The Europeanization of Moldova's direct democracy: assessing the new tools for citizen engagement in policymaking

Georgiana CICEO*

Abstract

This article zooms in on citizens' participation in the decision-making process opened in recent years in the framework of EU-Moldova institutional relations in order to evaluate the extent to which it contributed to the strengthening of the structures of democratic governance in the Republic of Moldova. The present contribution moves away from the traditional top-down approach on how the EU supports democratization processes in neighboring countries through the transfer of norms on democratic governance and aims to provide an upward perspective on how the newly developed mechanisms of citizen participation strengthen the democratic structures in the particular case of the Republic of Moldova. This article does not intend to question the normative power of the European Union, but starts from the observation that although the EU possesses neither the military muscle, nor the political clout, it has nevertheless the capacity to influence norms and ideas on what could be considered an appropriate behavior in the relations between states. The main concern of this article will therefore be to address the challenges posed by the design of European norms and values in the context of the utterly complex situation existing in its Eastern neighborhood.

Keywords: Republic of Moldova, European Union, Eastern Partnership, European Neighborhood Policy, external governance, citizen participation

JEL Code: F55, H77, H83

1. Introduction

The exit of the Republic of Moldova from the Soviet system entailed a difficult process not only for building a new political system but also for

* Georgiana CICEO is Associate Professor at Babeș-Bolyai University, Cluj-Napoca, Romania. E-mail: ciceo.georgiana@ubbcluj.ro

changing deeply ingrained mentalities about the role of the state after decades of being held solely responsible for providing health services, housing, or access to education. As the Soviet state arrogated to itself the role of sole provider for the needs of its subjects, policymakers claimed that the state was the source of human rights, in contradiction with the common Western legal tradition that the individual holds inherent rights by his very nature (Lambelet, 1989, pp. 64–65). Otherwise stated, the state was placed high up on a plinth. Since there were no other alternatives for getting access to fundamental services such as healthcare or education, it was between dangerous to almost impossible to question the governing mechanisms of the state. By contrast, an adequate political culture, understood in the sense of a set of guidelines, attitudes, beliefs and values by which the individual relates to a particular political system, is the essential ingredient of a democratic political system based on the existence of a Constitution that guarantees the rule of law and respect for human rights and fundamental freedoms. A democratic political culture implies participation; citizens have the means to influence decision-making or political events that negatively affect their interests (Almond and Verba, 1989, p. 119).

However, a people with an almost unconditional obedience to the state represented, as in the case of post-war Germany, a difficult starting point for the newly-proclaimed Republic of Moldova. Reflecting on the situation of his country in the troubled years following the Nazi dictatorship, the first Chancellor of the Federal Republic of Germany, Konrad Adenauer, expressed the opinion that his country's most difficult problem was caused by "a false perception of the State, its power and the position of the individual within it" that existed at the level of the German society, which transformed "the State into an idol and raised it on an altar" then "sacrificed the individual and its dignity on this altar" (Adenauer, 1987, p. 44). Trying to make its own way after the collapse of the Soviet system, the Republic of Moldova was after 1990 in a comparable difficult situation with that of post-war Germany in terms of the relationship between the state and society and the need to redress this rapport.

However, Moldova's problems have been reinforced by a whole series of additional factors. Firstly, we need to consider what Professor Pompiliu

Teodor defined as "an unfinished process of forging a national identity", since, because of its 1812 annexation by the Russian Empire, Moldova remained untouched by the nationalist movements that had crossed the other nations in the region, being prevented from building its own national identity (Teodor, 2007, pp. 267–278). Then, until the end of the Soviet rule, Moldova was one of the most Sovietized republics in the former USSR, with a much higher than average rate of linguistic assimilation and mixed marriages. The consequences of this situation were best highlighted by professor Charles King, who stressed that "the situation of Moldova is furthermore complicated by the conflicts between the political and cultural elites of the country regarding the basis of the national identity of the state"(King, 2002, p. 231).This translated into a strained relation between Moldovan/Romanian majority population and ethnic minorities, especially the one of Russian descent, brought constantly to the forefront of political struggle. This rendered the efforts to build a new type of governance even more difficult. Secondly, the separatist war that led to the creation of the self-proclaimed Transdniestrian Moldovan Republic has deprived Moldova of most of its industrial resources and has accentuated its dependence on Russia[1](Roper, 2001; Protsyk, 2009; Chinn, 2019; Kosienkowski, 2019). Thirdly, we have to bear in mind that Moldova is part of a 'common neighborhood' of the European Union and Russia (Makarychev, 2014; Cadier, 2019). The competition between Brussels and Moscow has crystallized two radically opposed integration projects for the region: the Eastern Partnership and the Eurasian Customs Union. As part of a concerted effort to recover its status in the former Soviet republics and reconfirm its global leadership mainly since Vladimir Putin's takeover of power, Russia has taken systematic steps to destabilize those states that seek closer integration with the EU and NATO (Dimitrova and Dragneva, 2009; Zagorski, 2011; Delcour, 2015, 2018; Ademmer, Delcour and Wolczuk, 2016; Korosteleva, 2016). Countries in the common neighborhood like Moldova have been exposed to strong divergent external forces, which have only amplified their internal divisions (Hagemann, 2013; Kennedy, 2013). We believe that the situation in Moldova

[1]Depending on the source of the statistics, between 70 to 80% of Moldova's exports are sent to the Russian Federation.

cannot be assessed correctly without taking into account these factors that shape both its internal and external action.

Coming back to the parallel we drew with the comparable difficult situation of Germany at the end of the WWII and the way this was assessed by its first chancellor, we have to mention that for Adenauer it was clear from the beginning that democracy could not be created by simply establishing a parliamentary form of government. It required a political culture that was "deeply rooted in the consciousness of individuals." The role of the state was "to awaken the creative forces of the people, to guide and to protect." It was the mission of the state to turn the younger generation "into politically responsible people," not in the sense of making them willing to leave control and leadership to an overwhelmingly powerful state, but "by reinforcing their will and ability to become free people, wanting to integrate responsibly in the society as a whole" (Adenauer, 1987, pp. 45–46). All these considerations prove true in the case of Moldova as well. The country began an extensive process of democratization since the early 1990s. Engaging on a European path since 1994 should have facilitated a profound transformation of the Moldovan society. Yet, the specific circumstances of Moldova's situation have left a durable imprint on its relations with the European Union and limited considerably the normative power of the latter. So far Moldova's democratic performance remains modest. 25 years after the collapse of the Soviet Union and the proclamation of its independence, the Republic of Moldova is still torn between a pro-European and a pro-Russian way of action. After 2009, a pro-European coalition of parties assumed the mission of taking decisive measures to launch the country on an EU orbit, but the lack of political will to introduce the necessary reforms for a more democratic style of government threw Moldova by the end of 2015 in a deep political crisis, which nearly wiped out the credibility of a pro-European option[1](Racheru, 2016).The situation was even more dramatic as it contrasted sharply with its former status of champion of the Eastern Partnership and its reputation of success story for the democratization of a state situated in a region

[1]According to the Moldovan media, by the end of 2015 the support for a European orientation of the country and that for a Russian orientation were almost equal, whereas those who hesitate account for 40-50% of the electorate .

dangerously exposed to a very assertive Russian Federation. Although it has adopted "certain specific elements of a democratic system", but without having yet completed the transition, the Republic of Moldova, more than most CIS countries, came to be regarded as a semi-free state with combined elements of "democratic competition" and "authoritarianism" (Raik, 2006, pp. 7–9). According to Freedom House's Nations in Transition index (NIT), the Republic of Moldova should be considered a "hybrid regime" rather than a "transitional" one, due to its "limited democratic progress" and recurrent tendencies towards authoritarianism (Nilsson and Silander, 2016).

2. Data and methodology

This article aims to evaluate how the EU-Moldova partnership has succeeded in contributing to building a civic culture in the young former Soviet republic. On grounds relating to the limits imposed on this article, attention will focus on the paths opened by this partnership for the involvement of citizens in the conduct of political events that would adversely affect their interests. Its research questions relate to how does EU support for a more dynamic citizen engagement in policy-making can help the democratization processes in the case of a country in search of its own identity whose pro-European orientation is supported by half of the majority Moldovan/Romanian population and to a lesser extent by the minority groups representing 22% of the population (Kosienkowski and Schreiber, 2014, pp. 5–6). It is true that over the years the EU has often been criticized for its own democratic deficit, but this has not prevented it from turning democracy and rule of law into central goals of its global engagement and has consistently positioned itself to remain one of the strongest advocates of democratic transformation in its relations with other countries. In view of the considerations mentioned above, we believe that the most appropriate approach to the topic under discussion is from the perspective of the external governance of the European Union.

In these circumstances, the reminder of the paper will be organized in three relevant parts for the presentation of the research results. After a brief review of the literature devoted to the external governance of the European Union, the state of relations between Moldova and the European Union will

be discussed first, the focus being placed on their bilateral partnership's established objectives, content and means of implementation.Next, the ways of involving citizens open by this partnership will be explored in relation to the mechanisms for citizen participation available in a democratic system.In the last part, the limits of the citizen participative capacity established by this institutional framework will be exposed. The analysis will be complemented by a chapter of conclusions.

3. Literature review

Research on EU external governance started as a subfield of the wider literature on Europeanization, but has been so much enriched over the years that has been established as a field of research in its own (Lavenex, 2004; Schimmelfennig and Wagner, 2004; Lavenex, 2008; Freyburg, Lavenex, Schimmelfennig, et al., 2009; Lavenex and Schimmelfennig, 2009; Lavenex, 2011; Schimmelfennig, 2012; Freyburg, Lavenex, Schimmelfennig, et al., 2015; Schimmelfennig, 2015). Within the studies on external governance a considerably vast subfield EU governance at its Eastern border (Lavenex, 2004; Gänzle, 2009; Vasilyan, 2010; Korosteleva, 2014; Valiyeva, 2016; Schimmelfennig, 2018). These studies analyze from different perspectives the manner in which the European Neighborhood Policy, despite its asymmetrical and unilateral character, merges into the daily reality of a wide range of countries with different traditions and systems that form the neighborhood of the European Union. The research on the Europeanization of Central Europe (Raik, 2004; Schimmelfennig and Sedelmeier, 2004, 2019; Börzel and Schimmelfennig, 2017; Börzel, Dimitrova and Schimmelfennig, 2017) has highlighted the explanatory power of the 'reinforcement by reward' (conditionality) and 'reinforcement by support' (capacity building) to explain the complex processes of transformation of the countries in that region (Schimmelfennig and Sedelmeier, 2004, pp. 671–675). In the context of enlargement, the strongest reward to stimulate internal change was the prospective accession to the European Union. In contrast, European Neighborhood Policy employs conditionality by linking specific rewards such as access to the EU single market or visa liberalization with rules and

values of the European Union, whereas the prospect of accession has deliberately not been considered as a conditionality instrument.In an effort to reduce adaptation costs, the European Union has supported the building of local capacities in the form of regulatory institutions that require, establish and apply EU rules thus transferring knowledge and financial resources to its neighbors.

Above all, the concept of external governance tends to follow the logic of building networks on two axes – one regulatory and one organizational. Regulatory processes "allow for the expansion of norms and rules," while the organizational processes contribute to "opening participatory channels to decision making" (Lavenex, 2008, p. 943).Both dimensions are relevant to the study we propose below, as they can provide useful prospects for the processes that accompany the transition towards democratic governance. They are important because they support efforts to make the public sector more transparent, responsible and accessible to citizens and as such to facilitate better citizen participation. The "governance" model in the promotion of democracy was the focal point of several studies in the field (Börzel and Risse, 2004; Schimmelfennig and Scholtz, 2008; Youngs, 2009; Kurki, 2011; Lavenex, Sandra; Schimmelfennig, 2011; Stewart, 2011; Grimm and Leininger, 2012; Sasse, 2013; Panchuk and Bossuyt, 2014; Freyburg, Lavenex, Schimmelfennig, et al., 2015; Freyburg and Lavenex, 2017). In comparison with other contributions that focus on a top-down perspective on how the European Union supports democratization processes in neighboring countries by transferring the provisions on democratic governance, this article favors a bottom-up perspective on the way in which the newly developed mechanisms for citizen participation strengthen the structure of democratic governance in the particular case of the Republic of Moldova.

4. EU-Moldova Relations

In the early days, economic problems dominated the relationship between the European Union and the Republic of Moldova. Back then, the need to undertake democratic reforms, although formally present on the agenda of bilateral relations, were not so well prioritized as to shape the

relationship between the two sides. The Partnership and Cooperation Agreement (PCA) signed in November 1994 and put into effect from 1998 for a period of ten years established a legal framework for the bilateral dialogue between the Republic of Moldova and the EU. Moreover, it postulated the attachment to common values, such as democratic principles, respect for human rights, the rule of law and the market economy. In itself, the document was built on the framework structure of the agreements concluded by the European Union with the countries in its eastern neighborhood. The PCA established a structured dialogue in the political, commercial, investment, economic, legislative and cultural areas. Nevertheless, the various joint institutions established within the PCA (the Cooperation Council, the Cooperation Committee, the Sub-Committees on sectoral cooperation) suffered from the beginning from the absence of clear objectives and a certain degree of flexibility with regard to specific conditions in the countries that have signed this type of agreements. In many respects, it was likened to a one-size-fits-all solution for the complex EU relations with its eastern partners (Börzel and Risse, 2004).

The European Neighborhood Policy (ENP), inaugurated in 2004, after the first round of enlargement to Central and Eastern Europe and largely inspired by it, aimed to set up around the EU a 'ring of friends' consisting of well-governed countries, which shared common values (Ciceo, 2017). As such, it has put a much stronger emphasis on strengthening democratic institutions in the eastern countries. Its fundamental idea was to try to repeat the success of enlargement in promoting internal change, without using the conditionality of accession. The EU-Moldova Action Plan concluded within the framework of the European Neighborhood Policy inherited the objectives related to the promotion of democracy and the rule of law from the PCA. More practical in approaching cooperation, the Action Plan supplemented the older objectives of the PCA with greater specificity, by bringing in concrete indicators for each individual aspect, such as the strengthening of democratic institutions and the rule of law, review of legislation and implementation of judicial reforms and respect for human rights and fundamental freedoms. However, no measures were envisaged for the lack of progress in implementing the relevant reforms. This strictly bilateral format of the EU

relations with the ENP countries was complemented from 2009 by a multilateral structure named Eastern Partnership. It involved EU Member States and the six partner countries in a network of cooperation organized on four pillars – democracy promotion, good governance and internal stability; economic integration and convergence with the EU; energy security and the last, particularly relevant to the topic of this research, dedicated to "people-to-people" contacts, on which we will return in detail in the next section. The framework of EU-Moldova relations was complemented from June 2014, with an Association Agreement (AA), that included also a Deep and Comprehensive Free Trade Area (DCFTA), signed after more than four years of negotiations. The latest agreement emphasizes, among other things, the "development, consolidation and enhancement of the stability and effectiveness of democratic institutions and the rule of law" in the Republic of Moldova, as well as the objectives of democratic governance, such as "building a responsible, efficient, transparent and professional civil service. "Unlike the previous PCA, the AA establishes more ambitious objectives for sectoral reform and strengthens monitoring mechanisms, in particular empowering the EU to "assess the convergence of [Moldovan] legislation with EU law" and suspend EU benefits when finding flaws in fulfilling assumed undertakings.

In all these open formats for bilateral and multilateral co-operation, the EU's strategy was to strengthen state and non-state actors, which in turn would be able to exert pressure on the government to make the necessary reforms (Beichelt and Merkel, 2014; Rommens, 2014; Shapovalova and Youngs, 2014; Kourtikakis and Turkina, 2015; Ciceo, 2016a). However, Moldova failed to harness the moment of strategic opportunity created first by the increasing competition between Western countries and Russia on the Eastern flank of the EU and then by the Russian annexation of Crimea and aggression in Ukraine. Getting the status of "champion of the Eastern Partnership" after the signing the Association Agreement and being granted a visa-free regime from 2014 should have been incentives for a more thorough and authentic reform course than the one simulated by some of the Moldovan leaders. Yet, increasingly disappointed with the direction and quality of the reforms implemented by the pro-European parties, the Moldovan society

turned even less optimistic about the European integration prospects of their own country (Eastern Partnership - Civil Society Forum - Moldova National Platform, 2020, p. 5).Practically in all these years we have been faced with a situation where political anxiety generated by the government reforms, paved the way for an anxious course of government action in response to the population fears, which in turn further weakened popular support for European integration (Ciceo, 2016a, pp. 343–344). In the specific case of the Republic of Moldova, this could generate impulses for a Russian alternative. Having said this, we do not intend to suggest that the course of reforms demanded by the EU is the right one and that the Russian alternative is the bad one, but only to emphasize that the reforms involved in the democratic transformation of the Republic of Moldova along European lines require a fundamental change in the way of life and the attitude towards the state. The purpose of this article is strictly to evaluate the tools by which the EU aims to promote the democratic transformation of the Republic of Moldova. What we have tried to point out is that, given the difficulties that Moldovan society has to face, the EU conditions become even more difficult to consider and all the more problematic especially when there is an alternative.

5. EU support for citizens participation in the Republic of Moldova

The democratic legitimacy of the EU is based on two complementary principles of democracy – representative and participatory, respectively, which have been firmly anchored in the legal framework of the European Union. The first principle is drawn up in Article 10 of the Treaty on the European Union of the Treaty of Lisbon, which states that "the functioning of the Union is based on representative democracy". Since its establishment, the EU has been based on three different channels of representation to ensure that policy-making responds to citizen opinions - an electoral channel, which works through the European Parliament, a territorial channel that operates through the Union's intergovernmental institutions, such as the European Council and the Council of Ministers, and a channel of interest representation, which operates through interest-based organizations active at European level.

Article 11 of the same treaty enshrines the principle of participatory democracy by stating that citizens and their representative associations are given the opportunity to express their views "in all areas of Union action" and that the Union "maintains an open, transparent and regular dialogue with representative associations and civil society." The European Union supports and promotes both upward and downward instruments of citizen involvement. Upward instruments facilitate citizen influence on policy outcomes, as they challenge the political preferences of the political elite. In turn, downward instruments are generally weaker, as they are aimed at supporting existing policies and clarifying the value of newly introduced policy measures in order to achieve a more effective governance (Ciceo, 2016b). In its own practice, EU tends to favor downward instruments, thus giving greater importance to improving policy outcomes than to involving citizens in policy-making. In fact, citizens can not challenge the decision-making elite as their contribution is almost entirely limited to the policy-making phase. This leads to the conclusion that the EU continues to legitimize itself through the results of its policies (*output legitimacy*), rather than by involving citizens in shaping its actions (*input legitimacy*) (Schmidt, 2013).

In relation to its neighbors, in general, with the Republic of Moldova, in particular, the EU has been interested in improving citizen participation in policy-making by acting both to strengthen the principles of representative democracy and to inspire the principles of participatory democracy. The Association Agreement provides both institutional and interest-based channels for citizen participation, reflecting the prevailing EU experience. These are reinforced by the network of activities undertaken by the civil society in the framework of the Eastern Partnership - Civil Society Forum, where a Moldovan National Platform bringing together the most important third sector organizations have been established. In order to strengthen participatory democracy in the countries in its immediate vicinity, the EU has provided support to civil society organizations as the existence of civil society is regarded as an important precondition for a democratic society and, at the same time, the functioning of democracy requires an active and dynamic civil society. The main support provided by the European Union refers to: European Instrument for Democracy and Human Rights (EIDHR), European

Neighborhood and Partnership Instrument (ENPI), Civil Society Facility (CSF) and European Endowment for Democracy (EED) (Shapovalova and Youngs, 2014; Ciceo, 2016a).

EU-Moldova cooperation has helped to consolidate a democratic regime in the Republic of Moldova based on the both principles of representative and participatory democracy. However, events in recent years in Moldova have shown that the civil society, although largely pro-European, is divided and still far from exercising anything but minimal control over power holders to prevent concentration and abuse of power. There is still a certain indifference at the level of the citizen towards the way in which politics is made and important decisions end up being taken. As already mentioned, this citizen's apathy is symptomatic of the fact that there are other pressing issues that deserve better consideration. Nevertheless, in the end these impede on a much-needed change from below. That is why the EU still has a role to play as a catalyst for a better environment for involving civil society in issues related to the advancement of democratization processes in the Republic of Moldova and the implementation of bilateral agreements.

6. Limits of participatory capacity exposed by the current framework of EU-Moldova relations

Citizen participation means individual or collective action to identify and address issues of public interest. It refers to a process in which citizens organize themselves and achieve their goals at the local level and collaborate through non-governmental community organizations to influence decision-making. Participating in decision making means an opportunity for citizens, civil society organizations and other stakeholders to influence the development of policies and laws that affect them. By engaging in these political processes, citizens can address and have a say in how their concerns, demands, and principles are dealt with by central/ local authorities and are monitored, taken forward or resolved by them. Citizen participation takes place within the existing constitutional and legal framework and does not aim to achieve legislative or executive prerogatives as lawmaking or public policy

implementation. In itself is just a mean to allow authorities to act more efficient.

However, it is important to mention from that the behavior of individual citizens "can vary greatly in so far as they use the resources they have for political purposes" (Dahl, 1961, pp. 1340–1341). Their degree of participation may, however, vary along a 'scale' from a minimalist level where citizens are just an object of 'manipulation' by power-holders who do not really seek to allow them to participate, moving gradually to the superior levels of 'information' and 'consultation' through which citizens can really 'hear and be heard,' but they do not have the power to ensure that their opinions are taken into account by the powerful. Citizen participation can then increase to the higher levels of 'partnership,' when citizens can negotiate and engage in compromises with traditional power holders, and reach ultimately the level of 'citizen control,' whereby they acquire decision-making or full leadership power (Arnstein, 1969, pp. 217–224).

For the time being, neither AA nor any other cooperation framework between the EU and the Republic of Moldova do incorporate motivating-enough objectives, that could rally the Moldovan society around an ambitious reform programme and determine it to press pro-European political elites to meet their commitments. In the long term, the EU is likely to maintain its attractiveness in its neighborhood only if it can consistently adapt to the specifics of an ever-changing environment and can address its short-term challenges in an appropriate way. Unfortunately, much too often the EU tends to focus in a rigid manner on its long-term objectives even when on-the-spot developments move on at high speed and require prompt, firm, country-specific reactions. In addition, instead of imposing standard solutions to all its partners in the Eastern Neighborhood, EU must come up with more custom-made answers and tangible offers. The lack of EU sensitivity to specific domestic needs and realities makes it difficult for partner countries to accept the integration or rigors of a democratic model of government.

Last but not least, the EU needs to reassess the use of reward (conditionality) tools to provoke democratic transformation in its neighboring countries in general, in the Republic of Moldova in particular. While advancing on a path towards a full-fledged membership is not seen as an

option, given that the too hasty accession of Eastern Europe is now seen as a key cause of the challenging European political and economic situation, the EU must try to clarify its position vis-à-vis its Eastern neighbors and, depending on it, to calibrate the principle of conditionality according to other objectives that could be considered of interest. In both cases, conditionality could serve both as a stimulus tool but at the same time as a mean to penalize some types of behavior that deviate from European norms and values.

7. Conclusions

Despite its relative shortcomings, citizen participation, regardless of the form or degree of involvement, remains an important prerequisite for democratic governance and provides substantial benefits for enhancing transparency, accountability and accessibility of governmental activities. Participatory processes have become a transformative tool for social change. In consolidating its democratic path, the Republic of Moldova needs to strengthen its civil society and the principle of participatory democracy.

The main challenge for the European Union stems from the much less intense nature of the instruments it has developed for promoting democracy in its immediate neighborhood in the absence of accession conditionality. In order to make its message as credible and trusted as possible, the European Union will have to provide some clarification on the quality of the relations it is considering to develop with the Republic of Moldova and, in a broader sense, the other members of the Eastern Partnership. In fact, there are only two ways along which the EU can move in this respect: either suppresses with determination any of the expectations the Republic of Moldova might have in this respect and declares its ambitions unrealistic, or begins accession negotiations as with Turkey, which eventually stagnate and lead to significant tensions. Experience shows that stopping a "commitment," no matter how bitter and painful this could be, is better done sooner than later. However, as the EU-Moldova relationship has demonstrated, conditionality although short of an accession perspective may involve other winning goals than full membership, such as the creation of a visa-free regime, access to the single market, etc. At the same time, taking into account the experience of EU-

Moldova relation, better monitoring and evaluation tools will be needed to assess the fulfilment of requirements before offering rewards in order to avoid a second fall from a much-praised position.

References

Ademmer, E., Delcour, L. and Wolczuk, K. (2016), Beyond geopolitics: exploring the impact of the EU and Russia in the "contested neighborhood", *Eurasian Geography and Economics*, Vol. 57, No. 1, pp. 1–18.

Adenauer, K. (1987), *Erinnerungen 1945-1953*, Stuttgart: Deutsche Verlags-Anstalt-DVA.

Almond, G.A. and Verba, S. (1989), *The Civic Culture : Political Attitudes and Democracy in Five Nations*, London: Sage Publications.

Arnstein, S.R. (1969), A Ladder Of Citizen Participation, *Journal of the American Planning Association*, Vol. 35, No. 4, pp. 216–224.

Beichelt, T. and Merkel, W. (2014), Democracy Promotion and Civil Society, *Civil Society and Democracy Promotion*, available at:https://doi.org/10.1057/9781137291097.0008.

Börzel, T.A., Dimitrova, A. and Schimmelfennig, F. (2017), European Union enlargement and integration capacity: concepts, findings, and policy implications, *Journal of European Public Policy*, Vol. 24, No. 2, pp. 157–176.

Börzel, T.A. and Risse, T. (2004), *One Size Fits All! EU Policies for the Promotion of Human Rights, Democracy and the Rule of Law*, available at: https://www.polsoz.fu-berlin.de/ (accessed 24 May 2020).

Börzel, T.A. and Schimmelfennig, F. (2017), Coming together or drifting apart? The EU's political integration capacity in Eastern Europe, *Journal of European Public Policy*, Vol. 24, No. 2, pp. 278–296.

Cadier, D. (2019), The Geopoliticisation of the EU's Eastern Partnership, *Geopolitics*, Vol. 24, No. 1, pp. 71–99.

Chinn, J. (2019), The case of Transdniestr (Moldova), in Jonson, L. and Archer, C. (Eds.), *Peacekeeping And The Role Of Russia In Eurasia*, New York: Routledge, pp. 103–121.

Ciceo, G. (2016a), The normative power of Europe beyond its borders. Case study: The Republic of Moldova, in Păun, N. and Schirmann, S. (Eds.), *Borders, Identities, Communities. The Road to Reconciliation and Partnership in Central and Eastern Europe*, Baden-Baden: Nomos, pp.

337–350.

Ciceo, G. (2016b), The role of citizens in the functioning of the EU. What avenues for citizen participation were opened by the EU-Moldova association partnership?, in Sîrbu, O. (Ed.), *EU and Its Eastern Neighborhood: Fostering Deeper Europeanization of Moldova*, Chișinău: Impresum, pp. 96–111.

Ciceo, G. (2017), Continuity and Change in European Neighbourhood Policy. The Burden of Excessive Bureaucratization, *Studia Universitatis Babeș-Bolyai Studia Europaea*, Babes-Bolyai University, Vol. 62, No. 1, pp. 55–69.

Dahl, R.A. (1961), Who participates in local politics and why, *Science*, Vol. 134, No. 3487, pp. 1340–1348.

Delcour, L. (2015), Between the Eastern Partnership and Eurasian Integration: Explaining Post-Soviet Countries' Engagement in (Competing) Region-Building Projects, *Problems of Post-Communism*, Vol. 62, No. 6, pp. 316–327.

Delcour, L. (2018), Dealing with the elephant in the room: the EU, its "Eastern neighbourhood" and Russia, *Contemporary Politics*, Vol. 24, No. 1, pp. 14–29.

Dimitrova, A. and Dragneva, R. (2009), Constraining external governance: Interdependence with Russia and the CIS as limits to the EU's rule transfer in the Ukraine, *Journal of European Public Policy*, Vol. 16, No. 6, pp. 853–872.

Eastern Partnership - Civil Society Forum - Moldova National Platform. (2020), *Monitoring Public Policies in Moldova - 4*, Chișinău.

Freyburg, T. and Lavenex, S. (2017), Democracy promotion by functional cooperation, in Schumacher, T., Marchetti, A. and Demmelhuber, T. (Eds.), *The Routledge Handbook on the European Neighbourhood Policy*, Milton Park: Routledge, pp. 467–480.

Freyburg, T., Lavenex, S., Schimmelfennig, F., Skripka, T. and Wetzel, A. (2009), EU promotion of democratic governance in the neighbourhood, *Journal of European Public Policy*, Vol. 16, No. 6, pp. 916–934.

Freyburg, T., Lavenex, S., Schimmelfennig, F., Skripka, T., Wetzel, A., Freyburg, T., Lavenex, S., et al. (2015), Models of EU Democracy Promotion: From Leverage to Governance, in Freyburg, T., Lavenex, S., Schimmelfennig, F., Skripka, T. and Wetzel, A. (Eds.), *Democracy Promotion by Functional Cooperation*, Palgrave Macmillan UK, pp. 10–24.

Gänzle, S. (2009), EU Governance and the European Neighbourhood Policy:

A Framework for Analysis, *Europe-Asia Studies*, Vol. 61, No. 10, pp. 1715–1734.

Grimm, S. and Leininger, J.(2012), Not all good things go together: conflicting objectives in democracy promotion, *Democratization*, Vol. 19, No.3, pp. 391–414.

Hagemann, C. (2013), External Governance on the Terms of the Partner? The EU, Russia and the Republic of Moldova in the European Neighbourhood Policy, *Journal of European Integration*, Vol. 35, No. 7, pp. 767–783.

Kennedy, R. (2013), Moldova: arena of international influences, in Kosienkowski, Marcin; Schreiber, W. (Ed.), *East European Politics*, Lanham: Lexington Books, pp. 253–254.

King, C. (2002), *Moldovenii : România, Rusia Și Politica Culturală*, Chișinău: ARC.

Korosteleva, E. (2014), *The European Union and Its Eastern Neighbours: Towards a More Ambitious Partnership?*, London: Routledge.

Korosteleva, E.A. (2016), Eastern Partnership and the Eurasian Union: bringing "the political" back in the eastern region, *European Politics and Society*, Vol. 17, No. Suppl. 1, pp. 67–81.

Kosienkowski, M. (2019), The patron-client relationship between Russia and Transnistria, in Hoch, T. and Kopeček, V. (Eds.), *De Facto States in Eurasia*, London: Routledge, pp. 183–208.

Kosienkowski, M. and Schreiber, W. (2014), *Moldova's National Minorities: Why Are They Euroskeptical?*, Paris, available at: www.ifri.org

Kourtikakis, K. and Turkina, E. (2015), Civil Society Organizations in European Union External Relations: A Study of Interorganizational Networks in the Eastern Partnership and the Mediterranean, *Journal of European Integration*, available at:https://doi.org/10.1080/07036337.2015.1034275.

Kurki, M. (2011), Governmentality and EU Democracy Promotion: The European Instrument for Democracy and Human Rights and the Construction of Democratic Civil Societies, *International Political Sociology*, Vol. 5, No. 4, pp. 349–366.

Lambelet, D. (1989), The Contradiction Between Soviet and American Human Rights Doctrine: Reconciliation Through Perestroika and Pragmatism, *Boston University International Law Journal*, Vol. 7, No. 1, pp. 61–83.

Lavenex, Sandra; Schimmelfennig, F. (2011), EU democracy promotion in the neighbourhood: From leverage to governance?, *Democratization*,

Vol. 18, No. 4, pp. 885–909.
Lavenex, S. (2004), EU external governance in "wider Europe", *Journal of European Public Policy*, Vol. 11, No. 4, pp. 680–700.
Lavenex, S. (2008), A governance perspective on the European neighbourhood policy: Integration beyond conditionality?, *Journal of European Public Policy*, Vol. 15, No. 6, pp. 938–955.
Lavenex, S. (2011), Concentric circles of flexible EUropean integration: A typology of EU external governance relations, *Comparative European Politics*, Vol. 9, pp. 372–393.
Lavenex, S. and Schimmelfennig, F. (2009), EU rules beyond EU borders: Theorizing external governance in European politics, *Journal of European Public Policy*, Vol. 16, No. 6, pp. 791–812.
Makarychev, A. (2014), Russia, Ukraine and the Eastern Partnership: From common neighborhood to spheres of influence?, *Insight Turkey*, Vol. 16, No. 3, pp. 181–199.
Nilsson, M. and Silander, D. (2016), Democracy and Security in the EU's Eastern Neighborhood? Assessing the ENP in Georgia, Moldova, and Ukraine, *Democracy and Security*, Vol. 12, No. 1, pp. 44–61.
Panchuk, D. and Bossuyt, F. (2014), Effectiveness of EU democracy promotion in the neighbourhood through the lens of foreign policy analysis, *Democratization*, Vol. 21, No. 7, pp. 1341–1348.
Protsyk, O. (2009), Representation and democracy in Eurasia's unrecognized states: The case of Transnistria, *Post-Soviet Affairs*, Vol. 25, No. 3, pp. 257–281.
Racheru, I. (2016), Republica Moldova: absurdistan de tip ex-sovietic cu minime speranțe pro-europene, *Contributors.Ro*, available at: www.contributors.ro.
Raik, K. (2004), EU accession of Central and Eastern European countries: Democracy and integration as conflicting logics, *East European Politics and Societies*, Vol. 18, No. 4, pp. 567–594.
Raik, K. (2006), *Promoting Democracy through Civil Society*, Brussels, available at: http://aei.pitt.edu/6679/1/1298_237.pdf (accessed 23 May 2020).
Rommens, T. (2014), The Eastern Partnership: civil society in between the European and domestic level: the case of Georgia, *East European Politics*, Vol. 30, No. 1, pp. 54–70.
Roper, S.D. (2001), Regionalism in Moldova: The case of Transnistria and Gagauzia, *Regional and Federal Studies*, Frank Cass Publishers, Vol. 11, No. 3, pp. 101–122.

Sasse, G. (2013), Linkages and the promotion of democracy: The EU's eastern neighbourhood, *Democratization*, Vol. 20, No. 4, pp. 553–591.

Schimmelfennig, F. (2012), EU External Governance and Europeanization Beyond the EU, in Levi-Faur, D. (Ed.), *The Oxford Handbook of Governance*, Oxford: Oxford University Press, pp. 656–669.

Schimmelfennig, F. (2015), Europeanization beyond Europe, *Living Reviews in European Governance*, Vol. 4, No. 3, pp. 1–29.

Schimmelfennig, F. (2018), Beyond Enlargement: Conceptualizing the Study of the European Neighbourhood Policy, in Schumacher, T. and Marchetti, A. (Eds.), *The Routledge Handbook on the European Neighbourhood Policy*, New York: Routledge, pp. 17–27.

Schimmelfennig, F. and Scholtz, H. (2008), EU democracy promotion in the European neighbourhood: Political conditionality, economic development and transnational exchange, *European Union Politics*, Vol. 9, No. 2, pp. 187–225.

Schimmelfennig, F. and Sedelmeier, U. (2004), Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe, *Journal of European Public Policy*, Vol. 11, No. 4, pp. 669–687.

Schimmelfennig, F. and Sedelmeier, U. (2019), The Europeanization of Eastern Europe: the external incentives model revisited, *Journal of European Public Policy*, Vol. 27, No. 6, pp. 814–833.

Schimmelfennig, F. and Wagner, W. (2004), Preface: External governance in the European Union, *Journal of European Public Policy*, Vol. 11, No. 4, pp. 657–660.

Schmidt, V.A. (2013), Democracy and Legitimacy in the European Union Revisited: Input, Output and "Throughput", *Political Studies*, Vol. 61, No. 1, pp. 2–22.

Shapovalova, N. and Youngs, R. (2014), The Changing Nature of EU Support to Civil Society, in Beichelt, T., Hahn-Fuhr, I., Schimmelfennig, F. and Worschech, S. (Eds.), *Civil Society and Democracy Promotion*, Basingstoke: Palgrave Macmillan UK, pp. 86–110.

Stewart, S. (2011), EU democracy promotion in the Eastern neighbourhood: One template, multiple approaches, *European Foreign Affairs Review*, Vol. 16, pp. 607–621.

Teodor, P. (2007), Secolul luminilor în țările române, in Bărbulescu, Mihai; Deletant, Dennis; Hitchins, Keith; Papacostea, Șerban; Teodor, P. (Ed.), *Istoria României*, București: Corint.

Valiyeva, K. (2016), The EU's Eastern Partnership: normative or geopolitical

power projection?, *Eastern Journal of European Studies*, Vol. 7, No. 2, pp. 11–29.

Vasilyan, S. (2010), The "European" "Neighbourhood" "Policy": A Holistic Account, in Bailey, David ; Wunderlich, J.-U. (Ed.), *Handbook on the European Union and Global Governance*, London and New York: Routledge, pp. 177–184.

Youngs, R. (2009), Democracy promotion as external governance?, *Journal of European Public Policy*, Vol. 16, No. 6, pp. 895–915.

Zagorski, A. (2011), Eastern Partnership from the Russian perspective, *Internationale Politik Und Gesellschaft*, No. 3, pp. 41–61.

The relationship between the European Union's economic power status and the economic convergence of the Member States

Tudor Mugurel AURSULESEI[1], Ștefan Cătălin TOPLICEANU[2], Liviu-George MAHA[3]

Abstract

In this paper, we set out to look at where the European Union is located globally from an economic point of view. Let us observe what are the indicators that characterize European Union as a global economic power, at the same time, what are the indicators where union have problems. We consider it appropriate to observe whether the European Union's top-level indigenous people are internally influenced by the lack of convergence between the member states of the Union. All the Member States of the European Union have committed themselves to convergence, but over time we have noticed that convergence is often abandoned to the detriment of national interests. In the first part, we intend to observe the areas in which the European Union reflects the status of world economic power, using The World Bank`s indicators from 2013-2017. In the second part, we focused on an analysis of the following indicators, which determine a European Union deficit at the global level: GDP growth, unemployment rate and inflation rate. Finally, we propose to conclude if, for the three indicators, there is a correlation between the economic convergence between the European Union states and its world economic status.

Keywords: European Union; economic power; convergence; inflation rate

JEL code: E42; E52; E58; F02; F33; F45; F50; O50; O57

[1] Tudor Mugurel AURSULESEI is a PhD student at the „Alexandru Ioan Cuza" University of Iași. Email: aursulesei.tudor.mugurel@gmail.com
[2]Ștefan Cătălin TOPLICEANU, PhD, „Alexandru Ioan Cuza" University of Iași. Email: tstefan.catalin@yahoo.com
[3]Liviu-George MAHA is a professor at the „Alexandru Ioan Cuza" University of Iași. Email: mlg@uaic.ro

1. Introduction

Generally, power is defined by various concepts such as influence, domination, force, constraint and capability. This concept is often seen as the capacity of imposing your own will (Pausenberger, 1983, p. 131) or to control another person using different instruments. These perspectives come from social relations` point of view, but in international relations power is seen as the capacity to influence other actors` behavior through economic or military instruments. (Bucur, 2015, p. 9) In a much wider vision, power is considered the ability of an international actor to exert a significant influence over the world economy (Kebabdjian, 1994, p. 297). The actor can be represented either by an economic or political entity, either by an international organization or company. In all situations, the influence exerted by this actor can be an economic one, or political, military, social and cultural, but we believe that the economic dimension is the most important and most used today.

Over time, economic power was expressed in different forms; especially its manifestation being under military aspects. The world supremacy was held by various ancient, medieval and colonial empires. Even if the world economy suffered historical mutations under regional or international powers, the economic component remains the one which causes most of these changes. Nowadays situation presents a multipolar world with unprecedented intensities so far. The economic competition is driven by multiple actors, such as the United States, the European Union, China, Russia, India, Japan, Turkey, Israel, Nigeria, Brazil, South Africa and other, some of them being considered international power centers and other regional powers. (Huntington, 1999, pp. 35-36; Khanna, 2008, pp. 17-21) Within this multi-polar world, it is interesting to see the position of the European Union, especially in the conditions of recently shifted United States' foreign policy, of China`s rise and of the events regarding Brexit. This research seeks to respond why the European Union is considered a power center and which are its strengths and weaknesses in competition with other powers.

It is interesting to note whether the status of the European Union's economic power is influenced by the convergence of the Member States of the Union. "Unity in diversity" is the slogan of the European Union.

Unfortunately, this diversity also occurs in the economic development of the states.

2. Literature Review

In order to measure the power level of an economic actor, the literature provides various instruments, either quantifiable or non-quantifiable. Generally, the economic power is generated by territory, economic and military capabilities, natural resources, population size and political stability (Waltz, 2006, p. 183) or by advantageous geographical position, economic and technological resources, strong currency, military and nuclear capabilities, cultural values, diplomacy and international connections. (Yilmaz, 2010, pp. 197-198)

In fact, possession of resources is a power` source; whether they are referring to human, cultural or physical resources or to financial, technological and energetic ones. The important thing for the economic actor is to be able to convert his resources in influence, becoming a smart power (Nye, 2010, pp. 24-26). On the other hand, it is (Carlsneas *et all.* 2013, pp. 273-298) considered that the measurement of power should not be important and the focus should be on quantifying the distribution of power on specific components.

Some authors give importance to both quantitative and qualitative elements, grouped according to their temporal action on power. They consider that (Goldstein and Pevehouse, 2014, pp. 47-49) the quantitative aspects related to power are the quality of government, the size of GDP, the military force, population, natural resources, territory and other geographical elements. On the other hand, the qualitative elements of power are the education, the political leadership, the cultural attractiveness, the values promoted and the degree of technological knowledge.

The empirical evidences demonstrate that economic power is negative influenced by level of taxes, inflation and interest rate uncertainties, (Lensink and Hermes, 2000, pp. 142-163) but it can be also stimulated by political stability and human resources (Barro, 1991, pp. 407-443). Also, there are some evidences (Pop-Silaghi and Mutu, 2013, pp. 135-154) that investments,

government efficiency and trade have a positive effect on the growth of economic power while the level of corruption influences it in a negative way.

Usually, the empirical studies use statistical techniques based on various indicators in order to measure the power level and the world economic structure. The most used indicators are Gross Domestic Product, investment attractiveness, population, finance, foreign trade structure, poverty, inflation, interest rate and labor force. Also, there are some specialized institutions including Heritage Foundation, World Intellectual Property Organization (WIPO), World Economic Forum, The Business School for the World (INSEAD) and The United Nations Development Programme (UNDP) which developed composite indicators such as Human Development Index (HDI), Global Competitiveness Index (GCI), Index of Economic Freedom and other.

Unlike the other world powers, the European Union consists of a monetary union (only 19 of the 28 member states) and a number of states that are in the process of joining this monetary union. This lack of unity leads to a number of disadvantages.

A first disadvantage is the influence of the single currency on the national fiscal policy. In their analysis, Bovenberg, Kremers and Masson conclude that, within a common monetary union, national fiscal policy diminishes its influence (Bovenberg, et al., 1991, p. 395). At the same time, Rotte and Zimmermann anticipate the risk of an expansion of the fiscal policy of the national economies under the conditions of a low depreciation risk (Rotte& Zimmermann, 1998, p. 404). The debt crisis and the size of taxes are also being analyzed by Kenen. He considers that these components of fiscal policy end up negatively influencing participants in a monetary union, risking disrupting the balance between states (Kenen, 1995, pp. 181-192).

Increasing regional disparities is another disadvantage of joining a monetary union. This is due to the developmental differences between states from the moment of accession (Von Hagen, 1992, p. 250). A final disadvantage is the loss of earnings following the speculation with the exchange rate (Casella, 1992, p. 115). In some cases, when states give up their autonomy to trade their own currency and use it in international trade, states also give up the advantage of earning from foreign exchange differences (Cohen &Wyplosz, 1989, p. 325).

Rose through his research has shown that two countries with a single currency make more trade than the same two countries, but with different currencies. Thus, a monetary union can lead to the strengthening of trade between Member States (Rose, 1999, pp. 11-15).

Fatas also takes into account the dynamic aspects of a common monetary area. It is precisely for this reason that he is skeptical of the European Monetary Union. Fatas does not believe in the power of the EMU to resolve regional and country-specific crises. However, his study has shown that for EU member countries, borders are no longer an impediment to economic development and expansion. For this reason, his fears about the inability of the European Monetary System to prevent and mitigate possible regional crises are also unfounded (Fatas, 1997, p. 749).

Eichengreen and Frieden study the political-economic aspects of a monetary union, not just those of the economic dimension. The monetary union is formed on the basis of a political decision, and the politicians want to maximize the profits. Under these conditions, the chance of the emergence of interest groups within the union increases, each group tending towards the development of a certain region or for the implementation of certain policies (Eichengreen & Frieden, 2000, pp. 236-237).

3. Methodology

This research aims to show why the European Union is considered a power center in the world economy and to compare the European economy with other power centers, such as the United States, BRICS countries, Japan, Canada, Turkey, South Korea and Israel. Also, this study seeks to analyze if the convergence indicators of the European Union members lead to an increase or a decrease in the influence of the European Union at the global level. For these purposes, we will use several indicators selected from the World Bank`s statistical base for 2013-2017. The selection of this time span for the analysis is based on the fact that in 2013 Croatia has joined the European Community and the data for 2017 are the latest from The World Bank`s database.

The indicators used are and include Gross Domestic Product, nominal and per capita, both based on purchasing power parity (PPP), the annual

economic growth, trade aspects (exports, imports and external balance on goods and services), unemployment and inflation. Using these convergence indicators, we analyze if the European Union was united and strong enough between 2013 and 2017 to compete with other powers of the world economy.

In the study of real convergence, we will use the sigma convergence test (Barro& Sala-i-Martin, 1995). He defined this concept as follows: "a group of countries converges in the sense of Sigma convergence if the dispersion in terms of GDP / capita decreases over time" (Sala-i-Martin, 1995). In other words, the convergence σ is revealed by the temporal dependence of the standard deviation or the coefficient of variation of GDP / place within a group of countries (Dvorokova, 2014, p. 315).

$$\sigma = \sqrt{\frac{1}{n}\sum_{1=1}^{n}\left[\log\left(\frac{y_i}{y^*}\right)\right]^2} \qquad (1.1.)$$

$y_i$represents the indicator analyzed at time i

y^*represents the indicator analyzed at time 0

However, the most common indicator used in calculating the coefficient of variation is:

$$Cv_T = \frac{\sigma_T}{\overline{X_T}} \qquad (1.2.)$$

Cv_Trepresents the coefficient of variation between the period T

$\sigma_T$is the square value of the degree of regional development in the period T and is calculated as follows:

$$\sigma_T = \sqrt{\frac{1}{n}\sum_{i=1}^{n}\left(X_{i,T} - \overline{X_T}\right)^2} \qquad (1.3.)$$

$\overline{x_T}$represents the average level of development during the T.

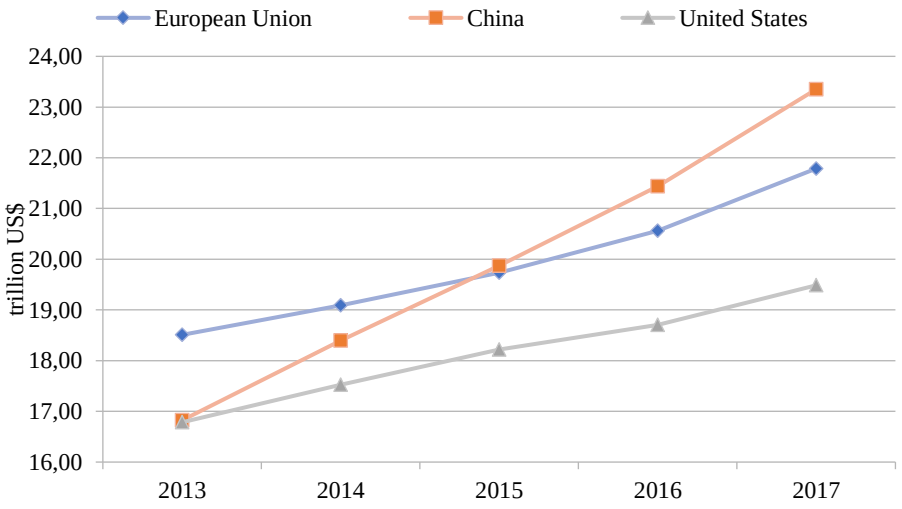
Closely related to the sigma test, we will make a descriptive analysis of the evolution of the main indicators. The picture provided by the sigma test for one year, gives us an overview of the situation in the European Union.

4. Analysis and findings

4.1. The European Union - one of the world's economic power centers

The European Union is great positioned worldwide at Gross Domestic Product based on purchasing power parity, exports, imports and external balance on goods and services.

Figure 1. The world`s top 3 largest economies by GDP-PPP between 2013-2017 (trillion US$)



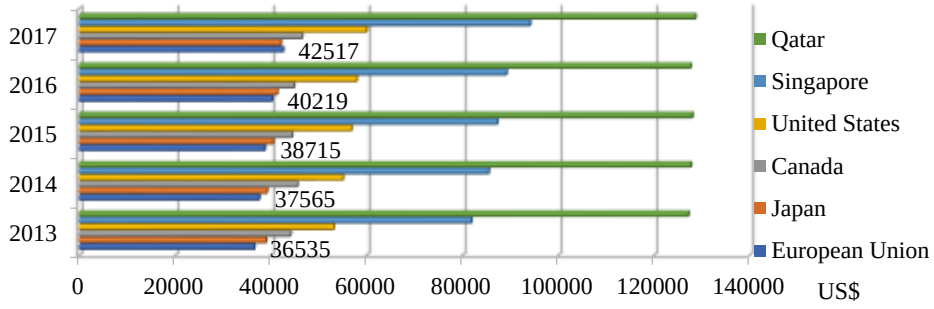
Source: own representation based on The World Bank, World

Starting with GDP at purchasing power parity, the Figure 1 shows that the European Union is the world` second biggest economy. The European economy was the world`s leader in 2013 and 2014, but it was overcome by China. Even if the European GDP increased from 18.5 trillion US$ to almost 21.8 trillion US$ between 2013 and 2017, the Chinese economy has grown in a faster rate. Moreover, in 2017 the European GDP almost reached 22 trillion

US$, while the Chinese one exceeded 23 trillion US$. The American economy was positioned on the third place and did not succeed to reach 20 trillion US$.

Also, the European Union has one of the highest levels of GDP per capita based on purchasing power parity in the world economy. We have chosen in representation, the states with the highest level of GDP per capita. China is not on the list, because GDP per capita is much lower than that of the top countries. According to Figure 2, the European GDP per capita grew from 36,535 US$ in 2013 to 42,517 US$ in 2017, becoming higher than the Japanese one in 2017. Despite of this grow, the European Union had a GDP per capita lower than other powers such the United States, Japan and Canada or than other countries. The biggest levels of GDP per capita based on purchasing power parity are recorded in Qatar and Singapore, according to The World Bank, but there are also countries which surpass the European Union such as the Arab states (Kuwait, Saudi Arabia, United Arab Emirates, and Bahrain), Brunei, Australia and European countries (Switzerland, Norway, Iceland and San Marino).

Figure 2. The European GDP per capita-PPP compared to other countries (US$)



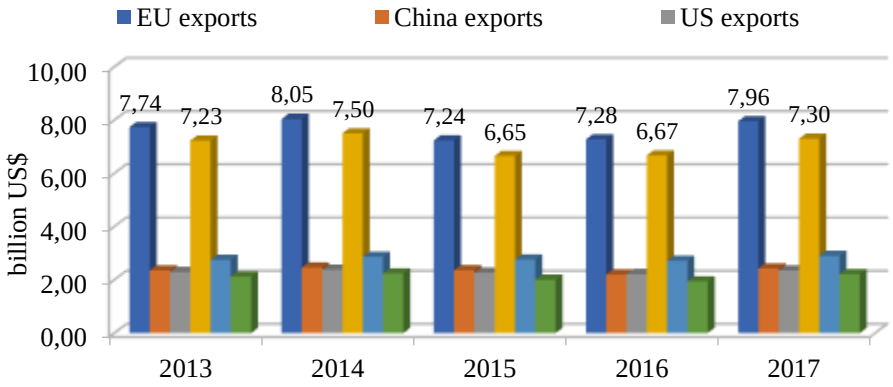
Source: own representation based on The World Bank, World Development Indicators, latest update24th April 2019

Nevertheless, the European Union is the world`s biggest exporter and importer of goods and services between 2013 and 2017(intra-EU trade is included). In same time, the high level of imports does not stop the European Union for having the largest trade surplus in the world economy.

The European exports of goods and services exceed 8 trillion US$ in 2014 and, after a short break, it almost reaches the same level in 2017, as it can be observed in Figure 3. Compared to them, the Chinese and the American exports remained below 2.5 trillion US$ for the whole period 2013-2017. Actually, the European Union exports more than China and United States together, the same situation being met at imports. The European imports of goods and services reached 7.5 trillion US$ in 2014 and have reduced below 7 trillion in next two years. But, in 2017, the European Union imported goods and services on amount of 7.3 trillion US$. On the other side, the American imports has situated between 2.7 trillion US$ and 3 trillion US$ and the Chinese ones never exceeded 2.3 trillion US$ in the analyzed period.

Even though the European imports were at high levels, the European Union had the largest trade surplus in the world economy. Its trade surplus reached 500 billion US$ in 2013 and continued to grow next years, exceeded 600 billion US$ in 2016. Moreover, in 2017, the European trade surplus amounted almost 655 billion US$, being three times bigger than the Chinese one, China being the second country in the world according to trade surplus. Compared to both of them, the United States recorded only trade deficit, growing from 461 billion US$ in 2013 to almost 550 billion US$ in 2017.

Figure 3. The world`s top 3 largest exporters and importers between 2013-2017 (billion US)



Source: own representation based on The World Bank, World Development Indicators, latest update24th April 2019.

4.2. Convergence of Member States - Possible repercussions for the global economic position

Despite of these, the European Union has some weaknesses related to annual GDP growth, inflation at consumer prices and unemployment.

The annual GDP growth is relatively low compared with other economic powers of the world, as it can be seen in Table 1. In this table we have selected the countries with the highest level of annual GDP growth. The European economy grew with 0.26% in 2013 and with 1.78% in 2014 compared with previous years, while in 2013 all countries represented in Table 1 had an annual growth of GDP higher than the European one. In 2014, the European Union succeeded to surpass Japan.

The European annual growth rates of GDP were higher between 2015 and 2017, surpassing 2% every year. But these numbers remain relatively low compared with other economic powers. For example, the Chinese economy, which had an annual GDP growth higher than 7% before 2014, maintained an economic growth between 6.7% and 6.9% in 2015-2017.

In fact, besides Japan, the European Union surpassed Canada in 2015 related to GDP annual growth, while in 2016 the United States added to them. From all of these, only Canada succeeded to return in a better position after an almost 3% growth rate in 2017 compared with the European one.

Table 1. Gross Domestic Product annual growth (%)

Year	2013	2014	2015	2016	2017
China	7.76	7.30	6.90	6.70	6.90
Israel	4.14	3.90	2.57	4.01	3.44
South Korea	2.90	3.34	2.79	2.93	3.06
Canada	2.48	2.86	1.00	1.41	3.05
EU 28	**0.26**	**1.78**	**2.35**	**2.04**	**2.46**
United States	1.84	2.45	2.88	1.57	2.22
Japan	2.00	0.37	1.35	0.94	1.73

Source: own representation based on The World Bank, World Development Indicators, latest update24th April 2019.

Regarding inflation at consumer prices, the European Union has recorded a downward trend until 2015, becoming negative in this year, as it can be observed in Table 2. In 2013, the inflation rate was 1.3%, almost the same with the one recorded in South Korea, but worst positioned at international level than the Japanese and the Canadian ones. The gap was recovered over the next three years. In 2014 and 2016, the European inflation rate was almost the same, respectively 0.22%, positioning the European Union very well among other economic powers.

But, this performance did not last for a long time. First of all, the European inflation rate continued the upward trend started in 2016 and reached almost 1.5% by the end of 2017. Secondly, Japan, which in 2016 has an inflation rate of -0.12%, was better positioned than the European Union in 2017 with an inflation rate of almost 0.5%. Thirdly, Israel has improved its negative inflation rates from 0.64% and -0.54% in 2015-2016 to 0.24% in 2017, being the best placed at international level. Nevertheless, the European inflation rates remain at optimal parameters compared with the Chinese or the American ones.

Table 2. Inflation at consumer prices (annual %)

Year	2013	2014	2015	2016	2017
Israel	1.57	0.49	-0.63	-0.54	0.24
Japan	0.35	2.76	0.79	-0.12	0.47
EU 28	**1.31**	**0.22**	**-0.05**	**0.22**	**1.47**
China	2.62	1.92	1.44	2.00	1.59
Canada	0.94	1.91	1.13	1.43	1.60
South Korea	1.30	1.27	0.71	0.97	1.94
United States	1.46	1.62	0.12	1.26	2.13

Source: *own representation based on The World Bank, World Development Indicators, latest update24th April 2019.*

On the other hand, the unemployment situation in the European Union is not as good as the inflation rate one. Even though the unemployment has improved, decreasing from rates above 10% in 2013 and 2014 to 7.6% in 2017, it has remained at higher levels compared to other economic powers.

Table 3 shows that the European unemployment rates were the biggest among the economic powers in 2013 and 2014 and the only ones above 10%.

Despite the performance of reducing the level of unemployment over the next years, the unemployment in the European Union remained high. The European Union recorded the highest unemployment rate during the entire period under review. The best performances related to unemployment were recorded in Japan and South Korea with rates below 4%.

Table 3. Unemployment (% of total labor force)

Year	2013	2014	2015	2016	2017
Japan	4.00	3.60	3.40	3.10	2.80
South Korea	3.10	3.50	3.60	3.70	3.70
Israel	6.21	5.89	5.25	4.80	4.22
United States	7.38	6.17	5.28	4.87	4.36
China	4.60	4.60	4.60	4.50	4.40
Canada	7.07	6.91	6.91	7.00	6.34
EU 28	**10.82**	**10.21**	**9.38**	**8.53**	**7.61**

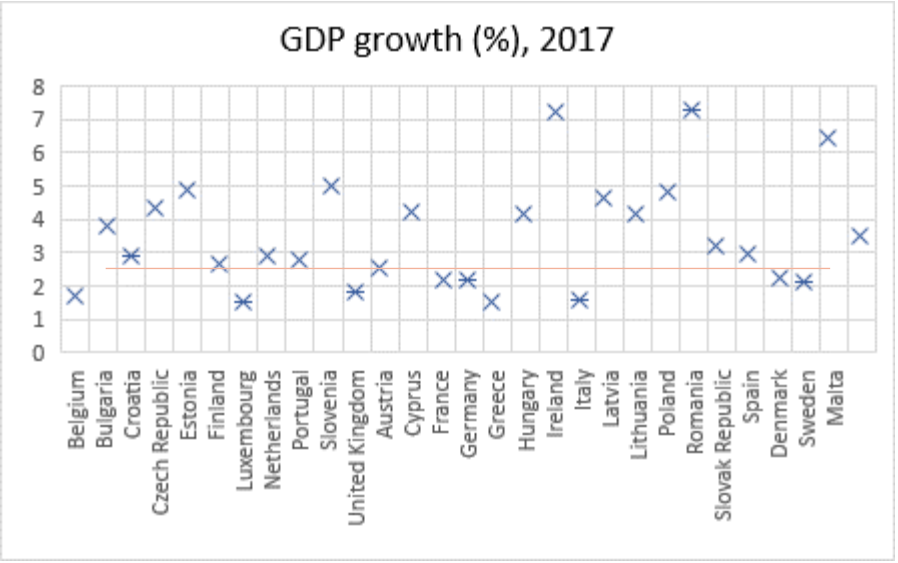
Source: own representation based on The World Bank, World Development Indicators, latest update24th April 2019.

In the following, we consider it appropriate to conduct an analysis of the European Union to see what causes this modest ranking in the international charts of the three indicators. When a state accedes to the European Union, it assumes that it will do its utmost to keep its economy moving towards convergence with that of other Member States. If we want to deepen the integration process, move towards a monetary union that will include all the EU Member States, then a fiscal union, and ultimately a political union on the model of the United States of America, we must assume that the economies of all Member States need to synchronize. In a united Europe, we need to talk about a single economy that characterizes the entire European area.

Unfortunately, the policy of small steps adopted by the European Union does not stimulate states to cross the national barrier and to advance for the good and prosperity of the whole of the Union. Even now, states are reluctant to adopt common economic measures, and if they are adopted, they are often

not respected. The national interest of the Member States outweighs the common interest of the Union.

Figure 4. GDP growth in European Union in 2017



Source: own representation based on The World Bank, World Development Indicators, latest update24th April 2019.

Over time, states have been urged to aim for a convergence of the economy through various measures. First of all, we are talking about the economic criteria imposed on pre-accession countries, different European economic or financial policies, and the Maastricht Treaty, which sets out the criteria for joining the European Monetary Union.

For this analysis, we chose 2017 as a reference in order to see an X-ray of the present situation within the European Union.

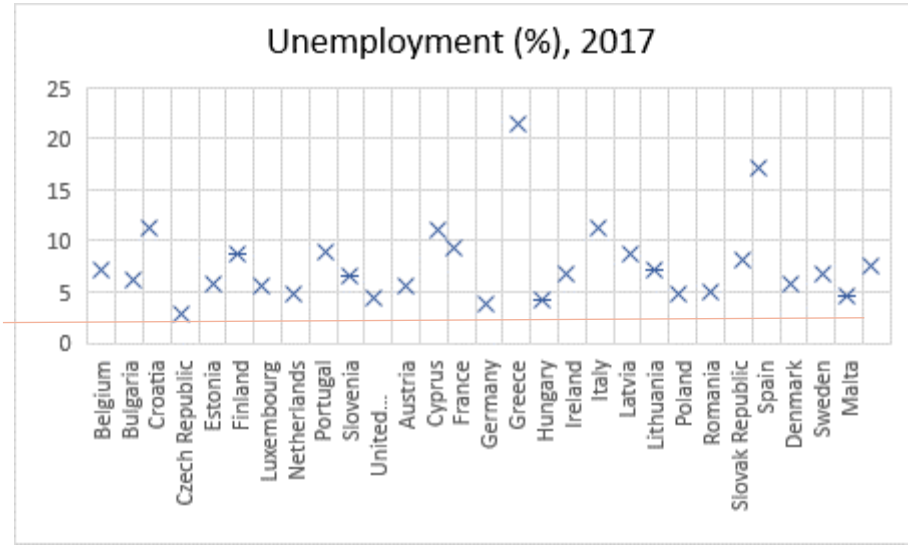
As we can see from Figure 4, the first indicator studied is GDP growth. As we have seen before, it is an indicator that pulls the European Union out of the international charts. According to the World Bank data, the EU average is 3.49%. From Figure 4, we can see that the distribution of the GDP growth rate in the Member States of the European Union in 2017 is relatively homogeneous. We have 16 states that have a GDP growth rate below the Union average and 12 states that exceed the average. The range in which GDP

growth rates fluctuate among Member States is 1.51% - 7.26%. Note that most of the mumble states have a rate that fluctuates by up to 2 percentage points from the average. Only Ireland, Romania and Malta, with a much higher than average GDP growth rate, are noted.

Applying the Sigma test on the GDP growth rate we reached a percentage change of 47.36%. In order to be able to say that an indicator has reached convergence in the case of a union, the percentage of variation must be 0 or close to 0. In the case of the GDP growth rate, we can say that it is not close to convergence. As we could see, there are significant differences between states. On the one hand we have Ireland and Romania with a marked increase in GDP and countries such as Greece and Luxembourg, where the growth is lower.

For a healthy economy, GDP growth rates need to be real, based on economic growth, not just on widening social spending.

Figure 5. Unemployment in European Union in 2017



Source: own representation based on The World Bank, World Development Indicators, latest update24th April 2019.

Unemployment rate is another problem indicator for the European Union. In Figure 5, we can see the unemployment rate in the European Union

Member States in 2017. This year, the average unemployment rate in the European Union was 7.61%. As we can see, the rate at which the unemployment rate fluctuates within the union is: 2.89% - 21.49%.

Greece and Spain are the countries that stand out with an unemployment rate of over 15%. The high unemployment rate in the two countries comes amid the 2008 financial crisis and the Eurozone crisis. Both countries have a high economic risk.

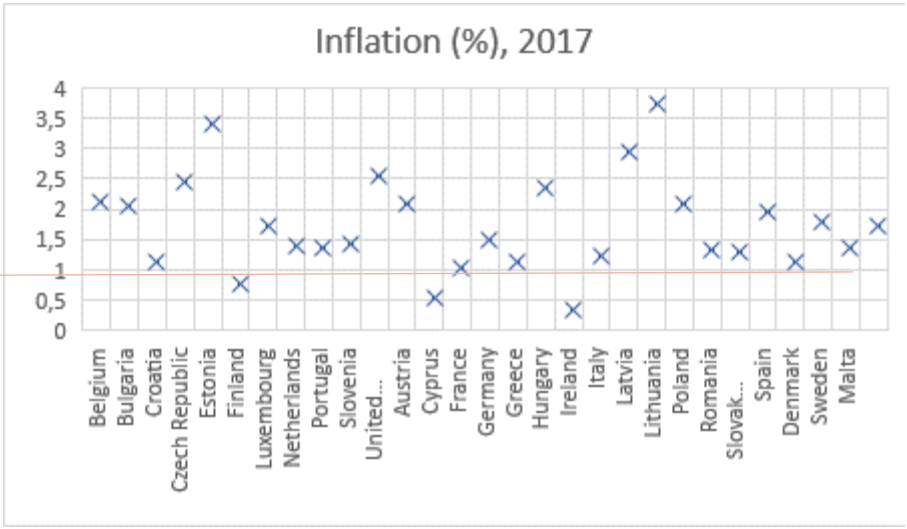
If the two countries are to be eliminated, the rate at which the unemployment rate fluctuates is: 2.89% - 11.21%. And under these conditions the range is quite large, about 5 percentage points below average and 4 over it. This range confirms that as far as the unemployment rate is concerned, states still do not tend towards convergence. However, the European Union, through the Europe 2020 Strategy, has proposed to eliminate these differences between states. At the same time, the increase in employability is also mentioned in the monetary policy of the euro area.

In the context of massive migration in the European Union, both immigrants from outside the community and internal migration, states are leading a fierce fight to reduce the unemployment rate. Let us not forget that around the migration and the possibility of increasing national unemployment, Britain has chosen to leave the European Union.

According to the Sigma convergence test, the percentage of convergence variation is 53.31%, which indicates that in 2017, the unemployment rate did not tend towards convergence. In order for an indicator to tend towards convergence, the variation rate must be close to 0. As we have seen before, there are discrepancies in the value of the unemployment rate between the Member States of the European Union.

As mentioned earlier, the next step in the deepening of the Union is the accession of all the Member States of the European Union to the Eurozone. The main objective of optimal monetary policy is price stability. This objective has its origins in Article 127 (1) of the Maastricht Treaty (EUR-Lex, 1992). At the same time, the Euro system supports the achievement of the general economic objectives in the European Union. Among these general objectives, we can recall employment and balanced economic growth among the Member States.

Figure 6. Inflation in European Union in 2017



Source: own representation based on The World Bank, World Development Indicators, latest update24th April 2019.

However, in order of priorities, price stability is the most important objective. The Maastricht Treaty establishes that monetary stability will achieve a high rate of employment and a favorable economic environment through price stability. Maintaining stable prices on the basis of coherent policy is the basis of harmonious economic development. Given that monetary policy can affect real short-term activity, the European Central Bank needs to control excessive fluctuations in output and employment (European Central Bank, 2019). Price stability contributes to a high level of economic development and a high level of employment within the Union. Governing Council of the European Central Bank established that price stability is defined as the year-on-year increase of the Harmonized Index of Consumer Prices (a method of calculating the inflation rate) by a maximum of two percent (Eijffinger & de Haan, 2000, p. 64)

According to Figure 6, in 2017, the average inflation rate in the European Union was 1.72%. We can see that at the level of the European Union, the inflation rate ranges from 0.34% to 3.72%. If we limit ourselves to the margins of monetary policy, the inflation rate does not exceed 2%, 10 non-respecting Member States fall into this situation. Among countries with

an inflation of over 2%, we find: Belgium, Bulgaria, Czech Republic, Estonia, Great Britain, Austria, Hungary, Latvia, Lithuania and Poland. In this category, we find states both in the West and in the rest of Europe. Disparities between states arise as a result of the promotion of national interests, to the detriment of the European ones. Governors prefer to borrow, increase public spending in the social sphere, and pump money into the economy to attract their electorate on their side.

According to the Sigma test, even in the case of the inflation rate we cannot speak of convergence. The percentage of inflation rate change in 2017 is 47.19%.

5. Conclusions

Based on the analysis we made, we reached a series of conclusions:

There are different ways to quantify power and to analyze the economic powers in the world economy. In this study, we want to look if there is a correlation between the economic power status of the European Union and the economic convergence among the European Union states. The first part of this study demonstrates that the European Union is a great economic power at international level, being in the World`s Top 3 largest economies related to Gross Domestic Product based on purchasing power parity, with a high GDP per capita and the world`s biggest exporter and importer of goods and services between 2013 and 2017. Also, even though the European imports were at high levels, the European Union had the largest trade surplus in the world economy. Despite these performances, the European economy has some weaknesses due to discrepancies between Member States.

The three indicators analyzed: GDP growth, unemployment and inflation position the European Union outside the world rankings and, in some situations, in a worst position compared to other economic powers. At the same time, we have seen that within the European Union, Member States are far from tending towards the convergence of these indicators. This lack of convergence can be considered a possible cause of the European Union's inability to position itself in a leading position worldwide with these indicators.

European Union Member States put the national interest first, then the interest of the whole union. The political parties in the government are primarily aimed at attracting the electorate to win new mandates. They believe that if the state faces various economic difficulties, it will be "saved" by the rest of the Member States.

The lack of economic convergence of the Member States of the European Union led to a decrease in the influence of the European Union at the global level. The existence of economic development discrepancies slows down the overall economic growth rate of the union. Even though we have not determined the intensity with which the global economic position of the European Union is influenced by this article, as we follow the convergence trend of the Member States, we consider that this is only the starting point of a much broader future paper on this subject.

References

Barro, R. (1991), Economic Growth in a Cross Section of Countries. *The Quarterly Journal of Economics*, Oxford University Press, 106(2): 407-443.

Barro, R. & Sala-i-Martin, X. (1995), *Economic growth*. New York: McGraw-Hill.

Begg, I. &Mushovel, F. (2016), The economic impact of Brexit: jobs, growth and the public finances. *European Institute, The London School of Economics and Political Science*.

Bovenberg, L., Kremers, J. & Masson, P. (1991), Economic and Monetary Union in Europe and Constraints on national Budgetary Policies. *Staff Papers*, 38(2), pp. 374-398.

Bucur, C. (2015), Evolution of the concept of power – from hard power to smart power.*Infosfera*, 7, (2): 9-14.

Caporaso, J. (2018), Europe`s Triple Crisis and the Uneven Role of Institutions: the Euro, Refugees and Brexit. *Journal of Common Market Studies*, 56(6), pp. 1345-1361.

Carlsnaes, W., Risse, T. & Simmions, B. (2013), *Handbook of international relations. Second Edition.* London: SAGE Publications Ltd.

Casella, A. (1992), On Markets and Clubs: Economic and Political Integration of Regions with Unequal Productivity. *The American Economic Review*, 82(2), pp. 115-121.

Cohen, D. &Wyplosz, C. (1989), *The European Monetary Union: An Agnostic Evaluation, Macroeconomic Policies in an Interdependent World*, s.l.: International Monetary Fund, pp. 23-28.

Dvorokova, K. (2014), Sigma Versus Beta-convergence in EU28: do they lead to different results?.*WSEAS Transactions on Business and Economics*, 11(1), pp. 314-321.

Eichengreen, B. & Frieden, J. (2000), *Forging an integrated Europe.* Michigan Studies in International Political Economy.

Eijffinger, S. & de Haan, J. (2000), .*European Monetary and Fiscal Policy.* Tilburg University, School of Economics and Management.

EUR-Lex. (1992), Maastricht Treaty. http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=LEGISSUM%3Axy0026. Accessed 8 May 2019.

European Central Bank (2019), Objective of monetary policy. https://www.ecb.europa.eu/mopo/intro/objective/html/index.en.html. Accessed 25 April 2019.

Fatas, A. (1997), EMU: Countries or regions? Lessons from the EMS experience. *European Economic Review*, 41(3-5), pp. 743-751.

Goldstein, J.& Pevehouse, J. (2014), *International Relations*. *10th Edition*: Pearson Education Inc.

Huntington, S. (1999), The lonely superpower.*Foreign Affairs,*78(2), pp. 39-49.

Kebabdjian, G. (1994), *L`economie mondiale: enjeux nouveaux, nouvelles theories*. Paris: Du Seuil Publisher.

Kenen, P. (1995), Capital Controls, the EMS and EMU. *The Economic Journal*, 105(428), pp. 181-192.

Khanna, P. (2008), *The second world: empires and influence in the new global order*. Iasi: Polirom Press.

Kissinger, H. (2015), *The world order*. Bucharest: Rao Publisher.

Lensink, R. & Hermes, N. (2000), FDI, Financial Development and Economic Growth. *Journal of Development Studies,* 40(1): 142-163.

Marga, A. (2017), *The future global order*. Bucharest: Niculescu Publisher.

Naumescu, V. (ed.) (2017), *The EU crisis and the global order in Trump Era*. Bucharest: Trei Publisher.

Nye, J. (2010), The future of American power: dominance and decline in perspective, *Foreign Affairs*, 89(6).

Pausenberger, E. (1983), How powerful are the multinational corporations?,*Intereconomics,* 18(3): 130-136.

Pop-Silaghi, M. & Mutu, S. (2013), The impact of institutions on economic growth in emergent economies. *The Review of Economic Studies and Research Virgil Madgearu*, VI(1), pp. 135-154.

Rose, A. (1999), A review of some of the economic contributions of Robert A. Mundell, winner of the 1999 nobel Memorial Prize in economics. *The Scandinavian Journal of Economics*, 102(2), pp. 211-222.

Rotte, R._& Zimmermann, K. (1998), Fiscal Restraints and the Political Economy of EMU. *Public Choice,* 94(3-4), pp. 385-406.

Sala-i-Martin (1995), The Classical approach to convergence analysis. *Economic WorkingPaper*, Vol. 117.

Von Hagen, J. (1992), Fiscal arrengements in a monetary union: evidence from the US. Fiscal Policy, Taxation and the Financial System in an Increasingly Integrated Europe, *Financial and Monetary Policy Studies*, Vol. 22, pp. 237-259.

Waltz, K. (2006), *Theory of International Politics.* Iasi*:* Polirom Press.

World Bank. 2019. World Development Indicators (WDI).http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators&preview=on. Accessed 25 May 2019.

Yilmaz, S. (2010), State, power and hegemony. *International Journal of Business and Social Science*, 1(3): 197-198.

Structure - Agency Problem in Foreign Policy Analysis of Post-Soviet States: The Cases of Armenia and Ukraine

***Aram TERZYAN*[1]**

Abstract

This article explores the agency-structure problem in foreign policy analysis of former Soviet Union states, by examining the cases of Ukraine and Armenia. It applies a holistic model of foreign policy analysis that considers its structural, dispositional, and intentional dimensions and outlines a more dynamic structure- agency interplay. While the ideational incentives have been the core rationale behind Ukraine's and Armenia's drive towards Europe, the structural constraints, along with arbitrary decisions of the authoritarian incumbents would considerably obstruct countries' rapprochement with Europe. Thus, as the article concludes, along with structural constraints, stemming from Russian resistance to Europeanization, agency-level factors, such as the preferences and perceptions of Armenian and Ukrainian presidents have been critical to shaping countries' foreign policy outputs.

Keywords: structure, agency, European choice, Russia, Ukraine, Armenia.

JEL Code: F50

1. Introduction

The drive towards Europe has been an integral part of Ukrainian and Armenian foreign policy agendas since the collapse of the Soviet Union. While small Armenia gave in to Russia's pressure, by making a U-turn and joining the Eurasian Economic (Customs) Union (EAEU) in September 2013,

[1] Aram TERZYAN, PhD, isresearch director of the Centre for East European and Russian Studies, Eurasia Institutes, Los Angeles, USA. E-mail: aramterzyan@gmail.com.

Ukraine has showed strong resilience and persistence in asserting its European orientation vividly manifested in the 2014 Maidan Revolution.

Despite the thorny path, Ukraine stood up for its 'European choice' and ultimately signed the Association Agreement (AA) in June 2014, while Armenia, ended up with its edited and sacrificed version - Comprehensive and Enhanced Partnership Agreement (CEPA) with the EU signed in 2016. Moreover, the 2018 "Velvet Revolution" has not led to foreign policy shifts and left Armenia's centrality in the Russia-led socio-political order intact.

This study explores the structure – agency interplay in determining the pro-European and pro-Russian foreign policy outputs of Ukraine and Armenia respectively**.** It examines the structural, ideational and intentional conditions and factors, underlying European and Eurasian foreign policy choices of the two post-Soviet countries. On the basis of these observations, this article seeks to address the following question: What are the core structure-induced and actor-driven factors influencing the foreign policy choices of Armenia and Ukraine?

While the geopolitical rivalry between the European Union and Russia over their common neighborhood has increasingly attracted academic and public attention, relatively little is known of agency-level factors behind contested neighbors' foreign policy choices.

While for neo-realists human agency was essentially irrelevant at the structural level of explanation, the collapse of the Cold War system seemed to depend very largely on active and calculating agents. Therefore, questions concerning the nature of agency and the meaning of structure and the relationship between them are now more relevant than ever in international relations theory (Hollis and Smith, 1994). That said, "despite the increasing external competition over the post-Soviet space, domestic actors remain the key agents to account for the pattern of change in the contested neighborhood" (Ademmer, Delcour and Wolczuk, 2016).

Walter Carlsnaes (1992) offers an instructive explanatory model that provides a practical solution on how to bridge the agency-structure problem in foreign policy analysis. He outlines a model consisting of three dimensions: a structural dimension (objective conditions and institutional setting), a dispositional dimension (perceptions and values), and an intentional

dimension (preference and choice). These dimensions are connected through causal relationships; that is, the structural dimension has causal effects on the dispositional dimension, and the dispositional dimension has causal effects on the intentional dimension (Carlsnaes, 1992; Aberg and Terzyan, 2018, pp. 153-154). However, this study does not fall to reductionism of causality of Carlsnaes model, but instead uses it as a heuristic device that disciplines the analysis of the study object.

This study is an in-depth case analysis, that uses policy analysis and process tracing to examine Armenia's and Ukraine's foreign policy dynamics. It builds its empirical argumentation by analyzing a broad variety of sources, including the newspaper articles, observations from political speeches, official documents and interviews.

The article will proceed as follows: First, the ideational/dispositional dimension of Armenia's and Ukraine's foreign policy choices will be discussed. The second section will address the core structural constraints on advancing their foreign policy agendas, focusing specifically on Russia -EU contestation in the shared neighborhood. The final section will examine the agency-level factors in determining countries' foreign policy outputs, focusing on the preferences and choices of Armenian and Ukrainian "indispensable actors." The conclusion discusses main findings.

2. The ideational dimension of foreign policy choices: Europe as a civilizational choice

The drive towards Europe has been a crucial part of both Ukrainian and Armenian political agendas since the break-up of the Soviet Union. The rapprochement towards Europe has been largely treated as a civilizational choice, and an essential opportunity for the two post-soviet countries to join the European family of democracies.

The outset of second Armenian President Robert Kocharyan's presidency (1998-2008), heralded a shift in the European dimension of Armenia's foreign policy. Foreign Minister Oskanian declared: "There were many questions about the choice of path to take…Armenia is Europe" (Oskanian, 2005).

The Armenian leadership would invariably emphasize its unshakeable determination to overcome the severe consequences of Armenia's lengthy isolation from Europe, and thus achieve substantial progress on the approximation towards prosperous and democratic European community. Kocharyan announced: "Armenian society, which has deep European roots, was isolated from European political, economic and legal realm because of the ideological confrontation of the 20th century. Today our goal is to comply with EU standards" (Kocharyan 2011, p. 253). The 'European choice' would be associated with Armenia's commitment to the European values, such as rule of law, human rights, democracy, as well as social and economic development. Thus, Kocharyan confirmed that "Armenia perceives its future in its full-scale integration with the European family" (Kocharyan, 2004).

The analysis of Kocharyan's successor Serzh Sargsyan's (2008-2018) discourse reveals his consistency with his predecessor in terms of his treatment of European integration as Armenia's civilizational choice: "The people of Armenia have made their historic and irreversible choice. Our road to becoming closer to Europe has been unique in a natural way" (Sargsyan, 2011). It follows that Armenia's European aspirations stem from its culture, identity, and values, that make the country an indivisible part of Europe (Sargsyan, 2011).

The EU itself has been largely portrayed as normative actor and peace promoter, capable of extending the European values to its neighbourhood, thus transforming the latter into an area of security, prosperity, and stability (Sargsyan, 2009).Not surprisingly, the Armenian leadership would passionately welcome the inauguration of the Eastern Partnership (EaP) in 2009, due to its huge potential to foster fundamental reforms in the Eastern neighbourhood and to bring lasting peace to the region (Terzyan, 2017, pp. 194-197).

Thus, the EaP was deemed extremely conducive to breaking the logjam on the Armenian-Azerbaijani troubled relations and, particularly, on the long-standing Nagorno – Karabakh conflict settlement (Terzyan 2016, pp. 168-169). This conflict resolution would occur gradually, shifting into a higher gear due to successful implementation of the EaP provisions. In Sargsyan's words, the EU would significantly contribute to conflict resolution by

promoting democracy and laying ground for democratic interstate dialogue; advancing trust-building measures through people-to-people contact and joint undertakings, and most importantly, through intensifying its engagement with Azerbaijan and ensuring that the latter complies with the 'European rules' (Sargsyan, 2012).

Similarly, the Ukrainian leadership has largely treated the advancement towards Europe as Ukraine's ideational choice and foreign policy priority, leading the country down the path to democracy and prosperity. Essentially, the rapprochement with the European core has been inherently linked to Ukraine's fervent desire to distance itself from the sphere of the Russian influence, as the logic of moving away from Moscow – in civilizational, political and economic terms – was historically always popular in Ukraine (Kakachia, Lebanidze and Dubovyk, 2019, p. 457).

Clearly, the 2005 Orange Revolution presented huge opportunities for Ukraine's European integration, given its pro-Western President Viktor Yuschenko's emphasis on European/Euro-Atlantic foreign policy agenda. More specifically, Yuschenko would hail the EU membership as the best path to Ukraine's development, with the EU being framed as peace and democracy promoter (Yuschenko, 2005a). He would repeatedly stress the necessity of fundamental democratic reforms that would enable Ukraine to knock the door of European family of democracies (Yuschenko, 2005a).

Thus, Yushchenko vowed to make democratic reforms irreversible and prepare Ukraine for EU membership: "We welcome the EU's intention to develop a new strategy of relations with Ukraine. I am convinced that it should contain the prospect of membership" (Yuschenko, 2005a). Moreover, Yuschenko hailed the 'choice for Europe' as the main rationale behind the Orange Revolution, that consolidated Ukraine's independence and reaffirmed its vision of European and Euro-Atlantic integration (Yuschenko, 2005 b).

Nevertheless, the European aspirations of post-Orange Revolution Ukraine's government would inevitably run into Russian resistance. Since the collapse of the Soviet Union the Kremlin has employed a series of tools to tighten its grip on Ukraine. Meanwhile, the concept of the "Russian world" would resonate with millions of Ukrainians, not least due to the Orthodox

Church, the role of which should not be underestimated (Kakachia, Lebanidze and Dubovyk, 2019, p. 457).

Not surprisingly, after the 2014 Maidan Revolution, President Petro Poroshenko brought up the issue of country's spiritual independence "to make independence irreversible, make Ukraine great and strong, without any prospect of returning to the Russian influence zone" (Poroshenko, 2018a). Poroshenko hailed December 15 - the date of the Ukrainian Orthodox Church's vote on future relations with Moscow – as "the day of the final gaining of Ukrainian independence from Russia. And Ukraine will no longer drink, as Taras Shevchenko said, "Moscow's poison from the Moscow's bowl"(Poroshenko, 2018 b). Overall, Poroshenko's foreign policy concept was simple - "Away from Moscow! Europe now!" (Poroshenko, 2018b).

In sum, in both countries the approximation towards Europe has been treated as an ideational choice, with the being EU framed as normative actor, peace and democracy promoter.

3. Structural constraints: Russian resistance to the "choice for Europe"

The core structural factors, obstructing the advancement of Armenia's and Ukraine's European foreign policy agendas have stemmed from Putin's Russia's adamant resistance to large-scale Europeanization in the sphere of its 'privileged interests'. Meanwhile, the ongoing crisis in Ukraine has plunged the EU-Russia relations in their common neighborhood into a volatile new phase, with all ensuing adverse effects on the 'shared neighbors'.

The root causes of the mounting confrontation date back to early 2000s- the early stage of Vladimir Putin's presidency, that marked a shift from 'liberal ideas' to geopolitical and particularly pragmatic geo-economic realism in the Russian leadership's foreign policy thinking (Thorun, 2009, p. 28). This shift significantly influenced Russian policy priorities towards newly independent CIS states, prompting the Kremlin to shield its 'near neighbourhood' from 'unwanted intrusions' amid the enlarging EU's deepening engagement with the region.

The setbacks endured in the EU-Russia relations over the last decade provoke an inquiry into the main rationale behind their conflictual visions of their common neighborhood.

Studies show that in early 2000s Russia would not fiercely resist to the EU's rapprochement with its near neighborhood, as it would do when it comes to NATO. Rather, Russia tended to indicate considerable interest in developing partnership with the EU, centering on but not limited to energy and trade (Delcour and Kostanyan, 2014. p. 2).

While the EU granted Russia the role of special 'strategic partner', Brussels and its institutions would be the 'unipole' with Russia envisaged as a recipient of norms, values and best practices promoted by the EU (Dragneva and Wolczuk, 2013, pp. 163-164). This was absolutely consistent with Russia's ambition to join the 'community of civilized states' and set up a comprehensive system of collective security in Europe as an antidote to dividing lines and polarization. Yet, Delcour and Kostanyan (2014) note that the partnership developed between the EU and Russia in the 2000s was underpinned by false premises and misperceptions (pp. 2-3). The EU would take for granted the assumption that Russia would unequivocally share its values by adopting the Western liberal standards of democracy and the market economy, and thus becoming a democratic and reliable partner. Meanwhile, the core assumption dominating the Kremlin's political thinking was that the EU's weak security actorness and its low profile in the post-Soviet space would impair its ability to compete with Russia in its neighborhood (Delcour and Kostanyan, 2014, pp. 2-3)

The first major setback in the EU-Russia relations was the introduction of the European Neighborhood Policy in 2004 – largely perceived as detrimental to Russian interests by Kremlin. Moreover, the fear of losing its influence in its 'backyard' amidst 'color revolutions' in Georgia and Ukraine, along with the EU's alarming engagement with them, prompted Russia into taking preventive measures. Notably, given their 'anti-post-Soviet' nature, there has been a tendency to regard the post-soviet revolutions as major international setbacks to Putin's Russia (Finkel and Brudny, 2012, p. 15). Russia's efforts at keeping its 'near abroad' in the orbit of its authoritarian influence, did not resonate particularly with Georgian and Ukrainian societies, determined to overcome post-Soviet authoritarianism and stand up for their 'European choice' (Cameron and Orenstein, 2012).

The inauguration of the Eastern Partnership in 2008 reinforced Russia's worst fears about the EU's 'expansionist agenda' and put it in the same category as 'hostile' NATO in Russian political thinking. Essentially, by offering Eastern neighbors Deep and Comprehensive Free Trade Agreements (DCFTAs) and Association Agreements (AAs), the EU was deemed to be making significant strides in 'absorbing' them into its ranks.

In response to the EU's integration agenda, Russia resorted to alternative region building or region-spoiling measures with a view to securing regional hegemony (Delcour and Wolczuk, 2017, p. 195).Russia's mounting assertiveness has been vividly manifested in its intensifying efforts at promoting its preferred vision of order beyond its borders in the form of Eurasian Economic (Customs) Union launched in 2010.

As a long-term project aimed at regaining the Russian control over post-Soviet space, the Eurasian Union was bound to collide with the Eastern Partnership as the European and Russian visions for the 'shared' eastern neighborhood remain exclusionary (Korosteleva, 2016, p. 67). In effect, the growing antagonism between the European and Eurasian visions of the 'shared neighborhood' has been fraught with severe consequences for the common neighbors. More specifically, the ongoing crisis in Ukraine that has much to do with country's 'European choice' reveals a profound lack of understanding the region by both the EU and Russia (p. 67).

Not surprisingly, the 2014 Maidan Revolution in Ukraine has been viewed as a manifestation of "clash of civilizations" between Russia and Europe that heralded the end of the post-Cold war settlement and vanished the hopes of Euro-Russian integration (Shevtsova, 2014, p. 74). That said, instead of joining the Western civilization, Russia positioned itself as its 'Other' and embarked on creating the Eurasian Union and constructing a Eurasian identity (Stefansson, 2015, pp. 20-21). Clearly, the relationship between Russia and the West has reached its nadir since the end of the Cold War, and by December 2014 the concept of an iron curtain, separating East and West was again put in the spotlight, at least in some analyst circles. Interestingly, some Russian analysts claim that the West's lingering Cold War thinking that fed the "Western triumphalism," and resulted in NATO's and

EU's expansion, was the main cause of the crisis outbreak in Ukraine (Black and Johns, 2016, xvii).

Consistent with such contentions, Putin went as far as to accuse the USA, and to a lesser extent the EU of the devastation unleashed on Ukraine. In Putin's words, Washington's attempts at "remaking the whole world" around its own interests and imposing a "unilateral diktat" on the rest of the world, are bound to cause instability in different parts of the world (Putin, 2015).Thus, the crisis in Ukraine has been framed as an unsurprising consequence of the United States and NATO's expansionist and inherently anti-Russian policies. "… They continue their policy of expanding NATO. What for? If the Warsaw Bloc stopped its existence, the Soviet Union have collapsed …they offered the poor Soviet countries a false choice: either to be with the West or with the East. Sooner or later, this logic of confrontation was bound to spark off a grave geopolitical crisis. This is exactly what happened in Ukraine…" (Putin, 2015). Similarly, as noted earlier, the Kremlin has viewed the EU's growing engagement with its Eastern neighbors as detrimental to Russia's strategic interests in the sphere of its 'privileged interests'.

When viewed from Brussels, the Eastern Partnership has marked a new phase of the EU's 'constructive engagement' in its neighborhood, with the view to transforming it into an area of democracy, peace and prosperity (Haukkala, 2018, p. 84). Meanwhile, the Kremlin would treat the Eastern Partnership as European intrusion in its sphere of influence, as for Russia, converging with the acquis means a shift away from what ties EaP countries have with Moscow (Delcour and Kostanyan, 2014, p. 3).

It is for these reasons that Putin threw his back behind promoting the Eurasian Union, most vividly by forcing Armenia to join it. A glance at Armenia's perplexing U-turn on the eve of signing the Association Agreement are suggestive of the depth and scope of the coercive measures that Russia took to prevent the Association Agreements from taking effect.

It is worth noting that, prior to Armenia's move towards the EAEU, Russia played its energy card by increasing gas prices for Armenia by 50 percent in April 2013, thus alarming possible economic repercussions of Armenia's European aspirations. Ironically, the gas price went down as

Armenia decided to sign up to the EAEU. Armenia's energy minister, Armen Movsisyan stated outright that the 'Eurasian choice' would shield Armenia from unwanted gas price hikes (Terzyan, 2018a, p. 237). Similarly, there has been a tendency in President Sargsyan's discourse to emphasize the hypothetical economic and political hardships that Armenia would suffer in case of deviating from strategic partnership with Russia. Thus, he would repeatedly refer to highly undesirable 'hypothetical future' to legitimate Armenia's decision to join the EAEU (Terzyan, 2017, p. 191). More specifically, given Armenia's huge economic and energy dependence on Russia, he particularly noted that the choice of the EAEU would keep Armenia from unwelcome surprises and economic repercussions: "Our choice is not civilizational. It corresponds to the economic interests of our nation. We cannot sign the Free trade agreement [DCFTA] and increase gas price and electricity fee three times?" (Terzyan, 2018a, p. 238).

Clearly, Russia possesses a bunch of economic and political tools for further tightening its grip on Armenia and influencing its policy preferences. Not surprisingly, the domestic change has not led to foreign policy shifts. Rather, Pashinyan's government was quick to confirm its further commitment to the 'Eurasian choice' (Terzyan, 2019, p. 27).

While small Armenia gave in to Russia's pressure, by making a U-turn and joining the Eurasian Economic (Customs) Union (EAEU) in September 2013, Ukraine showed strong resilience and persistence in asserting its European orientation. The Ukrainian society stood up for its 'European choice' and deposed Yanukovich, refusing to sign the long-awaited Association Agreement with the EU. As a result, despite the thorny path, Ukraine ultimately signed the Association Agreement (AA) in June 2014, while Armenia, ended up with its edited and sacrificed version - Comprehensive and Enhanced Partnership Agreement (CEPA) with the EU signed in 2016.

As a matter of fact, unlike Ukrainians, the Armenian society has gone the extra mile to move its 'European choice' forward or to somehow oppose to country's integration into the Eurasian Union. Along with other factors, such as Russia's treatment as security ally in Armenian public consciousness, low awareness of the EU's policies across the country have adversely affected

public demand for EU approximation. The surveys conducted by Armenian civil society organizations suggest that the vast majority of the Armenian population, especially outside of capital Yerevan, has a poor understanding of the EU, compounded by misconceptions about European values, culture and lifestyle (EaP Civil Society Forum, 2020 a, p. 10). More precisely, it has not been uncommon to perceive the EU as purely 'LGBT - promoting community', that undermines traditional values and national identities in former Soviet Union countries (MAXCAP Policy Briefs, 2015). It follows, that to improve the effectiveness of its policies, it is essential for the EU to work more on enhancing the visibility of its initiatives in Armenia and other EaP countries, thus breaking down the widespread misconceptions.

On the contrary, the demand for EU membership has been on the rise in Ukraine and is over 55 percent at this point (Kyiv Post, 2019). Surveys show that over 70 percent of Ukrainians recognize fundamental European values, such as human rights, rule of law, individual freedoms, etc. (EU Neighbors, 2019) and view them as guiding principles for the Ukrainian state-building (Buhbe, 2017). Thus, the EU is largely perceived as the most desired partner, capable of transmitting a series of political values to Ukraine (Chaban and O'loughlin, 2018). Yet, studies show that the EU needs to step up in terms of enhancing the visibility of its policies in Ukraine too (EaP Civil Society Forum, 2020b, p. 10).

Indeed, the positive attitudes towards the EU per se are insufficient to accelerate the dynamics of approximation towards Europe in the face of the Kremlin's unrelenting efforts at halting Ukraine's march toward closer European and wider Euro-Atlantic integration in its tracks (Haukkala, 2018, p. 84). While Poroshenko's successor Volodymyr Zelensky's 'game-changing' agenda is expected to trickle down to the troubled relations with Russia, arguably any substantial new developments in the relationship will mostly depend on how ready Moscow is to deal with the new Ukrainian authorities (Dreyfus, 2019). Against this backdrop, the limited progress on the implementation of the "Minsk II" agreement[*] in 2019, provided grounds

[*]The "Minsk II" agreement, signed in February 2015, was designed to put an end to the armed fighting, resolve the underlying political issues, and gradually restore Ukrainian government control of the country's eastern border.

for cautious optimism. Namely, two prisoner swaps, as well as the completion of de-mining and dismantling of fortifications within the Stanytsia Luhanska area seemed to move the needle on the devastating confrontation(European Commission, 2019, p. 8).Moreover, the first Normandy Four summit since 2016 was held in Paris on December 9, 2019. While the parties agreed to implement the ceasefire in full, the issues, such as the withdrawal of Russian-backed troops, elections in separatist-held regions and a special status for the Donbass region remain unresolved (European Parliament, 2020). The resumption of ceasefire violations with ensuing casualties prompted the five EU members of the UN Security Council – Belgium, Estonia, France, Germany and Poland to condemn Russia's violations of its Minsk agreement commitments (European Parliament, 2020). Yet, some see the dismissal of Vladislav Surkov –Ukraine adviser to Russian President – as a sign of change in Kremlin's approach to Ukraine (Vasilyeva, 2020). Among a bunch of uncertainties surrounding the future of Russo - Ukrainian relations, Ukraine's commitment to irreversibly depart from the sphere of the Russian influence seems certain.

To sum up, both Armenia's and Ukraine's choice for Europe' have run into Russian resistance and unrelenting efforts at keeping the countries in the orbit of its influence. A question remains as to whether along with the Kremlin-related structural constraints, the agency-level factors have played a role in shaping European and Eurasian foreign policy outputs of Ukraine and Armenia, respectively.

4. European and Eurasian choices of Ukraine and Armenia: structure or agency?

While structure-induced constraints influencing foreign policy making both in Armenia and Ukraine have been thoroughly studied, the actor-driven factors have remained largely overlooked.

Indeed, it is easy to fall prey to the reductionism of structural constraints and suggest that agency-level factors would not be instrumental in reshaping the EU-Russia contested neighborhood. By contrast, some observers contend that "despite the increasing external competition over the

post-Soviet space, domestic actors remain the key agents to account for the pattern of change in the contested neighborhood" (Ademmer, Delcour and Wolczuk, 2016).

This study further supports this assertion, by suggesting that agency-level factors have significantly impacted foreign policy choices of Armenia and Ukraine. This contention goes into the heart of "actor indispensability" and "operational code" frameworks that are deemed relevant to explaining Ukrainian and Armenian "indispensable actors'"- Viktor Yanukovich's and Robert Kocharyan's foreign policy choices. Both presidents used to enjoy unlimited power not least in foreign policy making.

The framework of the 'operational code' as a set of general philosophical and instrumental beliefs about fundamental political issues has been frequently employed to study individual dimensions of foreign policy behaviors (Dyson, 2009; Post, 2003). It is premised on the assumption that policy makers' beliefs and perceptions considerably influence the ways they choose and shift among different courses of action (Hermann, 2003). Two crucial conditions, which, if satisfied, can prompt to posit that an individual has been important to an outcome. The first condition is that of 'action dispensability'. If the actions of an individual are removed from the events to be explained, do the events still occur? Therefore, the actions of an individual are indispensable to the outcome as long as their removal would lead to considerable changes in the outcome. The second condition is that of 'actor dispensability'. Would any individual, confronting the same set of circumstances, have taken broadly the same actions? Again, this is a function of two factors. First, the degree to which the individual holds strong and distinctive beliefs and predispositions concerning the matter at hand. Second, the clarity of the situational imperatives is key (Dyson, 2009, pp. 15-16.).

The post-Soviet transition both in Armenia and Ukraine has been marked by the accumulation of strong presidential power at the expense of the two other branches of the government. Both countries would find themselves in a situation where the presidents had immense power to make strategic foreign policy choices single-handedly. The biggest challenge involves explaining how the perceptions and preferences of Kocharyan and Yanukovich influenced their foreign policy behaviors. Against this backdrop,

the 'authoritarian learning' is employed to account for some of their foreign policy decisions.

The 'authoritarian learning' literature is concerned with learning from both internal and external experience. In the analysis of the post-Soviet region, the literature has chiefly focused on the fostering and promotion by Russia of authoritarianism in other states (Ambrosio, 2016; Vanderhill, 2013). While authoritarian learning literature has not touched on individual learning, prospect theory puts attention on how decision makers formulate choices by using past reference points (Hall, 2017, p. 163), which makes prospect theory relevant to understanding Kocharyan's and Yanukovich's cases. Each individual weigh up gains and losses of a possible decision. Presumably, individuals with pronounced power motivation are likely to make decisions, including foreign policy ones, that would be conducive to maintaining their power (Hall, 2017, p. 163). Thus, it is assumed that the lessons Kocharyan and Yanukovich learned from their predecessors' declines, coupled with those learned from the steady survival of Russia-sponsored regimes, have considerably influenced the their 'choice for Russia'.

Despite his initial emphasis on the "European choice," in early 2000s in the wake of Russia's Putin-led engagement with its 'near neighborhood', Armenia plunged into the orbit of Russian influence. As noted earlier, the assertion, that in Armenia's hyper-presidential system, Kocharyan's personality and beliefs influenced Armenia's foreign policy outputs comes down to actor and action dispensability framework. Regarding the 'actor dispensability' in Kocharyan-led Armenian politics, it is worth noting that the post-Soviet transition led to the accumulation of presidential power at the expense of the parliament and the judiciary, neither of which had sufficient power to balance the presidential one or even properly perform their constitutional functions (Payasilyan, 2011, p. 110). The presidential power got immensely solidified after the assassinations of Prime Minister Vazgen Sargsyan and Head of Parliament Karen Demirchyan in 1999, especially as both limited Kocharyan's power and tended to explicitly disagree with him on many principal issues (Papazian, 2006, p. 235). The head of the 'Yerkrapah' union, Vazgen Sargsyan, was strongly supported by the

Armenian military forces and widely viewed as Armenia's most influential politician of the time (Terzyan, 2018a, pp. 243-244). Meanwhile, his assassination provided a fertile ground for immense consolidation of Kocharyan's power. Freedom House reports further suggest that Kocharyan used to exercise unlimited power over the country, with a strong tendency to curb political freedoms and dissent (Freedom House, 2005).

Essentially, the absence of checks and balances and lack of a viable opposition rendered Kocharyan the core policy-maker, i.e. an 'indispensable actor'. The consolidation of his power appeared to have strong impact on Armenia's foreign policy outputs by having the pro-Western agenda outweighed by the pro-Russian one (Aberg and Terzyan, 2018, pp. 161-162).

The critical unanswered question is why Russia's 'renewed' expansionist policy appealed to Kocharyan and prompted a foreign policy change. Particularly by contrast to Georgia, which was almost equally dependent on Russia, Armenia further jumped into the arms of Russia. This provokes an inquiry into the 'indispensable actor's' personality – his dispositions and beliefs.

Studies show, that as a typical autocrat, Kocharyan had a penchant for concentrating power in his hands and making decisions single-handedly (Derluguian and Hovhannisyan, 2018, pp. 455-456). He has been broadly regarded as a tough and unyielding politician in pursuit of his political goals (News.Bbc, 1998).In terms of political psychology, the above-mentioned could be interpreted as power motivation and a marked need for power. Received wisdom posits that individuals with high need for power tend to require greater personal control and involvement in policy and are more likely to insist that policy outputs match their personal preferences rather than represent consensual group decisions (Dyson, 2009, p. 30). Thus, they are reluctant to delegate power - inherently drawn to authoritarian governance. This seems to accurately capture Kocharyan's style of authoritarian governance (Payasilyan, 2011, pp. 205-206). Not surprisingly, Putin's plan on promoting authoritarianism in CIS countries significantly fit Kocharyan's ambitions (Secreiru, 2006).

The 'success stories' of the Russian-supported incumbents in Central Asian countries and Belarus and, by contrast, the mounting challenges facing

the political elites in other CIS Western-oriented democratizing countries, such as Georgia, Moldova and Ukraine, have reportedly contributed to Kocharyan's choice of the Russian 'package'. This comes down to the 'authoritarian learning' from international examples, with lesson-drawing, emulation and adaptability (Hall, 2017, p. 162).

Arguably, Kocharyan drew a range of lessons from the 2003 Rose Revolution in Georgia and the 2004 Orange Revolution in Ukraine. First, the perception, that the Russian-supported regimes, such as ones in Belarus and Kazakhstan had better chances to withstand 'colour revolutions' got reinforced. During the Georgian political crisis in November 2003, predating the revolution, Armenia decided to accept the Kremlin's offer of intensifying military partnership and thus signed a series of military agreements with Russia (Secrieru, 2006).

In further deepening partnership with Russia and letting the latter tighten its economic and political grip on Armenia, Kocharyan reportedly believed that the label of 'Russia's ally' would be beneficial to his regime's survival. Thus, the dispositional factors, coupled with intentional ones considerably influenced the 'choice for Russia'.

The second lesson learned by Kocharyan was that to avoid the destinies of former Georgian and Ukrainian presidents, opposition movements and media freedom needed to get restricted.

Using his hyper-presidential power, Kocharyan resorted to coercing the opposition and launched an extensive crackdown on independent media. As a result, Armenia smoothly plunged into authoritarianism, with centralization of power, weak opposition and censored media[*] (Refworld, 2004). Not surprisingly, Freedom House reports would point to downward democratic trends in Armenia, including but not limited to political repression, weak rule of law and undemocratic governance (Freedom House, 2005).

As for the Ukrainian case, it is noteworthy, that the 2005 Orange Revolution that brought pro-Western Victor Yuschenko to power would spark optimistic commentaries about Ukraine's profound advancement towards Europe. Nevertheless, Yuschenko's 'European agenda 'confronted a series of challenges, ranging from oligarchic influence to mounting Russian

[*]The sole opposition TV station A1+ was shut down in 2002.

resistance. Remarkably, some observers trace certain domestic and foreign policy setbacks to Yuschenko's personality, positing that "Yushchenko paid the price for being a democratic president… He was not a strong, charismatic man with a strategic vision, and thus failed to pass the test on calculating in global political terms and leading his country in the very difficult time of transformation and crisis" (Piekto,2016). Ironically, his term in office paved the way for his old rival Victor Yanukovych, notorious for his autocratic tendencies. Yuschenko would warn that a presidential victory by either of his two rivals would send Ukraine back into the orbit of the Russian authoritarian influence: "There is a danger of authoritarianism because we have two leaders, Tymoshenko and Yanukovych, who represent the best Moscow project, which takes away freedom, democracy, and 'Ukrainianhood' (Yuschenko, 2010). He concluded that the choice was very simple –"either this pro-Kremlin couple and pro-Kremlin policy wins, or the pro-European policy does" (Yuschenko, 2010).

Contrary to Yuschenko's 'European agenda', Yanukovych, supported by many Russian-speaking Ukrainians in country's east, would be quick to pledge Ukraine's allegiance to Russia. Clearly, Yanukovich's 'authoritarian project' would be incompatible with the fulfillment of the 'European agenda'. Therefore, when the moment for signing the Association Agreement came, his reservations, coupled with Russian pressure and blackmail, brought the deal to a halt. Hence, the case of Yanukovich's presidency is exemplary in showing how domestic political elites are powerful enough to shape, change or even obstruct the process of Ukraine's advancement towards Europe. Ultimately, it comes down to the interests, perceptions, and preferences of powerful local actors, given that domestic agency still plays a key role in managing the process of approximation to Europe (Kakachia, Lebanidze and Dubovyk, 2019, p. 454). The government of Viktor Yanukovich was quite telling in this regard. On the one hand, the European choice remained a top formal priority. On the other hand, the real life in Ukraine was increasingly incongruent with European values (p. 454).

Consistent with the Armenian President Robert Kocharyan's foreign policy decisions, the 'authoritarian learning' framework seems relevant to accounting for Yanukovich's pro-Russian foreign policy choice. Essentially,

along with his efforts at appeasing his Russian-speaking electorate, Yanukovich opted for Russia, as the latter would provide better chances at sustaining the stability of his authoritarian regime. Meanwhile, stepping down the path to fundamental Europeanization would positively correlate with democratic reforms across the country, with all repercussions for his power reproduction.

Hall (2017) has provided insights into Yanukovich's authoritarian learning that played a part in determining his pro-Russian choice. He specifically focuses on domestic learning in 'authoritarian learning'. Referring to the Orange Revolution, some lessons learnt by Yanukovych could be explored. First and foremost, he learnt the importance of controlling young people and placing them in regime-controlled organizations. This would curb youth activism and, most importantly, prevent the latter from pushing for democratic reforms in line with European democracies (Hall, 2017, pp 163-165). This lesson prompted Yanukovich to launch a crackdown on civil society and NGOs that had played a critical role in the Orange Revolution. More specifically, Yanukovich used legislation and the Security Service of Ukraine to curtail their activities (Gressel, 2019). Among other measures stemming from Yankovich's learnt lessons was using the financial backing of oligarchs to buy the allegiance of politicians, and thus consolidating his power (Hall, 2017, p. 168). All these lessons reportedly contributed to Yanukovich's decision to opt for centrality in the Russia-led socio-political order. While the implementation of the Association Agreement and DCFTA would inevitably lead to significant democratic reforms across the country and potentially challenge his immense power, it would be way easier to stay in office within the Russian-dominated Eurasian Union. Not only would not the latter promote democratic reforms, but it would ardently help reinforce the power base of the authoritarian rulers, as it tends to do in Kremlin-loyal regimes

Thus, I argue that the agency-level factors under both Kocharyan's and Yanukovich's administrations were critical to their foreign policy strategic choices.

While the Ukrainian society reversed Yanukovich's arbitrary decision by deposing him, and thus confirming the 'choice for Europe', Kocharyan's

'choice for Russia' left small and less resilient Armenia's centrality in the Russia-centered space intact.

Nevertheless, along with the above-mentioned dispositional factors it is impossible to downgrade the importance of the intentional dimension of Armenia's 'choice for Russia'. The latter has been largely treated as a strategic security ally in Armenian political thinking and public consciousness, that would create a critical bulwark against neighboring Azerbaijan's and Turkey's hostilities (Terzyan, 2018b, pp. 159-160).

In sum, despite the growing emphasis on the structural constraints underlying foreign policy behaviors of Eastern Partnership countries, the case studies of Ukraine and Armenia indicate the relevance of agency-level factors in shaping their foreign policy outputs.

5. Conclusion

This article contributes to existing literature on the structure-agency interplay in foreign policy analysis, by examining the cases of Ukraine and Armenia. Based on the previous discussion, there are three main concluding observations to make regarding structure-induced and actor-driven foreign policy outputs of the two post-soviet countries.

First, and in terms of the ideational rationale behind the foreign policy choices, the drive towards Europe has been an integral part of Ukrainian and Armenian political agendas since the break-up of the Soviet Union. Both in Armenian and Ukrainian discourses approximation towards Europe has been treated as an ideational choice, with the EU framed as normative actor, peace and democracy promoter.

Second, in terms of structural constraints to advancing their foreign policy agendas, both Armenia's and Ukraine's 'choices for Europe' have run into Russian resistance and unrelenting efforts at keeping the countries in the orbit of its influence. While small Armenia gave in to the Kremlin's pressure, by making a U-turn and joining the Eurasian Economic (Customs) Union in September 2013, Ukraine showed strong resilience and persistence in asserting its European orientation vividly manifested in the 2014 Maidan Revolution. Unlike Ukrainians, the Armenian society has not appeared to

oppose to country's integration into the Russian-led Eurasian Union. Along with other factors, such as Russia's treatment as security ally in Armenian public consciousness, low awareness of the EU's policies across the country have adversely affected public demand for EU approximation. Not surprisingly, domestic change in Armenia has not led to foreign policy shifts.

Third observation relates to the relevance of agency-level factors, as Viktor Yanukovich's and Robert Kocharyan's presidencies are exemplary in showing how the perceptions and preferences of presidents shaped the two post-Soviet states' foreign policy outputs. The 'authoritarian learning' framework is employed to account for Ukrainian and Armenian presidents' Kocharyan's and Victor Yanukovich's pro-Russian foreign policy choices. Arguably, both presidents opted for Russia, as the latter would provide better chances at sustaining the stability of their authoritarian regimes. Meanwhile, stepping down the path to fundamental Europeanization would positively correlate with democratic reforms across these countries, with all repercussions for their authoritarian rule. While the Ukrainian society reversed Yanukovich's arbitrary decision by deposing him, and thus confirming the 'choice for Europe', Kocharyan's 'choice for Russia' left small and less resilient Armenia's centrality in the Russia-led socio-political order intact.

It is essential for future studies to avoid reductionism to structural constraints and pay closer attention to agency-level factors in explaining the two states' foreign policy choices.

References

Aberg, J. H., and Terzyan, A. (2018), Structure or agency? Explaining Armenia's Foreign Policy Evolution. *Eastern Journal of European Studies*, *9*(1), pp. 151-172.

Ademmer, E., Delcour, L. and Wolczuk, K. (2016), Beyond Geopolitics: Exploring the Impact of the EU and Russia in the "Contested Neighborhood".*Eurasian Geography and Economics*, 57(1), pp. 1-18.

Ambrosio, T. (2016), *Authoritarian Backlash: Russian Resistance to Democratization in the Former Soviet Union*, New York: Routledge.

Buhbe, M. (2017), *How Ukrainians Perceive European Values: Main Results of an Empirical Survey*,retrieved April 17, 2020, from https://library.fes.de/pdf-files/id-moe/13731.pdf .

Cameron, D. R. and Orenstein, M. A. (2012), Post-Soviet Authoritarianism: The Influence of Russia in Its" Near Abroad". *Post-Soviet Affairs*, 28(1), pp 1-44.

Carlsnaes, W. (1992), The Agency-Structure Problem in Foreign Policy Analysis, *International Studies Quarterly*, 36(3), pp. 245–270.

Chaban, N. and B. O'loughlin (2018), *The EU's Crisis Diplomacy in Ukraine: The Matrix of Possibilities*, retrieved April 17, 2020, fromhttps://jia.sipa.columbia.edu/eus-crisis-diplomacy-ukraine-matrix-possibilities.

Delcour, L. and Kostanyan, H. (2014), Towards a Fragmented Neighbourhood: Policies of the EU and Russia and their Consequences for the Area that Lies in Between. *CEPS Essays*, (17), pp. 1-10.

Delcour, L. and Wolczuk, K. (2017), Between the Eastern Partnership and the Eurasian Economic Union: Competing Region-Building Projects in the 'Common Neighbourhood'. *Theorizing the European Neighbourhood Policy*, pp. 187-206.

Derluguian, G. and Hovhannisyan, R. (2018), The Armenian anomaly: Toward an interdisciplinary interpretation. *Demokratizatsiya: The Journal of Post-Soviet Democratization*, *26*(4), pp. 441-464.

Dragneva, R. and Wolczuk, K. (Eds.). (2013), *Eurasian Economic Integration: Law, Policy and Politics*. Edward Elgar Publishing.

Dreyfus, E. (2019), Expectations for Kyiv-Moscow Relations After Ukraine's Presidential Election, *PONARS Memo:593*, retrieved May 17, 2020, from http://www.ponarseurasia.org/memo/expectations-kyiv-moscow-relations-after-ukraines-presidential-election.

Dyson, S.B. (2009), *The Blair Identity: Leadership and Foreign Policy*. Oxford University Press.

EaP Civil Society Forum (2020a), *Structured Consultation on the Eastern Partnership Beyond 2020. Country Report: Armenia*, retrieved May 20, 2020, from https://eap-csf.eu/wp-content/uploads/Armenia-country-report.pdf .

EaP Civil Society Forum (2020b), *Structured Consultation on the Eastern Partnership Beyond 2020. Country Report: Ukraine*, retrieved May 20, 2020, from https://eap-csf.eu/wp-content/uploads/Ukraine-country-report.pdf .

EU Neighbors (2019), *EU Neighbors Opinion Survey 2019: Ukraine*, retrieved April 17, 2020, from https://www.euneighbours.eu/en/east/stay-informed/publications /opinion-survey-2019-ukraine .

European Commission (2019), *Association Implementation Report on Ukraine*, retrieved May 19, 2020, from https://eeas.europa.eu/ sites/eeas/files/swd_2019_433_f1_joint_staff_working_paper_en_v4_ p1_1056243.pdf

European Parliament (2020), *Ukraine: The Minsk Agreements Five Years On*, retrieved May 21, 2020, from https://www.europarl.europa.eu/Reg Data/ etudes/ATAG/2020/646203/EPRS_ATA(2020)646203_EN.pdf .

Finkel, E. and Brudny, Y. M. (2012), Russia and the Color Revolutions. *Democratization*, *19*(1), pp. 15-36.

Freedom House (2005), *Freedom in the World: Armenia*, retrieved February 19, 2020, from https://freedomhouse.org/report/freedom-world/2005/armenia.

Gressel, G. (2019), Guarding the Guardians: Ukraine's security and judicial reforms under Zelensky. *ECFR Policy Brief*, retrieved April 17, 2020, from https://www.ecfr.eu/page/-/guarding_the_guardiansukraine _security_and_ judicial_reforms_under_zelensky.pdf.

Hall, S.G. (2017), Learning from Past Experience: Yanukovych's Implementation of Authoritarianism After 2004. *Journal of Eurasian Studies*, 8(2), pp.161-171.

Haukkala, H. (2018). 'Crowdfunded Diplomacy'? The EU's Role in the Triangular Diplomacy Over the Ukraine Crisis. In *Triangular Diplomacy among the United States, the European Union, and the Russian Federation*, pp. 77-94.

Hermann, R. K. (2003), Image Theory and Strategic Interaction in International Relations, in: Sears. D., Huddy L. and Jervis. R. (eds.), *Oxford Handbook of Political Psychology*, 1st ed. Oxford University Press, pp. 285-314.

Hollis, M. and Smith, S. (1994), Two Stories About Structure and Agency. *Review of International Studies*, 20(3), pp. 241-251.

Kakachia, K., Lebanidze, B. and Dubovyk, V. (2019), Defying Marginality: Explaining Ukraine's and Georgia's Drive towards Europe. *Journal of Contemporary European Studies*, *27*(4), pp. 451-462.

Kocharyan (2004), *Speech Made to the Assembly*, retrieved February 19, 2020, from http://www.assembly.coe.int/nw/xml/Speeches/Speech-XML2HTML-EN.asp?SpeechID=118

Kocharyan, R. (2011), *Eluytner ev harcazruycner {Speeches and Statements}*, Yerevan.

Korosteleva, E. A. (2016), Eastern Partnership and the Eurasian Union: Bringing 'The Political' Back in the Eastern Region. *European Politics and Society*, 17(1), pp. 67-81.

KyivPost (2018), *Almost 60 Percent of Ukrainians Ready to Vote for Ukraine's Accession to EU at Referendum,*retrieved April 17, 2020 (retrieved from https://www.kyivpost.com/ukraine-politics/almost-60-percent-of-ukrainians-ready-to-vote-for-ukraines-accession-to-eu-at-referendum.html)

MAXCAP Policy Briefs (2015), *10 Years of the ENP - The Way Forward with the EaP*, retrieved April 17, 2020, (retrieved from http://userpage.fu-berlin.de/kfgeu/maxcap/sites/default/files/sites/default/files/policy-briefs/ maxcap_policy_brief_01.pdf)

News.bbc (1998), *Robert Kocharian - Armenia's New President*?retrieved February 19, 2020, from http://news.bbc.co.uk/2/hi/world/analysis/72058.stm.

Oskanian (2005), *Armenia is Part of Europe, Says Oskanian*, retrieved February 19, 2020, from https://www.azatutyun.am/a/1578607.html.

Papazian, T. (2006), From Ter-Petrossian to Kocharian: Explaining Continuity in Armenian Foreign Policy, 1991-2003, *Demokratizatsiya*, 14(2), pp. 235-251.

Payaslian, S. (2011), *The Political Economy of Human Rights in Armenia: Authoritarianism and Democracy in a Former Soviet Republic*, 75, London: IB Tauris.

Piekto (2016), Ukraine's Unrequited Passion for Europe. *Henrikh Boll Stiftung*, retrieved February 14, 2020, from https://eu.boell.org/en/2016/07/14/ukraines-unrequited-passion-europe

Poroshenko (2018a), *President Petro Poroshenko's Speech at the Military Parade in Kyiv*, retrieved February 17, 2020, from http://www.ukrweekly.com/uwwp/president-petro-poroshenkos-speech-at-the-military-parade-in-kyiv/ .

Poroshenko (2018b), *Speech by President Poroshenko on the Results of the Unification Synod*, retrieved February 19, 2020. (retrieved from http://www.ukrweekly.com/uwwp/)

Refworld (2004), *Freedom in the World 2004 – Armenia*, retrieved May 24, 2020, from https://www.refworld.org/docid/473c5473c.html.

Sargsyan (2009), *Statement by President Serzh Sargsyan at the EU Eastern Partnership Summit*,retrieved February 19, 2020 (retrieved from https://www.president.am/en/statements-and-messages/item/2009/05/07 /news-40/)

Sargsyan (2011), *Statement by the President of the Republic of Armenia Serzh Sargsyan at the Parliamentary Assembly of the Council of Europe*, retrieved February 19, 2020.(retrieved from https://www.president.am/en/statements-and-messages/item/2011/06/22/news-91/ .

Sargsyan (2012), *Speech by President Serzh Sargsyan at the Konrad Adenauer Foundation*, retrieved February 18, 2020, from https://www.president.am/en/statements-and-messages/item/2012/03/07/ news-124/ .

Secrieru, S. (2006), Russia's Foreign Policy under Putin: CIS Project, *UNISCI Discussion Papers*, (10), retrieved February 17, 2020, from http://www.redalyc.org/pdf/767/76701018.pdf.

Shevtsova, L. (2014), The Maidan and Beyond: The Russia Factor. *Journal of Democracy*, *25*(3), pp. 74-82.

Stefánsson, V. (2015), *Is Russia Europe's Other? How the Ukraine Crisis Reinforces European Identity Formation* (Doctoral dissertation), retrieved May 17, 2020, from https://skemman.is/bitstream/1946 /22766/3/Is%20Russia%20Europe% 27s%20Other%20Skemman-PDF.pdf.

Terzyan, A. (2016), The Evolution of Armenia's Foreign Policy Identity: The Conception of Identity Driven Paths. Friends and Foes in Armenian Foreign Policy Discourse. *Values and Identity as Sources of Foreign Policy in Armenia and Georgia*, pp. 145-183.

Terzyan, A. (2017), The EU vs. Russia in the Foreign Policy Discourse of Armenia: The Fragility of Normative Power or the Power of Russian Coercion?*Eastern Journal of European Studie*s, 8(2), pp. 185-203.

Terzyan, A. (2018), The Anatomy of Russia's Grip on Armenia: Bound to Persist? *CES Working Papers*, *10*(2), pp. 234-250.

Terzyan, A. (2018b), Identity Conflicts? The Sense of 'Victimhood' and the Enemy Images of Turkey and Azerbaijan in the Foreign Policy Discourse of Armenia. *Slovenská politologická revue*, *18*(2), pp. 155-175.

Terzyan, A. (2019), The Aftermath of the "Velvet Revolution": Armenia Between Domestic Change and Foreign Policy Continuity. *Eastern European Journal for Regional Studies (EEJRS)*, *5*(2), pp. 24-43.

Thorun, C. (2008), *Explaining Change in Russian Foreign Policy: The Role of Ideas in Post-soviet Russia's Conduct Towards the West*. Springer.

Vanderhill, R. (2013), *Promoting Authoritarianism Abroad, Boulder*. CO: Lynne Rienner Publishers.

Vasilyeva (2020), *Vladimir Putin Sacks His Hard-Line Point Man on Ukraine*, retrieved May 20, 2020 from https://www.telegraph.co.uk/news/2020/02/19/ vladimir-putin-sacks-hard-line-point-man-ukraine/ .

Yuschenko (2005a), *Yushchenko Seeks EU Membership*, retrieved February 18, 2020, from http://news.bbc.co.uk/2/hi/europe/4204149.stm .

Yuschenko (2005b), *Opening Statement by Viktor Yushchenko, President of Ukraine at the Meeting of the NATO-Ukraine Council at the Level of Heads of State and Government*, retrieved February 19, 2020, from https://www.nato.int/cps/en/natohq/opinions_21972.htm .

Yuschenko (2010), *Yushchenko: 'I Will Never Say I Failed During These Five Years'*, retrieved February 15, 2020, from https://www.rferl.org/a/Yushchenko_I_Will_Never_Say_I_Failed_ During_These_Five_Years/1924465.html .

The Security Issues in the 2008 Russian-Georgian War

Nicoleta MIRZA [1]

Abstract

The article aims to establish the security issues present in the 2008 Georgian conflict, and explore the securitization process by the Russian Federation, Georgia, and other involved parties. The allegations made by the parties to the conflict created more political and security instability. In this way, the security dilemma is addressed in relation to Georgia and Russia, and NATO and Russia. Furthermore, attention is also drawn to the intensity and type of the Russian-Georgian war. The regional conflict has sparked the attention of the international community. Therefore, the research paper provides an assessment of the tools of dispute settlement used by the international community. Considering the in type and intensity of the conflict, the paper identifies various crimes committed by each party to the conflict by also engaging legal arguments. The paper employs a qualitative study analysis by applying security theories to the case of the 2008 Russian-Georgian war. Consequently, the article identifies possible key element of the securitization process during the conflict.

Keywords: Russian Federation, Georgia, South Ossetia, Abkhazia, Securitization, Security dilemma.

JEL Code: K33, K42, F51, F53

1. Introduction

Tensions between South Ossetia, Abkhazia, the Russian Federation, and Georgia have been visible for years. These tensions have been intensified

[*]Nicoleta Mirza is a LLM (Law and Politics of International Security) student at the Vrije University Amsterdamwith a BA in International Relations from the University of Pecs. E-mail address: nicoleta.mirza7@gmail.com.

due to South Ossetia's attempts to reaffirm its independence in 2006, the Georgian president's efforts to increase border control, and Russia's political (granting citizenship to South Ossetians) and military involvement (Roudik & Law Library of Congress (U.S.), 2008, p. 2) (paramilitary elements sent in the region) (Nichol & Library of Congress, 2014, p. 25). However, the conflict escalated in 2008. The five days war raises legal, political and security questions. The conflict has brought insecurity in the region and sent a wave of concern towards other post-soviet countries. Therefore, the paper aims identify possible key element of the securitization process during the Russian Georgian war.

The first and second chapters aims to establish the security issues present in the conflict, and to investigate the securitization process by both parties. The third chapter discusses the security dilemma between Georgia and Russia, and NATO and Russia. The fourth chapter examines the degree and type of war crimes in the Russian-Georgian war. The paper is concluded with an assessment of the instruments used by the international community to reach a settlement to the conflict.

2. Security issue and Securitization

Each party to the conflict has had its own proclaimed security priorities at stake such as independency, sovereignty, and "self-defense". The security concerns of Georgia appear to be clear as the then president Mikheil Saakashvili used territorial integrity (Green, & Waters, 2010, p.12) threat as an object of securitization. On the other side, the Russian Federation rested on the defense of its citizens and peacekeepers (Green, & Waters, 2010, p.13) present in the zone of the conflict. President Putin went further by stating that Russia has a duty to stop crimes, not only against Russian peacekeepers and people who live in South Ossetia, but also Georgian citizens as Georgia suffered a hit against its territorial integrity (Chinkova, 2008). Similarly, Dmitry Medvedev stated that: Now in South Ossetia, peaceful people are dying, women, children, old people, and most of them are Russian citizens. According to the constitution and the Federal Law, as the President of the Russian Federation, I am obliged to protect the life and dignity of the Russian citizens wherever they are. (Medvedev, 2008).

These statements show how the politicians try to persuade the audience by changing and adding a referent subject of securitization.

The exposed security concerns of the belligerents can be analyzed using the core concepts of the securitization theory. Thierry Balzacq, Sarah Léonard, Jan Ruzicka suggest that "Securitization theory addresses the following main questions: What makes something a security issue? What kind of responses does this call for? What are the specific consequences of agreeing that something is a threat?" (Balzacq, Leonard, & Ruzicka, 2016, p. 496). Accordingly, the central concepts of the theory are the securitizing actor which is "an agent who presents an issue as a threat", the referent subject which is the entity that is threatening, the referent object which is the entity that is being threatened, the audience, and "the context and the adoption of distinctive policies" (Balzacq, et all, 2016, p. 495).

In the case of the Russian Federation as a securitizing actor, it can be concluded that the referent subject is Georgia, the referent object is mainly Russian citizens and the audience are Russians and the international community. According to a survey conducted by "Levada Center" in 2018, 34% of respondents consider that Georgia itself is responsible for the five-day war (Levada-Centre, 2018). Moreover, 24% consider that the responsible parties are the United States and NATO countries (Levada-Centre, 2018). 59% of respondents consider that Russia did everything possible to stop the conflict from escalating (Levada-Centre, 2018). Observing the data of the survey, it can be concluded that the Russian government succeeded to convince its citizens about the threatening nature of the referent subject.

However, in the case of Georgia as a securitizing actor, the referent subjects are South Ossetian and Abkhaz separatists, and Russia; the referent objects are territorial integrity, sovereignty, citizens; and the audience are Georgian citizens and the international community. The Georgian government succeeded to persuade the audience (at least the Georgian audience) about the eminent threat of territorial fragmentation and loss of sovereignty. As a result, the 2008 Georgian national survey showed that 91% of Georgian citizens are against the independence of the two regions (International Republican Institute, 2008). Furthermore, 42% of respondents consider territorial integrity an important issue (International Republican

Institute, 2008). It was also established that 21% of respondents are alarmed about the threat of a resumed war with Russia and 5% are concerned about the threat of Russian occupation (International Republican Institute, 2008).

Regardless of the portrayed security issues, other factors have also contributed to the escalation of the conflict. These factors are:

- NATO's enlargement and its position in Eastern Europe,
- Georgian foreign policy and its position towards South Ossetia and Abkhazia,
- the dominating Russian foreign policy towards Eastern European countries.

While Georgia claims to direct its military activities as defensive actions, (Green & Waters, 2010, p.160) the Russian government casts its actions as self - defense (Allison, 2013, chapter 7, p.3). The two parties accuse each other over the conflict creating a suitable atmosphere for a security dilemma.

3. Anarchy and Security Dilemma

The chapter discusses such notions as the dilemma of response, dilemma of interpretation, strategic challenge, and security paradox in relation to the 2008 Russian-Georgian war. Further, the relation between Russia and NATO is examined in the condition of the security dilemma. But first, the chapter aims to address the condition of anarchy and its relation to the security dilemma.

The condition of anarchy places security as the primordial concern of the states (Hanami & Walt, 2003, p. 84).The decisive factor causing security dilemma is the presence of anarchy in international relations and no central governing mechanism (Gvelesiani & Mölder 2018, p. 147, as cited in Waltz, 1986a, pp. 98-99). From the point of view of anarchy, due to the lack of trust between Russia and Georgia, the relations between the two states are illustrated by a degree of insecurity. Under anarchy, the logical decisions are mistrust and skepticism. This idea is plausible if indeed trust is unachievable between states. However, this thinking further increases uncertainty and contributes to the establishment of the security dilemma.

According to Nicholas Wheeler and Ken Booth, the existential condition of uncertainty in the framework of international relations entails that no government can be completely certain about the "motives and intentions" of parties able to inflict military harm (Booth & Wheeler, 2008, p. 138).In the case of Georgia for instance, it cannot be certain that the intentions of the Russian government are of a "peacekeeping"/humanitarian nature and does not follow any other motives of occupation and/or disruption of the Georgian territorial integrity. Considering the *ambiguous symbolism* of weapons that refers to the difficulty of distinguishing between offensive and defensive weapons, how can we differentiate between „offensive" and „defensive" weapons in the Georgian-Russian conflict (Booth & Wheeler, 2008, p. 138). For instance, the Russian decision on April 29th, 2008 to send more troops to Abkhazia can be viewed by the belligerent parties differently. While Russia claims that it has a defensive character to counteract Georgia's intentions for an attack, (CNN Library, 2019) Georgia sees it as an offensive action threatening its citizens and territorial integrity. This is an illustration of the security dilemma in the 2008 Russian-Georgian war.

Authors Wheeler and Booth describe the security dilemma in a "two-level strategic predicament": "dilemma of interpretation" and "dilemma of response" (Booth & Wheeler, 2008, p. 139).The first level, "Dilemma of interpretation" entails "predicament facing decision-makers when they are confronted, on matters affecting security, with a choice between two significant and usually (but not always) undesirable alternatives about the military policies and political postures of other entities" (Booth & Wheeler, 2008, p. 139). The second level "dilemma of response" "begins when the dilemma of interpretation has been settled" and "decision-makers then need to determine how to react" (Booth & Wheeler, 2008, p. 139).

3.1 Dilemma of Interpretation

Analyzing the Georgian-Russian conflict with relation to "dilemma of interpretation", it can be stated that by 2008, both parties to the conflict viewed each other's military developments as offensive. This decision was sparked by many events such as: Georgia's request that Russian peacekeepers have visas (CNN Library, 2019); shooting down a Georgian drone over

Abkhazia; (Chivers, 2008) Russia sending troops in Abkhazia (The New York Times, 2008, a.); the recognition of independence by Russia of South Ossetia and Abkhazia (The New York Times, 2008, b.).

3.2 Dilemma of response

From the perspective of the dilemma of response, the decision-makers reacted in a militarily hostile manner and created a confrontational environment. It is hard to establish whether the conflict was created because of "misplaced suspicion" concerning the true motives of the parties involved or "misplaced trust" (See Booth & Wheeler, 2008, p. 139). Moreover, if trusting both justifications to why the conflict escalated in the first place and what exactly sparked the aggression, it can be challenging to determine whether or not either party was seeking a conflict.

According to the Russian Federation, it acted in self-defense with the intent to protect its citizens. However, its claim is viewed as legally and politically controversial (Allison, 2013, p. 3). Even if the self-defense need could be justified with a convincing reason, Russian actions do not follow the legal principle of proportionality. The extension towards the Georgian territory outside the conflict zone and the degree of force used cannot justify Russia's response (Allison, 2013, pp. 4-5).Although Georgia could have tried to settle the tensions in a different manner, observing the Russian response to the alleged "Georgian attack", it cannot be certainly stated that the Georgian reaction is based on misplaced suspicions.

On the other hand, according to the Georgian accounts of events, "peacekeepers were not attacked prior to Russia's invasion" (IIFFMCG, V. I, 2009, pp. 186-188), thus, Georgia acted in a defensive manner. Accordingly, Georgia claims that it tried to resolve the conflict on a diplomatic level before the conflict escalated (Green & Waters, 2010, p. 160). If Georgian claims are valid then the state tried to resolve the dilemma of response in a peaceful manner but failed.

3.3 Strategic Challenge and Security Paradox

If, however we analyse Russia/Georgia relations since the 2000s entirely from the Georgian point of view, and consider all Georgian claims as

true and valid, then the conflict is no longer in the state of the security dilemma. On the contrary, since the Georgian government blames the conflict on Russian aggression, the relationship is recognized as a *strategic challenge*. According to Wheeler and Booth "[w]hen a dilemma of interpretation is settled in favour of the view that another state is a definite threat to one's own national security, there is no longer a security dilemma; the relationship is best understood as a *strategic challenge*"(Booth, & Wheeler, 2008, p. 141).

Yet, if we consider that the Georgian interpretation of Russia's intentions is incorrect, and the other state responds in a defensive manner, then, the situation may result in increased hostilities and insecurity. The situation created between Russia and Georgia can then be classified as a *security paradox* (See Booth &Wheeler, 2008, p. 141).

3.4 Russia-NATO Security Dilemma and its Consequence for Georgia

Georgia-NATO relationship can be counted as one of the reasons for the conflict escalation. Russian prime minister Dmitry Medvedev stated in 2008 that NATO was responsible for provoking the conflict in Georgia (Dyomkin, 2008). The power struggle between Russia and NATO has affected the Russian foreign policy. Its involvement in Georgia can be characterized as a determination to secure its vital interests and regain its influence in Eastern Europe (Özgöker & Yılmaz, 2016, p. 653). NATO enlargement has threatened Russian interests and ambitions. The security dilemma between the two actors has played a role in Russia/Georgia relations since the 2000s. Georgian ambition to become a NATO member became a security concern for Russia even if it was not intended as such.

4. Actions of the Parties Involved, War Crimes, and Humanitarianism

Each party to the conflict engaged in war crimes to some extent (Mullins, 2011, p. 932).During the conflict, indiscriminate attacks resulting in civilian casualties were documented (Amnesty International, 2008).The four parties to the conflict: Georgia, Russia, South Ossetia, and Abkhazia are responsible for war crimes at different variations and committed violations of the Geneva Conventions. The violations were documented by Amnesty

International, Human Rights Watch, the European Union and the Council of Europe's Commissioner for Human Rights.

4.1 Russia

Prior to and during the 2008-armed conflict, Russia's policy towards Georgia has been characterized by granting passports to South Ossetia and Abkhazia, and substantial media coverage. Months before the conflict, Russian activities appear to be suspicious. Increase in the troop strength, railroad repair and other activities (Mullins, 2011, p. 929) suggest a military, hostile intent. Article 3 (c) of the Genocide Convention states that "[d]irect and public incitement to commit genocide" must be punished (United Nations, 1948, p. 277).[1]Accordingly, Russian propaganda that resulted in provoked violence in South Ossetia can be classified as a criminal activity (Mullins, 2011, p. 929).

The allegations of "genocide" and "ethnic cleansing", have been signaled as a justification for the Russian intervention (Green & Waters, 2010, p. 56). However, Russia did not directly invoke the humanitarian intervention as a legal justification. Furthermore, it must be noted that there was no genocide event prior to Russian intervention, (Mullins 2011, p. 56) consequently, it uses false information to communicate its audience (Russian citizens and the international community) its "moral" duty to stop the atrocities.

Article 43 of the 1907 Hague Convention states that the Occupying power must ensure public order and safety.[2] Nevertheless, Russia as the occupying party, has violated this provision by failing to maintain public order which led to "South Ossetian forces to engage in their ethnic cleansing" (Mullins, 2011, p. 925). Russia was involved in disproportionate use of force that caused destruction to cultural objects and civilian injuries (Mullins, 2011,

[1] UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277, available at: https://www.refworld.org/docid/3ae6b3ac0.html [accessed 8 December 2019].

[2] International Conferences (The Hague), Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, available at: https://www.refworld.org/docid/4374cae64.html [accessed 8 December 2019].

p. 926). Moreover, it conducted attacks against civilian population (Mullins, 2011, p. 926) that directly amounts to a war crime.

4.2 Georgia

Christopher W. Mullins argues that the war crimes committed by the Georgian side were not intended against non-ethnic Georgian population or as commission of atrocities (Mullins, 2011, p.927). Compared to other belligerents, Georgia "committed fewer documented war crimes" (Mullins, 2011, p. 927). Most Georgian war crimes amount to targeting civilians and disproportionate use of force (Mullins, 2011, p. 927). Although Georgian actions amount to lesser war crimes, it does not in any way exonerate it.

4.3 South Ossetia

South Ossetian forces were recorded to commit most war crimes during the conflict. Human Rights Watch found that South Ossetian forces (with the involvement of Russian forces) robbed, "destroyed, and burned homes […] deliberately killed at least nine civilians, and raped at least two"(Human Rishts Watch, 2009).Human Rights Watch also uncovered that South Ossetian forces detained 159 ethnic Georgians, killing one and exposing almost all of them to "inhuman and degrading treatment and conditions of detention" (Human Rishts Watch, 2009).The party to the conflict, along with Russia, were implicated in torturing prisoners of war (Millins, 2011, p. 925).The belligerent party has repeatedly violated international humanitarian law. I argue that Russian support facilitated this behaviour by lack of control of the occupied territory and propaganda. Under article 43 of the 1907 Hague Convention, Russian Federation holds responsibility for the actions of South Ossetian forces.

4.4 Abkhazia

Abkhazia is the belligerent that committed minimum atrocities during the conflict. Moreover, it took specific measures to protect and secure the civilians during the conflict (IIFFMCG, V. III, 2009, p. 532). The lack of crimes in the region is impressive and noteworthy. Christopher W. Mullins

notes that such behavior might be explained by the presence of the Georgian military resistance (Mullins, 2011, p. 931).

4.5 The Possibility of a Humanitarian Intervention

A possible response from the international community in the name of humanitarianism in Georgia raises a lot of question. Would a humanitarian intervention really follow its scope, or would it be used as a pretext for a party's own interest? Can an intervention stop atrocities, or will it fuel more cruelty? Can an intervention be a right decision in a conflict where such an actor like Russia is involved? Could Georgia accept a bigger threat upon its sovereignty?

Under the responsibility to protect norm (R2P), the international community has a duty to step in and stop atrocities (See Responsibility to Protect n.d.). R2P represents a political commitment to stop the "the worst forms of violence and persecution". It "seeks to narrow the gap between Member States' pre-existing obligations under international humanitarian and human rights law and the reality faced by populations at risk of genocide, war crimes, ethnic cleansing and crimes against humanity" (Responsibility to Protect n.d.).

Nevertheless, the involvement of more parties in the Georgian conflict could have deteriorated the situation even more. Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide states that "[t]he Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish […]"[1], therefore reaffirming the norm. In theory, war crimes in Georgia could have triggered the responsibility to protect norm and ask for a humanitarian intervention. The humanitarian intervention can be invoked under articles 1(3), 55, 56, and 39 of the UN Charter, and the IV Geneva Convention. However, it is doubtful that such an intervention would have been a strategically right decision. Moreover, the short length of the conflict, which did not allow enough time for a response,

[1] UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277, available at: https://www.refworld.org/docid/3ae6b3ac0.html [accessed 10 December 2019].

in interdependence with the element of information is also a reason why other outside parties did not intervene. Misinformation that dominated the conflict may have prevented states to take action, yet, it is not the direct reason why it did not happen. It can also be noted (although morally wrong) that the scale, and the number of war crimes during the conflict could not have triggered a humanitarian intervention.

If we further investigate the situation from the legal point a view, then an authorized Security Council intervention under article 39 of the United Nations Charter would not be possible. As Russia is a party to the conflict and also a Security Council member, such a resolution would be blocked by a veto. Accordingly, the veto power is the biggest obstacle that could have blocked a humanitarian intervention in Georgia.

Although Russia tried to invoke the humanitarian intervention justification in response to alleged "genocide", because there was no direct proof of the event, it claimed it was a self-defense response in an attempt to protect the Russian citizens. The party has been widely criticized by the Western actors for the role it played in the war, regarding Russian justification as unconvincing. Accordingly, it can be determined that an intervention requires a strong political and legal support.

5. International Response

The Georgian-Russian war provoked a range of reactions on the international level that urged actors to respond to the conflict. The international community has a series of peaceful instruments at its disposal to try and solve the conflict such as sanctions, peace and diplomatic talks, and international law. However, whether or not all of these instruments would be successful in a peaceful conflict settlement is still unclear.

5.1 Sanctions

According to Eaton J. and Engers M. "[s]anctions are measures that one party (the sender) takes to influence the actions of another (the target)" (Eaton, Engers, & National Bureau of Economic Research, 1990, p.2). However, sanctions might not always be effective in every situation.

Sanctions can be ineffective because they are not adequate for the task, they can increase the support of the target state allies or that the imposition of sanctions might increase the general support for the government (Hufbauer, 2007, pp. 7-8).

Sanctions targeted at Russia would further worsen the situation since one reason for the conflict is Russia-NATO relations. While this tool might help to shift population's attitude towards the government, it would also fuel the belligerent to continue to assert its power. A sanction regime would alienate Russia from the Western world and create more tensions.

As a response to the conflict, the international community imposed only symbolic sanctions on Russia, afraid of worsened relations (Larsen, 2012, p. 116).German president Steinmeier was against suspending the EU-Russia Partnership and Cooperation Agreement and discouraged any tangible sanctions against Russia advocating for dialogue (Larsen, 2012, p. 110). European countries such as France, Germany and the United Kingdom stressed the importance of economic and political partnerships with Russia. This position did help to ameliorate the situation in the short term, however, this light attitude towards Russia did not discourage it to further target (by occupation, sanctions, embargoes and threats) other Eastern European countries, such as Ukraine, Georgia and Moldova.

5.2 Diplomacy and Cooperation

The international community took the diplomacy and cooperation approach towards the Russia-Georgia conflict and rejected the use of force. The attention was drawn to the implementation of a cease fire and a humanitarian relief. The war triggered various diplomatic reactions mostly directed towards the disproportionate use of force by Russia. The EU Monitoring Mission in Georgia is an example of the EU's readiness to act as a mediator to the conflict (Larsen, 2012, p. 106). The Mission has the aim to ensure "no return to hostilities" and "to build confidence among the conflict parties" and has been active for more than 10 years.[1] Despite the approach taken by the European Union, Russia failed to comply with the six-point

[1] EU Monitoring Mission in Georgia website. Retrieved from: https://eumm.eu/en/about_eumm/mandate. Accessed on [December 11, 2019].

peace plan negotiated between Medvedev, Sarkozy and Saakashvili (See Phillips, 2011, p. 3).

A different solution that can help in ameliorating the conflict is a NATO-Russia cooperation. Although the parties are already involved in talks in the EU-Russia Partnership and Cooperation Agreement, and NATO-Russia Council, a deeper cooperation is primordial for peace in Eastern Europe. Talks with Russia concerning no further NATO enlargement in the East can be a way to avoid future conflicts in the region. However, from this point of view, in allowing outside parties to decide the fate of Eastern European countries amounts to taking away their voices and liberty in conducting their own foreign policies. In my opinion it is already a breach of sovereignty against the post-Soviet states.

Although UN's role is to provide international security, it was undermined in the Russian-Georgian war. The position of Russia within the Security Council has a direct effect on the way UN acted as a response to the conflict. An example is the failed Resolution Extending the Mandate of the Georgia Mission, as Russia voted against it (Security Council, 2009). UN was unable not only to stop the conflict but also to prevent it. The role the European Union in mediating the conflict shows the inability of UN to do so. The UN Security Council and the UN General Assembly failed to respond accordingly and to determine whether Russian response amounts to an act of aggression.

5.3 International Law

Although the conflict "was concluded" with a ceasefire, parties further engaged in a legal war. Each party tried to justify its own actions and to discredit the other seeking legal justice. Russian and South Ossetian people filed over 3,000 lawsuits in the European Court of Justice (Green &Waters, 2010, p. 153). On the other hand, Georgia filed a lawsuit in the International Court of Justice against Russia (Green &Waters, 2010, p. 153). The fact that the belligerents are using International law as a platform of dispute settlement is evidence of its importance and to some extent, its effectiveness. Nevertheless, international law does not have a comprehensive response for

the non-compliance issue. In this way, the international legal system becomes ineffective to some extent.

6. Conclusion

Russia-Georgia relations since 2000s have been characterized by political, legal, and military challenges. The Russian desire to assert its position, the Georgian foreign policy towards the West, and its aim to establish the territorial integrity of the country, contributed to a military clash. Accusations and allegations among certain parties has led to the development of a security dilemma. International organizations have documented numerous war crimes at different variations committed by every party involved in the conflict. The international community has condemned the conflict and somewhat succeeded to negotiate a ceasefire; however, its response did not prove to be effective in the long term. Thus, the Russian Federation continued its policy against Eastern European countries, and the aftermath of the 2008 events remain a "frozen conflict".

Considering the Russia-NATO rivalry, a deeper cooperation amongst the two parties is needed in order to secure peace in Eastern Europe and perhaps even solve, on common grounds, the South Ossetian and Abkhaz "frozen conflict". Furthermore, the usage of international law as a tool for conflict settlement is already visible in the Russian-Georgian conflict. In this way, an increased commitment for the international law instruments and enforcement mechanisms would further aid the conflict settlement. The European Union role in achieving a cease-fire is remarkable. Yet, the Russian noncompliance with the six-point peace plan urges an additional EU attention towards the conflict. Most importantly, the UN which is tasked with the maintenance of international peace and security has failed in the Russian-Georgian conflict. Therefore, even if the UN Security Council' response can be compromised by having a belligerent party to the conflict as a member to the Council; the UN General Assembly needs to take the lead and engage more actively in the dispute settlement.

References

Allison, R. (2013), *Russia, the west, and military intervention*. Oxford, England: Oxford University Press.

Amnesty International. (2008), *Civilians in the line of fire: the Georgia-Russia conflict*, November 2008, EUR 04/005/2008, available at: https://www.refworld.org/docid/4922c0b22.html [accessed 8 December 2019].

Balzacq, T., Leonard, S., & Ruzicka, J. (2016), *'securitization' revisited: Theory and cases.* International Relations, 30(4), 494-531. doi:10.1177/0047117815596590.

Booth, K. & Wheeler, N. *Rethinking the security dilemma.*in Williams, P. D. (2013), Securitystudies: anintroduction (2nded.). Routledge.

Chinkova (2008), Вопрос Владимиру ПУТИНУ: Правда ли, что Вы обещали повесить Саакашвили за одно место? *Комсомольская Правда*. Availableat: https://www.kp.ru/online/news/173476/. Retrieved [12 December 2019].

CHIVERS C. J. (2008), Georgia-Russia Tension Escalates Over Downed Drone. *The New York Times.* Available at https://www.nytimes.com/2008/04/22/world/europe/22georgia.html. Accessed on [December 7, 2019].

CNN Library (2019), *2008 Georgia Russia Conflict Fast Facts*. (CNN). Available at https://edition.cnn.com/2014/03/13/world/europe/2008-georgia-russia-conflict/index.html. Accessed on [December 7, 2019].

Dyomkin D. (2008), Russia says NATO provoked Georgia conflict. *Reuters*. Retrieved from https://www.reuters.com/article/us-russia-medvedev-west/russia-says-nato-provoked-georgia-conflict-idUSLJ45058520080919. Accessed on [December 8, 2019].

Eaton, J., Engers, M., & National Bureau of Economic Research. (1990), *Sanctions* (Nber working paper series, no. w3399). Cambridge, Mass.: National Bureau of Economic Research. (1990).

EU Monitoring Mission in Georgia website. Retrieved from: https://eumm.eu/en/about_eumm/mandate. Accessed on [December 11, 2019].

Green, J., & Waters, C. (2010), *Conflict in the Caucasus: Implications for international legal order (Euro-asian studies).* Houndmills, Basingstoke, Hampshire: Palgrave Macmillan. doi:10.1057/9780230292413.

Gvelesiani L. & Mölder H. (2018), *Maintaining the Security Dilemma in the South Caucasus: Russia's Geostrategic Interests in Georgia*. Sõjateadlane (Estonian Journal of Military Studies), Volume 7, 2018, pp. 137–157. Available at https://www.researchgate.net/publication/331399067_MAINTAINING_THE_SECURITY_DILEMMA_IN_THE_SOUTH_CAUCASUS_RUSSIA'S_GEOSTRATEGIC_INTERESTS_IN_GEORGIA.

Hanami, A., & Walt, S. (2003), *Perspectives on structural realism (1st ed.)* [1st ed.]. New York, NY: Palgrave Macmillan. doi:10.1057/9781403981707.

Hufbauer, G. (2007), *Economic sanctions reconsidered (3rd ed., Expanded ed.)* [3rd ed., Expanded ed.]. Washington, DC: Peterson Institute for International Economics.

Human Rights Watch. (2009), *Up In Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*. Retrieved from https://www.hrw.org/report/2009/01/23/flames/humanitarian-law-violations-and-civilian-victims-conflict-over-south. Accessed on [December 8, 2019].

IIFFMCG VII- Report of the Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG) (30 September 2009), Volume II. Available at https://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf.

IIFFMCG VIII- Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG), IIFFMCG Report (30 September 2009), Volume III. Available at http://smr.gov.ge/Uploads/vol3_629a84b9.pdf.

International Conferences (The Hague), Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, available at: https://www.refworld.org/docid/4374cae64.html [accessed 8 December 2019].

International Republican Institute. (2008), Georgian National Survey, September 23-October 1, 2008. Available at: http://www.iri.org/sites/default/files/2008%20November%2021%20Survey%20of%20Georgian%20Public%20Opinion,%20September%2023-October%201,%202008%281%29.pdf. Accessed on [7th December 2019].

Larsen, H. (2012), *The Russo-Georgian war and beyond: Towards a European great power concert.* European Security, 21(1), 102-121. doi:10.1080/09662839.2012.656595.

Levada-Center (2018), *Август 2008 года.* Retrieved from: https://www.levada.ru/2018/08/06/avgust-2008-goda/. Accessedon [7thDecember 2019].

MedvedevD. ПрезидентРоссии. (2008), *Заявление в связи с ситуацией в Южной Осетии.* Retrievet from http://kremlin.ru/events/president/ transcripts/1042.

Mullins, C. (2011), War crimes in the 2008 Georgia-Russia conflict. British Journal of Criminology, 51(6), 918-936. doi:10.1093/bjc/azr048.

Nichol, J., & Library of Congress. Congressional Research Service. (2014), *Armenia, Azerbaijan, and Georgia: Political Developments and Implications for U.S. Interests (Ser. CRS report for congress, rl33453).* Library of Congress, Congressional Research Service.

Özgöker U. and Yılmaz S. (2016), *NATO and Russia's Security Dilemma Within the European Union's Far Neighbors.* International Relations and Diplomacy: DAVID PUBLISHING. Available at https://pdfs.semanticscholar.org/cd0f/780c9352f48c89079b1d1b163f2c06985fef.pdf. Accessed on [December 8, 2019].

Phillips D. L. (2011), *Implementation Review: Six-Point Ceasefire Agreement Between Russia and Georgia.* The National Committee on American Foreign Policy & Columbia University Institute for the Study of Human Rights. Retrieved from https://www.ncafp.org/2016/wp-content/uploads/2011/08/implementation-review-russia-and-georgia-aug2011.pdf.

Responsibility to Protect. (n.d.). Retrieved from https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml.

Roudik, P., & Law Library of Congress (U.S.). Global Legal Research Directorate. (2008), *Russian federation: Legal aspects of war in Georgia.* Washington, D.C.: Law Library of Congress, Global Legal Research Center.

Security Council :6143rd Meeting (Night). (2009), Security Council Fails to Adopt Resolution Extending Mandate of Georgia Mission for 2 Weeks, as Russian Federation Votes against Text. United Nations. Available at https://www.un.org/press/en/2009/sc9681.doc.htm. Accessed on [December 12, 2019].

The New York Times (2008a), *Russia sends 300 troops to Abkhazia*. Available at https://www.nytimes.com/2008/06/01/world/europe/01iht-georgia.4.13373464.html?searchResultPosition=1. Accessed on [December 7, 2019].

The New York Times (2008b), *Russian stocks slide after Medvedev recognizes independence of disputed regions*. Available at https://www.nytimes.com/2008/08/26/business/worldbusiness/26iht-26marketsfw.15635997.html?searchResultPosition=5. Accessed on [December 7, 2019].

UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277, available at: https://www.refworld.org/docid/3ae6b3ac0.html [accessed 8 December 2019].

UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277, Retrieved from https://www.refworld.org/docid/3ae6b3ac0.html [accessed 10 December 2019].

Some Notes on the Geopolitics and Geo-economics of Russia's Post-Soviet Neocolonialism in Central Asia

***Ioan Alexandru GHERASIM*[1]**

Abstract

The subject of "colonialism", which is linked to a rather long stage in the evolution of civilization, continues to arouse the interest of various theorists and historians in the field of international relations, all the more that the concept has become enriched with the neo- and post- prefixes. As for the these novel varieties, it is said that at the end of the Second World War, as a result of the radical change in the global balance of power, the former metropolises – such as the United Kingdom, France, Spain, Belgium –, have left their place to dissimulated, disguised colonial actors – such as the United States of America and the Soviet Union –, the latter being continued, in intricated manners, by its post-Cold-War heir, the Russian Federation. In this paper, I attempt to explain the extent to which the characteristics of Russia's current international relations with the former members of the Soviet Union, which have gained their independence, but live since then under constant Russian pressure, can be framed in the logic of colonial habits. Emphasis is on the Central Asia region, a place that has been the object of geopolitical/geo-economic disputes between several great powers, one of them being the ex-Soviet-imperial tutor, Russia. In order to obtain a portrayal of the Russian colonial-type behaviours, arguments of economic, political, technological or cultural substance are being provided, linking canonical scientific debates of colonialism to contextual ties among the involved stakeholders.

Keywords: geopolitics; geo-economics; colonialism; imperialism; neocolonialism; societal challenges.

JEL Code: A13; C12; C43; C55; E47

[1]IoanAlexandru GHERASIM is Ph.D. candidate, Corvinus University of Budapest, Hungary. E-mail: ioanalexandrugherasim@gmail.com.

1. Introduction

The landscape of *colonial* realities remains a complex one, even *hic et nunc*, when its golden ages are distant in time and the former colonial spaces are legally freed. In more or less discreet and disguised manners, a variety of post-/neo-colonial expressions survived. These are fueled by imperial nostalgias or dominance aspirations, coming from regional and global powers, be they past and present. From the perspective of "the other side", i.e., the "targeted" entities subject to colonial interest from former or "future" metropolises, such relations are governed by colonial resentments and fears. The scientific interest accompanies such a rich reality, with approaches at the confluence between political-economical (positive) and ethical-moral (normative) inquiries; or between the concerns for individual freedoms and national emancipation, on the one hand, and that of "costly progress" and "beneficial sacrifices" claims, for both individuals and nations, on the other hand. Moreover, the scrutiny of "Western"-type (post-/neo-) colonialism as that of Eastern varieties (i.e., Russian and Chinese) is on the table.

There are analysts who consider that after World War II, "*the former metropolises (Great Britain, France, Spain, Belgium) have left the place of neocolonialist entities such as the United States of America and the Soviet Union*" (Rahaman et al., 2017).The de-colonization movement – that changed the international geopolitical and geo-economic picture –was accompanied by a subtle twist in terms of "re-colonization" from the part of the new powers, labelled as "neo-imperialist". Although a growing proportion of the former colonies gained political independence, practically all remained within the economic sphere of the former metropolises, which shows that achieving economic independence is much more difficult than gaining political independence. So, the former colonies, due to institutional weaknesses of their adopted economic system (Jora et al., 2019) continued to face poverty, hunger, pandemics, corruption, political instability, civic turmoil, lack of essential financial resources for development, unilateral productive specialization depending on imports of industrial products from metropolises.

The case of the post-Soviet spaces and times only adds to the complexity and complicacy of analyzing the novel facets of colonialism, all

the more that Russian theorists and historians (unlike their Western counterparts) do not concede the existence of a *colonial* past for their country (yet the *imperial* past being an undeniable reality – with "words" being thus nuanced such that untrained students could be lost in translation). Russia (even if not assumedly) is concerned with maintaining its imperial vocation by trying to reunify the former Soviet space in a specific way: it acknowledges the new geopolitical and geo-economic circumstances, but in accordance with the rules dictated by it. Even if some may be uncomfortable with the words used, although the former Soviet republics have gained independence from the Moscow "metropolis", the new independent states have not gained "full/real sovereignty", as some still depend heavily – economically and politically (and even culturally)– on the former political epicenter. The case of Central Asia is illustrative in this respect.

The present article follows a twofold track (that is in a sense new and incomplete), opening theoretical and applied reflection further on. First, it revisits some key considerations from the mainstream literature devoted to the *conceptualization* of "colonialism", drawing attention, with regard to the epistemic scenery, on hybrid and somehow unsettled concepts like "neocolonialism", "postcolonialism", "tricontinentalism", etc. Secondly, it tries to import the colonial theoretical mindset to decipher the kind of relation/influence the Russian Federation exhibits with/exerts on the countries that were part of former USSR, with a particular emphasis on Central Asian countries, which have the peculiarity (in contrast to their Eastern European mates) of not being in the range of Euro-Atlantic structures (the European Union, the North Atlantic Treaty Organization) – a fact that "exposes" them to Russian pressure, in addition to their internal frailties. The article adds to a debate: does the Russian attitude have a (neo-) colonial nature?

2. A literature review: from *established concepts to novel realities*

The analyses of the colonial phenomenon converge when it comes to highlighting that this type of relationship between state entities represents "*a modern, West European invention par excellence, emerging from the 15th century onward*" (Böröcz& Sarkar, n.y.). In support of this perspective, it is

claimed that we have to deal with an atypical mixture of political, military, economic and cultural phenomena and processes (Gherasim 2019a; 2019b), the most relevant being:

- the unique combination of relationships between the discoverers of the new territories and those who inhabited them, with disruptions or displacement of latter ones' societal continuances;
- the (quasi-)scientific analysis of geography, resources, population, including traditions and customs, to substantiate the monopolization of resources and to justify the unequal exchanges;
- the cancellation of existing forms of economic development to enable the transformation of these regions into captive markets for the products and services offered by the metropolises;
- the promotion of a "commercial triangle" – finished European goods to the colonies>slaves from (African) colonies to the American continent> raw products from there to Europe…;
- the commencement of some modernization projects of the colonies (infrastructure, agricultural/industrial enterprises, administrative and tax apparatus to drain resources to the metropolis);
- the creation of local collaborative elites, specific education systems and cultural architectures that seek arguments for the superiority of the metropolis and the perpetuation of domination.

French philosopher J.P. Sartre (1964) criticized fervently French foreign policy in his work entitled *Colonialisme et néo-colonialisme,* particularly the use of violent means to achieve strategic external outcomes. This work was an important landmark for a whole specialized literature that dealt with this topic, among the follow-ups being the contributions from A. Memmi, F. Lyotard and F. Fanon.Sartre saw colonialism neither as a problem related to an isolated group of outdated individuals or to some evil historical events, nor as an exception to the essence of liberal democracy, but as a structurally inherent system taking into account of the expansion of European-type capitalism. In his view, "*colonialism could not be reformed from above or within by benevolent nationalist elites; it had to be dismantled on the national level through a popular revolutionary struggle itself made to*

circulate within the broader co-ordinates of an overcoming Third-Wordlist of imperialist capitalism" (Sartre, 1964).

S. Halperin defines the concept of *neocolonialism* as "*the control of less-developed countries by developed countries through indirect means*". The emphasis is placed on the ways in which great powers influence the state of affairs in less developed states, either directly or indirectly, by using both traditional and new practices. The domain in which the roots of colonialism were most deeply felt is the *economic* one – the appeal to economic means allowed the colonial powers to get most of the expected gains from expansionist adventures. The decolonization process has not changed too much the institutional, relational, social and economic realities of these states. In addition to the dependence configured over time on the former metropolises, these newborn states have gradually become the targets of the interests of the old hegemons, which have been (re)named by analysts the "neocolonialist powers". International economic/financial institutions (such as the International Monetary Fund, the World Bank, the World Trade Organization) are accused to have contributed to keeping the former colonies beyond some "neocolonialist curtain" (mirroring the "Iron Curtain, in the ideological West-East European clash), despite the fact that such institutions' statutes and objectives focus precisely on the economic emancipation of the less developed states (Jora, 2018). Starting from Kwame Nkrumah's view of neocolonialism, we draw attention to the fact that post-Soviet Central Asian states – similar to African post-colonial counterparts – cannot be considered completely independent if "*most of their resources are further used in the interest and for the development of those in the vicinity of the region or at greater distances from it*" (Northrop, 2012).

Postcolonialism is another concept that prepares the understanding of the neocolonial spectre. Without developing an extended discussion on it, we point out that this "state of affairs" requires a composite "state of analysis", in which realities cannot be understood unless one uses the epistemic lenses of structuralism, realism, institutionalism, functionalism. The key terms that more and more analysts invite us to consider are: hybridity, diaspora, representation, narrative, alterity, multiplicity and knowledge/power, so cultural studies, beyond political-economic one, are to be involved (Gayatri,

1988; Bennington, 1990; Williams and Chrisman, 1993; Ashcroft et al., 2000; Kohn, 2010; Darian-Smith, 2015; Ynalvez and Shrum, 2015).

Another conceptualization related to postcolonial realities is the one stating that "*the anti-colonial movements were not narrowly political campaigns, but developed their own cultural and political positions through the elaboration of a revolutionary 'tricontinental' epistemology*" (Memmi, 1965). Or the one speaking of "First world" (free, capitalist, Western), "Second world" (socialist/communist, Eastern), "Third world" (postcolonial, un-aligned to the first two worlds) (Shohat, 1992) and even "Fourth world" (made of "unknown nations" or cultural entities of indigenous peoples with a geography both outside and inside fully-fledged nation-states).

In the following sections we will discuss about "Russian neocolonialism", and place the analysis in the logic of a term closer to these realities, namely that of "*post-Soviet neocolonialism*". This conceptual delimitation is needed in order to be able to harmonize the position of officials, but also that of the Russian academic environment (who believe that one cannot speak of Russian neocolonialism because this powerful entity did not have colonies) with the Western perspective, which supports the view that the Russian Federation is only continuing the colonialist policy of the former Tsarist Empire and of the former Soviet Union.

3. The Russian conjectures – on "*stealth*" post-/neo-/colonialism

One of the aphorisms that marked the career of the Russian historian Sergei Solovevis that "*the history of Russia is the history of a country that colonizes itself*", being stated in 1840. Although it has become a real truism that this great power has constantly promoted colonialism, the representatives of Russian Federation almost always provide a standard answer: there is no talk of neocolonialism in a non-colonial country when speaking of Russia.

The complex and, to a large extent, unpredictable transformations that took place in a relatively short period of time in the former USSR space made it very difficult to anticipate the level at which political and economic stability could be placed. For both diplomatic and academic entourages, the subject of democratization of political regimes in this geographical area has become very attractive. Against this background, one of the analysts of these realities

(Hale, 2005) claims that "*…we should study the post-Soviet developments and classify them not as democratization / authorization, but as institutionalization / a-institutionalization, competitiveness / non-competitiveness, and stabilization / destabilization*". It became compulsory for all states resulting from the dismantling of the USSR to enter a race at the end of which a new national identity project was to be contoured. The essence of this belief can be found in the following approach: "*No nation is likely to survive, let alone preserve its culture, without a clear understanding of its national idea or a certain vision of its prospects. This makes society and the people vulnerable*" (Moiseev, 1999). In order to achieve this outline, it is necessary to develop and operationalize a set of strategies, the most important being: the national development strategy; strategic positioning or repositioning strategy; national security strategy.

Russia's concern is to maintain its imperial vocation by trying to reunify the former Soviet space in a specific way to the new geopolitical and geo-economic circumstances, but in accordance with the rules dictated by it. It is an unquestionable reality that, although they have gained independence from the "Moscow metropolis", the new states resulting from the dismantling of the "Soviet empire" have not gained "real sovereignty" as some still depend heavily on it form an economic, political, and even cultural perspective. After 1990, the region surrounding the Russian Federation was at the forefront of its foreign policy, although Russia's interest varied from one decade to another.

While Russia was led by Boris Yeltsin, the main interest was directed to the Slavic area (Belarus and Ukraine) and to the Trans-Caucasus region (Georgia, Azerbaijan and Armenia), regions in Central Asia not being of immediate importance. This state of affairs continued in the first years after Vladimir Putin came to power, things changing significantly later. Russia's interest in the Eastern space (Central Asia) intensified as the country's relations with the Western states gradually deteriorated, the American interest in the region became obvious, and China's economic and geo-political strength increased (Lo, 2014). One of the most important axes of the new partnership proposed by the decision makers from Moscow to the ones from

the new independent states was that of a specific type, Russian-led regional cooperation (Esengul et al., 2015).

The new facet of cooperation is strongly influenced by an interesting mix composed of factors of intra-national, but also of international nature, that advance Moscow formats as against regional, Russian-free, solutions of integration. Among the factors that mark Central Asian interstate cooperation, the most *ad rem* are the following:

- Over-focusing on the elements that define statehood (territoriality, sovereignty, legitimacy) may affect the possibility of actively participating in regional structures of economic and security integration (of EU/NATO-types) – and this lack of regional coagulation exposes them to "neocolonial" influences.
- Regionalism is presented, by neo-colonialist propagandists, as a form of supranational structures to which the states decide to transfer some of their national sovereignty – in reality, supranational bodies (we have the example of the EU) do not assume that states give up some of their sovereignty, but agree to exercise it all together.
- The placement of Central Asian states in different development paradigms (some focused on mineral and energy resources, others on infrastructure issues) makes it difficult to reach a consensus on certain strategic objectives – and this opens the door to extra-region coagulants (for instance, from Russia…).
- The type of transition strategy from a centralized system to the market economy ("shock" vs. "gradualism")differed in the region – for these reasons, it was very difficult to harmonize between the respective states the basic economic targets (i.e., investments form the West), exposing them to Russian politicized capital.
- The persistence of negative phenomena in the societies of this region – such as suffocating government bureaucracy, endemic corruption, authoritarianism – has led to the failure of the attempted economic reforms that might have convinced the international community (the "West") on their capacities and capabilities to cooperate.
- Each of the autocratic leaders of the countries in that area expects, in the framework of the regional integration negotiations, to triumph their

proposals to show at national level how respected they are, what their justice programs have – while aiming to be regional powers, they unknowingly fall in a kind of *divide et impera* trap.

- The maintenance of conflicts between the states in the region on the correct delimitation of borders, the use of large watercourses, respect for the rights of minorities, etc., despite an impressive number of agreements signed between these countries, add to the tensions and retard the moment of solid and sustainable cooperation.
- The different stage of integration of these republics within the worldwide international geo-political and geo-economic landscape – the accession of these states to the major international organizations took place at different times and with diverse degrees of commitment – put another impress on the week regional coagulation.

4. The Russian Federation's "*Game of… Tones*" in Central Asia

Some analysts say that the main sources of Russia's foreign policy are not primarily economic, but deeply geo-political. One author (Adomeit, 2012) points out that the intensification of the steps taken by Moscow authorities in the direction of deepening the Russian-type of economic integration (see Eurasian Economic Union – currently made of Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia) with the states in the vicinity occurs in the immediate temporal and spatial proximity with the European Union's efforts in terms of its Eastern Partnership (Damoc, 2015). We are witnessing an increasingly fierce competition, but not always fair, between the great powers to attract and keep within their sphere of influence the very same states from Eastern Europe and Central Asia.

In the case of Central Asia, the Russian authorities have to counterbalance another gravitational attraction, the one exerted by China, that uses economic levers to attract as many states as possible in its strategic projects. China, but also the EU, have intensified their trade relations and increased investment flows with the countries of the region, in many situations exceeding Russia's economic influence, which worries Kremlin decision-makers. Noticing the revival of Russia's imperial vocation, the states in the region are becoming more reluctant to accept the economic pole of

some geopolitical and strategic intentions. That is why the Russian authorities have begun to pay sensibly more attention to both statements and concrete actions regarding their vicinities.

The dimensions of Russia's partnership with its neighbouring states are multiple, one of the most important being the military one. There are numerous records in favour of the Russian administration carrying out actions to activate the Russian ethnic groups existing in the neighbouring states in order to become certain interventions in their favour. States in the region must pay close attention to both balance sheets proposed by their largest neighbour: on the one hand they are promised economic prosperity, commercial liberalization, increased investment flows, regional stability, predictability, non-interference in domestic affairs; on the other hand, there exists insecurity, instability, centrifugal moves, distrust, and hidden thoughts, etc. Their routes are fluid and so are their choices.

The Moscow authorities show that they have carefully studied the good practices in politics and economics established in other regions, that they take them as a benchmark when elaborating their strategic lines of foreign policy, give them a note of originality, and promote them using all modes of persuasion. The evolutions that have taken place in recent years show that the model of economic integration carried out in Western Europe was used by Russia to convince its neighbours of the good intentions nourished, of the modernity of the foreign policy and the need to understand the great advantages of promoting integration structures such as those that have already proven the benefits.

5. The Eurasian Economic Union: Russia, *primum inter pares*

Mimicking the footsteps and masterminded as a bridge to the European Union, the Eurasian Economic Union "*is, without exaggeration, a milestone not only for our three countries but also for all post-Soviet states. ...we propose a model of a powerful supranational union capable of becoming one of the poles of the modern world and of playing the role of an effective 'link' between Europe and the dynamic Asia-Pacific region. ...we propose to the Europeans that they think about creating a harmonious economic community from Lisbon to Vladivostok, a free trade zone and even more advanced forms*

of integration" (Putin, 2011). The ambitions of the partners of the former Eurasian integrationist initiatives (Mostafa and Mahmood, 2018) were aimed at the rapid advancement from the first stage of integration – *the customs union between Belarus, Kazakhstan and Russia* – to the second stage – *the formation of Single Economic Space, the Eurasian Economic Union (EEU)*.

The partners set out to create a common market in which to move goods, services, capital and labour freely. To these four traditional freedoms for the common market stage, it was agreed to add: coordination of monetary and fiscal policies; joint development of transport, energy and information systems; harmonization of sectoral policies and unification of national systems to support research, development and innovation processes. The main challenge facing this new stage of integration that began in 2015 was represented by the different way in which the governments of the participating states looked at the non-economic aspects that wanted to be harmonized. For instance, debatable issues were/are the following ones:

- The Russian decision makers proposed the creation of a "Parliament", an idea not very well received by the other leaders.
- The differences are also related to the advancement of integration according to the Western-European model towards an economic and monetary union. The issue of the common currency and that of the common bureaucracy to handle the integration issues was raised.
- One sensitive issue was that of keeping the participating states' freedom in their foreign economic relations: the Belarussian leader was in favour of unification, while the one of Kazakhstan wanted to maintain its freedom to expand relations with China, EU and US.
- Kazakhstan also insists on the need for Central Asian states to work more closely with each other, without becoming heavily dependent on a large economic or military power (in this case, Russia). Still, the military component is not overruled, as the signatory states are also members of the Collective Security Treaty Organization (CSTO).

There are studies that oscillate in identifying EEU either as a propensity for regional groupings, in order to find protection, by institutionalizing relationships, from the negative effects of globalization, in the *liberal theories* reading (Cooper, 2013; Connolly, 2014) or, in the realist theories reading, as

a "post-imperial syndrome", rooted in "annexationist Pan-Russianism" (Van Herpen, 2014), exhibited by an antidemocratic regime that instinctively have imperialistic ambitions (Brzezinski, 1994).

In the present study, and based on considerations exposed above, we consider that the EEU is much closer to the image of a neo-imperial/neo-colonial instantiation (we however de-homogenize these two words despite their convergence – *colonialism* is a "practice", *imperialism* is the "driver" of that particular practice). Its configuration rather points towards the creation not (just) of a EU-type common market and a democratic network, but of a hegemonic project in the region, powered by and profitable to the Russian Federation.

6. Conclusions

The most frequent used modalities in which the Russian decision-makers operate are an interesting combination between the traditional tools, applied since the time of the Tsarist Empire, and perfected during the Soviet period, while others are newer and considered adequate to the geo-political and geo-economic realities of the beginning of the new century: energy provision blackmailing and virtual space propaganda. In fact, the manipulation of inter-ethnic clashes and the activation of "frozen conflicts" have been used in practically all cases, while the cyber instrumentation or even direct military intervention have been resorted to at the right moments, in the right places.

The ingenuity of the Russian authorities regarding the combination of means used in various situations and their degree of sophistication cannot be overlooked. It is also important to point out that the mix of actional instruments was not a set of "spot" concerns, but expresses a robust continuity and a synergistic alignment with the strategic objectives of the country's foreign policy. Restoring and restating the country's role as high military-strategic and economic power is an element of continuity in the Russian representation of its own heritage and destiny, and its neo-imperial/colonial orientations are plentifully illustrated by the relations in its neighbourhood.

The attitude towards Central Asia illustrates the point and exploits the vulnerabilities of a region that despite many commonalities (in terms of

Russian interest) are affected by internal misalignments (in terms of market economy functionality, of democratic mechanism, of rule of law), as they are fragmented by geo-political/economic mismatches (with the countries in the region having mutual frustrations and inflated leadership aspirations). This landscape makes it possible for the Russian imperial strategists to find a fertile soil to exercise economic, political and cultural influences, that can be placed, without erring too much, in the range of the neocolonial tools.

The binders that make it possible to advance the "imperial" Russia-lead integration process in this region (EEU) are multiple: the USSR period materialized in infrastructure networks and economic interdependencies; there are functional logistics chains, close economic and technological complementarities and vivid human mobility flows. But far from being an argument for an integrative process designed as a counterweight to Russian influence (due to the dominant internal and external frailties in the region), it only makes it easier for Moscow to coagulate a block that accentuates *its* own power vectors (geographical size, resource pooling, human capital, industrial potential).

References:

Adomeit, H. (2012), Putin's Eurasian Union. Russia's Integration Project and Policies in Post-Soviet Space. *CIES Neighborhood Paper* No. 4.

Ashcroft, B.; Griffiths, G.; Tiffin H. (2000), *Post-Colonial Studies. The Key Concepts* (Second Edition). London: Routledge.

Bennington, G. (1990), Postal Politics and the Institution of the Nation. In: Bhabha H.K. (ed.), *Nation and Narration*. London & New York: Routledge.

Böröcz, J; Sarkar, M. (n.y.). Colonialism. In: Anheier, H.K; Juergensmeyer, M.; Faessell, V., *Encyclopaedia of Global Studies*. Thousand Oaks, CA: SAGE.

Brzezinski, Z. (1994), The Premature Partnership. *Foreign Affairs*, Vol. 73, No. 2, p. 72.

Connolly, R. (2014), The Eurasian Customs Union and the WTO. In: Dragneva, R.; Wolczuk, K. (eds.), *Eurasian Economic Integration: Law Policy and Politics*. Edward Elgar Publishing Ltd (2013), pp. 61-81.

Cooper, J. (2013), The Development of Eurasian Economic Integration. In: Dragneva, R.; Wolczuk, K. (eds.), *Eurasian Economic Integration: Law Policy and Politics*. Edward Elgar Publishing Ltd (2013), pp. 15-34.

Damoc, A.I. (2015), The Eurasian Economic Union: Outlooks on the Development of Relations with the European Union. *Œconomica*, Vol. XXIV, No. 4, pp.51-72.

Darian-Smith, E. (2015), Postcolonial Law. In: *International Encyclopaedia of the Social & Behavioural Sciences* (Second Edition).

Esengul, C.; Baktygulov, S.; Imanalieva, B. (2015). Prospects for Regional Cooperation in Central Asia as Seen Today. *Central Asia and the Caucasus*, Volume 16, Issue 3-4.

Gayatri, S. (1988), Can the Subaltern Speak? In: Nelson C.; Grossberg, L. (eds.), *Marxism and the Interpretation of Culture*. London: Macmillan.

Gherasim, I.A. (2019a), Colonial Realities – Amidst Conceptual "Lights" and Î "Shadows". *Œconomica*, Vol. XXVIII, No. 3.

Gherasim, I.A. (2019b), Reminiscent or Reloaded Colonialism: On "Post-" Versus "Neo-". *Œconomica*, Vol. XXVIII, No. 4.

Hale, H. (2005), Regime Cycles: Democracy, Autocracy and Revolution in Post Soviet Eurasia. *World Politics*, No. 58, 2005, pp. 133-165.

Halperin, S. (n.y.), Neocolonialism. *Encyclopaedia Britannica*, https://global. britannica.com/topic/neocolonialism.

Jora, O.D. (2018), Organizare și organizații internaționale. *Œconomica*, Vol. XXVII, No. 3-4, p. 3.

Jora, O.D.; Topan, M.V.; Apăvăloaei, M.A. (2017), Sisteme economice comparate. In: Hurduzeu, G.; Nicolescu, L. (eds.), *Relații economice internaționale: teorii, strategii, politici, instrumente și studii de caz*. București: Editura ASE.

Kohn, M. (2010), Postcolonial Theory. In: Bell, D. (ed.), *Ethics and World Politics*. Oxford: Oxford University Press.

Lo B. (2014), Russia's Eastern Direction-Distinguishing the Real from the Virtual. *RussieNei Reports*, No. 17, January.

Memmi, A. (1965), *The Colonizer and the Colonized*. Beacon Press.

Moiseev, N.N. (1999), Rossia na pereputie. *Sotsialno-gumanitarnye znaniia*, No. 4, pp. 173-174.

Mostafa, G; Mahmood, M. (2018), Eurasian Economic Union: Evolution, Challenges and Possible Future Directions. *Journal of Eurasian Studies*, Vol. 9, No. 2, pp. 163-172.

Northrop, D. (2012), *A Companion to World History*. West Sussex: Wiley Blackwell.

Putin, V. (2011), Novyi integratsionnyi proyekt dlia Evrazii – budushchee, kotoroero zhdaetsia segodnia [A new integration project for Eurasia – a future that is born to-day]. *Izvestiia*, Retrieved from http://izvestia.ru/news/502761#ixzz1s03GRcgw.

Rahaman, S.; Yeazdani, R.; Mahmud, R. (2017), The Untold History of Neocolonialism in Africa (1960-2011). *History Research*, Vol. 5, No. 1, pp. 9-16.

Sartre, J.P. (1964), *Colonialisme et néo-colonialisme*. Paris: Editions Gallimard.

Shohat, E. (1992), Notes on the "Post-Colonial". *Third World and Post-Colonial Issues*, No. 31-32, pp. 99-113.

Van Herpen, M. (2014), Putin's Wars: The Rise of Russia's New Imperialism. Maryland: Rowman & Littlefield Publishers.

Williams, P.; Chrisman, L. (eds.) (1993), *Colonial Discourse and Post-Colonial Theory: A Reader*. Hemel Hempstead: Harvester Wheatsheaf.

Ynalvez, M.A.; Shrum, W.M. (2015), Science and Development. In: *International Encyclopedia of the Social & Behavioural Sciences* (Second Edition).

Features of intellectual property reflection in accounting and in financial statements

Liudmila LAPIȚKAIA[1], Alexandru LEAHOVCENCO[2]

Abstract

Intellectual property is a powerful tool that helps the company feel confident in a competitive environment, attract investment, expand sales markets, thereby improving its financial position. The correct reflection of intellectual property in the accounting is of great importance for the correct disclosure of information in the financial statements of the enterprise. From an accounting point of view, intellectual property can be reflected in different ways. There are certain difficulties and discussions regarding the correctness of the reflection of intellectual property in the accounting. In this article, the authors reveal controversial issues in the field of intellectual property accounting and suggest ways to solve them. This article also indicates ways to improve the accounting of intellectual property in the Republic of Moldova.

Key words: accounting, intellectual property, financial reporting.

JEL Code: M40, M41, M48, O34

1. Introduction

Intellectual property is an economic resource with great potential. It includes a set of exclusive rights relating to the property of the enterprise and having a reasonable monetary value, then it can be considered as an object of accounting. Thus, various types of intellectual property and operations with

[1] Liudmila LAPIȚKAIA is associate professor at Academy of Economic Studies of Moldova, Chisinau, E-mail: liudmila@ase.md

[2] Alexandru LEAHOVCENCO is PHd studentat Academy of Economic Studies of Moldova, Chisinau, E-mail: alexandru.leahovcenco@yandex.com

them are reflected in the financial accounting and reporting of economic agents of both copyright holders and users. Disclosure of information on intellectual property will increase the reliability of the financial situation of the enterprise and enhance its economic attractiveness to investors. The digital economy contributes to the development of intellectual capital as the main innovative resource of the enterprise.

Reflection of intellectual property in accounting and in financial statements is possible through various categories, including as intangible assets (IA). However, the relative novelty of this category, the need to improve the current regulatory framework governing the accounting and taxation of operations with intangible assets, cause many problems associated with the correct reflection of intangible assets in the accounting and in financial statements.

2. Literature review

The definition of intellectual property can be found in various regulations and legislation governing both national and international law.For example, World Intellectual Property Organization (WIPO) notes that intellectual property (IP) *refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce* (WIPO).

At the same time, the Convention Establishing the World Intellectual Property Organization provides a classification of intellectual property, such as:

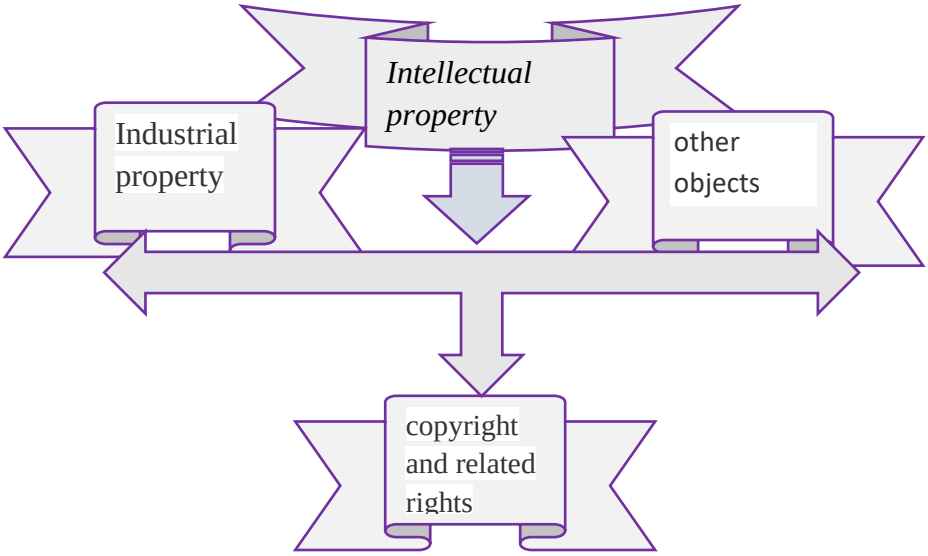
- ✓ rights relating to:
  - literary, artistic and scientific works,
  - performances of performing artists, phonograms, and broadcasts,
  - inventions in all fields of human endeavor,
  - scientific discoveries,
  - industrial designs,
  - trademarks, service marks, and commercial names and designations,
  - protection against unfair competition.

- ✓ and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields (Convention Establishing the World Intellectual Property Organization art.2).

At the same time, modern economic literature considers the concept of intellectual capital, which has a broader meaning than intellectual property. In his article, ``Intellectual Capital Accounting, Reporting and Disclosure in the Modern Economy for Value Reflection``, which was presented at International Center of Academic Communication (ICOAC) on 9th International Conference on Economics and Management, Rome, Italy, February 3, 2017, dr. Cevdet Kızıl noted that: ``*intellectual capital is composed of three elements, which are classified as human capital, structural capital and relational capital (customer capital). Thus, it is not just limited with intellectual property and has much larger scope*`` *(Kizil, 2017).*

However, it should be noted that most of the elements of intellectual capital may not be reflected in accounting, for example: such as human capital correlational capital.

Fig.1 Classification of intellectual property



Source: *developed by the authors based on the materials of the Law No. 114 of 03-07-2014*

This is a requirement for the recognition of an asset in both International financial reporting standards and National accounting standards of the Republic of Moldova.

Article 9 of the Constitution of the Republic of Moldova stipulates that property consists of material and intellectual values. Law No. 114 of 03-07-2014 on the State Agency for Intellectual Property defines: *intellectual property as a private property owned by individuals or legal entities with the right of possession, use and disposal. Intellectual property includes objects resulting from intellectual activity in the industrial, economic, commercial, scientific, informational, literary and / or artistic fields, as well as in other fields (*Law No. 114 of 03.07.2014*).*

The classification of intellectual property is given in the Law No. 114 of 03-07-2014, which we will reflect in the figure1.

The object of intellectual property is any result of intellectual activity, confirmed and protected by the relevant rights to use it. As shown in figure 1 intellectual property consists of the following components:

- industrial property;
- copyright and related rights.

Intellectual property objects are divided into two categories:

- industrial property objects, which include: inventions, plant varieties, topographies of integrated circuits, trademarks, industrial drawings and models, geographical indications, appellations of origin and guaranteed traditional products; and
- objects of copyright (literary, artistic and scientific works) and related rights (performances, phonograms, video recordings and broadcasts of broadcasting organizations).

Other objects that have a separate regulatory system, such as:

a) the secret of production (know-how);

b) commercial name.

In respect of industrial property objects, the right to them arises as a result of registration of the object, issuance of a title of protection to it by the national intellectual property office or in the presence of other conditions in accordance with national legislation, as well as on the basis of international treaties to which the Republic of Moldova is a party. With regard to copyright

and related rights, registration is not a prerequisite for the emergence and exercise of the relevant rights, since these objects are protected from the moment of their creation.

Analyzing the literature on the specialty in the Republic of Moldova, in the field of reflection in the accounting the intellectual property, it should be noted that this topic has been little studied and disclosed. The main papers are related to the recognition of intangible assets. So as, in her article presented at the conference, Cauș revealed the features of accounting for intangible assets for non-commercial organizations. These features primarily concerned the use of funds of a non-profit organization, for example, when calculating the amortization of an intangible asset (Cauş, 2019). Thus, the purpose of this article is to analyze, summarize information on intellectual property and suggest ways to improve the accounting of such property in the Republic of Moldova.

3. Analysis of reflection in accounting and in the financial statements transactions with intellectual property

To properly reflect intellectual property in accounting, it is necessary to determine their economic essence. For this purpose, we will consider the definition of intangible assets and analyse whether the criteria of their recognition can be applied to intellectual property at present, in terms of accounting for intangible assets in the Republic of Moldova, you can use the following provisions:

- Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;
- IAS 38 “Intangible Assets”;
- National Accounting Standard "Long-term intangible and tangible assets".

The National Accounting Standard "Long-term intangible and tangible assets" defines intangible assets as non-monetary long-term assets that do not

have a tangible form and are identified and controlled by the entity. For its part, IAS 38 ``Intangible Assets`` considers intangible asset: as identifiable non-monetary asset without physical substance and classifies them into:

- patented technology, computer software, databases and trade secrets,
- trademarks, trade dress, newspaper mastheads, internet domains,
- video and audiovisual material (e.g. motion pictures, television programmes,
- customer lists,
- mortgage servicing rights,
- licensing, royalty and standstill agreements,
- import quotas,
- franchise agreements,
- customer and supplier relationships (including customer lists),
- marketing rights.

Thus, an intangible asset can be recognized, if the following conditions are met:

- the ability to identify it,
- the receipt of economic benefits from it, and
- the company has control over it.

The ability to identify: an intangible asset is identifiable when it:

- is separable (capable of being separated and sold, transferred, licensed, rented, or exchanged, either individually or together with a related contract) or.
- arises from contractual or other legal rights, regardless of whether those rights are transferable or separable from the entity or from other rights and obligations.

The probability of future economic benefits must be based on reasonable and supportable assumptions about conditions that will exist over the life of the asset. Another important aspect of the recognition of an intangible asset is the fact that its value is reliably determined. If an intangible item does not meet both the definition of and the criteria for recognition as an intangible asset, IAS 38 requires the expenditure on this item to be recognised as an expense when it is incurred.

Thus, analysing the classification of intellectual property in accordance with the legislation of the Republic of Moldova and the provisions of IFRS 38 it should be noted, that a significant part of them falls under the definition of intangible assets.

In accordance with IAS 38 "Intangible Assets", the initial recognition of intangible assets is as follows for:

- *research and development costs - not recognized as intangible assets*, charge all research cost to expense. Research costs must be capitalised only after technical and commercial feasibility of the asset for sale or use have been established. This means that the entity must intend and be able to complete the intangible asset and either use it or sell it and be able to demonstrate how the asset will generate future economic benefits. If an undertaking cannot distinguish the research phase of an internal project to create an intangible asset from the development phase, the entity treats the expenditure for that project as if it were incurred in the research phase only.
- *in-process research and development acquired in a business combination.* A research and development project acquired in a business combination is recognised as an intangible asset at cost, even if a component is research.
- *internally generated brands, mastheads publishing, titles, customer lists* - should not be recognised as assets.
- *computer software.* Software should be capitalised with hardware: so include in hardware cost.
- *internally generated goodwill, start-up, pre-opening, and pre-operating costs, training cost, advertising and promotional cost, including mail order catalogues, relocation costs* - must be charged to expense when incurred.

Intangible assets are initially measured at cost. According to cost model after initial recognition intangible assets should be carried at cost less accumulated amortisation and impairment losses. Measurement subsequent to acquisition: cost model and revaluation models allowed. An undertaking must choose either the cost model or the revaluation model for each class of intangible asset. Intangible assets may be carried at a revalued amount, less

any subsequent amortisation and impairment losses only if fair value can be determined by reference to an active market. Such active markets are expected to be uncommon for intangible assets: production quotas, licences, etc.

Intangible assets are classified as:

- Indefinite life: no limit to the period over which the asset is expected to generate net cash inflows for the entity.
- Finite life: a limited period of benefit to the entity.

In the RM chart of accounts, the following accounts are provided to reflect transactions with intangible assets:

11 INTANGIBLE ASSETS

111 Intangible assets in progress

112 Intangible assets in operation:

1121 Concessions, licenses and trademarks

1122 copyrights and security documents 1123 software

1124 other intangible assets 113 amortization of intangible assets

113 Amortization of intangible assets:

1131 Amortization of Concessions, licenses and trademarks

1132 Amortization of copyrights and security documents

1133 Amortization of software

114 Impairment of intangible assets

115 Goodwill

116 Badwill

117 Impairment of positive goodwill

Consider the procedure for reflecting the registration of a trademark in accordance with the provisions of National Accounting Standards. In accordance with the provisions of Law of RM No. 38 from 29-02-2008 ”On the protection of trademarks”: *a trademark is any designation (visual, sound, olfactory, tactile) that allows you to individualize and distinguish the goods and / or services of one individual or legal entity from the goods and / or services of other individuals or legal entities. (*Law of RM No. 38 from 29.02.2008)

When registering a trademark at the State Agency on intellectual property, you must pay taxes. Let's see which of these taxes can be included in the initial cost of the trademark.

Table 1. Reflection in the accounting of taxes for registration of a trademark in a State Agency on Intellectual property

Nr.	Taxe's type for:	Reflection in accounting
1	filing an application for trademark registration	included in the initial cost of an intangible asset
2	the examination of the application for registration of a trademark, which consists of: the basic fees; fees for the class for each class in excess of 1	included in the initial cost of an intangible asset
3	registration and issuance of a trademark registration certificate	included in the initial cost of an intangible asset
4	the renewal of the trademark registration at the same time as the application for renewal is submitted or before the expiration of the trademark.	expenses
5	making changes to the materials of the trademark registration application or correcting an error	included in the initial cost of an intangible asset
6	filing an objection	included in the initial cost of an intangible asset
7	the issuance of extracts from registers;	initial cost or expenses
8	for receiving, checking, reviewing and submitting an application for international registration to the International Bureau of the world intellectual property organization, simultaneously with submitting the application to AGEPI;	included in the initial cost of an intangible asset
9	for the extension of the period stipulated for the procedure, simultaneously with the application for extension of the period or before the expiration of the prescribed period	initial cost or expenses
10	the restoration of the missed deadline	initial cost or expenses
11	restoration of rights	initial cost or expenses

Source: developed by the authors based on the materials of the Law of RM No. 38 from 29.02.2008

If the tax is included in the initial cost of an intangible asset, then the following accounting entry is given:

Dt 111 “Intangible assets in progress”

Ct 544 “Other current liabilities”

It should be noted that both international financial reporting standards and national standards require disclosure of information about intangible assets in the financial statements, and it is necessary to disclose: in terms of:

- depreciation of intangible assets: *useful life or amortisation rate amortisation method gross carrying amount accumulated amortisation and impairment losses line items in the income statement in which amortisation is included reconciliation of the carrying amount at the beginning and the end of the period*,
- business combinations,
- basis for determining that an intangible has an indefinite life description and carrying amount of individually material intangible assets,
- intangible assets acquired by way of government grants,
- intangible assets whose title is restricted contractual commitments to acquire intangible assets,
- intangible assets carried at revalued amounts**,**
- the amount of research and development expenditure recognised as an expense in the reporting period.

4. Conclusions

After analysing the procedure for recording intellectual property as an intangible asset the following should be suggested:

1) in the Chart of accounts of the RM for account 112 Intangible assets, it is necessary to review the existing sub-accounts in order to more fully reflect the different types of intangible assets on different sub-accounts,

2) since intangible assets are a specific assets, it would be needful if the relevant authorities developed and approved certain changes to the forms of primary accounting documents used for registration of business transactions with intangible assets.

3) in the regulation on inventory Nr. 60 from 29.05.2012 RM should specify the procedure for inventory with intellectual property,

4) the National Accounting Standard should specify the classification of long-Term tangible and intangible assets into depreciable and non-amortised ones,

5) the economic literature discusses the issue that income and expenses from operations with intangible assets should be recorded as operating activities. In the Republic of Moldova, such transactions are reflected in income and expenses from investment activities.

References:

Law No. 114 of 03.07.2014 On the State Agency for Intellectual Property http://www.legis.md/cautare/getResults?doc_id=110504&lang=ro

Law of RM No. 38 from 29.02.2008 ”On the protection of trademarks” http://www.legis.md/cautare/getResults?doc_id=93464&lan=ro

Cauş L. (2019), *Accounting aspects of intangible assets to noncommercial organizations.* In: Conferinţa Ştiinţifica Internaţionala ”Competitivitate şi Inovare în economia cunoaşterii”, Ediţia a XXI-a 27-28 septembrie 2019, Chişinău (retrieved from https://ase.md/files/publicatii/electronice /conf_09.19_teze_v1.pdf)

Kızıl, C. (2017), *Intellectual Capital Accounting, Reporting and Disclosure in the Modern Economy for Value Reflection. Paper at 9th International Conference on Economics and Management,* Rome, Italy, February 3, 2017 (retrieved from https://www.researchgate.net/publication/313751343_Intellectual_ Capital_Accounting_Reporting_and_Disclosure_in_the_Modern_Economy_ or_Value_Reflection_-_Abstract)

Convention Establishing the World Intellectual Property Organization art.2 (retrieved from https://www.wipo.int/treaties/en/text.jsp?file_id=283854)

WIPO. What is Intellectual Property (retrieved from https://www.wipo.int/about-ip/en/)

The Confusion – A Perfect Interference Between Competition and Industrial Property

Violeta COJOCARU[1], Iulian MORARU[2]

Abstract

Industrial property and competition are indissoluble in terms of the legal manner in which the unfair competition act of confusion is committed. The regulation of confusion within the competition legislation of the Republic of Moldova (Law no. 183/2012 on Competition) is in an explicit connection relationship with industrial property, given the fact that the trademarks, industrial designs and other industrial property objects are protected through the provisions of the Law no. 183/2012 on Competition as well. Thus, there is a double protection of industrial property objects: through the rules of industrial property and, at the same time, through those of unfair competition. In the same context, it is important to specify that under competition law are protected even industrial property objects that are not protected under industrial property division law. At the same time, in order to benefit from effective legal protection in accordance with the rules of unfair competition, there is a stringent need for a complex and effective bilateral evidentiary process. In order to validate the theoretical aspects stated above, the practice of the national competition authority of the Republic of Moldova (Competition Council) is essential.

Keywords: object, unfair competition, industrial property, confusion, protection.

JEL Code: K29

[1] Violeta COJOCARU is university professor at Moldova State University, Chișinău, Republic of Moldova. E-mail:violetacojocaru@yahoo.fr

[2]Iulian MORARU is Ph.D. in law candidate at Moldova State University, Chișinău, Republic of Moldova. E-mail:iulian.moraru94@gmail.com

1. Introduction

The main reason for the present research lies in the need to outline some theoretical and practical aspects regarding the qualifying elements of the action of unfair competition of confusion, as well as the way of investigating the cases of confusion from a probationary perspective.

The importance of such research is explained by the frequency with which this kind of unfair competition action is used in the process of economic activity of enterprises, or the numerical quantity of confusion cases is higher than that of other types of unfair competition actions.

The practical relevance of the researched subject consists of creating a consolidated vision regarding the doctrinal, legal and institutional approaches tangent to the researched field.

In the context of this research, it is proposed to reach the following proposed objectives:

- To determine origin and historical course of the unfair competition of confusion;

- To understand the need for the existence of this unfair competition action within the current competition law of the Republic of Moldova;

- To expose the difference in approach between the legal protection mechanism under industrial property rules and under unfair competition rules;

- To estimate the statistical weight of the cases of confusion examined by the national competition authority of the Republic of Moldova;

- To identify the most important qualification elements of unfair competition action of confusion;

- To elucidate the probative alternatives for the unfair competition action of confusion;

In order to reach the above-mentioned objects, we propose the consecutive approach of the following aspects:

- The evocation of the historical origin and of the historical course of the unfair competition action of confusion until the stage of the legislative consecration of the respective concept in the Law on competition no. 183 of 11.07.2012;

- Drawing the problem of qualification of the confusion at the current stage;

- Revealing the relevant probationary aspects of the unfair competition action of confusion through the examples from the practice of the Competition Council of the Republic of Moldova.

2. Literature review

Within the territorial limits of the Romanian space, the relevant literature in the matter is not a rich one in the quantitative aspect, or a limited number of authors have written by the moment on the subject in question.

The paper of Căpățână, O. (1996) is a general source related to theoretical approaches to the system of unfair competition actions. That source is to be used in order to crystallize the meaning and content of the unfair competition action of confusion.

Also, the research of Gorincioi, C. (2019) represents an integrated synthesis of the specifics of the system of unfair competition actions, as well as of the available legal mechanisms to counteract these actions. The most important theoretical landmark identified in this paper lies in the extensive approach of the qualifying elements of the unfair competition action of confusion. On the other hand, the paper of Castraveț, D. (2019), represents a bibliographical reference for consultation in the sense of diversifying the views expressed by various researchers in the field of approach.

3. Methodology

The methodological arsenal used in the context of the elaboration of this paper consists in particular of:

- *The historical method.* The use of that method contributes, in particular, to the identification of the historical origin from the normative point of view of the concept of confusion in the system of unfair competition actions, as well as the evolutionary course of the given concept, until its introduction in competition and related legislation at national level;

- *Logical-formal method.* The benefit of using this method lies in the possibility of a proper analysis of theoretical ideas, as well as previous

practical findings through deduction and induction operations in order to identify the compliance of those findings with the related regulatory trends;

- *Legal-comparative method.* In view of the application of this research method, the necessary conditions are created in order to contrast the theoretical-practical and legislative aspects, as a result of which relevant conclusions can be drawn in order to improve the existing conceptual framework and unify current practice.

All the methods listed and analyzed above will be used alternatively and as a whole.

4. Interference Between Competition and Industrial Property

The concept of confusion was first regulated in the context of the provisions of the Paris Convention for the Protection of Industrial Property of 1883 by means of amendments to the text of the Convention on 06.11.1925 in The Hague, with subsequent amendments made on 02.06.1934 in London.

Subsequently, through the Model Provisions on Protection Against Unfair Competition (1996), WIPO (World Intellectual Property Organization) developed a set of framework provisions on the system of unfair competition actions, which included confusion.

At national level, through the provisions of art. 8 para. (1) letter d) of Law no. 1103 of 30.06.2000 on the protection of competition (currently repealed), there have been only the ways of creating confusion, without expressly indicating the name of the respective action of unfair competition. At the current stage, the unfair competition action of confusion is enshrined in the text of art. 19 of the Law on competition no. 183 of 11.07.2012.

4.1. The current stage

According to the Explanatory Dictionary of the Romanian language, the confusion (from the Latin “confusio”) derives from the verb “to confuse”, which is explained as “the action of taking one person as another or one thing as another, to resemble, to form one whole, to merge”.

In the context of defining confusion as an action of unfair competition, the doctrine provides a relevant answer. Thus, "Confusionis the act of unfair competition, which consists from the credible concealment of the author's own market activity under the guise of the distinctive signs of the injured competitor or a group of competitors". (Căpățână, 1996).

At legislative level, art. 19 para. (1) of the Law on competition no. 183 of 11.07.2012 provides: “Any actions or facts that are likely to create, by any means, a confusion with the enterprise, products or economic activity of a competitor, carried out by:

a) illegal, in whole or in part use of a trademark, service emblem, company names, an industrial design or other objects of industrial property likely to create confusion with those legally used by another enterprise;

b) unlawful copying of the shape, packaging and / or external appearance of an undertaking's product and placing that product on the market, unlawful copying of an undertaking's advertising, if it has harmed or is likely to harm the legitimate interests of the competitor. "

4.2. Reason for being

The need for express and distinct regulation of confusion as an unfair competition act is explained by the possibility for protected and / or unprotected industrial property rights holders to receive protection through unfair competition rules as well, for situations where an industrial property right is infringed by the non-holder competitor of the respective infringed right.

4.3. Different approaches

The double protection that holders of protected and / or unprotected industrial property rights may enjoy is, however, conditional (with reference to protection through unfair competition rules).

Thus, if, according to the rules of industrial property, the protected industrial property object is susceptible to protection even if the field of activity (market on which it operates) of the usurper of the rights of the

rightful owner is different from the latter, then in case of unfair competition, the essential condition is the existence of the legal relationship of competition between the holder of industrial property rights and the usurper of these rights. In other words, they must operate on the same market, or the Law on competition, through the provisions of art. 4, defines unfair competition as "any action taken by undertakings in the competition process that is contrary to honest practices in economic activity", and competition is defined in the same context as existing or potential economic rivalry between two or more independent undertakings on a relevant market, when their actions effectively limit the possibilities of each of them to unilaterally influence the general conditions of movement of the products on that market, stimulate technical-scientific progress and increase consumer welfare".

By contrast, as an example, the corresponding norms of Law no. 38 of 29.02.2008 on the protection of trademarks (in this case, the provisions of art. 9 paragraph (1) letter c) of the specified legislative act), indicates the following: "The trademark owner is entitled to prohibit third parties from using in their activity without its consent:…a sign identical or similar to the trademark for products and / or services other than those for which the trademark is registered when the latter has acquired a reputation in the Republic of Moldova, and the third party, following the use of the sign, without justified reasons, takes advantage of the distinctive character or the reputation of the trademark or harms them.".

We note that even in this case, the protection of the registered trademark for products and / or services other than those for which the usurping mark was registered is conditioned by the circumstance of acquiring a national reputation of the first.

4.4. Statistical aspects

In the practice of the national competition authority, the numeric weight of confusion cases, in the period May 2017 - May 2020, is more significant than the numeric weight of other types of infringements of unfair competition rules (discrediting the competitor, misleading the competitor's clients, instigation to terminate the contract with the competitor, obtaining and / or illegally using the competitor's trade secret).Thus, during the nominated

period, within the Competition Council, there were / are under preliminary examination / investigation over 20 complaints which have as object the alleged violation manifested by the unfair competition action of confusion.

4.5. Qualifying issues

From the practice of the Competition Council, the following ways of qualifying the confusion action can be deduced according to the criterion of the existence of a registered industrial property right. Thus, the action for unfair competition is qualified, in accordance with the order of arrangement of alternative ways of confusion realizing:
- the existence of a protected intellectual property right;
- unprotected intellectual property right;
- mixed (combined) version.

4.5.1. The existence of a protected industrial property right

The trademark. With reference to the trademark, the provisions of art. 3 of Law no. 38 of 29.02.2008 on trademark protection are relevant. Thus, according to the provisions given in the specified normative act, the rights over the trademark are acquired and protected on the territory of the Republic of Moldova by:
a) registration under the respective law;
b) international registration under the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891 or according to the Protocol to the Madrid Agreement Concerning the International Registration of Marks of June 27, 1989;
c) recognition of the trademark as notorious.

Therefore, the proprietor's right to the trademark is protected, alternatively, by:
- national or international registration;
- recognition of the trademark as notorious.

The procedure for recognizing the trademark as notorious is regulated through the provisions of Section 11 of the nominated normative act. The basis of recognition is the provisions of art. 32^1. Thus, according to par. (1)

of the specified article, “The trademark may be recognized as notorious following a request for notoriety, filed in the court in whose jurisdiction is the seat of AGEPI, or a counterclaim in an action for protection of rights, filed in the same court”.

Industrial design. Concerning the industrial designs, the provisions of art. 4 of Law no. 161 of 12.07.2007 on the protection of industrial designs are relevant. Thus, according to the provisions of par. (2) of the art. specified above, on the territory of the Republic of Moldova are recognized and protected, under the conditions of the respective law:

a) the industrial designs registered and confirmed by the registration certificate of the industrial design;

b) international industrial designs registered under the Hague Agreement Concerning the International Registration of Industrial Designs, adopted on November 6, 1925;

c) unregistered industrial designs if they have been made public in accordance with the respective law.

Therefore, industrial designs are protected, alternatively:

- in case they are registered at national or international level;
- they have been made public in the established manner.

In the sense of the second way of benefiting from legal protection, the provisions of art. 10 of the same normative act are relevant, provisions according to which “… an industrial design is considered to have been made public if it has been exhibited or published, used, marketed or otherwise disclosed, unless such actions do not could become reasonably known in the normal course of business of natural or legal persons of the Republic of Moldova, specialized in the respective field:

a) in the case of the registered industrial design, before the filing date or, if priority is invoked, before the priority date;

b) in the case of an unregistered industrial design, before the date on which it was first disclosed."

At the same time, in accordance with the provisions of par. (2) of the same article, "A design shall not be considered made public if it has been disclosed to a third party under explicit or implicit conditions of confidentiality."

In the same context, in accordance with the provisions of art. 4 para. (4) of Law no. 161/2007, the recognition of the rights provided by the respective law does not prejudice and does not exclude the protection granted to the same person or, with his consent, to another person by other legal provisions regarding intellectual property, especially those regarding trademarks, geographical indications, patents, utility models, typographic characters, topographies of integrated circuits and unfair competition.

This means that the holder of rights over an industrial design enjoys the legal protection offered by the legislation related to the concept of unfair competition, regardless of the existence of protection in accordance with the provisions of the nominated normative act. It is in this way that the holder of rights over an unprotected industrial design can be protected in accordance with the provisions of art. 19 para. (1) letter b) of the Law on competition no. 183 of 11.07.2012.

Service emblem. Regarding the service emblem, we specify that the relevant local legislation does not contain any regulations. Therefore, the service emblem can be qualified as an object of industrial property only in the context of the provisions of the Law on competition no. 183 of 11.07.2012. By way of comparison, in the Romanian legislation, art. 15 letter a) of the Law on the trade register no. 26 of 1990 provides that: "The matriculation of an autonomous direction, national company or national society in the trade register will include: establishment, name, registered office and, where appropriate, its emblem… ".

Thus, the emblem is an optional identification attribute in addition to the company name, which is registered in the trade register to the detriment of its registration in a certain industrial property register. (Gorincioi, 2019, p.120)

In the light of local legislation and doctrine, the legal regime for the protection of trademarks is considered to apply to the service emblem. In other words, the right holder will enjoy protection if that emblem is protected as a trademark. At the same time, we also share the opinion that the service emblem could possibly be protected to the extent that it is protected as an industrial design. Moreover, the protection criteria offered by the legislation on the protection of industrial designs extend the number of cases in which

such an object of industrial property can be protected, which, taking into account the specific use of emblem, can significantly facilitate the task of the holder of rights.

Company name. Regarding the company name, according to the provisions of art. 182 para. (1) of the Civil Code of the Republic of Moldova, "The legal person participates in legal relations only under its own name, established by the articles of incorporation and registered in the appropriate manner." Thus, the law, along with the relevant doctrine, considers the name of the company as one of the identifying attributes of the legal person.

In this context, similar to the situation of service emblem, the company name can be registered as a trademark under the provisions of art. 24 point 5 of Law no. 845 of 1992 on entrepreneurship and enterprises, provisions according to which "The company name may also be used as a trademark, provided that it is registered according to Law no. 38-XVI of February 29, 2008 on trademark protection. "

With regard to other objects of industrial property, it is considered that such objects may constitute geographical indications, designations of origin, guaranteed traditional specialties, plant varieties, topographies of integrated circuits. (Gorincioi, 2019, p.122)

Geographical indications, designations of origin and guaranteed traditional specialties. The regime of the mentioned industrial property objects is determined through the provisions of Law no. 66 of 27.03.2008 on the protection of geographical indications, designations of origin and guaranteed traditional specialties. Thus, according to the provisions of art. 4 of the nominated act, the legal protection of geographical indications, designations of origin and guaranteed traditional specialties on the territory of the Republic of Moldova is ensured based on their registration at AGEPI, in the manner established by law or based on international treaties, including bilateral agreements, to which the Republic of Moldova is a party. Therefore, the industrial property objects specified above are protected following a proper registration at AGEPI.

Plant variety. In accordance with the provisions of art. 4 para. (1) of Law no. 39 of 29.02.2008 on the protection of plant varieties, the rights over a variety are obtained and protected on the territory of the Republic of

Moldova by granting a patent for plant variety by the State Agency for Intellectual Property in accordance with the law and normative acts subject to law, as well as with the international treaties to which the Republic of Moldova is a party. Therefore, the criterion for the protection of plant varieties is related to their registration at AGEPI.

Topographies of the integrated circuits. In this context, the provisions of art. 1, para. (3) of Law no. 655 of 29.10.1999 on the protection of topographies of integrated circuits are relevant, provisions according to which the right on topography is recognized and protected on the territory of the Republic of Moldova by registration, under the law, at State Agency for Intellectual Property and issuance of registration certificate.

Therefore, it is found that, regardless of the type of object of industrial property, the holder of rights over that object enjoys legal protection, as a general rule, in case of state registration at AGEPI of the given object of industrial property. Namely in the situation of the existence of a legal protection offered by the necessary normative provisions, an enterprise is liable to administrative liability in case of full or partial illegal use of a certain industrial property object expressly or implicitly stated at the disposal of the norm from art. 19 para. (1) letter a) of the Law on competition no. 183 of 11.07.2012.

It should also be noted that the illegal, full or partial use of a protected industrial property object can also be realized in the case of the use of industrial property objects other than those legally used by another enterprise. In other words, it is possible, for example, to use a company name illegally, in full or in part in the context in which the competing undertaking uses a similar or identical trademark.

An eloquent example in this regard can be considered the case "Totul pentru copii" S.R.L. against “Daybegin” S.R.L. Thus, through the Decision of the Plenum of the Competition Council no. CN-46 of 02.07.2015, the enterprise “Daybegin” S.R.L. was fined in a total amount of 8142.68 lei for violating the provisions of art. 19 para. (1) letter a) of the Law on competition no. 183 of 11.07.2012. According to those alleged in the complaint, the alleged unfair competition actions realized by Daybegin S.R.L. are manifested by the latter's partial use of the trademark "BABY-BOOM"

(which belongs to the complainant) as a means of redirection on the website www.bimbo.md, through which the products of the complainant are promoted and marketed.

As a consequence of the preliminary examination of the complaint in accordance with the relevant provisions of the Law on competition no. 183 of 11.07.2012, the Plenum of the Competition Council ordered the initiation of the investigation through Disposition no. 10 of 20.03.2015 regarding the alleged violation of the provisions of art. 19 para. (1) letter a) of the Law on competition.

In the course of the preliminary examination and investigation, the following was found:

- The trademark 'BABY-BOOM', which belongs to the complainant, is registered at AGEPI;
- The complained company uses the respective trademark as a domain name with the title www.babyboom.md, without having adequate protection through the industrial property norms;
- The complained party undertook actions likely to create confusion with the complainant undertaking, in particular the trademark owned by the latter;
- These actions are manifested by the use of the domain name www.babyboom.md to the detriment of the complainant, who has protection in so far as he registered the 'BABY-BOOM' trademark at AGEPI;
- These actions are likely to harm the legitimate interests of the complainant.

In the operative part of the Decision of the Plenum of the Competition Council no. CN-46 of 02.07.2015, the qualifying approach considered at the time of the adoption of the Disposition for initiating the investigation no. 10 of 20.03.2015 regarding the alleged violation of the provisions of art. 19 para. (1) letter a) of the Law on competition no. 183 of 11.07.2012 was maintained.

Therefore, the unfair competition action was found to be confusing in the context of the existence of a protected industrial property right in accordance with the rules of industrial property law and the appropriate legal qualification was realized.

Another significant feature of the given way of manifesting the confusion lies in the realization of the implicit negative condition of non-

benefit of legal protection of the holder of the object of industrial property. In other words, the illegal user, in whole or in part, of the object of industrial property must not benefit from legal protection within the meaning of the provisions of the law's tangent to the field of industrial property.

However, there is a possibility of generating the situation in which the registration of the object of industrial property is made in bad faith and the use of this object in full or in part, provided that the latter reproduces in whole or in part the object of industrial property legally used by to the usurper's competitor. In such a case, it is debatable the qualification of such facts according to the provisions of art. 19 para. (1) letter a) or the registered the object of industrial property by the usurper establishes a presumption of legality. However, we consider that depending on all the relevant circumstances of the case (including the existence or lack of good faith in the process of registration of the object of industrial property), the existence or absence of the constitutive signs of the stated infringement is to be determined.

4.5.2. Unprotected intellectual property right

As indicated above, the object of protection for the confusion is a legitimate interest which is not protected by industrial property law. Namely the phrase "legitimate interest" generates the conclusion according to which the object of protection is an unprotected industrial property right according to the special law tangential to the field of industrial property, or the legitimate interest in such contexts lies in the fact that the potential holder of protection of rights over industrial property objects is interested in obtaining effective legal protection in the sense that the special domain law grants such a prerogative. In principle, by giving the correct meaning to all the terms of the provision of that rule, it can be concluded that the object of protection may be an unprotected trademark or design by means of the Law on Trademark Protection and the Law on the Protection of Industrial Designs, given the fact that the shape, packaging and / or appearance of the product of an undertaking may alternatively or at the same time constitute unprotected trademarks or designs.

In the same context, we consider that an unprotected guaranteed traditional specialty may be subject to protection within the meaning of the provisions of art. 19 para. (1) letter b) of the Law on competition no. 183 of 11.07.2012. It is true that according to the provisions of art. 6 para. (2) of Law no. 66 of 27.03.2008 on the protection of geographical indications, designations of origin and guaranteed traditional specialties, "The characteristic or set of characteristics that determine the specificity of the product must be related to its intrinsic properties, such as its physical, chemical, microbiological or organoleptic properties, the production method or the specific conditions prevailing during production. The external appearance of an agricultural or food product is not considered to be a characteristic of its specificity.".

We emphasize that in the context of the external aspect of the unprotected guaranteed traditional specialty, the latter cannot be the object of protection within the meaning of the provisions of art. 19 para. (1) letter b) of the Law on competition, but may, per a contrario, constitute an object of protection in terms of its form, because the law does not contain a prohibition in this regard. At the same time, the illegal copying of a company name or service emblem is not excluded as they can be registered as a trademark or industrial design.

Regarding the illegal copying of advertising, the provisions of art. 1 of Law no. 1227 of 27.06.1997 on advertising are relevant. These provisions define advertising as public information about persons, goods (works, services), ideas or initiatives (advertising information, advertising material) meant to arouse and support the public interest compared to them, to contribute to their commercialization and to raise the prestige of the producer. The definition of the above-mentioned term shows its defining elements:

- advertising is a public information;
- this public information is about people, goods (works or services), ideas or initiatives;
- this public information is intended, cumulatively, to arouse and support the public interest in the object of advertising, to contribute to their marketing and to increase the prestige of the manufacturer.

Therefore, there is a need to meet 3 positive conditions in order to qualify certain information as advertising.

In the context of the same way of realizing the respective unfair competition act, we mention that the provision of the respective norm establishes the condition of illegality of copying the object of unprotected industrial property and of the advertising. But we consider that in addition to the condition of illegality, the copying can be both complete or partial. Therefore, it is sufficient a partial copy of an unprotected industrial property or of an advertisement in the sense of qualifying the respective unfair competition act according to the provisions of art. 19 para. (1) letter b) of the Law on competition no. 183 of 11.07.2012.

In this sense, the circumstances of the case "Bucuria" S.A. against "Nefis" S.R.L. are relevant. By the Decision of the Plenum of the Competition Council no. CN-48 / 18-74 of 31.10.2019, the enterprise "Nefis" S.R.L. was fined in total amount of 152,100, 24 lei for violating the provisions of art. 19 para. (1) letter b) of the Law on competition no. 183 of 11.07.2012.

According to those alleged in the complaint, the alleged unfair competition actions realized by the company "Nefis" S.R.L. are manifested by copying the packaging and placing on the market the products of boxed candies "Meteorit 320 g", "Meteorit 400 g", "Chișinăul de seară" and "Pasărea Măiastră" for the products "5 minute", "Fortuna", " Prună Delicioasă "and "Lapte de vis".

As a consequence of the preliminary examination of the complaint in accordance with the relevant provisions of the Law on competition no. 183 of 11.07.2012, the Plenum of the Competition Council ordered the initiation of the investigation through Disposition no. 48 of 20.12.2018 regarding the alleged violation of the provisions of art. 19 para. (1) letter b) of the Law on competition.

In the course of the preliminary examination and investigation, the following were found:

- There is no evidence of a record of the packaging of the products marketed by the complainant and complained undertaking claimed as a design;

- The complained undertaking took steps to create confusion with the complainant, in particular the products of the latter;

- These actions are manifested by the fact of copying the packaging and placing on the market the boxed candies"Meteorit 320 g", "Meteorit 400 g", "Chișinăul de seară" and "Pasărea Măiastră" for the products "5 minute", "Fortuna", " Prună Delicioasă" and "Lapte de vis".

- These actions are likely to harm the legitimate interests of the complainant.

In the operative part of the Decision of the Plenum of the Competition Council no. CN-48 / 18-74 of 31.10.2019, the qualifying approach considered at the time of the adoption of the Disposition to initiate the investigation no. 48 of 20.12.2018 regarding the alleged violation of the provisions of art. 19 para. (1) letter b) of the Law on competition no. 183 of 11.07.2012 was maintained

Therefore, the unfair competition action was found to be confusing in the absence of a protected industrial property right in accordance with the rules of industrial property law and the appropriate legal qualification was realized.

4.5.3. Mixed version (combined)

In the practice of the national competition authority (Competition Council, Republic of Moldova), there are cases that were finalized with decisions to sanction the authors of unfair competition actions of confusion, decision acts through which the anti-competitive conduct of active subjects was qualified in accordance with the provisions of both alternative ways of realizing the confusion (generic or general qualification). Such qualifications are likely to be operated in contexts such as:

- the existence of an uncertain situation generated by the impossibility of determining the degree of similarity between protected and unprotected industrial property rights;

- the existence of a pending application for registration at AGEPI regarding the unprotected industrial property object;

- the actions of the same undertaking show signs of both alternative ways of realizing the act of unfair competition;

- the need to match the final qualification solution with the possible qualification solution considered at the stage of initiating the investigation.

In this sense, the case of “Sevex-Prim” S.R.L. against “Buelo” S.R.L. is relevant.

By the Decision of the Plenum of the Competition Council no. CN-56 of 02.11.2017, the enterprise “Buelo” S.R.L. was fined in a total amount of 77,197, 29 lei for violating the provisions of art. 19 para. (1) letter a) and) b of the Law on competition no. 183 of 11.07.2012 in relation to the company “Sevex-Prim” S.R.L.

Thus, according to those invoked in the complaint, the alleged unfair competition actions realized by the enterprise “Buelo” SRL are manifested by the fact of the partial illegal use of the trademark with no. 17829, copying the packaging and placing on the market the products of corn sticks 'CRISTINUȚA', 'CRISTINEL' for the products 'SĂNDUȚA', 'SĂNDEL', which could create confusion with the complainant’s products.

As a consequence of the preliminary examination of the complaint in accordance with the relevant rules of the Law on competition no. 183 of 11.07.2012, the Plenum of the Competition Council ordered the initiation of the investigation by Disposition no. 20 of 16.11.2016 regarding the alleged violation of the provisions of art. 19 para. (1) letter a) and b) of the Law on competition. In the context of the preliminary examination of the complaint and the investigation, the following were found:

- The trademarks belonging to the complainant 'CRISTINUȚA' and 'CRISTINEL' are registered at AGEPI;

- The packaging of the products 'CRISTINUȚA' and 'CRISTINEL' are registered at AGEPI as industrial designs;

- The complained undertaking registered only the trademark 'SĂNDUȚA'; - The complained enterprise undertook actions likely to create confusion with the complainant, in particular with the economic activity and the products of the latter;

- These actions are manifested by the partial illegal copying of the packaging of the corn sticks product 'CRISTINUȚA', 'CRISTINEL' for the products 'SĂNDUȚA', 'SĂNDEL' and their placing on the market;

- These actions are likely to harm the legitimate interests of the complainant.

In the operative part (resolutive) of the Decision of the Plenum of the Competition Council no. CN-56 of 02.11.2017, the qualifying approach considered at the time of the adoption of the Disposition to initiate the investigation no. 20 of 16.11.2016 regarding the alleged violation of the provisions of art. 19 para. (1) letter a) and letter b) of the Law on competition no. 183 of 11.07.2012 was maintained.

4.6. General aspects of the probationary procedure

In the course of the activity, within the competition authority, depending on certain varieties of the elements of the unfair competition system, certain implicit standards of probation have been created, standards that are inherent to one or another type of violation of the concept of fair competition. Those standards are determined on the basis of certain criteria:
- the stages of the administrative proceedings;
- the type (species) of the alleged unfair competition action;
- the object of the alleged unfair competition action or its effect.

4.6.1. The specifics of the probation according to the stages of the administrative procedures

The administrative procedures involve a special specificity in terms of establishing special procedural provisions through the respective norms of the Law on competition no. 183 of 11.07.2012.

Thus, depending on the concrete stages of the concrete proceedings, certain evidence could be presented on the initiative of the complainant and / or the complained undertaking or at the request of the Competition Council which would confirm / deny the existence of signs of alleged unfair competition.

4.6.2. Specificity of the probation according to the species (type) of the alleged unfair competition action

In the context of the current way of regulating unfair competition actions to the text of art. 15-19 of the Law on competition (rigid system,

which does not allow the finding of other types of unfair competition actions than those expressly regulated) (Gorincioi, 2019, p.50), each category of unfair competition action has a certain probative specificity, which is assessed in each case separately depending on a multitude of factors, such as the subject matter of the legitimate interest alleged to be affected, the subject matter of the alleged unfair competition action, its effect or other circumstances relevant to the case.

The specifics of the probation depending on the object of the alleged violation or its effect. We find that this criterion is one derived from the one analyzed above and is a reference point of the variation of probation that is based on the characteristic of the object of attack and, as the case may be, the characteristic of effects (assuming such effects).

4.6.3. General Evidence of Confusion

In case of confusion, the practice of the Competition Council derives a triple standard of probation (three levels):
- primary level: assessment of the investigative body of the risk of creating confusion among consumers by placing the product on the market or by another form of illegal use of the object of industrial property protected or unprotected by means of industrial property rules;
- secondary level: presentation to the investigative body of information attesting the actual creation of confusion among consumers;
- tertiary level: the existence of injurious consequences as a result of the effect of the unfair competition action.

4.6.3.1. Primary level of probation

We consider that such a level is mainly specific to the administrative procedure of preliminary examination, or this is typical to the incipient time interval of accumulation of evidence by the Competition Council.

Taking into accound the relevant legal provisions from the Law on competition no. 183 of 11.07.2012, we conclude that the law does not limit the range of evidence that may contribute to a more effective examination of the alleged unfair competition actions claimed through the complaint.

For the purposes of the above, by reference to the specifics of the unfair competition action, the Competition Council may, for example, access the AGEPI database, request the presentation of information which concerns the existence of certain complaints from the complainant's customers which would suggest confusion or other relevant information.

As an example, we mention the findings from the Decisions of the Plenum of the Competition Council that were analyzed above:

- Decision of the Plenum of the Competition Council no. CN-56 of 02.11.2017: "The database of the State Intellectual Property Agency was also accessed, as a result of which it was found that the logos of both companies are registered as trademarks, which indicates on the legality of using them."; in the same context: „According to the data of the State Agency for Intellectual Property, the packaging of the products "CRISTINUȚA" and "CRISTINEL" are registered in the Register of designs with no. 1370 of January 6, 2012.".
- Decision of the Plenum of the Competition Council no. CN-48 / 18-74 of 31.10.2019: "The database of the State Agency for Intellectual Property was also accessed, as a result of which it was found that the logos of both companies are registered as trademarks, which denotes the legality of their use. "; in the same context: "According to the same letter, the company "Bucuria"S.A. mentioned that there are 2 complaints from consumers and many phone calls from them regarding possible collaboration with the company "Nefis" S.R.L.".

4.6.3.2. Secondary level of probation

As progress is made within the stages of administrative procedures, by reference to the provisions of art. 19 applicable to both ways of creating confusion, provisions according to which "Any actions or facts that are likely to create, by any means, confusion with the enterprise, products or economic activity of a competitor ..." (emphasis added)), we find that the unfair competition action of confusion has a legal character of formal-material infringement (the infringement is harmful by its object and does not require the actual occurrence of the injurious consequence; the existence of the risk of confusion is sufficient).

In this regard, we are of the opinion that the secondary level of probation would come to finalize the formal-material character of the respective unfair competition action and to attribute to it a material character. Therefore, for example, the complainant (on its own initiative or at the request of the Competition Council) may submit a possible consumer opinion poll, which would confirm the actual realization of the confusion. In the same context, the defendant has the possibility to present a counter-survey which would refute the hypothesis of actually creating confusion among consumers. In terms of the stages of the administrative procedure, such a means of proof could be used both in the preliminary examination stage of the complaint and in the investigation where the investigation was initiated on the basis of the information available at the time of the adoption of the relevant provision.

From a practical perspective, the following findings made by means of the same decision-making acts addressed above can be mentioned:

- Decision of the Plenum of the Competition Council no. CN-56 of 02.11.2017: “Sevex-Prim” SRL by letter no ... presented: “National survey - stick trademark testing”, conducted by “IMAS INVEST” S.R.L .; "Consumer Perception Study", carried out at the request of the Chamber of Commerce and Industry of the Republic of Moldova and the State Agency for Intellectual Property by the National Marketing Association, between April 27 and May 15, 2017 ".
- Decision of the Plenum of the Competition Council no. CN-48 / 18-74 of 31.10.2019: “At the same time, at the complaint of the enterprise „Bucuria” S.A. the result of the opinion poll conducted by the Independent Sociology and Information Service "Opinia" was also attached, poll which indicates the existence of a certain degree of confusion among consumers regarding the commercial affiliation of the specified packaging "; in the same context: “Thus, through the new study, the company “Nefis” S.R.L. refutes the results of the survey carried out at the request of “Bucuria” S.A., claiming the non-existence of the confusion of the packaging under which the confectionery products are sold, a fact found in the Technical-Scientific Research Report no. 1-03 / 19 regarding the similarity / difference of the packaging of boxed candies products of the producers „Nefis” S.R.L. and “Bucuria” S.A. ”.

4.6.3.3. Tertiary level of probation

We suggest that from the point of view of substantive law, the most advanced degree of probation in terms of confusion could be the provision of information that would confirm the existence of the effect or result of the confusion among consumers. One way of achieving the most advanced degree of probation could be, for example, the presentation of information on the evolution of the company's sales whose legitimate interests were potentially harmed by the alleged unfair competition of claimed undertaking. We suggest that a negative evolution of sales may accentuate the existence of a causal link between the alleged unfair competition actions and its consequences. The same finding could be made in the event of a positive development of the complained undertaking's sales. At the same time, we note that such a means of proof could ideally be the subject of correspondence between the complainant and the Competition Council following the adoption of the provision of initiation of the investigation of the alleged unfair competition actions of the claimed undertaking.

In this regard, the findings extracted from the Decision of the Plenum of the Competition Council no. CN-48 / 18-74 of 31.10.2019 are relevant: Therefore, there is a positive evolution of sales of its products by the company "Nefis" S.R.L., which is in contrast with the negative evolution of sales of the company "Bucuria" S.A. in the same time frame. Such a circumstance denotes a possible causal relationship between the fact of placing on the market of its products by the complained party and the effect of the diminished sales of the complainant or, it is attested that the sales of the company "Bucuria" S.A. have registered a decrease in the context in which the process of selling boxed candies by its competitor increased

4.7. Specific trends

From the above-mentioned facts, the following essential trends are outlined in the cases of examination of the alleged violations of the provisions of art. 19 of the Law on competition no. 183 of 11.07.2012:

- In terms of quantity, the numerical weight of the complaints through which is claimed the violation of the provisions of art. 19 of the Law on competition

is superior to the situations in which the unfair competition actions regulated by means of the provisions of art. 15-18 of the same legislative act are claimed;
- In terms of qualification, most of the times at the stage of adoption of the final Decision by the Plenum of the Competition Council, the qualifying hypothesis considered at the adoption of the Provision to initiate the corresponding investigation is maintained;
- In terms of probation, following the initiation of the investigation, as a rule, the tertiary level of probation is used.

5. Conclusion

In conclusion, we specify that unfair competition act of confusion has, overall, an increased degree of complexity in relation to other acts of unfair competition both in terms of quantity (weight of qualifying elements) and in terms of quality (probationary procedure), or the respective unfair competition action implies a polyvalent nature, given the interference between the concept of unfair competition and that of industrial property. Thus, there is a need for a complex and multi-aspectual research of each case viewed separately.

References

Castraveț, D. (2019*), Răspunderea civilă delictuală pentru actele de concurență neloială*. Ph.D. in law thesis. Chișinău. 197 p.

Căpățână, O. (1996). *Dreptul concurenței comeciale, concurența neloială pe piața internă și internațională*. București: Lumina Lex. 327 p.

Civil code of Republic of Moldova no. 1107 of 06.06.2002.

Constitution of Republic of Moldovaof 29.07.1994.

Decision of the Plenul of the Competition Council no. CN – 46 of 02.07.2015.

Decision of the Plenul of the Competition Council no. CN – 56 of 02.11.2017.

Decision of the Plenul of the Competition Council no. CN-48/18 – 74 of 31.10.2019.

Gorincioi, C. (2019). Cercetarea instrumentelor juridice de contracarare a actelor de concurență neloială. Ph.D. in law thesis. Chișinău. 208 p.

Lawon competition no. 183 of 11.07.2012.
Law on the protection of competition no. 1103 of 30.06.2000 cu privire la protecția concurenței (repealed).
Law on the protection of trademarks no. 38 of 29.02.2008.
Law on the protection of industrial designs no. 161 of 12.07.2007.
Law on the protection of geographical indications, designations of origin and guaranteed traditional specialties no. 66 of 27.03.2008.
Law on the protection of plant varieties no. 39 of 29.02.2008.
Law on the protection of integrated circuit topographies no. 655 of 29.10.1999.
Paris Convention for the Protection of Industrial Property of 1883.
Romanian Law on the trade register no. 26 of 07.12.1990.
WIPO (1996). Model Provision on Protection against Unfair Competition (retrieved from https://www.wipo.int/publications/en/details.jsp?id=3227&plang=EN)

EU Provisions: Health & Consumer Protection in terms of Intellectual Property Rights

Olesea PLOTNIC[1], Elena CIOCHINA[2]

Abstract

The safety and health of European patients and consumers are subject to double protection: in national law, first and foremost in the EU European secondary legislation (regulations, directives and decisions), in a complementary or subsidiary manner, as appropriate. consumer protection is very broad to defend their economic interests, their physical security is the subject of a general directive and several specific directives, consumer protection policy took off at European level about twenty years ago. The main objective of the article is to investigate the legal provisions of comparative law on consumer protection as beneficiaries of medical services and to establish the direct link of the right to health with consumer protection and intellectual property law, respectively.

Keywords: health, protection, consumer, security, intellectual property

JEL Code: K32

1.Introduction

Protecting the health of consumers, especially European citizens, is a basic principle of European law, available in all sectors of activity and especially in the field of food security. Patient safety issues have first

[1] Olesea PLOTNIC, Academy of Economic Studies of Moldova, Chisinau, R.Moldova Email: plotnicolesea.aum@gmail.com
[2] Elena CIOCHINA, Academy of Economic Studies of Moldova, Chisinau, R.Moldova Email: ciochina.elena.law@gmail.com

appeared in specific texts on drug safety (pharmacovigilance) and radiation protection. With the recent development of European competences in the field of public health, patient safety has become an important topic for cooperation between the European Commission (hereinafter the Commission), ministries of health and patient representative organizations and healthcare professionals. Thus, competences for health issues as well as legal issues for consumer rights were spread across many more areas and services of the Commission, most of which were brought together in 1999 in a new "Directorate-General for Health and Consumers DG SANCO" (Directorate-General for Health and Consumers), under the authority of a single European Commissioner: David Byrne, then Markos Kyprianou, since 2004. Following the further enlargement of the Union to 27 countries in 2007, the portfolio of consumer policies was entrusted to Bulgarian Commissioner Meglena Kuneva and the health for a Cypriot, Androulla Vassiliou.

2.EU health regulatory framework for consumer protection

Article 152 of the Treaty of Nice provides that a level of protection of human health is ensured in the definition and implementation of all policies and actions of the European Union. This applies in particular to food, transport, energy and all other products and services offered to consumers, as well as health products or services directly targeting patients. For the quality and safety of substances of human origin, this article specifies that measures taken by the EU cannot prevent a Member State from maintaining or establishing measures that are too strict.(Treaty of Nice, 2001)

Article 153 of the Treaty provides that the EU shall contribute to the protection of the health and safety of consumers when it adopts measures for the organization of the internal market or for supporting and supplementing national consumer protection policies. This article specifies that Member States may maintain or establish more stringent measures, compatible with the principles of the Treaty and notified to the Commission.

The Euratom Treaty created the European Atomic Energy Community in 1957 for cooperation in nuclear research and protection of the population. This treaty makes it possible to establish criteria for uniform safety and

radiation protection, in particular for patients and healthcare professionals exposed to ionizing radiation.(EU, 1957)

Council Directive 85/374 / EEC of 25 July 1985 harmonized the laws of the Member States relating to product liability in order to ensure a high level of consumer protection against damage caused by a defective product. The victim has three years to seek redress. This Directive establishes the principle of liability for the objective liability of the manufacturer or importer in the event of damage caused by a defect in his product. The defect is assessed in particular according to the date of presentation, use of the product or service. (EEC,1985/85/374)

The manufacturer's liability starts ten years from marketing. The manufacturer is exempted if he proves that the technical knowledge, at the time of placing the product on the market, proved to be insufficient to detect the defect. To this end, Member States are authorized to take derogating measures. In addition, the victim may rely on more favorable national provisions than the Directive. Directive 1999/34 / EC extended the liability for defective products to agricultural raw materials, such as milk and meat, by eliminating border problems with processed foods.

Directive 2001/95 / EC of the European Parliament and of the European Parliament Council of 3 December 20013 lays down general rules for the safety of consumer products. This Directive shall apply where there are no specific Community provisions governing safety or where Community sectoral legislation has shortcomings. A product is considered safe when it complies with the specific provisions of the Community governing its safety or in accordance with a European standard established in accordance with a procedure laid down in that Directive. (EC, 2001/95)

In the absence of EU provisions, these are national regulations or standards in the country from which they apply. Manufacturers and distributors must ensure that the product market fulfills the general safety obligation. In addition, they must:

- provide the consumer with useful information for assessing the risks of the product;
- monitor their placing on the market and ensure the traceability of their products;

- in case of danger, notify the competent authorities and cooperate with them;
- take appropriate measures in case of danger such as: withdrawal from the market, warning consumers, etc.

Member States shall ensure that producers and distributors fulfill their obligations through control and intervention structures as well as by imposing sanctions. The Commission mandates the European standardization bodies to establish the presumption of conformity with the general safety obligation. It manages the Rapid Alert System (RAPEX) and strengthens the system of appropriate response measures. (EC, 2004/418)

3.The Health Services within the EU action programs

The EU's multiannual consumer protection program was renewed in 2014, with a budget of almost EUR 188.83 million for the period 2014-2020. This program aims to ensure a high level of consumer protection and empower consumers through information and education. With increased power, consumers can better exercise their rights by organizing and thus play a more active role in the EU's single market.

The third EU action program in the field of health entered into force in 2014, while the first Community action program funded more than 300 trans-European projects from 2002 to 2007, and the second program had a budget of 321 .5 million for the period 2008-2013. The general objective of the third program is to complement, support and add value to the policies of the Member States, to improve the health of the citizens of the Union and to reduce health inequalities by promoting health, encouraging health innovation, enhancing the sustainability of health systems and protecting Union citizens from serious cross-border health threats. (EU, Consumer Programme, 2013)

It should be noted that, in the framework of the renewal of European programs, the European Commission has proposed to the Council and Parliament an important global program for health and consumer protection, endowed with EUR 1.203 million, of which EUR 969 million for health. The European Parliament preferred to split this ambitious major program again into two separate programs, while the Council significantly reduced the

appropriations allocated, considering the difficult financial prospects for the general budget of the European Union until 2013. Three scientific committees have been set up on the basis of Commission Decision 2004/210 / EC, as amended by Commission Decision 2007/263 / EC:

- Scientific Committee on Consumer Products
- Scientific Committee on Health and Environmental Risks
- Scientific Committee for Emerging and New Health Risks

The requirements for the quality, safety and efficacy of medicinal products placed on the market in Europe have been considerably strengthened since the first directive in 1965. These complex provisions, fully codified in 2001, relate to market access, drug information, surveillance measures. and control from research, manufacturing, marketing to hazardous or defective product withdrawal procedures. All rules and guidance notes for the application of regulations are updated electronically in a series of several thematic volumes (EUDRALEX). (EC, 2007/263)

The extension of the European Agency's powers in 2004 was accompanied by a considerable strengthening of pharmacovigilance measures, in particular the extension of obligations and notifications of adverse reactions and the creation of a European Medicines Database (EUDRAPHARM). Detailed requirements for European pharmacovigilance are published in Volume 9 of EUDRALEX. The European Medicines Agency frequently publishes information on pharmacovigilance through national agencies and the media. Community pharmaceutical regulations, including pharmacovigilance, have been extended to advanced therapies, such as genetic, somatic and tissue therapies, by Regulation (EC) No 882/2004. 1394/2007 which enters into force at the end of 2008.

Following a reflection process on patient mobility, including health ministers, professionals and patients, the Commission set up a High-Level Group on Health Services and Healthcare in 2004, composed of representatives appointed by the Ministers of Health. This group has been tasked with several major areas:

- providing cross-border healthcare;
- information on the quality, safety and continuity of care;

- patients' rights and responsibilities; - continuous professional training to guarantee the quality of services;
- reference centers for rare diseases or other specialized care assessing health technology and creating a viable European network;
- online information and health;
- the impact of the EU on health and health systems;
- exchanges of experience and expertise on patient safety.

In parallel with these activities, the projects were funded by the European Public Health Program on antibiotic resistance, nosocomial diseases and in 2005, two major European conferences of the Presidencies in Luxembourg and the United Kingdom. The Commission renewed its consumer protection strategy in 2007 and later in 2014. The subsidiary nature of consumer protection by the "Minimum Harmonization" Directives maintains significant differences in the level of protection and rights depending on the country. Following the research, the author found that there is a broad consultation within the EU based on a comparative report on national policies and legal systems for consumer protection.

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

The Treaty of Lisbon emphasized the importance of health policy, stipulating that "a high level of protection of human health shall be ensured in the definition and implementation of all Community policies and actions". This objective is to be achieved with the Union's support to the Member States and by encouraging cooperation. The main responsibility for the protection of health, and in particular health systems, remains with the Member States. However, the EU has an important role to play in improving public health, preventing and managing disease, mitigating sources of danger to human health and harmonizing health strategies between Member States. The EU has

successfully implemented a comprehensive policy through the Health Strategy for Health for Growth and its action program for 2014-2020, as well as a body of secondary legislation. The current institutional structure to support implementation includes the Commission's Directorate-General for Health and Food Safety (DG HEALTH) and the specialized agencies, in particular the European Center for Disease Prevention and Control (ECDC) and the European Medicines Agency (EMA). (EU, Treaty of Lisbon,2007)

4.The impact of intellectual property infringements on the life and health of consumers

4.1. At the economic level

A 2016 study by the European Union Intellectual Property Office (EUIPO) and the Organization for Economic Co-operation and Development (OECD) estimated that international trade in counterfeit and pirated goods was worth about $ 461 billion. However, this estimate does not include products made and consumed in the internal market or intangible digital products. If these types of products were included, the EUIPO and OECD study estimates that international trade in counterfeit and pirated products would have exceeded $ 461 billion by several hundred billion dollars. In the EU, these products account for up to 5% of total EU imports, amounting to up to € 85 billion.

The EUIPO and OECD synthesis report brings together the findings of research over the last five years on the scale, scope and economic consequences of infringements of intellectual property rights in the EU. Research shows that annual direct losses amount to 60 billion euros due to counterfeiting in 13 economic sectors. The 13 sectors studied are: cosmetics and personal care; clothing, footwear and accessories; sporting goods; toys and games; jewelry and watches; bags and luggage, recorded music; spirits and wine; pharmaceutical products; pesticides; Smartphones; batteries and tires.

Counterfeit and pirated products come from several economies, with emerging economies playing an important role in this phenomenon, either as

counterfeiters (China being the largest producer market) or as transit zones. It is also noted that trade in counterfeit goods is being catalyzed by the increased use of small shipments by counterfeiters, due to the increase in e-commerce and also the reduction of risks and financial consequences of detection. The EUIPO and OECD study highlights the extent of funding that Governments and legitimate businesses lose due to trade in counterfeit and pirated products, which can be used to increase the level of development of society (e.g. to build schools, hospitals and others) or to create jobs. (EUIPO, 2019)

4.2.At the level of Health and Safety

The study by EUIPO and the OECD also showed that counterfeiting is not limited to luxury items such as watches and clothing signed by designers, but has also spread to pharmaceuticals, food, beverages, medical equipment, personal care items, toys, and safety items.

Interpol mentions “Trademark trafficking and copyright piracy are serious intellectual property crimes that defame consumers, threaten their health and safety, cost billions of dollars in lost government revenue, foreign investment or profits from and infringes the rights of trademark and copyright owners. Imitation products pose a significant threat to consumer safety around the world. Customers who do not ask questions in this regard risk their health and even their lives every time they use counterfeit products, alcoholic beverages and counterfeit food or travel in cars and planes maintained with counterfeit parts made below standard." (EUIPO, 2019)

On the other hand, the World Health Organization (WHO) states that "counterfeit medicines and other health products can have harmful effects on patients' health, and can even cause death in the worst cases." (Blackstone, 2014)

We would like to mention that by the Government Decision of the Republic of Moldova no. 880 of 22.11.12, the National Strategy on Intellectual Property was approved, covering the period between 2012 and 2020, the main objective being to increase the capacity of government institutions to apply intellectual property law. (HG RM nr.880 from 22.11.2012)

In the Republic of Moldova, the effective fight against counterfeiting and piracy requires a coordinated effort on the part of several institutions, including: State Agency for Intellectual Property, Customs Service, Agency for Consumer Protection and Market Surveillance, General Inspectorate of Police and General Prosecutor's Office. Similarly, a body dedicated to facilitating cooperation between institutions responsible for intellectual property, including having a role in the fight against counterfeiting and piracy, called the National Commission for Intellectual Property, has been established in the Republic of Moldova. There is also an Observatory against Counterfeiting and Piracy, made up of representatives of the State Agency for Intellectual Property, the Agency for Consumer Protection and Market Surveillance, the Customs Service, the General Inspectorate of Police and the General Prosecutor's Office. At the international level, it is relevant to note that there are international organizations that contribute to capacity building and cross-border investigations in the field of intellectual property, namely: EUIPO Observatory, Europol, Interpol, World Customs Organization (WMO), World Property Organization Intellectual Property (WIPO). With regard to infringements of intellectual property rights in the online environment, we would like to mention that there is a growing tendency to advertise, distribute and / or sell goods that infringe intellectual property rights on the Internet. In this context, several problematic aspects are outlined, namely: non-confirmation of the protection of intellectual property rights in the Republic of Moldova and non-compliance with the notification procedure of the rights holder.

5.Conclusion

Based on the above, we can conclude that from a historical point of view, EU health policy has its origins in health and safety provisions, later developing as a result of the free movement of persons and goods in the internal market, which made it necessary to coordinate public health in terms of consumption. In harmonizing the measures for the creation of the internal market, the basis of the proposals in the field of health and safety was a high level of protection. Various factors, including the crisis caused by bovine

spongiform encephalopathy at the end of the last century, have made health and consumer protection important issues on the political agenda. Likewise, with the consolidation of the sales market, we must recognize that counterfeiting has grown not only for expensive products but also in the domestic environment, which inevitably established a direct correlation between the doctor, the consumer and the consumer. In conclusion, we can say that consumer protection could, by itself and distinctly from the users' perspective, add a new dimension to the analysis of intellectual property. Considering that users of creative works as consumers of tangible goods may prove useful when faced with conflicts between intellectual property owners and beneficiaries of works, intellectual creations, however, raise other concerns that should not be taken lightly. simple to be suppressed by a standard contract. Not only are they commodities that can be judged by their usefulness and price, but also by information works that can affect consumer autonomy and freedom of expression.

Disclaimer: This paper is elaborated in the framework of the Jean Monnet Support to Associations in European Integration and Intellectual Property Protection Studies / EUPROIN, nr. ref. 611344-EPP-1-2019-1-MD-EPPJMO-SUPPA, implemented with finnacial support of the Erasmus+ programme of the European Union.

"The European Commission's support for the production of this publication does not constitute an endorsement of the contents, which reflect the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein."

References

Blackstone, Erwin A et al. (2014), The health and economic effects of counterfeit drugs, *American health & drug benefits* vol. 7,4 (2014): 216-24.

European Union (2006), Council Conclusions on Common values and principles in European Union Health Systems *OJ C 146, 22.6.2006, p. 1–3,* retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52006XG0622%2801%29

European Economic Commynity (1985) ,Council Directive 85/374 of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective

products, OJ L 210, 7.8.1985, p. 29–33, retrieved from https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A31985L0374

European Commission (2004), Commission Decision 2004/418 /EC laying down guidelines for the management of the RAPEX system, OJEC, no. L 151 of 30 April 2004, retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004D0418R(01)

European Union (2019), Commission Implementing Decision 417 of 8 November 2018 laying down guidelines for the management of the European Union Rapid Information System, "RAPEX", established pursuant to Article 12 of Directive 2001/95 / EC on general product safety and its notification system (notified under document number C (2018) 7334, retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019D0417&from =EN

European Commission (2001), Consolidated text: Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use

Europeam Commision (2013), The Consumer Programme 2014-2020 is a financial instrument supporting the growth and competitiveness of the European Union, retrieved from https://ec.europa.eu/info/funding-tenders/opportunities /portal/screen/programmes/cp

European Commission (2008), Comission Decission setting up an advisory structure of Scientific Committees and experts in the field of consumer safety, public health and the environment and repealing Decision 2004/210/EC, retrieved from https://op.europa.eu/o/opportal-service/download-handler?identifier =5e5216d0-6977-47dc-87d8-26f4db946451&format=pdf&language=en& productionSystem=cellar &part=

European Commission (1999), Directive 1999/34 of the European Parliament and of the Council of 10 May 1999 amending Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, OJ L 141, 4.6.1999, p. 20–21, retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31999L0034

European Commission (2001), Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, *OJ L 311, 28.11.2001, p. 67–128*, retrieved from https://ec.europa.eu/health

/sites/health/files/files/eudralex/vol1/dir_2001_83_consol_2012/dir_2001 _83_cons_2012_en.pdf

European Commission (2002) ,Regulation No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ L 31, 1.2.2002, p. 1–24, retrieved from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri= CELEX%3A32002R0178

European Commission, (2009), Regulation No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (Text with EEA relevance), OJ L 342, 22.12.2009, p. 59–209, retrieved from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri =CELEX%3A32009R 1223

European Union (2014), Regulation No 282 of the European Parliament and of the Council of 11 March 2014 on the establishment of a third Programme for the Union's action in the field of health (2014-2020) and repealing Decision No 1350/2007/EC Text with EEA relevance, *OJ L 86, 21.3.2014, p. 1–13 , retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri =CELEX%3A32014R0282*

European Union (2013), Regulation No 1295 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC Text with EEA relevance, *OJ L 347, 20.12.2013, p. 221–237,*retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1295

European Union, The multiannual consumer programme (2014-2020), retrieved form https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A090101_1

HG RM nr.880 from 22.11.2012, Strategia Națională a Republicii Moldova în domeniul Proprietății Intelectuale, retrieved from http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=345660

European Union (2007), Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007

OJ C 306, 17.12.2007, retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT

Treaty of Nice (2001) amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts *OJ C*

80, 10.3.2001, p. 1–87, retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12001C%2FTXT

European Union Intellectual Property Office (2019), Status Report on IPR Infringement, retrieved form https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/docs/2019_Status_Report_on_IPR_infringement/2019_Status_Report_on_IPR_infringement_en.pdf