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The Yearbook on the Rule of Law and European Values is a publication seeking to increase discussion in the field of Rule of Law and European Values in the EU and beyond. In particular, the Yearbook investigates important and timely questions about the state of the rule of law, democracy, and other European values across the EU. The Yearbook is published within the framework of the Jean Monnet Centre of Excellence for the Rule of Law and European Values (CRoLEV) (2022-2025). For more information on CRoLEV, visit https://crolev.eu/

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We currently invite contributions for the third issue of the Yeabook from researchers working in different disciplines that study themes of relevance. In particular, we invite submissions related to such themes as:

- Civic engagement, the relationship between rule of law protections and grassroots political participation, structures of democracy, political participation, and/or citizen empowerment, both from empirical and theoretical perspectives;

- Democratic governance and the relationship between rule of law and democracy, including institutional and non-institutional means of safeguarding the rule of law in a democratic state (anti-corruption, transparency, access to information, free press), both from empirical and theoretical perspectives.

Submissions should take the form of original research in a scientific article (8000-10000 words). The deadline for the submission of a complete manuscript is the 30th of September 2025. Selected submissions will be notified by November 2025. All submissions will then undergo double blind review.

July 2025

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Table of Contents

Prologue

THE RULE OF LAW – AN ANCIENT GREEK CONCEPT

The Rule of Law is inextricably intertwined with the very idea of Law itself. Law, as a binding rule of conduct, has neither meaning nor effect unless it is to be respected and enforced when not respected – unless, that is, it is to rule over all that are subject to it. The concept of Law and the Rule of Law is thus set in opposition to the concept of Might and the Rule of Might which ordains that Might is Right and which obtains in the absence of Law.

The concept of Law and the Rule of Law has developed historically over the aeons as humanity progressed from Might to Right, from individualism to society, from self-help to judicial adjudication. This process has not been uniform throughout the earth, nor has it been without set-backs. But it nevertheless has been a process that determined the level of civilization of every country at any given time, because law, beyond its mandatory force and enforcement, also has a moral dimension as to right and wrong which differentiates it from the crude force of Might as indifferent to right and wrong. It is thus not surprising that Law has historically been associated with Divinity and its expression through Natural Law as the ideal law of the order of things.

In Europe today, we pride ourselves that we have reached a very high standard of the Rule of Law, achieved through the promotion of fundamental values, social awareness and proper institutions. Indeed, one may remark that this is also largely due to the parallel establishment of peace, because war, founded on force and leading to the imposition of the stronger, is in no way conducive to the Rule of Law.

Even so, it is good to know that the concept of the Rule of Law is only in name a current concept. As with all great ideas that humanity considers as part of its civilization, the Rule of law has its origins in Ancient Greece. At a time when throughout the world the order of things rested on physical strength and military might, the concept of the Rule of law was taking root in Greece. The most emphatic demonstration of this is to be found in Greek mythology which discloses that even the gods themselves were under the law. Let me tell you the story of the god Ares (Mars) who killed a man for some reason or other. Being a god, one might suppose that he could do as he liked and be immune from the consequences of his acts. Not so, however. His fellow gods decided

that Ares must be tried for murder because he was subject to the Law as much as any mortal would be, reminding us of the much later English idea that 'the king is under no man save under God and the Law'. So they set up his trial on a hill in Athens, which has since then been called Areios Pagos, that is, Ares' Hill, this being the first ever recorded court in history. It was at Areios Pagos that Orestes was later also tried for the murder of his mother Clytaemnystra which he committed to avenge the murder of his father Agamemnon by Clytaemnystra and her lover Aegisthos. It is further noteworthy that it was at Areios Pagos that the goddess Athena established the rule concerning the benefit of doubt, to the effect that, if the gods' votes as to guilt or innocence were evenly divided, the accused should be acquitted. So high is the significance of Ares' trial in Greek ethics that Areios Pagos has given its name to the highest court in Greece even down to our own days.

Besides Areios Pagos, we should also note the ancient Greek custom of purification, whereby one who committed a killing not necessarily amounting to murder could voluntarily submit himself to the service of a just man for a period of time, thereby purifying himself of his moral turpitude through such humiliation in the form of punishment. Even, and particularly, gods, heroes and kings were subject to this custom, indicating again that they were not immune from wrongdoing. We recall, in this respect, the purification of Apollo for killing Python and seizing the Oracle of Delphi and the purification of Hercules for killing Iphitos.

In recorded history, the Ancient Greeks were always concerned about the establishment of good laws for the city. Tradition has it that the oldest and best laws were those of Crete, given after consultation with Zeus himself, and it was to the Cretan Code that the city lawmakers usually turned as a model. Lycourgos of Sparta, who lived in the 9th century BC, was the first major lawmaker, and it was not a coincidence that his name means Worker of the Light and that his father's name, who was a king of Sparta, was Eunomus, which means Law-Abiding. It was for Eunomia – the Rule of Good Laws, that Lycourgos dedicated himself, having studied the Cretan Laws and having consulted the Oracle of Delphi, the Oracle that always guided the Wise Men of Greece. So, Lycourgos' laws for Sparta were given to him by The Oracle of Delphi as oracles and were called the 'Megali Ritra', meaning the 'Great Contract', reminding us of the much later concept of the Social Contract. Lycourgos believed that only if the laws are related to the ethics of the city and are respected through education and conviction can they be effective. This involves

the conscious acceptance by the citizens of the power and value of the laws for the governance of the city, which constitutes the foundation of the Rule of Law. It was thus not accidental that Lycourgos' laws lasted for five centuries and were instrumental for Sparta's development into a protagonist of political life in Greece. These laws regulated not only the life and dealings of the citizens but also the political system of government which involved a fine balance between Monarchy, Aristocracy and Democracy.

Lycourgos was followed some centuries later by the so-called Seven Wise Men, who lived from the middle of the 7th until the middle of the 6th century BC. They were men of superior wisdom and knowledge, who mostly distinguished themselves as law-makers in their cities. Like Lycourgos, all the Wise Men were related to the Oracle of Delphi, the Shrine of Apollo, who as we know was the god of light and civilization, and were led and instructed by it through its oracles into effecting those reforms in their cities that transformed Greece from feudal to democratic. They thereby laid the foundations for good and effective laws based on equality and good government, which are so crucial to the prevalence of the Rule of Law. Most prominent among the Wise Men was Solon of Athens. Amid age-long injustice and conflict in the city, he was, through his virtue, elected Archon as well as Conciliator and Law-Maker, proceeding to introduce such reforms and laws regulating the entire expanse of city life that were aimed to transform Athens into a just and law-abiding city. Solon's vision for Athens did suffer from the tyranny of Peisistratos and his sons which followed, but, nevertheless, they lighted the way for the city's later establishment as the epitome of democracy and civilization. Solon's spirit is reflected in the Athenians' constant aversion to tyranny, shown most emphatically in the attempt of the lovers Harmodios and Areistogeiton to overthrow the tyranny of the Peisistratides – although the attempt was unsuccessful and both of them were killed, the Athenians, seeing them as symbols for democracy and the opposition to tyranny, in due course erected a magnificent statue of them as a reminder to all peoples through the ages that tyranny is the arch enemy of lawfulness and dignity and that the price of freedom is eternal vigilance.

No better instance of this conviction and vigilance can be given than the Greeks', and particularly the Athenians', stand against the failed Persian attempt to conquer Greece. Greece and Persia represented two entirely different worlds. The Persian Empire was founded on the power of the Persian king as absolute monarch whose word and military might was law. There was no room

here for law, liberty and dignity of the individual. In Greece, and most prominently in Athens, the individual was the foundation of the city and its justification, liberty and dignity under the law being the point of reference in every respect. The Persian king, having reached as far as Asia Minor, now wanted more, and Greece and its world beyond was the part of the known world that was not his. So he set his mind on conquering Greece, and to that effect setting up an army such as had not been seen before – certainly many times greater than any army that could be set up by all the Greek cities together. There was, however, one thing that the Persian king had not understood and that throughout history dictators determined to conquer the world never understood – the unlimited strength of men who love freedom and are prepared to fight for it. Let me tell you the story of this lack of understanding. In the course of his preparations, the Persian king, like a good militarist, wanted to find out as much as he could about the Greeks. He was particularly concerned about Athens, the leading city in Greece, and asked to know who was the king of Athens and what kind of man he was. The answer given to him was that the Athenians had no king, which shocked the Persian because he only knew that cities are governed by kings as supreme monarchs. So he asked again, how could it happen that the Athenians had no king, only to get the answer that the king of Athens is the Law. The Law, he wondered, I know of no such name of a king – and, of course, it was of no avail trying to explain to him that the Law in Athens was king because it was supreme and ruled over governors and governed alike. I know of no more fitting tribute to the Rule of Law than the answer given to the Persian king that in the city the Law is King. And this answer resounded most strongly upon the ultimate and utter defeat of the Persian invasion of Greece which saved the western world from no one knows how long and oppressive a tyranny and made possible the unprecedented prosperity of classical civilization that has lighted and led the entire world ever since.

The philosopher par excellence – and I am of course speaking of Plato, has given us in his writings, in which Socrates is the constant protagonist, the highest possible exposition of the Rule of Law. His monumental work, the Politeia – the City, has in fact Justice as its central theme, Justice being the ultimate virtue. Right from the start, Plato systematically demolishes the conventional idea that Law and Justice are determined by the will of the powerful, be it a monarch, an aristocracy or a democracy, showing that, on the contrary, they are founded upon the power of Right itself in accordance with equality and worth. Justice is thus not conventional but absolute and eternal, being in accord with divine virtue and being spoilt by men's ignorance of Truth and selfshiness, hence,

'ουδείς εκών κακός' – 'no man is willingly bad'. That is why education is so important in lighting men's minds into Justice and achieving conscious respect for the Law, and, further, why, if men cannot all be taught to be just, the city needs good laws and incorruptible law enforcement to correct injustices. And that is why Tyranny is the worst possible system of government for a city, because a tyrant has no respect for the Laws, being a law unto himself. The same is true, even though to a lesser extent, of Oligarchy – the rule of the few, particularly if it is based on wealth and personal interest, and of Democracy which can be as unjust as the masses, under the sway of demagogues, may decide. The ideal system of government that guarantees Justice and respect for the Law is Aristocracy, be it of one man or a few as rulers, based on the rulers' merits and virtue, so that they will maintain the city as just and law-abiding. Such a system must exclude the influence of wealth upon government because the concentration of wealth is bound to corrupt it. Indeed, ideally, the city must avoid both excessive wealth and excessive poverty in the citizens, because just as excessive wealth corrupts so excessive poverty degrades, both conditions being negative to lawfulness in the city.

In the Laws, his other major work, Plato completes his philosophic conception of Justice. The main theme of the Laws is the fundamental significance of good laws and the Rule of Law for the attainment of Justice as the supreme virtue in society as much as in the individual. Only if the city is well governed by laws can it truly prosper, for it will then operate peacefully under laws that promote respect, accord and peace among the citizens and thus civilization and all its benefits. That is why the ideal system of government, regardless of its form as monarchical or democratic, is that in which the laws and not the kings or the people are supreme, in which the kings as well as the citizens live willingly as subject to the law. Thus, it does not really matter whether the system of government is a monarchy, an oligarchy or a democracy, so long as it respects the laws of the city and does not aim at the promotion of the interests of those who govern, be they the monarch in a monarchy, the few in an oligarchy or the majority of the people in a democracy. Otherwise, if the laws are made and changed in accordance with the interests of those who happen to govern, the laws will fall into disrespect and lead to injustice, the power of the laws being replaced by the laws of the powerful. In a city in which the laws are in the service of those in power and have no authority in themselves, the commonwealth will collapse, whereas if the laws are supreme and those who govern are its servants the commonwealth will prosper. Well, I tell you, this is a classic exposition of the Rule of Law, as relevant in our days as it was in Plato's conception, and it is

amazing that such ideas came to be expressed nearly two and a half millennia ego. What is particularly significant to our modern-day commitment to democracy, in which the will of the people is supreme, is Plato's reminder that, if the peoples' will disregards the laws and shapes them according to the interests of the occasional majority, the Rule of Law is violated as much as if the same is done by a tyrant, democracy becoming the tyrannical rule of the majority over the minority. To this effect, in any system of government the laws should not be changed easily but only when obviously required and after proper consultation, nor should it be possible to change the basic laws of the city – a clear reference to constitutionalism and the constitutionality of laws. The law, Plato tells us, is the supreme and most exalted institution of the city.

Plato's trilogy consisting of the Apology of Socrates, Criton and Phaedon constitutes the ultimate celebration of the Rule of Law. In the Apology Socrates, addressing the judges at his trial, explains why, his commitment being to philosophic truth and virtue, he will not be deterred from teaching it even at the threat of the greatest punishment from his fellow citizens. His subsequent conviction and sentence to death, therefore, he says, will be a constant burden upon the Athenians – the burden of having put a wise and just man to death in the name of the law, and they will thus have sentenced themselves to injustice.

In the second dialogue Socrates' student and friend, Criton, comes to see Socrates in his jail and tries to persuade him to escape in order to avoid the impending death punishment, telling him that he has arranged everything for the escape. He resorts to all sorts of arguments to show why Socrates must agree to the escape, including the loss to family and friends from Socrates' death and to Socrates' duty to continue his teaching in places outside Athens where his fame will make him welcome. Socrates however refuses to accede to Criton's request. Pointing out that his commitment is to virtue rather than life, he explains that it would be wrong to ignore the judgment of his fellow Athenians, erroneous though it may have been, because one should never reciprocate injustice with injustice even though one is to suffer, because so doing would be acting unjustly. And Socrates would be acting unjustly if, to save his life, he were to ignore the judgment of the Athenians, for he would be breaking the bond between city and citizen as to the supremacy of the laws and institutions of the city, particularly the judgments of the courts, even if he considers that judgment as unjust. If any citizen could in this way ignore the laws and judgments of his city at will, he would in effect be revenging his city and destroying its very foundations. A citizen who

believes that he will be treated unjustly by his city should try and persuade his judges to that effect, otherwise he should accept their judgment. And I, says Socrates, more than any Athenian, have bound myself to this bond with the city, having shown this throughout my life and teachings, so that, if I now agree to escape, I would be denying that virtue and the law are above everything else. I shall, therefore, accept the judgment of the Athenians, even though I consider it wrong, knowing that, if I have been treated unjustly I have been so treated not by the city itself but by the men who, as appointed by the city, have passed judgment upon me in accordance with their erroneous understanding of the law.

This standpoint of principle is maintained by Socrates in the third dialogue, Phaedon, which concerns the last discussion of Socrates with his students and friends in prison and his last hours. Socrates demonstrates that virtue is more important than life for life refers to the mortal body whereas virtue refers to the immortal soul which is thus superior to the body.

Socrates' position at his trial and after constitutes the extreme manifestation of devotion to virtue and to the law. And, of course, it is only when beliefs are put to the extreme test that their truth and their worth can be established. What greater devotion to the idea of the Rule of Law can be conceived than Socrates' commitment to the laws and institutions of his city even when he believes that their judgment is wrong and even when he knows that the price of such commitment is death. The Law is then not merely king but absolute monarch.

Aristotle was a member of Plato's Academy for twenty years until Plato's death, founding his own school, the Lyceum, thereafter. Essentially reflecting Plato's teachings, he concentrated upon the more practical aspect of philosophy. In his Nicomachean Ethics he expounds the concept of Justice as the supreme virtue, Justice being even more extensive than the Law. The Law, referring to that part of Justice which has been made compulsory in the regulation of social life in the city, must be respected by all through, if necessary, the judicial process involving the judgment as to what is just or unjust according to the Law. This is so because the virtuous men, who will act in accordance with Justice and the Law because of their virtue and not because of the compulsion of the Law, are few, whereas the many obey the Law through the compulsion of its penalties rather than through their own virtue. The Law has the power of compulsion so that Justice may prevail and so that men may be ultimately led and instructed into virtue. This is why it is also important for the laws to be good laws, as the product of reason, because only good laws can command obedience

and justify enforcement. In the Laws, as Aristotle emphasizes in his Rhetoric, lies the salvation and the life of the city. And, as he succinctly concludes in his Politics, the Law and not the citizens should govern.

There is no need to extend this reference to Greek philosophy any further in order to show that the twin concepts of Law and the Rule of Law have their deepest millennia roots in Ancient Greece, receiving their perfected philosophic expression with Plato – indeed, as has justly been remarked, all philosophy after Plato is but a footnote to Plato. To grasp the need for good Law and for its supremacy over all, the rulers as well as the ruled, and over the very democratic process itself, as was grasped by the Ancient Greeks, is to know that these concepts have such well-laid and venerably old foundations that the edifice built upon them through the centuries and right down to our own times is strong and safe for the citizen in all vicissitudes of life.

The edifice has, in modern times, been further strengthened by the concept of constitutionalism, which, through the constitutional enactment of inalienable and immutable fundamental rights and the constitutional regulation of the structure and operation of the state, guarantees that no government, and no citizen, can, by any law or action, violate such rights or such regulation. Such constitutional limits upon the power of the legislature itself are essential in order to avoid the tyranny of any majority and any populism in our democratic systems of government to legislate or act in disregard of such rights and such institutional regulation. The strength of our tradition of the Rule of Law as supreme would be effectively worthless if, in the name of democracy, the fundamental laws and institutions of the commonwealth could be changed and adjusted to the interests of the occasional ruling majority or any combination of sectional interests.

The guardians of the Rule of Law are, of course, the courts. But it is essential to remember that no system of compulsory law enforcement can be more effective than the voluntary submission of the citizens to the Laws. That is why the education of the citizens into virtue is so fundamentally crucial, as Plato and Aristotle have repeatedly stressed and as Socrates has so convincingly taught. The light of Reason is stronger than the might of the Law. That is the true Rule of Law.

Judge Akis Hadjihambis (Ret'd)

The Cyprus Investment Programme (2007-2020): any room for the Rule of Law in its construction and operation in times of crisis?

Stéphanie Laulhé Shaelou and Katerina Kalaitzaki*

1. Introduction

The construction of citizenship has developed a long way from its traditional idea.[1] This is so not only in terms of its conceptions and 'dimensional' structures, such as the state-centric or multi-level citizenship,[2] or the different rights and freedoms attached to it,[3] but also in relation to the terms and conditions on which a citizenship is granted. In the current world of mass migration across vast distances, the economic aspect of citizenship is a modern reality, which has affected several dimensions of policy,[4] while an increasing number of people choose the states in which to become citizens in their capacity as investors.[5] As a result, investment migration programmes have spread globally in the last few decades, taking a variety of forms. These investment migration programmes can constitute an innovative and increasingly common mechanism that allows governments to monetise national rights and freedoms – and, in the context of the EU, transnational

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[1] For a contemporary account of the idea of citizenship, see Dimitry Kochenov, *Citizenship* (Boston, MA: MIT Press, 2019).

[2] Willem Maas, 'Varieties of Multilevel Citizenship' in Willem Maas (ed), *Multilevel Citizenship* (University of Pennsylvania Press 2013); Willem Maas, 'Multilevel Citizenship' in Ayelet Shachar, Rainer Bauböck, Irene Bloemraad and Maarten Vink (eds), *The Oxford Handbook of Citizenship* (OUP 2017) 646; Antje Wiener, *European Citizenship Practice: Building Institutions Of A Non-state* (Taylor & Francis 2018); Koen Lenaerts and José A. Gutiérrez-Fons, 'Epilogue on EU Citizenship: Hopes and Fears' in Dimitry Kochenov (ed), *EU citizenship and Federalism: The Role of Rights* (CUP 2017).

[3] Thomas Humphrey Marshall, *Citizenship and Social Class: And Other Essays* (Cambridge University Press 1950) 14-21

[4] Christian Joppke, *Citizenship and Immigration* (Cambridge: Polity Press, 2010); Vladimir Popov, 'Why some countries have more Billionaires than others? Explaining variations in the Billionaire Intensity of GDP' (2018) IMC-RP 2018/3.

[5] Don J. DeVoretz and Nahikari Irastorza, 'Economic Theories of Citizenship?' (2017) IZA Discussion Paper Series No. 10495 <http://ftp.iza.org/dp10495.pdf>

rights and freedoms – to prospective migrants, resulting in direct contribution to a country's financial system,[6] while improving the global visibility of small countries. On the other hand, they are also criticised as to the 'inherent risks' they carry including those to do with security, money laundering, tax evasion and/or corruption at both national and pan-EU levels.[7] Moreover, there are debates in relation to these investment programmes legality in numerous regions, while the Court of Justice of the EU (CJEU) has recently ruled that the investment scheme of Malta is contrary to EU law.[8]

Cyprus[9] is one of the Member States that established and operated investment migration programmes in the EU for granting citizenship to third-country nationals (TCNs). Having become a Member State of the EU on 1 May 2004, Cyprus initially introduced its Investment Programme in 2007, shortly before Cyprus adopted the euro currency on 1 January 2008, as financial storm clouds were gathering in parts of the EU, particularly in the UK which was still in the EU at the time. Indeed, the financial crisis in the UK preceded its Cypriot equivalent by a few years.[10] The Investment Programme was subsequently amended several times until November 2020, when, amidst a breaking scandal and mounting allegations of wrongdoing, the Council of Ministers decided to abolish it. Although the terms and conditions did not fundamentally change from the initial establishment of the scheme in 2007, the objectives and motives behind its construction seem to have shifted direction from constituting a direct attraction of wealth into the country to a financial crisis mechanism.[11] This piece aims to discuss the alleged shift in the scheme's objectives and subsequently assess the scheme's shifted rationale in the eyes of rule of law aspects.

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[6] Alan Gamlen, Chris Kutarna and Ashby Monk, 'Re-thinking Immigrant Investment Funds' (2016) 14 Global Policy 527-541.

[7] European Parliament Resolution of 16 January 2014 on EU citizenship for sale (2013/2995(RSP))

[8] CJEU, C-181/23 - *Commission v Malta (Citoyenneté par investissement)*, 29 April 2025

[9] The Republic of Cyprus is the official name of the independent sovereign state established in 97 per cent of the Island of Cyprus under the Cyprus Act 1960, an Act of the UK Parliament which received Royal Assent on 29 July 1960 but brought into force on 16 August 1960, and the Treaty of Establishment signed in Nicosia on 16 August 1960. Whereas the Constitution of 1960 repeatedly refers to the Republic of Cyprus, Article 1 refers to both the State of Cyprus and Cyprus. Accordingly, it is appropriate for the paper to adopt the term Cyprus.

[10] For details, see Federico Mor, *Bank rescues of 2007-09: outcomes and cost: Briefing Paper 5748* (House of Commons Library 8 October 2018), https://researchbriefings.files.parliament.uk/documents/SN05748/SN05748.pdf and https://commonslibrary.parliament.uk/research-briefings/sn05748/ and Timothy Edmonds, *Financial Crisis Timeline: Briefing Paper Number 04991* (House of Commons Library 12 April 2010), https://researchbriefings.files.parliament.uk/documents/SN04991/SN04991.pdf and https://commonslibrary.parliament.uk/research-briefings/sn04991/

[11] Due to the absence of any Westminster-style mechanism of frequent ministerial accountability to the House of Representatives and partly because of the secrecy attached to the House committees where ministers speak

This piece begins necessarily by briefly analysing the Cyprus Investment Programme as introduced in 2007 and as subsequently amended, particularly in 2019, before its abolition in 2020. The primary aim here is to identify and analyse the rationale behind its construction and operation. The paper then more specifically assesses the compatibility of the scheme with the principles of good administration, due process and proportionality - three core tenets of integral to the rule of law. As explained further in the paper, these principles have been selected for their central role in ensuring that administrative action remains transparent, accountable, and just. In that context, the paper considers to what extent, in the event of evidence of incompatibility with any of the principles discussed, such contradictions could be approached with reference to the rationale and motives underlining the scheme, mainly as a financial crisis mechanism.

2. The construction and operation of the Cyprus Investment Programme

2.1. The programme as a wealth attraction tool

The acquisition of Cypriot citizenship is determined by the Civil Registry Laws of 2002 to 2019 and Annex D of the Constitution of Cyprus. In particular, the naturalisation of aliens is based on Article 111 of the abovementioned laws, under which the Minister of Interior is granted full discretion to engage in the naturalisation of aliens, subject to certain conditions. Since the enactment of the Civil Registry Law in 2002, the Council of Ministers in Cyprus has had the discretionary power to grant citizenship in very exceptional circumstances of high-level services provided to the Cyprus for reasons of public interest, irrespective of the period of stay provided in paragraph (1) of Schedule 3 of the Civil Registry Law of 2002, 141(I)/2002, provided that the House of Representatives is informed in advance.[12] Such exceptional circumstances include athletes who have been naturalised at the request of the relevant Cypriot Sports federations and/or the Cyprus Sports Organisation, with a view to their inclusion in the Cyprus National Teams.[13] In

infrequently, there is no easily accessible record of ministerial rationale over the scheme. The systemic lack of transparency hinders academic research into this and so many other issues.

[12] Paragraph 2(f) Schedule 3 of the Civil Registry Law of 2002, 141(I)/2002

[13] Proceedings of the House of Representatives, I Parliamentary Period – Meeting A', Sitting on 23 February 2012, 1427

the period between 2008-2018, 22 athletes had been naturalised in Cyprus under the scheme according to the Civil Registry Law of 2002.[14]

In 2007, during the pre-crisis period, the Republic of Cyprus had for the first time introduced a broader citizenship scheme to attract investments,[15] whereby foreign investors are exceptionally naturalised provided they satisfy specific conditions. The criteria under the first investor's citizenship scheme required direct investment in factories or property of at least 15 million Cyprus pounds,[16] which is equivalent to €26 million euro of today's value, or business activities including the establishment of a company with an annual turnover of at least 50 million Cyprus Pounds (approximately €85 million today) in the year before the application, or investments in new and innovative technologies and research centres in a large scale. The option of having deposits in Cyprus banks of at least 10 million Cyprus Pounds (equivalent to €17 million today) for five years prior to the application also existed, as well as a combination of direct investments and deposits in banks up to 15 million Cyprus Pounds (equivalent to €26 million today).[17] Moreover, it was provided (without much explanation) that the investor had to be more than 30 years old, with a clean criminal record and in possession of a permanent residence in Cyprus.[18]

The Council of Ministers of Cyprus reviewed the investment scheme in 2011,[19] introducing new exceptional criteria for the acquisition of Cypriot citizenship by foreign wealthy individuals, primarily investors, by means of naturalisation. In particular, the applicant was required to have direct investments or business in Cyprus of at least €10 million which could include the purchase of immovable property, businesses, shares and debentures or deposits of at least €15 million. At

[14] https://inbusinessnews.reporter.com.cy/article/2018/3/5/410684/kupriake-upekooteta-se-3381-atoma-apo-to-2008/ (in Greek)
[15] Decision of the Council of Ministers of 11 July 2007, no. 65.824. The decision was not published in the official gazette which raises issues of transparency in the process.
[16] Decision no. 65.824 does not further specify what these investments might include.
[17] Maria Kyprianou for Milieu Ltd, 'Factual analysis of Member States Investors' Schemes granting citizenship or residence to third-country nationals investing in the said Member State: Deliverable B.I Investors' Citizenship Schemes in Cyprus' (Brussels, June 2018)
https://best-citizenships.com/2019/02/07/history-of-cypriot-citizenship-by-investment/
[18] Decision of the Council of Ministers of 11 July 2007, no. 65.824. The decision was not published in the official gazette which raises further issues of transparency in the process.
[19] Decision of the Council of Ministers of 10 October 2011, no. 72.676 <http://www.cm.gov.cy/cm/cm.nsf/All/CC32518337BD0A25C22583E500298A75/$file/72.676.pdf?OpenElement>

the same time the applicant again had to be over 30 years old, and possess a clean criminal record, while the requirement of a residence worth more than €500,000 was added.[20]

One of the main objectives of the economic policy of the Republic of Cyprus has always been to encourage further foreign direct investment and attract high net worth individuals to settle and conduct their business in Cyprus.[21] The criteria of the initial scheme in Cyprus were relatively high and difficult to satisfy, which made it less attractive, compared to the significantly lowered financial thresholds adopted after 2012. Under the old stricter criteria, only twenty-five foreign businessmen had been given Cypriot citizenship,[22] which demonstrates its exceptional use and the idea of creating a wealth attraction tool promoting 'quality' over 'quantity', while no urgent need for financial support was apparent. In fact, during the year of the scheme's establishment, i.e., 2007, Cyprus recorded a budget balance of 3.2 percent of the country's Gross Domestic Product (GDP) and a public debt of 53.5 percent of the country's GDP.[23] At the same time, the relevant decision of the Council of Ministers establishing the scheme did not make any reference to the duration of the scheme or its necessity. Therefore, the initial introduction of the scheme in Cyprus seems to be rather related to direct attraction of wealth into the country, rather than to an emergency mechanism, in the form of financial capital while no human capital requirements such as 'skills', 'education' or 'qualifications' were imposed.[24] At this point, one could say that no or little consideration had been given to the fundamental principles of good administration, due process and proportionality in the making.

2.2. The programme as a financial crisis mechanism

From 2011 onwards, Cyprus faced a serious recession of its economy and a sudden increase of fiscal deficit and debt, due to lowered revenues and increased expenditure. In March 2013 a 10-billion-euro financial assistance package towards Cyprus was agreed with the European Stability

[20] Decision of the Council of Ministers of 10 October 2011, no. 72.676 <http://www.cm.gov.cy/cm/cm.nsf/All/CC32518337BD0A25C22583E500298A75/$file/72.676.pdf?OpenElement>

[21] Guidelines on the Cyprus Investment Programme from the Ministry of Interior (2019) <http://www.moi.gov.cy/moi/moi.nsf/all/A54823EFD5AA75DDC22583FE00224C1F/$file/CYPRUS%20INVESTEMENT%20PROGRAMME_15.5.2019.pdf?openelement>

[22] George Yiangou & Co, 'Brand new eligibility requirements for gaining Cypriot citizenship' Corporate News (November 2011)

[23] Main Economic Indicators for Cyprus, 2005-2020 <http://mof.gov.cy/assets/modules/wnp/articles/201704/281/docs/macro_figures_2005_20_web_april_2017_en.pdf>

[24] Such human capital requirements are imposed in Hong Kong, France and Canada.; Alan Gamlen, Chris Kutarna and Ashby Monk, 'Re-thinking Immigrant Investment Funds' (2016) Investment Migration Working Papers, IMC-RP 2016/2, 4 <http://kutarna.net/wp-content/uploads/2016/09/Kutarna-et-al-IMC-RP1-2016-1.pdf>

Mechanism (ESM) and the International Monetary Fund (IMF). A Memorandum of Understanding (MoU) was therefore adopted between the Troika of International Lenders and Cyprus as to the Macroeconomic Program that Cyprus had to implement and apply, with the aim of revitalising the economy and mitigating the financial problems faced at the time.[25] The crisis in Cyprus culminated in 2013 with a decision by the Eurogroup to recapitalise the Cypriot banks through a bail-in of shareholders – bond holders and uninsured depositors.[26]

It is argued that, at this point, a change in the character of the investment scheme can be observed – from a mere wealth attraction tool towards a financial crisis assistance mechanism, not only due to the significantly lowered criteria introduced but also due to the nature and the aims behind the newly created routes to citizenship. In the aftermath of the financial crisis, the Investment Scheme's aim became twofold in so far as can be ascertained from what is in the public domain; the preservation of foreign investments and the continuation of their presence in Cyprus, coupled with the attraction of fresh foreign investment, which would help re-start the Cypriot economy.[27] In particular, the decision of the Council of Ministers immediately following the detrimental and controversial 'haircut' of deposits in Cyprus[28] seems to have been driven by the extreme plight of the national economy, the liquidity problem of the banks and the need to support the economy with foreign investment. Cyprus was one of the prime destinations of outward capital flows from Russian investors for decades after the Soviet Union's dissolution, yet the 2013 bank crisis and detrimental haircut resulted in investments to fall and Russian oligarchs sought out new "safe harbours" for their investments.[29]

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[25] Memorandum of Understanding Cyprus (2013) <http://www.mof.gov.cy/mof/mof.nsf/MoU_Final_approved_13913.pdf>; see also S. Laulhé Shaelou and P. Athanassiou, 'Cyprus Report' in G. Bàndi et al, *European Banking Union* (FIDE XXVII Congress Proceedings, Vol. 1, Wolters Kluwer, 2016) 269-297.

[26] Stéphanie Laulhé Shaelou and Anastasia Karatzia, 'Some Preliminary Thoughts on the Cyprus Bail-in Litigation: A Commentary on *Mallis* and *Ledra'* (2018) 43 E.L. Rev. 248.

[27] https://inbusinessnews.reporter.com.cy/article/2016/12/6/417449/eur4-dis-apo-ten-politographese-allodapon-ependuton/

[28] Decision of the Council of Ministers of 15 and 16 April 2013, no. 74.912 <http://www.cm.gov.cy/cm/cm.nsf/All/B44340862195B616C22583E50029A9AB/$file/74.912.pdf?OpenElement>

[29] The dominance of Russian inflows and outflows was evident before the bank crisis, official data shows they were five times more than those from the second most important source, which was Greece.; Financial Secrecy Index 2020, 'Narrative Report on Cyprus' (2020) (accessed in January 2021 and not available anymore). For updated, see https://fsi.taxjustice.net/country-detail/#jurisdiction_id=CY&scoring_id=168 (2022) and https://fsi.taxjustice.net/country-detail/#jurisdiction_id=CY&scoring_id=268 (2025); see also Von Markus Dettmer et al, 'Bailing Out Oligarchs' (Der Spiegel, January 2013), https://www.spiegel.de/international/europe/tax-haven-reputation-plagues-eu-bailout-of-cyprus-a-877369.html

This new 'driving force' and rationale behind the Investment Scheme appears to be substantiated by the fact that new routes to the exceptional citizenship were created. More specifically, new routes seemed to become available in order to combat the effects of the economic and financial crisis which mounted in 2012 and hit Cyprus in March 2013 in the context of the presidential handover, while at the same time providing a response to the 'haircut' of the deposits of more than €100,000 in Laiki Bank and the Bank of Cyprus.[30] More specifically, according to decision no. 74.912,[31] the applicant must have had deposits of at least €3 million or direct investments of at least €5 million (property purchase, setting up companies, investing in shares and other values such as bonds of the Republic of Cyprus). Alternatively, the applicant could be a shareholder of a company registered and operating in Cyprus, which has paid annually the amount of €500,000 in State funds, in the last 5 years before the application submission and employed at least 10 Cypriots.[32]

More importantly, through the new measures of the citizenship scheme the government tried to "mitigate to some extent the damage" suffered by investors who held deposits in the Cypriot banks where the one-time bank deposit levy was imposed. The haircut agreement caused considerable losses of billions of euros on large foreign investors who lost their trust in the Cypriot banking system. As a result, the newly elected President of the Republic of Cyprus announced that in line with the Council of Ministers' decision,[33] persons whose deposits with Bank of Cyprus or Popular Bank had been impaired due to the measures applied to the two Banks after 15 March 2013, would be eligible to apply for citizenship in Cyprus provided that the applicant had suffered a deposit depreciation of at least €3 million.[34]

[30] https://www.bbc.com/news/world-europe-22147643

[31] Decision 74.912 of 15 and 16 April 2013 provided for the requirements and conditions for the exceptional granting of citizenship to foreign investors/businessmen under paragraph 2(f) of Schedule 3 of the Civil Registry Laws of 2002 to 2011 and the exceptional granting of citizenship to the spouse and children over 18 years of age of the foreign businessman investor who received citizenship under the Council of Ministers' Decision.

[32] Decision of the Council of Ministers of 15 and 16 April 2013, no. 74.912 <http://www.cm.gov.cy/cm/cm.nsf/All/B44340862195B616C22583E50029A9AB/$file/74.912.pdf?OpenElement>

[33] The president serving at the time was Mr Nicos Anastasiades; See also: https://www.bbc.com/news/world-europe-22147643

[34] Decision of the Council of Ministers of 15 and 16 April 2013, no. 74.912 <http://www.cm.gov.cy/cm/cm.nsf/All/B44340862195B616C22583E50029A9AB/$file/74.912.pdf?OpenElement>

Later in April 2013, the House of Representatives voted the Civil Registry amending Law 36(I)/2013.[35] The new amendment introduced the "honorary citizenship of an alien citizen (third-country national) for reasons of public interest" under Article 111A and the previous paragraph 2(f) of Schedule 3, on which the decisions of the Council of Ministers were based on, was deleted. The new Article 111A expressly grants to the Council of Ministers the power to "allow the granting of citizenship to an alien businessman and investor without the fulfilment of the requirements provided in paragraphs 1(a), 1(b) and 1(d) of Schedule 3".[36] The importance of the legal amendment lies firstly in the fact that the investment programme became an integral part of the main legislation as opposed to a mere decision of the Council of Ministers, now directly associated with the public interest. Hence, it was to be expected that the principle of the separation of powers would apply, coupled with institutional checks and balances within the fabric of the Constitution, and in accordance with Rule of Law principles. On the other hand, the seemingly more democratic process put in place meant that the House of Representatives became 'co-opted' into the programme and, as events were to unfold, found itself tainted alongside the government.

Under the new legislation, the Council of Ministers issued a series of Decisions providing the requirements and conditions for the exceptional granting of citizenship to foreign investors under Article 111A(2) of the Civil Registry Law and the exceptional granting of citizenship to the spouse and children over 18 years old of the foreign investor who received citizenship under the Council of Ministers' Decision.[37] According to Decision 75.148, applicants were eligible for citizenship if they, *inter alia*, invest or donate to the State an amount of at least €2 million or have direct investments of at least €5 million or if they have deposits in the Republic amounting to at least €5 million with a three-year maturity. Moreover, the applicant must possess a clean criminal record and be the permanent owner of a residence in the Republic of Cyprus with a market value of at least €500.000.[38] In addition, the Council of Ministers introduced government bonds as an

[35] Law No. 36(I)/2013: The Civil Registry (Amendment) Law of 2013, No.4386, 30.4.2013 available at: <http://www.cylaw.org/nomoi/arith/2013_1_036.pdf> (in Greek)
[36] Section 111A paragraph 2 of the Civil Registry Law
[37] Decision of the Council of Ministers of 15 and 16 April 2013, no. 74.912 <http://www.cm.gov.cy/cm/cm.nsf/All/B44340862195B616C22583E50029A9AB/$file/74.912.pdf?OpenElement>
[38] Decision of the Council of Ministers of 24 May 2013, no. 75.148 <http://www.cm.gov.cy/cm/cm.nsf/All/8A6CEB9C46E1E520C22583E50029A9D5/$file/75.148.pdf?OpenElement>

investment option, granting further eligibility to apply for citizenship with investments of at least €5 million in 2014.[39]

In 2016, following the completion of the economic adjustment programme of Cyprus the required investment under the 'Scheme for Naturalisation of Investors in Cyprus by Exception', was reduced to €2 million in real estate or infrastructure projects, bonds/securities or infrastructure projects.[40] The revisions followed a series of external shocks of direct relevance to Cyprus, such as the premise of Brexit with the referendum in the UK and the initial Russian invasion of Ukraine in February 2014 leading to post-invasion imposition of sanctions by the EU. These revisions were arguably part of the implementation of the main objective of the renewed economic policy of the Republic of Cyprus, namely to further encourage Foreign Direct Investment and attract high net worth individuals to settle and do business in Cyprus. More specifically, the decision established better targeting of investment criteria to ensure increased economic activity through investments with a direct positive impact on the growth of the economy and job creation.[41] With the 2016 amendments, it was also considered appropriate to reduce the investment rates requested given that allegedly less productive investments such as deposits, the government bond market, and deposit depreciation were abolished.

Notwithstanding the amendments, the Investment Programme in Cyprus was repeatedly criticised for its lack of due process, good administration and proportionality in view of the wide discretionary powers and potential conflicts of interest which could open Europe's door to corruption.[42] The Cypriot authorities had earlier agreed with the Troika of International Lenders on an action plan, appended as Annex 2 to the MoU, regarding the Prevention and Suppression of Money Laundering Activities with a view to addressing deficiencies identified in the pre-financial

[39] Decision of the Council of Ministers of 19 March 2014, no. 76.668 <http://www.cm.gov.cy/cm/cm.nsf/All/533622FF078EF0B1C22583E50029C3D9/$file/76.668.pdf?OpenElement>

[40] Decision of the Council of Ministers of 13 September 2016, no. 81.292 <http://www.cm.gov.cy/cm/cm.nsf/All/3E353C9246EEFC4DC22583E5002A3941/$file/81.292.pdf?OpenElement>

[41] Υπουργείο Οικονομικών, 'Μελέτη για το Κυπριακό Επενδυτικό Πρόγραμμα: Επίδραση στην Οικονομία' (February 2019) <http://mof.gov.cy/assets/modules/wnp/articles/201902/461/docs/study_cip.pdf> (Translated by the authors); The Minister of Finance conducted this study, following to the decision of the Council of Ministers No. 84.957 (21 May 2018) which authorised the Minister of Finance to conduct a study evaluating the implementation of the Cyprus Investment Program and its impact on the economy.

[42] Transparency International (Laure Brillaud and Maíra Martini) and Global Witness, 'European Getaway: Inside the Murky World of Golden Visas' (October 2018) <https://www.transparency.org/whatwedo/publication/golden_visas>

assistance phase.[43] There was therefore an increased risk of shifting such responsibility to banks and intermediaries in the context of the Investment Programme in Cyprus, with the proviso that, when it comes to delivering passports and residence permits, anti-money laundering checks cannot simply be outsourced to the private sector. Subsequent allegations of money laundering involving European banks in Cyprus[44] appeared to reinforce this point. Therefore, as part of the efforts to further improve the Cyprus Investment Programme, the Cypriot Government, as of 2018 and in line with forthcoming EU recommendations, decided to limit the scheme to 700 citizenships by investment per year,[45] announced the establishment of a Supervisory and Control Committee and introduced a Code of Conduct for its investor citizenship scheme, for purposes of firm regulatory oversight and transparency.[46]

The Government of the Republic of Cyprus revised and established the latest form of the 'Cyprus Investment Programme' based on section 111A(2) of the Civil Registry Laws in 2019, with the aim of addressing the concerns expressed by the European Commission regarding the Investor Citizenship and Residence Schemes in the EU.[47] Importantly, in July 2019 the Council of Ministers introduced a provision that it would not be possible to grant Cypriot citizenship anymore, through the Programme to persons belonging to high-risk categories such as politically exposed persons.[48]

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[43] https://www.centralbank.cy/en/licensing-supervision/prevention-and-suppression-of-money-laundering-activities-and-financing-of-terrorism-1

[44] Stephanie Kirchgaessner and Sara Farolf. 'FBI investigates Russian-linked Cyprus bank accused of money laundering', The Guardian 24 December 2017 <https://www.theguardian.com/us-news/2017/dec/24/fbi-investigates-russian-linked-cyprus-bank-accused-of-money-laundering>

[45] Decision of the Council of Ministers of 21 May 2018, no. 84.957 <http://www.cm.gov.cy/cm/cm.nsf/All/A2C2A67092274FCAC22583E5002AC961/$file/84.957.pdf?OpenElement> As a result, Cyprus would have the potential to attract €1.4 billion annually, which represents about 7.5 per cent of the country's current Gross Domestic Product (GDP) levels. Calculations of average GDP for the 2008-2017 period are based on the Eurostat database <https://ec.europa.eu/eurostat/databrowser/view/tec00115/default/table?lang=en>; Transparency International (Laure Brillaud and Maíra Martini) and Global Witness, 'European Getaway: Inside the Murky World of Golden Visas' (October 2018) <https://www.transparency.org/whatwedo/publication/golden_visas

[46] Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Investor Citizenship and Residence Schemes in the European Union', COM(2019) 12 final, 19; Decision of the Council of Ministers of 9 January 2018, no. 84.068 <http://www.cm.gov.cy/cm/cm.nsf/All/25479C987315C868C22583E5002AC80B/$file/84.068.pdf?OpenElement> . See http://cipregistry.mof.gov.cy/en/

[47] Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Investor Citizenship and Residence Schemes in the European Union', COM(2019) 12 final; see also EESC Opinion: Investor Citizenship and Residence Schemes in the EU SOC/618, 21 October 2019 https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/investor-citizenship-and-residence-schemes-european-union

[48] Decision of the Council of Ministers of 25 July 2019, no. 87.926 <http://www.cm.gov.cy/cm/cm.nsf/All/64F7738E4301B55BC225845F002FA202/$file/87.926.pdf?OpenElement>

In any case, although "citizenship entitles the EU to review Member State action which may undermine the status of EU citizens, Member States retain a significant margin of action to ensure the EU does not overstep the powers" conferred under Articles 21-25 TFEU, thereby casting doubt over any substantial EU action in this field.[49] This was the first time the Commission had presented a comprehensive report on the Member States' investor citizenship and residence programmes. The report identified certain risks resulting from the schemes such as security, money laundering, tax evasion and corruption, while acknowledging that the lack of transparency in how the schemes operated and a lack of cooperation among Member States further exacerbated these risks.[50] Irrespective of any EU action on that front, which were deemed at that point more politically driven than legally grounded, the Cypriot Government through its Council of Ministers continued to address structural and operational concerns through the taking of regular measures in the form of decisions and regulations, with little regard for substantial rule of law aspects.

According to the latest legal updates, a non-Cypriot citizen could submit an application on the basis of the Cyprus Investment Programme provided they firstly held residence permit for a period of at least six months prior to the application and they contributed at least €75,000 to the Research and Innovation Foundation, and another €75,000 to the Cyprus Land Development Agency to fund affordable housing schemes, totalling to a €150,000 mandatory contribution.[51] The applicant then had to make a 2-million-euro investment in real estate, land development and infrastructure projects or in a purchase or Establishment or Participation in Cypriot Companies or Businesses or in Alternative Investment Funds or Registered Alternative Investment Funds or financial assets of Cypriot companies or Cypriot organisations that are licensed by the Cyprus Securities and Exchange Commission, or a combination of the aforementioned investments.[52] Additionally, the applicant should have made the necessary investments during the 3 years preceding the date of the application and retained the said investments for a period of at least 5 years as from the date of the

[49] Daniel Sarmiento, 'EU Competence and the Attribution of Nationality in Member States' (2019) Investment Migration Working Papers, IMC-RP2019/2, 8.
[50] European Commission - Press release, 'Commission reports on the risks of investor citizenship and residence schemes in the EU and outlines steps to address them' (Brussels 23 January 2019) <http://europa.eu/rapid/press-release_IP-19-526_en.htm>
[51] The obligation to contribute €75,000 to the Research and Innovation Foundation did not apply if the applicant invested at least €75,000 in a certified innovative business or a certified social corporation.; Decision of the Council of Ministers of 13 February 2019, no. 86.879 <http://www.cm.gov.cy/cm/cm.nsf/All/B374F161F3F53A07C22583F300273513/$file/86%20879.pdf?OpenElement>.
[52] Section 111A of the Civil Registry Laws of 2002-2019; N. 9(I)/2019.

naturalisation,[53] allegedly thereby cementing the relationship and providing substance to the investment. Therefore, the authorities arguably maintained a *de minimis* relationship between the economic interests of the foreign investors and the Cypriot economy, potentially creating a renewed 'sufficient' link doctrine to give rise to claims of citizenship through investment.[54]

Moreover, later in 2019, the Council of Ministers decided to authorise the Minister of the Interior to proceed with new due diligence checks for all persons who were naturalised under the Programme before 2018. When due diligence checks were strengthened, the aim was to establish whether persons who have been granted the Cypriot citizenship faced accusations of committing crimes and/or international or European restrictive measures were imposed on them,[55] including sanctions in the context of the Russian war of aggression in Ukraine. Consequently, the Ministry of the Interior would activate a process of revocation of Cypriot citizenship where necessary. On this basis, the government decided to start the process of depriving 26 persons from their citizenship of the Republic of Cyprus, following their naturalisation through the investment scheme.[56] The last development before the programme's abolition concerned the establishment of a three-member Committee with the task of examining whether all cases of naturalisation of investors were approved in accordance with the applicable regulations and criteria at the time of approval of their application, including the 26 cases of revocation mentioned above. Additionally, the Committee would be able to make suggestions and recommendations for further improvement of the scheme.

2.3. The Abolition of the Investment Programme in Cyprus

Despite continued – albeit merely technical as opposed to in-depth efforts – by the Cypriot Government to address concerns around the operation of the Investment Programme through multiple legal amendments, the Investment Programme in Cyprus was eventually abolished in

[53] Decision of the Council of Ministers of 13 February 2019, no. 86.879 <http://www.cm.gov.cy/cm/cm.nsf/All/B374F161F3F53A07C22583F300273513/$file/86%20879.pdf?OpenElement>; Guidelines on the Cyprus Investment Programme from the Ministry of Interior (2019) <http://www.moi.gov.cy/moi/moi.nsf/all/A54823EFD5AA75DDC22583FE00224C1F/$file/CYPRUS%20INVESTEMENT%20PROGRAMME_15.5.2019.pdf?openelement>

[54] Fact finding study - Milieu Law and Policy Consulting, 'Factual Analysis of Member States' Investor Schemes granting citizenship or residence to third-country nationals investing in the said Member State' (Brussels 2018) 16

[55] Decision of the Council of Ministers of 23 October 2019, no. 88.424 <http://www.cm.gov.cy/cm/cm.nsf/All/3821398A29E3566FC22584CF00258E56/$file/88.424.pdf?OpenElement>

[56] Decision of the Council of Ministers of 6 November 2019, no. 88.506 <http://www.cm.gov.cy/cm/cm.nsf/All/007BF7793005E413C22584B3003D5A87/$file/88.506.pdf?OpenElement>

November 2020. This was as a response to the scandals and critics that culminated in early 2020 with intense international media exposure,[57] having both political and legal consequences in Cyprus and showing the gravity of the situation.[58] At the same time the European Commission had launched infringement procedures against Cyprus and Malta in October 2020, by issuing letters of formal notice regarding the investment schemes. The Commission supported that programmes that allow citizenships to be granted without a genuine link with the Member State concerned, in exchange for investments, are not compatible with the principle of sincere cooperation enshrined in Article 4(3) TFEU, while undermining the integrity of the status of EU citizenship. Importantly, the European Commission stressed that the effects of investor citizenship schemes are not only limited to the Member States operating them, but they are also affecting other Member States and the EU as a whole.[59]

The argumentation of the European Commission was in line with previous recommendations made by the European Parliament in March 2019, urging EU countries to terminate the "Golden visas and passports" programmes primarily due to their weak due diligence.[60] More fundamentally, the programmes have been accused of undermining the constitutional and civil principles of citizenship grounded in reciprocity, equality, and solidarity. This argument was based on the rationale that these programmes provide increasing opportunities for specific categories of migrants to move across borders, while at the same time the phenomenon of hardening the borders for refugees and undocumented migrants has become ever more present.[61]

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[57] Louis Karaolis, 'A Golden Passport to Crime and Corruption: European Values on Trial', Oxford Human Rights Hub Blog, 6 September 2021, University of Oxford website https://ohrh.law.ox.ac.uk/a-golden-passport-to-crime-and-corruption-european-values-on-trial/

[58] See press release published by the Law Office of the Republic of Cyprus on 14 July 2022 about the filing of a criminal case at the Nicosia District Court, to be allocated to the Assize Court, as a result of international media exposure and events in the context of naturalisations by exception of foreign investors and businessmen as reported by the Nicolatos [Investigative] Committee.
https://www.law.gov.cy/Law/law.nsf/All/6559AA2E19F0580CC225887F0042D0C9?OpenDocument (in Greek)

[59] https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1925

[60] The recommendations were prepared by the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) of the EU Parliament, which for over a year has investigated, found and recommended the measures that the EU should undertake in order to deal with tax crimes.; https://www.schengenvisainfo.com/news/eu-parliament-urges-the-termination-of-golden-visa-schemes-run-by-some-eu-countries/

[61] Mavelli L., Citizenship for sale and the neoliberal political economy of belonging, International Studies Quarterly, 2018; European Parliament, Citizenship by Investment (CBI) and Residency by Investment (RBI) schemes in the EU PE 627.128 – October 2018.

As a result, in October 2020, following a proposal by the Ministers of Finance and Interior, the Council of Ministers decided to abolish the 'Cyprus Investment Programme' recognising its "chronic weaknesses and the abusive exploitation", and by extension the naturalisation of foreign investors and/or their family members, in accordance with the national law.[62] The decision clarified that the existing applications and/or the new applications that would be submitted until 30.10.2020, would be examined in the context of the latest conditions of the Programme.

Very recently, in a long-awaited judgment, the CJEU sided with the European Commission in ruling that the 2020 investor citizenship scheme of Malta, which amounted to the commercialisation of the grant of the nationality of a Member State and, by extension, of Union citizenship, infringed EU law. As a result, a Member State cannot grant its nationality – and indeed EU citizenship – in exchange for predetermined payments or investments, as this essentially amounts to rendering the acquisition of nationality a mere commercial transaction. According to the Court, such a practice does not make it possible to establish the necessary bond of solidarity and good faith between a Member State and its citizens, or to ensure mutual trust between the Member States, and thus constitutes a breach of the principle of sincere cooperation.[63] The case has been very quickly characterised as a "massive stretch" from where the case law used to stand, as the Court interfered in the domain of nationality in the most far-reaching way to date, yet without substantiated legal reasoning.[64]

It remains however that what is at stake more generally, as shown by the Cyprus example, is not only the acquisition, but also the refusal and/or more importantly, the revocation of citizenship (and hence of EU citizenship too) by exception, in Member States through an investment or other financial scheme deemed in the national public interest, resulting in a potential 'temporary' and/or even 'rented out' citizenship that may be very difficult to reconcile with EU law principles and values. While there should be no doubt that the definition of the conditions for granting and losing nationality remains with the Member States, such a competence must be exercised 'in compliance' with EU law and suffers no exception, as recognised by the Court. As such, it could be said that

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[62] Decision of the Council of Ministers of 13 October 2020, no. 90.177 <http://www.cm.gov.cy/cm/cm.nsf/All/89DB643D9B8609ECC225861100349655/$file/90.177.pdf?OpenElement>

[63] Judgment of 29 April 2025, C-181/23, *Commission v Malta (Citoyenneté par investissement)*, paras 50, 99, 101.

[64] Martijn van den Brink 'Why bother with legal reasoning? The CJEU Judgment in Commission v Malta (Citizenship by Investment)' (2 May 2025) EUI Global Citizenship <https://globalcit.eu/why-bother-with-legal-reasoning-the-cjeu-judgment-in-commission-v-malta-citizenship-by-investment/>

there exists a strong degree of intermingling between the EU and its Member States under the wider spectrum of EU law, of relevance to the essence of the matter (particularly the temporary acquisition and/or the loss of citizenship by exception). In line with the principles of subsidiarity, of primacy of EU law, of harmonious interpretation, of effectiveness of EU law, and the duty of loyalty, one may argue that there are sufficient grounds for EU law to intervene in some aspects of the acquisition and/or revocation of citizenship by exception in an EU Member State granting and/or revoking citizenship by investment or other financial scheme deemed in the national public interest. As it transpires from the Court's case law, there may be specific situations where some of the key aspects and/or implementing measures of a given scheme can be challengeable based on EU law and/or at the EU level, 'in the interest of the Union as a whole'. Such schemes could affect *inter alia* the financial interests of the Union through the abuses and/or misuse of funds and rules relating to money laundering, financing of terrorism, organised crime, corruption, tax, since every national of a Member State is also an EU citizen with rights and entitlements. In such cases, there are checks and balances at the supranational level, to be followed/applied uniformly across the Union and balanced carefully vis-a-vis national security. There probably can be different degrees of interference with EU law, depending on the specific instance, ranging from challenges in the attainment of Union objectives and/or the uniform interpretation of Union principles and values, to the circumvention of EU law principles and/or allegations of violation of specific EU law core provisions at the level of a national scheme (like the Maltese one) or of an individual decision taken with respect to the acquisition and/or loss of citizenship in a Member State.[65] And as Malta prepares to adjust its scheme,[66] the *Commission v Malta (Citizenship by Investment)* case is probably not the end of the matter.

Shortly after the delivery of the *Commission v Malta (Citizenship by Investment)* case in April 2025, the Council and the European Parliament agreed (provisionally) in June 2025 on an update of mechanisms allowing the EU to suspend visa-free travel for third country nationals exempt from applying for a visa when travelling to the Schengen area, in the event that visa-free travel may be

[65] European Commission, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Investor Citizenship and Residence Schemes in the EU COM(2019) 12 final.
[66] https://imglobalwealth.com/articles/malta-moves-to-amend-investment-migration-laws-after-european-judgment/

'abused' or work 'against the interests of the Union'.[67] In particular, a new ground for suspension was introduced relating to the 'operation of an investor citizenship scheme, whereby citizenship is granted to people who have no genuine link to the third country concerned in exchange for pre-determined payments or investments'.[68] This provisional institutional agreement, pending approval, seems to indicate the entrenchment of the EU narrative including outside of the EU and the Schengen area. At this point it is important to note that following the entry of Bulgaria and Romania into the Schengen area in January 2025, the only EU Member State currently outside of the Schengen zone (and authorised to join) at the time of writing,[69] is the Republic of Cyprus, who has nonetheless officially requested to join the Schengen Agreement.[70]

2.4. The public interest justification in exceptional naturalisation: Wealth attraction programme vs Financial crisis mechanism

Some of the common requirements across the EU for TCNs who want to obtain citizenship include previous residence in the country, along with language and cultural tests. For a foreigner to acquire Cypriot citizenship through naturalisation, the applicant must have lived for seven consecutive years legally in the Republic of Cyprus prior to the application. In that sense, granting citizenship through naturalisation, based on a monetary investment alone, without the existence of a 'genuine link' with the concerned Member State and its citizens, departs from the traditional ways of granting nationality. As previously explained, this approach could affect EU citizenship, which is an automatic consequence of holding the nationality of a Member State.[71] As Christian Joppke outlined in detail, where citizenship is legalistic and procedural, the only link one might have with a state is precisely the official decision granting citizenship, since residing in a particular place or speaking a particular language could not be framed as enforceable duties of citizenship outside of atrocious totalitarian regimes.[72] Therefore, it could be imagined that, provided effective checks and balances are in place to combat crime and uphold national security, a limited category of investors with the capacity to assist in the fight against a financial breakdown, may be offered

[67] https://www.consilium.europa.eu/en/press/press-releases/2025/06/17/visa-policy-council-and-european-parliament-secure-a-deal-on-rules-about-the-suspension-of-visa-free-travel-for-third-countries/
[68] Ibid.
[69] https://home-affairs.ec.europa.eu/news/bulgaria-and-romania-join-schengen-area-2025-01-03_en
[70] https://schengenvisainfo.com/news/cyprus-will-join-schengen-in-2026-president-christodoulides-says/
[71] Article 20 TFEU
[72] Christian Joppke, The Inevitable Lightening of Citizenship (2010) 1 European Journal of Sociology 9-32

citizenship on grounds of emergency relief,[73] especially considering that the Cyprus Investment Programme was, in loose terms, a financial crisis mitigation mechanism after 2013.

Although the Cyprus Investment Programme was not formally established as a crisis assistance mechanism, its structure, objectives, and underlying rationale over the years appear to mirror, by analogy, those of other financial crisis response tools — such as the European Stability Mechanism (ESM), which was founded under Article 136(3) TFEU. Both the investment programme and the ESM aimed at mitigating the financial and economic consequences of the crisis, including liquidity support, bolstering of the real economy and promotion of economic development in different fields. Moreover, both mechanisms could have conducted to the imposition of restrictions on fundamental rights as well as freedoms, EU principles and/or values, potentially 'objectively justifiable' as serving the general public interest of economic stability, under certain conditions.

The concept of public interest is intertwined with the term public policy, referring to the well-being of society. Both terms are very much in use, although their application and their perceived meaning are not entirely unambiguous.[74] Public interest, goes beyond the interest of an individual citizen towards the wider "good for society". The term's meaning changes depending on the period and place of its usage, which is why interpretative leeway is granted to each enforcer, to establish whether a given case falls within the reach of the term.[75]

Likewise, the general public interest justification seems to have been used differently throughout the existence of the citizenship-by-investment scheme in Cyprus, giving it different weight and substance depending on the period. More specifically, based on Schedule 3 para. 2(f) of the Civil Registry Law, during the establishment of the scheme in 2007, citizenship could be granted in "very exceptional cases of high-level services to the Republic for reasons of public interest". Three Council decisions were adopted using this route including the initial Decision 65.824 establishing the scheme in 2007, Decision 72.676 in 2011 and Decision 74.912 in 2013, few weeks after the haircut took place. The general public interest justification was not included in the main body of the law, nor the "reason of public interest", namely the investment scheme. On the contrary, the

[73] Rainer Bauböck, 'Summary: Global, European and National Questions about the Price of Citizenship' in Ayelet Shachar and Rainer Bauböck (eds), 'Should citizenship be for sale?' (2014) EUI Working Paper RSCAS 2014/01.
[74] Alexander J. Bělohlávek, 'Public Policy and Public Interest in International Law and EU Law' in Pavel Šturma and Peter Mišúr (eds), *Czech Yearbook of International Law* (Czech Society of International Law 2012) 117-147
[75] Ibid.

Council of Ministers had the discretionary power to decide upon the conditions of the 'very exceptional' circumstances to grant citizenship. On 30 April 2013, a legal amendment was adopted by the House of Representatives which introduced the general public interest ground in the main legislation, giving it more weight and value. For the first time, the substance of investment migration was referred to in primary law in Cyprus. Under the new Article 111A, a series of Decisions were adopted by the Council of Ministers setting out the detailed conditions of the investment scheme, including Decisions 75.148 of 2013, 76.668 of 2014, 81.292 of 2016, 84.957 of 2018 and 86.879 of 2019. It therefore appears that since April 2013, more weight is given to the general public interest ground as well as to the substance of the citizenship granted.

The period when the general public interest has been given more value and significance seems to correspond to the point where the Investment programme is arguably changing character, from a mere wealth attraction tool, rarely used, to a financial crisis resolution mechanism, whose use is on the rise. It therefore transpires that the more the criteria are relaxed or generalised — and the programme is framed as part of a financial crisis response — the greater the emphasis placed on the general public interest as a justification for its operation. The only exception to this observation is Decision 74.912, which may be the first decision expressly providing a response to the detrimental 'haircut' of the deposits with strikingly lowered criteria but was adopted in accordance with Schedule 3 para. 2(f) of the Civil Registry Law. This exception can be attributed to the fact that Decision 74.912 was urgently adopted, two weeks after the haircut, as an immediate/emergency response to the loss of trust by investors, while a legal amendment voted by the House of Representatives would have been more democratic but time-consuming. Two weeks after this decision, i.e. one month following the haircut, the legal amendment introducing the general public interest equation was adopted, through which all the future decisions were adopted.

In view of the different routes to naturalisation available to investors as analysed above and the legal position of the general public interest ground, it can be argued that the general public interest was increasingly associated with the economic interests of the Republic of Cyprus in the context of the financial difficulties faced. This approach would appear to promote however a rather narrow understanding of the public interest itself, with little consideration for the promotion of national

security and the countering of economic crime. Throughout the financial crisis period,[76] the economic interests of the Member States were put into the balance of the general public interest, while governments tended to eventually equate the general public interest with the interests of the financial sector such as the recapitalisation of the banking system.[77] At the same time the CJEU is increasingly accepting the financial, currency, or economic policy of the community or of a member state as a general public interest concern.[78] It would thus appear that the general public interest at the national and European level could be aligned during the financial crisis period, allowing the economic interest to prevail, allegedly in the interest of the economic and financial situation of the Member States and/or a certain vision of the Union as a whole, and to the detriment of other fundamental considerations such as the rule of law, security and democracy.

3. 'Cyprus' Investment Programme': Good administration, due diligence and proportionality

The CJEU has repeatedly held that while it is for each Member State to lay down the conditions for the acquisition and loss of nationality, they must do so 'having due regard to' Union law.[79] That formula has now been replaced with 'in compliance with' EU law in the recent *Commission v Malta (Citizenship by investment)* case. Criticisms of the citizenship-by-investment schemes, at a more fundamental level, refer to their morality or ethics and their compatibility with EU rules and good administration principles (including transparency, proportionality and fairness). Such criticisms also express structural concerns including those to do with anti-money laundering and tax evasion.[80] The European Parliament also outlined that that the "outright sale of EU citizenship undermines the mutual trust upon which the Union is built" and the "very concept of European

[76] The financial crisis in Cyprus primarily unfolded between 2012 and 2013, with its roots tracing back a few years earlier since 2011 when Cyprus' economy began to show serious signs of distress.
[77] Ben Thirkell-White, 'Dealing with the banks: populism and the public interest in the global financial crisis' (2009) 85 International Affairs 689-711
[78] Alexander J. Bělohlávek, Public Policy and Public Interest in International Law and EU Law (2012) Czech Yearbook of International Law: Public Policy and Ordre Public, 117-147; Duncan Lindo and Aline Fares, 'Representation of the public interest in banking: A report with funding from the Hans-Böckler-Stiftung' (2016) Finance Watch Report <https://www.finance-watch.org/wp-content/uploads/2018/08/Representation-of-the-Public-Interest-in-Banking-A-Finance-Watch-Report-2016.pdf>
[79] Judgment of 7 July 1992, *Micheletti and Others v Delegación del Gobierno en Cantabria*, C-369/90, EU:C:1992:295, paragraph 10; Judgment of 11 November 1999, Belgian State v Mesbah, C-179/98, EU:C:1999:549, paragraph 29; Judgment of 20 February 2001, Kaur, C-192/99, EU:C:2001:106, paragraph 19; Judgment of 19 October 2004, Zhu and Chen, C-200/02, EU:C:2004:639, paragraph 37; Judgment of 2 March 2010, Rottmann, C-135/08, EU:C:2010:104, paragraph 39.
[80] Transparency International (Laure Brillaud and Maíra Martini) and Global Witness, 'European Getaway: Inside the Murky World of Golden Visas' (October 2018) <https://www.transparency.org/whatwedo/publication/golden_visas>

citizenship", while recognising however that "matters of residency and citizenship are the competence of the Member States", and calling on the Member States "to be careful when exercising their competences in this area and to take possible side-effects into account". [81] At the same time, the Commission's latest report identified certain grey areas in the application of anti-money laundering legislation and transparency requirements, which are nationally regulated while agencies operating these schemes do not necessarily fall under the EU's anti-money laundering requirements.[82] In an effort to exercise their competence 'carefully', build trust and take into consideration 'possible side-effects' at the EU level, Member States like Cyprus could consider whether these contradictions can be reconciled and objectively justified on the ground of financial crisis mitigation. To that end, the principles of due process and good administration and proportionality are analysed as arguably the most relevant principles/values in the public sphere at the national and/or EU level.

3.1. Good administration and due process

The Commission has made clear that both citizenship and residence schemes have come under close public scrutiny following allegations of related abuse and corruption as well as significant concerns around the lack of transparency and governance of the schemes.[83] This has been the case for Cyprus as well. Following the line of arguments discussed above, one could argue that during the financial crisis, the Eurogroup allegedly adopted formal decisions, under the umbrella of the ESM, but without being bound by EU regulations on transparency.[84] However, due process and good administration principles should not be restricted or limited on the ground of achieving a legitimate aim in the general public interest.

[81] European Parliament resolution of 16 January 2014 on EU citizenship for sale (2013/2995(RSP)), paras G and M.
[82] European Commission - Press release, 'Commission reports on the risks of investor citizenship and residence schemes in the EU and outlines steps to address them' (Brussels 23 January 2019) <http://europa.eu/rapid/press-release_IP-19-526_en.htm>; It is however worth noting that the Investment Programme in Cyprus has not been specifically raised by EU institutions until the 2019 Commission's Report, whereas the compatibility of the Maltese citizenship-by-investment scheme with EU rules was raised since 2013. See European Parliament resolution of 16 January 2014 on EU citizenship for sale (2013/2995(RSP)); European Parliament Strasbourg plenary session, 'EU passports for sale: MEPs want more transparency and controls', 28-31 May 2018.
[83] Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Investor Citizenship and Residence Schemes in the European Union', COM(2019) 12 final, 10
[84] https://transparency.eu/eurogroup/

Legal and institutional transparency is indispensable for the exercise of the rule of law and can be regarded as a prerequisite for establishing an accountable legal system.[85] Transparency can be understood in multiple ways, including as a structural principle of the legal system and as a requirement for minimum openness in processes—such as access to documents, publication of official measures, and procedural clarity.[86] Within the framework of access to documents and freedom of information, transparency is enshrined in Article 15 TFEU which expressly requires *inter alia* that the proceedings of all bodies be transparent, for example, by publication of "documents relating to the legislative procedures".[87] Also, under Article 297 TFEU, the European Parliament has the duty to publish all legislative measures and decisions. In fact, Hungary was offering permanent residence to investors from 2013 to 2017 that would have qualified as a residence-by-investment scheme, which was however suspended in 2017 due to controversies over its transparency and lack of due diligence.[88] Non-transparent regimes and regimes with no effective exchange of information between their jurisdictions, enhance conditions for money laundering and tax transparency issues, create strong public and political distrust,[89] and affect the mutual trust between Member States and the principle of sincere cooperation.[90] An evaluation report by the Irish authorities stressed that 'due to the significant volatility caused by recent international events, there is a necessity that this programme is formally evaluated on an annual basis'.[91] A high level of transparency, including better data collection, is not only critical to forecast

[85] Herwig C.H. Hofmann, 'General Principles of EU law and EU administrative law' in Catherine Barnard and Steve Peers (eds.), *European Union Law* (OUP 2014) 15

[86] Wim Voermans. Hans-Martien ten Napel and Reijer Passchier, 'Combining efficiency and transparency in legislative processes' (2016) 3 The Theory and Practice of Legislation 279-294

[87] Case C-345/06 *Heinrich* [2009] ECR I-1659, paras. 41-47 and 64-66; Access to documents is also restated in terms of an individual right in Article 42 CFR. Details are included in Regulation 1049/2001 on public access to documents.

[88] Maíra Martini, 'Hungary's controversial Golden Visa scheme: ins and outs' (March 2018) Transparency International <https://voices.transparency.org/hungarys-controversial-golden-visa-scheme-ins-and-outs-daf8961df85d>; Reports have alleged that the Committee of the Hungarian Parliament's work was hindered by a non-transparent and unaccountable process.; Statement by the Investment Migration Council <https://investmentmigration.org/news-section/whose-interest-shadows-hungarian-residency-bond-program/>

[89] Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs' (2015) IMF Working Paper WP/15/93 <https://www.imf.org/external/pubs/ft/wp/2015/wp1593.pdf>

[90] Council conclusions on the EU Citizenship Report 2017 (adoption 11 May 2017) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2014-0015+0+DOC+XML+V0//EN>

[91] Irish Government Economic & Evaluation Service, Interim evaluation of the IIP, 2017.

vulnerabilities, but would also enhance the programme's reputation sustainability over the long-term.[92]

In order to tackle these concerns and comply with the EU standards of transparency, Cyprus adopted new rules, based on which applicants were subjected to a process of enhanced due diligence. In particular, on 22 May 2018, Cyprus announced the establishment of a Supervisory and Control Committee composed of Officers of the Ministry of Interior, the Ministry of Finance and the Cyprus Investment Promotion Agency.[93] In Cyprus, non-public bodies were involved in the proceedings (e.g. developers' companies, law firms or accountancy firms) by acting as facilitators, promoting their clients' interests and providing services to prepare the application for the residence permit. Their duties were restricted to the submission of the application and to the provision of consultancy services. Since 2018, these non-public bodies were included in an Investor Citizenship Scheme Providers Registry, indicating the criteria they must satisfy while a code of conduct for the service providers was introduced.[94] The Council of Ministers also introduced an obligation on the applicant to submit a signed declaration, as well as an obligation on the registered service provider to confirm the application of good service practice, and to provide full information with regard to the procedures of the scheme so that the application could be submitted through a registered service provider.[95] International agencies specialised in anti-money laundering were also deployed to examine requests.[96] Subsequently, stricter eligibility requirements were announced as applicants would undergo a stricter due diligence test which would be conducted by a specialised external firm. Thus, apart from the origin of proceeds checks currently being conducted by the banks and the Cyprus authorities, other controls would be done

[92] Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs' (2015) IMF Working Paper WP/15/93, 24 <https://www.imf.org/external/pubs/ft/wp/2015/wp1593.pdf>; European Parliament, Citizenship by Investment (CBI) and Residency by Investment (RBI) schemes in the EU PE 627.128 – October 2018, 51

[93] Commission Staff Working Document, Accompanying the document: Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Investor Citizenship and Residence Schemes in the European Union', SWD(2019) 5 final, 5

[94] Decision of the Council of Ministers of 9 January 2018, no. 84.068 <http://www.cm.gov.cy/cm/cm.nsf/All/25479C987315C868C22583E5002AC80B/$file/84.068.pdf?OpenElement> ; see also http://cipregistry.mof.gov.cy/en/

[95] Fact finding study - Milieu Law and Policy Consulting, 'Factual Analysis of Member States' Investor Schemes granting citizenship or residence to third-country nationals investing in the said Member State' (Brussels 2018) 24

[96] https://www.theguardian.com/world/2018/may/23/cyprus-to-step-up-security-checks-in-cash-for-citizenship-scheme

by this specialised firm which would be engaged by the Cypriot Government. Applicants were also required to hold a Schengen visa for at least 90 days prior to submitting a citizenship application,[97] and those individuals whose request for a visa was rejected by any other EU state would be ineligible to submit a citizenship application.[98] In addition, applicants who were already refused citizenship by any other Member state of the EU would not be entitled to apply.[99]

Arguably, the rationale behind the construction of the Cyprus Investment Programme, as it stood, even if it constituted a financial crisis mitigation mechanism within the sphere of the general public interest, should not have justified any limitations imposed on the principles of good administration or transparency. Transparency and good administration not only provide compliance with EU law but also help mitigate as far as possible any risk of abuse and corruption at all levels. Nevertheless, the decision-making authority in Cyprus is the Ministry of Interior, although the competent authority deciding to waive the naturalisation conditions is the Council of Ministers, the latter of which has wide executive powers under Article 54 of the Constitution and may take decisions at its discretion. Applications were processed by the Director of the Civil Registry and Migration Department within the Ministry of the Interior and the Director General of the Ministry of Interior, together with the Ministry of Finance. The decision-making process was confidential and not subject to the principles of good administration, in particular that of due reasoning, thereby indicating a lack of transparency and accountability in the process. In the case of the citizenship investment programme, applications were kept secret allegedly to 'ease relations' with the EU on this matter and/or to preserve personal data of applicants.

Since June 2018, in an effort towards accountability which was limited to the Council of Ministers, there was a requirement on the Ministry of Finance to study and assess the application of the Cyprus Investment Programme and its effects on the economy.[100] The study mainly focused on the impact of the Programme on real estate/construction and the growth of the country's GDP. It also examined the exposure and risks for the domestic banking sector in the financing of

[97] As Cyprus is a non-Schengen State, TCNs who hold a residency permit in Cyprus still need to apply for a Schengen visa if they are not citizens of a visa-exempted country.

[98] Decision of the Council of Ministers of 13 February 2019, no. 86.879 <http://www.cm.gov.cy/cm/cm.nsf/All/B374F161F3F53A07C22583F300273513/$file/86%20879.pdf?OpenElement>;

[99] https://www.cccyprus.com/news/cyprus-investment-programme-amendments-2019

[100] Decision of the Council of Ministers of 21 May 2018, no. 84.957 <http://www.cm.gov.cy/cm/cm.nsf/All/A2C2A67092274FCAC22583E5002AC961/$file/84.957.pdf?OpenElement>

investments as well as the programme's effects on the stabilisation of the economy and the reduction in unemployment.[101] *Prima facie*, the conduct of a detailed economic analysis could assist the Council of Ministers to manage the naturalisation applications more efficiently and exploit the benefits of the Programme in a responsible manner.

If the investment programme would continue its operations, full compliance with international and European standards would require Cyprus to consider establishing further monitoring mechanisms, reporting obligations and accountability processes. Although the Council of Ministers was under an obligation to inform the House of Representatives before adopting a decision to grant citizenship,[102] no publicly available Parliamentary Report was produced to monitor the scheme.

3.2. Proportionality

Limitations and/or restrictions to EU rules can only be objectively justified on the grounds of general public interest, including under emergency relief, if they are proportionate. The CJEU has developed the review of compliance with the principle of proportionality as a three-step test. Firstly "the principle of proportionality requires that measures adopted by EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question".[103] On the next level, "when there is a choice between several appropriate measures, recourse must be had to the least onerous".[104] Thirdly, "the disadvantages caused must not be disproportionate to the aims pursued" namely, there must be an overall reasonable ratio between means and outcome.[105]

In Cyprus, the principle of proportionality constitutes the most notable legal principle emanating from the Constitution. The principle already had a constitutional position as an unwritten principle of law and has been referred to by the Supreme Court in the landmark judgment of *Ibrahim*[106] as

[101] Υπουργείο Οικονομικών, 'Μελέτη για το Κυπριακό Επενδυτικό Πρόγραμμα: Επίδραση στην Οικονομία' (February 2019) <http://mof.gov.cy/assets/modules/wnp/articles/201902/461/docs/study_cip.pdf> (Translated by the authors)
[102] Article 111A(3) of the Civil Registry Law
[103] Case C-343/09 Afton Chemical [2010] ECR I-7027, para 45, and Joined Cases C-581/10 and C-629/10 Nelson and Others [2012], para 71; Takis Tridimas, *General Principles of EU Law* (OUP 2007, 3rd edn) 89
[104] ibid; The notion of 'least onerous' therefore requires a clear definition of the rights in question.
[105] Herwig C.H. Hofmann, 'General Principles of EU law and EU administrative law' in Catherine Barnard and Steve Peers (eds.), *European Union Law* (OUP 2014); Takis Tridimas, *General Principles of EU Law* (OUP 2007, 3rd edn) 90-160
[106] *The Attorney-General of the Republic v. Mustafa Ibrahim* [1964] CLR 195

an essential criterion to be met so as for the constitutional doctrine of necessity to be applicable. It was then given an elevated status through the codification of the general principles of administrative law in Art. 52 of Law 158(I)/99.[107] Judicially, the Cypriot Courts examine the principle of proportionality within the framework of the Constitutional provisions,[108] while references to the principle of proportionality under Article 3 TEU and under the ECHR are made, aligning the national principle with European standards.[109] Therefore, its application in practice depends on the circumstances of the case under examination. More recently, the Supreme Court of Cyprus made clear that "the principle of proportionality, as used in Cyprus, has been established by the case law of the ECtHR *inter alia*,[110] in the context of examining individual appeals for violation of specific Convention provisions".[111] Consequently, in order for the restrictions allegedly imposed by the Cyprus Investment Programme to be objectively justified as pursuing a legitimate aim in the general public interest, the proportionality test must have been satisfied on the national and European levels, in accordance with the three-step test cited above and the judicial application of the proportionality test in the Cypriot Courts.[112]

In a similar manner, the proportionality test was applied during the financial crisis for justifying the austerity measures imposed. For instance, in *Koufaki and ADEDY*, the ECtHR declared a case challenging the legality of a series of austerity measures adopted by Greece, including the reduction of salaries and pensions of civil servants,[113] as inadmissible and manifestly ill-founded, ruling that the right to property under the Convention, does not recognise a right to a specific amount of pension or remuneration. In doing so, the ECtHR applied the proportionality test, considering that the measures adopted met a fair balance between the need to restrain the crisis and the protection of human rights.[114] In particular, the reduction of the first applicant's salary was

[107] Constantinos Kombos and Stephanie Laulhe Shaelou, 'The Cypriot Constitution Under the Impact of EU Law: An Asymmetrical Formation' in Anneli Albi and Samo Bardutzky (eds), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law: National Reports* (2019 Asser Press) 1373-1432
[108] Civil Application No. 20/2017, 9 March 2017 examined the principle of proportionality within the framework of Article 17 of the Constitution (Right to Privacy of Communication)
[109] *Giorgos Charalambous and others*, Joined Cases n° 1480/2011 – 1625/2011, 11 June 2014 (Translated from Greek by the authors).
[110] Clarify that Cyprus became a Member State of the Council of Europe in 1961.
[111] Supreme Court of Cyprus, Civil Application 75/2019, 24 April 2019, (translated by the authors)
[112] See Stephanie Laulhé Shaelou and Phoebus Athanassiou, 'Cyprus Report on Emergency Law' in Krzysztof Pacuła (ed.) EU Emergency Law. XXXI FIDE Congress | Katowice 2025 Congress Publications Vol. 1 (FIDE XXXI Congress Proceedings, 2025) 417-432 DOI: https://doi.org/10.31261/PN.4294
[113] *Koufaki and Adedy v. Greece* App nos 57665/12 and 57657/12 (ECtHR, 7 May 2013).
[114] ibid para 37.

not such that it risked exposing her to subsistence difficulties incompatible with Article 1 of Protocol No. 1.[115]

The ECtHR once more followed the same approach in September 2015, unanimously declaring the application of *Da Silva Carvalho Rico v. Portugal* inadmissible. That case concerned the reductions of retirement pensions following the austerity measures applied in Portugal.[116] Given the overall public interests at stake in Portugal and the limited as well as temporary nature of the measures applied to the applicant's pension, the Court indicated that the reduction was a proportionate restriction to the applicant's right to the protection of property with the legitimate aim of achieving medium-term economic recovery.[117] Interestingly enough, the ECtHR also made reference to the margin of appreciation allowed to the Member States of the Council of Europe, when it comes to general measures of economic and social policy. More particularly, the ECtHR stated that "since the legislature remained within the limits of its margin of appreciation, it is not for the Court to decide whether better alternative measures could have been envisaged in order to reduce the State budget deficit".[118]

In an attempt to address the proportionality test within the realm of the Cyprus Investment Programme, the Government had imposed some limits on the numbers of applicants who can benefit from their investor citizenship schemes as well as adopted a code of conduct. As of 2018, the Cypriot Government decided to cap the number of successful applications to 700 per year,[119] sending the message that 'this is not an industry'.[120] Even before the amendment, the Government seemed to have kept the successful applications to a minimum, allegedly balancing the interests of the Cypriot economy on the one hand and the preservation of equality and non-discrimination on the other. Overall, 25810 naturalisations were processed in Cyprus between 2008 and 2016, while 3336 were processed through the Investment

[115] The reduction that occurred for the first applicant's salary was around EUR 550, from EUR 2,435.83 to EUR 1,885.79.
[116] *Da Silva Carvalho Rico v. Portugal* App no 13341/14 (ECtHR, 24 September 2015).
[117] Dalila Ghailani, 'Violations of fundamental rights: collateral damage of the Eurozone crisis?' in Bart Vanhercke, David Natali and Denis Bouget (eds), *Social policy in the European Union: state of play 2016* (ETUI 2017) 22.
[118] *Da Silva Carvalho Rico v. Portugal* App no 13341/14 (ECtHR, 24 September 2015) para 45.
[119] Decision of the Council of Ministers of 21 May 2018, no. 84.957 <http://www.cm.gov.cy/cm/cm.nsf/All/A2C2A67092274FCAC22583E5002AC961/$file/84.957.pdf?OpenElement>
[120] https://www.theguardian.com/world/2018/may/23/cyprus-to-step-up-security-checks-in-cash-for-citizenship-scheme

Programme between 2008 and 2017.[121] As the reference periods are different, it is not possible to draw a definite conclusion, but it can be assumed that around 10% of new Cyprus citizens acquired their nationality through an investment scheme.[122] A call for more publicly accessible information and statistics was and is still therefore warranted.

Despite the legislative attempts made by the Government to limit the programme's restrictions to the minimum necessary to achieve the legitimate aim of medium-term economic recovery and stability, no reference had ever been made to the duration of the programme. This remained the case up until its abolition. In fact, despite its initial temporary nature, the Cypriot authorities had indicated that they wanted to maintain the programme in the future beyond crisis times.[123] It is worth noting that in both the *Da Conceição Mateus and others* and *Da Silva Carvalho Rico v. Portugal* judgments, the ECtHR based its rulings on the existence of proportionality and fair balance, partly because of the temporary effects of the reductions challenged, which arguably outweigh their adverse effects. Therefore, the question that follows is whether the lack of indication on the programme's duration could have rendered it disproportionate. Contrary to the *Da Conceição Mateus and others* and *Da Silva Carvalho Rico v. Portugal* judgments, the Court in the case of *ADEDY* declared the measures under examination justified and proportionate, despite their permanent effects that would be capable of jeopardising the proportionality and fair balance.

Thus, the duration of the disputed measure is not necessarily a decisive factor on its proportionality but only an initial indication of it. The balancing exercise involves a variety of factors, such as the degree of economic contribution made through the scheme and/or the social affairs at the time and/or the immigration and refugees' schemes in place. As a result, if a fair balance was kept in the usage of the Cyprus Investment Scheme, including its successful applications, the interests provided for the public and the society, and the fairness of the immigration and refugees' schemes, the proportionality test would be more likely to be satisfied, even if the programme was for the long-term.

[121] Amandine Scherrer and Elodie Thirion, 'Citizenship by Investment (CBI) and Residency by Investment (RBI) schemes in the EU: State of play, issues and impacts' (October 2018) European Parliamentary Research Service, PE 627.128, 18
[122] Ibid.
[123] http://www.reuters.com/article/us-cyprus-president-russia-idUSBRE93D09720130414

4. Concluding remarks

The citizenship-by-investment programme in Cyprus, had been modified several times, adjusting to circumstances, including in times of crisis. As shown in this article, since 2013 until its abolition, the Cyprus Investment Programme can be perceived to a great extent as another mechanism mitigating the consequences of the financial crisis. The rationale behind the construction of the Cyprus Investment Programme is of essence to assessing the extent to which the scheme pursued the legitimate aim of enhancing the economy and achieving financial stability in the long-term in the general public interest. Equating the several mechanisms used during the financial crisis or at least treating them by analogy since they appear to share common rationale allegedly in the name of the general public interest, leaves little room for doubting the fact that such restrictions can be objectively justifiable.

The rationale behind the construction of any scheme is of essence in its justification and legitimacy. On the other hand, the lack of clear rationale may lead to weak justification and legitimacy of the scheme. This is even more the case following the judgment of *Commission v Malta (Citizenship by investment)* where the Court attempted to put an end to citizenship by investment schemes, by holding that Malta's citizenship-by-investment scheme "amounts to the commercialisation of the granting of the status of national of a Member State and, by extension, Union citizenship",[124] and is thereby incompatible with the very nature of Union citizenship, as well as with the principle of sincere cooperation enshrined in Article 4(3) TEU. The Court in its judgment has not discussed the possible rationale behind the alleged 'commercialisation of citizenship' including the possibility of it being mirroring a financial crisis mechanism. Although challenging, in the case of Cyprus, it could appear that the alleged objective of the renewed 2013 programme, namely the mitigation of the financial crisis consequences, could have contributed to the legitimatisation of restrictions and limitations to fundamental principles of EU law provided these were objectively justifiable. Subject to the formulation of a stronger and clearer rationale, the problem seems to lie elsewhere, in the little room left for the Rule of Law in the scheme's construction and operation in times of crisis, that eventually brought it to an end.

[124] Judgment of 29 April 2025, C-181/23, *Commission v Malta (Citoyenneté par investissement)*, para 100.

The Rule of Law and the EU Enlargement: The Gap between Legal Doctrine and Accession Practice

Youri Devuyst*

Introduction

According to Professor Koen Lenaerts, the current President of the Court of Justice of the European Union (EU), "'integration through the rule of law' defines what the European Union stands for".[1] The rule of law, he argues, "is the only reliable bulwark against the arbitrary exercise of power".[2] To bring the rule of law into practice, Lenaerts frequently refers to the merits of "a government of laws and not men", tracing this expression back to John Adams (1735-1826), the American Founding Father who served as the second President of the United States.[3] Adams explicitly included his ideal of "a government of laws, and not of men" in the Massachusetts Constitution of 1780.[4] He considered this to be "the very definition of a Republic", i.e. "that form of government, which is best contrived to secure an impartial and exact execution of the laws", with a "judicial power … distinct from both the legislative and executive", and a "representative assembly" in charge of the making of the laws.[5] Adams' vocabulary was borrowed from the English republican

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[1] Koen Lenaerts, "New Horizons for the Rule of Law Within the EU", *German Law Journal*, Vol. 21, No. 1, 2020, p. 29. See also Koen Lenaerts, "On Checks and Balances: The Rule of Law Within the EU", *Columbia Journal of European Law*, Vol. 29, No. 2, 2023, p. 63 ("If the EU is to operate as an area without internal frontiers, where there is liberty, democracy and justice for all, integration through the rule of law is the only way forward").

[2] Koen Lenaerts, "Overview of the Case Law of the Court of Justice of the European Union with respect to the Rule of Law", in Paul Craig et al., eds., *Rule of Law in Europe: Perspectives from Practitioners and Academics* (Brussels: European Judicial Training Network, 2019), p. 71.

[3] *Id*. See also Koen Lenaerts, "On Values and Structures: The Rule of Law and the Court of Justice of the European Union", in Anna Södersten & Edwin Hercock, eds., *The Rule of Law in the EU: Crisis and Solutions* (Stockholm: Swedish Institute for European Policy Studies, 2023), p. 12.

[4] Constitution of Massachusetts of 1780, Part the First, Art. XXX, https://www.nhinet.org/ma-1780-mob.htm. This article continues to be part of the currently applicable Massachusetts Constitution. See also Liam Edward Cronan, "The Massachusetts Origins of 'A Government of Laws and Not of Men': The Separation of Powers Debate, Article 30, and the K.J. v. Superintendent of Bridgewater State Hospital", *Boston Bar Journal*, Vol. 67, No. 2, 2023, https://bostonbar.org/journal/the-massachusetts-origins-of-a-government-of-laws-and-not-of-men-the-separation-of-powers-debate-article-30-and-k-j-v-superintendent-of-bridgewater-state-hospital/.

[5] John Adams, "Thoughts on Government, Apr. 1776", in Philip B. Kurland & Ralph Lerner, eds., *The Founders' Constitution* (Chicago: University of Chicago Press, 1986), Vol. 1, chapter 4, doc. 5, https://press-pubs.uchicago.edu/founders/documents/v1ch4s5.html.

theorist James Harrington (1611-1677).[6] In his utopian *Commonwealth of Oceana*, Harrington opposed an "empire of laws and not of men" (whereby laws are made by the people in the interest of the whole and the magistrate "is answerable unto the people that his execution be according unto the law") to an "empire of men and not of laws" (whereby one or a few men make laws and implement them according to their own interests).[7] Harrington's Commonwealth was intended as a model of the former. His inspiration came from the Greek philosopher Aristotle (384-322 BC) and the Roman historian Livy (Titus Livius, 59 BC-AD 17).[8] Discussing relations between kings and law, Aristotle raised the explicit question "whether it is more expedient to be ruled by the best man or by the best law?[9] To avoid the "wild beast", which he associated with the rule by humans, including absolute kings, and foster rationality and wisdom, he came to the conclusion "that it is preferable that law should rule rather than any single one of the citizens".[10] Aristotle's theory seemed vindicated by Livy's *History of Rome*, which recalled the liberty enjoyed by the Roman citizens in the early republic when "the rule of laws was superior to that of men" ("*imperia legum potentiora fuerunt quam hominum"*).[11] Identified as a key component of a "good polity" more than 2300 years ago, and still considered as one of the ideals dominating "liberal political morality" today, it is logical that the rule of law features prominently in the list of values on which the EU is founded, as currently formulated in Article 2 of the Treaty on European Union (TEU).[12]

The degree to which the EU enlargement process can be seen as upholding the long-standing ideal of the rule of law (or of a "government of laws and not of men") is the central subject of this

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[6] Richard Samuelson, "A Government of Laws, Not of Men", *Claremont Review of Books*, Fall 2017, https://claremontreviewofbooks.com/a-government-of-laws-not-of-men/.
[7] James Harrington, *The Commonwealth of Oceana and A System of Politics,* J.G.A. Pocock, ed. (Cambridge: Cambridge University Press, 1992), pp. 8-9, 19-21, 25.
[8] *Id.*, pp. 8, 20.
[9] Aristotle, *The Politics*, T.A. Sinclair & Trevor J. Saunders, transl. (London: Penguin Classics, 1992), section 1286a7.
[10] *Id.*, section 1287a10. See also Iain Stewart, "Men of Class: Aristotle, Montesquieu and Dicey on 'Separation of Powers' and 'the Rule of Law'", *Maquarie Law Journal*, Vol. 4, 2004, pp. 193-194 (interpreting Aristotle's doctrine as that of a "government of laws", or the "subjection of rulers to law"); Steve Wexler & Andrew Irvine, "Aristolte on the Rule of Law", *Polis: The Journal for Ancient Greek and Roman Political Thought*, Vol. 23, No. 1, 2006, pp. 116-138 (providing a subtle analysis of Aristotle's thinking from the perspective of the constant tensions between the "rule of law" and the "rule of men"); Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004), pp. 7-14 (putting Aristotle's views in the broader context of Greek thought).
[11] Livy, *The History of Rome*, B.O. Foster, transl. (Cambridge, Mass.: Harvard University Press, 1919), book II, chapter 1. See also the chapter on "Livy's Empire of Laws" in M. N. S. Sellers, *American Republicanism: Roman Ideology in the United States Constitution* (New York: New York University Press, 1994), pp 69-76.
[12] Jeremy Waldron, "The Rule of Law", in Edward N. Zalta & Uri Nodelman, eds., *Stanford Encyclopedia of Philosophy* (Stanford: Metaphysics Research Lab, Department of Philosophy, Stanford University, 2023), section 1, https://plato.stanford.edu/entries/rule-of-law/ (referring to the rule of law as "one ideal in an array of values that dominates liberal political morality").

paper.[13] For this purpose, the first three sections zoom in on the EU's legal doctrine on the rule of law. The last three sections assess the EU's political practice on the rule of law in the specific accession context. The analysis shows a considerable gap between doctrine and practice.

Setting the scene, section 1 recalls that the rule of law was not explicitly included in the treaties establishing the European Communities of the 1950s and briefly reviews the influence of enlargement pressures on the gradual creation and consolidation of the EU's framework of EU founding values, including the rule of law. Since EU primary law provides only scattered hints and no comprehensive definition of the rule of law, section 2 reviews the common understanding of concept as established in the case-law of the Court of Justice and in EU secondary law. This is followed in section 3 by a specific review of the Court's well-established legal doctrine on the connections between the EU's founding values, including the rule of law, and accession of new Member States.

Section 4 focuses on the initiatives by the EU's political institutions to put the rule of law concept centre stage during the accession process, notably after the revised enlargement methodology of 2020. Section 5 turns to the EU's practice of considering the rule of law situation in applicant countries when deciding to grant candidate country status. It illustrates how political pressures and deadlines have been seen to take the upperhand over a purely merit-based approach. Finally, section 6 highlights key methodological shortcomings regarding the assessment and enforcement of the founding values, including the rule of law, in the EU's current accession practice. The paper ends with concrete recommendations to offset those shortcomings and help close the currently existing gap between the EU's legal doctrine and political practice.

1. The gradual creation and consolidation of the EU's framework of EU founding values

Since the entry into force of the Treaty of Lisbon in 2009, Article 49 of the Treaty on European Union (TEU) leaves no doubt that applicants for EU membership must be European States that

[13] As correctly highlighted by Jeremy Waldron, "in many ways, this distinction between rule by men and rule by laws is a false contrast. Laws are human artifacts. They are made by men (made by people), interpreted by people, and applied by people. Rule by law seems to be rule by people all the way down". What really matters in the application of the rule of law is that "people in positions of state authority … exercise their power within a constraining framework of public norms rather than simply on the basis of their own personal or political preferences". See Jeremy Waldron, *Thoughtfulness and the Rule of Law* (Cambridge, Mass.: Harvard University Press, 2023), pp. 2 and 12.

respect the values referred to in Article 2 TEU and are committed to promoting them. Article 2 TEU provides as follows:

> "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, *the rule of law* and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail".[14]

Several EU values – including "democracy, *the rule of law*, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, [and] the principles of equality and solidarity" – are also highlighted in Article 21(1) TEU as "the principles which have inspired [the EU's] own creation, development and *enlargement*, and which it seeks to advance in the wider world".[15] Historian Ivan T. Berend has rightly observed that throughout its history "Europe has violated these values and principles thousands of times through vicious intolerance, inquisitions, bloody wars, ethnic cleansings, and genocides".[16] It was precisely in opposition to this trail of suffering – especially that perpetrated by Nazi Germany and Stalinist Russia in the middle part of the 20th century – that the European construction came into being.[17]

Still, the founding treaties establishing the European Communities were silent on such common values, and consequently did not mention them among the criteria for membership of the original Communities.[18]

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[14] In this and the subsequent quotations, I have put *the rule of law* in italics. For a commentary on Article 2 TEU, see Koen Lenaerts & Piet Van Nuffel, *EU Constitutional Law* (Oxford: Oxford University Press, 2021), pp. 77-81; Marcus Klamert & Dimitry Kochenov, "Article 2 TEU", in Manuel Kellerbauer, Marcus Klamert & Jonathan Tomkin, eds., *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford: Oxford University Press, 2024, 2nd ed.), Vol. I, pp. 26-40.

[15] TEU, art. 21(1).

[16] Ivan T. Berend, *Europe Since 1980* (Cambridge: Cambridge University Press, 2010), p. 6.

[17] Richard Vinen, *A History in Fragments: Europe in the Twentieth Century* (London: Abacus, 2000), pp. 636-637; Konrad H. Jarausch, *Out of Ashes: A New History of Europe in the Twentieth Century* (Princeton: Princeton University Press, 2015), pp. ix, 16, 776, 783, 786-787.

[18] This can be explained, at least in part, by the informal division of labour between the European Communities (which had an economic focus) and the Council of Europe (which was the venue for debate on Europe's values and fundamental rights). In the preamble of the Statute of the Council of Europe (London, 5 May 1949, European Treaty Series - No. 1), the members reaffirmed "their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and *the rule of law*, principles which form the basis of all genuine democracy". It was also in the framework of the Council of Europe that the

As far as the rule of law is concerned, the Treaty establishing the European Economic Community, signed in 1957, merely held that the "Court of Justice shall ensure observance of law and justice in the interpretation and application of this Treaty".[19] Students in the legal field are aware of the crucial role the played by the Court of Justice in filling the gap in the treaties. In 1969, the Court held for the first time that "fundamental human rights" constituted general principles of Community law, which it protected.[20] During the 1970s, it further developed a rich case-law on the protection of fundamental rights in the Community sphere, as derived from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms.[21] In the *Les Verts* judgment of 1986, it left no doubt that "the European Economic Community is a Community based on *the rule of law*, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty".[22]

In the political realm, the initiatives to create clarity about the EU's democratic nature and to consolidate the values underpinning the European construction were primarily developed in the enlargement context.[23] In 1962, several years before the Court's landmark judgment of 1969, the European Parliamentary Assembly (before it was named European Parliament) adopted a report on the political and institutional aspects of accession to or association with the Community.[24] It was drafted by the German social-democrat Willi Birkelbach, who had been imprisoned by the Nazi regime. The report underlined that States whose governments were lacking in democratic

members signed the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950, European Treaty Series - No. 5).

[19] Treaty establishing the European Economic Community (Rome, 25 March 1957, UNTS 298, p. 11), art. 164.

[20] Judgment of 12 November 1969, *Stauder v Stadt Ulm*, C-29/69, EU:C:1969:57, para. 7.

[21] For an overview of the fundamental rights case-law, see Eleanor Spaventa, "Fundamental rights in the European Union", in Catherine Barnard & Steve Peers, eds., *European Union Law* (Oxford: Oxford University Press, 2020, 3rd ed.), pp. 243, 245-252. In 1977, acknowledging the Court's jurisprudence on fundamental rights, the European Parliament, the Council and the Commission adopted a Joint Declaration in which they vowed to respect these rights in the exercise of their powers. See "Joint Declaration by the European Parliament, the Council and the Commission" (Luxembourg, 5 April 1977), OJ C 103, 27 April 1977.

[22] Judgment of 23 April 1986, *Les Verts v Parliament*, Case 294/83, EU:C:1986:166, para. 23. For an interpretation, see Laurent Pech, "The Rule of Law", in Paul Craig & Gráinne de Búrca, eds., *The Evolution of EU Law* (Oxford: Oxford University Press, 2021, 3rd ed.), pp. 312-313.

[23] For a detailed overview, see Emma De Angelis & Eirini Karamouzi, "Enlargement and the Historical Origins of the European Community's Democratic Identity, 1961–1978", *Contemporary European History*, Vol. 25, No. 3, 2016, pp. 439-458; Ronald Janse, "The evolution of the political criteria for accession to the European Community, 1957–1973", *European Law Journal*, Vol. 24, No. 1, 2028, pp. 57-76.

[24] Assemblée parlementaire européenne, Rapport fait au nom de la commission politique sur les aspects politiques et institutionnels de l'adhésion ou de l'associations à la Communauté par M. Willi Birkelbach, rapporteur (Documents de séance 1961-1962, Document 122, 15 January 1962).

legitimacy "cannot claim admission to the circle of peoples who form the European Communities". It therefore considered "the existence of a form of democratic State, in the sense of a liberal political organisation" as "a condition of accession".[25] During the 1970s, a similar line was followed by the Member States when they adopted high-level political texts on the nature of the European Communities, such as the 1973 Copenhagen Declaration on European Identity and the 1978 Copenhagen Declaration on Democracy. Both underscored the importance of "the principles of representative democracy, of *the rule of law*, of social justice and of respect for human rights".[26] In the context of the enlargement perspective of Greece, Portugal and Spain (at a moment when these countries were each still in the process of consolidating their democratic regimes), the 1978 Declaration on Democracy went into the footsteps of the Birkelbach report by solemnly stating "that respect for and maintenance of representative democracy and human rights" were "essential elements of membership of the European Communities".[27]

After the end of the Cold War, the Court's case-law and the political declarations mentioned above were gradually formalized and consolidated in EU primary law. In the preamble to the Treaty of Maastricht of 1992, the Member States confirmed "their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of *the rule of law*".[28] The Maastricht Treaty objectives on the common foreign and security policy and development cooperation specifically included "develop[ing] and consolidat[ing] democracy and *the rule of law*, and respect for human rights and fundamental freedoms".[29] A year later, in light of the wave of applications from the countries of Central and Eastern Europe, the Copenhagen European Council held that EU membership required, among other elements, "stability of institutions guaranteeing democracy, *the rule of law*, human rights and respect for and protection of minorities" (generally called Copenhagen's political criterion).[30] The ensuing Treaty of Amsterdam of 1997 turned the gist of this criterion into a legal obligation by introducing the concept of founding principles of the Union (covering "liberty, democracy, respect for human

[25] *Id.*, para. 25.
[26] "Declaration on European Identity" (Copenhagen European Summit, 14-15 December 1973), in *Bulletin of the European Communities*, December 1973, No. 12, pp. 118-122; "Declaration on Democracy" (Copenhagen European Council, 7-8 April 1978), in *Bulletin of the European Communities*, March 1978, No. 3, pp. 5-6.
[27] "Declaration on Democracy", *op. cit.*, p. 6.
[28] Treaty on European Union (TEU Maastricht, 7 February 1992), OJ C 191, 29 July 1992, preamble.
[29] *Id.*, TEU Maastricht, Art. J.1(2); Treaty establishing the European Community (TEC Maastricht), Art. 130u(2).
[30] European Council, Presidency Conclusions (Copenhagen, 21-22 June 1993), section 7.A.iii. Democracy, the rule of law and human rights were less of a concern in the context of the membership applications by Cyprus and Malta.

rights and fundamental freedoms, and *the rule of law*"), and by adding that they needed to be respected by candidate countries.[31] The Reflection Group preparing the negotiations of the Treaty of Amsterdam made the explicit connection between the challenge of enlargement with former Warsaw Pact countries and "the need to preserve and strengthen the Community as an entity based on *the rule of law*".[32]

Following the EU's Constitutional Convention of 2001-2002, the Treaty of Lisbon of 2007 turned the Amsterdam Treaty's founding "principles" into the currently applicable founding "values" of Article 2 TEU.[33] This was linked to the introduction of a sanction mechanism under Article 7 TEU, which allows for the suspension of certain rights of a Member State found a serious and persistent breach of the values referred to in Article 2 TEU.[34] The Lisbon Treaty also incorporated the Charter of Fundamental Rights into the EU's primary law framework, with the same legal value as the Treaties.[35] The Charter's preamble confirmed that the EU "is based on the principles of democracy and *the rule of law*".[36] With respect to the EU and the rule of law, a newly formulated Article 19(1) TEU underlined in the first subparagraph that the Court of Justice of the European Union has to "ensure that in the interpretation and application of the Treaties the law is observed". The second subparagraph made explicit that the "Member States shall provide remedies sufficient to ensure

[31] Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (Amsterdam, 2 October 1997), OJ C 340, 10 November 1997, Article 1(8) ("The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and *the rule of law*, principles which are common to the Member States") and Article 1(15) (adding to the then-existing Article O TEU that applicants for EU membership must respect those principles).
[32] Reflection Group Report, *A Strategy for Europe* (Brussels, 5 December 1995), Part Two, para. 19.
[33] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (Lisbon, 13 December 2007), OJ C 306, 17 December 2007, Article 1(3) (replacing the Treaty of Amsterdam's sentence on founding "principles" by a reference to the EU's founding "values" and Article 1(57)(a) (replacing the requirement for applicants to respect the Treaty of Amsterdam's founding "principles" by the requirement to respect the EU's founding "values" and be committed to promoting them under Article 49 TEU). On the contribution of the Constitutional Convention on the EU's founding values, see Marianne Dony, "Les valeurs, objectifs et principes de l'Union", in Marianne Dony, ed., *Commentaire de la Constitution de l'Union européenne* (Brussels: Editions de l'Université de Bruxelles, 2005), pp. 33-38.
[34] So far, Article 7 TEU has remained dead letter, mainly because it requires a unanimous vote in the European Council to determine the existence of a serious and persistent breach by a Member State of the Article 2 values. See Dimitry Kochenov, "Article 7: A Commentary on a Much Talked-About 'Dead' Provision", in Armin von Bogdandy, *et al.*, eds., *Defending Checks and Balances in EU Member States: Taking Stock of Europe's Actions* (Berlin: Springer, 2021), pp. 127–154.
[35] Consolidated version of the Treaty on European Union, OJ C 202, 7 June 2016, Art. 6(1).
[36] Charter of Fundamental Rights of the European Union, OJ C 202*,* 7 June 2016, preamble.

effective legal protection in the fields covered by Union law". The Court has interpreted Article 19(1) TEU as giving "concrete expression to the value of the rule of law stated in Article 2 TEU".[37]

2. The EU's common understanding of the rule of law concept

Requiring that the applicant countries respect and promote the values of Article 2 TEU necessitates an agreement on their definition. Article 2 itself is formulated at a relatively high level of abstraction and does not offer guidance on the precise meaning of the terms used. Throughout the EU Treaties, scattered provisions give an operational meaning to several of the values listed, but without providing comprehensive definitions. This is not different for the rule of law.[38]

Turning to EU secondary law, Regulation 2020/2092 of the European Parliament and the Council, which concerns the protection of the Union budget in the case of breaches of the rule of law in the Member States, provides a useful clarification.[39] First, the Regulation's Article 2(a) leaves no doubt that its rule of law concept "refers to the Union value enshrined in Article 2 TEU". Thereafter, it specifies that the concept "includes the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law". The Regulation's 3rd recital complements Article 2(a) by stating that the "rule of law requires that all public powers act within the constraints set out by law, in accordance with the values of democracy and the respect for fundamental rights". The recital also provides references to the Court's case-law on the principles set out in Article 2(a).[40] The Regulation's list of core rule of law principles was derived from the almost identical set mentioned in the European Commission 2014 Communication on a new EU framework to strengthen the rule of law.[41]

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[37] Judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, para. 32.
[38] Werner Schroeder, "The Rule of Law as a Value in the Sense of Article 2 TEU: What Does It Mean and Imply?" in Armin von Bogdandy *et al*., eds., *Defending Checks and Balances in EU Member States: Taking Stock of Europe's Actions* (Berlin: Springer, 2021), pp. 105-126.
[39] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22 December 2020, p. 1.
[40] This is except for the principles of non-discrimination and equality before the law, which are somewhat strangely not mentioned in the 3rd recital.
[41] European Commission, Communication: A new EU Framework to strengthen the Rule of Law (Brussels, 11 March 2014, COM(2014) 158 final), p. 4. The principles mentioned in this Commission Communication are: "legality, which

When Hungary and Poland requested the Court to annul Regulation 2020/2092, one of their pleas was aimed at the non-exhaustive list of Article 2(a).[42] In their view, the rule of law concept did not lend itself to a precise definition, thus leading to "serious conceptual uncertainties". They also claimed that the concept could not be given a uniform interpretation because of the obligation to respect the national identity of each of the Member States. In their view, the rule of law had to be understood as "an ideal or, at most, a guiding standard, which is never fully achieved".[43] For Hungary and Poland, trying to enforce such an unclear concept would necessarily lead to a breach of the principle of legal certainty.

In its judgment, the Court recognised that the Member States have separate national political and constitutional identities (which the EU respects in accordance with Article 4(2) TEU) and therefore enjoy a certain degree of discretion in implementing the rule of law.[44] However, it underlined that the recognition of national identities in no way implies that the obligation as to the result to be achieved could vary from one Member State to another or that the application of uniform assessment criteria would be impossible.[45] Dismissing the idea that Article 2 TEU would be a mere statement of policy guidelines or intentions, the Court highlighted that "the Member States must adhere to a concept of 'the rule of law' which they share, as a value common to their own constitutional traditions, and which they have undertaken to respect at all times".[46]

As regards the content-related components of the rule of law, the Court basically confirmed the principles highlighted in the Regulation.[47] Listing "the principles of legality, legal certainty, prohibition of arbitrariness of the executive powers, effective judicial protection and separation of powers" as well as "equality before the law and non-discrimination", the Court stated that "[t]hose principles of the rule of law, as developed in the case-law of the Court on the basis of the EU Treaties, are thus recognised and specified in the legal order of the European Union and have their

implies a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; independent and impartial courts; effective judicial review including respect for fundamental rights; and equality before the law".

[42] Judgments of 16 February 2022, *Hungary v Parliament and Council*, C-156/21, EU:C:2022:97, para. 199-212, and *Poland v Parliament and Council*, C-157/21, EU:C:2022:98, para. 311-316.

[43] Judgment of 16 February 2022, *Hungary v Parliament and Council*, C-156/21, EU:C:2022:97, para. 200.

[44] *Id.,* para. 233-234.

[45] *Id.,* para. 233, 235

[46] *Id.*, para. 232, 234.

[47] *Id.*, para. 236-237. In contrast with the Regulation, the Court does not mention the requirement of a "transparent, accountable, democratic and pluralistic law-making process".

source in common values which are also recognised and applied by the Member States in their own legal systems".[48] A couple of years earlier, the General Court had produced a similar "non-exhaustive list of principles and standards which may fall within the concept of the rule of law", based on the case-law of the Court of Justice and of the European Court of Human Rights, and the work of the Council of Europe's, Commission for Democracy through Law.[49]

The brief overview above shows a large degree of consensus between the EU institutions on the key rule of law principles. The only notable difference between the EU's political institutions and the Court is that the latter's list does not encompass "a transparent, accountable, democratic and pluralistic process for enacting laws". Apart from this aspect, Professor Laurent Pech is correct in concluding that there exists – at the level of the EU institutions – a common understanding of the core meaning and of the key components of the rule of law concept.[50] This *de facto* common understanding has, however, not been turned into a comprehensive, transparent and public joint EU declaration that could serve as an authoritative benchmark on rule of law questions for internal and external purposes, including accession. As will become clear below, this has plagued the EU's enlargement process.

3. The Court of Justice on the connection between the founding values and EU accession

Looking further into the case-law on the EU's founding values, the Court left no doubt they have an operational legal significance in the context of the enlargement process.[51] The Court's well-

[48] *Id.*, para. 236-237.

[49] Judgment of the General Court of 15 September 2016, *Yanukovych v Council*, T-346/14, EU:T:2016:497, para. 98. The list included "the principles of legality, legal certainty and the prohibition on arbitrary exercise of power by the executive; independent and impartial courts; effective judicial review, extending to respect for fundamental rights and equality before the law". Apart from these clarifications on the prime components of the rule of law concept, the Court of Justice has since its judgment of 2018 in the Portuguese judges' case developed a detailed jurisprudence on the judicial aspects of the rule of law. See the Judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117; of 20 April 2021, *Repubblika v Il-Prim Ministru*, C-896/19, EU:C:2021:311, para. 52-55, 160-161; of 30 April 2025, *Inspectorate at the Bulgarian Supreme Judicial Council*, Joined Cases C-313/23, C-316/23 and C-332/23, EU:C:2025:303, para. 81-90.

[50] Laurent Pech, "The Rule of Law as a Well-Established and Well-Defined Principle of EU Law", *Hague Journal on the Rule of Law,* Vol. 14, No. 2-3, 2022, p. 127. While highlighting the common understanding on the rule of law concept, Pech recognises that it undergoes a constant evolution, is marked by a certain degree of diversity in its implementation and is subject of illiberal attempts to redefine its core meaning in an authoritarian direction.

[51] Judgments of 16 February 2022, *Hungary v Parliament and Council*, C-156/21, EU:C:2022:97, para 232; *Poland v Parliament and Council*, C-157/21, EU:C:2022:98, para. 264. For a systematic insight in the EU values and their concretization in the EU's primary and secondary law, see Friedrich Erlbacher & Katarzyna Herrmann, "Fundamental values of the European Union: from principles to legal obligations", in *70 Years of EU Law: A Union for its Citizens* (Luxembourg: Publications Office of the European Union, 2022), pp. 30, 51-53.

established doctrine consists of four key aspects. First, it has labelled respect for the values of Article 2 TEU as "a precondition" or "a prerequisite" for accession.[52] From Article 49 TEU, it derived "that the European Union is composed of States which have freely and voluntarily committed themselves to the common values referred to in Article 2 TEU, which respect those values and which undertake to promote them".[53] As summarized by President Lenaerts:

> "before joining the EU, a candidate Member State must align its own constitution (or Basic law) – including institutional and substantive provisions – with the values on which the EU is founded … The decision to align its own constitutional arrangements with EU values is a sovereign choice of the candidate Member State. However, if such a State fails to do so, Article 49 TEU bars it from becoming a member of the EU".[54]

Second, as a consequence of the first point, "once a candidate State becomes a Member State, it joins a legal structure that is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, the common values, contained in Article 2 TEU, on which the European Union is founded".[55] In the Court view, "[t]hat premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the EU law that implements them will be respected".[56] For the Court, the "fundamental importance" of the principle of mutual trust (and mutual recognition, which is itself based on mutual trust) resides in the fact that "they allow an area without internal borders to be created and maintained", and in particular the internal market and the area of freedom, security and justice.[57] Since the principle of mutual trust "is not applicable in relations

[52] Judgments of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, para. 161; of 16 February 2022, *Poland v Parliament and Council*, C-157/21, EU:C:2022:98, para. 142.
[53] *Id.*, para. 61.
[54] Koen Lenaerts, "On Checks and Balances", *op. cit*., pp. 50-51.
[55] Judgments of 16 February 2022, *Poland v Parliament and Council*, C-157/21, EU:C:2022:98, para. 143; of 20 April 2021, *Repubblika v Il-Prim Ministru*, C-896/19, EU:C:2021:311, para. 62; of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, para. 30; Opinion 2/13 *(Accession of the European Union to the ECHR)* of 18 December 2014, EU:C:2014:2454, para. 168.
[56] Judgment of 16 February 2022, *Poland v Parliament and Council*, C-157/21, EU:C:2022:98, para. 143.
[57] Judgments of 28 October 2022, *PPU, HF,* C-435/22, EU:C:2022:852, para. 92; of 22 February 2022, Joined Cases *PPU* C-562/21 and *PPU, X Y* C-563/21, EU:C:2022:100, para. 40; of 15 October 2019, *Dorobantu*, C-128/18, EU:C:2019:857, para. 46.

between the Union and a non-Member State",[58] it constitutes a key "demarcation line between the internal relationships among Member States and their relations with third countries".[59]

Third, as "compliance by a Member State with the values enshrined in Article 2 TEU is a condition for the enjoyment of all of the rights deriving from the application of the Treaties to that Member State",[60] the Court has made abundantly clear that "[c]ompliance with those values cannot be reduced to an obligation which a candidate State must meet in order to accede to the European Union and which it may disregard after its accession".[61] In other words, there can be no "regression" or "reduction" in a Member State's practical commitment to these values after accession.[62]

Fourth, while the Court has left no doubt that the Member States must comply with the values of Article 2 TEU, and related provisions such as Article 19 TEU, it has also underlined that "neither Article 2 TEU nor the second subparagraph of Article 19(1) TEU, nor any other provision of EU law requires Member States to adopt a particular constitutional model". Nevertheless, "in choosing their respective constitutional model, the Member States are required to comply with their obligations deriving from EU law".[63] This implies, for example, that "in accordance with the principle of the separation of powers which characterises the operation of the rule of law, the independence of the judiciary must be ensured in relation to the legislature and the executive". The specific manner of achieving this result is for the Member States to decide.[64]

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[58] Opinion 1/17 (*CETA*), EU:C:2019:341, para. 129.
[59] Iris Canor, "Restoring Faith in EU Values: Mutual Trust and Systemic Deficiencies in the Member States", *ZEuS Zeitschrift für Europarechtliche Studien*, Vol. 26, No. 4, 2023, p. 522.
[60] Judgments of 20 April 2021, *Repubblika v Il-Prim Ministru*, C-896/19, EU:C:2021:311, para. 63; of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions),* C-824/18, EU:C:2021:153, para. 108.
[61] Judgment of 16 February 2022, *Poland v Parliament and Council*, C-157/21, EU:C:2022:98, para. 144.
[62] The Court underscored the non-regression principle after accession in several cases related specifically to the rule of law principle. See Judgments of 20 April 2021, *Repubblika v Il-Prim Ministru*, C-896/19, EU:C:2021:311, para. 63-64; of 18 May 2021, *Asociaţia 'Forumul Judecătorilor din România'*, Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, para. 162.
[63] Judgments of 25 February 2025, Joined Cases C-146/23 [*Sąd Rejonowy w Białymstoku*] and C-374/23 [*Adoreikė*], EU:C:2025:109, para. 45-46; of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, para. 43.
[64] Judgments of 25 February 2025, Joined Cases C-146/23 [*Sąd Rejonowy w Białymstoku*] and C-374/23 [*Adoreikė*], EU:C:2025:109, para. 50; of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, para. 124; of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, para. 54; of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, para. 42.

4. The political framework of EU enlargement: putting the rule of law centre stage

4.1. The enhanced EU Negotiating Frameworks and the "fundamentals first" approach

While the Court's doctrine is solid and clear, ensuring its full application remains a challenge and a key dimension of the accession process. The revised enlargement methodology of 2020 has resulted in a substantially reinforced position of the rule of law in EU Negotiating Frameworks.[65] This was seen as crucial in light of (a) the weaknesses of Article 7 TEU, which has not prevented Member States such as Hungary from constantly challenging and breaking the EU's founding values, but without ever triggering a unanimous European Council determination on the existence of a serious and persistent breach (and, as a corollary, without ever leading to the suspension of certain rights of the Member States in question);[66] (b) the widespread academic criticism of the pre-2020 rule of law conditionality in the accession context;[67] and (c) the unhappy experience with the Cooperation and Verification Mechanism after the accession of Bulgaria and Romania. The latter merits an explanation.

As highlighted in section 3, Court doctrine clearly leaves no place for new Member States that would need to use the Union as a training ground for the application of the founding values. Nevertheless, in 2006, just months before the scheduled accession of Bulgaria and Romania, the Commission signalled persistent rule of law deficiencies in both countries.[68] For the Commission, this endangered the functioning of EU's internal market and area of freedom, security and justice, but the accession process was neither stopped nor delayed.[69] Instead, the accession of 2007 went hand in hand with the creation of a Cooperation and Verification Mechanism to check both

[65] Joint statement of the Members of the European Council (Brussels, 26 March 2020), p. 6. The content of the revised enlargement methodology is based on European Commission, Communication - Enhancing the accession process - A credible EU perspective for the Western Balkans (Brussels, 5 February 2020, COM(2020) 57 final).
[66] On 27 May 2025, the General Affairs Council held its eighth inconclusive hearing as part of the Article 7(1) TEU procedure regarding Hungary since the European Parliament's reasoned proposal of 2018, which triggered the procedure. See https://www.consilium.europa.eu/en/meetings/gac/2025/05/27/?
[67] The landmark statement remains Dimitry Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-accession Conditionality in the Fields of Democracy and the Rule of Law* (The Hague: Kluwer Law International, 2008). More recent reassessments lead to similar conclusions. See, for example, Beáta Huszka & Zsolt Körtvélyesi, "EU enlargement policy and human rights", in Jan Wouters *et al.,* eds., *The European Union and Human Rights: Law and Policy* (Oxford: Oxford University Press, 2020), pp. 345–364; Ana Knežević Bojović & Vesna Ćorić, "Challenges of Rule of Law Conditionality in EU Accession", *Bratislava Law Review*, Vol. 7, No. 1, 2023, pp. 41-62.
[68] European Commission, Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania (COM(2006) 549 final, 26 September 2006), pp. 9-11 (section 3.3.1).
[69] *Id.*

countries' progress in addressing a number of benchmarks in the areas of judicial reform, the fight against corruption, and (for Bulgaria) the fight against organised crime.[70] In case of a failure by Bulgaria or Romania to address the benchmarks adequately, the Commission was authorized to apply safeguard measures based on the Act of Accession, including the suspension of Member States' obligation to recognise and execute Bulgarian or Romanian judgments and judicial decisions, such as European arrest warrants.[71] In 2019 (for Bulgaria) and 2022 (for Romania), the Commission reported that the benchmarks under the Cooperation and Verification Mechanism had been sufficiently met.[72] It therefore launched its closure, which was completed in September 2023.[73] Whether both countries actually made significant progress is put into question by both qualitative research and some of the most prominent international rule of law indicators.[74] . When comparing the situation of Bulgaria in 2006 with the most recent indicators, there hardly seems any improvement.[75] In 2006, the World Bank's rule of law indicator showed Bulgaria with a percentile rank of 51. In 2023, this stood at 53, the lowest score in the EU (with Finland at the top with a percentile rank of 100). The Economist Intelligence Unit's rule of law indicator for Bulgaria indicates a declining position (from 0.57 in 2006 to 0.47 in 2024; with Austria and Finland topping the ranking with a score of 0.97). In the case of Romania, the results were slightly better. The

[70] Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption, O.J. L 354, 14 December 2006, p. 56, recital 6; Commission Decision 2006/929/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime, OJ L 354, 14 December 2006, p. 58, recital 6. See also Judgments of 18 May 2021, *Asociaţia 'Forumul Judecătorilor din România'*, Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, para 155, 167-178; of 7 September 2023, Case C-216/21, *Asociaţia 'Forumul Judecătorilor din România'*, EU:C:2023:628, para. 56 (both cases explaining the legal nature of the Commission Decision 2006/928).

[71] Commission Decision 2006/928/EC, recital 7; Commission Decision 2006/929/EC, recital 7.

[72] European Commission, Report on Progress in Bulgaria under the Cooperation and Verification Mechanism **(**COM (2019) 498, 22 October 2019); European Commission, Report on Progress in Romania under the Cooperation and Verification Mechanism (COM (2022) 664, 22 November 2022).

[73] Commission Decision (EU) 2023/1785 of 15 September 2023 repealing Decision 2006/929/EC establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime, OJ L 229, 18 September 2023, p. 91; Commission Decision (EU) 2023/1786 of 15 September 2023 repealing Decision 2006/928/EC establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption, OJ L 229, 18 September 2023, p. 94.

[74] For solid qualitative assessments of the Mechanism, see Radosveta Vassileva, "Threats to the Rule of Law: The Pitfalls of the Cooperation and Verification Mechanism". *European Public Law,* Vol. 26, No. 3, 2020, pp. 741–768; Georgi Dimitrov & Anna Plachkova, "Bulgaria and Romania, twin Cinderellas in the European Union: how they contributed in a peculiar way to the change in EU policy for the promotion of democracy and rule of law", *European Politics and Society*, Vol. 22, No. 2, 2020, pp. 167–184.

[75] See also Radosveta Vassileva, "Bulgaria's Mafia State and the Failure of the CVM", VerfassungsBlog, 6 June 2023, https://verfassungsblog.de/bulgarias-mafia-state-and-the-failure-of-cvm/.

country moved up on the World Bank's rule of law indicator, with a percentile ranking of 51 in 2006 and 56 in 2023. In the Economist Intelligence Unit's rule of law ranking, Romania stood at 0.53 in 2006 and 0.63 in 2024.[76] In this light, the overall results of the Cooperation and Verification Mechanism look far from spectacular.

To avoid a repetition of the Bulgarian and Romanian case and strengthen the rule of law conditionality during the accession negotiations, the EU Negotiating Frameworks adopted after the revised enlargement methodology of 2020 are all similar in giving "crucial importance" to the so-called fundamentals' cluster.[77] This includes the negotiating chapters on the judiciary and fundamental rights, justice, freedom and security, economic criteria, the functioning of democratic institutions, public administration reform, public procurement, statistics, and financial control.[78] Chapters 23 on the judiciary and fundamental rights and chapter 24 on justice, freedom and security are commonly called "the rule of law chapters".[79] In the course of the negotiations, the fundamentals cluster is opened first and closed last. This should allow sufficient time to establish the necessary legislation, institutions, and solid track records of implementation before the negotiations are closed. EU Negotiating Frameworks underline that progress under the fundamentals' cluster determines the overall pace of negotiations and is taken into account for the decision to open or close new clusters or chapters.[80]

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[76] See World Bank, Worldwide Governance Indicators, www.govindicators.org; Economist Intelligence Unit, Democracy Index.

[77] The EU adopts a Negotiating Framework regarding each candidate country. To structure the negotiations, the existing body of EU law that should be accepted by the candidate countries is broken down into several chapters, each covering a specific policy area. The chapters are grouped into six thematic clusters. See, for example, Conference on Accession to the European Union – Ukraine, General EU Position: Ministerial meeting opening the Intergovernmental Conference on the Accession of Ukraine to the European Union - Negotiating Framework (Brussels, 21 June 2024, CONF-UA 2) [hereinafter "Negotiating Framework UA"], para. 11 and Annex II to the Annex; Conference on Accession to the European Union – Republic of Moldova, General EU Position: Ministerial meeting opening the Intergovernmental Conference on the Accession of the Republic of Moldova to the European Union - Negotiating Framework (Brussels, 21 June 2024, CONF-MD 2) [hereinafter "Negotiating Framework MD"], para. 11 and Annex II to the Annex; Conference on Accession to the European Union – Albania, General EU Position: Ministerial meeting opening the Intergovernmental Conference on the Accession of Albania to the European Union - Negotiating Framework (Brussels, 18 July 2022, CONF-ALB 2) [hereinafter "Negotiating Framework ALB"], para. 10 and Annex II to the Annex.

[78] *Id.*

[79] Negotiating Framework UA, para. 39; Negotiating Framework MD, para. 39; Negotiating Framework ALB, para. 35. Negotiating Frameworks adopted since 2020 are all very similar. The following footnotes will therefore refer to only one of them.

[80] Negotiating Framework UA, para. 11, 37.

Following the Commission's screening (which serves to assess the state of preparation of the candidate for opening the negotiations in specific areas and to obtain preliminary indications of the issues that will most likely come up), the main steps under the fundamentals' cluster are the following:

(a) A first step is the invitation to the candidate country to prepare a *roadmap* for the rule of law chapters as well as roadmaps for public administration reform and for the functioning of democratic institutions. Roadmaps must be prepared on the basis of the Commission screening reports and after transparent consultations with the stakeholders. It is essential that they contain the key reform priorities.[81]

(b) The roadmaps serve to identify the *opening benchmarks* for the fundamentals' cluster (possibly together with additional opening benchmarks from the chapters on public procurement and financial control). These opening benchmarks are adopted by the Council on a proposal by the Commission.[82]

(c) Once it is satisfied that the opening benchmarks have been met by the candidate country, the Council can decide to formally open the fundamentals' cluster and adopt *interim benchmarks* on the rule of law chapters. These interim benchmarks specifically target the adoption of legislation and the establishment and strengthening of administrative structures and of an intermediate track record and must be closely linked to actions and milestones in the implementation of the roadmap. No other negotiating chapter can be provisionally closed before these interim benchmarks are met.[83]

(d) If the Council concludes that the interim benchmarks have been met, it can move the process forward by laying down the *closing benchmarks* for the fundamentals' cluster as a whole. This must include "solid track records of reform implementation".[84]

(e) Finally, once the Council is satisfied, on the basis of an assessment by the Commission that the closing benchmarks for the fundamentals' cluster have been fulfilled, it will decide on the provisional closure of the fundamentals' cluster as a whole.[85]

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[81] *Id*., para. 39.
[82] *Id*., para. 38.
[83] *Id*., para. 42.
[84] *Id*., para. 43.
[85] *Id*., para. 44.

In case of "a serious and persistent breach by the candidate country of the values on which the Union is founded", the Commission can, on its own initiative or at the request of a Member State, recommend "the suspension of negotiations and propose the conditions for eventual resumption".[86] While all the above-mentioned steps forward in the accession proces require a unanimous action by the Council, the decision to suspend the negotiations is "deemed to be adopted by the Council, unless … it decides by a qualified majority to reject the Commission's recommendation within 90 days".[87] The resumption can be decided in the same way. A similar system is available in case of "any serious or prolonged stagnation or backsliding in reform implementation in the fundamentals' cluster, or a situation where progress under the fundamentals cluster significantly lags behind progress in other areas and this leads to an overall imbalance of the enlargement negotiations".[88]

These provisions are important. Through the fundamentals' cluster, the rule of law takes centre stage during the accession negotiations, from start to finish. Thanks to the roadmap, which is prepared by the candidate country after stakeholder consultations, it is hoped that the country and its citizens will benefit from an enhanced buy-in and feeling of ownership of the requirements. In case of a backsliding, the available conditionality/sanction mechanism avoids the unanimity trap that is paralysing Article 7 TEU. In terms of the results achieved since its introduction, initial studies on the actual use of the "fundamentals first" approach remain cautious in their assessment.[89]

4.2. The enhanced guidance and support mechanisms for candidate countries in the rule of law domain

Since 2024, the "most advanced candidate countries" are included in the EU's annual rule of law reporting cycle. This means that the Commission's 2024 Rule of Law Report included an assessment of the rule of law in Albania, Montenegro, North Macedonia, and Serbia.[90] That

[86] *Id.,* para. 16.
[87] For the origins of this provision, see European Council, Presidency Conclusions (Brussels, 16-17 December 2004, 16238/1/04 REV 1), para. 24.
[88] Negotiating Framework UA, para. 16.
[89] Marta Szpala, "How to make the EU ready for Enlargement: Member States' perspective" (EUROPEUM Institute for European Policy – Think Visegrad Platform, 2025), p. 10; Andi Hoxhaj, "The EU Rule of Law Initiative Towards the Western Balkans", *Hague Journal on the Rule Law*, Vol. 13, No. 1, 2021, pp. 143–17.
[90] European Commission, 2024 Rule of Law Report (Brussels, 24 July 2024 COM(2024) 800 final), pp. 1, 7-9 and the Country Chapters on the rule of law situation in Albania (SWD(2024) 828 final), Montenegro (SWD(2024) 829 final), North Macedonia (SWD(2024) 830 final) and Serbia (SWD(2024) 831 final). The choice of these four candidate countries has not been without criticism, in particular with respect of Serbia, which has seen a steady deterioration of

allowed the General Affairs Council of September 2024 to organize a first regular exchange of views on the overall rule of law situation in the above listed candidate countries.[91] As this was done in the presence of ministers from the countries concerned, it offered the candidates an opportunity to gain experience and obtain guidance and input on rule of law issues from their EU counterparts in an inclusive setting. Council's discussion did not result in formal conclusions or recommendations on the rule of law in individual candidate countries. Those continue to be issued in the framework of the enlargement process.[92] However, the link between these two exercises remains unclear. Thus, it proved difficult to find a substantive reflection of the discussions in the context of the annual rule of law reporting cycle in the Commission's subsequent 2024 Enlargement Package reports for the countries in question.[93]

In addition to the widening of the political dialogue on the rule of law, the candidate countries also benefit from an enhanced financial support framework since 2024. EU Negotiating Frameworks foresee that the candidates receive, as appropriate, financial assistance from relevant Union instruments in support of their accession process.[94] This includes assistance of direct relevance for the strengthening of the rule of law, via the Justice Programme, the Citizens, Equality, Rights and Values Programme, and the EU Anti-Fraud Programme.[95] In addition, the candidate countries are now able to benefit from substantial and earmarked financial support through the dedicated Ukraine Facility, the Reform and Growth Facility for the Western Balkans, and the Reform and Growth Facility for the Republic of Moldova.[96] The three Facilities give a major financial boost

its liberal democracy and rule of law situation since it was recognized as a candidate country in 2012 and can therefore hardly be called "most advanced" in this area. See Alejandro Esteso Pérez, "Illiberalising EU enlargement to the Western Balkans" (EUROPEUM Institute for European Policy – Think Visegrad Platform, 2025), pp. 7-8.

[91] General Affairs Council: Main results (Brussels, 24 September 2024), https://www.consilium.europa.eu/en/meetings/gac/2024/09/24/.

[92] *Id.*

[93] Szpala, *op. cit*., p. 10.

[94] Negotiating Framework UA, para. 14.

[95] Regulation (EU) 2021/1529 of the European Parliament and of the Council of 15 September 2021 establishing the Instrument for Pre-Accession assistance (IPA III), OJ L 330, 20 September 2021, p. 1, recital (11) and Annex I. Examples of financial programmes open to candidate countries include Regulation (EU) 2021/693 (Justice Programme), OJ L 156, 5 May 2021, p. 21, art. 6(b); Regulation (EU) 2021/692 (Citizens, Equality, Rights and Values Programme), OJ L 156, 5 May 2021, p. 1, art. 8(b); Regulation (EU) 2021/785 (EU Anti-Fraud Programme), OJ L 172, 17.5.2021, p. 110**,** art. 4(b).

[96] Regulation (EU) 2024/792 of the European Parliament and of the Council of 29 February 2024 establishing the Ukraine Facility, OJ L, 2024/792, 29 February 2024; Regulation (EU) 2024/1449 of the European Parliament and of the Council of 14 May 2024 on establishing the Reform and Growth Facility for the Western Balkans, OJ L, 2024/1449, 24 May 2024; Regulation (EU) 2025/535 of the European Parliament and of the Council of March 2025 establishing the Reform and Growth Facility for the Republic of Moldova, OJ L, 2025/535, 21.3.2025 .

to the countries concerned compared to the Instrument for Pre-Accession assistance of 2021.[97] The objective of the Facilities is to provide assistance for the delivery of EU-related reforms (in particular inclusive and sustainable socio-economic reforms and reforms concerning fundamentals of the enlargement process, aligned with Union values) as well as investments to implement the Reform Agendas of the countries concerned.[98] The further strengthening of the rule of law is a common objective of the three Facilities.[99] On the one hand, the candidate countries must continue to uphold and respect the Copenhagen political criterion, including the rule of law, as a precondition for support.[100] On the other hand, the assistance provided aims to support the progressive alignment to the Union *acquis* by the candidates with a view to future EU membership. The strengthening of the rule of law is highlighted in this context.[101] The European Court of Auditors, however, warned "that the disbursement conditions to be set in the Reform Agendas might not be ambitious enough and that the underlying indicators might not be sufficiently clear and measurable" notably in the rule of law field.[102]

5. EU political practice on the granting of candidate country status: the rule of law dimension

In the accession process, the granting of candidate status to an applicant country is a first major step. It is done by the Council or the European Council following an Opinion by the European Commission. The rule of law assessment that is linked to this process sheds some light on the current political limits of EU's merit-based approach. The decision to grant candidate status to Bosnia and Herzegovina in 2022 is particularly revealing in this context.

In its Opinion of 2019, the Commission concluded that Bosnia and Herzegovina did "not yet sufficiently fulfil the criteria related to the stability of institutions guaranteeing democracy, the

[97] Regulation (EU) 2021/1529, *op. cit.*
[98] Regulation (EU) 2024/792, art. 3; Regulation (EU) 2024/1449, art. 1(2); Regulation (EU) 2025/535, art. 1(2).
[99] Regulation (EU) 2024/792, art. 3(2)(h); Regulation (EU) 2024/1449, art. 3(2)(a); Regulation (EU) 2025/535 , art. 3(2)(a).
[100] Regulation (EU) 2024/792, art. 5(1); Regulation (EU) 2024/1449, art. 5(1)(a); Regulation (EU) 2025/535, art. 5(1).
[101] Regulation (EU) 2024/792, art. 34(1); Regulation (EU) 2024/1449, art. 11(2), 12(1)(c); Regulation (EU) 2025/535, art. 9(2), 11(1)(c).
[102] European Court of Auditors, Opinion 01/2024 concerning the proposal for a Regulation of the European Parliament and of the Council on establishing the Reform and Growth Facility for the Western Balkans, 2024, p. 14, https://www.eca.europa.eu/ECAPublications/OP-2024-01/OP-2024-01_EN.pdf. The European Court of Auditors made a cross-reference to its earlier Special Report - EU support for the rule of law in the Western Balkans: despite efforts, fundamental problems persist, 2022, https://www.eca.europa.eu/Lists/ECADocuments/SR22_01/SR_ROL-Balkans_EN.pdf.

rule of law, human rights and respect for and protection of minorities, set by the Copenhagen European Council in 1993".[103] The Commission identified 14 priorities, which the country needed to address in the areas of democracy/functionality, rule of law, fundamental rights and public administration reform.[104] In June 2022, in the wake of Russia's full-scale invasion of Ukraine, the political agreement reached by Bosnia and Herzegovina's factions to ensure a more stable and functioning country, the European Council called for an "acceleration of the accession process" and declared itself ready to grant candidate status to Bosnia and Herzegovina. To that aim it invited the Commission to report on the implementation of the 14 key priorities set out in its 2019 Opinion.[105] The European Council thus put the cart before the horse by issuing a strong political signal in favour of candidate country status for Bosnia and Herzegovina, without awaiting the Commission's substantive assessment.

In October 2022, the Commission reported a standstill in Bosnia and Herzegovina's reforms along the EU path.[106] It held that the country was "lagging behind on justice reform, with no progress in strengthening the sector".[107] With respect to the independence and impartiality of the judiciary or on fight against corruption and organised crime, the Commission equally signalled "no progress".[108] The Commission's country report included a table on the implementation of the 14 key priorities, which was largely empty in the area of the rule of law.[109] In spite of this, the Commission nevertheless recommended Bosnia and Herzegovina for candidate status. This recommendation was made "on the understanding" that the country would take eight further steps, but that did not dissimulate the gap between the Commission's own technical assessment and the conclusion drawn from it.[110]

In December 2022, the General Affairs Council followed the Commission's line.[111] The Council reiterated in general terms that the rule of law is "a crucial aspect of democratic transformation",

[103] European Commission, Bosnia and Herzegovina 2022 Report (Brussels, 12.10.2022, SWD(2022) 336 final, p. 14.
[104] *Id*.
[105] European Council, Conclusions (Brussels, 23-24 June 2022, EUCO 24/22), para. 15, 20, 21.
[106] European Commission, 2022 Communication on EU Enlargement Policy (Brussels, 12 October 2022, COM(2022) 528 final), p. 10.
[107] *Id.,* p. 11.
[108] European Commission, Bosnia and Herzegovina 2022 Report (Brussels, 12.10.2022, SWD(2022) 336 final), pp. 3-5, 17-50.
[109] *Id.,* pp. 119-120.
[110] 2022 Communication on EU Enlargement Policy, *op. cit*., pp. 38-39.
[111] General Affairs Council, Conclusions on Enlargement and Stabilisation and Association Process (Brussels, 13 December 2022, 15935/22).

is "at the heart" of the enlargement process, and is "the key benchmark against which progress towards EU membership is assessed". It therefore considered it "essential that partners' progress in this area is robust, tangible and irreversible".[112] Turning to Bosnia and Herzegovina, the Council noted "with concern the overall limited progress in reforms", particularly regarding rule of law issues.[113] It therefore underlined "the need for the authorities to reinforce the rule of law and take decisive steps to strengthen the prevention of and fight against corruption and organised crime". To this aim, the Council urged Bosnia and Herzegovina to adopt the measures listed in the Commission Communication.[114] At the same time, referring to the geopolitical context, the European Council's call of June 2022 and the Commission's subsequent recommendation of October 2022, the Council nevertheless recommended to grant the status of candidate country to Bosnia and Herzegovina right away. This was done "on the understanding that the steps specified in the Commission's recommendation are taken, in order to strengthen the rule of law, the fight against corruption and organised crime, migration management and fundamental rights".[115] Two days later, this position was endorsed by the European Council.[116]

In spite of their own rhetoric on the rule of law, the Council and the Commission thus seemed incapable or unwilling of sticking to a credible merit-based approach that would make the granting of candidate status dependent on demonstrated and consolidated rule of law improvements. Although such improvements were hardly to be found, the Commmission and the Council seemed caught in a maelstrom stirred up by the European Council. Whatever the actual rule of law situation in Bosnia and Herzegovina, the political expectations created by the Heads of State or Government in June 2022 seemed to make the granting of candidate status by the European Council meeting in December unavoidable.

That the granting of candidate country status to Bosnia and Herzegovina in 2022 had little or nothing to do with progress on its rule of law situation is broadly confirmed by non-EU sources. The World Bank's Worldwide Governance Indicator on the rule of law showed that Bosnia and Herzegovina's percentile rank descended between 2019 and 2022, from 46 to 41 in 2022 (well below the percentile rank of 100 for top performer Finland and 52 for Bulgaria, the worst performer

[112] *Id.,* para. 13.
[113] *Id.,* para. 82, 85.
[114] *Id.,* para. 85.
[115] *Id.,* para. 78.
[116] European Council, Conclusions (Brussels, 15 December 2022, EUCO 34/22), para. 30.

within the EU in 2019). For control of corruption, the World Bank's figures went down from a percentile rank of 30 to 26 (compared to 99 for Denmark and 49 for Bulgaria in 2019).[117] Similarly, Transparency International's Corruption Perception Index showed Bosnia and Herzegovina in decline between 2019 and 2022 (it fell from the 101st to 110th position).[118]

An overall comparison between the Commission's picture of the rule of law situation in the applicant countries with that expressed in international rule of law rankings generally shows a more sombre assessment by the non-EU indicators. This was most pronounced in the case of Ukraine. The Commission Opinion of 2022 concluded that the country was "well advanced" regarding the Copenhagen political criterion and immediately recommended candidate country status, on the understanding to would tackle seven key steps.[119] The rule of law and corruption indicators by non-EU organisations showed an entirely different picture. The World Bank's 2022 indicators on the rule of law attributed Ukraine a percentile rank of merely 19 (which was significantly worse than Georgia's 56 and Bosnia and Herzegovina's 42 for the same year).[120] The World Justice Project's Rule of Law Index for 2022 placed Ukraine in 76th position (below both Georgia and Bosnia and Herzegovina, which came in 49th and 70th place respectively).[121] In terms of corruption, the World Bank's percentile ranking of 29 and Transparency International's Corruption Perception rank of 116 placed Ukraine far below any other candidate country.[122]

The differences between the Commission assessment and that embodied in the international rankings might be explained by the fact that the "EU's rule of law conditionality vis-à-vis Ukraine [and vis-à-vis the other applicants] is marked by a strong focus on formal standards and institutions, whereas social and economic underpinnings of the rule of law are ignored".[123] In contrast, the international rule of law rankings, while necessarily providing a simplified picture of reality, at the same time capture "a higher-order concept that subsumes all the differing

[117] World Bank, Worldwide Governance Indicators, www.govindicators.org.
[118] Transparency International, Corruption Perceptions Index, https://www.transparency.org/en/cpi/2024.
[119] European Commission, Opinion on Ukraine's application for membership of the European Union (Brussels, 17 June 2022, COM(2022) 407 final), p. 20.
[120] World Bank, Worldwide Governance Indicators, www.govindicators.org.
[121] World Justice Project, Rule of Law Index, https://worldjusticeproject.org/rule-of-law-index/global/.
[122] Transparency International, Corruption Perceptions Index, https://www.transparency.org/en/cpi/2024.
[123] Maryna Rabinovych, "EU Enlargement Policy Goes East: Historical and Comparative Takes on the EU's Rule of Law Conditionality vis-à-vis Ukraine", *Hague Journal on the Rule Law*, Vol. 16, No. 3, 2024, p. 717.

conceptions of the rule of law".[124] This is not a plea to give a formal role to such international rule of law rankings in the granting of candidate country status or in the other steps of the EU accession process. However, when the various types of rankings, notwithstanding their different conceptualizations, systematically show a considerably more sobering picture of the rule of law situation in the applicant countries than the Commission assessment, there might be ground for concern about the reliability of the EU approach. Given the geopolitical pressures on the Commission, and the consequent risks that this could affect the outcome of its rule of law assessment, it might be considered whether such an assessment should not be better outsourced to a more neutral body.[125] The EU Agency for Fundamental Rights, the Council of Europe's Venice Commission for Democracy through Law, or a dedicated body composed of senior academics and former constitutional judges from the EU Member States could be considered for this task.

6. Methodological problems with the assessment of Article 2 TEU and rule of law compliance in the accession context: Suggestions to bridge the gap between law and practice

The issues signaled in the previous section are closely connected to methodological problems that characterize the EU's current assessment of applicant country compliance with the values of Article 2 TEU, including the rule of law. To credibly enforce the Court's doctrine on respect for the values of Article 2 TEU as "a precondition" or "a prerequisite" for accession, the EU's political institutions should bring their practice in line with the letter and spirit of Articles 49 and 2 TEU.

6.1. The EU should take seriously the wording of Article 49 TEU on respect of the Article 2 TEU values by the applicants

Article 49 TEU states in a clear and unconditional language that an applicant for EU membership must be "a European State which respects the values referred to in Article 2". In other words, there is no doubt that countries whose candidate status is recognised, and whose application is therefore

[124] Tom Ginsburg & Mila Versteeg, "Rule of Law Measurement", in Jens Meierhenrich & Martin Loughlin, eds., *The Cambridge Companion to the Rule of Law* (Cambridge: Cambridge University Press, 2021), p. 512.
[125] On the risk of the "over-politicisation" of the EU's rule of law assessment, see Elena Basheska, "EU Enlargement in Disregard of the Rule of Law: A Way Forward Following the Unsuccessful Dispute Settlement Between Croatia and Slovenia and the Name Change of Macedonia", *Hague Journal on the Rule of Law,* Vol. 14, No. 2-3, 2022, p. 221; Benoît Bréville, "EU: new members are welcome," *Le Monde diplomatique*, December 2023, https://mondediplo.com/2023/12/01edito (expressing the criticism that "unlike previous candidates, Ukraine is not being assessed on its ability to meet the EU's much-vaunted standards – tackling corruption, respecting the rule of law, defending minorities, balancing its budget – but according to immediate geopolitical considerations").

considered admissible, should already meet the Article 2 TEU standards. However, the EU has so far ignored this aspect of Article 49 TEU. In practice, neither the Commission nor the Council have tried to implement the requirement that applicants fully respect the values of Article 2 TEU at the moment of applying, for example when considering their candidate status.[126] Given the clear wording of Article 49 TEU, this is a serious shortcoming.

The issue is especially important because EU Negotiating Frameworks are building on the legal fiction contained in Article 49 TEU. They highlight that "[n]egotiations are opened on the basis that [the candidate country] respects and is committed to promoting the values on which the Union is founded, referred to in Article 2 TEU".[127] This borders surrealism. First, the EU institutions fail to enforce the Article 2 dimension of Article 49 TEU at the moment a country applies for EU membership. Thereafter, they nevertheless assume compliance with the wording of the non-enforced provision. Either the provision should be redrafted (which implies treaty revision) or it should be applied in a correct manner with an Article 2 TEU test before a country is granted candidate country status.

6.2. The accession process needs a comprehensive Article 2 TEU compliance test

Considering the prominence of Article 2 in first sentence of Article 49 TEU, one would expect that – if not when considering an applicant's candidate status, then at a later stage in the accession process – the EU effectively tests an applicant's respect for the EU's funding values, as formulated in Article 2 TEU. This is not the case. The accession process simply lacks a formal, transparent and coherent Article 2 TEU compliance test. Commission Opinions on the possible granting of candidate status briefly mention Articles 49 and 2 TEU but are essentially aimed and structured to verify compliance with the Copenhagen criteria, including its political criterion.[128] As seen before, Copenhagen's political criterion overlaps in part with the values of Article 2 TEU, but is not identical to it. In addition, none of the negotiating clusters or chapters covers the values of Article 2 TEU in a comprehensive and coherent manner. That also means that Commission and Council, when opening and closing chapters, never take a consistent look at an applicant's performance

[126] See, for example, Opinion on Bosnia and Herzegovina's application, *op. cit*. ; Opinion on Ukraine's application, *op. cit*.; Opinion on Georgia's application, *op. cit*.
[127] Negotiating Framework UA, para. 4.
[128] See, for example, Opinion on Bosnia and Herzegovina's application, *op. cit*., pp. 2, 6, 13; Opinion on Ukraine's application, *op. cit*., pp. 2, 5, 19-20; Opinion on Georgia's application, *op. cit*., pp. 5, 16.

under Article 2 TEU as such.[129] The Commission's annual reports on the candidate countries, as part of the Commission's annual enlargement package, are equally structured along the clusters and chapters of the accession negotiations, without any mentioning of Article 2 TEU.[130]

The EU institutions have thus missed the opportunity of giving an operational meaning to the Article 2 dimension of the accession process, despite the clear wording of Article 49 TEU. This is an important shortcoming. Article 2 TEU purposefully brings together the EU's values in one provision, thus underlining their interdependence and mutually reinforcing nature. The EU's founding values get substantive meaning in this interconnected context. This applies in particular to respect for the rule of law. As Regulation 2020/2092 reminded, the "rule of law requires that all public powers act within the constraints set out by law, *in accordance with the values of democracy and the respect for fundamental rights*".[131] In view of its wording, the values encompassed by Article 2 TEU cannot be interpreted in an isolated or reductionist way. Thus, from a legal philosophical perspective, the formulation of Article 2 TEU stands in opposition to the interpretation of academics like Joseph Raz, who considered the rule of law as perfectly compatible with the absence of democracy and the denial of human rights.[132] The wording of Article 2 TEU is clearly more in line with the views of those who see the rule of law as inseparably linked to human rights (such as Tom Bingham) and to legislative democracy (such as Jeremy Waldron).[133] It is essential that this vision of Article 2 TEU is structurally reflected in the accession process, whereby, the verification of an applicant's respect of the EU's interlinked founding values becomes the core of a comprehensive dedicated chapter within the fundamentals' cluster.

6.3. The accession process needs a coherent rule of law compliance test

The fact that the rule of law is part of an interconnected set of values does not deny "its distinctive contribution to the constellation of ideals we bring to our politics".[134] In other words, the applicants also need to be assessed based on the rule of law concept as such. While section 2 showed a large

[129] Along the same lines, see Jan Wouters, "Revisiting Art. 2 TEU: A True Union of Values?", *European Papers*, Vol. 5, No. 1, 2020, pp. 263-265.
[130] See the country reports under the European Commission's 2024 Enlargement Package, https://enlargement.ec.europa.eu/news/commission-adopts-2024-enlargement-package-2024-10-30_en.
[131] Regulation 2020/2092, *op. cit*., 3rd recital.
[132] Joseph Raz, *The Authority of Law* (Oxford: Oxford University Press, 2009, 2nd ed.), pp. 210-232.
[133] Tom Bingham, *The Rule of Law* (London: Penguin Books, 2010), pp. 66-84; Waldron, *Thoughtfulness and the Rule of Law, op. cit*., pp. 208-234.
[134] Waldron, *Thoughtfulness and the Rule of Law, op. cit*., pp. 2-3.

degree of consensus between the EU institutions on the key rule of law principles, the texts produced in the accession context do not systematically and comprehensively reflect this common understanding.

This is a structural problem since the two "rule of law chapters" under the EU Negotiating Frameworks (already introduced in section 4.1) lack consistency with the *de facto* common understanding reviewed in section 2. Chapter 23 deals with the functioning of the judiciary and the fight against corruption, which are directly related to the rule of law concept that emerged in section 2. But an issue such as the freedom of expression, which is also part of chapter 23, goes beyond the common understanding explained in section 2.[135] Chapter 24 – the other so-called "rule of law chapter" – concerns judicial cooperation in civil and criminal matters, including the fight against organised crime, cooperation against drugs, the fight against terrorism, and the criminal law aspect of Euro counterfeiting, as well as legal and irregular migration, asylum, visa policy, Schengen and the external borders.[136] Through chapter 24, all substantive policy fields related to the old "third pillar" of the Treaty of Maastricht (cooperation in the fields of justice and home affairs) are thus considered as belonging under the "rule of law" concept. This is a mistake. As shown in section 2, the EU's common understanding of the rule of law essentially includes the cross-cutting principles of legality, legal certainty, prohibition of arbitrariness of the executive powers, effective judicial protection and equality before the law. Substantive matters on EU cooperation in the fields of justice and home affairs should be treated like all other policy fields in the accession process, but not within the context of an Article 2 TEU rule of law assessment.

Another structural problem with the current EU Negotiating Frameworks is the absence of a dedicated *locus* for a comprehensive and coherent assessment of the rule of law and its cross-cutting horizontal principles listed above. This is a major shortcoming, which should be rectified in the framework of the proposed dedicated negotiating chapter on Article 2 TEU (see section 6.2). In this context, the European Parliament, the Council, and the Commission would do well to formalise their *de facto* common understanding on the rule of law, and agree to use this in a

[135] Chapter 23 also includes fundamental rights. "Effective judicial review including respect for fundamental rights" is part of the EU's common understanding on the rule of law, as reviewed in section 2. At the same time, while the notions of rule of law and fundamental right are closely interrelated, they are not identical and would best each be assessed on their own merits under the fundamentals cluster.

[136] Commission, 2024 Enlargement Package, *op. cit*.

transparent and systematic manner during the accession process.[137] That should bring an end to the rather erratic use of rule of law concepts in texts on the candidate countries. For example, in its 2019 Opinion on the application for EU membership by Bosnia and Herzegovina, the Commission treated obvious rule of law priorities (guaranteeing the independence of the judiciary, reform the Constitutional Court, guaranteeing legal certainty, including by establishing a judicial body entrusted with ensuring the consistent interpretation of the law, and ensuring equality and non-discrimination of citizens, notably by addressing the European Court of Human Rights case law) under the democracy/efficiency rubric, and that while the Opinion also included a dedicated set of rule of law priorities.

Conclusions

This paper examined the degree to which the EU enlargement process can be seen as upholding the ideal of a "government of laws and not of men". Section 1 underscored the gradual, but successful buildup of a solid primary law basis for an accession process that is underpinned by the principle of respect by the applicants for the rule of law and the other foundational values included in Article 2 TEU. This has been usefully complemented by the Court's legal doctrine on the link between the Article 2 TEU values and EU membership (reviewed in section 3). As shown in section 4, the EU's political institutions have taken several steps to reinforce the position of the rule of law as one of the fundamentals of the accession process. Still, important gaps remain between the legal requirement for a full compliance by the applicant countries with the Article 2 TEU values, including the rule of law, and the EU's accession practice. As underscored in sections 6.2 and 6.3, the EU has so far failed to develop a comprehensive and coherent manner of assessing the performance of the applicants against the standards of Article 2 TEU in general and the rule of law concept in particular. Given its prominence in Article 49 TEU's accession process, the underexposure of Article 2 TEU in the accession process is not in the spirit of the Treaty. A new and dedicated negotiating chapter should embody a transparent assessment of each of the Article 2 values, giving due space to their cross-cutting principles. This would provide much needed coherence in the evaluation of the candidate countries' performance on those values across the board. For the rule of law, it would provide a locus for the examination of such transversal

[137] See also Arnisa Tepelija, "Past Legacies and Future Projections: The Implementation of the Rule of Law in EU Enlargement Policy", CIFE Policy Paper, No. 162, 2024, p. 3 (arguing that "[s]ubstantiation and convergence of the rule of law understanding are necessary to prevent confusion" during the accession process).

principles as legality or legal certainty that are key to "a government of laws" but are hardly visible in the current enlargement practice.

The recommendations made above should not be considered as trivial technocratic inventions. EU enlargement shapes the nature and future development of the European construction. So does the manner in which the applicants are assessed and guided. This applies *a fortiori* when compliance with the EU's founding values and the rule of law is considered. Nothing less than the ethos of the EU is at stake. Building on the history of the rule of law concept at the start of this article, one of the sharpest analysts of Aristotle's constitutional reflections was Marcus Tullius Cicero (106–43 BCE), the Roman consul, lawyer and legal philosopher. In one of his landmark contributions on what should bind together a sustainable republic he made the point of underlining that it required not merely *utilitatis communione sociatus* (the sharing of interest and advantage), but above all *iuris consensu* (a common acknowledgment and understanding of the law and of justice as guaranteed by law).[138] In its essence, the latter is what underpins the rule of law. As remarked by Augustine of Hippo (Saint Augustine, 354-430), without *iuris consensu* political entities would be nothing but "great bands of robbers", keen on dividing their loot under the leadership of strongmen.[139] Clearly, the EU aspires to be much different from a predatory alliance pursuing joint actions in the manner warned against by Augustine. It is a new legal order based on the rule of law, that is "if we can keep it" (to paraphrase Benjamin Franklin). In this context, the process of welcoming new members is essential in determining whether the Union will be able to keep moving forward by way of "integration through the rule of law" or whether it will sink back into a form of "integration through the rule of power and mere geopolitical calculations".

[138] Marcus Tullius Cicero, *De Republica,* book 1, section 39. See also Malcolm Schofield, *Cicero: Political Philosophy* (Oxford: Oxford University Press, 2021), pp. 64-68; Malcolm Schofield, "*Iuris consensu Revisited*", in Nathan Gilbert *et al.,* eds., *Power and Persuasion in Cicero's Philosophy* (Cambridge: Cambridge University Press, 2023), pp. 119-139.
[139] Aurelius Augustine, *The City of God*, book 4, section 4.

Judicial Backlogs in the Republic of Cyprus: Causes, Consequences and Prospects for Reform

Stéphanie Laulhé Shaelou and Andrea Manoli*

Table of Contents

Introduction

The maxim "justice delayed is justice denied" was first used by the English philosopher and jurist Sir Edward Coke in the early 1600s, and his words could not be more relevant today.[1] Historically, the trial threshold within a reasonable time can be traced back to the Magna Carta Liberatum.[2] In 1642, Sir Edward Coke termed "delay" as a form of Denial. The 20th century came with adopting several legal supranational instruments constituting today's cornerstones, most of which protect fair trial, including within a reasonable time. More illustrative, Article 6 of the European Convention on Human Rights (ECHR),[3] Article 47 of the European Union Charter of Fundamental Rights (the EU Charter),[4] Article 14 of the International Covenant on Civil and Political Rights (ICCPR)[5] and Article 10 of the Universal Declaration of Human Rights (UNDHR)[6] provide that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, to the determination of their rights and obligations and of the handling of any criminal charge against them without undue delay. Consequently, the international legal order upholds that adjudication within a reasonable time is a standard set in the judiciary, often determining its efficiency. Any delayed proceedings and decisions constitute a flagrant violation of a person's rights.[7] Nonetheless, there seems to be a worldwide failure to deal promptly with cases, generating very human consequences. European and other countries alike are experiencing an increasing trend

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[1] Krishnan, Jayanth K., and C. Raj Kumar. "Delay in process, denial of justice: the jurisprudence and empirics of speedy trials in comparative perspective." *Georgetown Journal of International Law* 42, no. 3 (2011): 746-784; Dyson, Lord. "Delay too often defeats justice." In *The Judicial Review: Selected Conference Papers: Journal of the Judicial Commission of New South Wales*, vol. 12, no. 3, pp. 285-299. Sydney: Judicial Commission of NSW, 2015.

[2] Magna Carta 1297.

[3] The Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, as amended), Article 6.

[4] Charter of Fundamental Rights of the European Union [2012] OJ C326/391, Article 47.

[5] International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 14.

[6] United Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)), Article 10.

[7] The Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, as amended), Article 6.

towards litigation but seem unable to sustain such a trend.[8] To put it simply, this growing propensity to litigate often exceeds the capacity to handle it due to various aspects in the administration of justice, including budget constraints, the limited number of judges, the lack of alternative dispute resolution methods and of judicial time.[9] The alarming court backlogs erode individual and property rights and freedoms, obstructing economic progress and fundamental human rights.[10] The term "Backlog" refers to cases that have not been resolved within a reasonable timeframe. Insufficient legal frameworks, inadequate resources, and poor case management practices often cause these delays. They result in high legal costs, uncertainty, and diminished public confidence in judicial systems.

Challenges in the administration of justice and delays in courts worldwide constitute an ongoing, persistent, and pressing issue at the heart of every modern democracy.[11] Despite the globality of the phenomenon, this paper has a jurisdictional scope, that is, analysing the judicial backlog in a member state of the European Union, namely, the Republic of Cyprus with references at the European level. According to Fjelstul, Gabel and Carruba, even the Court of Justice of the European Union (CJEU) faces the growing backlog challenge.[12]

Considering the issue identified, this paper will discuss the backlog and efforts to reduce the delays in the courts within the Republic of Cyprus. In doing so, the paper will be divided into three parts.

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[8] Samantha Bielen et al. "Backlogs and litigation rates: Testing congestion equilibrium across European judiciaries." *International Review of Law and Economics* 53 (2018): 9-22; Magalhães, Pedro C., and Nuno Garoupa. "Judicial Performance and Trust in Legal Systems: Findings from a Decade of Surveys in over 20 European Countries." *Social Science Quarterly (Wiley-Blackwell)* 101, no. 5 (2020).
[9] Ibid.
[10] Samantha Bielen et al. "Backlogs and litigation rates: Testing congestion equilibrium across European judiciaries." *International Review of Law and Economics* 53 (2018): 9-11
[11] Ibid.
[12] Fjelstul, Joshua, Gabel, Matthew and Carrubba, Clifford (2022) *How the Court of Justice of the European Union can be reformed to improve the timely administration of justice. LSE European Politics and Policy (EUROPP) blog* (07 Oct 2022). This is also apparent from the CJEU Annual Reports and from ongoing structural reforms to address the growing number of cases and legal issues arising at the two levels of jurisdiction at the CJEU. https://curia.europa.eu/jcms/jcms/Jo2_7000/en/

Part A provides the backdrop to the court backlog and the jurisprudence of reasonable time. Furthermore, it discusses the importance of the Rule of Law and its connection with inordinately lengthy court proceedings. It will discuss the fundamental importance of the Rule of Law, how it is affected by delays in courts, and thus the pertinence of the current analysis. Part B will explain the European legal order on the subject matter and then analyse reasonable time according to the ECtHR and the CJEU case law. Part C has a deep jurisdictional scope and examines the reasons behind the arguable failure to resolve and/or durably reduce backlogs in Cyprus by providing the history of the court backlog in Cyprus and the reforms in light of it. Finally, this paper also intends to draw lessons from European tools and best practices available to ensure the effective implementation of recommendations and reform in the field, transferable to Cyprus.

This analysis will present qualitative and quantitative data concerning the backlog in Cyprus. This paper argues and discusses how backlogs affect the rule of law and how they need to be explicitly identified, documented, and addressed to resolve backlogs effectively and strengthen the rule of law on the island of Cyprus. Finally, conclusions and recommendations will be drawn using the European tools and best practices to propose an alternative mechanism adapted to Cyprus's legal and socio-legal specificities.

PART A – Judicial Backlog and the Rule of Law

I. Setting the Background

All in all, European states such as the Republic of Cyprus continue to experience a rise in cases before the courts, leading to significant court backlogs. In the case of the Republic of Cyprus, this has been attributed to several factors. One prominent cause is the aftermath of the financial crisis,

after which individuals raced to litigation after the much-discussed 2013 bail-in,[13] which prompted a surge of litigation, particularly in the financial and commercial sectors.

Another persistent problem is the structural inefficiencies within the Cypriot judiciary, as evidenced by repeated delays and inaction. The Court has highlighted these issues in cases such as ECtHR, *Irodotou v Cyprus*, where the Court found violations of Article 6 and 13 ECHR due to excessive length of private criminal proceedings and the lack of an effective remedy following the Attorney General's decision to discontinue a prosecution.[14] Despite legislative amendments including Law 23(I)/2015 amended by Law 173(I)/2024, challenges remain regarding the finality of prosecutions and the constitutional discretion of the A-G (*nolle prosequi*), which escapes judicial scrutiny.

Like other EU states, Cyprus is also struggling with a growing number of applications for international protection.[15] The judgment of the ECtHR in *M.A. and Z.R. v Cyprus* in 2024,[16] underscored persisting systemic deficiencies in asylum procedures and legal remedies for asylum seekers. The Court found multiple violations of Article 3 and 4, Protocol 4, and 14 ECHR, notably concerning collective expulsion and lack of access to an effective remedy with automatic

[13] Έκθεση Καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου, Επαρχιακών Δικαστηρίων, 28 Ιουνίου 2021 < http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%CE%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 21 November 2024; Stephanie Laulhe Shaelou, and Anastasia Karatzia. "Some preliminary thoughts on the Cyprus bail-in litigation: a commentary on Mallis and Ledra." *European Law Review* 43, no. 1 (2018): 248-267.

[14] Irodotou v Cyprus, App no 16783/20 (ECtHR, 23 August 2023) https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-224776%22]} accessed 21 November 2024

[15] European Asylum Support Office, Operating Plan 2022–2024 Agreed by the European Asylum Support Office and the Republic of Cyprus (December 2021) https://euaa.europa.eu/sites/default/files/OP_CY_2022-2024.FINAL_.pdf accessed 21 November 2024

[16] *M.A and Z.R v Cyprus*, Application no. 39090/20 (ECtHR, 8 October 2024) https://hudoc.echr.coe.int/#{%22fulltext%22:[%221.\tM.A%20and%20Z.R%20v%20Cyprus%20(2024)%22],%22itemid%22:[%22001-236141%22]} accessed 21 March 2025.

suspensive effect.[17] It could be argued that this is a call for legislative and procedural reforms, including amendments to Section 12(2) of the Aliens and immigration Law and ensuring that asylum seekers can access immediate and effective remedies to challenge removal decisions, without fear of prosecution for ill-founded complaints as now allowed under Law 73(I)/2024.

Furthermore, in *Altius Insurance Ltd v. Cyprus*, the Court held that Cyprus's system of addressing excessive judicial delays through The Effective Remedies for the violation of the Right to a Determination of Civil Rights and Obligations within a Reasonable Time Law of 2010, Law 2(I)/2010 (as amended by Law 53(I)/2023) was incompatible with the ECHR because it fragmented delay complaints by level of jurisdiction rather than addressing the overall duration of proceedings.[18] This structural flaw prevents an effective remedy within the meaning of Article 13, contributing further to case backlog and legal uncertainty. These judgments collectively expose how delays and ineffective remedies exacerbate court backlogs and erode access to justice.

Further recent cases of the ECtHR, such as *Krashias and others v. Cyprus*,[19] *Souroullas, Kay and Zannettos v. Cyprus*,[20] and *X v. Cyprus*,[21] reveal similar patterns in both civil and criminal justice sectors. While in *Souroullas, Kay and Zannettos v. Cyprus* the ECtHR found no violation of fair trial Rights, in a notable dissenting opinion, two judges emphasised the persistent systemic backlog in Cypriot courts expressing concern that chronic delays risk undermining justice.[22] In particular, the Court in *Krashias* required Cypriot first instance courts to explicitly recognise delays in

[17] Ibid.
[18] The Effective Remedies for the violation of the Right to a Determination of Civil Rights and Obligations within a Reasonable Time Law of 2010, Law 2(I)/2010 < https://www.cylaw.org/nomoi/enop/non-ind/2010_1_2/full.html > last accessed on 25 June 2025
[19] Application no 225319/22 (ECtHR, Chamber judgment, 27 February 2025) https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-225319%22]} accessed 22 May 2025
[20] Application no 1618/18 (ECtHR, Chamber judgment, 26 November 2024)
[21] Application no 40733/22 (ECtHR, Chamber judgment, 27 February 2025)
[22] Application no 1618/18 (ECtHR, Chamber judgment, 26 November 2024)

sentencing decisions and quantify sentence reductions attributable to procedural delays, thus emphasising the need to internalise delay considerations at every stage of proceedings to mitigate backlog effects and human rights violations.

As Part B will discuss extensively, the Republic of Cyprus has gone through institutional reforms, including the establishment of an Administrative Court of International Protection and automatic suspensive effects in asylum-related decisions, in line with earlier ECtHR judgments like *M.A. v. Cyprus*.[23] However, as noted by the ECtHR and the Committee of Ministers, the effectiveness of these reforms in practice remains questionable, particularly in light of the recent judgments of the ECtHR, which exposed ongoing failures in processing asylum applications and preventing collective expulsions at sea.

In summary, Cyprus's backlog crisis is not merely a numerical issue of case volume, but a symptom of deeper systemic shortcomings in remedy effectiveness, procedural safeguards, and access to justice. ECtHR jurisprudence provides both a diagnosis of these failings and a roadmap for urgent reforms to tackle delays and enhance the practical operation of legal remedies in Cyprus.

Nonetheless, the court backlogs are by far not a new phenomenon. Internationally, in 1999, Buscaglia and Dakolias reported a concerning level of court backlogs, which resulted in violations of personal, social, and economic rights.[24] The multifaceted nature of violations arising from backlogs threatens the Rule of Law, democracy and thus people's daily human rights. Consequently, the confrontation of the issue becomes all the more pressing. Addressing the issue of court backlogs has been a challenge for policymakers and the judiciary alike. On the one hand, policymakers have been drafting reforms to improve timelines, enhance the fairness of procedures,

[23] M.A. v Cyprus (App no 41872/10) (ECtHR, 23 July 2013).
[24] Buscaglia, Edgardo, and Maria Dakolias. *Comparative international study of court performance indicators: a descriptive and analytical account*. No. 20177. The World Bank, 1999.

and even find ways to reduce the demand for litigation through alternative means.[25] On the other hand, the judiciary faces a significant challenge in managing its backlog. Reports indicate that the primary solution of appointing additional judges, which was also proposed for Cyprus, may threaten judicial independence.[26]

Effective and timely application of justice remains a pressing issue that needs to be resolved if systems are meant to uphold the Rule of Law, protect fundamental rights and freedoms, and maintain democracy. From an international legal standpoint, Article 6 ECHR[27] and Article 47 EU Charter equally and explicitly provide that "everyone is entitled to a fair and public hearing within a reasonable time."[28] However, the full enjoyment of these rights can be hindered by obstacles or inefficiencies stemming from an inadequate legal framework, an inappropriate court system, the increasing complexity of cases, or insufficient court resources to handle incoming cases.[29]

While multiple judicial systems continue to struggle with backlogs,[30] the necessity for prompt action based on scientifically robust mechanisms in the field is ever-growing. For this reason, this

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[25] Samantha Bielen et al. "Backlogs and litigation rates: Testing congestion equilibrium across European judiciaries." *International Review of Law and Economics* 53 (2018): 9-22.
[26] Ibid; Έκθεση Καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου, Επαρχιακών Δικαστηρίων, 28 Ιουνίου 2021 < http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%CE%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 21 November 2024.
[27] The European Convention on Human Rights, Article 6.
[28] Charter of Fundamental Rights of the European Union, Article 47.
[29] Samantha Bielen et al. "Backlogs and litigation rates: Testing congestion equilibrium across European judiciaries." *International Review of Law and Economics* 53 (2018): 9-22; Έκθεση Καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου, Επαρχιακών Δικαστηρίων, 28 Ιουνίου 2021 < http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%CE%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 21 November 2024.
[30] Samantha Bielen et al. "Backlogs and litigation rates: Testing congestion equilibrium across European judiciaries." *International Review of Law and Economics* 53 (2018): 9-22.

paper will focus on the Republic of Cyprus, as one of the state member of the EU and of the Council of Europe most affected by the phenomenon of delays in courts, as the country stands out in almost every monitoring or reporting mechanism of the European Commission, the Council of Europe's Venice Commission, the Council of Europe, and other indexes at the international level.[31] While the issue of backlogs in the administration of justice has been examined extensively through reports and academic literature in many jurisdictions and at the European and international level,[32] the study of the administration of justice in Cyprus, with a focus on the backlog, remains scientifically underdeveloped. Despite progress made through amendments[33] including to the Civil Procedure Rules, the reorganisation of the courts through the creation of new tiers, specialised courts, the appointment of new judges and recommendations by nationally set Independent Inquiries on the delays at courts in the Republic of Cyprus,[34] the issue arguably remains ever more prominent and pressing. Cyprus is regularly pointed at in reports and/or found in violation of Articles 6 and 13 ECHR respectively.[35] This working paper, therefore, proposes to

[31] Centre for the Rule of Law and European Values (CRoLEV), *CRoLEV Dashboard* (UCLan Cyprus, April 2025) < https://crolev.eu/dashboard/> last accessed 25 June 2025.
[32] Madhana, B., and S. Subhashree. "A Study on Backlog of Cases." *Issue 5 Int'l JL Mgmt. & Human.* 5 (2022): 942; Mcalister, Merritt, Adalberto Jordan, and Kimberly J. Mueller. "What can be done about backlogs?." *Judicature* 107, no. 2 (2023): 50-59; Kerwin, Donald, and Brendan Kerwin. "What Will It Take to Eliminate the Immigration Court Backlog? Assessing "Judge Team" Hiring Needs Based on Changed Conditions and the Need for Broader Reform." *Journal on Migration and Human Security* (2024): 23315024241226645; Hassan, Rana Saifullah, Naeem Ahmed, and Fahim Ahmed Siddiqui. "Judicial System and Public Policy: Strategy for Expeditious Disposal of Backlog." *JISR management and social sciences & economics* 19, no. 2 (2021): 193-205.
[33] Centre for the Rule of Law and European Values (CRoLEV), *CRoLEV Dashboard* (UCLan Cyprus, April 2025) < https://crolev.eu/dashboard/> last accessed 25 June 2025.
[34] See for example, Έκθεση Καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου, Επαρχιακών Δικαστηρίων, 28 Ιουνίου 2021 < http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%CE%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 21 November 2024.
[35] See for example, Irodotou v Cyprus, App no 16783/20 (ECtHR, 23 August 2023) https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-224776%22]} accessed 21 November 2024

delve into the matter of the administration of justice in the Republic of Cyprus, with a particular focus on the backlog of cases and its implication on upholding the Rule of Law and Justice on the island of Cyprus. The Republic of Cyprus was chosen as a unique case study. The island, located at the edge of Europe, divided because of its internal conflict within an even more challenging crossroad of continents, has been reportedly under siege, including due to the court backlog posing particular threats to the Rule of Law.

II. The fundamental importance of the Rule of Law and its connection with inordinately lengthy court proceedings

Respecting the Rule of Law is not simply a political slogan in times of populism; it is not a mere phrase for social scientists and theorists to explore. It is not just one of the European values enshrined in Article 2 of the Treaty of the European Union (TEU). It constitutes a way of working, improving democracies, legal systems and thus the lives of millions of European citizens. It provides the fundamental way to distinguish between legitimate and illegitimate, legal and arbitrary decisions in favour and/or against socio-legal challenges at the heart of Europe and elsewhere.[36] Article 2 TEU demands "respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities". All these core values are interconnected; they are indispensable as they provide the backbone of the values of the Union. As a matter of accuracy, though, it should be mentioned that, often, it is assumed that the institutional and structural values (i.e., the protection of democracy

[36] Brian Tamanaha, On the Rule of Law: History, Politics, Theory (Cambridge: Cambridge University Press, 2004) 3; Brian Tamanaha 'The history and elements of the rule of law' (2012) Singapore Journal of Legal Studies 237; Martin Krygier, 'The Rule of Law and State Legitimacy', in Wojciech Sadurski, Michael Sevel, and Kevin Walton (eds), Legitimacy: The State and Beyond (Oxford, 2019); Michel Rosenfeld, 'The Rule of Law and the Legitimacy of Constitutional Democracy' (2001) 74 S. Cal. L. Rev. 1307; Laurent Pech, '"A Union Founded on the Rule of Law": Meaning and Reality of the Rule of Law as a Constitutional Principle of EU Law' (2010) 6 European Constitutional Law Review 359.

and the Rule of Law) are fundamental rights and can be found in the EU Charter.[37] While provisions such as Article 47 EU Charter and Article 2 TEU enshrine the fundamental significance of the Rule of Law,[38] they have also faced significant criticism. For instance, Article 2 has been criticised for its vagueness, with some academics arguing that it was never intended to impose, concrete, enforceable values on member states.[39] Moreover, even if, these provisions are drafted in a more sophisticated and flexible manner, allowing EU principles to evolve over time, as some scholars suggest, the core values of the EU, particularly the Rule of Law, remain essential. They form the very backbone, the 'skeleton', not only of the EU but of any democracy. This central role is evident not just in the EU Treaties and the ECHR, but also through the case law of the Court of Justice of the European Union and the European Court of Human Rights, as well as in the opinions and Communications issued by EU institutions themselves.[40]

Democracy and with it the Rule of Law, forms an integral part of the constitutional framework of the EU, is enshrined in the constitutions of every EU member state, and also in those of non-member states through broader European frameworks such as the Council of Europe, precisely because of democratic values. Yet, the concept of the Rule of Law can remain theoretical.[41] The concept might not have yet been defined completely, but its normative strength and implications

[37] Ibid.
[38] LD Spieker, 'Breathing Life into the Union's Common Values: On the Judicial Application of Article 2 TEU in the EU Value Crisis' (2018) 20 German Law Journal 1182, 1187.
[39] Ibid.
[40] Case 26/62 NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration, ECLI:EU:C:1963:1; Case 6/64 Flaminio Costa v ENEL, ECLI:EU:C:1964:66; Case C-284/16 Slowakische Republik v Achmea BV, ECLI:EU:C:2018:158. See furthermore Opinion 2/13 on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, ECLI:EU:C:2014:2454. See for an in-depth analysis e.g. P Eeckhout, 'Opinion 2/13 on EU Accession to the ECHR and Judicial Dialogue – Autonomy or Autarky?' (2015) 38 Fordham International Law Journal 955; E Spaventa, 'A Very Fearful Court?: The Protection of Fundamental Rights in the European Union after Opinion 2/13' (2015) 22 Maastricht Journal of European and Comparative Law 35; J Wouters, 'Revisiting Art. 2 TEU: A True Union of Values?' (2020) 5 European Papers 255, 262.
[41] L Solum, 'Legal theory Lexicon: Rules, Standards and Principles' (Legal Theory Blog, 29 September 2019); F Schauer, 'The Convergence of Rules and Standards' [2003] New Zealand Law Review 303, 306.

in practice are not to be taken lightly.[42] Ontologically, the Rule of Law nourishes and maintains democratic constitutional systems. Nevertheless, the lack of a concrete definition or the meaning and nature of European values enshrined in Article 2 may be misinterpreted and/or allow for a wider margin of appreciation.[43]

While this paper has no intention to discuss the inability to reach a consensus about the terms and wide-ranging implications, it does not extend either to the history of the Rule of Law or the thin or thick conceptions of the term. The problem with the definition of the Rule of Law has always been that its conceptions, especially thin conceptions, can be framed in obscure terms.[44] Throughout the 20th century, the Rule of Law attracted much attention from academics, the judiciary, the legislature, and the executive branch of many governments.[45] While theorists and philosophers from Aristotle to Dicey tried to build components explaining the Rule of Law, it remains an elusive concept that still attracts much attention and debate.[46]

Drawing from the CJEU's and the ECtHR case-law, one cannot help but understand the importance placed in the concept of the Rule of Law. In *Golder v the UK*, it was expressly stated that the Rule of Law belongs to the Council of Europe's common spiritual heritage.[47] Martin Loughhlin argues that although a coherent formulation of the concept can be devised, it will be unworkable in

[42] N. Kornioti, A. Marcou, K. Kalaitzaki 'The Rule of Law as a Unifying Principle of Research Governance' (CRoLEV JMCEWP 3/2025) https://crolev.eu/wp-content/uploads/2025/06/CRoLEv-Working-Paper-The-Rule-of-Law-as-a-Unifying-Principle-of-Research-Governance-final.pdf last accessed on 26 June 2025.
[43] Ibid.
[44] Ibid.
[45] A Marcou and K Kalaitzaki, 'Rule of Law and European Values: Beyond the state of the art analysis' (CRoLEV WP 31 August 2022) < https://crolev.eu/wp-content/uploads/2022/10/CRoLEV-Deliverable-D.3.1-31-August-2022-FINAL.docx.pdf > last accessed on 22 November 2024.
[46] Ibid.
[47] Golder v the United Kingdom, App no 4451/70 (ECtHR, 21 February 1975) https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57496%22]} accessed 22 November 2024

practice.[48] The Rule of Law constitutes a foundational principle, the oversight of which remains primarily a political responsibility.[49]

On the one hand, thin conceptions of the Rule of Law maintain that the ideal should be understood exclusively in terms of its formal/procedural attributes, with no demand being placed on the specific content of the law. On the other hand, thick conceptions of the Rule of Law integrate requirements proposed by thin conceptions and insist on the substantive values that place restrictions/demands on the content of specific laws.[50]

Considering the relationship between the Rule of Law and human rights, there has been an emerging inherent connection between the two as a substitute to thin approaches, and as a method used by international bodies and agencies that purpose to measure and assess the state of the rule of law in several countries.[51] Legal positivists insist that the law's existence is a matter of social facts. American philosopher Ronald Dworkin argues that it is improbable to think that the operation of legal rules is the only factor determining judicial outcomes.[52] According to Dworkin, even if the legal rule provides a clear answer in simple cases, in hard cases, judges apply legal principles that represent the moral values of a political community, often found in past judgments.[53] In essence, the philosopher supports 'rule by an accurate public conception of

[48] Loughlin, M. The Rule of Law: A Slogan in Search of a Concept. *Hague J Rule Law* 16, 509–523 (2024); Stephanie Laulhe Shaelou et al, Impact Assessment, Recommendations and Synopsis (Deliverable D.5.3, CRoLEV-Centre for the Rule of Law and European Values, UCLan Cyprus, March 2025) < https://crolev.eu/wp-content/uploads/2025/03/D.5.3-Impact-assessment-and-Recommendations.pdf > last accessed on 25 June 2025
[49] Ibid.
[50] A Marcou and K Kalaitzaki, 'Rule of Law and European Values: Beyond the state of the art analysis' (CRoLEV WP 31 August 2022) < https://crolev.eu/wp-content/uploads/2022/10/CRoLEV-Deliverable-D.3.1-31-August-2022-FINAL.docx.pdf > last accessed on 22 November 2024.
[51] See for example, Venice Commission, Report on the Rule of Law < https://rm.coe.int/1680700a61 > last accessed 22 November 2024.
[52] Ronald Dworkin, 'The Model of Rules' (1967) 35 University of Chicago Law Review 22-29; Ronald Dworkin, 'Hard Cases' (1975) 88 Harvard Law Review 1057.
[53] Ibid.

individual rights'.[54] In that sense, the ability of the courts to ensure protection of rights by reviewing public decisions becomes significant to the Rule of Law.[55] Furthermore, Lord Bingham also famously conceptualised the Rule of Law. According to Lord Bingham, all individuals and all organisations within the state, whether public or private, are bound by and entitled to the benefit of laws prospectively promulgated and publicly administered in the courts.[56] The famous eight mutually reinforcing sub-rules, which describe Bingham's broad model of the rule of law, rely heavily on the widespread perception that fundamental rights are indeed a prerequisite to a democratic society that functions based on the rule of law.[57]

Nevertheless, we must acknowledge that while the goal of the EU is to ensure that all citizens within the EU and beyond live under a system that respects the rule of law and individual rights, we should also recognise that the inherent connections between human rights and the rule of law does not mean that the latter encompasses protections for fundamental human rights. While there are noticeable links between the two, there is no way to guarantee that there is an ipso facto violation of the rule of law when there is a violation of human rights in a state and vice versa.

For the purposes of this paper, the Rule of Law will be defined as a substantive term with a direct linkage to the fundamental democratic values enshrined in the establishing Treaties of the European Union and of the Council of Europe. The definition reassures democracy, thus it ought to assume a processual and substantive delimitation of what a democratic decision should look like. Under the Rule of Law, all public powers must always act within the constraints set out by

[54] Ronald Dworkin, *A Matter of Principle,* (Oxford: Clarendon Press, 1985) 11-16.
[55] A Marcou and K Kalaitzaki, 'Rule of Law and European Values: Beyond the state of the art analysis' (CRoLEV WP 31 August 2022) < https://crolev.eu/wp-content/uploads/2022/10/CRoLEV-Deliverable-D.3.1-31-August-2022-FINAL.docx.pdf > last accessed on 22 November 2024.
[56] Thomas Bingham, *The Rule of Law* (Penguin, 2010) 11-12.
[57] Ibid, 69.

law, which respect democracy and are controlled by independent and impartial courts.[58] When the fundamental values of the EU are undermined, especially values and procedures which violate the proper functioning of the judicial system, despite not explicitly violating judicial independence or formal characteristics of the law, then the Rule of Law is in danger.[59] One such backlash of the Rule of Law relates to the fairness of the trial and the "reasonable time" requirement of Article 6 ECHR and Article 47 EU Charter, respectively. The argument put forth in this paper is that the Rule of Law faces serious challenges due to inefficient court procedures and limited capacity, which lead to significant delays in processing court cases. This is so in the Republic of Cyprus as well as other jurisdictions.

Court procedures in Europe are not all perfect, with one of the most visible challenges being the excessively lengthy proceedings. The vast number of complaints before the ECtHR on the issue of unduly delayed court procedures is the undeniable evidence of this problem.[60] Inordinately long proceedings undermine the credibility of the justice system in its entirety and consequently the fairness of judicial procedures.[61] In several resolutions, the Council of Europe's Committee of Ministers emphasised that excessive delays in the administration of justice constitute an important danger, particularly for the Rule of Law.[62]

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[58] A Marcou and K Kalaitzaki, 'Rule of Law and European Values: Beyond the state of the art analysis' (CRoLEV WP 31 August 2022) < https://crolev.eu/wp-content/uploads/2022/10/CRoLEV-Deliverable-D.3.1-31-August-2022-FINAL.docx.pdf > last accessed on 22 November 2024.
[59] Ibid.
[60] See for example, ECtHR Analysis of statistics 2022 < https://www.echr.coe.int/documents/d/echr/stats_analysis_2022_eng > last accessed 22 November 2024.
[61] Bowers, Josh, and Paul H. Robinson. "Perceptions of fairness and justice: The shared aims & occasional conflicts of legitimacy and moral credibility." *Wake Forest Law Review* 47 (2012): 11-13; Stancil, Paul. "Substantive equality and procedural justice." *Iowa L. Rev.* 102 (2016): 1633; Rhode, Deborah L. *Access to justice*. Oxford University Press, 2004; A Marcou and K Kalaitzaki, 'Rule of Law and European Values: Beyond the state of the art analysis' (CRoLEV WP 31 August 2022) < https://crolev.eu/wp-content/uploads/2022/10/CRoLEV-Deliverable-D.3.1-31-August-2022-FINAL.docx.pdf > last accessed on 22 November 2024.
[62] Thomas Hammarberg, 'Long Delays in ocurt proceedings threaten the Rule of law' (Strasbourg 15/10/2007) < https://www.coe.int/en/web/commissioner/blog/2007/-/asset_publisher/xZ32OPEoxOkq/content/long-delays-in-court-proceedings-threaten-the-rule-of-law> last accessed on 22 November 2024; European Commission, '2024 Rule of Law Report: Country Chapter on the rule of law situation in Cyprus' (Brussels 24/7/2024) <

There is a consensus that delayed proceedings tend to undermine the public's opinion about justice, creating an extensive and elusive danger. As legal certainty becomes illusory, frustration and unfortunate feelings of powerlessness might lead to anarchy, in the sense that citizens may take matters into their own hands.[63] As time passes, financial difficulties may arise, and the credibility of witnesses may be jeopardised due to the passing of time.[64] All in all, the credibility of the justice system and thus the Rule of Law is endangered due to the backlog, as delayed justice can lead to frustration, anger, and even violence.[65] The ECtHR, *in Scordino v Italy (no1)*, emphasised the importance of administering justice without delays that might otherwise jeopardise its effectiveness and credibility.[66] Where the Court finds that in a particular state there is a practice incompatible with the Convention resulting from an accumulation of breaches of the "reasonable time" requirement, this constitutes an "aggravating circumstance of the violation of Article 6 § 1".[67] In the last two decades the legal maxim "justice delayed is justice denied" has been at the centre of domestic and international agendas. The judiciary, as an integral part of every democracy, bears the responsibility to deliver justice in a timely and fair manner. Improving judicial performance has been a policy goal for governments in the past decades. Delayed cases are a sign of danger for national judiciaries. A judgment is only effective when completed in a fair interval of time but not rushed. Today, there are countless and innumerable arrears in national courts and

https://commission.europa.eu/document/download/a3e5a6f3-2dc4-403a-94ea-af42177813e9_en?filename=31_1_58067_coun_chap_cyprus_en.pdf > last accessed on 22 November 2024.

[63] Bowers, Josh, and Paul H. Robinson. "Perceptions of fairness and justice: The shared aims & occasional conflicts of legitimacy and moral credibility." *Wake Forest Law Review* 47 (2012): 11-13; Stancil, Paul. "Substantive equality and procedural justice." *Iowa L. Rev.* 102 (2016): 1633; Rhode, Deborah L. *Access to justice*. Oxford University Press, 2004; A Marcou and K Kalaitzaki, 'Rule of Law and European Values: Beyond the state of the art analysis' (CRoLEV WP 31 August 2022) < https://crolev.eu/wp-content/uploads/2022/10/CRoLEV-Deliverable-D.3.1-31-August-2022-FINAL.docx.pdf > last accessed on 22 November 2024. Also cite the impact assessment

[64] Ibid.

[65] Ibid.

[66] Scordino v Italy (no 1) [GC], App no 36813/97 (ECtHR, 29 March 2006) § 224

[67] Bottazzi v Italy [GC], App no 34884/97 (ECtHR, 28 July 1999) § 22; Scordino v Italy (no 1) [GC], App no 36813/97 (ECtHR, 29 March 2006) § 225

more so in the administrative courts in the Republic of Cyprus. In Cyprus, the International Protection Administrative Court (IPAC) started to formally operate in June 2019, and since then has been overwhelmed by a surge in asylum appeals. By early 2023, it was reported that the court faced a backlog of approximately 20,000 cases, with around 10,000 new claims being filed each year.[68] This influx is largely attributed to a significant increase in asylum applications, leading the court and contributing to prolonged delays.[69] Moreover, the administrative courts have been hampered by systemic issues, including staffing shortages and inadequate infrastructure. All the above, alongside the lack of a digital tool and an electronic case management system, and the delayed implementation of reforms, have exacerbated the problem.[70]

In his 2016 State of the Union Speech, the then European Commission President Jean-Claude Junker emphasised the need and the role of effective justice systems in supporting economic growth and defending fundamental rights: "That is why Europe promotes and defends the rule of law". A glimpse of the EU Justice Scoreboard is all one needs to realise that improving the effectiveness of national justice systems remains a priority for the EU. Independence, quality, and efficiency are key elements fundamental Treaties of the EU and EU law mechanisms facilitate. For example, Article 81 of the Treaty on the Functioning of the European Union (TFEU) forms part of the Union's competence in the area of judicial cooperation in civil matters having cross-border implications. This competence is exercised under Article 81(1) TFEU, which provides that

[68] Cyprus Mail, 'Cyprus justice faces "serious efficiency challenges" says EU' (30 September 2020) https://archive.cyprus-mail.com/2020/09/30/cyprus-justice-faces-serious-efficiency-challenges-says-eu/; FastForward, 'Justice Reform Remains Incomplete as District Court Changes Stall' (5 March 2025) https://fastforward.com.cy/policy/justice-reform-remains-incomplete; Cyprus Mail, 'More legal staff to deal with asylum cases' (16 January 2023) https://cyprus-mail.com/2023/01/16/more-legal-staff-to-deal-with-asylum-cases/ > last accessed on 28 June 2025.
[69] Ibid.
[70] Ibid.

the Union shall develop judicial cooperation in civil matters based on the principle of mutual recognition of judgments and decisions in civil and commercial matters.

The provisions under Article 81(2) list specific areas where measures may be adopted to improve civil justice within the Union. For instance Article 81(2)(e) ensures effective access to justice, while Article 81(2)(f) promotes the compatibility of procedural rules among member states when necessary to facilitate cross-border cooperation. Furthermore, Article 81(2)(7) addresses the elimination of obstacles to the proper functioning of civil proceedings, contributing to the objective of establishing an area of freedom, security, and justice, in line with the principle of subsidiarity.

The CJEU has also interpreted aspects of Article 81 TFEU in its case law, particularly in relation to the principle of reasonable time in judicial proceedings as part of effective access to justice. In case *Gambazzi*, the CJEU considered the balance between the procedural autonomy of member states and the Union's commitment to ensuring effective remedies and fair trial standards.[71] Furthermore, in Case *Diageo Brands BV* highlighted how mutual recognition and procedural safeguards should be interpreted in line with fundamental rights, ensuring proceedings do not result in undue delays or procedural disadvantages in cross-border disputes.[72]

Part B – Reasonable Time and the European quora

Before addressing the case law of the European courts on delays in judicial proceedings, it is essential to clarify why the determination of what constitutes a "reasonable time" cannot be reduced to a fixed, uniform timeframe applicable to all cases. Legal systems and procedural realities vary greatly across jurisdictions, case types and factual circumstances. Moreover, setting

[71] Case C-394 Gambazzi [2009] ECR I-2563

[72] Case C-681/13 Diageo Brands BV v. Simiramida [2015] ECR I-0000; See Veraldi, Jacquelyn, and Stephanie Laulhe Shaelou. "The substantive requirements of judicial independence in the EU: lessons from times of crisis." (2021) https://eupopulism.eu/working-paper-series/ and https://cadmus.eui.eu//handle/1814/72058 last accessed on 26 June 2025.

a strict universal limit would risk undermining the fair administration of justice by disregarding the complexity, importance, and sensitivity of individual cases. Instead, both the ECtHR and the CJEU adopt a case-by-case assessment, guided by the principle of proportionality. This principle requires that any delays in proceedings be balanced against legitimate justifications, such as the complexity of the case, the conduct of the parties and authorities involved, and what is at stake for the applicant. Proportionality ensures a nuanced, context-sensitive evaluation, preserving the integrity of the justice system while upholding individuals' fundamental rights. It is therefore indispensable to examine the evolving interpretation of "reasonable time" as developed through the jurisprudence of the Courts. This judicial approach both safeguards procedural fairness and maintains a balance between the efficiency of judicial systems and the quality of justice delivered

Reasonable time in ECtHR and CJEU case-law

The ECtHR

The concept of "reasonable time" as defined in Article 6(1) ECHR is of paramount importance and applies universally, regardless of the parties' status, the nature of the dispute, or the jurisdictional authority involved.[73] The fundamental principle guiding the application of Article 6 is fairness.[74] However, the notion of a fair trial is complex and varies depending on the specific circumstances of each case.[75] The ECHR is considered a living instrument that evolves in line with societal and contextual changes. On a state-by-state basis, the success of the ECHR is contingent on the interaction between the national system and the ECtHR. According to the data available on HUDOC, the Court has found more violations of Article 6 than of any other Convention article.[76]

[73] Bochan v Ukraine (no 2) [GC], App no 22251/08 (ECtHR, 5 February 2015) § 43; Naït-Liman v Switzerland [GC], App no 51357/07 (ECtHR, 15 March 2018) § 106; Georgiadis v Greece, App no 21522/93 (ECtHR, 29 May 1997) § 34.
[74] Gregačević v Croatia, App no 58331/00 (ECtHR, 10 July 2012) § 49
[75] Ibrahim and Others v the United Kingdom [GC], App nos 50541/08 et al (ECtHR, 13 September 2016) § 250
[76] ECtHR, 'Statistical Reports' < https://www.echr.coe.int/statistical-reports > last accessed on 22 November 2024.

Until before *Kudla v. Poland*,[77] the position of the ECtHR was that Article 6 was a *lex specialis* in relation to Article 13 of the Convention. However, after the case of *Kudla*, there was a shift in the Court's position in that complaints related to the length of the proceeding should, in the first place, be addressed within the national legal system.

The assessment of what constitutes a reasonable time is a well-established procedure by the Court, but the reasonableness of the duration is determined based on the specific facts of each case through an overall evaluation.[78] Article 6 mandates that judicial proceedings be expeditious without being rushed, striking a fair balance that ensures the proper administration of justice. The civil and criminal aspects of Article 6 are not necessarily mutually exclusive, and the Court may assess the applicability of both aspects even if not explicitly raised. However, the jurisprudence indicates that the requirements of a fair hearing under Article 6 are stricter in criminal law, although they may not apply with full stringency in all criminal cases, particularly those involving tax surcharges, minor road traffic offences, or administrative fines for providing premises for prostitution.[79]

In cases where a procedural defect is identified, it is the responsibility of domestic courts to determine whether the shortcoming has been remedied during subsequent proceedings. Failure to conduct such an assessment is prima facie incompatible with the requirements of a fair trial under Article 6 of the Convention.[80] Article 6 encompasses various guarantees, including fairness, protection from adversarial proceedings, equality of arms, public hearings, and the determination

[77] Application no 30210/96 (ECtHR, Grand Chamber, 26 October 2000) https://hudoc.echr.coe.int/eng?i=001-58920 accessed 22 May 2025
[78] Boddaert v Belgium, App no 12919/87 (ECtHR, 12 October 1992) § 36
[79] Moreira Ferreira v Portugal (no 2) [GC], App no 19867/12 (ECtHR, 11 July 2017) § 67; Carmel Saliba v Malta, App no 24221/13 (ECtHR, 29 November 2016) § 67; Marčan v Croatia, App no 40820/12 (ECtHR, 10 July 2014) § 37; Sancaklı v Turkey, App no 13878/07 (ECtHR, 18 December 2018) §§ 43–52.
[80] Mehmet Zeki Çelebi v Turkey, App no 27582/07 (ECtHR, 24 March 2020) § 51

of cases within a reasonable time. Concerning the institutional requirements, these includes the autonomous concept of a "tribunal", which is established by law, the level of jurisdiction of the tribunal, the execution of judgments, the independence and impartiality of a tribunal vis a vis the executive, Parliament, the parties' specific case of judges' independence and the extra-territorial effect of Article 6. Nonetheless, as noted in the introduction, this section will analyse only the issue of reasonable time, which directly relates to the court delays. In doing so, the current section will be divided into two parts. The first part will provide an overview of the general guarantee of the procedural requirement of a reasonable time in criminal matters, and the second part will provide the same overview vis-à-vis civil matters. Relevant case-law directly concerning the Republic of Cyprus will be analysed in the first part of the section

The Court has established some general criteria for assessing the reasonableness of the length of proceedings, namely, the case's complexity, the conduct of the applicant and of the national authorities, and what is at issue for the applicant. Regarding the complexity of the case and the applicant's conduct, these may release the state of its responsibility provided that the reasons for the delays are sufficiently objective not to be attributed to the state and that the domestic authorities have shown sufficient diligence. The European Commission's report states that "The Court examines the reasonable nature of proceedings, with reference (i) to actual verifiable facts and the particular circumstances of each case and (ii) the entire proceedings, which means that timescales which would not be unreasonable when taken separately, become so in combination. However, the Court is also perfectly prepared to find that a specific phase of the proceedings has lasted an excessive length of time."[81] The criteria established by the jurisprudence of the Court are that the commencement of the calculation varies depending on whether the case is civil, criminal, or

[81] ECtHR, 'Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (civil limb)' < https://rm.coe.int/1680700aaf > last accessed on 22 November 2024.

administrative in nature. In civil cases, the calculation typically begins on the date the case is referred to the court.[82] For criminal cases, the starting point is when the applicant is first accused, which could be the date of arrest, formal charges, or the initiation of a police investigation.[83] In administrative cases, the calculation starts from the date the applicant first brings the matter to the attention of the administrative authorities, including preliminary administrative appeals or internal review appeals.[84] In criminal cases, the court assesses the duration until the final judgment on the substantive charge or the decision by the prosecution or court to terminate proceedings.[85] For civil or administrative matters, the duration is measured until the decision becomes final.[86] Additionally, the Court considers the length of the enforcement procedure, which may lead to a separate finding of a violation in certain cases.

An examination of the jurisprudence of the ECtHR reveals the following principles about the duration of legal proceedings: The typical duration of up to two years per level of jurisdiction in regular (non-complex) cases has generally been considered reasonable. When proceedings have extended beyond two years, the Court scrutinises the case to ascertain whether there are any legitimate grounds, such as the complexity of the case, and whether the national authorities have demonstrated due diligence in the process. In complex cases, the Court may permit a longer duration, but closely monitors periods of inactivity that are excessive. However, the extended

[82] Ibid.
[83] ECtHR, 'Guide on Article 6 – Right to a Fair Trial (criminal limb)' < https://rm.coe.int/1680304c4e > last accessed on 22 November 2024.
[84] Lasha Lursmanashvili, "Reasonable Time Requirement: ECtHR Approach: It is said that:"Justice delayed is justice denied."." *Caucasus Journal of Social Sciences* 11, no. 1 (2018): 141-177; ECtHR, 'Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (civil limb)' < https://rm.coe.int/1680700aaf > last accessed on 22 November 2024.
[85] Osuna, 'Reasonable Time in the Administration of Justice: A requirement of the European Convention of Human Rights' (Europe of Rights: A compendium on the European convention of human rights Brill Nijhoff, 2012) 177-196.
[86] Ibid; Lursmanashvili, Lasha. "Reasonable Time Requirement: ECtHR Approach: It is said that:"Justice delayed is justice denied."." *Caucasus Journal of Social Sciences* 11, no. 1 (2018): 141-177; ECtHR, 'Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (civil limb)' < https://rm.coe.int/1680700aaf > last accessed on 22 November 2024.

duration is seldom more than five years and rarely exceeds eight years in total. In priority cases, where a specific issue is at stake, the court may deviate from the general approach and find a violation even if the case lasted less than two years per level of jurisdiction. This may occur, for instance, when the applicant's health is a critical concern or when the delay could have irreversible consequences for the applicant. The only instances in which the Court did not find a violation despite an obviously excessive duration of proceedings were cases in which the applicant's conduct had been a significant factor.

It should be emphasized that the case law of the ECtHR is, in principle, relevant to the application of Article 47 EU Charter, with the CJEU to often cite the ECtHR's jurisprudence.[87] Nevertheless, it does not mean that the ECHR is a legal instrument of the Union (pending EU accession to the Convention). However, corresponding rights by virtue of Article 52(3) of EU Charter, have equivalent meaning and scope.

Criminal Matters

In criminal matters, Article 6 ECHR ensures that individuals have the right to a hearing within a reasonable time. Following *Wemhoff v Germany*[88] and *Kart v Turkey*,[89] the "reasonable time" requirement guarantees that an accused person cannot lie under a charge for too long and that the charge is determined and duly executed.[90] The general rule is that the reasonable time requirement commences when the accused becomes aware of the alleged charge or is substantially affected by

[87] See for example C-562/12 Centre public d'action sociale d'Ottignies-Louvain-La-Neuve v Moussa Abdida (CG), paras 47 and 51.
[88] Wemhoff v. Germany App. No 2125/64 (ECtHR, 27 June 1986) para 18.
[89] Kart v. Turkey App No. 8917/05 (ECtHR, 3 July 2007) para 68
[90] Ramos Nunes de Carvalho e Sá v. Portugal [Application nos 55391/13, 57728/13 and 74041/13 (ECtHR, Grand Chamber, 6 November 2018) < https://hudoc.echr.coe.int/eng?i=001-187861 > accessed 22 May 2025, and Application no 76639/11 (ECtHR, Grand Chamber, 25 September 2018) § 43 < https://hudoc.echr.coe.int/eng?i=001-186350 > accessed 22 May 2025; Selmani and Others v the former Yugoslav Republic of Macedonia, App no 67259/14 (ECtHR, 9 February 2017) § 27

measures taken during criminal investigation proceedings.[91] For example, it can begin from the time of the arrest,[92] the time a person is charged,[93] the time an institution is under investigation[94] or the questioning of an applicant as a witness suspected of the commission of an offence.[95] The concept of a "charge" and the criminal nature of the charge are autonomous notions that must be interpreted within the framework of Article 6. The severity and nature of the penalty, as well as the classification of the action in domestic law, are crucial factors in determining the criminal nature of an offense.

The meaning behind 'charge' is substantive, and it has been previously defined in *Deweer v Belgium*[96] as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected".[97] In practice the definition means that a person arrested on suspicion of having committed a criminal offence, a suspect questioned about their involvement in acts constituting a criminal offence and a person who has been questioned in respect of their suspected involvement in an offence, irrespective of the fact that they were formally treated as a witness as well as a person who has been formally charged with a criminal offence under procedure set out in domestic law, could fall into the definition of 'charged with a criminal offence'. Similarly, a person who was sent a letter from a public prosecutor regarding a settlement or a letter by the public prosecutor containing a settlement advice

[91] Mamič v Slovenia (no 2), App no 75778/01 (ECtHR, 27 July 2006) §§ 23–24; Liblik and Others v Estonia, App nos 173/15 et al (ECtHR, 28 May 2019) § 94
[92] Wemhoff v Germany, App no 2122/64 (ECtHR, 27 June 1968) § 19
[93] Neumeister v Austria, App no 1936/63 (ECtHR, 27 June 1968) § 18
[94] Ringeisen v Austria, App no 2614/65 (ECtHR, 16 July 1971) § 110; Subinsku v Slovenia**,** App no 19666/04 (ECtHR, 18 January 2007) §§ 65–68
[95] Kleja v Latvia, App no 70939/10 (ECtHR, 5 October 2017) § 40
[96] Ibid
[97] Ibid §§ 42 and 46; Eckle v Germany, App no 8130/78 (ECtHR, 15 July 1982) § 73, and also Ibrahim and Others v the United Kingdom [GC], App nos 50541/08 et al (ECtHR, 13 September 2016) § 110

or the gathering of forensic samples on the crime scene and from the applicant, suggested that the authorities had treated the applicant as a suspect and implicitly and substantially affected the notion of 'charges with a criminal offence'. Nonetheless, a person who is questioned in the context of a border control and in the absence of any need to determine the existence of a reasonable suspicion of the commission of an offence or in the context of administrative missions, was not considered to fall into the definition of 'charged with a criminal offence'.[98]

As a general rule, an offence should, by its nature, be regarded as "criminal" from the point of view of the Convention, or that the offence renders the person in question liable to a sanction whose severity and nature belong in general to the "criminal" sphere.[99] According to *Nicoleta Gheorghe v. Romania*,[100] the mere fact that an offence carries the punishment of imprisonment is not in itself a decisive factor, sine the relative lack of seriousness of the penalty at stake cannot divest an offence of its inherently criminal character. Nevertheless, the Court created three criteria which are outlined in *Engel and Others v. the Netherlands*.[101] The starting point is the classification of the action in domestic law. It is a decisive fact whenever domestic law classifies the act as a criminal offence, otherwise the ECtHR will need to examine the substantive reality of the national procedure in question.[102] The following evaluating criterion concerns the nature of the offence. The nature of the offence has many factors that should be taken into consideration:

[98] Beghal v the United Kingdom, App no 4755/16 (ECtHR, 28 February 2019) § 121; Sassi and Benchellali v France, App nos 10917/15 and 10941/15 (ECtHR, 25 November 2021) §§ 70–78.
[99] Lutz v Germany, App no 9912/82 (ECtHR, 25 August 1987) § 55; Öztürk v Germany, App no 8544/79 (ECtHR, 21 February 1984) §§ 53–54
[100] Application no 23470/05 (ECtHR, 3 April 2012)
< https://hudoc.echr.coe.int/eng?i=001-110176 > accessed 22 May 2025
[101] Application nos 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72 (ECtHR, Plenary, 8 June 1976) paras 82-83 < https://hudoc.echr.coe.int/eng?i=001-57479 > accessed 22 May 2025
[102] Gestur Jónsson and Ragnar Halldór Hall v Iceland [GC], App nos 68273/14 and 68271/14 (ECtHR, 30 July 2020) §§ 85, 77–78

- whether the legal rule in question is directed solely at a specific group or is of a generally binding character (*Bendenoun v. France*, 1994, § 47);[103]
- whether the proceedings are instituted by a public body with statutory powers of enforcement (*Benham v. the United Kingdom*, 1996, § 56);[104]
- whether the legal rule has a punitive or deterrent purpose (Öztürk v. Germany, 1984, § 53; *Bendenoun v. France*, 1994, § 47);[105]
- whether the legal rule seeks to protect the general interests of society usually protected by criminal law (*Produkcija Plus Storitveno podjetje d.o.o. v. Slovenia*, 2018, § 42);[106]
- whether the imposition of any penalty is dependent upon a finding of guilt (*Benham v. the United Kingdom*, 1996, § 56);[107]
- how comparable procedures are classified in other Council of Europe member states (*Öztürk v. Germany*, 1984, § 53).[108]

The third and final criterion concerns the severity of the penalty that the person risks incurring and it is determined by reference to the maximum potential penalty for which the relevant law provides.**[109]** In *Bendenoum v. France*,[110] the Court held that a cumulative approach may be adopted in cases where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of criminal charges.

[103] Bendenoun v France, App no 12547/86 (ECtHR, 24 February 1994) § 47
[104] Benham v the United Kingdom, App no 19380/92 (ECtHR, 10 June 1996) § 56
[105] Öztürk v Germany, App no 8544/79 (ECtHR, 21 February 1984) §§ 53–54; Bendenoun v France, App no 12547/86 (ECtHR, 24 February 1994) § 47
[106] Produkcija Plus Storitveno podjetje d.o.o. v Slovenia, App no 47072/15 (ECtHR, 23 October 2018) § 42
[107] Benham v the United Kingdom, App no 19380/92 (ECtHR, 10 June 1996) § 56
[108] Öztürk v Germany, App no 8544/79 (ECtHR, 21 February 1984) §§ 53–54
[109]Campbell and Fell v the United Kingdom, App nos 7819/77 and 7878/77 (ECtHR, 28 June 1984) § 72; Demicoli v Malta, App no 13057/87 (ECtHR, 27 August 1991) § 34
[110] Bendenoun v France, App no 12547/86 (ECtHR, 24 February 1994) § 47

In criminal proceedings Article 6 covers the entire process, including any subsequent appeals.[111] Yet, as with all legal rules though there is an exception. For example, in *Nechay v Ukraine*,[112] the applicant's psychiatric internment was decided to be an intervening period that relates to the procedure and was thus discounted from the overall period of the criminal proceedings against the applicant. The ending period lasts at least until acquittal or conviction, even if that decision is reached on appeal and the execution of a judgment given by a competent court must be regarded as an integral part of the trial for the purposes of Article 6.

When determining the reasonable length of criminal proceedings, a set rule is not applicable since every case is different. For that reason, the complexity of a case, the conduct of the applicant and relevant authorities, and the international dimension of the offense are factors considered when determining the reasonable length of criminal proceedings.[113] For example in *Neumeister v Austria*,[114] the offence in question had an international dimension, which meant that the assistance of Interpol and various persons residing abroad was necessary, complicating the process of the case. Usually this category includes white-collar crimes, and international money laundering.[115] Although the complexity of a case may justify some delay or certain lapse of time, a lengthy unexplained inactivity can be unjustified depending on the facts of each case.[116] In *Eckle v. Germany*,[117] the Court specified that while an applicant is not actively required to cooperate with

[111] Delcourt v Belgium**,** App no 2689/65 (ECtHR, 17 January 1970) §§ 25–26; König v Germany**,** App no 6232/73 (ECtHR, 28 June 1978) § 98; V v the United Kingdom [GC], App no 24888/94 (ECtHR, 16 December 1999) § 109
[112] Nechay v. Ukraine App. no. 15360/20 (ECtHR, 1 July 2021)
[113] König v Germany**,** App no 6232/73 (ECtHR, 28 June 1978) § 99; Neumeister v Austria**,** App no 1936/63 (ECtHR, 27 June 1968) § 21; Ringeisen v Austria**,** App no 2614/65 (ECtHR, 16 July 1971) § 110; Pélissier and Sassi v France [GC], App no 25444/94 (ECtHR, 25 March 1999) § 67; Pedersen and Baadsgaard v Denmark**,** App no 49017/99 (ECtHR, 17 December 2004) § 45; Chiarello v Germany**,** App no 497/17 (ECtHR, 8 October 2019) § 45; Liblik and Others v Estonia**,** App nos 173/15 et al (ECtHR, 28 May 2019) § 91
[114] Ibid.
[115] C.P. and Others v France**,** App no 36009/97 (ECtHR, 5 April 2000) § 30; Arewa v Lithuania**,** App no 42202/14 (ECtHR, 22 July 2021) § 52
[116] Rutkowski and Others v Poland**,** App nos 72287/10 et al (ECtHR, 7 July 2015) § 137; Adiletta and Others v Italy**,** App no 15966/89 (ECtHR, 9 February 1991) § 17.
[117] Eckle v Germany**,** App no 8130/78 (ECtHR, 15 July 1982) § 73

the judicial authorities, their conduct which is an objective fact in each case cannot be attributed to the respondent state in the context of Article 6. In *Eckle* and in the *Ringeisen v. Austria*,[118] the systemic challenge of judges by the applicant held to be a deliberate obstruction. Similarly, an applicant's state of health cannot be attributed to a substantial delay.[119] Concerning the conduct of the relevant authorities, the general rule is that each state has the obligation to organise their judicial systems in a way that their courts can meet each requirement and obligation.

Civil matters

In 2022, the Grand Chamber of the ECtHR summarised the applicability of Article 6(1).[120] Firstly, in civil matters, the applicability of Article 6(1) depends on the existence of a genuine and serious dispute relating to a recognized right under national law. Secondly, the dispute must relate to the actual existence of a right, its scope and the matter of its exercise. Thirdly, the result of the proceedings must be directly decisive for the "civil" right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play.[121]

Recent ECtHR Jurisprudence on Cyprus

In recent years, the ECtHR has intensified its scrutiny of the Republic of Cyprus's judicial system, particularly in procedural delays, ineffective legal remedies, and entrenched structural deficiencies. The following section provides a doctrinal analysis of the most recent and significant judgments against Cyprus, offering a detailed exploration of their legal significance and their implications for the Rule of Law within the Cypriot legal order.

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[118] Ringeisen v Austria**,** App no 2614/65 (ECtHR, 16 July 1971) § 110
[119] Yaikov v Russia**,** App no 39317/05 (ECtHR, 18 June 2015) § 76
[120] Grzęda v Poland [GC], App no 43572/18 (ECtHR, 15 March 2022) §§ 257–259
[121] Károly Nagy v Hungary [GC], App no 56665/09 (ECtHR, 14 September 2017) § 60; Regner v the Czech Republic [GC], App no 35289/11 (ECtHR, 19 September 2017) § 99; Naït-Liman v Switzerland [GC], App no 51357/07 (ECtHR, 15 March 2018) § 106; Denisov v Ukraine [GC], App no 76639/11 (ECtHR, 25 September 2018) § 44.

The judgment in Altius Insurance Ltd v Cyprus (2024)[122] further exposed systemic delays within the Cypriot judicial system. The Court identified violations of Article 6 for excessive delays and Article 13 for the absence of an effective remedy capable of addressing the overall length of proceedings. Of particular significance was the Court's rejection of Cyprus's procedural fragmentation in addressing delay claims under Law 2(I)/2010,[123] which it deemed incompatible with the Convention's requirements. The ECtHR clarified that an effective remedy must account for the total duration of proceedings across all judicial instances, in line with Article 13 and the Court's jurisprudence in Scordino v Italy.[124] The implications for the Rule of Law in Cyprus are substantial, as this decision highlights the failure of existing mechanisms to uphold legal certainty, procedural predictability, and timely justice, necessitating urgent legislative reform to consolidate fragmented remedies into a single, effective framework.

In Irodotou v Cyprus (2023),[125] the Court identified serious flaws in the handling of private criminal proceedings, finding violations of Article 6 for excessive delays and of Article 13 for the lack of a remedy against the discontinuation of prosecutions by the Attorney General through *nolle prosequi* decisions. Doctrinally, the Court condemned the absolute immunity of the Attorney General's discretion, ruling it incompatible with the principles of legal certainty and the right to a fair trial. The ECtHR stressed that while prosecutorial discretion is a legitimate feature of criminal justice systems, it cannot be exercised in a manner entirely shielded from judicial oversight, particularly when it directly affects the rights of private complainants seeking access to justice.

[122] Application no 41151/20 (ECtHR, Third Section, 24 October 2023) < https://hudoc.echr.coe.int/eng?i=001-144151 > accessed 22 May 2025
[123] The Law Providing for an Effective Remedy in Cases of Excessive Length of Court Proceedings of 2010, Law 2(I)/2010
[124] Scordino v Italy (no 1) [GC], App no 36813/97 (ECtHR, 29 March 2006)
[125] Irodotou v Cyprus**,** App no 16783/20 (ECtHR, 23 August 2023) <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-224776%22]} > accessed 21 November 2024

This absolute, unreviewable discretion was found to create a structural imbalance, denying individuals an effective remedy against potentially arbitrary or disproportionate decisions, thereby breaching Article 13 ECHR as well.

The broader implications for the Rule of Law are significant because the case exposes a constitutional anomaly in the Cypriot legal system. Unlike most European jurisdictions, where prosecutorial decisions can be subject to judicial review, Cyprus maintains an entrenched system of absolute prosecutorial immunity, stemming from its colonial-era Constitution. This entrenched constitutional anomaly undermines both procedural fairness and public accountability in criminal justice, by enabling a single executive official to unilaterally terminate proceedings without justification or the possibility of legal change. It risks fostering legal uncertainty and eroding public trust in the impartiality and transparency of the justice system. The Court's ruling thus illustrates the urgent need to introduce judicial review mechanisms over prosecutorial decisions, particularly in contexts involving private criminal proceedings, to ensure alignment with European human rights standards and the foundational tenets of the Rule of Law.

Furthermore, the Court's decision in Krashias and Others v Cyprus (2023)[126] revisited the excessive duration of criminal proceedings, further violating Article 6. Notably, the Court reaffirmed that, under its jurisprudence, national courts must explicitly quantify and reason any sentence reductions attributed to procedural delays. This is a necessary procedural precondition for the ECtHR to deny victim status under Article 34 ECHR. The judgment demonstrated ongoing deficiencies in sentencing transparency and accountability within the Cypriot courts. From a Rule of Law standpoint, the absence of clear criteria and consistent procedural safeguards for addressing

[126] Application no 225319/22 (ECtHR, Chamber judgment, 27 February 2025) <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-225319%22]} > accessed 22 May 2025

delays in sentencing continues to erode public trust and undermine the principle of equality before the law.

Finally, Souroullas Kay and Zannettos v Cyprus (2024)[127] concerned evidentiary issues in a corruption trial. While the Court upheld the admissibility of accomplice testimony, dissenting opinions (most notably that of Judge Serghides) raised critical concerns about selective evidentiary acceptance practices and their implications for procedural fairness. Although the case did not result in a finding of a violation, its pending Grand Chamber referral underscores ongoing judicial controversies surrounding fair trial standards in Cyprus. It also illustrates how procedural uncertainties and selective evidentiary practices can undermine the Rule of Law and public confidence in judicial impartiality, particularly in politically sensitive cases.

The cumulative effect of these judgments illustrates a consistent pattern of structural weaknesses in Cyprus's judicial system. Taken together, they reveal a systemic failure to deliver justice within a reasonable time, to guarantee fair trial standards, and to provide effective domestic remedies, as required under the Convention and general principles of the Rule of Law. This paper offers some recommendations to mitigate the challenges (see next sections).

The CJEU case-law

Ever since the adoption of the Charter of Fundamental Rights of the European Union, it has become even more apparent that the Union, through its institutions, and laws, prioritise the protection of human rights. As mentioned in the introduction, the Charter provides for the right to a fair trial within a reasonable time. While the extensive jurisprudence of the ECtHR has provided for many years the key guidance to the interpretation of reasonable time and the right to a fair trial

[127] Application no 1618/18 (ECtHR, Chamber judgment, 26 November 2024)

within the Council of Europe and the EU, respectively, the CJEU have also started to build its jurisprudential analysis.[128] As one of the general principles of EU law enshrined in Article 47 EU Charter, the right to a fair trial is interpreted and implemented with significance. While the CJEU draws inspiration from the ECtHR, and as the ECHR does not bind it, it has also developed such jurisprudence, especially in competition law. In *Europese Gemeenschap v Otis NV and others*,[129] the CJEU stated that Article 47 EU Charter secures in the EU law the protection afforded by Article 6(1) ECHR and that was therefore necessary to refer only to Article 47. In *Baustahlgewebe,*[130] the CJEU recognised the violation of the right by the Court of First Instance (now General Court) by declaring that the reasonableness of the time of the trial must be appraised in the light of the unique circumstances of each case, the complexity of the case, and the conduct of the applicant and competent authorities. It should be emphasised that EU law is not confined to disputes relating to civil law rights and obligations since it is a community based on the rule of law.[131] Still, other than their scope, the guarantees afforded by the two instruments are deemed equivalent.

In *Der Grüne Punkt - Duales System Deutschland v Commission*,[132] the Court decided that there had been an infringement of the right to trial within a reasonable time. The case arose from a prolonged procedure before the EU courts, where the applicants argued that the excessive delay violated their rights under Article 47 EU Charter and Article 5 ECHR. However, it also required a separate action for damages to be lodged before the General Court. In addressing this procedural issue, by analysing the principles of effective judicial protection, the CJEU asserted that an

[128] C-199/11 Europese Gemeenschap v Otis NV and Others [GC] Judgment of 6 November 2012.
[129] Case C-199/11 Europees Gemeenschap v Otis NV and Others [GC] ECLI:EU:C:2012:684
[130] Baustahlgewebe GmbH v Commission of the European Communities Case C-185/95 P, Judgment of 17 December 1998, ECLI:EU:C:1998:608, [1998] ECR I-8417 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61995CJ0185 accessed 22 May 2025
[131] Case 294/83 'Les Verts' v European Parliament [1986] ECR 1339; Laulhé Shaelou,*The EU and Cyprus: principles and strategies of full integration* (vol. 3, Studies in EU External Relations, Brill/Martinus Nijhoff Publishers, Leiden, 2010) (ISBN 978-90-04-17619-5) I-400
[132] Der Grüne Punkt - Duales System Deutschland v Commission**,** Case C-385/07 P ECLI:EU:C:2009:456.

effective remedy had to be available. The remedy requested by the applicants was to set aside the appeal's judgment. Yet, the Court found that it would not remedy the infringement because setting aside the judgment would neither erase the delay not compensate from the harm caused by it and decided that a claim for damages brought against the EU under Articles 268 and 340(2) TFEU did constitute an effective remedy that should have been made directly to the General Court.

This doctrinal approach was subsequently confirmed and elaborated in the landmark cases of *P. Kendrion v Commission, P. Groupe Gascogne v Commission and P. Gascogne Sack Deutschland v Commission*.[133] In these cases, the applicants similarly claimed violations of their right to a hearing within a reasonable time and sought remedies for the procedural delay. The Court reiterated its position that the appropriate remedy would be a separate action for damages under Articles 268 and 340(2) TFEU, rather than the annulment of prior judgments or other forms of procedural correction.

Nevertheless, this remedy also means that if the General Court has violated a party's right to a hearing within a reasonable time, that party will have to seek judicial protection and just compensation before that same court, creating a sense of lack of impartiality as there is no guarantee that a different composition of the General Court will decide in the action on damages. This situation raises concerns about institutional impartiality, as it forces the injured party to rely on the same judicial body to assess the harm caused by its own procedural shortcomings. The Court has thus been criticised for not providing for an alternative, external or higher judicial review mechanism in such instances, which might better satisfy the requirements of impartiality and effective judicial protection under EU law.

[133] P Kendrion v Commission**,** P Groupe Gascogne v Commission**, and** P Gascogne Sack Deutschland v Commission**,** Cases C-50/12 P, C-58/12 P, C-63/12 P ECLI:EU:C:2013:771

Nevertheless, the CJEU has continued to face challenges in managing its caseload in recent years, leading to persistent backlog. In 2023, the General Court received 1,271 new cases, including a series of 404 essentially identical cases related to the supplementary pension scheme for members of the EU Parliament. Excluding these, the net number of new cases stood at 868.[134] The Court managed to close 904 cases, resulting in a slight reduction in pending cases to 1,438 by the end of the year. The average duration of proceedings seemed to have sightly increased to 18.2 months, up from 16.2 months in 2022. Notably, the duration varied significantly depending on the case type.

The judicial procedure of the Court of Justice involves several steps where institutional features can potentially cause delay. These include the workload of judges and Advocates General, the Court's investment in case management systems to help Judge-Rapporteurs, the size of the panel hearing the case, the translation requirements, and whether there is an AG opinion. In 2023, 13.6% of cases were closed by extended five-judge formations, indicating an upward trend in referrals to extended formations, which can contribute to longer proceedings.

Consequently, unsurprisingly, scholars, EU officials, and the CJEU have proposed reforms designed to expedite the review of cases and reduce the backlog. Reform proposals have focused on expanding resources, dividing the work among the judges through the system of chambers, and procedural adjustments, such as reducing the use of AG opinions. Additionally, the full implementation of the General Court's reform, which doubled the number of its judges, also in the light of the 2024 reform on preliminary rulings, aim to enhance its capacity to handle the increasing caseload efficiently. As a member state of the EU and of the Council of Europe, the Republic of

[134] Court of Justice of the European Union, Annual Report 2023 – Judicial Activity (CJEU 2024) <https://curia.europa.eu/jcms/jcms/P_97330/en/ > accessed 21 May 2025.

Cyprus is bound to follow these rules and uphold higher standards for the Rule of Law, democratic values and human rights protection

Part C – The Judicial Backlog in the Republic of Cyprus: A Cautionary Tale

I. The Pre-Reform Structure and Organization of the Cyprus Judicial System

Historically, under English law, the island was part of the British Empire's protectorate (1878-1914).[135] It was then annexed to the Crown in 1914, becoming a colony (1914-1925).[136] Eventually, it was awarded the title of a Crown Colony (1925-1960) until it gained independence.[137] The island was subject to English rule throughout that period while retaining certain aspects of its previous rulers' legal systems. The justice system in the Republic of Cyprus is primarily based on English common law.[138] However, it is considered a uniquely mixed legal system due to the influence of civil law in certain areas, such as contract law.[139] The Constitution of the Republic of Cyprus has a bi-communal nature, with Greek-Cypriot and Turkish-Cypriot communities. The law of necessity has disrupted the constitutional legal order since the 1963 constitutional crisis and the 1974 Turkish invasion and occupation of territories of the Republic.[140] After the withdrawal of the Turkish Cypriot community from various posts in 1963, the Supreme Court of Cyprus provided a margin of manoeuvre for the continuation of a functional state under

[135] Hook, Gail Ruth. "Britons in Cyprus, 1878-1914." (2009); Heacock, 'The Framing of Empire: Cyprus and Cypriots through British Eyes, 1878-1960' (Cyprus Review 23(2)), 21-37; Hatzimihail, Nikitas E. "Cyprus as a mixed legal system." *J. Civ. L. Stud.* 6 (2013): 37.
[136] Ibid
[137] Ibid
[138] Κρίτωνος Γ Τορναρίτη, Ιδιορρυθμίες του Κυπριακού Συντάγματος και Επιπτώσεις στην Ομαλή Λειτουργία του Κράτους (Λευκωσία 1980) (in Greek).
[139] Hatzimihail, Nikitas E. "Cyprus as a mixed legal system." *J. Civ. L. Stud.* 6 (2013): 37.
[140] Κρίτωνος Γ Τορναρίτη, Ιδιορρυθμίες του Κυπριακού Συντάγματος και Επιπτώσεις στην Ομαλή Λειτουργία του Κράτους (Λευκωσία 1980) (in Greek)

the doctrine of necessity in the *Mustafa Ibrahim* case in 1964, allowing for a "restored" order within the country.[141]

Since then and prior to the recent reforms, Cyprus had a two-tier system. The Supreme Court succeeded the Supreme Constitutional Court and the High Court. It served as the final court of appeal and had jurisdiction over constitutional matters. The other organs of justice include the District Court, which has jurisdiction to hear and determine first-instance civil disputes, excluding disputes falling under the jurisdictions of specialised courts such as the Family Court, Rent Control Tribunal, and Industrial Dispute Tribunal. Nevertheless, as will be seen later, in the light of reforms, new specialised courts were created, and the Supreme Constitutional Court was reinstated. Criminal cases that involve severe penalties and are of the most serious nature, such as sexual violence and murder, are heard by the Assize Court. The District Court and specialised courts operate under the control and supervision of the Supreme Court. They have jurisdiction to hear, at first instance, civil cases where the cause of action has arisen wholly or in part within the limits of the district where the court is established or where the defendant resides or carries on business within that District. On the one hand, the District Courts have jurisdiction to try, at first instance, all offences punishable with imprisonment for a term not exceeding five years or with a fine not exceeding 85,000, or both, summarily. On the other hand, the Assize Courts have unlimited jurisdiction to try, at first instance, all criminal offences punishable by the Criminal Code (Cap. 154) or any other law, and they have the power to impose the maximum sentence provided by the relevant law. According to 2021 data, there are 12 courts of general jurisdiction (including 5 assize courts) and 19 specialised courts (legal entities). The total number of courts as geographic

[141] Papastylianos, Christos. "The Cypriot doctrine of necessity within the context of emergency discourse: How a unique emergency shaped a peculiar type of emergency law." *Cyprus Review* 30, no. 1 (2018): 113-143.

locations is 31.[142] All the above are the pre-reform numbers, as no information was available post-legal reforms. Thus, the figures might differ post legal reform.

The management of the courts is administered by the Supreme Court, which has the overall responsibility and is accountable for using public funds assigned to the courts. There is an Administrative President in each District Court (the most senior judge in the District). The Supreme Court has a Chief Registrar, the head of the judicial and administrative staff. The Chief Registrar is responsible for the daily administration of courts. Until today, large parts of the filing and the management of the courts are paper-based, and ICTs were only recently utilised, making the management process weak and demanding.

Despite the *de facto* division of the island due to the 1974 invasion and occupation, the Republic of Cyprus acceded to the EU in May 2004 as one island, and a unique legal regime was designed for Cyprus within the EU.[143] More specifically, the Union *acquis* was suspended in territories not under the effective control of the government of the Republic of Cyprus due to the ongoing occupation of the territory of the Republic of Cyprus by Turkey on the island of Cyprus. Simultaneously, EU law became selectively applicable in the Sovereign Base Areas (SBAs) located on the island of Cyprus. This was done to ensure equal treatment of Cypriots living and working in the SBAs and other Cypriots in the Republic.[144]

Within this background, several EU reports highlight serious deficiencies within the Cypriot judicial system's operation, including the European Council Recommendation of 11 July 2017. The report noted that "Cyprus has been taking measures to reinforce its judicial system but

[142] 'Judiciary at a glance in Cyprus' (2021 data) <https://rm.coe.int/cyprus-2021-data-/1680ab89b2> last accessed on 22 November 2024.
[143] Laulhé Shaelou,*The EU and Cyprus: principles and strategies of full integration* (vol. 3, Studies in EU External Relations, Brill/Martinus Nijhoff Publishers, Leiden, 2010) (ISBN 978-90-04-17619-5) I-400
[144] Ibid.

continues to face serious challenges regarding its efficiency. Inefficient court procedures and limited capacity lead to significant delays in processing court cases." In the same way, Opinion 1060/2021 of the European Commission for Democracy through Law (Venice Commission)[145] noted that "the main problem is the enormous backlog of cases pending before the courts and the average time it takes to get a final judicial decision in any given case."

Significant delays of up to 4 years in courts of first instance and a further delay of up to 5 years on appeals led to a situation where the State was required by the ECtHR to pay damages to citizens impacted by those delays in *Mavronichis v Cyprus* in 1997.[146] This requirement was also reiterated more recently in *Irodotou v Cyprus*.[147] Yet, the issue remains even more prominent. The distribution between first-instance general jurisdiction courts and first-instance specialised courts is 36,7% - 63,3%, which is different from the distribution tendency in the EU, which is 72,8% - 27,2%.[148] In 2021, the Children in Conflict with the Law, Law of 2021 (Law 55/21) was enacted, providing for establishing a juvenile court in each district of the Republic. Family, Labour and rent control courts have been established in one more district.[149]

[145] Venice Commission, Opinion No. 1060/2021 CDL-AD(2021)043, Opinion on the Draft Law on the Reform of the Judicial System of the Republic of Cyprus**,** adopted at the 129th Plenary Session (10–11 December 2021) https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)043-e accessed 22 May 2025
[146] Case of Mavronichis v. Cyprus Application no 28054/95 (ECtHR, Chamber judgment, 24 April 1998) https://hudoc.echr.coe.int/eng?i=001-58102 accessed 22 May 2025
[147] Irodotou v Cyprus**,** App no 16783/20 (ECtHR, 23 August 2023) <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-224776%22]} > accessed 21 November 2024
[148] Judiciary at a glance in Cyprus' (2021 data) 4 <https://rm.coe.int/cyprus-2021-data-/1680ab89b2> last accessed on 22 November 2024.
[149] The Children in Conflict with the Law, Law (Law 55(I)/2021)

II. The History of the Backlog in the Republic of Cyprus

Delays in the Republic of Cyprus courts have been a recurring issue. The number of pending cases increases by a few hundred each year, leading to a significant increase in the overall volume of delayed cases.

Reports explained that the possible causes of the backlog vary from the disproportionate number of justices compared to the judicial demand, the administrative inability of the courts, the obsolete Civil Procedure Institutions and their ineffective implementation, the gradual decrease in the productivity of judges, due to the complexity of the cases, the introduction of European Law, improper time management and improper case management.[150] Further reasons include the lack of adequate supervision of each Judge's productivity, the lack of training, and the delay in acknowledging all the above deficiencies. Lawyers similarly cause unreasonable delays through their frequent and pressing requests for adjournment of hearings and the slack manner of granting such adjournments by many first-instance Judges, resulting in a procrastination culture. In addition, the lack of publicity of statistics, analysis of such statistical data and the suspension of the Annual Report of the Supreme Court publication led to the delayed identification of the problem[151]

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[150] Έκθεση Καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου, Επαρχιακών Δικαστηρίων, 28 Ιουνίου 2021, 10 < http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%CE%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 21 November 2024; Functional Review of the Court System of Cyprus (Technical Assistance Project 2017/2018 IPA Ireland, March 2018) < https://www.cyprusbarassociation.org/files/publications/Functional_Review_of_Courts_System_of_Cyprus_IPA_Ireland_-_Final_Report.pdf > last accessed on 22 November 2024.

[151] Έκθεση Καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου, Επαρχιακών Δικαστηρίων, 28 Ιουνίου 2021, 10 < http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%C

A disproportionate increase in delays was observed between 2010 and 2013, a period which marked the peak of the financial crisis in Cyprus, which resulted in the submission of numerous cases in District courts. Unprepared as it was to receive and deal with the increased workload, the judicial system was overwhelmed. Tremendous pressure was created by the extensive cases in the judicial pipelines, raising concerns among Europeans.[152] For this reason, in 2016, the Supreme Court presented a reform Report to the then-President of the Republic of Cyprus. The government publicly expressed its political commitment to support the reform of the Cypriot courts. In summary, the Supreme Court report attempted to identify the ongoing challenges faced by the judiciary and request technical support from the European Commission.[153] The application for technical support was submitted and accepted at the end of 2016. Nevertheless, 4 years after the received request, Erotokritou's report on the backlog noted that "several funded projects were completed, and several measures for the implementation of more have been decided but not yet implemented, despite the significant efforts being made by the Supreme Court and the Ministries of Finance and Justice, respectively."[154] The report indicated that despite the reasonably high level

E%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 21 November 2024.

[152] Έκθεση Καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου, Επαρχιακών Δικαστηρίων, 28 Ιουνίου 2021 < http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%CE%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 21 November 2024.

[153] Έκθεση καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου Επαρχιακών Δικαστηρίων < http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%CE%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 23 November 2024.

[154] Έκθεση Καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου, Επαρχιακών Δικαστηρίων, 28 Ιουνίου 2021, 10 <

of justice delivery, the system remains in collapse, mainly due to the large backlog. Similar to previous reports, the Supreme Court Report 2016 identified backlog as the biggest problem faced by the Courts.[155] The findings showed that the excessive workload of Judges, the lack of a sufficient number of judges, and the non-modernization of the judicial system, especially concerning the Civil Procedure Rules, were among the most important causes of the issue.[156] For these reasons, in 2017, the EU Justice Scoreboard indicated that while judicial independence was perceived as high, achieving greater efficiency in the judicial system remained a severe challenge due to the backlog.[157] It was further denoted that the length of court proceedings in Cyprus remained amongst the longest in the EU, with the longest being in litigious civil and commercial cases.[158] Similarly to the 2016 Supreme Court Report, the 2017 Scoreboard emphasised that there were serious deficiencies concerning the availability and use of information communication technologies, ADR and that standards on timing for case management or other performance measures were lacking.[159]

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http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%CE%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 21 November 2024.

[155] Έκθεση καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου Επαρχιακών Δικαστηρίων < http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%CE%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 23 November 2024.

[156] Ibid.

[157] The 2017 EU Justice Scoreboard < https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en > last accessed on 22 November 2024.

[158] Ibid.

[159] The 2017 EU Justice Scoreboard < https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en > last accessed on 22 November 2024.

Thus, it was necessary to bring in external experts who prepared a Functional Review Report in 2018. The "Functional Review of the Courts System of Cyprus" was prepared by the Irish Institute of Public Administration (IPA) Technical Assistance Project 2017/2018 and was supported by the Structural Reform Support Service (SRSS) of the European Commission.[160] The IPA Report acknowledged the deficiencies as mentioned in internal and external reports and explicitly noted that the efforts of the Cypriot government to resolve the issue through the implementation of several measures, which included **t**he establishment of an Administrative Court; the **a**mendment of Order 25 and Order 30 of the Rules of Civil Procedure to provide the judiciary with a more active role while introducing simplified and more expeditious procedures for claims under €3,000. New legislation limiting the right to appeal against interlocutory orders was also introduced alongside the increased court fees as a preventive measure.

Further measures planned, or which were already in progress by the end of 2018, not directly part of the functional review, included the establishment of a Commercial Court, the introduction of the E-Justice system, **t**he establishment of the Administrative Court of International Protection, the revised Civil Procedure Rules and the development of a Judicial Training School".[161]

The Administrative Court was established by the Establishment and Operation of the Administrative Court Law 2015 (Law 131(I)/2015). Furthermore, the legislation that limits the right to appeal against interlocutory orders was introduced through amendment 109(I)/2017 of the Court Law 14/60 on July 21, 2017. The IPA's report identified the delay in the appeals hearing as

[160] Functional Review of the Court System of Cyprus (Technical Assistance Project 2017/2018 IPA Ireland, March 2018) < https://www.cyprusbarassociation.org/files/publications/Functional_Review_of_Courts_System_of_Cyprus_IPA_Ireland_-_Final_Report.pdf > last accessed on 22 November 2024.

[161] Functional Review of the Court System of Cyprus (Technical Assistance Project 2017/2018 IPA Ireland, March 2018) < https://www.cyprusbarassociation.org/files/publications/Functional_Review_of_Courts_System_of_Cyprus_IPA_Ireland_-_Final_Report.pdf > last accessed on 22 November 2024.

a significant challenge in the Supreme Court. According to the report, establishing the Administrative Court in 2017 has helped alleviate the phenomenon. Following the transfer of the Supreme Court's original jurisdiction under Article 146 of the Republic of Cyprus to the Administrative Court, one week a month was released from the workload of the Supreme Court. However, "the problem of delay remains chronic," and "the data presented in this report shows that the problem has been getting worse yearly".[162] The average waiting time for an appeal was 5.8 years at the beginning of 2016 and increased to 6.3 years by the end of the year. The increase was attributed to the inflated workload caused by the financial crisis and the complexity of the caseload. In its executive summary, the report noted limited or no structured management processes for various areas, including business planning, production and analysis of management information, development of training or staffing plans, and opportunities for structured engagement with ICT development or building plans.[163] The lack of a formal management process undoubtedly contributed to developing the current critical problem of delays. The system, as it stood, could not systematically analyse trends, identify problems before they become critical, and generate and implement solutions once problems are identified. Additionally, the IPA report emphasised the importance of considering the effective and efficient utilisation of judicial time to enable judges to address high-priority issues. Simultaneously, the IPA report highlighted that the registry accommodation and storage space at the Supreme Court needed urgent improvement, as the problems regarding the delays in receiving court proceeding transcripts promptly also need to

[162] Functional Review of the Court System of Cyprus (Technical Assistance Project 2017/2018 IPA Ireland, March 2018) < https://www.cyprusbarassociation.org/files/publications/Functional_Review_of_Courts_System_of_Cyprus_IPA_Ireland_-_Final_Report.pdf > last accessed on 22 November 2024.

[163] Functional Review of the Court System of Cyprus (Technical Assistance Project 2017/2018 IPA Ireland, March 2018) < https://www.cyprusbarassociation.org/files/publications/Functional_Review_of_Courts_System_of_Cyprus_IPA_Ireland_-_Final_Report.pdf > last accessed on 22 November 2024.

be addressed.[164] Similarly, a significant challenge faced by the Courts of First Instance and specialised courts was identified and related to the delay in hearing cases that proceed to trial. This issue, however, was most prominent in civil disputes and not as much in criminal cases since the latter are generally prioritised. The extent of delays varied across districts, ranging from 1 to 7 years.[165] The delays were substantial between 2010 and 2016, with an increase of 83% especially in appellate and administrative courts. The increase was again attributed to the financial crisis and the complexity of the cases. These cases involved significant levels of discovery and lengthy dispositions. In the specialised courts, the backlog was not as critical, except for the Industrial Disputes Court. Similarly to its predecessor, the IPA report found an urgent need to revise Civil Procedure Rules and provide recommendations for ICT support and IT-based filing and tracking while attributing the lack of statistical and management information to the lack of filing, making monitoring compliance with directions impossible. Following all the above reports and recommendations, and programs and the implemented measure, the 2021 Scoreboard on the usage of ICT tools of courts in Cyprus revealed that by that time, there were still no available tools and data while quality standards were determined for the judicial system at national level (e.g. quality systems for the judiciary and judicial quality policies) in the midst of the pandemic.[166] However, no specialised personnel within the courts or the public prosecution services are entrusted with implementing these national-level quality standards.[167]

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[164] Functional Review of the Court System of Cyprus (Technical Assistance Project 2017/2018 IPA Ireland, March 2018) < https://www.cyprusbarassociation.org/files/publications/Functional_Review_of_Courts_System_of_Cyprus_IPA_Ireland_-_Final_Report.pdf > last accessed on 22 November 2024.
[165] Ibid.
[166] The 2021 EU Justice Scoreboard < https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en > last accessed on 23 November 2024.
[167] Judiciary at a glance in Cyprus <https://rm.coe.int/cyprus-2021-data-/1680ab89b2.> last accessed on 23 November 2024.

Due to the backlog, parties do not expect the case to proceed on the set date. Thus, the dates set for trials are not considered credible, creating a situation where, regularly, neither party is fully prepared to proceed, and the cases are adjourned. The shortage of appropriately skilled staff (e.g., stenographers, legal support/research) created even more challenges. Concerning the ADR methods, the Certain Aspect of Mediation in Civil Matters Law of 2012 (Law 159(I) of 2012) provides the framework for using ADR in civil disputes. Nonetheless, it is rarely used as the decision to use ADR is voluntary, and legal practitioners and litigants are reluctant to try amicable settlements. The 2021 Scoreboard stresses that information about the number of registered court-related mediators and court-related mediation procedures is unavailable.[168] This lack of transparency can be attributed to the limited use of IT and ICT tools,[169] and possibly to a lack of coordination.

Since there is little use of IT-based filing and tracking to help with the cultivation of up-to-date information, a widespread lack of transparency and data information is evident throughout the reports of the European Commission regarding court delays, which prevents us from accurately demonstrating and understanding the actual situation and magnitude of the problem. Basic information on the role and functions of the courts, or the daily court list, is not available to the public, and the use of ICT between courts and lawyers is one of the lowest in the EU according to the 2017 EU Justice Scoreboard European Commission.[170] The most recent available statistics regarding the District Courts pertain to the registered, processed, and pending cases from 2002 until December 31, 2020, and are analysed in Erotocritou's report. This specific report divides the analysis into three categories: cases registered, cases processed, and productivity of judges.

[168] Ibid.
[169] Ibid.
[170] The 2017 EU Justice Scoreboard < https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en > last accessed on 23 November 2024.

Regarding the registered cases, the report notes that since 2002, the number of cases in the District Courts has steadily decreased. While in 2002, 32.852 cases were submitted, in 2020, only 11.689 were submitted (i.e., a 64.5% reduction of the registered cases in 20 years).[171] Concerning the cases being processed, the report noted that there was expected to be a corresponding reduction in their number. Indeed, there was a decrease amounting to 69.7%. While there was a decrease of approximately ⅓ in the registered and processed cases, there was no increase in the performance or the productivity of the judiciary "[…] on the contrary, there is a significant decrease in the number of cases heard by the Courts, resulting in a parallel increase in the cases pending before the Courts".[172] This finding arguably does not reflect on the conscientious work of the judiciary but on the fact that despite the efforts, the results are not as expected because the judiciary does not have the required tools to be productive and efficient. For example, the Civil Procedure Rules may not help them, they may not adequately manage their time, or more training may be needed. To apprehend what plagues the courts, it should be clarified that each year, on average, a large percentage of cases are withdrawn either because of a compromise between the parties or with issuing a decision in the absence of the defendant approximately 1-2 years after they are submitted. Consequently, there is an approximation between 95-97% of cases which are withdrawn. Yet, the remaining 3-5% of cases that require hearings, testimonies, and the issuance of the decision are the ones that burden the courts, creating a backlog.[173] Therefore, when discussing delayed cases,

[171] Έκθεση Καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου, Επαρχιακών Δικαστηρίων, 28 Ιουνίου 2021 < http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%CE%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 21 November 2024.

[172] Ibid.

[173]Εκθεση Καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου, Επαρχιακών Δικαστηρίων, 28 Ιουνίου 2021, 26 <

we discuss this tiny percentage of cases the courts do not find it possible to process each year. This small number of cases are not heard readily, while new cases are added each year to the existing volume, increasing them substantially. Consequently, the pace of cases heard is a significant factor which affects the backlog. Concerning the Supreme Court, despite the observed annual increase in pending appeals, measures to contain the backlog were not taken regularly; thus, the volume of the backlog is unsurprising.[174]

In the above graph, the yellow line represents the pending caseload, the blue line represents the processed cases, and the red line represents the registered cases. The graph, which the Supreme Court Reform Division prepared, shows that by 2008, all the categories of cases were on a downward trend. Since 2009, the line depicting pending cases has stood out, causing it to widen the gap between processed and pending cases, which meant a gradual increase in the number of delayed cases and the "swelling" of the Backlog. Likewise, Table 2 shows that the Supreme Court backlog is because fewer cases are heard each year than submitted.

Therefore, the first recommendation of the IPA's Report was on the backlog. It recommended the establishment of a task force, supported by a dedicated project team leader and project team, to address the backlog in the Supreme Court, the District Court, and the Industrial Disputes Court. What is particularly interesting yet worrisome is the fact that according to the Erotokritou Report, the then Director of Strategy, Coordination and Communication of the Ministry of Finance and a representative of the Ministry prepared a draft action plan by the recommendations of the IPA

http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%CE%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 21 November 2024.

[174] Ibid, 60-61.

experts which was never approved and therefore never implemented.[175] Following the recommendations of the IPA, a task force was established, and the dedicated team leader submitted a Summary Report on the Establishment of the task force to handle the Backlog on 25 May 2018.[176] As Erotokritou's Report puts it, the overall Report of the task force was described as a "mission impossible" due to the many parameters and the urgent need for action.[177]

The Summary Report of the Taskforce recommended the appointment of 26 new Judges who will deal with the Backlog.[178] Even though this recommendation was immediately approved, the appointment of the new judges was delayed mainly for two reasons. Firstly, there were no building facilities to accommodate such many additional judges. Secondly, establishing criteria for the appointment and promotion of judges was pending. The task force's initial report was followed by three more minor reports addressing individual issues concerning the accommodation of the judiciary. The Pancyprian Bar Association did not accept the suggestion for evening hearings. Following the IPA's report, the Supreme Court appointed judges to manage the backlog in District Courts and the Supreme Court. The Supreme Court was further strengthened by appointing the

[175] Έκθεση Καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου, Επαρχιακών Δικαστηρίων, 28 Ιουνίου 2021, 24 < http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%CE%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 21 November 2024.

[176] Functional Review of the Court System of Cyprus – Technical Assistance Project 2017/2018 IPA, Ireland < https://www.cyprusbarassociation.org/files/publications/Functional_Review_of_Courts_System_of_Cyprus_IPA_Ireland_-_Final_Report.pdf > last accessed on 23 November 2024.

[177] Έκθεση Καθυστερημένες υποθέσεις (Backlog) Ανώτατου Δικαστηρίου, Επαρχιακών Δικαστηρίων, 28 Ιουνίου 2021, 24 < http://www.supremecourt.gov.cy/judicial/sc.nsf/All/0759C496EB6BC10DC2258764003BB541/$file/%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97%20%CE%9A%CE%91%CE%98%CE%A5%CE%A3%CE%A4%CE%95%CE%A1%CE%97%CE%9C%CE%95%CE%9D%CE%95%CE%A3%20%CE%A5%CE%A0%CE%9F%CE%98%CE%95%CE%A3%CE%95%CE%99%CE%A3%20(BACKLOG)%20-%20%CE%93.%20%CE%95%CE%A1%CE%A9%CE%A4%CE%9F%CE%9A%CE%A1%CE%99%CE%A4%CE%9F%CE%A5.pdf > last accessed on 21 November 2024.

[178] Ibid.

Director of Reform and a Head Registrar. Despite the best efforts, a series of unfortunate events occurred after the Registrar's appointment, resulting in the vacancy of the Registrar post. Since then, the Department has remained understaffed, with only the Director and one Assistant Secretarial Officer.

All the above factors contributed to the failure to implement the recommendations. The latest report from the Director of Reform was submitted on February 10, 2020.[179] In this report, a final motion was made to begin adjudicating the delayed cases on May 1, 2020. The task force's working hours were proposed to be between 12:00 and 17:00, as the Minister of Justice suggested. Finally, the Supreme Court appointed new judges and established a judicial task force consisting of seven newly appointed judges. They commenced hearing backlogged cases in September 2020 in the Paphos District, where suitable accommodations were provided for the judges. For the other districts, this came later as arrangements were made to find new premises to accommodate the remaining force members, just as the new judges were appointed.

By 2021, professional judges were at a total of 129, which per 100.000 inhabitants amounts to 14,3, contrary to the EU Median, which is 24,1. Prosecutors were at 146, which amounts to 16,1 per 100.000 inhabitants, whereby the EU Median is 10,8. This increase in judges and prosecutors is understandable, as they were deemed necessary by the recommendations above. Finally, the number of lawyers reached 4377, which amounts to 483,8 per 100.000 inhabitants, much higher than the 122,4 of the EU Median.[180] The latest Scoreboard also shows the efficiency indicators of the Cypriot courts compared to the EU Median. Nevertheless, the lack of available information

[179] Functional Review of the Court System of Cyprus (Technical Assistance Project 2017/2018 IPA Ireland, March 2018) < https://www.cyprusbarassociation.org/files/publications/Functional_Review_of_Courts_System_of_Cyprus_IPA_Ireland_-_Final_Report.pdf > last accessed on 22 November 2024.
[180] 2024 EU Justice Scoreboard < https://commission.europa.eu/document/84aa3726-82d7-4401-98c1-fee04a7d2dd6_en > last accessed on 22 November 2024.

again shows Cyprus faces to provide up-to-date information due to the heavy reliance of the overall judicial system on paper-based filing and reporting.

Compared with previous years, in 2021, criminal law cases were resolved the fastest. Simultaneously, first-instance administrative law cases seem to take the longest.[181] However, their disposition times are significantly above the EU median; in all matters, the total length of proceedings in Cyprus is above the EU median. The Clearance Rate of the Scoreboard shows the capacity of a judicial system to deal with incoming cases. A Clearance Rate of 100% and higher does not generate a backlog. At first instance, courts in Cyprus seem efficient in criminal law cases, with a clearance rate above the 100% threshold, while for administrative law cases, the clearance rate is well below the 100% threshold. The Disposition time is also higher than the EU median for all cases. The Disposition Time of the Scoreboard determines the estimated days necessary for a pending case to be solved in court. The disposition time of final instance cases is indicated above the 100% threshold. Yet, it remains above the EU median for all cases but is significantly higher for civil law and administrative law cases. While the data of incoming, resolved, and pending cases for first-instance civil and commercial litigious cases are unavailable due to the lack of an electronic filing system, the data of first-instance administrative law cases show a clearance rate of 45,9% in 2021, emphasising the difficulties of the system in dealing with first instance administrative law cases. Nevertheless, it should be noted that the clearance rate decreased by approximately -37,8 points between 2020 and 2021, revealing that the efforts to deal with the backlog might finally be fruitful. The backlog in administrative cases could also be attributed to the increasing number of applications for international protection in 2021. From 1 January 2021, the Review authority for refugees was abolished. Similarly, the clearance rate of

[181] 2024 EU Justice Scoreboard < https://commission.europa.eu/document/84aa3726-82d7-4401-98c1-fee04a7d2dd6_en > last accessed on 22 November 2024.

first-instance cases (excluding criminal cases) is calculated at 81,3% in 2021, indicating the difficulties of the judicial system in dealing with first-instance cases. The clearance rate has decreased by -7,9 points, which is hopeful for the years to come.

In summary, many member states, following country-specific recommendations, pursue efforts to improve the effectiveness of their national justice system. Cyprus has taken several reform projects and tried to adopt and promote procedural reforms, such as ADR, which develops ICT in the courts' administration. Nevertheless, the latest scoreboard indicates Cyprus has the longest time resolving administrative cases in second-instance courts. The overall promotion effort for ADR methods in consumer disputes remained among Europe's lowest. The above can also be confirmed by the data collected and analyzed from the CRoLEV team on civic engagement, democratic governance, functionality of justice and democratic values.[182]

III. Administrative challenges, Human Rights and the Impact on the Administration of Justice in 2025

As this paper discussed, the efficient administration of justice is a cornerstone of the Rule of Law in any democratic society. In the Republic of Cyprus, however, successive reports from independent oversight institutions have identified persistent systemic weaknesses affecting both the functioning of the judiciary and the broader human rights environment on the island. More illustrative, the Audit Office's annual financial and compliance audit for 2023 uncovered a range of administrative inefficiencies within the judiciary.[183] The report emphasises the inadequate record-keeping regarding judges' leave entitlements and related financial settlements, as well as

[182] Centre for the Rule of Law and European Values (CRoLEV), *Dashboard* < https://crolev.eu/dashboard/> last accessed on 26 June 2025.
[183] Audit Office of the Republic of Cyprus**,** Annual Report 2023 **<** https://www.audit.gov.cy/audit/audit.nsf/reports_en/reports_en?Opendocument > accessed 22 May 2025

the non-compliance with public service regulations in the administration of sick leave for judges.[184] Moreover, it outlined the prolonged delays in adjudicating civil rights and obligations contributed to Cyprus's exposure to litigation before the ECtHR.[185] The report also identifies a significant administrative backlog in maintenance orders, custody decisions, and the execution of arrest warrants, alongside persistent operational inefficiencies, including the failure to properly track movable assets, legal library inventories, and the execution of guardianship orders.[186]

Similarly, the European Network of National Human Rights Institutions (ENNHRI) Rule of Law Report, as submitted by the Commissioner for Administration and the Protection of Human Rights of Cyprus, identifies corroborated systemic challenges affecting access to justice in Cyprus.[187] On court backlogs the ENNHRI report identified delays in court proceedings, weak specialisation and professionalism among judges, and difficulties in the timely execution of judicial decisions. Furthermore, it identified persistent gaps in the implementation of ECtHR judgments, despite recent efforts to adopt action plans in cooperation with national authorities.[188]

Collectively, the above reports show direct and indirect consequence for the administration of justice stemming from administrative inefficiencies, procedural delays, inequities in legal aid provisions, insufficient human rights trainings which result in biased rulings, procedural errors and the need for retrials or appeals to delayed ECtHR judgment execution.[189] Consequently, these challenges extend beyond the judiciary to the broader Rule of Law environment in Cyprus with

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[184] Ibid.
[185] Ibid.
[186] Ibid.
[187] European Network of National Human Rights Institutions (ENNHRI), Cyprus: Rule of Law Report 2024, submitted by the Commissioner for Administration and the Protection of Human Rights (Ombudsman) < https://ennhri.org/wp-content/uploads/2024/04/Cyprus_Country-Report_Rule-of-Law-2024.pdf >accessed 22 May 2025
[188] Ibid.
[189] Council of Europe, 'Supervision of Execution of Judgments – Cyprus' (Council of Europe) <https://rm.coe.int/mi-cyprus-eng/1680a23c84 > accessed 19 May 2025.

implications in the public confidence in the justice system due to administrative shortcomings and unequal access to justice. Cyprus is under increased international scrutiny from European institutions and human rights bodies concerning delays in ECtHR judgment execution and court backlogs as well as stagnation of essential justice reforms, including slow implementation of e-justice systems.

IV. Civil Procedure Rules and Backlog

All in all, the reports above collectively indicated that the Civil Procedure Rules needed to be revised. For that reason, the designated Department of Reform and Education announced, on 12 February 2020, the Inaugural Meeting for the Review of Civil Procedure Rules. The meeting marked the beginning of the seventh project financed by the European Commission in the context of reforming the courts.[190] On 26 November 2020, the official handover ceremony of the proposed revised Civil Procedure Rules was held online amidst the COVID-19 pandemic. The proposed Rules were prepared by experts under the chairmanship of Lord Dyson and were thoroughly processed by the Institution Committee appointed by the Supreme Court. According to the announcement issued by the Department of Reform and Education, practitioners were constantly involved in the whole process and during the drafting of the rules. There was also a public consultation, and the results were sent to lawyers and citizens alike.[191]

On 24 November 2020, the proposed Civil Procedure Rules were published.

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[190] Εναρκτήρια Συνάντηση για την Αναθεώρηση των Θεσμών Πολιτικής Δικονομίας (Ανώτατο Δικαστήριο Κυπριακής Δημοκρατίας)
<http://www.supremecourt.gov.cy/Judicial/sc.nsf/All/1595D4C0AC7996A4C225851A002CA619?OpenDocument> last accessed on 22 November 2024.

[191] Επίσημη Τελετή Παράδοσης των Προτεινόμενων Κανονισμών,
Πολιτικής Δικονομίας στο Ανώτατο Δικαστήριο (Ανώτατο Δικαστήριο Κυπριακής Δημοκρατίας)
<http://www.supremecourt.gov.cy/judicial/sc.nsf/All/54C4E15446C85912C225863000249277?OpenDocument> last accessed on 22 November 2024.

The fundamental changes of the new CPR promote new conduct, active management by the courts, and collaboration between the parties. The parties exchange information at an early stage, while ADR is encouraged. In cases where the grievance is brought to court, the protocols aim to smooth the judicial process by limiting the issues in disputes. The court may consider compliance or non-compliance with a preliminary ruling protocol when issuing case management instructions and when issuing orders as to costs, thus offering a strong incentive for the parties to engage in pre-trial communications. The new procedures claim to limit expenses and promote the identification of issues at an early stage. Finally, CPR is a utilisation of technological means. Essentially, the revised CPR rules introduced pre-trial protocols, enhanced case management responsibilities for judges, and formalised the use of preliminary hearings to identify and narrow issues. Despite these improvements, their practical implementation remains uneven, hampered by entrenched institutional cultures and ongoing deficiencies in court administration. Moreover, the Rule changes do not yet address the backlog of existing cases, which continues to strain judicial resources

V. Concluding remarks

The structures and functioning of the justice system in Cyprus have consistently been at the centre of public interest. Naturally, one could say that the administration of justice constitutes one of the fundamental pillars upon which every well-governed state is built. In reality, though, the Republic of Cyprus's operational practices were held back in the colonial era for many years. The acknowledgement of the situation brought many reforms. However, further improvement is required, especially regarding the functioning of courts. Although Cyprus showed a reduction in the estimated time required to resolve civil, commercial, administrative and other cases in 2022 compared to the two previous years, it still records the longest duration in Europe for the resolution

of court cases in both primary and secondary tiers according to the 2024 EU Justice Scoreboard.[192] Addressing the challenges in the justice field requires transparency, increased spending and investments in judicial infrastructure by the state and the utilisation of digital technologies. In light of the failure of the e-justice and i-justice platforms, the state should find alternative solutions promptly and transparently, as ICT might play a big part in improving the justice system. This is because, through digital technologies and the broader modernisation of the justice system, cases could be initiated remotely, and case files/applications would be built and submitted online. The cases could be grouped and assigned to specialised judges. The court should hire legal assistants and clerks, and the existing personnel should be further trained. The establishment of a Small Claims Court is essential in addressing the backlog. An important reformative step is also the promotion of ADR methods. The CBA, the judiciary, and the state should collaborate to build a culture focused on ADR. To achieve this goal, it is deemed necessary to encourage both lawyers and the involved parties, with the active support of judges. Incorporating out-of-court dispute resolution for many cases will relieve the courts, boost economic growth, and positively contribute to attracting investments.

Similar to the academic research on the CJEU backlog case, judging specific factors is essential to the duration of a case. Given the realities of the Cypriot justice system, as explained in the working paper, the courts often do not have docket control. The Court's internal procedure plays a substantial role in case duration. Although e-justice and i-justice could resolve some problems arising from the lack of digitalisation, the reform was unsuccessful and raised significant concerns about the project's assignment and procurement procedure. Increasing funding for case management systems would have significantly reduced the average case duration and the backlog

[192] The 2024 EU Justice Scoreboard < https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en > last accessed on 24 November 2024.

size. Case management systems will impact the quality and consistency of judicial decision-making for the better.

Additionally, through case management systems, transparency will advance; thus, the general public's trust in justice will increase. Proper and effective ICTs can help legal professionals draft judgments and conduct legal research. The judicial system has a critical challenge: the need for streamlined, efficient and transparent case management that ensures data security and fairness. ICTs used and built correctly have the potential to leverage advanced technologies to harmonise legal processes while fostering collaboration. The justice system is overwhelmed by complex case management, high workloads, and fragmented data. This inefficiency often hinders fairness and access to justice. Accordingly, case management solutions and ICT can tackle this problem by automating the categorisation and analysis of legal cases. Multilingual and open-source capabilities could ensure accessibility, scalability, and transparency. By integrating innovation, security and accessibility, legal professionals, researchers, and the general public will be empowered while fairness and openness are advanced.

Part of the solution is also to engage with international initiatives such as the CEPEJ Backlog Reduction Tool. During its 40th plenary meeting in June 2023, the European Commission for the Efficiency of Justice (CEPEJ) introduced a Backlog Reduction Tool to address delays in court systems.[193] The tool was developed in response to state requests and aims to identify and resolve structural judicial inefficiencies.[194]

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[193] Philipp Schroeder, Seizing opportunities: the determinants of the CJEU's deference to national courts. (2024) *Journal of European Public Policy* 31:9, pages 2986-3009; Fjelstul, J. C., Gabel, M., & C.J. Carrubba, The timely administration of justice: using computational simulations to evaluate institutional reforms at the CJEU (2022) *Journal of European Public Policy*, *30*(12), 2643–2664.

[194] Ibid; 'European Commission for the Efficiency of Justice (CEPEJ) Backlog Reduction Tool- Document adopted at the 40th plenary meeting of the CEPEJ' (Strasbourg, on 15 and 16 June 2023) < https://rm.coe.int/cepej-2023-9final-backlog-reduction-tool-en-adopted/1680acf8ee > last accessed on 24 November 2024.

The CEPEJ's tool provides a step-by-step framework to reduce backlogs. It is a four-phase methodology that first identifies the causes by using quantitative and qualitative analysis of court data, such as case age, duration, and resource allocation, alongside efficiency indicators like Clearance Rate and Disposition Time—secondly, developing a strategy establishing specific goals at various levels (judges, courts, judiciary) and implementing measures tailored to the identified causes. These include legislative reforms, digitalisation, resource allocation, and improved case and court management.[195] The third phase is monitoring progress by creating regular monitoring mechanisms to evaluate the effectiveness of the implemented measures, focusing on timeliness and quality.[196] The fourth phase ensures sustainability by instituting long-term strategies to prevent backlogs from recurring, including analysing trends and building on lessons learned.[197]

Summarily, the tool adapts to the unique circumstances of each judicial system, offering practical guidance while encouraging collaboration among stakeholders, including judges and legal experts. Sustainability is a core focus to maintain momentum beyond initial results. The CEPEJ's tool is designed to enhance judicial efficiency, reduce costs, and improve public confidence in courts.[198] The comprehensive report also includes templates, checklists, and data analysis guidelines for practical use. Other resources, such as the International Framework for Court Excellence and NACM's cashflow management guides, complement this initiative. The CEPEJ Backlog

[195] Ibid; 'Got the case backlog blues? A new backlog reduction tool is here to help!' (Court Leader, 2/8/2023) < https://courtleader.net/2023/08/02/got-the-case-backlog-blues-a-new-backlog-reduction-tool-is-here-to-help/#:~:text=In%20June%20the%20European%20Commission,int)%5D%20that%20can%20benefit%20every > last accessed on 24 November 2024.
[196] Ibid.
[197] Ibid.
[198] Ibid.

Reduction Tool is a dynamic resource that helps courts worldwide address delays, streamline processes, and ensure timely justice.[199]

[199] Philipp Schroeder, Seizing opportunities: the determinants of the CJEU's deference to national courts (2024) *Journal of European Public Policy* 31:9, pages 2986-3009; Fjelstul, J. C., Gabel, M., & C.J. Carrubba, C. J., The timely administration of justice: using computational simulations to evaluate institutional reforms at the CJEU (2022) *Journal of European Public Policy*, *30*(12), 2643–2664; European Commission for the Efficiency of Justice (CEPEJ) Backlog Reduction Tool- Document adopted at the 40th plenary meeting of the CEPEJ' (Strasbourg, on 15 and 16 June 2023) < https://rm.coe.int/cepej-2023-9final-backlog-reduction-tool-en-adopted/1680acf8ee > last accessed on 24 November 2024; Got the case backlog blues? A new backlog reduction tool is here to help!' (Court Leader, 2/8/2023) < https://courtleader.net/2023/08/02/got-the-case-backlog-blues-a-new-backlog-reduction-tool-is-here-to-help/#:~:text=In%20June%20the%20European%20Commission,int)%5D%20that%20can%20benefit%20every > last accessed on 24 November 2024.