared that: "We want to send people to Brussels who know how to fight for our rights. We have had and have in the European Parliament people who defamed Romania. Let's not do this anymore"[54]. On the issue of the European Union, Tăriceanu advocated for a fairer Europe: "the future

[50] HotNews.ro, "Fostul președinte Traian Băsescu la HotNews.ro LIVE: „Să ajungi într-o justiție în care procurorii să se acuze reciproc că au creat grup infracțional organizat este mult prea mult"", 20.05.2019, https://www.hotnews.ro/stiri-europarlamentare_2019-23152528-plan-are-pmp-pentru-parlamentul-european-fostul-presedinte-traian-basescu-invitat-marti-ora-12-00-hotnews-live.htm.

[51] *Ibidem*.

[52] *Ibidem*.

[53] Digi24, „Tomac: Cu Traian Băsescu primul pe lista pentru europarlamentare, vrem să obținem un scor de 10%", 17.03.2019, https://www.digi24.ro/stiri/actualitate/politica/tomac-cu-traian-basescu-primul-pe-lista-pentru-europarlamentare-vrem-sa-obtinem-un-scor-de-10-1099282.

[54] Vlad Rotaru, „ALDE si-a lansat candidatii la europarlamentare in Iasi. Calin Popescu Tariceanu a laudat Capitala Moldovei", *BZI*, 14.04.2019, https://arhiva.bzi.ro/alde-si-a-lansat-candidatii-la-europarlamentare-in-iasi-calin-popescu-tariceanu-a-laudat-capitala-moldovei-foto-video-690198.

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European project cannot be a Europe with multiple speeds, a Europe that leaves part of the states behind. I want it to be a Europe of solidarity, of cohesion, in which all countries are treated on an equal footing. This is the Europe I thought Romania was entering on January 1, 2007"[55].

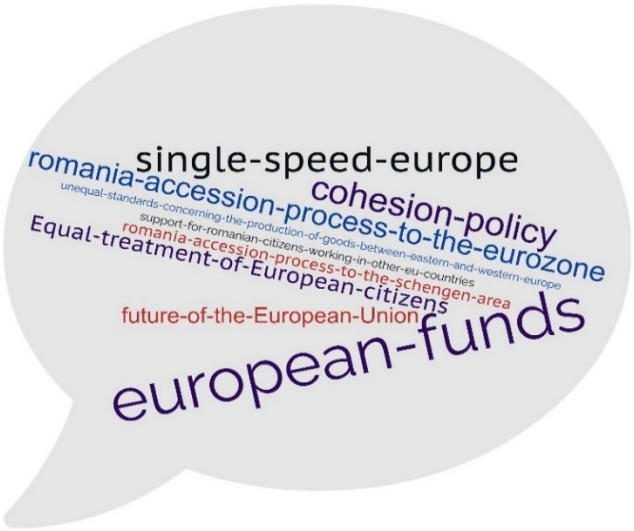

Figure no. 2: Themes advanced by the Romanian parties during the 2019 campaign for the EP.

DISCUSSION

Following the analysis of the electoral programs of the main political parties that ran for the 2019 EU parliamentary elections, we identified a large number of areas where the Romanian political parties had similar visions, listing approximately the same area problems (see Figure no. 2), or even proposing the same solutions. Even if their programs included references to European themes (the most detailed being those of PNL and USR-PLUS), during the electoral campaign, in the speeches of the candidates or during electoral rallies, the political parties tried to mobilize voters mainly by referring to domestic political issues. Among these, the fight against corruption and the need for justice reform were the most important, since they were the subject of the referendum held on the same day as the European elections. Due to this first-order election, Romania registered the highest turnout (51.20%) in a European election since it became a member and the 12th highest in EU. The citizens' interest in the referendum topics meant that not only was turnout in the European elections greatly improved, but also, that the political parties which supported the referendum (USR-PLUS and PNL) also benefited from it, gaining a greater number of votes that they would have otherwise received.

Regarding our three hypotheses, we found that the *(H1) national parties will promote issues concerning the EU during the campaign for European election* is partially confirmed – topics concerning the future of European integration, the development policy, immigration, or agriculture were brought up (if only in a limited manner). However, these were presented as areas where Romania should improve over the next multiannual framework and contained few provisions about the parties' intended course of action in the EP.

In the case of *(H2) national parties will promote issues concerning the EU in accordance with the priorities set by the Euro-parties in their manifestos* – we could not confirm this hypothesis, finding no mentions about the Euro-groups and how the parties interacted with the broader

[55] Răzvan Bibire, „Tăriceanu: Mergem la Bruxelles să apărăm interesele României", *Deșteptarea*, 23.03.2019, https://www.desteptarea.ro/tariceanu-mergem-la-bruxelles-sa-aparam-interesele-romaniei/.

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supranational structure or their peers in other countries. European politicians visited Romania during the campaign, showing their support for the national parties (EPP figures like Manfred Weber, candidate for the presidency of the European Commission, backed PNL, while PES representatives did not come, having earlier criticized the direction of the PSD), but proposals on the broader Euro-parties' agenda were absent. This disconnect between the national and the European levels of campaigning was indicative of a systemic failure to Europeanize the Romanian institutions. After all, prior to the election, with the occasion of Europe Day (9 May), an informal European Council was held in Sibiu to discuss the outcome of the coming EP elections. At the end, the heads of state or government adopted the Sibiu Declaration on the future of the EU, pledging to "reaffirm our belief that united, we are stronger in this increasingly unsettled and challenging world. We recognize our responsibility as leaders to make our Union stronger and our future brighter, while recognizing the European perspective of other European States"[56]. This was not referenced during the elections.

Finally, *(H3) due to the second-order nature of the EP elections, national parties will campaign on topics concerning internal issues* is partially confirmed and the conditions for SOE are only partially met, on account of the electoral distortions created by the anti-corruption referendum[57]. Opposition parties were critical of government policies and of the direction in which PSD had taken the country after three years of governing. They pursued a negative campaign, where policy alternatives did not need to be fully articulated, surfing on the idea that, simply on the merit of being anti-PSD, they would be a net improvement. In this way, the EP election gained a first order dimension (though not of the supranational type), being used as an opportunity to strengthen the national consolidation of the opposition parties and of the newer / smaller parties that were building their base at that time.

CONCLUSION

In 2024, in Romania, the context for the European elections will be one substantially changed from previous cycles. Throughout the year, aside from the European ones, all the other types of elections (local, parliamentary, and presidential) are going to be organized one after the other. Since the EP elections are the first to open the cycle, they could very well be an indicator of things to come. Aside from the electoral circumstances, the pandemic also played a role in changing the political landscape to a fundamental degree from the days of the 2019 election, since PSD (with a new leadership) and PNL are now coalition partners, overseeing the country's post-pandemic recovery. Speaking of fundamental changes, Romania has now a radical party of its own – AUR[58] – which like other European predecessors is poised to make inroads in the 2024 elections. Mainstream parties do not seem particularly willing to engage in substantial debates, hoping to marginalize AUR on account of their nationalist rhetoric[59]. Much rests on the performance of AUR in the EP elections, as it could lead (once again) to a populist backsliding by PSD (and others). Referring to this possibility, Pârvulescu posits that "Next year, it will all depend on the results from the European elections. In Romania and in Europe. And if the result is a complicated one, unfavorable to the pro-European

[56] European Council, "Informal meeting of heads of state or government, Sibiu, 9 May 2019", https://www.consilium.europa.eu/en/meetings/european-council/2019/05/09/.

[57] See the conclusions on a decade of EP elections in Romania, drawn by M. Ivănescu, *op. cit.,* pp. 163-164.

[58] Notably, George Simion, currently the leader of AUR, had campaigned as an independent candidate during the 2019 EP elections, where he garnered 1.29% of the votes.

[59] In 2023, the idea of a "Democratic Bloc" was touted by PNL and PSD, which was supposed to be an electoral mammoth, meant to ensure that the two parties would sail through to victory in all four elections from 2024. (See: Andreea Pora, „Analiză: Blocul Democratic, noua invenție a Coaliției PSD-PNL, folosește AUR și echipei Ciucă-Bode-Iohannis", *Europa Liberă*, 17.09.2023, https://romania.europalibera.org/a/alianta-electorala-psd-pnl-aur-ciuca-bode-iohannis-/32594467.html).

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parties, then we can expect a total change"[60]. In the meantime, when it comes to the EU issues, it is business as usual for the national parties that once again are distracted from engaging with the substance of European debates by the extraordinary national circumstances in which they find themselves.

In the five years that have passed, the world went through a pandemic, witnessed a war of aggression at the Eastern border of the EU, and is still coping with the aftereffects of multiple global crises[61]. As such, the political landscape is irreversibly changed, if not where the parties are concerned, then with the larger constellation of voters. The **2024 EP elections** will be a test of resilience for the EU: will the foundations hold, or will they bend to the pressure from within (and without)? The 2019 trends carry early warnings of an unfolding European crisis that should be properly understood and not dismissed as merely a populist storm in a glass that will soon abate. Mainstreaming fringe actors and pursuing respectable marriages in some misguided search of electoral influence jeopardizes the stability of the political system and alienates the more moderate elements of the voting pool. Romania is one case where this process is currently unfolding...

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[60] Cristian Șuțu, „Exclusiv Cât de realistă e alianța PSD-AUR după 2024. Cristian Pârvulescu: "Totul va depinde de rezultatele de la alegerile europene"", *Digi24*, 04.09.2023, https://www.digi24.ro/stiri/actualitate/politica/cat-de-realista-e-alianta-psd-aur-dupa-2024-cristian-parvulescu-totul-va-depinde-de-rezultatele-de-la-alegerile-europene-2486001.

[61] See, for example: Mihaela Daciana Natea, *Reshaping European Security in a Post COVID-19 World,* L'Harmattan, Paris, 2023; Maria Costea and Simion Costea, Simion (coord.), *Diplomație și actori geopolitici în epoca interdependenței complexe/Diplomacy and Geopolitical Players in the Age of Complex Interdependence*, Cluj-Napoca, Napoca Star, 2021.

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A Window of Opportunity with an Existential Stake: The European integration of the Republic of Moldova

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Abstract: *In the context of Russia's brutal invasion of Ukraine, an opportunity, previously seen as unrealistic, arose: The Republic of Moldova received an EU candidate status in June 2022. As the Chisinau administration is currently the most pro-European in the country's history, and considering the great mobilisation towards integration on Brussels's side, it is a very relevant endeavour to analyse Moldova's main opportunities and barriers. This paper looks at the European integration process within the Republic of Moldova, by analysing their historical evolution (both within the Soviet Union and post-Soviet).*
Keywords: *EU, Moldova, European integration, hybrid threats*

INTRODUCTION

Russia's unjustified and brutal invasion of Ukraine has caused inconceivable destruction and death, making an increasingly larger majority of post-Soviet countries realize that their future as independent nations can only be built outside of Kremlin's influence. In the case of the subject of the invasion, Ukraine, it is obvious that Europe is not just the better, democratic alternative, but the only option that would sustain the existence of the country and of Ukrainian identity. Meanwhile, another country, heavily targeted by Russia's hybrid warfare, is the Republic of Moldova, who has recently sensed an opportunity in a time of crisis and, along with Ukraine, managed to receive the European Union candidate status in June 2022.[2]

This does not imply a fast-track path towards membership though. The Balkan countries are great examples in that sense, as they have been waiting at Brussels's doorstep for years or even decades in some cases to meet the requirements and get accepted. Nevertheless, while this announcement is not a guarantee *per se*, it certainly signals a paradigm shift from the EU's side coupled with an acceleration in reform efforts by both countries to meet the EU accession criteria. The two countries have made considerable progress over the past year, but the journey towards membership is long, bumpy, and can conceal many unexpected U-turns. Still, if we were to conceive such a geopolitical development a few years ago, that is Ukraine and the Republic of Moldova having a realistic chance to EU membership, it would have seemed idealistic to say the least.

The current geopolitical situation shows that under great challenges arise great opportunities and vigorous mobilisations, and it remains to be seen whether the two post-Soviet countries will be able to escape the "grey zone" status: an area that is neither Kremlin's, nor part of the European family.

This paper will analyse the current European integration process of the Republic of Moldova since the start of Russia's invasion of Ukraine, on the 24th of February 2022.

1. The historical background will be provided, detailing the country's recent geopolitical evolution, with a focus on their post-Soviet developments and rapprochements with the European Union.

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[2] "EU leaders grant Ukraine and Moldova candidate status", Politico, June 23, 2022, URL: https://www.politico.eu/article/eu-leaders-grant-ukraine-and-moldova-candidate-status/

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2. Analyse of the strongest impediments the country is facing in its Europeanization process.

While Ukraine is facing Russia's brutal and unjustified invasion, The Republic of Moldova has been subjected to an insidious hybrid warfare from Moscow. The country is in the proximity of the war and Russia's influence has always been significant here. It consisted, among others, in energy supply blackmail, disinformation campaigns and sabotage attempts directed towards the current pro-European leadership, such as paid protests. While energy dependence has been lowered recently, the Eastern European nation still has to counter aspects such as separatism, corruption, oligarchs, and propaganda.

When it comes to EU integration, thus far, the Republic of Moldova managed to fulfil three of the European Commission's nine recommendations, mainly the ones related to civil society involvement in decision-making and in human rights protection, while also making good progress in the justice and public finances domains.[3] It fulfilled more conditions than Ukraine and Georgia since June last year. While the progress is palpable, the Chisinau authorities still have a long way to go, as some of the issues they are facing are not novel, but have a deep historical root.

HISTORICAL BACKGROUND AND CONTEXT

The Republic of Moldova was under Russian rule during two different political systems: the Czarist Empire from 1812,[4] being reconnected to Romania only in 1918, only to be lost again in 1940, and then to be fully incorporated within the Soviet Union in 1944. Under Soviet rule, the Republic of Moldova went through a deep denationalization process, as Romanian became a pariah language and was artificially named "Moldovan" by Soviet authorities, to create a cultural separation between Chisinau and Bucharest, both institutionally and socially.[5] Meanwhile, the Latin script was replaced with Cyrillic and the upper-middle classes of Romanian origins were deported in Siberia and northern Kazakhstan (approximately 35.000 people), being replaced with ethnic Russians.[6]

As a reaction, pro-Romanian identity groups would later emerge in the late 1980s,[7] Moldova ultimately gaining independence on August 27, 1991, benefiting from the Perestroika. That was the founding moment of what will become a thus-far flawed and corrupted democracy, but a democracy, nonetheless. A year later, in 1992, after a month-long conflict, a pro-Russian separatist regime emerged in the Eastern part of Moldova's territory with Russia's support, named Transnistria.[8] It has remained a thorn in the flesh of the country's European integration process to this day, with Russia's 14th Army Regiment still active in the region.

[3] Cristina Popușoi, "Progress report: Moldova met more conditions for EU membership than Ukraine and Georgia". Radio Free Europe Romania, June 21, 2023, URL: https://romania.europalibera.org/amp/raport-intermediar-moldova-conditii-aderare-ue/32468564.html?mc_cid=d263ff3d95&mc_eid=cd1f92f96c

[4] Bogdan-Alexandru Ciachir. "How did Bessarabia become part of the Russian Empire?", URL: https://historia.ro/sectiune/general/cum-a-ajuns-basarabia-in-componenta-imperiului-585728.html

[5] "How it went from Cyrillic to Latin script, as people from the south of Moldova say", Moldova.org, URL: https://www.moldova.org/cum-s-trecut-de-la-chirilica-la-grafia-latina-povestesc-oameni-din-sudul-moldovei/

[6] "The lists of those deported to Siberia in 1949 are available online". Radio Free Europe Moldova, URL:https://moldova.europalibera.org/a/listele-deporta%C8%9Bilor-%C3%AEn-siberia-%C3%AEn-1949-sunt-accesi bile-online-/31929778.html

[7] Ion Mardarovici. "NATO and security in the Eastern countries during transition times". NATO Research Fellowships programme, 2002, p. 10.

[8] Martin Duffy. "Moldova and the Transnistria Conflict: Still a Regional Cold War?", E-International Relations, 2021, p. 1,URL: https://www.e-ir.info/2021/08/03/moldova-and-the-transnistria-conflict-still-a-regional-cold-w

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In the 1990s, Moldova was definitely not on the European Union's priority list. Humanitarian aid was the main concern for Western nations regarding one of Europe's poorest countries.[9] At that time, the small republic was seen as clearly being part of Russia's sphere of influence and its Europeanization process seemed highly unlikely. An important breaking point was recorded in the mid-2000s, when after years of pro-Russian rule, Moldovans from both opposition groups and civil society protested against the 2003 Kozak Memorandum, a settlement that, in the context of a "unified" Republic of Moldova, would have offered asymmetrical federal powers and a veto on foreign affairs to Transnistria and guarantee Russian military presence for the next 20-30 years.[10] Following the rejection of this memorandum, Moldovan authorities intensified their European integration process, signing a EU-Moldova action plan in 2004.[11] Moldova was led by the Communist Party since 2001, but its leaders profited from a "best of both worlds" scenario, in which Russian and European economic advantages can be accessed simultaneously, while also maintaining the corrupt political system.

A breaking point was represented by the April 2009 protests, when under the guise of election fraud by the Communist leadership, protesters clashed with the authorities, leading to later snap elections won by the pro-European forces.[12] Four young people were killed by the authorities during those manifestations.[13]

Still, the subsequent pro-European governments' actions were severely shadowed by their unbridled corruption. As such, the Moldovan authorities (both pro-European and pro-Russian) facilitated the greatest fraud in the country's history, **the infamous "billion-dollar theft"** from the Republic of Moldova's banking system between 2012-2014. Some of the main architects of this crime were the oligarchs Vladimir Plahotniuc and Ilan Shor. At the time, their deep control of the media sphere, politicians and businesses turned the country into a captured state.[14] The prime minister at that time, Vlad Filat, was also put under trial.[15]

Currently, the Republic of Moldova is under the most pro-European leadership in its history, whose reforms and track record have been acknowledged by the European Union, leading to being granted the EU candidate status in June 2022, simultaneously with Ukraine.[16] There is great pressure on the current government to seize this opportunity, considering the ideological divide within society. In an attempt to decrease Moldova's energy dependence on Russia, the country is dealing with a volatile energy market, as end-consumer bills have soared tenfold compared to 2022.[17] Also, as a result of the energy costs, but also of protesters paid by Russian-backed forces,[18] manifestations

[9] Ryan Kennedy. "The limits of soft balancing: the frozen conflict in Transnistria and the challenge to EU and NATO strategy." *Small Wars & Insurgencies* 27, no. 3 (2016), p. 6.
[10] Ibidem, p. 7.
[11] Ibidem.
[12] Vitalie Ciobanu, "Moldova, 7 April 2009 – the stolen revolution", Deutsche Welle Romania, April 7, 2023, URL: https://www.dw.com/ro/moldova-7-aprilie-2009-revolu%C8%9Bia-furat%C4%83/a-65258382
[13] Victor Moșneag, "April 2009 suspect deaths. Dossier information", Ziarul de Gardă, April 7, 2018, URL: https://www.zdg.md/importante/mortii-suspecti-din-aprilie-2009-informatii-din-dosare/
[14] Andriy Osavoliuk, Igor Savchenko, "Moldova's "Theft of the Century" – ostensible investigations or sincere lust for justice?", Open Dialogue Foundation, July 8, 2021, URL: https://en.odfoundation.eu/a/37290,moldovas-theft-of-the-century-ostensible-investigations-or-sincere-lust-for-justice/
[15] Ibidem.
[16] "EU leaders grant Ukraine and Moldova candidate status", Politico, URL: https://www.politico.eu/article/eu-leaders-grant-ukraine-and-moldova-candidate-status/
[17] Aura Sabadus, "Moldova Accepts the Price for Energy Independence". CEPA, December 7, 2022, URL: https://cepa.org/article/moldova-accepts-the-price-for-energy-independence/
[18] "Protesters for rent. ZdG undercover investigation: We infiltrated the Shor protesters to show you, from the inside, how people brought to Chisinau are paid and how the protest machine works". September 30, 2022, Ziarul de Gardă, URL:

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have been common wise in the last months, demanding pro-European authorities to negotiate a better energy deal with Vladimir Putin.[19]

While society has always been divided more or less equally among pro Russians and pro Europeans, Moldova is currently experiencing its biggest EU public support, as almost 60% of the population views EU adherence as the right way forward.[20] Moldova's path is intertwined with Ukraine's not only in its European integration, but also in the ongoing war. As some analysts claim, the fate of the Republic of Moldova is ultimately decided by the victory or loss of Ukraine against Russia.[21] If Russia keeps on advancing in Ukraine's south-eastern flank, into the Odessa region, then Moldova's chances of becoming a military target, from both Russia and Transnistria, will increase. In addition to these pivotal external factors, the Republic of Moldova has internal impediments to tackle to enable a European future.

Some of the domains in which the country has to create significant reforms are justice, corruption, deoligarchization, public administration reform and public finances management.[22] Currently, the Republic of Moldova has received the approval from the European Parliament that accession negotiations can start in late 2023.[23] That is a first step towards a long process which requires the approval of all member states after a long negotiation process.[24]

In that sense, the organization of the second **European Political Community summit in Chisinau on June 1**, 2023, was a milestone which showed the commitment of both European countries and the Republic of Moldova towards integration.[25] It marked in a symbolic manner the detachment between Chisinau and Moscow, the former finally forming its true independent identity.

The next EU report regarding the enlargement package is set to be published in November 2023, evaluating the progress made by both Chisinau and Kyiv.[26] What could accelerate the Republic of Moldova's advancement towards accession, just as in the case of Ukraine, is the current war situation in Ukraine. Nevertheless, it is ultimately Moldova who is the master of its own destiny, the speed of the accession process depending mostly on the success of the reforms.

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[19] "DISINFORMATION: The number of Moldovans siding with Russia in the war in Ukraine is growing". Veridica.ro, March 17, 2023, URL: https://www.veridica.ro/en/disinformation/disinformation-the-number-of-moldovans-siding-with-russia-in-the-war-in-ukraine-is-growing

[20] "The condition so that Moldova can join the EU by 2030", Deutsche Welle Romania, March 3, 2023, URL: https://www.dw.com/ro/men%C8%9Binerea-cursului-pro-european-condi%C8%9Bia-ca-moldova-s%C4%83-poat%C4%83-adera-la-ue-p%C3%A2n%C4%83-%C3%AEn-2030/a-64605209

[21] Iileana Giurchescu, "Armand Goșu: Moldova's European integration is decided in Ukraine | Transnistrian elite not interested in Russia's victory". January 19, 2023, Radio Free Europe Moldova, URL: https://moldova.europalibera.org/a/armand-go%C8%99u-integrarea-european%C4%83-a-r-moldova-se-decide-%C3%AEn-ucraina-elita-transnistrean%C4%83-nu-este-interesat%C4%83-de-victoria-rusiei/32230583.html

[22] Alla Ceapai, "Chisinau aims to meet EU pre-accession conditions within a year", Radio Free Europe Moldova, August 2, 2022, URL: https://moldova.europalibera.org/a/chi%C8%99in%C4%83ul-%C3%AE%C8%99i-propune-s%C4%83-%C3%AEndeplineasc%C4%83-%C3%AEntr-un-an-condi%C8%9Biile-de-pre-aderare-la-ue-/31970572.html

[23] Vitalie Călugăreanu, "EP calls for opening of accession negotiations with Moldova", Deutsche Welle, April 20, 2023, URL: https://www.dw.com/ro/deschidere-f%C4%83r%C4%83-precedent-moldova-este-practic-invitat%C4%83-%C3%AEn-ue/a-65385788

[24] Nicolae Pânzaru, "One year since Moldova applied for EU membership", Nordews.md, March 3, 2023, URL: https://nordnews.md/un-an-de-cand-r-moldova-a-depus-cererea-de-integrare-la-ue/

[25] "'Important moment for Moldova' as European leaders gather for political summit". Euronews, June 1, 2023, URL: https://www.euronews.com/my-europe/2023/06/01/important-moment-for-moldova-as-european-leaders-gather-for-political-summit

[26] "The European Commission will soon publish the Enlargement Report which will also contain the evaluation of the progress of the Republic of Moldova". RadioMoldova.md, November 3, 2023, URL: https://radiomoldova.md/p/24200/the-european-commission-will-soon-publish-the-enlargement-report-which-will-also-contain-the-evaluation-of-the-progress-of-the-republic-of-moldova

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- Transnistria and Gagauzia

The frozen conflict in Transnistria has been a geopolitical reality for 31 years now. The dictatorial regime instilled in the region is viewed by the European Union as a serious security risk if the Republic of Moldova becomes a member state. Nevertheless, there is a precedent of a nation facing separatism entering the EU, namely Cyprus. There are doubts regarding the acceptance of another similar case, especially when dealing with Russia-backed separatists, who are arguably a more considerable security threat than the Northern Cyprus separatists.

Currently, the Chisinau government's relation with the separatists is tense, but stable. According to the Moldovan parliament speaker, Igor Grosu, since Transnistria has not represented an impediment to EU accession thus far, it will not represent one in the future. Furthermore, he emphasized that the Transnistrian conflict is artificially produced by Russia and that Moldova's constant reform for its integration process will increase the openness to reform of the general population.[27] Furthermore, from an economic point of view, Transnistria is exporting 70% of its products to the EU market, while its connections with the Russian market have been severely affected since the start of the Ukraine war,[28] which force the separatists to interact more with Europe.

All leaders from Transnistria are connected to a certain extent to Russia since Moscow has represented a lifeline for the region since its formation in 1992. Despite the dictatorial nature of the regime, there are two rival factions to consider. The first one is a hard-line pro-Russian side, which is fully subservient to the Kremlin, headed by the so-called foreign minister, Vitaly Ignatiev. Second is the "Sheriff" camp, a plutocratic group currently controlling the monopolizing "Sheriff Tiraspol" company and seizing the legislative and executive branches of the regime.[29] Since the second group currently holds the power grips in Transnistria, this could play into Moldova's European integration, especially on the economic side. In regard to issues such as human rights or rule of law, little can be expected from the dictatorial regime in Tiraspol, regardless of who is in charge. Still, the "Sheriff" group could be more lenient towards negotiating with Moldova, out of a mercantile interest, in order to protect its business with the European market. It will definitely not be open for European integration, because that would spell the end of Sheriff's monopoly in Transnistria.

Because of the war in Ukraine, Transnistria is isolated from its nanny state, Russia, indicated also by the decrease in pension payments (Russia covers around 20% of Transnistrian pensions) and of the construction of schools, kindergartens, hospitals.[30] On the energy situation, the Chisinau authorities managed to reach a deal with the separatists, that allows the former to benefit from electricity while decoupling from Russian gas, and the Transnistrians to continue receiving subsidized gas from Moscow.[31] As such, relations with the Transnistrians are much more stable at this point, based on an interdependency and on the separatists' need to work with Chisinau.

[27] "Igor Grosu: Transnistrian problem does not represent an impediment to the accession of the Republic of Moldova to the EU". RadioMoldova.md, January 22, 2023, URL: https://radiomoldova.md/p/4179/igor-grosu-transnistrian-problem-does-not-represent-an-impediment-to-the-accession-of-the-republic-of-moldova-to-the-eu

[28] Ibidem.

[29] George Scutaru, Marcu Solomon, Ecaterina Dadiverina, Diana Baroian, "Russian hybrid war in the Republic of Moldova", New Strategy Center, April 4, 2023, URL: https://newstrategycenter.ro/project/russian-hybrid-war-in-the-republic-of-moldova/

[30] Ibidem.

[31] Eugen Urușciuc, "Chisinau will buy electricity from Transnistria at a price of $73 | Moldova will have two sources of gas supply". Radio Free Europe Moldova, December 3, 2022, URL: https://moldova.europalibera.org/a/chi%C8%99in%C4%83ul-va-cump%C4%83ra-curent-din-transnistria-la-un-pre%C8%9B-de-73-de-dolari-moldova-va-avea-dou%C4%83-surse-de-aprovizionare-cu-gaze/32160382.html

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Furthermore, the experience of the current Moldovan Prime Minister, Dorin Recean, of negotiating with the separatist authorities will prove useful in future encounters.[32]

Gagauzia is a constitutionally recognized autonomous region within the Republic of Moldova with a significant pro-Russian population which can represent a Trojan Horse for Moldova. Whilst Transnistria is a separate entity, *de facto*, whose totalitarian regime and total dependency on Moscow exclude it from any reintegration or Europeanization talks at this point, Gagauzia is a pro-Russian region *within* Moldova's territory, whose form of autonomy was constitutionally recognized in 1994. Oftentimes, the region's leadership called for a secession from the country if European integration advanced which was perceived as a possible reunification with Romania by the local leaders.[33]

While Gagauzia expressed its indignation regarding Moldova receiving EU candidate status last year,[34] the regional protests have been against the pro EU government and the high energy prices[35] and have not explicitly called for separatism. Thus, it is less likely for Gagauz separatism to take shape, especially in the current geopolitical context, but destabilisation is still on the table. Moldova has the great challenge of integrating Gagauzia, whose informational sphere has been for a long time dominated by Russian propaganda, both on TV and in the online space.[36] It is the Republic of Moldova's responsibility to make it an active part of the EU accession process, otherwise either the process is slowed down, or it moves forward with an increasingly separatist Gagauzia.

The Chisinau authorities struggled to engage in such a Russophile area to find pragmatic solutions to attract Gagauzia towards European integration, especially by appealing to the local population. Gagauzia is stuck in an ideological and informational bubble that will be harder and harder to pop. Whereas the last governor (or Bashkan), Irina Vlah, was a pro-Russian open to negotiation who did not support separatism, the new Bashkan-elect, Evghenia Gutul, (elected in May 2023) is a member of the "Shor" party, created by the pro-Russian oligarch-in-exile, Ilan Shor.[37] She could potentially be an agent provocateur, meant to deviate the Republic of Moldova's course towards the European Union, through negotiation call outs towards Moscow or even through separatism. Nevertheless, having a "Shor" party member on the Bashkan seat does not spell out stability for the current pro-European forces, as once again the influence of oligarchs is showcased, even in their physical absence from the country.

Furthermore, while the elections have been validated by the Gagauz Court of Appeal,[38] they are under investigation by Moldovan anti-corruption authorities, based on allegations of voter

[32] "Carp: Dorin Recean is currently in talks with Vadim Krasnoselski, in Varnița", TV8.md, April 28, 2022, URL:https://www.tv8.md/ru/2022/28/04/video-carp-dorin-recean-se-afla-chiar-acum-in-discutii-cu-vadim-krasnoselski-la-varnita/199223

[33] "Gagauzia region of the Republic of Moldova, a "Trojan horse" of Moscow", Veridica.ro, September 5, 2022, URL: https://www.veridica.ro/editoriale/regiunea-gagauzia-din-republica-moldova-un-cal-troian-al-moscovei

[34] "The Gagauz parliament is outraged that Moldova obtained EU candidate status without taking into account the opinion of the autonomy", Infotag.md, July 7, 2022, URL: http://www.infotag.md/rebelion-ro/300551/

[35] "Gagauzia region of the Republic of Moldova, a "Trojan horse" of Moscow", Veridica.ro, September 5, 2022, URL: https://www.veridica.ro/editoriale/regiunea-gagauzia-din-republica-moldova-un-cal-troian-al-moscovei

[36] Piotr Garciu, "Russian Propaganda Dominates Moldova's Gagauzia", Institute for war & peace reporting, October 3, 2022, URL: https://iwpr.net/global-voices/russian-propaganda-dominates-moldovas-gagauzia

[37] "Preliminary results: the candidate of the "Shor" Party wins the elections for Bashkan of Gagauzia", Ziarul de Gardă, May 15, 2023, URL: https://www.zdg.md/stiri/politic/rezultate-preliminare-candidata-partidului-sor-castiga-alegerile-pentru-functia-de-bascan-al-gagauziei/

[38] "The Mandate of the Baskhan of the Gagauz Autonomy has been validated. The Comrat Court of Appeal approved the results of the election one by Evghenia Gutul". ProTV.md, May 22, 2023, URL: https://protv.md/politic/mandatul-bascanului-autonomiei-gagauze-a-fost-validat-curtea-de-apel-comrat-a-recunoscut-rezultatele-scrutinului-castigat-de-evghenia-gutul-video---2654783.html

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bribing.[39] If the investigations are conclusive, the elections might be repeated. In that event, a pro-Russian candidate would still be the most likely to be elected, but it would be a better alternative than a governor backed by Shor. The oligarch's influence in the small autonomous republic is relevant to this day, as he recently met with MPs from Gagauzia's Popular Assembly, leading to an unofficial resolution calling for reforms regarding the autonomy of the region. These reforms, according to the appeal, have to be implemented until September 2023.[40] In such a tense climate, where the geopolitical aspirations of the central authorities and of Gagauzia are polar opposites, it is to be expected that pro-Russian forces will keep using the region as a thorn in the flesh of Moldova's Europeanization, by sabotaging the reform process and by promoting separatist narratives.

- Oligarch influence

The two aforementioned oligarchs, Vladimir Plahotniuc and Ilan Shor, fled Moldova in 2019, now allegedly residing in Northern Cyprus and, respectively, in Israel.[41] While the assets of both within Moldova have been seized in 2019[42] and in 2022,[43] – from media to real estate and banking – their foreign assets cannot be amounted and are skilfully hidden in offshores.

Considering their economic power, the two main Moldovan oligarchs can still easily influence Moldovan politics and society and have recently proven their capacity to do that. Plahotniuc threatened last year to return to Moldovan politics, based on what he claimed to be an increasing wave of popular discontent regarding the economic and energy crisis.[44] Meanwhile, Ilan Shor's influence in Moldova is even more palpable. He still has an eponymous party in parliament with 6 seats (out of 101) and he is the main funder of the latest anti-government protests. To push his pro-Russian agenda, he uses low-income vulnerable populations, who are willing to protest for days if paid even the mere sum of 400 Moldovan lei/day (approx. 20 euros). While these manifestations have been mainly ineffective thus far, and the current pro-European leadership has not been shaken yet, the two oligarchs remain a real concern.

The anti-oligarch reforms are an imperative for the country's EU accession and the Moldovan authorities have made significant advancements at both legislative and execution level. In December 2022, an ambitious draft law was proposed by the Justice Minister, that would be inspired from the US Magnitsky Law. According to this, individuals who are subject to international sanctions will have their assets frozen and will not be able to open bank accounts in the Republic of Moldova. Furthermore, the licenses for their companies will be seized, including media outlets, dominated by pro-Russian oligarchs for many years.[45]

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[40] "Speaker of the NSG held a meeting with the chairman of the party "Shor"". Halktoplushu.md, May 19, 2023, URL: https://halktoplushu.md/archives/13041

[41] Sorin Ioniță, "Rotative in Chisinau: who makes Moscow's games and what role does Romania play in the landscape". Contributors.ro, February 11, 2023, URL: https://www.contributors.ro/rotativa-la-chisinau-cine-face-jocurile-moscovei-si-ce-rol-joaca-romania-in-peisaj/

[42] Viorica Mija, "DOC// Irrevocable decision regarding the estate of Vlad Plahotniuc", Anticoruptie.md, February 4, 2023, URL: https://anticoruptie.md/en/cases-of-corruption/doc-irrevocable-decision-regarding-the-estate-of-vlad-plahotniu

[43] Madalin Nescutu, "NEWS Moldova Seizes €75 Million in Assets from Fugitive Oligarch", Balkan Insight, June 14, 2022, URL: https://balkaninsight.com/2022/06/14/moldova-seizes-e75-million-in-assets-from-fugitive-oligarch/

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However, there are still some doubts about the law. It is still up for review by the Venice Commission, since originally the law applied only to foreigners and there might be some constitutionality issues.[46] It is important that beyond the effectiveness of the law, it should be applied democratically and assure that it will not be utilized against pro-European forces in the case of a future pro-Russian government, while also respecting European norms.

Later in February 2023, another draft law was proposed to form the National Deoligarchization Committee, consisting of the Prime Minister, relevant ministers (justice, finance, internal affairs etc.), the Governor of Gagauzia, and other state institution representatives. Under this legislation, the committee can present proposals regarding someone's oligarch status to the parliament, and to be ratified it has to be supported by 3/5 of the Moldovan parliament. A person legally designated as an oligarch would not be able to finance political parties, privatize public goods, create public-private partnerships, control media institutions or organize public demonstrations. The ones who are deemed as oligarchs can only be judged in the context of an appeal by magistrates who went through the pre-vetting process.[47] If implemented, the draft would significantly reduce oligarch leverage, and would annihilate their ability to conduct hybrid warfare tactics through disinformation and paid protests.

European authorities clearly indicated they wanted to see more than legislative reform from the Chisinau authorities, especially results from high-profile cases.[48] In that sense, the new chief of the Anti-Corruption Prosecutor's Office in Moldova, Veronica Dragalin, with experience in the US justice system, has proved to be a great asset. She has pursued criminal investigations against key Kremlin pawns, such as the former president Igor Dodon, for illegal financing of the party, or the "Shor" party president and general secretary,[49] Ilan Shor and Marina Tauber, first sentenced *in absentia* to 15 years for the billion dollar bank fraud in Moldova,[50] second detained in early May 2023 in the Chisinau airport, and being under prosecution for illegal financing.[51] Not only the most infamous oligarchs and corrupted politicians have started to be sanctioned and prosecuted, but their associates as well. In that sense, the Moldovan Secret Service (SIS) created a list of people suspected of being associated with Shor and Plahotniuc, who are now banned from making financial transactions.[52] Regarding the seizing of oligarch assets, one of the greatest accomplishments by the current Moldovan leadership was the return of the Chisinau airport in the property of the state. The

[46] "The Magnitsky draft law announced by the Justice Minister might have many deficiencies. The Director of the European politics and reform Institute: „it doesn't have odds of success"". PRO TV Chisinau, June 24, 2023, URL: https://protv.md/politic/proiectul-legii-magnitsky-anuntat-de-ministerul-justitiei-ar-avea-mai-multe-carente-directorul-institutului-pentru-politici-si-reforme-europene-nu-are-sorti-de-izbanda-video---2640459.html

[47] Nicu Gușan, "Deoligarchisation law | How does Moldova intend to fight oligarchs?", Radio Free Europe Moldova, February 22, 2023, URL:https://moldova.europalibera.org/a/legea-deoligarhiz%C4%83rii-cum-%C3%AE%C8%99i-propune-r-moldova-s%C4%83-lupte-cu-oligarhii-/32283187.html

[48] Alla Ceapai, "Chisinau aims to meet EU pre-accession conditions within a year", Radio Free Europe Moldova, URL: https://moldova.europalibera.org/a/chi%C8%99in%C4%83ul-%C3%AE%C8%99i-propune-s%C4%83-%C3%AEndeplineasc%C4%83-%C3%AEntr-un-an-condi%C8%9Biile-de-pre-aderare-la-ue-/31970572.html

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[52] "Lists drawn up by SIS including persons associated with Plahotniuc, Shor and Ceaika, sanctioned by the US: restrictive measures applied". Ziarul de Gardă, December 21, 2022, URL: https://www.zdg.md/stiri/politic/doc-listele-intocmite-de-sis-in-care-sunt-incluse-persoanele-asociate-lui-plahotniuc-sor-si-ceaika-sanctionati-de-sua-masurile-restrictive-aplicate/

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airport was under the ownership of Ilan Shor, after the Moldovan state transferred it to the oligarch under suspicious conditions in 2013.[53]

Moldovan authorities have also been showcasing a zero-tolerance policy towards the bribing of the vulnerable population for political purposes. As such, during the protests organized by Ilan Shor against the pro-European administration, large sums of cash meant to be used to bribe the protesters have been confiscated.[54] Furthermore, election fraud has also been detected and dealt with quickly in the case of the May 2023 Bashkan elections in Gagauzia. It was determined by the anti-corruption authorities that a voter would receive 15000 Moldovan lei (about 763 euros) to vote for the candidate backed by the oligarch's party.[55]

This shows a clear shift of the Moldovan authorities' play: from letting the authors of the most significant theft in the country's history live in exile, to assuring their associates and similar oligarchic characters can remain in the country, receive a fair trial, and not continue the illegal activities. This can be seen as a big step forward by European authorities, who value action much more than draft laws.

The European authorities themselves are proposing measures to aid the country's efforts to fight the Russian agents of influence. As such, according to the chief of the EU delegation in the Republic of Moldova, Janis Mazieks, the EU will follow the UK and the US's lead in preparing a sanction mechanism targeting individuals who breached Moldova's sovereignty and democracy, which includes Shor and Plahotniuc.[56] A European and Western consensus regarding the sanctions that should be enacted against Moldovan oligarchs is crucial, as that limits their leeway in conducting financial operations and subsequently in influencing the political and social agenda of the Eastern European nation. Eventually, in late May this year, the European Union decided to impose sanctions against Moldovan oligarchs, including Shor, Plahotniuc, and Tauber, and high-profile individuals connected to the Russian secret service.[57] This move will not only lower the chances of further destabilization acts from Moldova's exiled oligarchs, but it will also increase the European Union's credibility in the eyes of the Moldovan population.

Lastly, it must be emphasized that the billion-dollar theft is a cataclysmic event from the nation's short history, which has affected all social classes of all political beliefs. If even the undecided or pro-Russian parts of the population will see that the EU is actively working to prevent any similar events, it might convince a considerable percentage of them to support the Republic of Moldova's European pathway.

- Disinformation

As a remnant of the USSR, disinformation and propaganda narratives coming from Moscow are still effective and prevalent within the Republic of Moldova. Since the Soviet times, Moldovans

[53] Vitalie Călugăreanu, " Chisinau Airport returns to state management", Deutsche Welle, November 23, 2022, URL: https://www.dw.com/ro/aeroportul-chi%C8%99in%C4%83u-revine-%C3%AEn-gestiunea-statului-dup%C4%83-ce-a-fost-concesionat-abuziv-%C3%AEn-2013/a-63861997

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[55] "Corruption of voters in Gagauzia; CNA after raids: 15,000 lei for 30 votes in favour of PP ȘOR candidate". Jurnal.md, May 7, 2023,: https://www.jurnal.md/ro/news/3a5b5d822fe178fd/coruperea-alegatorilor-in-gagauzia-cna-dupa-perchezitii-15-000-de-lei-pentru-30-de-voturi-in-favoarea-candidatului-pp-sor.html?utm_source=RSS&utm_medium=RSS&utm_campaign=RSS0

[56] Robert Lupițu, "EU diplomacy chief: We are preparing a civilian mission in Moldova to strengthen the country's capacity against hybrid threats", Calea Europeană, March 21, 2023, URL: https://www.caleaeuropeana.ro/seful-diplomatiei-ue-pregatim-o-misiune-civila-in-r-moldova-pentru-a-consolida-capacitatea-tarii-impotriva-amenintarilor-hibride/

[57] "EU sanctions pro-Russian oligarch over plan to 'destabilize' Moldova". Politico, May 30, 2023, URL: https://www.politico.eu/article/ilan-shor-moldova-russia-eu-sanctions-pro-russian-oligarch-over-plan-to-destabilize/

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were kept within a propaganda bubble, which later turned into a nostalgia bubble, where the USSR was portrayed as a saviour from Nazism and glorified as opposed to the "corrupted Western world". In that sense, a generational gap was created within the Republic of Moldova, making the Soviet-time generation more vulnerable to Russian propaganda.[58]

In the current geopolitical context, with the Ukrainian war in the proximity of the Republic of Moldova's territory, Russian propaganda narratives are circulating through society, both generic themes and specifically tailored for Moldovans. They can be easily considered one of the Kremlin's most effective hybrid weapons, which can sway the Moldovan population away from the Europeanization course pursued by the current government.

Firstly, the recurrent propaganda that is widely promoted in other European countries finds its way through Moldovan news and social media, through the usage of both politicians and of "deepfake" social media accounts. Some of the narratives include urges to demonize and deport Ukrainian refugees, portraying the Ukrainian Army as Nazis and Russia's war as a liberation mission for the oppressed Russian population, or advancing the rumour that there are American labs in Ukraine containing chemical weapons and viruses.[59]

Secondly, when it comes to Russian propaganda specifically tailored for the Republic of Moldova, there are several narratives which have been pushed since the start of the war. The current leadership is portrayed as a Western puppet, who is slowly pushed into a war with Russia. One way that would be achieved is through an alleged attack on Transnistria. Meanwhile, the government is depicted, much like Ukraine's, as a dictatorial and Russophobe regime, actively persecuting the Russian-speaking population. It also repurposes historical narratives, in which the USSR and its "liberation" of the Republic of Moldova in 1940 led to its development, compared to Romania, who allegedly kept the region underdeveloped and with an illiterate population.[60]

Due to the ethic, linguistic and historical connection between Romania and the Republic of Moldova, the former has always been depicted by Russian propaganda as an aggressor, labelling any unification aspirations as a form of annexation.[61] As such, some narratives that were induced by Kremlin since the start of the war in Ukraine are: Romania will be using NATO's military support to annex the Republic of Moldova and parts of Ukraine,[62] or to firstly annex Transnistria,[63] by instilling military provocations along with the current Chisinau administration.[64] Especially prone to

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[58] "Nicolae Negru: Russian propaganda in Moldova exists due to political forces fuelled by Russia", IPN.md, October 24, 2023, URL: https://www.ipn.md/en/nicolae-negru-russian-propaganda-in-moldova-exists-due-to-political-8004_1092952.html

[59] Stela Mihailovici, "Trolls in Moldova supporting the Russian aggression. Concerted actions and connections with PSRM". TV8.md, March 29, 2022, URL: https://tv8.md/2022/29/03/video-ancheta-trolli-din-moldova-care-sustin-agresiunea-rusiei-actiuni-concertate-si-conexiunile-cu-psrm/196567

[60] "The Republic of Moldova 2022: Top FAKE NEWS & DISINFORMATION debunked by Veridica". Veridica, January 6, 2023, URL: https://www.veridica.ro/en/analyses/the-republic-of-moldova-2022-top-fake-news-disinformation-debunked-by-veridica

[61] "FAKE NEWS: Brussels greenlights the annexation of the Republic of Moldova by Romania". Veridica, January 10, 2023, URL: https://www.veridica.ro/en/fake-news/fake-news-brussels-greenlights-the-annexation-of-the-republic-of-moldova-by-romania

[62] "FAKE NEWS: NATO forces were brought to Romania to help it annex the Republic of Moldova and part of the territory of Ukraine". Veridica, January 6, 2023, URL: https://www.veridica.ro/en/fake-news/fake-news-nato-forces-were-brought-to-romania-to-help-it-annex-the-republic-of-moldova-and-part-of-the-territory-of-ukraine

[63] "Russia claims that Romania is planning to annex Moldova with the help of NATO and Ukraine: "A military operation in Transnistria will follow"". Ziare.com, April 25, 2022, URL: https://ziare.com/razboi-ucraina/rusia-sustine-ca-romania-vrea-sa-anexeze-republica-moldova-atac-transnistria-1737638

[64] Ramona Ciobanu, "Marina Tauber, "ȘOR" MP, accuses that the Republic of Moldova, helped by Romania, is planning "provocations" in Transnistria for Easter. Chisinau's reaction". Libertatea, March 24, 2023, URL: https://www.libertatea.ro/stiri/marina-tauber-republica-moldova-ajutata-de-romania-planifica-provocari-in-transnistria-4490947

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Russian propaganda is the aforementioned Gagauzia region, were, according to a 2021 pole, 90% of the Gagauz population consumes Russian-language media, which is trusted to a large extent.[65]

Disinformation is a battlefront that the Republic of Moldova will have to face holistically in a society that is indeed becoming more and more pro-European,[66] but which is split somewhere around the 40-60% mark on almost all foreign policy issues, indicating a still-large societal divide. The measures that the Moldovan state has taken against disinformation have been limited and reactive. The Moldovan Security Services firstly banned TV channels owned by Ilan Shor, responsible for spreading propaganda on the Ukrainian war.[67] Later, that was followed by a Kremlin-related site ban, such as the Sputnik outlet.[68] That is not enough to counter Russian disinformation, the government needs to work on active measures to educate and enhance the resilience to propaganda of the general population. Furthermore, although the EU has been investing much more in the Republic of Moldova than Russia in the last years, there's an unawareness among the Moldovans regarding EU advantages and aid. The rampant Kremlin propaganda still makes a large part of Moldovans view Russia favourably. An informative, sustained counter-narrative coming from the European Union and from the Moldovan government is imperative to correctly inform the population.

The EU has also attempted to aid the Republic of Moldova in fighting disinformation (along with other forms of pressure) by sending a civilian taskforce specialised in hybrid warfare.[69] Moldova has recently officially approved this measure, by creating the "Patriot" Centre, an institution meant to combat Russian propaganda and increase the population's resilience towards disinformation campaigns.[70] These are only the first steps towards lowering the impact of Russia's greatest weapon, disinformation, and it remains to be seen to what extent it is effective.

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[70] Madalin Necsutu, "Moldova to Create 'Anti-Propaganda Centre' to Counter Russian Disinformation". Balkan Insight, May 29, 2023, URL: https://balkaninsight.com/2023/05/29/moldova-to-create-anti-propaganda-centre-to-counter-russian-disinformation/

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Conclusions

Dans les pages de "Le Droit et la Politique de l'UE à la Croisée des Chemins: Naviguer à travers les Complexités de l'Intelligence Artificielle, de la Digitalisation, de la Protection des Données, de la Sécurité et de la Radicalisation" / "EU Law and Politics at the Crossroads: Navigating the Complexities of AI, Digitalization, Data Protection, Security, and Radicalization" les perspectives collectives de nos contributeurs éminents convergent pour former une riche toile qui éclaire les défis multifacettes et les opportunités ancrés dans le discours juridique et politique de l'Union européenne.

L'effort collaboratif présenté dans ces pages encapsule une compréhension approfondie des défis et des opportunités auxquels l'Union européenne est confrontée dans un paysage mondial en rapide évolution. Les perspectives partagées par les universitaires, les praticiens et les experts contribuent à un discours nuancé qui s'étend au-delà des frontières disciplinaires, favorisant une compréhension holistique de l'interaction complexe entre le droit, la politique et les technologies émergentes.

L'exploration initiée dans la section "Le Droit de l'UE: De l'Innovation à la Régulation" */ EU Law: From Innovation to Regulation* encapsule le paysage juridique en rapide évolution façonné par les avancées technologiques. L'exploration par Giorgi URTMELIDZE des concepts de la technologie juridique pose les bases pour comprendre la nature changeante de la pratique juridique. Mattia MORRESI plonge dans les dimensions éthiques de l'IA, mettant en lumière les défis posés par les systèmes d'armes autonomes. Ruxandra Andreea LĂPĂDAT questionne la menace potentielle de l'IA remplaçant les professions juridiques traditionnelles. Daniela DUȚĂ tisse un récit autour de l'innovation responsable, mettant en avant le rôle de la confidentialité, de la vie privée et de la protection des données. Ana KOIAVA navigue dans l'intersection complexe de la divulgation des vulnérabilités, des obligations du RGPD et de la cybersécurité. Marta TERLETSKA explore le paysage en évolution de la vie privée post-mortem dans le contexte des évolutions législatives du RGPD. L'exploration de Vlad BĂRBAT de la Loi naturelle offre une perspective philosophique pour anticiper l'avenir du droit européen, tandis que Marieta SAFTA examine les vulnérabilités des cours constitutionnelles face aux défis de sécurité. Irina-Cristina APOSTOLESCU conclut cette section par un examen du notariat traditionnel face à l'influence transformative de la technologie blockchain.

La deuxième section, "Sécurité et Politiques de l'UE: Naviguer en Eaux Troubles" */ EU Security and Politics Highlights: Navigating Turbulent Waters*, amplifie le discours en entrelaçant les considérations de sécurité avec les dynamiques politiques. L'analyse sociologique de Dr. Hedi SAIDI sur la jeunesse radicalisée incite à la réflexion sur les racines sociétales de la radicalisation. Sabina CENOLLI et Ulpian HOTI contribuent à une analyse nuancée de la gestion des performances dans l'administration publique. Ana BUHALJOTI et Mirela MERSINI mettent en lumière la priorisation de la sensibilisation à la sécurité dans la quatrième révolution industrielle. Irina NICOLAESCU aborde la solidarité du mouvement syndical international dans l'ère post-COVID-19. Andreea-Romana BAN attire l'attention sur l'impact transformateur de la transition numérique sur l'éducation. Dr. Mihaela IVĂNESCU et Dr. Luiza-Maria FILIMON éclairent les tendances des campagnes des partis nationaux lors des élections européennes. Marcu-Andrei Solomon conclut cette section par une analyse captivante de l'intégration européenne de la République de Moldavie. Cette anthologie représente un témoignage de l'engagement collectif envers l'avancement des connaissances et la promotion du dialogue. Nous espérons sincèrement que les contributions au sein de ce volume serviront de catalyseurs pour de nouvelles explorations, suscitant de nouveaux débats et inspirant de futures initiatives dans le domaine dynamique du droit et de la politique de l'Union européenne.

MIHAELA NATEA, SIMION COSTEA

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