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# European Studies Review

Who Will Putin Invade Next? An Analysis of Future Russian Endeavors  
Sanctions, the Russian Elite and the EU's need for more transparency  
Polarization East and West: neighbors being neighbors?



# UKRAINE

# AND CONSEQUENCES



# European Studies Review

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# EUROPEAN STUDIES REVIEW

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On the 24th of February, Putin launched a full-scale invasion of Ukraine, shocking the world. Most of the world stands united in favor of Ukraine's sovereignty, but fears surround Russia's neighbors, wondering who is next. While Putin's true intentions are not yet clear, it would not be surprising for Putin to continue his militaristic advances into other countries if he manages to successfully capture Ukraine and turn it into a pro-Russian state. While Putin has revealed his goal of growing Russia's sphere of influence, he also wants to keep NATO from expanding and is determined to maintain a buffer zone between Russia and NATO.<sup>1</sup> Further Russian military action seems unlikely in the near future, given the catastrophic losses already documented in Ukraine.<sup>2</sup> Putin also prefers gray zone and salami tactics such as funding proxy wars, election interference, economic pressure, and misinformation campaigns.<sup>3</sup> It is more likely that Putin wants to NATO-block these nations and return them to Russia's sphere of influence rather than restore

the Russian Empire. But if Putin were to hypothetically further his imperialistic advances, where would he attack?

### The Baltics

Concerns about Russia invading the Baltic states have circulated for years. The controversial Zapad exercises with Belarus in 2017, recent statements from Putin, and Putin's reaction to the Baltics joining NATO demonstrate Putin's resentment over losing this region.<sup>456</sup> These nations, particularly Latvia and Estonia, have large Russian minorities that Russia could use to justify an invasion, as they did in Crimea. These nations share significant borders with Russia, meaning they are vulnerable to an attack from the East.

Despite their apparent vulnerability, Lithuania, Latvia, and Estonia have a very small risk of being invaded by Russia. If these nations are invaded, Article 5 of NATO states that all NATO nations would come in to defend. Preparations for a

- 1 Gotev, Georgi. "Putin's World: Selected Quotes from a Disturbing Speech." *Www.euractiv.com*, 22 Feb. 2022, [www.euractiv.com/section/global-europe/news/putins-world-selected-quotes-from-a-disturbing-speech/](http://www.euractiv.com/section/global-europe/news/putins-world-selected-quotes-from-a-disturbing-speech/); Wiegrefe, Klaus. "NATO's Eastward Expansion: Is Vladimir Putin Right?" *Der Spiegel*, 15 Feb. 2022, [www.spiegel.de/international/world/nato-s-eastward-expansion-is-vladimir-putin-right-a-bf318d2c-7aeb-4b59-8d5f-1d8c94e1964d](http://www.spiegel.de/international/world/nato-s-eastward-expansion-is-vladimir-putin-right-a-bf318d2c-7aeb-4b59-8d5f-1d8c94e1964d).
- 2 Stijn Mitzer. "Attack on Europe: Documenting Equipment Losses during the 2022 Russian Invasion of Ukraine." *Oryx*, 24 Feb. 2022, [www.oryxspioenkop.com/2022/02/attack-on-europe-documenting-equipment.html](http://www.oryxspioenkop.com/2022/02/attack-on-europe-documenting-equipment.html).
- 3 Dalton, Melissa, et al. "Competing in the Gray Zone." *Csis.org*, 2018, [www.csis.org/features/competing-gray-zone](http://www.csis.org/features/competing-gray-zone).
- 4 Giles, Keir. "Russia Hit Multiple Targets with Zapad-2017." *Carnegie Endowment for International Peace*, 25 Jan. 2018, [carnegieendowment.org/2018/01/25/russia-hit-multiple-targets-with-zapad-2017-pub-75278](http://carnegieendowment.org/2018/01/25/russia-hit-multiple-targets-with-zapad-2017-pub-75278).
- 5 Gotev, 2022.
- 6 Myers, Steven Lee. "As NATO Finally Arrives on Its Border, Russia Grumbles." *The New York Times*, 3 Apr. 2004, [www.nytimes.com/2004/04/03/world/as-nato-finally-arrives-on-its-border-russia-grumbles.html](http://www.nytimes.com/2004/04/03/world/as-nato-finally-arrives-on-its-border-russia-grumbles.html).

possible Baltic invasion have been building up for years, and after the recent Ukrainian invasion, extra troops from Germany, France, and the US line the borders, ready for any Russian attack.<sup>7</sup> Given Russia's current struggles against Ukraine, a non-NATO member, an invasion of the Baltics is out of the question. Unless Putin wants to risk a war with NATO, a war he cannot afford, the Baltics, as well as every other NATO state, are safe.

## Belarus

Currently, Belarus is safe due to its status as Russia's only military ally and buffer state between Russia and NATO. Belarus could be in danger if Belarusian president Alexander Lukashenko turns against Putin, which is possible if Putin upsets Lukashenko or threatens the independence of Belarus.

In December 2019, Lukashenko had a row with Putin after Lukashenko rejected Putin's proposal for a controversial economic integration plan.<sup>8</sup> This plan would have furthered economic integration between Russia and Belarus, possibly leading to Russia's annexation of the smaller country. Lukashenko's rebellion resulted in Russia halting oil and gas supplies to Belarus, which led to Lukashenko entertaining relations with NATO countries and importing oil reserves from elsewhere to spite Putin.<sup>9</sup> However, the protests after the 2020 election rekindled Putin and Lukashenko's

alliance, as Putin backed Lukashenko in suppressing the protestors.

While Lukashenko appears mindlessly obedient to Putin, he does not wish to submit entirely to Russia and give up his lofty position as dictator. After the 2014 Crimean annexation, Lukashenko has tried to slowly inch away from Russia, implementing more policies promoting the Belarusian language and national identity.<sup>10</sup> Lukashenko has stated that he will never let his country become a part of Russia without the consent of its people.<sup>11</sup> Although Lukashenko is dodging sending his own troops to assist Russia in the military endeavor, he has helped Putin tremendously by allowing Russian troops to advance into Ukraine from Belarusian territory in the North.<sup>12</sup> He also allowed Russia's military to use Belarus's roads, railroads, airports, hospitals, morgues, and territory to launch missiles and airplanes.<sup>13</sup>

Russia does not have a justification to invade Belarus. There is no significant Russian minority, and Belarus is mostly ethnically homogenous.<sup>14</sup> A justification could be invented if Russia created a pro-Russian separatist group by transferring Russians to Belarus via the free settlement of peoples in the Union State.<sup>15</sup> Putin could also use an excuse similar to his justification for interfering during the 2020 protests, claiming that an American-backed coup is threatening Belarus.

7 "Blinken Tells Nervous Baltics NATO Will Protect Them from Russia." *www.aljazeera.com*, Al Jazeera, 7 Mar. 2022, [www.aljazeera.com/news/2022/3/7/blinken-tells-nervous-baltics-nato-will-protect-them-from-russia](http://www.aljazeera.com/news/2022/3/7/blinken-tells-nervous-baltics-nato-will-protect-them-from-russia).

8 Higgins, Andrew. "Putin Rejects Oil Deal with Belarus, Increasing Pressure for Merger." *The New York Times*, 7 Feb. 2020, [www.nytimes.com/2020/02/07/world/europe/belarus-lukashenko-russia-putin.html](http://www.nytimes.com/2020/02/07/world/europe/belarus-lukashenko-russia-putin.html). Accessed 18 May 2022.

9 Vandiver, John. "Russia's Close Ally Belarus Explores Working Closer with NATO." *Stars and Stripes*, 3 Jan. 2020, [www.stripes.com/theaters/europe/russia-s-close-ally-belarus-explores-working-closer-with-nato-1.613379](http://www.stripes.com/theaters/europe/russia-s-close-ally-belarus-explores-working-closer-with-nato-1.613379). Accessed 18 May 2022.

10 "Lukashenko on State of Affairs in CIS: We Are Virtually Torn Apart." *Eng.belta.by*, Belta, 6 Apr. 2020, [eng.belta.by/president/view/lukashenko-on-state-of-affairs-in-cis-we-are-virtually-torn-apart-129541-2020/](http://eng.belta.by/president/view/lukashenko-on-state-of-affairs-in-cis-we-are-virtually-torn-apart-129541-2020/). Accessed 18 May 2022.

11 "Lukashenka Accuses Moscow of Pressuring Belarus into Russian Merger." *RadioFreeEurope/RadioLiberty*, 25 Jan. 2020, [www.rferl.org/a/lukashenka-belarus-accuses-russia-pressuring-merger/30396235.html](http://www.rferl.org/a/lukashenka-belarus-accuses-russia-pressuring-merger/30396235.html). Accessed 18 May 2022.

12 Kuznetzov, Sergei. "Lukashenko Dodges and Weaves over Joining Russia in Attacking Ukraine." *POLITICO*, 15 Mar. 2022, [www.politico.eu/article/belarus-ukraine-war-russia-alexander-lukashenko-dodges-weaves/](http://www.politico.eu/article/belarus-ukraine-war-russia-alexander-lukashenko-dodges-weaves/).

13 *Ibid.*

14 *Attitude to Separatism in Belarus: "Doves" and "Hawks."* IISEPS, 2015.

15 Weigal, Courtney. "Promoting Belarus's Political and Economic Independence from Russia." *Michigan Foreign Policy Review*, vol. 4, no. 2, May 2020.



Invading Belarus could prove more difficult than Ukraine, as Belarus is landlocked, requiring Russia to rely on air and land forces. If Russia takes Ukraine, or this endeavor takes place during the Ukrainian operation, Russia could come from the South and surround Belarus from two sides. If this is not the case, then Russia's military movements would be much more predictable. However, Belarus also has a much smaller population, meaning less civilian resistance. While Belarus is a flat nation like Ukraine, it does have some unfavorable terrain, namely the Pripyat marshes.

Lukashenko is an incredibly unpredictable actor, making the future of Belarus uncertain. If Lukashenko sees the Ukrainian invasion as an opportunity to break away from Putin's control, there is a chance he could completely switch sides. This would be possible if there were signs Russia is losing this conflict. As of right now, Lukashenko remains dedicated to Putin, thus, Belarus is safe from any future Russian aggression.

## Moldova

Leaks from Lukashenko show plans to invade Moldova from Odessa, or at the very least, Transnistria.<sup>16</sup> If Putin is successful in Ukraine, then Moldova could be next. Russia has forces in Transnistria, which are taking part in the current Ukrainian invasion. Russia needs Transnistria for its endeavors in Ukraine, so Moldova is a lesser priority at the moment.<sup>17</sup> The number of Russian forces in Transnistria is unknown, but Transnistrian forces have 4,500 to 5,500 active-duty soldiers with

20,000 in reserve.<sup>18</sup> Moldova has 5,000 to 7,500 active personnel and 70,000 in reserve and is supplied by a variety of NATO nations, despite not being a part of the organization.<sup>19</sup> Moldova is not in NATO, nor can it join due to the current occupation of Transnistria. Moldova also lacks natural barriers from the East, meaning marching into Chişinău would not be difficult. Moldova also has various minority groups that Putin could use as an excuse to invade, as he did in Ukraine and Georgia.<sup>20</sup> Due to its easy terrain, proximity to Ukraine, the presence of Russian troops, various turbulent minority groups, and its breakaway region, Moldova is a clear future target for Putin's agenda.

However, an invasion of Moldova is less likely due to the fact that Putin lacks a reason to invade Moldova. Moldova has remained neutral in this conflict, has not tried to join or work with NATO, and has not taken any recent actions to anger Putin. While Moldova would be an easy target, the lack of motivation to invade Moldova is what currently keeps it safe. If an invasion of Moldova were imminent, there would be warning signs such as a crumbling of relations or accusations from the Kremlin regarding undesirable behavior. As long as Moldova stays on Putin's good side, it will remain a peaceful next-door neighbor.

## Georgia

Georgia is the most likely target of further Russian aggression. In 2008, Russia invaded Georgia, occupying Abkhazia and South Ossetia under the banner of saving oppressed minorities, although Putin's true intentions, like with Ukraine, are keeping a

16 Mitchell, Ellen. "Belarus President Stands in Front of Map Indicating Moldova Invasion Plans." *The Hill*, 1 Mar. 2022, thehill.com/policy/international/596409-belarus-president-stands-in-front-of-battle-map-indicating-moldova/. Accessed 18 May 2022.

17 "BREAKING: Missiles Being Fired from Separatist Territory of Transnistria, Moldova, towards ... - Latest Tweet by the Spectator Index | LatestLY." *LatestLY*, 24 Feb. 2022, www.latestly.com/socially/world/breaking-missiles-being-fired-from-separatist-territory-of-transnistria-moldova-towards-latest-tweet-by-the-spectator-index-3401667.html. Accessed 18 May 2022.

18 "Law Enforcement and Armed Forces of Pridnestrovie." *Pridnestrovie Moldavskaia Respublica*, 4 Aug. 2007.

19 "Preşedintele Republicii Moldova L-a Prezentat Pe Noul Şef al Marelui Stat Major." *Www.interlic.md*, Interlic, 8 July 2019, www.interlic.md/2019-07-08/pre-edintele-republicii-moldova-la-prezentat-pe-noul-ef-al-marelui-stat-major-59648.html. Accessed 18 May 2022.

20 Veidlinger, Jeffrey. "Putin's Claim to Rid Ukraine of Nazis Is Especially Absurd given Its History." *The Conversation*, 26 Feb. 2022, theconversation.com/putins-claim-to-rid-ukraine-of-nazis-is-especially-absurd-given-its-history-177959.

buffer state between Russia and NATO.<sup>21</sup> Being a small, non-NATO country with a decade-long conflict with Russia, many useful resources, and a number of hostile insurgent groups, annexing Georgia would be an easy military endeavor. Georgia also has a smaller role on the global stage and is further away from the European Union and NATO. The only NATO member it borders is Turkey. Georgian leaders have been incredibly hostile to the Kremlin ever since the invasion, have expressed their solidarity with Ukraine, and have tried to join NATO for over a decade, giving Putin more motivation to quash its leader.

Russia could invade from the North, using its forces in Abkhazia and South Ossetia, while using the Black Sea to take the West. There is also a possibility of enlisting Armenian forces to attack from the South, as Armenia is a strong ally that heavily relies on Russia. However, the chances of Armenia joining are unlikely because Armenia does not have an incentive to take part in a war against its friendly neighbor.<sup>22</sup>

An invasion of Georgia would be especially likely if Georgia were to attempt to reclaim Abkhazia and South Ossetia or join NATO. This would provoke a Russian response that could alleviate pressure on Ukraine, but it would be a major gamble given the above concerns. Even if Putin fails in Ukraine, annexing Georgia would be a very likely endeavor due to the present regional forces and possible lack of support.

## Finland

Russia repeatedly threatened “military and political consequences” if Finland and Sweden tried joining NATO.<sup>23</sup> After decades of neutrality, public opinion in Finland has rapidly swung in favor of joining NATO. This would eliminate another buffer state and give NATO another direct border with Russia. Finland has also sent millions of dollars of aid and weapons to Ukraine and expressed strong solidarity.<sup>24</sup> The possibility of Finland considering joining NATO has heightened significantly, which could provoke an aggressive response from Russia, as seen in Georgia and Ukraine.

Finland was a part of Russia from 1807 to 1917. The Winter War and the Continuation War settled Finland into a neutral position during the Cold War, maintaining good relations with Russia.<sup>25</sup> Finland relies on Russia for almost 100% of its gas and has a significant Russian minority, making it an easy target for both economic and military punishment.<sup>26</sup> While annexing an entire nation is less likely, it is possible that Putin could use NATO-blocking measures like he did in Georgia. This would involve invading and occupying part of Finland, most likely an area with a Karelian or Russian minority, to prevent it from joining NATO. NATO has delayed and refused Georgia and Ukraine's acceptance into NATO because their membership would mean immediate war with Russia. Therefore, Finland would also be prevented from

21 Flintoff, Corey. “Russia-Georgia Conflict Has Deep Roots.” *Choice.npr.org*, NPR, 12 Aug. 2008, [choice.npr.org/index.html?origin=www.npr.org/templates/story/story.php?storyId=93525210](http://choice.npr.org/index.html?origin=www.npr.org/templates/story/story.php?storyId=93525210). Accessed 18 May 2022.

22 Hovhannisyan, David. “Armenian-Georgian Neighborhood: Same Directions or Diverging Paths? | Heinrich Böll Stiftung | Tbilisi - South Caucasus Region.” *Heinrich-Böll-Stiftung*, 15 Dec. 2017.

23 Szumski, Charles. “Russia Threatens Sweden and Finland over NATO Membership, Again.” *www.euractiv.com*, 14 Mar. 2022, [www.euractiv.com/section/politics/short\\_news/russia-threatens-sweden-and-finland-over-nato-membership-again/](http://www.euractiv.com/section/politics/short_news/russia-threatens-sweden-and-finland-over-nato-membership-again/); Lonas, Lexi. “Russia Threatens “Military and Political Consequences” If Finland, Sweden Try Joining NATO.” *The Hill*, 25 Feb. 2022, [thehill.com/policy/international/russia/595853-russia-threatens-military-and-political-consequences-if-finland/](http://thehill.com/policy/international/russia/595853-russia-threatens-military-and-political-consequences-if-finland/). Accessed 18 May 2022.

24 Banka, Neha. “Explained: Amid Ukraine Invasion, Why Russia Is Objecting to Finland and Sweden's NATO Membership.” *The Indian Express*, 3 Mar. 2022, [indianexpress.com/article/explained/explained-russia-ukraine-invasion-finland-sweden-nato-7792957/](http://indianexpress.com/article/explained/explained-russia-ukraine-invasion-finland-sweden-nato-7792957/). Accessed 18 May 2022.

25 *Ibid.*

26 Buchholz, Katharina. “Infographic: Which European Countries Depend on Russian Gas?” *Statista Infographics*, 24 Feb. 2022, [www.statista.com/chart/26768/dependence-on-russian-gas-by-european-country/](http://www.statista.com/chart/26768/dependence-on-russian-gas-by-european-country/).

joining NATO unless it relinquishes its territorial integrity to Russia.

An invasion of Finland could be possible. Even if Finland were to combine its military forces with neighboring Sweden, Russian forces would greatly outnumber them.<sup>27</sup> A small military exercise near the region would most likely take place first, but a military attack would test the capabilities of the European Union and its ability to protect its members. While the EU has a mutual assistance clause, it has yet to be tested. If the European Union proves incapable of protecting Finland, it would signal to Putin the incapacities of the EU, motivating him to dig further into Europe. Germany's early response to Russia's attack on Ukraine has already signaled some members' weaknesses.<sup>28</sup> At the same time, Finland's EU status could be a deterrent, as France possesses nuclear weapons: a potential EU intervention could hence be disastrous for Russia.<sup>29</sup>

## Azerbaijan

Azerbaijan's greatest resource is its oil reserves, a resource Russia already has an excess of. However, a strategic occupation of Azerbaijan would cut off one of Europe's major oil suppliers and the ideal alternative to Russian gas, putting Europe in an incredibly vulnerable position.<sup>30</sup> Russia is also a critical ally of Azerbaijan's enemy, Armenia, and has a strong reason

to invade on behalf of Armenia as well as Azerbaijan's Russian minority. Azerbaijan's capital, Baku, is right on the Caspian Sea, so taking it with naval forces while invading from the North and West is possible. In fact, this is how the Soviet Union invaded Azerbaijan in 1920. Russia could also enlist help from Armenia to attack from the South, surrounding the country.<sup>31</sup> Azerbaijan is not a NATO member but frequently works with NATO and is incredibly close to prominent NATO members and crucial financial supporter of Ukraine, Turkey.<sup>32</sup> A tense opponent of Russia in many conflicts including the Syrian Civil War, Turkey would definitely intervene if Azerbaijan were invaded. The nations' militaries are often intertwined, frequently working together, making cooperation against a direct Russian attack highly likely. Despite its small size, occupying Azerbaijan would not be an easy endeavor due to Turkey's brotherly alliance. Even if his Ukrainian operation is successful, Putin would not be in a position to invade Azerbaijan for a long time due to the cost of fighting the Turkish army. However, Azerbaijan should be cautious of a potential Russian-backed proxy war, most likely in the Nagorno-Karabakh region. Such a conflict would block Azerbaijan from joining NATO while potentially disrupting its oil prospects in the EU.

27 *Maavoimien Historia ja Perinteet*. Puolustusvoimat, 1 Jan. 2008.; "Personalsiffror." *Försvarsmakten*, [www.forsvarsmakten.se/sv/organisation/om-var-organisation/personalsiffror/](http://www.forsvarsmakten.se/sv/organisation/om-var-organisation/personalsiffror/).

28 Birnbaum, Michael, and Rick Noack. "Germany Abandons Muted Approach to Aid for Ukraine, Sending Weapons and Greenlighting Sanctions." *Washington Post*, 26 Feb. 2022, [www.washingtonpost.com/world/2022/02/26/germany-weapons-swift-russia-ukraine/](http://www.washingtonpost.com/world/2022/02/26/germany-weapons-swift-russia-ukraine/).

29 Dunand, Emmanuel. "Weapons of Mass Debate - Time to Talk about Nuclear Deterrence in Europe (Again)." *Institut Montaigne*, [www.institutmontaigne.org/en/blog/weapons-mass-debate-time-talk-about-nuclear-deterrence-europe-again#:~:text=There%20are%20two%20European%20nuclear](http://www.institutmontaigne.org/en/blog/weapons-mass-debate-time-talk-about-nuclear-deterrence-europe-again#:~:text=There%20are%20two%20European%20nuclear). Accessed 19 May 2022.

30 Turan, Iclal. "Azerbaijan's Natural Gas Enough for Neighbors, Europe, Says Energy Minister." *www.aa.com.tr*, 12 Mar. 2022, [www.aa.com.tr/en/turkey/azerbaijans-natural-gas-enough-for-neighbors-europe-says-energy-minister/2533108](http://www.aa.com.tr/en/turkey/azerbaijans-natural-gas-enough-for-neighbors-europe-says-energy-minister/2533108).

31 Широкопад А. Б. Великая речная война. 1918–1920 годы / А. Б. Широкопад. - М.: Вече, 2006. - 416 с.; илл. - (Военные тайны XX века). Тираж 3000 экз. isbn 5-9533-1465-5.

32 Jones, Dorian. "Turkey Steps up Support for Ukraine, Risking Russian Retaliation." *VOA*, 3 Mar. 2022, [www.voanews.com/a/turkey-steps-up-support-for-ukraine-risking-russian-retaliation-/6468635.html](http://www.voanews.com/a/turkey-steps-up-support-for-ukraine-risking-russian-retaliation-/6468635.html).



## Kazakhstan

Kazakhstan has been a strong Russian ally ever since the fall of the USSR. In January 2022, Russian troops entered Kazakhstan at the president's request to quell major protests against corruption.<sup>33</sup> Despite this favor, Kazakhstan has been defiant, denying Russia's request for Kazakh forces to join in the Ukrainian mission and not recognizing the Luhansk and Donetsk People's Republics.<sup>34</sup> The war is drastically affecting Russia's relationship with Kazakhstan, as Kazakh television providers have blocked Russian TV stations, Kazakh officials are allowing citizens to protest Russia's actions, and the Kazakh government has approved millions of dollars worth of humanitarian aid to Ukraine.<sup>35</sup>

Kazakhstan is no stranger to standing up to Russia, as former President Nazarbayev threatened to withdraw from the Eurasian Economic Union in 2013 over Putin claiming that "Kazakhs never had a statehood."<sup>36</sup> Kazakhstan also has a significant Russian minority and enough political turmoil for Putin to justify an invasion, be it on protecting Russians or pretending to save the country from an American-backed coup. Kazakhstan also has many natural resources that Russia could benefit from and many important

investments that Russian companies rely on. Could this country be next on Putin's list?<sup>37</sup>

The answer is not likely. Kazakhstan is a loyal ally of Russia. In addition, Kazakhstan is a large country and is sparsely populated, meaning the supplies needed for the Russian troops to invade would slow down military maneuvers.<sup>38</sup> Running out of supplies in the middle of the Kazakh semi-desert could be disastrous and possibly fatal for troops on land. The most populous city, Almaty, is in the far South of the country. The hostile environment and sparse resources would require a number of soldiers and effort that Russia cannot afford. While this did not stop the Russian invasion of Central Asia over a century ago, another recent addition to the Kazakh geography brings another set of troubles to Russian troops: radioactivity. Semipalatinsk, a former Soviet nuclear testing site, is one of the most radioactive places in the world. Thousands of people still suffer from that radiation today, and that radiation would have a definite impact on Russian soldiers.<sup>39</sup> While Kazakhstan's geography makes it more troublesome, Kazakhstan also has a much smaller population, therefore, less resistance.

33 "Kazakhstan: Why Are There Riots and Why Are Russian Troops There?" *BBC News*, 7 Jan. 2022, [www.bbc.com/news/explainers-59894266](http://www.bbc.com/news/explainers-59894266). Accessed 9 Jan. 2022.

34 Notheis, Asher. "Russia Ally Kazakhstan Denies Request to Join Attack on Ukraine: Report." *Washington Examiner*, 26 Feb. 2022, [www.washingtonexaminer.com/policy/defense-national-security/russian-ally-kazakhstan-denies-request-to-join-attack-on-ukraine-report](http://www.washingtonexaminer.com/policy/defense-national-security/russian-ally-kazakhstan-denies-request-to-join-attack-on-ukraine-report). Accessed 19 May 2022.

35 Reuters. "Kazakh Provider Blocks Russian TV Stations over Ukraine War." *Reuters*, 28 Feb. 2022, [www.reuters.com/world/kazakh-provider-blocks-russian-tv-stations-over-ukraine-war-2022-02-28/](http://www.reuters.com/world/kazakh-provider-blocks-russian-tv-stations-over-ukraine-war-2022-02-28/). Accessed 19 May 2022.; Putz, Catherine. "Rally in Support of Ukraine Illustrates Kazakhstan's Awkward Position." *The Diplomat*, 7 Mar. 2022, [thediplomat.com/2022/03/rally-in-support-of-ukraine-illustrates-kazakhstans-awkward-position/](http://thediplomat.com/2022/03/rally-in-support-of-ukraine-illustrates-kazakhstans-awkward-position/). Accessed 19 May 2022.

36 Lillis, Joanna. "Kazakhstan Celebrates Statehood in Riposte to Russia | Eurasianet." *Eurasianet.org*, 15 June 2015, [eurasianet.org/kazakhstan-celebrates-statehood-in-riposte-to-russia](http://eurasianet.org/kazakhstan-celebrates-statehood-in-riposte-to-russia). Accessed 19 May 2022.

37 Embassy of the Russian Federation of the Republic of Kazakhstan, 2022. Российско-казахстанские торгово-экономические связи. Embassy of the Russian Federation of the Republic of Kazakhstan.

38 "Kazakhstan Population 2020 (Demographics, Maps, Graphs)." *Worldpopulationreview.com*, 2022, [worldpopulationreview.com/countries/kazakhstan-population](http://worldpopulationreview.com/countries/kazakhstan-population).

39 "Kazakhstan's Nuclear Nightmare | History Today." *Historytoday.com*, History Today, 2019, [www.historytoday.com/archive/behind-times/kazakhstan%E2%80%99s-nuclear-nightmare](http://www.historytoday.com/archive/behind-times/kazakhstan%E2%80%99s-nuclear-nightmare). Accessed 19 Nov. 2020.

Kazakhstan is in a similar position to Moldova: as long as it complies with Russia, it will be safe. While Kazakhstan has undesirable terrain, there would also be less resistance. Additionally, Kazakhstan does not pose a threat to Russia, as it does not have a desire to join NATO. Therefore, Kazakhstan is under medium threat.

These other invasions are unlikely at the given moment and could only take place if Putin is successful in Ukraine. Even if Putin takes Ukraine, the lack of Russian support for this war and harsh financial sanctions would make immediately taking another country difficult. However, these nations should pay attention to possible gray-zone and salami tactics from Russia. Russia's neighbors are safe for now, therefore, attention and support should be concentrated on Ukraine. However, it may be smart for these nations to consider their positions and prepare accordingly for the future.



## Introduction

From restricting bank access to import bans, sanctions have long been the favored foreign policy instrument by the European Union to showcase its discontent with a state's actions. At the time of writing, the EU as a unified entity has 14 different sanctions in place against Russia as a reaction to the invasion of Ukraine.<sup>1</sup> By far the most visible in the media, except for energy sanctions, was the detainment of superyachts of various economic elites who support the Russian regime.<sup>2</sup> These sanctions work in a way that most people would not suspect: by hurting their social status.<sup>3</sup> The Russian elite is not the only one hurting, Russian and European citizens alike are starting to realize what sanctions mean for their daily life. While it seems that the end of the Russia – Ukraine crisis is not yet in sight and new sanctions loom on the horizon, we urge the European

Union to uphold the same values as it does in non-crisis times. They may find that transparency not only is essential for democratic accountability, but also has some unintended ramifications on the effectiveness of the sanctions.

## Hit them where everyone can see it

Targeting the influential allies of Putin was the first measure the EU undertook, as blacklisting and freezing assets of individuals is a good tool to apply some heat, without having to disrupt more significant parts of the economy.<sup>4</sup> Moreover, oligarchs play an essential role in providing public support for Putin's regime.<sup>5</sup> Although the extent of the oligarchs' influence over the Russian president remains widely debated, they have played an essential role in providing public and economic support to Kremlin's initiatives.<sup>6</sup>

1 Minami Funakoshi, Hugh Lawson, and Kannaki Deka, "Tracking Sanctions against Russia," Reuters (Thomson Reuters, 2022), <https://graphics.reuters.com/UKRAINE-CRISIS/SANCTIONS/byvrijenzmve/>.

2 Devon Pendleton, Tom Maloney, and Daniele Lepido, "EU Police Detain Superyachts of Sanctioned Russian Billionaires," BusinessLIVE (Bloomberg, March 6, 2022), <https://www.businesslive.co.za/bloomberg/news/2022-03-06-eu-police-detain-superyachts-of-sanctioned-russian-billionaires/>.

3 Brooke Harrington, "The Russian Elite Can't Stand the Sanctions," The Atlantic (Atlantic Media Company, March 7, 2022), <https://www.theatlantic.com/ideas/archive/2022/03/russian-sanctions-oligarchs-offshore-wealth/623886/>.

4 Funakoshi, Lawson and Deka, "Tracking Sanctions".

5 Harrington, "The Russian Elite".

6 Stanislav Markus, "Meet Russia's Oligarchs, a Group of Men Who Won't Be Toppling Putin Anytime Soon," The Conversation, May 23, 2022, <https://theconversation.com/meet-russias-oligarchs-a-group-of-men-who-wont-be-toppling-putin-anytime-soon-178474>.



More interesting is the way these sanctions are hurting the elite. Losing their beloved yacht is not the source of their problems, rather the losing face among their peers and the international community is the real thorn in their side. Sociologists have long understood that for the ultra-rich, having the ability to flaunt their wealth and maintain their status is more important than actually being extremely rich. Freezing of assets and televised raids on their yachts and villas have publicly embarrassed and stigmatized these economic elites and brought about something that is known in academic literature as “social death”.<sup>7</sup> These public ‘attacks’ by governments, media and internet users<sup>8</sup> alike, have proven their efficiency. By the end of February, Russian billionaires Mikhail Fridman and Oleg Deripaska<sup>9</sup> called upon the Kremlin to end the war, while Chelsea-owner Roman Abramovich vowed to donate all proceeds of the sale of the football club to victims of the war in Ukraine.<sup>10</sup> This serves as an important reminder that a system built around a small circle of wealthy core actors in flawed democratic institutions is also one that is easily targeted through components of ‘cancel culture’.

### Who really bears the brunt?

The upper echelons of Russian society are not the only ones bearing the cost of the actions taken against the Russian regime. For both Russian and the European Union

citizens, there is a growing realization that these measures come at a cost for all parties involved. Take for example the fifth wave of sanctions, which included a full ban on coal imports. The European Commission estimated that this ban would cost Russia 4 billion euros per year, but remained silent on the costs for the European market.<sup>11</sup> Close to half of the EU’s coal is imported from Russia, and although the EU could bridge the gap of losing its leading coal import partner by diversifying its suppliers, the Union risks paying a hefty premium in the long run, as was witnessed after the Chinese coal import ban on Australia.<sup>12</sup>

In March, the European Commission announced it will reduce the EU’s energy reliance on Russia by cutting 2/3 of the gas imports by the end of 2022 and achieve Russian fossil fuel independence by 2023. However, Bruegel, a Brussels-based think tank, put forth the possible risks of such a gradual wind-down of import volumes. With lower volumes of Russian energy sources being brought in and more sanctions on the horizon, European prices for energy imported from Russia have already increased and will continue to climb in the near future. They foresee that these higher prices will overcompensate the loss of volume by the embargos and as such, will not be effective in reducing Russia’s energy revenues in the short term. A complete embargo, on the other hand, would cut these revenues, but would also

7 Brooke Harrington, “Perspective | Sanctions on Russia Are a Reminder That Shame Works on Oligarchs,” The Washington Post (WP Company, April 4, 2022), <https://www.washingtonpost.com/outlook/2022/04/04/oligarchs-sanctions-shame/>.

8 Natalie Huet, “Teen Who Tracked Elon Musk’s Jet Is Now Chasing Russian Oligarchs,” euronews, March 1, 2022, <https://www.euronews.com/next/2022/03/01/where-are-the-russian-oligarchs-the-teen-who-annoyed-elon-musk-is-now-tracking-their-priva>.

9 Charles Riley, “Two Russian Oligarchs Call for an End to Putin’s War,” CNN (Cable News Network, March 1, 2022), <https://edition.cnn.com/2022/02/28/business/oligarchs-russia-ukraine-fridman-deripaska/index.html>.

10 Anna Kaplan, “Russian Billionaire Roman Abramovich to Sell Chelsea FC—Donate Proceeds to Help Victims in Ukraine,” Forbes (Forbes Magazine, March 3, 2022), <https://www.forbes.com/sites/annakaplan/2022/03/02/russian-billionaire-roman-abramovich-to-sell-chelsea-fcdonate-proceeds-to-help-victims-in-ukraine/?sh=2bc81e3c44a0>.

11 Huileng Tan, “The EU Is Proposing a Ban on Russian Coal Imports in Its 5th Round of Sanctions - but Didn’t Mention Natural Gas,” Business Insider (Business Insider, April 6, 2022), <https://www.businessinsider.com/european-union-coal-ban-russia-oil-natural-gas-ukraine-war-2022-4?international=true&r=US&IR=T>.

12 Clyde Russell, “Column: Europe’s Planned Ban on Russian Coal Has Unhappy China Precedent,” Reuters (Thomson Reuters, April 7, 2022), <https://www.reuters.com/markets/commodities/europes-planned-ban-russian-coal-has-unhappy-china-precedent-2022-04-07/>.

have substantial economic consequences for the EU's energy market.<sup>13</sup>

Draft conclusions of the EU Summit at the end of May urge member states to prepare for significant disruptions in Russian gas supply.<sup>14</sup> Not an unwarranted warning considering Russia's Gazprom halted all gas deliveries to both Poland and Bulgaria for refusing to comply with the demand to pay only in Rubles.<sup>15</sup> While the EU starts looking for solutions to bolster their gas and general energy market (e.g. refill storages, renewable energy, etc.), the ideas put forward only pertain to the long-term. When it comes to immediate alternatives for Russian gas, the only viable option seems to buy LNG from suppliers like the United States and Qatar. This alternative would, in principle, lead to prolonging the current energy crisis, as LNG is more costly than Russian gas and this would drive the overall gas prices up.<sup>16</sup>

So while people all over Europe are rallying for harsher political response and sanctions to end the war in Ukraine, most of them are woefully unaware of what this would entail for their own lives. We are left to wonder if the benefits of these sanctions outweigh the costs for European citizens amidst the rising energy prices.

## **Transparency: The Logical Mirror of Sanctions**

The sanctions against Russia have made one thing abundantly clear: more transparency is needed. Not only is it important for citizens to realize the actual cost of the EU's foreign policy decisions, but it will also have the added benefit of increasing the effectiveness of targeted sanctions, such as freezing the assets of economic elites. Whether it is a bot tracking Russian oligarch jets or televised seizing of yachts, publicizing through various forms of media increases public support for actions taken by governmental entities and further stigmatizes the elite in the eye of the public, which in turn makes the sanctions more effective. Nevertheless, trying to slash Putin's funds through sanctions is a worthwhile goal, but it should not come at the cost of the livelihood of the citizens. Moreover, the citizens should at least be well-informed on the possible costs and benefits that these sanctions entail and their implications for the average inhabitant of an EU member state. Accountability and transparency have forelong been the backbone of democracy and values that are held in high regard by the European Union.<sup>17</sup> These same values should be upheld in times of rapid decision making or crises.

13 Hausmann, R., A. Łoskot-Strachota, A. Ockenfels, U. Schetter, S. Tagliapietra, G.B. Wolff and G. Zachmann (2022) 'Cutting Putin's energy rent: 'smart sanctioning' Russian oil and gas', Working Paper 05/2022, Bruegel

14 Kira Taylor, "EU Countries Urged to Prepare for Russian Gas Cut: Summit Draft," [www.euractiv.com](https://www.euractiv.com/section/energy/news/eu-countries-urged-to-prepare-for-russian-gas-cut-summit-draft/) (EURACTIV, May 23, 2022), <https://www.euractiv.com/section/energy/news/eu-countries-urged-to-prepare-for-russian-gas-cut-summit-draft/>.

15 America Hernandez and Zosia Wanat, "Russia Halts Gas Shipments to Poland and Bulgaria," POLITICO (POLITICO, April 27, 2022), <https://www.politico.eu/article/poland-russia-gas-europe-halt-shipments-ukraine-war/>.

16 Frédéric Simon, "Academic: We Are Probably Entering a Long Period of High Gas Prices," [www.euractiv.com](https://www.euractiv.com/section/energy/interview/academic-we-are-probably-entering-a-long-period-of-high-gas-prices/) (EURACTIV, May 13, 2022), <https://www.euractiv.com/section/energy/interview/academic-we-are-probably-entering-a-long-period-of-high-gas-prices/>.

17 "The EU Values," The EU values - About - ECL v2, accessed May 28, 2022, <https://ec.europa.eu/component-library/eu/about/eu-values/>.



## Introduction

Following the Russian invasion of Ukraine, the European Union (EU) has adopted unprecedented sanctions against the Russian Federation. In response to the unprovoked attack, the EU has so far adopted six packages of sanctions to cripple the Kremlin's ability to finance its war, has imposed clear political and economic costs on Russian elites and overall has diminished the country's economic base. Besides imposing asset freezes on over 1158 individuals and 98 entities, the EU also took more controversial and unprecedented steps such as kicking Russian banks from the international payment system SWIFT – a move once considered to be a financial atom bomb-, banning the state-owned outlets of Russia Today and Sputnik, and closing EU airspace to all Russian-controlled aircrafts. On May 4, 2022, European Commission President Von der Leyen announced the sixth package of sanctions, including further measures against Russian financial institutions and a gradual ban on the import of all Russian oil.

However, strong opposition, especially to the import ban from Hungary, significantly delayed the adoption of the sixth package.<sup>1</sup>

## Undermining sanction effectiveness

Notwithstanding Hungarian opposition to the oil import ban, which can also be seen in light of the rule of law dispute with the Union and the suspension of EU recovery funds by the European Commission, the adopted sanctions were unprecedented. However, an important determinant of their effectiveness is the ability to prevent the target state from circumventing sanctions by redirecting flows of capital, trade, and energy to like-minded partners.<sup>2</sup> Several countries so far have chosen not to join the international effort to sanction Russia for various reasons, ranging from a complicated relationship with Moscow to financial ties and strategic national security considerations. Several big players are still significantly disrupting Western sanctions, the biggest and most obvious of which being China as one of Moscow's closest trading and strategic partners as well as one of its biggest oil customers.

<sup>1</sup> European Commission. *EU sanctions against Russia following the invasion of Ukraine* (Brussels: European Union, 2022). Accessed May 11, 2022 from [https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-sanctions-against-russia-following-invasion-ukraine\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-sanctions-against-russia-following-invasion-ukraine_en).

<sup>2</sup> Hufbauer, Gary Clyde and Megan Hogan, "How effective are sanctions against Russia?" *Peterson Institute for International Economics*, March 16, 2022. Accessed June 1, 2022 from <https://www.piie.com/blogs/realtime-economic-issues-watch/how-effective-are-sanctions-against-russia>



Other less obvious states are India, for which Russia has become a key energy provider, trade partner, and historical supporter in disputes with Pakistan and China, the United Arab Emirates (UAE), due to its considerable trade relations with Russia, and Israel, which came to an understanding with Moscow about its strikes on Iranian convoys in Syria.<sup>3</sup>

### Addressing China

Although China stated that it would not take sides, it has declared a 'no limits' partnership with Russia and has refused up till this day to condemn the attack. Beijing shares with Russia the strategic position that NATO expansion –dominated and led by the United States– is the primary cause for the war in Ukraine and that the ensuing Western sanctions are uninvited violations of sovereignty. It increasingly feels threatened by several key elements of the US-led liberal world order which it seeks to replace and in which Russia is an important partner. Examples are Chinese non-compliance with international arbitration for several disputes in the South-China Sea or the creation of alternative international institutions such as the Asian Infrastructure Investment Bank (AIIB).

During the EU-China summit on April 1, 2022, EU leaders never had the illusion that China would back Western sanctions. Nevertheless, they send a clear signal that if China did not want to support sanctions, it should at least not interfere in any way. China has a custom of not supporting sanctions as it fears that their effects will spill over to the rest of the world and

lead to currency and trade wars, thereby jeopardizing supply chains, globalization, the international economic order and, ultimately, Chinese domestic stability.<sup>4</sup>

The reminder of Commission President Von der Leyen that every day China and the EU trade almost two billion euros worth of goods and services, compared to only 300 million euros between Russia and China, struck the right tone as one of China's priorities has always been to maintain access to the rich EU internal market.<sup>5</sup> Such statistics, however, have failed to deter China from tacitly supporting Russia both economically and financially, as the two countries' bilateral trade volume has risen by 28% from the previous year in the first quarter. Furthermore, China is already one of the biggest markets for Russian oil, gas, and energy. Just a week before the invasion, the two countries announced a new 20 billion dollar coal deal. Moscow also unveiled several new oil and gas deals with China, worth an estimated 117.5 billion dollars.<sup>6</sup> Furthermore, the ban from SWIFT has further stimulated the development of an alternative international payment system not dominated by the West –a move that both Russia and China have advocated for several years.

The fact that China is reportedly preparing for Russia-style sanctions in the form of stress tests, as it fears similar embargos from the United States and its allies, fails to reassure the West that it will not interfere with sanctions against Moscow. Such initiatives are being led by a growing concern among Chinese elites that a strategic conflict between China and the West in the near future could be a real

3 Westwood, Sarah, "Which countries have decided not to sanction Russia?" *Washington Examiner*, March 3, 2022. Accessed May 11, 2022 from <https://www.washingtonexaminer.com/policy/foreign/which-countries-have-decided-not-to-sanction-russia>.

4 Herrero, Alicia Garcia, "Can China bail out Putin?" *Bruegel*, March 9, 2022. Accessed June 1, 2022 from <https://www.bruegel.org/2022/03/can-china-bail-out-putin/>

5 Lau, Stuart, "EU warns China not to help Putin bust sanctions." *Politico*, April 1, 2022. Accessed May 11, 2022 from <https://www.politico.eu/article/eu-china-xi-jinping-russia-president-vladimir-putin-sanctions-ukraine-war>.

6 Wang, Kay and Song Wanyuan, "Ukraine war: What support is China offering Russia?" *BBC News*, April 14, 2022. Accessed May 11, 2022 from <https://www.bbc.com/news/60571253>.

possibility, especially over the issue of Taiwan.<sup>7</sup>

The EU and its NATO allies unanimously agree on the idea that China should be prevented from engaging too closely with Russia but lack consensus on how that should be achieved. Using inducements – such as preferential market access – would not lie well with the United States which seems to follow a strategy of deterrence. The EU-China summit of April 2022 has been rightfully dubbed the ‘April fools’ summit’ as China continues to perceive the EU as not having a distinct opinion or security profile from the United States.<sup>8</sup> Furthermore, the strategy of using preferential market access as an inducement lacks credibility as an initial investment and market access agreement – the Comprehensive Agreement on Investment (CAI) – has remained blocked over EU sanctions due to human rights abuses in the Chinese province of Xinjiang and the resulting Chinese countersanctions against members of the European Parliament.<sup>9</sup>

## Addressing India

India has historically maintained a neutral stance in tensions between major powers even though it has joined several groups such as the Quad security alliance with Australia, Japan, and the United States. The country has increasingly come under pressure to formally condemn the Russian attack and side with the West in joining sanctions. Although India has been growing closer to the United States

over the last decades, it also has a historic relationship with Russia as it relies on the latter for military equipment, spare parts, and now also significantly discounted oil. As India intends to keep its options open, especially since a significant part of the world is not joining the sanctions regime against Russia, it maintains and even expands its engagement with Moscow. This rationale is supported by the fact that India has frequently received criticism from the West in recent years when it passed several controversial policies such as the Citizenship Amendment Act or the revocation of Kashmir’s autonomy. Russia, on the contrary, remained silent and has tacitly supported India.<sup>10</sup> Furthermore, New Delhi does not want to further complicate its security calculus as the border stand-off with China enters its second consecutive year, especially given the Indian dependence on Russia for much of its military hardware.

Since India abstained from a key vote in the United Nations Security Council (UNSC) on a resolution calling the Ukraine-Russia conflict a humanitarian crisis, the debate whether or not India is abandoning its non-alignment policy has further intensified. And still, even before, US-India relations were complicated due to the conclusion of a 5 billion dollar agreement to purchase 5 Russian S-400 air defense systems.<sup>11</sup>

In April, India went a step further by announcing it would boost exports to Russia by an additional 2 billion dollars. Furthermore, in order to facilitate bilateral trade and despite Western sanctions,

7 Ni, Vincent, “Beijing orders ‘stress test’ as fears of Russia-style sanctions mount.” *The Guardian*, May 4, 2022. Accessed May 11, 2022 from <https://www.theguardian.com/world/2022/may/04/beijing-orders-stress-test-as-fears-of-russia-style-sanctions-mount>.

8 Christiansen, T., Kirchner, E. and Wissenbach, U. (2019), ‘The Security Dimension of EU-China Relations’, in *The European Union and China* (London: Macmillan International), 122-139.

9 Bloomberg News, “Ukraine latest: First phase of Mariupol evacuation is completed.” *Bloomberg News*, May 7, 2022. Accessed May 11, 2022 from <https://www.bloomberg.com/news/articles/2022-05-07/ukraine-latest-chelsea-deal-nato-calls-for-more-modern-weapons>.

10 Agrawal, Ravi, “Why India won’t condemn Russia.” *Foreign Policy*, April 11, 2022. Accessed May 11, 2022 from <https://foreignpolicy.com/2022/04/11/india-russia-ukraine-war-diplomacy>.

11 Patil, Sameer and Uday Patil, “Ukraine sanctions stress test US-India relations.” *East Asia Forum*, April 21, 2022. Accessed May 11, 2022 from <https://www.eastasiaforum.org/2022/04/21/ukraine-sanctions-stress-test-us-india-relations>.

the two countries agreed to develop a payment system in local currencies. The agreement arose following talks between New Delhi and Moscow to liberalize market access for several Indian-made products and a proposal to balance trade, given that India is still a net importer of Russian goods. The export of several goods such as pharmaceutical products, chemicals and plastics –often supplied by countries that have halted shipments after the imposition of sanctions– will further increase.<sup>12</sup> Despite having received a parade of envoys from different countries that have urged a harder line on Russia, India continues to increase its imports of Russian oil. The country not only seeks to keep its options open in a world that has become increasingly polarized due to the emergence of multiple centers of power, but has also engaged in economic opportunism as its purchases of Russian oil have risen from almost nothing in December 2021 to 700,000 barrels a day in April 2022. The oil ban in the United States and the proposed EU embargo thus contribute to substantial discounts for India, powering its energy-thirsty economy at a lower cost.<sup>13</sup>

Due to the systemic rivalry with China, the recent history of serious disputes over human rights, and the wide range of economic issues, the EU is far more likely

to use inducements in the case of India than in its relation with China. However, at the beginning of the conflict, EU member states primarily criticized India for benefiting from the war by continuing to buy vast quantities of Russian oil at a considerable discount, criticism which India considered to be hypocritical as several EU member states refused to significantly restrict Russian energy imports themselves.

This position nevertheless started to change in April 2022, when the EU and India agreed to set up a trade and technology council to step up cooperation in the fields of privacy, social media supervision and broader digitization efforts –an institutional framework previously only granted to the United States. President Von der Leyen, during a two-day trip to New Delhi, primarily intended to encourage India to reduce ties with its main weapons supplier, Russia. A joint EU-India statement argued that rapid changes in the geopolitical environment highlight the need for joint in-depth strategic engagement.<sup>14</sup> By seeking to increase sales of EU military equipment to India and revive talks on a free trade deal –which had been frozen in 2013– the EU is clearly offering New Delhi the ability to diversify away from Russia in key domains such as military hardware and trade.<sup>15</sup>

12 Srivastava, Shruti, "India plans 2 billion more of exports to sanctions-hit Russia." *Bloomberg News*, April 12, 2022. Accessed May 11, 2022 from <https://www.bloomberg.com/news/articles/2022-04-12/india-plans-2-billion-more-of-exports-to-sanctions-hit-russia>.

13 Schmall, Emily and Stanley Reed, "India finds Russian oil an irresistible deal, no matter the diplomatic pressure." *The New York Times*, May 4, 2022. Accessed May 11, 2022 from <https://www.nytimes.com/2022/05/04/world/asia/india-russia-oil>.

14 Das, Krishna and Jan Strupczewski, "EU and India agree to broaden ties amid Ukraine war." *Reuters*, April 25, 2022. Accessed May 11, 2022 from <https://www.reuters.com/world/africa/africa-feel-food-security-impact-russian-invasion-commissioner-2022-03-28>.

15 Reuters, "EU Chief to seek closer military, trade and tech ties on India visit." *Reuters*, April 24, 2022. Accessed May 11, 2022 from <https://www.reuters.com/world/india/eu-chief-seek-closer-military-trade-tech-ties-india-visit-2022-04-24>.



## Conclusion

China and India are key players in ensuring the effectiveness of the Western sanctions regime. Both share deep military and economic ties with Russia, a billion-dollar population, and are some of the biggest economies in the world. However, contrary to China, India is a democracy and has far better relations with the West.

When it comes to China, the EU will necessarily have to focus on deterring Beijing from disrupting Western sanctions as more intensive cooperation or a swift conclusion of investment and market access agreements –considered to be a priority for China– have lost credibility in recent years. When it comes to India, the EU seems to have reoriented its strategy from that of morally criticizing India to one that develops alternatives for Indian dependence on Russia for military hardware and provides inducements such as reviving the EU-India free trade agreement negotiations. If properly implemented, these initiatives would definitely be a step in the right direction. After all, the naivety of expecting an ally to ignore economic benefits and forcing it to incur great costs without offering alternatives in return is a (non-)strategy the EU will necessarily have to abandon in this era of renewed great power competition.



Neighborhood policy and the discussion on East-West coexistence and competition has recently resurfaced. It is reasonable to investigate how balances have changed and how many actors are now involved. After the request of some old and new candidate countries, the enlargement of the North Atlantic Treaty Organization or the European Union might further change the current state of the art. Flagship of the narrative against the Western enlargement is the case of the Russian government.

### **Fragile new balances**

When the Cold War ended the West was the main, even if not fully united, actor, a superpower. After the 90s the superpowers have shifted and the military and political balance has been changing since then. The European states are, in some ways, dependent from the United States of America (USA) which allows China and Russia to raise the bar and be increasingly competitive. The biggest competition at the time of writing is between the USA and China, on many different levels. Russia has shown that its way of acting is unpredictable for the West which is not always ready or prompt to listen. Even if Russia has become more offensive in recent years, the West was not

completely ready for its attack. The same could happen with China, in that Taiwan has been under threat since ages, although experts suggest that an attack now is less likely than before given the united front of sanctions against Russia. At the same time Russia and China could opt for military cooperation in opposition to the North Atlantic Treaty Organization (NATO). Truth of the matter is, China and Russia have certain shared interests, including the containment of the United States and the West. This could lead to a polarization of superpowers due to common challenges that threaten the international, now fragile, balance: the reshuffling of cards could come soon or in the future but it is likely to come and to ruffle some feathers in areas of joint interest such as China's expanding commercial interests in Central Asia, the Russian Far East, and the Arctic<sup>1</sup>. The European Union should have a decisive approach now that these balances are at risk and its power is at stake because of the increasing dependency from gas imports, which now is shifting towards autocratic countries: its lack of strategic policies toward its eastern neighbors on the one hand and toward Russia on the other is its weakest spot. Everyone's eyes are now on Europe, especially the public. The sanctions against Russia grabbed the

<sup>1</sup> Paul Stronski, Nicole Ng, "Cooperation and Competition: Russia and China in Central Asia, the Russian Far East, and the Arctic", February 28, 2018, <https://carnegieendowment.org/2018/02/28/cooperation-and-competition-russia-and-china-in-central-asia-russian-far-east-and-arctic-pub-75673>

spotlight but now this Western united front should prepare to further changes in the balances. It is now important to ponder how to relate to these factors and to analyze possible outcomes, both in the short and in the long term, as history has recently shown.

Alongside these “super balances”, in 2022 there has been newly animated discussion not only on whether new countries should enter NATO but also the EU, two large but very different entities: on one side NATO, an intergovernmental military alliance with 28 European States, the USA and Canada, and on the other side the European Union, a political and economic union of 27 member states. The two entities are already cooperating on some areas such as hybrid threats, migration, cyber security, defense, and supporting partners capacity-building efforts.<sup>2</sup> The relationship is well-established: on July 8<sup>th</sup> 2016, the President of the European Council and the President of the European Commission, together with the Secretary General of the NATO signed a Joint Declaration in Warsaw with a view to giving new impetus and new substance to the EU-NATO strategic partnership. Later on there was supposed to be another Joint Declaration planned for the end of 2021, which was postponed because of the war in Ukraine.

Finland and Sweden recently submitted their application to enter NATO: they are militarily ready and it would not come as a surprise if they join since they were already training together with the UK and the USA. Both their armies are in fact well equipped, moreover they have mandatory military conscription and many soldiers continue

to operate in service of the respective militaries. After World War II Finland decided to pursue a “Comprehensive Defense”<sup>3</sup> in order to defend itself: all people are involved in the military action and in the democratic process. Should Finland be attacked, the thinking goes, the entire nation goes to war. Throughout the Cold War and thereafter, the state spent around 1.5 percent of its GDP on defense to develop this type of defense policy and to be ready for historically troubled events that may come in the future.

Alessandro Minuto Rizzo<sup>4</sup>, President of the NATO Defense College Foundation, has recently underlined some of the consequences of the two northern states joining the NATO, which also apply to other future accessions:

- First, NATO since the II World War is searching for its purpose and since the first Ukrainian crisis in 2014 there has been new discussion on refocusing on the purpose of collective defense. Until now it seemed like NATO was not useful anymore, although in recent years NATO members developed its weaponry and military protection in response to both small and big security threats.
- The intervention of the West in Northern/Eastern matters might not be appreciated: the Russian attack in Ukraine happened because of Putin's fear of NATO intervention in Ukraine and now the risk has increased and might spread like wildfire also in other states.

<sup>2</sup> Josep Borell, #EUDefence factsheet, “EU-NATO COOPERATION”, June, 2020, [https://www.eeas.europa.eu/sites/default/files/eu\\_nato\\_factsheet\\_november-2020-v2.pdf](https://www.eeas.europa.eu/sites/default/files/eu_nato_factsheet_november-2020-v2.pdf)

<sup>3</sup> Paul R.S. Gebhard, Atlantic Council, “For Finland, the Cold War never ended. That's why it's ready for NATO”, May 20, 2022, <https://www.atlanticcouncil.org/blogs/new-atlanticist/for-finland-the-cold-war-never-ended-thats-why-its-ready-for-nato/>

<sup>4</sup> Alessandro Minuto Rizzo, Willmedia, “Possible accession of other countries into NATO” (translated from italian), May 6, 2022, <https://willmedia.it/podcast/>



- New accessing countries should not expect NATO to be aggressive: NATO would continue to act only if needed since it's a purely defensive alliance, its action and purpose would not change even in the event of new conflicts.
- Last and foremost, although an European united defense is a mirage, the EU could improve and boost its overall strategy, such as coordinated new technologies, even if it's unreal for the EU to be militarily united. In fact, what is important to differentiate is the fact that the *raison d'être* of the European Union is under no circumstances a defense union in contrast to NATO and their scope must be viewed separately.

This last consideration is notably correct, however one might add that it is cardinal to take into account some difficulties when dealing with a democratic union of states. The first one is the unanimity rule: when decisions have to be taken, action is agreed upon on the basis of unanimity and common accord, which is difficult in times of sudden crisis and when a fast and prompt reaction is needed. A second pressing issue is the fact that some member states, such as Ireland, Austria, Finland, and Sweden, have inscribed neutrality in their Constitution, reason why a coordinated and fast technological defense appears to be difficult. Last and foremost, consensus on other matters is not encouraging: migration, taxation or budget policies still require a lot of time and procedures before reaching unanimity, reason why more pragmatism from the EU has to be expected, especially in these unprecedented times.

## Eastward enlargement

Given these circumstances, the eastward enlargement of the European Union has suddenly regained space on the European political agenda and many are asking if enlargement is a viable option or not. While many MEPs showed to be in favor of Ukraine's future integration, some voices in fact stood out, such as the Left group and Charles Michel, President of the European Council. For both EU and aspiring member states this means a long procedure of reforms. In March 2022, Georgia, Moldova, and Ukraine submitted applications to join the European Union and are now waiting to be assigned the status of candidates to enter the EU. Each of them signed an association agreement with the EU in 2014<sup>5</sup>, which laid the foundations for close political, economic, cultural, and security relations (and for Putin's discontent). Now everyone is waiting to see what the Commission and the Council will decide. The accession process is long, many actors are involved, and it could take up to many years: member States have to vote twice by unanimity in the accession procedure and Bosnia and Herzegovina, for instance, applied in 2016, but the Commission did not issue its recommendation until 2019.

Speaking of enlargement, other processes should also be reignited and resumed: as instance the one concerning the Balkan countries, which are candidate countries since some time now. It would be unthinkable to admit Ukraine to the EU while still excluding the countries of the region that have started the process much earlier. This renovated interest in the enlargement policy will ask for security policy review. Rules must be agreed on and shared before the accession process is over, in order to ensure political stability and the respect of the European standards. Bringing acceding states closer

5 European Council, "Eastern Partnership" May 16, 2022. <https://www.consilium.europa.eu/en/policies/eastern-partnership/>

to the economic and political standard of other European member states is key to ensure global stability and avoid further difficulties. As proposed, among the others, by think tank *OBC Transeuropa*<sup>6</sup>, streamlining the process seems difficult and an alternative could be offering new tools to the candidate states to move closer to European standards *ex ante* the accession.

A sudden accession of Ukraine, after the long waiting period faced by the above mentioned countries, might destabilize the enlargement process *in totum*. In recent years the Commission has underlined<sup>7</sup> the importance of common grounds, meritocracy, and implemented complex reforms before entering the Union: before considering a fast-track procedure that would involve not only Ukraine but also all other candidates, a revision of the country's internal system is required. Given recent events, after the accession of countries where different states have common interest, such as Georgia, Moldova and Ukraine, policy priority for the EU might be even more focused on security, as well as the pressing issue of an energy union. Before admitting these countries, it is also inevitable that the EU needs to face risk of democratic backsliding and improve the law enforcement in these countries. As underlined by Professor Casolari<sup>8</sup> from the University of Bologna, the expedited accession could further exacerbate the ongoing crisis of the rule of law, endangering the very survival of the Union. Secondarily, Georgia, Moldova and Ukraine have low GDPs, and the EU might have to develop the right tools to face new balances: an economic redistribution within the EU with the annexation of low

incomes countries is to be expected. Sudden social, economic and political imbalances between member states is one of the risks.

### **Polarization East-West and Putin's narrative**

As underlined before, NATO and the EU are strategic partners and have long cooperated on crisis management and operations. Even if their purposes are different, from the outside it might seem like they represent the West as a whole in opposition to the East, since the security of Europe depends on NATO's collective defense, reason why a flash accession of Ukraine into the EU or Finland and Sweden into NATO could not be welcomed by neighbors. Since the beginning, NATO and the EU have been united in condemning Russia's invasion of Ukraine, and are supporting Ukraine's sovereignty, territorial integrity, and right to self-defense. This ensemble immediately kick-started the Russian narrative towards the West: it usually moves from the pretext that the EU is "forcing" States to apply for EU membership, which is one of the pillars of Putin's propaganda. The "sudden entrance" of new States into NATO and the EU (and here arises the need to understand what is sudden for the West and what is for the Russian government) could exacerbate Putin's iron fist and make matters worse for the Russian society and the spread of fake news.

It may appear that the Russian government strongly aims at protecting its borders and isolate itself from Western influences and reclaim territories once part of the Russian territory. The reason behind this action is,

6 Lorenzo Ferrari, "EU: enlargement to the east is back on the agenda", March 10, 2022. <https://www.balcanicaucaso.org/eng/Areas/Europe/EU-enlargement-to-the-east-is-back-on-the-agenda-216545>

7 European Commission, "2019 Communication on EU Enlargement Policy", May 29, 2019. [https://ec.europa.eu/neighbourhood-enlargement/system/files/2019-05/20190529-communication-on-eu-enlargement-policy\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/system/files/2019-05/20190529-communication-on-eu-enlargement-policy_en.pdf)

8 Federico Casolari, EUBlog, 24 May, 2022. <https://www.eublog.eu/articolo/34998/Perché-un'adesione-istantanea-dell'Ucraina-all'UE-non-è-possibile-e-forse-non-è-nemmeno-necessaria/Casolari>

apart from all the obvious geographical and historical reasons, the fact that one of the many weak spots in the Russian State today is the demographic challenge: as of the end of the communist bloc, the population fell and in 2020 it reached 144.1 million<sup>9</sup>, compared to 329.4 million in the United States. Since the invasion of Ukraine in 2022, the Russian human and brain drain<sup>10</sup> has accelerated, intensifying population decline. The Russian government is aware of it, especially considering that in the long run the absence of new young graduates will weaken the country's ability to develop and innovate. On the one hand, this shrinking of the population leaves the country with fewer and maybe a less young, well-informed, or international people to lead, which could make it easier for the government to impose economic restrictions and rules and spread false information in a top-down manner without the inconvenient of strong waves of opposition. On the other hand, given the historical preconditions of the Russian state we might expect an even tighter armor around Russia with serious economic and social repercussions. In the last months Russians noticed constant price rises for everyday goods and inflation is still at its highest in two decades at more than 17%<sup>11</sup>. The economic output from the country's increasing isolation could put Russia in a new "post-Soviet" crisis. The one with a chink in its armor could be Russia itself: the isolation process and Putin's narrative could bring serious repercussions to the Russian society.

While the accession process of some candidate countries into the EU and NATO, even though long, might seem on the international doorstep and welcomed by many parties, it could also bring changes that might require some adjusting in the current highly globalized world. Preparing countries for the accession is still the best approach but the West should also be ready for the fact that the enlargement could backfire and some countries could even more embitter their narratives, such as the case of Russia, where internal communication strategy related to many fundamental and urgent issues around world politics is turning to be increasingly confrontational. Given the fact that lives are and will be at stake and diplomacy seems to be less and less on the table, the need for new, adapting neighborhood policies and for closing the gap between narratives and ideologies that are drifting apart is urgent.

9 Statista 2022, "Total resident population of Russia from 1959 to 2022", January 2022, <https://www.statista.com/statistics/1009271/population-size-russia/>

10 Marie Charrel, Le Monde, "The Russian population is declining at a dizzying rate, and the war will only exacerbate this trend", 17 April, 2022, [https://www.lemonde.fr/en/opinion/article/2022/04/17/the-russian-population-is-declining-at-a-dizzying-rate-and-the-war-will-only-exacerbate-this-trend\\_5980760\\_23.html](https://www.lemonde.fr/en/opinion/article/2022/04/17/the-russian-population-is-declining-at-a-dizzying-rate-and-the-war-will-only-exacerbate-this-trend_5980760_23.html),

11 Jake Cordell, REUTERS, "Analysis: Russians feel little economic pain now, long-term outlook darkens", May 30, 2022, <https://www.reuters.com/markets/europe/russians-feel-little-economic-pain-now-long-term-outlook-darkens-2022-05-30/>





Since the establishment of the Visegrad Group in 1991, envisioned to strengthen the cooperation between four Central and Eastern European states from the former Easter Bloc (Poland, Czechia, Hungary, Slovakia) and for them to join NATO and the European Union,<sup>1</sup> this regional alliance has gradually strayed away from its EU enthusiastic genesis towards a nativist and EU-cynical agenda.<sup>2</sup> The scars of the institutional warfare between the EU and the Visegrad tandem during the 2015 refugee crisis are still healing. However, it could symbolize not only an isolated triumph but the precedent for the advent of a populist coalition driven by common ideological traits. One who wields significant bargaining power within European institutions to shape the European agenda and steer it in its favor.

So, how did this humanitarian crisis affect the Visegrad forces' affirmation, and how did it affect the outcome of EU policy on the refugee crisis? What might this new Central European bloc's institutional

impact be within the EU? And what risks does this sort of intransigence pose to European unity?

### Refugee Crisis and the 'Visegrad Fortress'

In April 2015, 700 refugees drowned in a tragedy in the Mediterranean, one of the largest losses of life at sea. The EU's initial response to the incident was a ten-point plan for immediate action. This has proven insufficient, as the EU's legal framework was not able to deal with this influx of migrants. Following that, the EU passed a slew of new laws and agendas aimed at better managing the crisis, all of which were based on the idea that member states should collaborate.

The Commission proposed acting on article 78(3) of the TFEU and devising a scheme in which it was specified how many migrants each member country was supposed to take in, ensuring a fair and balanced common participation of

<sup>1</sup> International Visegrad Fund. "The Bratislava Declaration of the Prime Ministers of the Czech Republic, the Republic of Hungary, the Republic of Poland and the Slovak Republic on the Occasion of the 20th Anniversary of the Visegrad Group." The Visegrad Group: the Czech Republic, Hungary, Poland and Slovakia. International Visegrad Fund, February 15, 2011. Accessed June 17, 2022. <https://www.visegradgroup.eu/2011/the-bratislava>.

<sup>2</sup> Végh, Zsuzsanna. "From Pro-European Alliance to Eurosceptic Protest Group? The Case of the Visegrad Group." *European Policy Analysis*, no. 7 (June 2018), 10-11. Accessed June 17, 2022. <https://www.sieps.se/en/publications/2018/from-pro-european-alliance-to-eurosceptic-protest-group-the-case-of-the-visegrad-group/>.

all member states. EU member states voted on a mandatory quota scheme on September 22, 2015, with the goal of forced resettlement of migrants in all member states. Resettlement was defined as the EU's and UNHCR's joint responsibility to ensure safe and legal pathways for migrants to enter Europe and transit to a safe country. With the exception of the Czech Republic, Hungary, Romania, and Slovakia, almost all countries voted in favor, with Poland later taking a more critical stance. This marks the start of the European Union's schism over migration policy.

What could cause such strife? According to a Postfunctionalist perspective, the political conflict between the EU and the Visegrad 4 was sparked by national communities' perceptions of themselves as belonging solely to their own community or to a European multicultural one. Inequity within one's own community does not always translate into hostility toward other cultural communities or groups. What matters is not which group one belongs to, but how incompatibly contrasting group identities can or cannot understand each other - and whether or not they are mobilized in elite debate, and how they are mobilized by these elites.<sup>3</sup> On the other hand, from a New Intergovernmentalist perspective member states under a lot of migratory pressure are more likely to demand regulatory improvements, such as a more equitable European burden-sharing system. Under these circumstances, the EU seemed essentially divided in four types of countries relatively

to the refugee crisis:<sup>4</sup>

- Front-line States, such as Greece, Italy and Malta, as the main "Mediterranean hubs", overwhelmed with the refugee influx and in need of help;<sup>5</sup>
- Destination States, such as Germany, Sweden and France, which followed an approach of helping refugees as far as they could, expecting other member states to follow suit;
- Transit States, such as the Visegrad 4, the «coalition of the unwilling,» which have been vehemently vocal opponents of mandatory quotas and provide minimal or no assistance in supporting the stream of refugees;
- Bystanders States, composed of non-cooperative countries located outside of the main migration streams.

Focusing on the third category, transit nation-states from Central and Eastern Europe have an incentive to undercut systems for dispersing migrants by enforcing tighter external border restrictions within the EU in order to dissuade migrants from coming in the first place. The Visegrad political elites have reinforced their focus on sovereignty principles in contrast to the EU's integration stances, and they intend to become protectors of a more traditional concept of state and nationhood, linked to Christian values, national and ethnical identity.

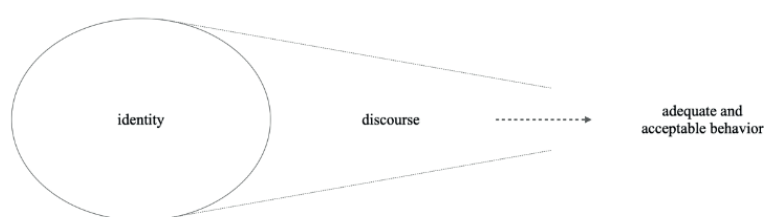
Applying the historical discourse analysis requires consideration of a number of key concepts, including discourse,

3 Lundgren, Giuliana Chiesi. "The Visegrad Group and the 2015-2016 Migration Crisis," 2020. Accessed June 17, 2022, 20. <https://www.diva-portal.org/smash/get/diva2:1470302/FULLTEXT01.pdf>.

4 Moravcsik, Andrew, and Frank Schimmelfennig. "Liberal Intergovernmentalism." *European Integration Theory*, 2018, 64-84, 75-76. <https://doi.org/10.1093/hepl/9780198737315.003.0004>.

5 Duszczak, Maciej, Karolina Podgórska, and Dominika Pszczółkowska. "From Mandatory to Voluntary. Impact of V4 on the EU Relocation Scheme." *European Politics and Society* 21, no. 4 (October 9, 2019): 1-18, 1. <https://doi.org/10.1080/23745118.2019.1672367>.

Figure 7: Identity and discourse



Source: Own depiction

Vetrovcova, Martina, *The Visegrad Countries in the European Union: Understanding the Identity-Solidarity Nexus in the Context of Migration and EU Enlargement*, 2021, p. 120.

discursive themes, legitimating principles, historical context, and normalization.<sup>6</sup> Maciej Duszczek, Karolina Podgórska, and Dominika Pszczółkowska, in their article for *European Politics and Society* in 2019, mentioned the following:

"Later statements from leaders of V4 countries (...) suggested that not only would mandatory quotas be unacceptable, but that the countries were not willing to accept refugees from the South at all."<sup>7</sup>

Hungary's PM Viktor Orban has also stated that «We don't see these people as Muslim refugees. We see them as Muslim invaders (...) We believe that a large number of Muslims inevitably leads to parallel societies, because Christian and Muslim society will never unit (...) Multiculturalism (...) is only an illusion».<sup>8</sup> It's also interesting to identify how in another joint statement from the Visegrad Group issue, after the 2015 terrorist attacks in Paris, that «(...) only the first two paragraphs deal there with the EU's fight against terrorism (...) but more than seven

paragraphs focused on migration and the refugee crisis, highlighting how important these issues are for the V4 leaders».<sup>9</sup> Such public discourse from the V4 main political identities is filled with nativist and security themes, in order to legitimize their harder stance on not adopting the mandatory migration scheme and maintain the cultural homogeneous status-quo. The historical circumstances of a massive refugee crisis without a proper, coordinated, and agreed-upon European plan, as well as the threat of forcing these culturally and religiously diverse exiles onto the V4 nations, allowed such states to put their national interests ahead of «the common principles of the EU»<sup>10</sup> without major domestic repercussions. The spread of these ideals resulted in an increasingly negative attitude toward refugees and other non-European communities. Factors such as state influence on national media and through social media have contributed to the rapid spread of anti-immigrant attitudes in countries like Hungary, influenced by the Head of

6 Jóhannesson, Ingólfur Ásgeir. "The Politics of Historical Discourse Analysis: A Qualitative Research Method?" *Discourse: Studies in the Cultural Politics of Education* 31, no. 2 (April 26, 2010): 251–64, 252. <https://doi.org/10.1080/01596301003679768>.

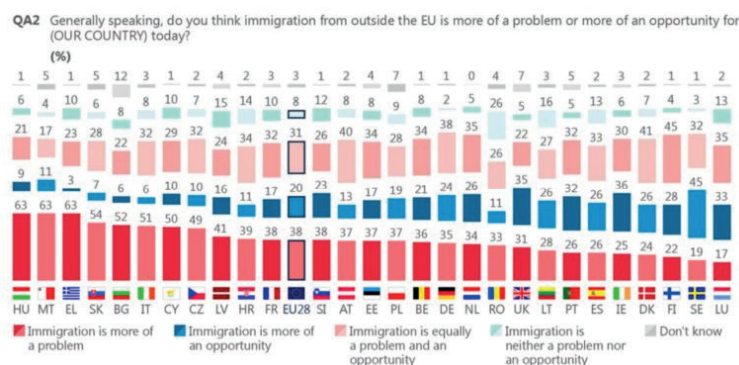
7 Duszczek, Maciej, Karolina Podgórska, and Dominika Pszczółkowska. "From Mandatory to Voluntary. Impact of V4 on the EU Relocation Scheme." *European Politics and Society* 21, no. 4 (October 9, 2019): 1–18, 4. <https://doi.org/10.1080/23745118.2019.1672367>.

8 Pearson, Alexander. "Viktor Orban's Most Controversial Migration Comments." *Deutsche Welle*, January 9, 2018. Accessed June 17, 2022. <https://p.dw.com/p/2qaVK>.

9 Stepper, Péter. "The Visegrad Group and the EU Agenda on Migration: A Coalition of the Unwilling?" *Corvinus Journal of International Affairs* 1, no. 1 (March 10, 2016): 62–82. Accessed June 17, 2022, 73. <https://journals.lib.uni-corvinus.hu/index.php/cojourn/article/view/27>.

10 Ratkovic, Milijana. "Migrant Crisis and Strengthening of the Right Wing in the European Union." *Megatrend revija* 14, no. 3 (January 2017): 47–60, 49. <https://doi.org/10.5937/megrev1703047r>.





European Commission Directorate-General for Migration and Home Affairs, "Special Eurobarometer 469: Integration of immigrants in the European Union-Report", European Union, April 2018.

Government's views on these matters.<sup>11</sup> Visegrad Group's anti-migration stances started to become normalized in the public discourse, eventually discrediting the EU institutional compromises achieved so far and perpetually dooming the mandatory reallocation mechanism proposed and discussed for so many years in the European institutions. While the relocation mechanism was legally adopted within the EU framework, major factors such as the V4's intransigence and defense of a more flexible voluntary-based relocation scheme, as well as the growing negative public opinion, all contributed to the migration system's overall poor performance since its conception, which was politically propagated by Visegrad's political elites through strong rhetoric. The mandatory migration quotas would come to an end with the EU Commission's eventual withdrawal in 2019 after their expiration in 2017 and eventual deprioritization at the same year's EU summit.<sup>12</sup> The question now is whether this is a one-time occurrence or the first V4's efforts to reshape the European project to suit their illiberal leanings.

### The advent of Visegrad's 'international populism' and concluding remarks

«The Visegrad Group is able to act as a 'bloc', exploiting the current vacuum of EU governance and maintaining its one-cause mobilization capabilities against refugee and migrant redistribution across the EU, while enjoying billions of EU funds for economic development» writes Italian political researcher Paolo Zucconi.<sup>13</sup> The cancellation of the new refugee proposal in 2019 was not necessarily an exception, but rather a delicate precedent for EU institutions, particularly the Council of the European Union, to deal with. It's worth noting that the Visegrad 4 is not the only subgroup within the EU; the Nordic Council (Sweden, Finland, and Denmark, plus non-EU members Iceland and Norway) and BeNeLux (Belgium, Netherlands and Luxembourg, founding states of the European project) are two others. The V4 subgroup, on the other hand, has shared the same goals since the beginning of the refugee crisis, which stems «from their geographical and cultural proximity».<sup>14</sup>

11 EU-Logos. "Explaining the Main Drivers of Anti-Immigration Attitudes in Europe." Eyes on Europe, March 22, 2021. Accessed June 17, 2022. <https://www.eyes-on-europe.eu/explaining-the-main-drivers-of-anti-immigration-attitudes-in-europe/>.

12 European Parliament. "Legislative Train Schedule: Towards a New Policy on Migration." European Parliament, December 2017. Accessed June 17, 2022. <https://www.europarl.europa.eu/legislative-train/>.

13 Zucconi, Paolo. "Central Europe, a Brief Analysis of the Visegrad Group's Function within the EU Political Framework." *The Foreign Policy Centre*, February 2020. Accessed June 17, 2022. <https://fpc.org.uk/central-europe-a-brief-analysis-of-the-visegrad-groups-function-within-the-eu-political-framework/>.

14 Bauerová, Helena. "Migration Policy of the V4 in the Context of Migration Crisis." *Politics in Central Europe* 14, no. 2 (2018):

Major political constraints were discovered within the EU after September 2015, and a constant clash between Western European and Central-Eastern European countries resulted in a state of disunity on EU refugee policy for the next four years. Visegrad's anti-refugee rhetoric spread across the continent, including Italy, Austria, and Romania, as well as within domestic right-wing nationalistic parties in Germany (Alternative for Germany), France (Rassemblement National), Sweden (SD), and the Netherlands (Party for Freedom and Forum for Democracy), fueled by security concerns following the terrorist attacks the following year. For said reasons and due to its own nature, V4's discourse has been highly castigated for its populist substance and essence. Jan-Werner Müller defines the concept of populism in the following way:<sup>15</sup>

- polarization between the people versus the elite(s)
- monolithic culture, antipluralism, delegitimization of opponents
- populist governments characterized by open displays of:
  - suspension of the separation of powers
  - state jobs being handed out to loyalists
  - corruption, cronyism
  - mass clientelism
  - discriminatory legalism
  - suppression of civil society
  - proneness to conspiracy theories.<sup>16</sup>

Several of these characteristics can be applied to Hungarian and Polish domestic affairs, from the violations of the rule of law, pretensions of suppression of civil society and the proneness to accuse the opposition of being controlled by upper interests. But in this context I would rather explore another concept – populism beyond the nation and the state.

Jonathan Kuyper and Ben Moffitt explain two separate concepts:

- Transnational Populism – when populists make claims on behalf of «people» who clearly extend beyond the borders of a single nation-state, a transnational community described as being ruled or subjugated by an elite in ways that cross national borders;
- International Populism – when populists in one nation-state strive to build and maintain alliances, allegiances, and affinities with populists in other nation-states without intending to claim or to represent 'their people'.

In other words, whereas a transnational form of populism seeks to represent a community that transcends any border or nation-state, an international form of populism intends to forge alliances with populist representatives of their people – «that is, they seek a plural grouping of 'peoples' from different nation-state».<sup>17</sup>

99–120, 113. <https://doi.org/10.2478/pce-2018-0011>.

15 Müller, Jan-Werner. *What Is Populism?* Philadelphia, USA: University of Pennsylvania Press, 2016.

16 Jespersen, Bjørn. "Jan-Werner Müller: What Is Populism?" *Organon F* 24, no. 2, (2017): 245–54.

17 Kuyper, Jonathan, and Benjamin Moffitt. "Transnational Populism, Democracy, and Representation: Pitfalls and Potentialities." *Global Justice : Theory Practice Rhetoric* 12, no. 02 (November 15, 2020): 27–49, 33. <https://doi.org/10.21248/gjn.12.02.208>.

Taking both concepts into account, and in light of 1) the Visegrad Group's strategic existence, 2) the Central-Eastern European bloc's advances towards new potential allies, such as Austria, Romania, Slovenia, and Italy (from 2018 to 2019, when right-wing populist Matteo Salvini served as Deputy Prime Minister and Minister of the Interior), and inside the European Parliament (ECR and ID Groups, plus parts of the EPP group), and 3) the preponderant nativist aspect of each of V4's Member States, we can essentially recognise the Visegrad Group as an international populist actor. While some authors argue that there could be some ground for «(...) originating an international cultural populist wave aiming at a transnational populism»,<sup>18</sup> the main focus and aspect of this European subgroup is for each to safeguard their own national sovereignty, culture, traditions and welfare – they just happen to share some objectives in common, but not all (e.g. Hungary's close relations with Putin's Russia in detriment with the other Visegrad defensive stances towards Russian jingoism).

The recognition of Visegrad forces as an international populist influencer played a key role in overturning European refugee policy decisions. Attracting political allies from across the continent, growing in popularity through rhetorical elements similar to those used by V4. Within the Covid-19 pandemic context, the EU Recovery and Resilience Plans materialized under the circumstances that the receiving country would respect and uphold the rule of law – conditions already compromised by Poland and Hungary but without any major repercussions on sight. Underestimating their potential reach to undermine not only singular EU institutions but the whole European project could become one major compromising blunder for the future of the European project.

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18 Pinto, José Filipe. "Visegrad Fortress and Transnational Populism." *International Journal of Management and Social Sciences Research* 3, no. 3 (2021): 28–36. Accessed June 17, 2022, 35. <https://www.ijmsssr.org/paper/IJMSSSR00387.pdf>.





The notion that individuals ought to have a human right to a healthy environment (RHE) is fraught with controversy. Certain academics canvass the right as non-justiciable, inherently vague and practically unenforceable – an elaborate “paper tiger”.<sup>1</sup> Others view the nexus between environmental and human rights as “mutually reinforcing and interdependent”, where “each is vital to the realisation of the other for present and future generations”.<sup>2</sup> Presently, the European Convention of Human Rights (ECHR) is bereft of any autonomous *de jure* RHE,<sup>3</sup> an omission seemingly anachronistic against the exponential surge in international recognition since the mid-1960s.<sup>4</sup> Is the aegis afforded by the ECtHR’s jurisprudence commensurable to the gravity of environmental degradation being witnessed in the 21<sup>st</sup> century, and if not, what would the insertion of a RHE

into the ECHR’s “catalogue of fundamental rights”<sup>5</sup> add to the existing environmental legislative framework?

### **The “Greening”<sup>6</sup> of Human Rights – Jurisprudence of the ECtHR**

Due to the absence of any substantive environmental protection in the Convention - as confirmed by the ECtHR in *Kyrtatos*<sup>7</sup> and *Hatton*<sup>8</sup> - reliance on Articles 2 and 8 ECHR (and sometimes Article 1 of the First Protocol<sup>9</sup>) as “a means of generating environmental rights is heavily circumscribed”<sup>10</sup>. This mechanism, which Knox and Cima alike label the ‘greening’ of human rights, is both legitimate and often effectual<sup>11</sup>. The greening of the rights to life and to respect for private/family life in particular have given rise to a ballistic trajectory of appreciable case law both at regional and national level, steering some

1 Boyd, D., 2012. Review of *The Constitutional Right to a Healthy Environment*. Routledge, p.5

2 Haythornthwaite, S., & Pettit, J., 2021. *Human Rights Day: From recognition to action on the right to a clean, healthy and sustainable environment*. Universal Rights Group, Available at: < <https://www.universal-rights.org/blog/human-rights-day-from-recognition-to-action-on-the-right-to-a-clean-healthy-and-sustainable-environment/> >

3 See for example *Hatton v The United Kingdom*; *Allen and Others v The United Kingdom*; *Greenpeace EV and Others v Germany*.

4 Knox, J.H., 2020. *Constructing the Human Right to a Healthy Environment*, Annual Review of Law and Social Science, Vol.16, p.83

5 Van Dyke, B., 1994. *A Proposal to Introduce the Right to a Healthy Environment into the European Convention Regime*, 13 Virginia Environmental Law Journal 101, p.324

6 *Ibid.*, p.84

7 *Kyrtatos v Greece*, (App. 41666/98), 22 May 2003 at para [52] of the judgment.

8 *Hatton v United Kingdom*, (App.36022/97), 8 July 2003 [GC] at para [96] of the judgment

9 Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms

10 Jacobs, F., White, R., Ovey, C., Rainey, B. & McCormick, P., 2017. *The European convention on human rights*. 7th ed. Oxford University Press, p.448.

11 *Supra.*, Van Dyke, B., p.356

individuals into presupposition that a *de facto* RHE does indeed exist. However, as will be evidenced forthwith, the defence purportedly offered by Articles 2 and 8, both respectively and collectively, is narrow in essence, and thus far from sufficing in reality.

### (A) Article 2. Right to Life

Environmental rights advocates boast bridled success when petitioning under Art.2. Environmental litigants most commonly invoke Art.2 in cases concerning “serious risks to life [caused by] hazardous activities”<sup>12</sup>, wherein states have allegedly failed to take appropriate and reasonable steps to protect the claimant’s right to life (the doctrine of positive obligations). This point of departure was witnessed in *LCB*<sup>13</sup>, where despite establishing an interface between the environment and the right to life, the ECtHR ruled against the claimant based on her inability to satisfy the causal link between her father’s exposure to radiation during nuclear testing in England and the leukaemia sustained by her as a child. The applicants in both *Budayeva*<sup>14</sup> and *Öneryıldız*<sup>15</sup>, *per contra*, succeeded in their claims on analogous grounds. In the former, the Strasbourg Court held that “the circumstances of the case [...] leave no doubt as to the existence of a threat to their (applicants’) physical integrity. [...] This brings their complaints within the ambit of Article 2”<sup>16</sup>. In the latter, the ECtHR ruled that because the State failed to take preventive measures, in line with the precautionary principle, in circumstances where they were cognisant of “a real and

immediate risk to the lives of people living near the rubbish tip”<sup>17</sup>, they had violated Art.2.

The proverbial bastion of environmental rights purported by Art.2 is limited, predominantly because of the elevated threshold claimants need to satisfy. Applicants must prove firstly that there is a causal link between their individual mortality and the environmental harm in question, and then must go on to illustrate that there is a sufficiently grave and immediate threat to their life. This is an onerous burden of proof, Cima contending that this judicial approach fails “to reflect well the [fundamental] idea that underpins environmental (and climate law)”, namely the State’s duty to “prevent harm to the global environment”.<sup>18</sup> Against this backdrop, the environmental protection enshrined in Art.2 can be characterised as redressive or personal-injury-focused, devoid of any ecocentric substance<sup>19</sup> and failing to account for future generations entirely. Harris *et al*, however, do note the existence of an auxiliary protection which can be invoked “where the facts do not meet the Article 2 threshold”.<sup>20</sup> a supereminent device in asserting environmental rights (albeit indirectly) – Article 8.

### (B) Article 8. Right to Respect for Private and Family Life

In contrast to Art.2, Art.8 requires the applicant to prove that environmental factors – most commonly “intangible sources such as noise, emissions, smells

12 Harris, D.J., O’Boyle, M., Bates, E.P., & Buckley, C.M., 2018. *Harris, O’Boyle and Warbrick: Law of the European Convention on Human Rights*. 4<sup>th</sup> ed. Oxford University Press, p.561

13 *L.C.B. v. United Kingdom*, (App.23413/94), 9 June 1998

14 *Budayeva and others v. Russia*, (Apps. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02), 20 March 2008, ECHR.

15 *Öneryıldız v. Turkey*, (App. 48939/99), 30 November 2004 [GC]

16 *Supra.*, *Budayeva* at para [146] of the judgment

17 Council of Europe., 2012. *Manual on Human Rights and the Environment*. 2<sup>nd</sup> ed, Council of Europe Publishing, Strasbourg, p.37; *Öneryıldız v. Turkey* at para [109] of the judgment

18 Cima, E., 2021. *The right to a healthy environment: Reconceptualizing human rights in the face of climate change*, Review of European, Comparative & International Environmental Law, Wiley Periodicals LLC, p.11

19 *Ibid.*,

20 *Supra.*, Harris, D.J., *et al*, p.563

or other similar forms of interference"<sup>21</sup> - seriously and directly interfere with their quality of life or "living space"<sup>22</sup>, a notably lesser threshold than that espoused by Art.2. However, despite this greeted nuance, petitioners seeking the vindication of environmental rights are abridged by the State's enjoyment of an intrinsic "jurisprudential bias",<sup>23</sup> namely the margin of appreciation doctrine; that which allows contracting parties to the Convention a certain "room for manoeuvre"<sup>24</sup> in fulfilling their obligations, creating an imbalance of powers and contributing further to the already bifurcated structure of proceedings. On the surface, the scope of environmental claims triggering Art.8 appears extensive, but as will be evidenced in the jurisprudence forthwith, fails to provide a panacea for acute issues including climate change, transboundary harm and extraterritorial application.

The marriage of Art.8 and environmental rights was contemplated in *E.A. Arrondelle*<sup>25</sup> and again in *Powell and Rayner*, where despite a negative finding, both respective cases were deemed admissible, thus categorically recognising "that environmental degradation [...] can violate recognized human rights"<sup>26</sup>. The ECtHR in *Fadeyeva*<sup>27</sup> opined that in order to successfully engage Art.8, the applicant must demonstrate both that there is a causal link between the activity complained of and the negative effect on the individual; and secondly, that this adverse impact is severe enough to warrant a violation of

the right (the 'severity test' as embraced in *Denisov*<sup>28</sup>). A fruitful invocation of Art.8 was seen in *López Ostra*<sup>29</sup> where despite the State's wide margin of appreciation, the applicant succeeded in her complaint of gas fumes, pestilential smells and contamination caused by a liquid and solid waste management plant 12 metres from her home. The Court had to balance the competing interests of the applicant's rights under the Convention against the countervailing interests of the community as a whole, a central process to all claims brought under Art.8. Myriad applicants have prevailed in vindicating their rights employing this instrument: *Guerra*<sup>30</sup> (failure to provide timely information of environmental risks), *Moreno Gómez*<sup>31</sup> (failure to effectively police noise nuisance caused by discotheques and bars), *Brândeș v Romania*<sup>32</sup> (offensive smells), *Di Sarno and Others*<sup>33</sup> (prolonged failure to ensure collection, treatment and disposal of rubbish), amongst others. These findings adhere to an indistinguishable logic – that a State has failed in its positive obligations by not taking reasonably appropriate preventive steps to marshal environmental degradation. In a narrow sense, this insinuates that the ECtHR is adopting an anti-recidivist, quasi-precautionary attitude to environmental cases, but from a fully-informed perspective it can be said with confidence that more often than not, the environmental harm is irreversible by the time the petitioner reaches Strasbourg, leaving individual justice to be achieved through mere compensatory damages

21 *Supra.*, *Manual on Human Rights and the Environment*, p.45

22 *Powell and Rayner v United Kingdom*, (App. 9310/81), 21 February 1990, ECHR.

23 *Supra.*, Van Dyke, B., p.368

24 Greer, S., 2000. *The Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights*, Human Rights Files No.17, Council of Europe Publishing, p. 5

25 *E.A. Arrondelle v United Kingdom*, (App. 7889/77), 15 July 1980, Commission (Plenary) – Decision

26 *Supra.*, Van Dyke, B., p. 329 (emphasis added)

27 *Fadeyeva and Others v Russia*, (App. 55723/00), 9 June 2005, ECHR

28 For a discussion of the proposed 'severity test', see for example *Denisov v Ukraine*, para [110] to [117]

29 *López Ostra v Spain*, (App.16798/09), 9 December 1994

30 *Guerra and others v Italy*, (App. 14967/89), 19 February 1998

31 *Moreno Gómez v. Spain*, (App.4143/02), 16 November 2004

32 *Brândeș v Romania*, (App. 39951/08), 27 October 2015

33 *Di Sarno and Others v Italy*, (App. 30765/08), 10 January 2012

– meaning that a remedy in *restitutio ad integrum* is never truly attainable. Could this be resolved by a *de jure* RHE?

The right prescribed by Art.8 markedly protects ample environmental interests, from waste management and industrial pollution to access to environmental information and beyond. Does the *ad rem* jurisprudence indicate that a *de facto* RHE exists under the current Convention regime, and that individuals are (in practice but not on paper) protected by a right that is environmental in everything but name? While Niska puts forth that the ECtHR's environmental jurisprudence can be perceived as a "powerful tool"<sup>34</sup>, particularly since a decision of the Court is "informally binding" on all contracting parties, per Art. 46; I argue that the protection averred by Articles 2 and 8 respectively (or collectively) is deficient. It lacks both the sway, standing and scope that a *de jure* RHE would afford.

The most unadorned frailty – or 'litigable hoop' – in the protection is the onerous threshold, whereby the claimant must be directly and personally affected by the environmental harm, eradicating the possibility of claims *actio popularis* entirely<sup>35</sup> and preventing the possibility of intergenerational or even collective justice, the Court adopting a reactive/redressive stance instead of proactive and forward-looking<sup>36</sup>. The regime falls short of providing a dynamic accountability mechanism which a *de jure* RHE would

sanction. It will be interesting to see whether or not the ECtHR will extend the reach of either Article 2 or 8 further to cover harm inflicted by greenhouse gas emissions or by climate change. *Duarte Agostinho*<sup>37</sup> or the *Swiss Climate Protection* case could offer some resolve here, two cases at the heart of the "growing body of systemic climate litigation"<sup>38</sup> which could elicit substantive advancement in sustainable and effective regional policymaking.

### Going Beyond the 'Greening' of Convention Rights: a Note on Justiciability

Would recognition of an autonomous RHE serve as "a powerful catalyst for accelerating progress towards a sustainable future"<sup>39</sup>, resulting in a true plethora of "positive procedural and substantive outcomes"<sup>40</sup> or would an RHE merely constitute an ineffective elaborate paper tiger, merely duplicating existing rights?<sup>41</sup>

Many claim the insertion of a RHE into the ECHR is non-justiciable, that it would engender in a deluge of frivolous and vexatious claims, frustrating the Court's backlog progress over recent years. Some raise the concern that it belongs to the body of economic, social and cultural rights protected by the ESC<sup>42</sup>. Others contend that a RHE would add nothing of value to the existing framework, that it would be unenforceable and arduous for States to implement<sup>43</sup>. For example,

34 Niska, T.K. 2020. *Climate Change Litigation and the European Court of Human Rights – A Strategic Next Step?*, Journal of World Energy Law and Business, 13, p.331

35 See Article 34 ECHR

36 *Supra.*, Cima, E., p.11 for example.

37 *Duarte Agostinho and Others v Portugal and 32 Other States*, (App.39371/20) (pending)

38 Daly, A., Leviner, P., & Thorburn Stern, R., 2021. *How children are taking European states to court over the climate crisis – and changing the law*, The Conversation [online]. Available at < <https://theconversation.com/how-children-are-taking-european-states-to-court-over-the-climate-crisis-and-changing-the-law-158546>>

39 *Supra.*, Boyd, D., p.5

40 *Supra.*, Cima, E., p.6

41 *Ibid.*,

42 Council of Europe, European Social Charter, 18 October 1961

43 For discussion, see *supra.*, Van Dyke, B.,



in *Climate Case Ireland*<sup>44</sup>, Clarke CJ (as he then was) in the Supreme Court claimed that a RHE is “superfluous”, “ill-defined”, and unenforceable on a practical level because of an absence of parameters and boundaries<sup>45</sup>. While his scrutiny pertains to a domestic context, namely the possibility of environmental constitutionalism in Ireland, it coincides with the scepticism raised by other academics who share the same belief regarding the insertion of a RHE into the Convention –inherent vagueness, unenforceable and adding no significance to the pre-existing caselaw<sup>46</sup>.

A *de jure* RHE would be no vaguer than other human rights provided for by the Convention. Introduction of a substantive RHE (more likely than not by Protocol) would act as a “hermeneutic floor”<sup>47</sup> which could be built on over time. In this regard, Van Dyke and Nickel both appear plugged in to the importance of interpretation in international human rights law, where a competent judiciary can and should engage in a “line-drawing exercise” over time, establishing normative regional standards<sup>48</sup>, all the while cognisant of societal conditions and political factors. In theory, all human rights are vague, and most (if not all) require flexibility. The breadth of application of most laws, whether within the realm of human rights or outside, is never formed *ab nihilo* through legislation – progressive, prudent and pragmatic interpretation is central to respond to “changing [societal] conditions, or political pressures, and the growth of knowledge”.<sup>49</sup> Judicial interpretation (both teleological

and evolutive) renders this concern rather arbitrary, for “Environmental issues do not render judges suddenly incompetent to perform the task of balancing interests”.<sup>50</sup>

## Concluding Remarks

The success achieved under the present Convention regime merely eclipses the success that could be realised under a substantive RHE. In this light, not only is a RHE justiciable, but it comprises the “missing jewel in the crown of environmental rights law”.<sup>51</sup> As the framework stands, the ECtHR is stuck in a proverbial straitjacket of systemic interpretation, whereby environmental harm is curbed from having a collective or intergenerational impact, and moreover, is restricted to being considered in terms of effects on an individual's life, property, private and family life. In this light, the Strasbourg Organs are purely reactive and redressive, instead of preventive, precautionary and forward looking.

An autonomous RHE would precipitate in improved sustainable policymaking, greater public participation and more sensitive procedural outcomes and would consequently fortify the pre-existing environmental protection, culminating in an effectual accountability mechanism and preventing, or at least curtailing, future climate change.

44 *Friends of the Irish Environment v. The Government of Ireland & Ors* [2020] IESC 49 (Climate Case Ireland)

45 *Ibid.*, Clarke CJ at 8.17

46 See Ryall, A., 2020. *Supreme Court ruling a turning-point for climate governance in Ireland*, The Irish Times, Available at < <https://www.irishtimes.com/opinion/supreme-court-ruling-a-turning-point-for-climate-governance-in-ireland-1.4323848>>

47 *Supra.*, Knox, J.H., p.87

48 Nickel, J.W., 1993. *The Human Right to a Safe Environment: Philosophical Perspectives on Its Scope and Justification*, Yale Journal of International Law, Vol.18, No.281, p.285 in particular (on defeating vagueness). Also see *supra.*, Van Dyke, B., p. 372

49 Hiskes, R.P., 2005. *The Right to a Green Future: Human Rights, Environmentalism and Intergenerational Justice*, Human Rights Quarterly, Vol.27, No.4, Johns Hopkins University Press, p.1357

50 *Supra.*, Van Dyke, B., p. 347

51 *Supra.*, Knox, J.H., p. 81



The recent publication of statistics by UNAIDS show that the international response to HIV/AIDS is at a defining moment as the number of HIV infections and AIDS-related deaths significantly decreases.<sup>1</sup> The drop in case numbers has resulted in a change of European societal attitudes; the virus is no longer regarded as an epidemic emergency, instead, it is understood to be a life-long condition. Thus, the focus of the international debate regarding HIV/AIDS has progressively shifted from being predominantly medical in nature to include considerations of human rights. This essay explores how the European Court of Human Rights<sup>2</sup> have traditionally protected the rights of HIV/AIDS sufferers until the most recent case of *Dikaïou and Others v Greece*<sup>3</sup>, where the Court ruled that the separation of HIV/AIDS prisoners from the rest of the prison population was not a violation of Article 3 of the European Convention of Human Rights (ECHR). Part (i) of this essay will provide a synopsis of the ECtHR's previous case law dealing with HIV/AIDS sufferers.

Part (ii) will discuss the decision in *Dikaïou*<sup>4</sup> and part (iii) will subject the decision to a compatibility analysis with Article 3 of the European Convention on Human Rights. This essay will argue that the Court's use of language in its reasoning of the case amplifies the 'othering' and marginalisation of a group it has previously classified as 'vulnerable' and that such marginalisation goes against the core values protected in Article 3 of the ECHR.

### ECtHR Case Law

The ECtHR has traditionally been proactive in its protection and vindication of the rights of those living with HIV/AIDS. In the case of *Kiyutin v Russia*,<sup>5</sup> the Court acknowledged that HIV/AIDS sufferers were classified as a 'vulnerable group in society' who have suffered from a history of considerable discrimination, prejudice and stigmatisation.<sup>6</sup> As such, the Court asserted that member states should be afforded a narrow margin of appreciation when implementing measures which give

<sup>1</sup> Joint United Nations Programme on HIV/AIDS (UNAIDS), REPORT: *How AIDS Changed Everything – MDG6: 15 Years, 15 Lessons of Hope from the AIDS Response*, New York, 2015, at <unaids.org/en/resources/documents/2015/MDG6\_15years-15lessonsfromtheAIDSresponse> (accessed 13 November 2015).

<sup>2</sup> Herein referred to as 'the ECtHR' or 'the Court'.

<sup>3</sup> No. 77457/13 [2020].

<sup>4</sup> No. 77457/13 [2020].

<sup>5</sup> No. 2700/10 [2011].

<sup>6</sup> No. 2700/10 [2011] para 63.

rise to differential treatment to this group based on their HIV status.<sup>7</sup> The ECtHR reaffirmed this approach in the case of *I.B v Greece*<sup>8</sup>, where an employee had been dismissed due to their HIV positive status. Here, the Court noted that the stigmatisation and marginalisation of the group, in part, flows from the deep-rooted ignorance about how the infection is transmitted and that prejudice from those who are not HIV/AIDS sufferers cannot be relied upon 'as a pretext to cause material or dignitarian harm to people living with HIV/AIDS'.<sup>9</sup> Interestingly, the Court went on to provide guidance as to how competing interests should be balanced in such cases, highlighting that significant weight must be given to the needs of those living with HIV/AIDS due to their unique vulnerability. Similarly, in *Smith and Grady v UK*<sup>10</sup> the ECtHR implicitly applied this reasoning in regard to the treatment of homosexuals: 'predisposed bias' or 'negative attitudes cannot, of themselves, be considered by the Court to amount to sufficient justification for the interferences' of rights.<sup>11</sup> Thus, the aforementioned cases show a clear judicial understanding of the particular vulnerability which HIV/AIDS positive individuals live with, and the Court had been commended for such a sympathetic and human rights based approach on the matter.<sup>12</sup>

### Dikaïou and Others v Greece

In the recent case *Dikaïou and Others v Greece*<sup>13</sup>, the ECtHR seemingly abandoned their compassionate stance towards those individuals living with HIV/AIDS. The

case involved the decision of the female prison of Thebes in central Greece to separate the six prisoners with HIV/AIDS from the other inmates; the six prisoners were instead made to live together in the same room.<sup>14</sup> The applicants argued that their segregation was a form of both 'ghettoization and isolation', which posed significant threats to their psychological health.<sup>15</sup> The question for the Court was whether the separate detention amounted to a violation of the prohibition of discrimination established in Article 14 of the ECHR and or the right not to be subjected to torture or inhuman or degrading treatment or punishment in Article 3 ECHR. For the purposes of this essay, I will focus on the Court's discussion of the latter matter.

The ECtHR held that there had been no violation of Article 3. Although the Court made an initial and dubious finding that there had not been an intention to segregate the prisoners, only an intention to efficiently manage the prison, the Court later acknowledged that an intention to segregate did in fact exist. However, it was determined that this intention was justified due to the legitimate aim of managing the 'understandable' worry and anxiety of 'ordinary' prisoners.<sup>16</sup> In addition, the means of separation in this case were proportionate to the aim pursued of alleviating stress.<sup>17</sup> In doing so, the Court essentially legitimised the stigmatised views surrounding HIV/AIDS, a position which they have so vehemently criticised in the past.

7 No. 2700/10 [2011] para 64.

8 No. 552/10 [2013].

9 No. 552/10 [2013] para 80-87.

10 [1999] 29 EHRR 493

11 [1999] 29 EHRR 493 para 97

12 Danisi, Carmelo (2015) Protecting the Human Rights of people living with HIV/AIDS: A European approach? Groningen Journal of International Law, 3 (2).

13 No. 77457/13 [2020]

14 No. 77457/13 [2020] para 15.

15 No. 77457/13 [2020] para 15.

16 No. 77457/13 [2020] para 53.

17 No. 77457/13 [2020] para 55.

### Article 3

Article 3 of the ECHR states that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment.' Elaine Webster has characterised torture or inhuman and degrading treatment as a 'symbolic exclusion from the human community'.<sup>18</sup> Furthermore, the Court in *Cyprus v Turkey*<sup>19</sup> showed a willingness to accept that the exclusion or isolation of a particular 'class of persons' could lead to a violation of Article 3 ECHR as it offends 'the very notion of respect for the human dignity of its members'.<sup>20</sup> Thus, it could be argued that the core or fundamental wrong condemned by Article 3 is the 'form of radical othering' which torture perpetuates.<sup>21</sup> The process of 'othering' a group does not involve a denial in sameness but rather, it denies a vulnerable group an equivalent moral status which is so closely connected with human dignity.<sup>22</sup> Indeed, the ECtHR has previously stated that the very essence which the Convention protects is respect for human dignity.<sup>23</sup>

Yet, the ECtHR in *Dikaïou and Others v Greece* effectively sidestep any consideration of the intrinsic link between segregation and inhuman or degrading treatment or torture. Rather, the Court further encourages the 'othering' of HIV/AIDS prisoners through the repeated use of the adjective 'ordinary' to describe the prisoners who do not suffer from the condition.<sup>24</sup> Moreover, the Court legitimises the stigma against

the vulnerable group by establishing the alleviation of anxiety of those without HIV/AIDS as a legitimate aim and discriminatory or differential treatment of the vulnerable group as a proportionate means to such aim. In essence, the ECtHR validated the 'sense of deviance' so often attributed to HIV/AIDS status.<sup>25</sup>

Not only is the case distinctly out of line with previous jurisprudence on the matter, but its decision is most serious as it regards a violation of an individual's right to not be subjected to torture or inhuman or degrading treatment or punishment: 'one of the fundamental values of the democratic societies making up the Council of Europe'.<sup>26</sup> The ECtHR has asserted on numerous occasions that this right is absolute and the infringement of such right is categorically prohibited. Most notably in *Chahal v UK*<sup>27</sup> the Court declared that 'unlike most of the substantive clauses of the Convention... Article 3 makes no provision for exceptions... even in the event of a public emergency threatening the life of the nation', highlighting the strong protection given to the Article. Similarly, in *Bensaid v UK*<sup>28</sup> the Court emphasised the 'absolute terms' of Article 3. In light of these judicial utterances, the position taken in *Dikaïou*<sup>29</sup> is made even more shocking.

18 Elaine Webster (2019) 'A Positive Take on the Legacy of the 1978 Judgment in Ireland v. United Kingdom' <<https://www.ejiltalk.org/a-positive-take-on-the-legacy-of-the-1978-judgment-in-ireland-v-united-kingdom/>> accessed 20 May 2022

19 No. 25781/94 [2001].

20 No. 25781/94 para 309.

21 Goold, B.J., & Lazarus, L. (Eds.). (2019). *Security and Human Rights* (Hart Studies in Security and Justice). Oxford: Hart Publishing.

22 Goold, B.J., & Lazarus, L. (Eds.). (2019). *Security and Human Rights* (Hart Studies in Security and Justice). Oxford: Hart Publishing.

23 Nos. 66069/09, 130/10 and 3896/10 [2013] para 113.

24 Nos. 66069/09, 130/10 and 3896/10 [2013] para 52-55

25 Goold, B.J., & Lazarus, L. (Eds.). (2019). *Security and Human Rights* (Hart Studies in Security and Justice). Oxford: Hart Publishing.

26 Yutaka Arai-Yokoi, Grading Scale of Degradation: Identifying the Threshold of Degrading Treatment of Punishment Under Article 3 ECHR (2003) 21 Netherlands Quarterly of Human Rights 385.

27 [1997] 23 EHRR 413 para 79.

28 [2001] 33 EHRR 205, para.32

29 No. 77457/13 [2020].



## Conclusion

The reasoning employed in *Dikaïou and Others v Greece*<sup>30</sup> is incompatible with the ECtHR's previous jurisprudence on the rights of those living with HIV/AIDS. Regrettably, the Court has permitted and perhaps even encouraged the further stigmatisation of the group by establishing prejudice and ignorance about how the virus spreads as a legitimate basis for differential treatment of the vulnerable group. The language employed by the Court encourages the 'othering' and exclusion of HIV/AIDS sufferers, violating the core value of human dignity which Article 3 seeks to protect. It is submitted that the Grand Chamber should, at the next opportunity, return to the compassionate approach taken in its previous jurisprudence.

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<sup>30</sup> No. 77457/13 [2020].



## Introduction

The European Union's energy policy is undoubtedly one of the most critical policies of this supranational organization and a major challenge for its member States, particularly in the current context of regional or global energy wars.<sup>1</sup> The origins of this policy can be traced back to the 1950s, but its contemporary form is dated to the late 1980s. The beginning of this policy came in conjunction with the creation of the European Coal and Steel Community (ECSC), a European organization formally established in 1951, by the Treaty of Paris, and with the creation of the European Atomic Energy Community (Euratom), in 1957, by the Treaty of Rome, this policy being, at that time, dominated by coal mining issues.<sup>2</sup>

The current energy policy, announced in 2015 in 'The Energy Union Strategy', has tried to propose the energy integration of the European Union and is based on five interrelated areas: (i) Energy security, solidarity and trust; (ii) A fully integrated

European energy market; (iii) Energy efficiency contributing to moderation of demand; (iv) Decarbonizing the economy and (v) Research, Innovation and Competitiveness.<sup>3</sup> This strategy aims to guarantee the European Union's energy security, while at the same time trying to improve its competitiveness.

In 2019, a new strategy was adopted, the package called 'Clean Energy for All Europeans'. This is one of the main European Union energy policy packages to achieve carbon neutrality by 2050, facilitating the transition from fossil fuels and replacing them with clean energy.<sup>4</sup> The 2030 strategy foresees five main actions: (i) improving the energy performance of buildings; (ii) increasing renewable energies with a target of 32% by 2030; (iii) improving energy efficiency and reducing greenhouse gas emissions; (iv) establishing integrated 10-year energy and climate plans for all member states and (v) design a modern and more flexible energy market system<sup>5</sup>.

1 Nazim Hajiyev et al., "Energy War Strategies: The 21st Century Experience," *Energies* 2020 13, no. 21 (2020): 2, <https://doi.org/10.3390/en13215797>

2 Krzysztof Wach et al., "Europeanization Processes of the EU Energy Policy in Visegrad Countries in the Years 2005–2018," *Energies* 2021 14, no. 7 (2021): 6, <https://doi.org/10.3390/en14071802>

3 European Commission. *A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy* COM (2015) 80 final (Brussels: European Union, 2015). Accessed May 19, 2022 from: [https://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1\\_01aa75ed71a1.0001.03/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1_01aa75ed71a1.0001.03/DOC_1&format=PDF)

4 Maria Allen et al., "Comparative Capitalisms and Energy Transitions: Renewable Energy in the European Union," *British Journal of Management* 32, no. 1 (2020): 615, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1467-8551.12352>

5 Krzysztof Wach et al., "Europeanization Processes of the EU Energy Policy in Visegrad Countries in the Years 2005–2018,"

## The strategic importance of the European Union energy policy

After this introduction, it is possible to analyze several factors for the importance of energy policy in the European Union. Firstly, the European Union, the second-largest economy in the world, consumes a fifth of the energy produced worldwide but has few energy reserves<sup>6</sup>, i.e., in terms of energy, the European Union depends on external suppliers, mainly from the Russian Federation. The second is Russia's invasion of Ukraine. Historically, Ukraine has played a crucial role in the European energy system until the 1990s, since most of the natural gas exported by Russia to the European Union crossed Ukrainian territory. However, over the years, Russia has diversified export routes through pipelines that now pass-through other countries. Third, an increase in energy consumption in the European Union, with the entire world, is predicted by 2030.<sup>7</sup>

In addition, this policy is referred to in the Treaty on the Functioning of the European Union, in its article 194<sup>o</sup>, and two of the objectives of the European Union energy policy are: 'a) Ensuring the functioning of the energy market;' and 'b) ensure the security of the Union's energy supply. It is related, among other things, to access to energy markets, the need for the industry to function, and, of course, ensuring the comfort of citizens in their daily lives.

However, the proper functioning of the European energy market and in the countries that are part of the European

Union depends on solidarity between States concerning energy transit, consumption, and sharing of reserves.<sup>8</sup> It also especially depends on which external suppliers, and extremely in the case of natural gas and oil, whether this is the Russian Federation. And, despite the European Union being this country's principal customer, over the years Russia has shown itself to be an increasingly unreliable trading partner, especially with Russia's recent invasion of Ukraine and the order of the company that is under government control to cut off gas transit to Poland and Bulgaria.

Another problem is that eleven of the member States have a direct or indirect relationship with the supply of natural gas from the east of the Union: Bulgaria, Czech Republic, Estonia, Lithuania, Hungary, Austria, Poland, Romania, Slovenia, Slovakia and Finland. These countries are responsible for importing more than seventy-five percent of Russia's gas to the European Union.<sup>9</sup> Knowing this and considering the European Union's ambitious decarbonization and energy transition goals present in the European Green Deal, both Russia's invasion of Ukraine and dependence on Russian energy will have consequences for these goals.

## Russia's energy influence on the international system

Russia is the world's third-largest producer of oil and liquid hydrocarbons while being the largest exporter of oil to the global

*Energies* 2021 14, no. 7 (2021): 7, <https://doi.org/10.3390/en14071802>

6 European Commission, *The European Union Explained: Energy*. (Luxembourg: Publications Office of The European Union, 2012), 4.

7 Krzysztof Wach et al., "Europeanization Processes of the EU Energy Policy in Visegrad Countries in the Years 2005–2018," *Energies* 2021 14, no. 7 (2021): 1, <https://doi.org/10.3390/en14071802>

8 *Ibid.*, p. 9.

9 Holly Ellyatt, *Europe is fast-becoming a natural gas battleground for Russia and the US*, Consumer News and Business Channel, August 8, 2019, accessed May 17, 2022, from <https://www.cnn.com/2019/01/08/russia-and-the-us-battling-over-europes-gas-market.html>

market.<sup>10</sup> In terms of natural gas, Russia is the second-largest producer worldwide.<sup>11</sup> The commercialization of Russian energy resources represents more than a third of this country's revenues and, consequently, the economy ends up being dependent on energy exports.<sup>12</sup>

According to the International Energy Agency (2021), the energy dependence revealed by the European Union on Russian oil and gas is quite significant, representing thirty-four percent of total Russian oil imports, about forty-five percent of gas imports, and forty percent of your total gas consumption. However, by sending around eighty-seven percent of its natural gas to the European Union<sup>13</sup>, Russia also finds itself in a position of dependence.

Thus, Russia has a great weight in the energy matrix of the European Union. Around twenty-five percent of the energy consumed in the European Union comes from natural gas, and the rest comes from oil and petroleum products, which represent thirty-two percent, as well as renewable energies and biofuels (eighteen percent) and fossil fuels, representing eleven percent of the total.<sup>14</sup>

## **The future of decarbonization and the energy transition in the European Union**

As mentioned above, both Russia's invasion of Ukraine and the dependence on Russian energy will have consequences on the decarbonization and energy transition of the European Union. However, this does not mean that it is necessarily negative. Due to the invasion, the energy security debate has been reignited and the European Union has been accelerating its energy transition plans. To start the process of phasing out Russian fossil fuels, the European Commission developed the REPowerEU initiative. This action will seek to diversify the gas supply, accelerate the deployment of renewable gas, and replace gas in heating and power generation to reduce the Union's demand for Russian gas by two-thirds by the end of the year 2022.<sup>15</sup>

Furthermore, it is notable that Russia is increasingly using energy as an instrument of political influence. It is necessary to deprive it of this capacity by radically reducing dependence on fossil fuel imports from the Russian Federation.

Thus, the tendency is for the war to accelerate the energy transition process of the member States, which will have to invest increasingly in the diversification of their energy matrices, prioritizing green

10 Energy Information Administration, *Country Analysis Brief: Russia*, December 13, 2021, accessed May 19, 2022, from [https://www.eia.gov/international/content/analysis/countries\\_long/Russia/russia.pdf](https://www.eia.gov/international/content/analysis/countries_long/Russia/russia.pdf)

11 *Ibid.*

12 *Ibid.*

13 Rem Korteweg, "Energy as a tool of foreign policy of authoritarian states, in particular Russia," *Policy Department, Directorate-General for External Policies*, April 2019, accessed May 20, 2022 from [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603868/EXPO\\_STU\(2018\)603868\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603868/EXPO_STU(2018)603868_EN.pdf)

14 Directorate-General for Energy, *EU energy in figures: statistical pocketbook 2021*. Luxembourg: Publications Office of The European Union, 2012), 22.

15 European Commission, REPowerEU: Joint European action for more affordable, secure and sustainable energy, March 8, 2022, accessed 19 May, 2022, from [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1511](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1511)



investments, in clean and renewable energysources, as a not only environmental policy but national security.<sup>16</sup>

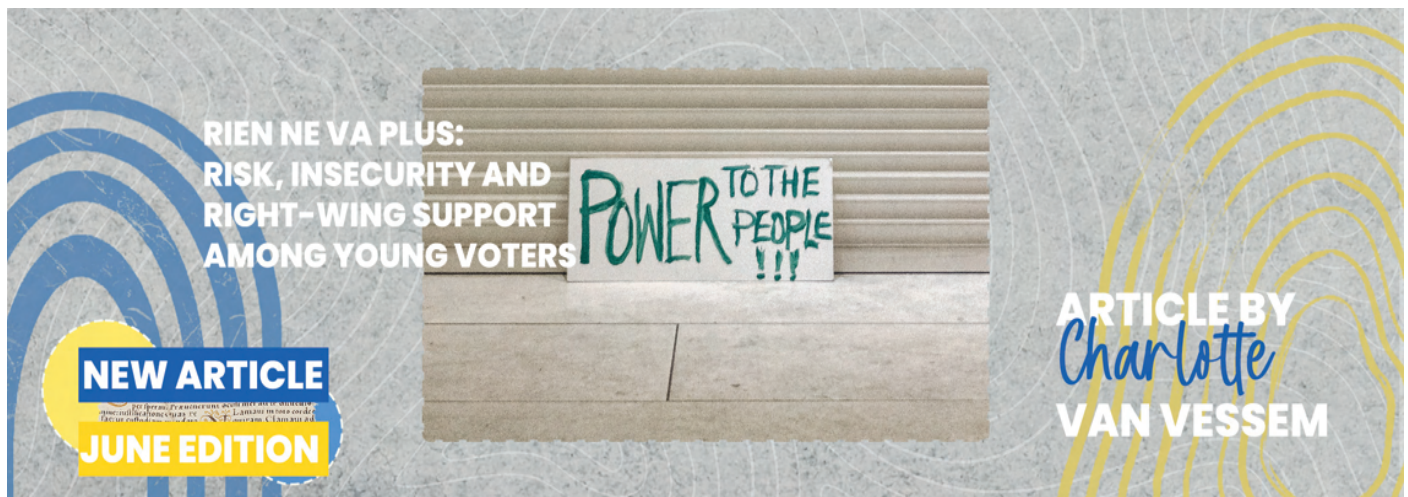
The point is that this process takes time and investment, therefore, in the short term, it is possible that European countries will increase the use of fossil fuels as a way of guaranteeing their energy security, which should delay the decarbonization process of Europe and further contribute to global warming.

However, in the medium and long term, investments in renewable energies will increase, even to be able to meet their carbon neutrality objectives by 2050, with cuts in emissions of up to fifty-five percent by 2030. In this way, the reinforcement of investments in this area is an unavoidable reality and establishes a link between the European Green Deal and energy security. What cannot be forgotten is that the transition of the entire economy to clean energy must be done carefully, so as not to create social and economic consequences for people, it must be a just transition.

Therefore, it is possible to affirm that the Russian war against Ukraine created a new scenario of great urgency in the search for energy alternatives by the countries of the European Union, which are at an opportune but costly time to invest in clean energy sources and renewable, to fulfill the commitments previously signed by the European Union.

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<sup>16</sup> Mats Engström, *Efficient influence: Energy initiatives for a geopolitical Europe*, European Council on Foreign Relations, April 27, 2022, accessed May 21, 2022, from <https://ecfr.eu/article/efficient-influence-energy-initiatives-for-a-geopolitical-europe/>



## Introduction

In the last decades, Europe has seen an increase in popularity on the right side of the political spectrum, in the form of new political parties that explicitly adopt conservative social values and argue directly against the liberal-democratic rights that previous generations have established.<sup>1</sup> The traditional political right has gotten company from new, relatively young right-wing parties with a more neo-conservative social outlook, often called the 'radical right'.<sup>2</sup> While such parties and their supporters are often called conservative, they do not simply want to go back to the values of older times and rather see themselves as reactionary conservatives that want to redefine and reclaim this term.<sup>3</sup> Traditionally, the idea exists that such parties and ideals are upheld by a specific category of society:

the image of the angry old (white) men or the 'losers of globalization' persists in media and public opinion.<sup>4</sup> However, this is refuted by research of Eatwell and Goodwin. In their book '*National Populism: The Revolt Against Liberal Democracy*' (2018), they reject the idea that the radical right is mainly supported by angry old men, but rather see support for the new radical right as a reaction to and a rejection of social progression by those who deem it immoral or taken too far. They argue that the current rise of such parties in Europe is fueled by people from younger generations, with a different outlook on societal norms and values due to frustration about for example their chances on the labor and housing market.<sup>5</sup>

While in Western Europe, a large part of the young electorate is more left-leaning<sup>6</sup> <sup>7</sup> <sup>8</sup>, there is a perceivable increase in

1 Roger Eatwell and Matthew J. Goodwin, *National Populism: The Revolt against Liberal Democracy* (London: Pelican, 2018).

2 Matthijs Rooduijn et al., "Radical Distinction: Support for Radical Left and Radical Right Parties in Europe," *European Union Politics* 18, no. 4 (November 2017): pp. 536-559, <https://doi.org/10.1177/1465116517718091>.

3 *Ibid.*

4 Schröder, Martin. "Is Income Inequality Related to Tolerance for Inequality?" *Social Justice Research* 30, no. 1 (2016): 23-47. <https://doi.org/10.1007/s11211-016-0276-8>.

5 Eatwell and Goodwin, "National Populism".

6 Carriat, Julie. "Jean-Luc Mélenchon's New Supporters: The Young, Urban Working Class." *Le Monde.fr. Le Monde*, April 12, 2022. [https://www.lemonde.fr/en/politics/article/2022/04/13/jean-luc-melenchon-s-new-supporters-the-young-urban-working-class\\_5980397\\_5.html](https://www.lemonde.fr/en/politics/article/2022/04/13/jean-luc-melenchon-s-new-supporters-the-young-urban-working-class_5980397_5.html).

7 Solomon, Erika. "'Our Government Forgot Young People': German Youth Flock to Greens and FDP." *Financial Times*. Financial Times, October 2, 2021. <https://www.ft.com/content/91090a03-5ba9-41f7-9cd5-846f07d72fa2>.

8 Nationale Omroep Stichting. "Forum Voor Democratie-Kiezers Komen Vooral Van PVV EN VVD." *NOS*, March 21, 2019. <https://>

support for right-wing parties among younger voting groups. During the last two Presidential elections, Le Pen won more votes from voters ages 18-35 than any other candidates.<sup>9 10</sup> Dutch far-right-wing party *Forum voor Democratie* has relatively more young voters than other Dutch parties.<sup>11</sup> In Germany, in the 2017 Federal Elections, *Alternative für Deutschland* secured most of their votes in the group aged between 35-44 (around 15%) but also became more popular among voters aged between 18 and 35,<sup>12</sup> a trend that more or less stabilized during the last elections in 2021.<sup>13</sup> Researchers see right-wing ideologies rising as a major challenge to the status quo of the European Union, as the new right-wing ideologies show a strong opposition and skepticism to the EU.<sup>14 15</sup> Especially since the covid-19 pandemic, Euroscepticism and distrust of authorities, in general, can clearly be perceived in Western right-wing thinking.<sup>16</sup> <sup>17</sup>The clearest results of Euroscepticism can be seen in Eastern-European countries such as Poland and Hungary, where fully conservative governments are in place (also due to their popularity among young voters) and have been reversing policies

on human rights in favor of a return to 'traditional family values'<sup>18</sup> and have started to refuse juridical supremacy of the EU courts.<sup>19</sup>

With similar right-wing ideologies on the rise in all of Europe, and examples of what can happen to liberal democracies if such parties reach a majority in the government, it is important to understand who, and most importantly, why individuals vote for such parties, as conventional explanations of their popularity have been proven false.<sup>20 21</sup> Research on new right-wing parties and their characteristics exists, just like research on system changes resulting from such parties as in Eastern Europe, but, so far, there has not been thorough research conducted on the position of specifically younger generations and their contributions to the popularity of these parties, or their reasons for supporting these ideologies. This article aims to explore some of the possible drivers of youth support for right-wing ideologies by looking at the (in)securities younger people face in contemporary Western European societies.

nos.nl/artikel/2276940-forum-voor-democratie-kiezers-komen-vooral-van-pvv-en-vvd.

9 Eatwell and Goodwin, "National Populism".

10 Cornelius Hirsch, "What the French Election Reveals about Young Euroskeptics," POLITICO, April 14, 2022, <https://www.politico.eu/article/france-presidential-election-2022-emmanuel-macron-marine-le-pen-young-euroskeptics/>.

11 Rooduijn et al., "Radical Distinction".

12 De Weck, Joseph, and Ferguson, Niall. "European Millennials Are Not like Their American Counterparts." The Atlantic. Atlantic Media Company, October 1, 2019. <https://www.theatlantic.com/ideas/archive/2019/09/europes-young-not-so-woke/598783/>.

13 Knight, Ben. "Why Young Eastern German Voters Support the Far-Right AfD." DW.COM. Deutsche Welle, June 11, 2021. <https://www.dw.com/en/why-young-eastern-german-voters-support-the-far-right-afd/a-57847028>.

14 Rooduijn et al., "Radical Distinction".

15 Fenkart, Stephanie. "The Rise of Populism in Europe," 2018, [https://static1.squarespace.com/static/58a2c691b3db2b3c6990193a/t/5b56f2c02b6a282123c1595f/1532424900817/2018-07-+The+Rise+of+Populism\\_Stephanie+Fenkart.pdf](https://static1.squarespace.com/static/58a2c691b3db2b3c6990193a/t/5b56f2c02b6a282123c1595f/1532424900817/2018-07-+The+Rise+of+Populism_Stephanie+Fenkart.pdf).

16 Schulmeister, Philipp M. Rep. *Public Opinion Monitoring - at a Glance*. Eurobarometer, June 2021. <https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2020/covid19/en-public-opinion-in-the-time-of-covid19-202106.pdf>.

17 Dandolov, Philip. "The Inevitable Rise of Euroscepticism in the Wake of COVID-19." Geopolitical Monitor, February 22, 2021. <https://www.geopoliticalmonitor.com/the-inevitable-rise-of-euroscepticism-in-the-wake-of-covid-19/>.

18 Rajkai, Zsombor, Csaba Dupcsik, and Olga Tóth. "Family Systems and Family Values in Twenty-First Century Hungary." Essay. In *Family and Social Change in Socialist and Post-Socialist Societies: Change and Continuity in Eastern Europe and East Asia*, 210–49. Leiden: Brill, 2015.

19 Euractiv. "Polish Court Rules against Supremacy of EU Law, Deepening Row with Brussels." [www.euractiv.com](https://www.euractiv.com/section/justice-home-affairs/news/polish-court-says-some-eu-treaty-articles-unconstitutional-deepening-row-with-brussels/). EURACTIV, October 7, 2021. <https://www.euractiv.com/section/justice-home-affairs/news/polish-court-says-some-eu-treaty-articles-unconstitutional-deepening-row-with-brussels/>.

20 Eatwell and Goodwin, "National Populism".

21 Schröder, "Is Inequality Related to Tolerance".

## Material uncertainty

In their argument against the 'angry old men'-hypothesis, Eatwell and Goodwin argue that the current rise of right-wing parties in Europe is fueled by people from younger generations with a different outlook on societal norms and values due to frustration about their societal prospects.<sup>22</sup> Young people are told that they will have great economic chances as they are better educated than the previous generations, but have lived through major economic crises and societal changes that leave them feeling disenchanted or lied to by affluent members of the older generations, whose retirement they also need to work for.<sup>23</sup> In addition, the traditional social patterns and hierarchy are more diffused than they used to be, leading to a bigger role for the individual to give meaning to life rather than the societal structure.<sup>24 25</sup> As such, these young conservatives can perhaps be specified less as the losers of globalization and more as the losers of postmodernity: the assumptions of the Western post-WWII society that every generation would get more chances than their predecessors, as described by Inglehart.<sup>26</sup> He hypothesized that Western countries with enough economic and political stability would come to value individual and progressive views more than ever before. His research focused on generational experiences, and it was his expectation that this trend would be ongoing and that each generation would become more *postmaterialist* than its predecessors. However, there is a visible

discrepancy between what was promised to younger generations and what actually occurred, leading to subsequent insecurity on the labor and housing markets. These materialist insecurities, according to Eatwell and Goodwin, factually reversed Inglehart's hypothesis. Rather than more opportunities, younger generations have fewer, consequently the views on identity political issues reverse as well.

## Risks and choices

These types of material changes are connected to societal and identity changes that Beck described as the 'risk society': a society in which massive social changes have occurred that have a global effect within contemporary social life.<sup>27</sup> Western societies have become increasingly individualistic, neoliberal and postmodern, with changes in many crucial aspects of society such as employment patterns, job security, and a decline in tradition and traditional family values.<sup>28</sup> According to Beck, people became separated from structures due to this individualization and now live in societies in which they reflexively create themselves. Social role patterns and hierarchies have changed drastically. Next to this, the social visibility and position of women, as well as minorities, have increased. With these changes, society is less and less defined by traditional markers, such as gender or sexuality. Traditional role patterns are no longer the fixed route but rather one of the many options, whether career-wise or in the personal sphere. Important traditional

22 Eatwell and Goodwin, "National Populism".

23 Van der Waals, Kelli. "De Millennial Jaagt Een Droom Na Die Allang Uiteen Is Gespat." Vrij Nederland, April 17, 2021. <https://www.vn.nl/millennialdroom-uiteengespat/>.

24 *Ibid.*

25 Inglehart, Ronald F. *The Silent Revolution: Changing Values and Political Styles among Western Publics*. Princeton: Princeton University Press, 2021.

26 *Ibid.*

27 Beck, Ulrich. *Risk Society: Towards a New Modernity*. Translated by Ritter, Mark. London: Sage Publications, 1992. ISBN 978-0-8039-8346-5

28 *Ibid.*



distributors of social values such as religious authorities have seen their role decline in most Western nations.<sup>29</sup>

These social changes fit into the increasing liberalization and individualization of society: developments that lead to more individualization might lead to positive changes for some, and negative ones for others. This connects to the modernity theory of Giddens, who famously said that in post-traditional societies, “*we have no choice but to choose*”.<sup>30</sup> In postmodern societies, structure is not abolished in favor of individual choice, choice simply became the new structure of postmodernity. Insecurity was the price to be paid for a more equal society, arising when people are no longer defined by one specific marker (such as gender).<sup>31</sup> Further modern developments such as the omnipresence of opinions through social media and the internet have made society a diffused space with no clear boundaries. The need to make many choices and the pressure to make the right ones can lead to feeling lost and overwhelmed. These feelings of anxiety can be on multiple levels: in an individualized society, the meaning of work, home and identity have all merged as individuals need to achieve the best possible results on each terrain in their life.<sup>32</sup> Furthermore, in a contemporary society centered around individualism, personal choice, and liberalism, the reigning idea is that the individual alone is the creator of their own success, and as

such, also the creator of their own misery.<sup>33</sup> The trends and effects described above will especially affect those with the least economically and socially advantageous positions as they are in the most insecure and vulnerable positions. As explained above, these are mainly individuals from younger generations, as they have less economic and societal chances, also giving them less power to compete with those in more favorable positions who were able to accumulate status and capital. As such, the youngest generation, as the least advantaged one, will be the most vulnerable and susceptible to feelings of social conservatism, whereas the older generations in hierarchical order had more opportunities and a more secure position. The shift towards conservatism could then be fueled by a kind of ‘generational homesickness’: a longing to return to the ‘good old days’ of generations past and, with that, a part of their values. In the contemporary Western world, in which individualism and social engineering are important values, it is not clear to everyone what their place in society is, as opposed to historical societies with a clear place for most people. In some young and conservative circles, this translates into a renewed appreciation for old societal structures and a wish to return to a stronger state,<sup>34 35</sup> combined with a strong sense of nationalism.<sup>36</sup>

29 Cox, Jeffrey. “Secularization and Other Master Narratives of Religion in Modern Europe.” *Kirchliche Zeitgeschichte* 14, no. 1 (2001): 24–35. <http://www.jstor.org/stable/43100018>.

30 quoted from Giddens in Schwarz, 2017, p. 845

31 Giddens, Anthony, quoted in Schwarz, Ori. “Cultures of Choice: Towards a Sociology of Choice as a Cultural Phenomenon.” *The British Journal of Sociology* 69, no. 3 (2017): 845–64. <https://doi.org/10.1111/1468-4446.12305>.

32 Van der Waals, “Millennial Jaagt een Droom na”.

33 Hosman, Britta (Director). *Lekker Conservatief*. VPRO Tegenlicht. VPRO, 2021. <https://www.vpro.nl/programmas/tegenlicht/kijk/afleringen/2019-2020/lekker-conservatief.html>.

34 Hosman, “Lekker Conservatief”.

35 Eatwell and Goodwin, “National Populism”.

36 Rooduijn et al., “Radical Distinction”.

However, it is important to note that the scenarios described above should not be seen to apply to an entire generation, as there will undoubtedly be cohorts within the younger generations that will not perceive these insecurities. These cohorts will most likely be the ones inheriting intergenerational wealth, status or networks. Likewise, this group could be seen developing stronger postmaterialist values: the 'woke' focus on fighting racism, homophobia and sexism. Subsequently, these values are perceived by other groups as militant-left and 'cultural marxism'. As such, a split can be seen between not only the 'haves' and the 'have-nots' but also between different value-groups. The support as such is not only a vote for a certain economic approach but has the potential to become one's identity. In a binary left-right system, a vote for one has the potential to quickly become a vote *against* the other, which can strengthen support for extremist ideologies.

## Conclusion

All things considered, the support for right-wing conservative ideologies might stem from a large foundation of societal insecurities that specifically younger generations face in Western Europe today. Younger generations are growing up in a world that is rapidly changing: major economic crises, increasing flexibilization, a global pandemic and a changing climate. Dealing with these challenges might invoke feelings of a sort of homesickness, especially considering the persisting opinions that younger generations will have much better opportunities than their predecessors. Coming to the table facing insecurities and risks might make some willing to take a 'safe bet' on a return to the known, 'good old times'.



Between 2020 and 2022, a significant number of European countries declared, at least once, a national state of emergency. Few specific events urged for emergency responses and exceptional policies by the EU Member States. These included, most notably, the Covid-19 pandemic, which provoked a progressive *en masse* launch of emergency provisions within the Schengen territory. After the peak of the spread of the infection, exceptional regulations were gradually revoked in European states, and derogations to fundamental rights were lifted. Nevertheless, new difficulties emerged during the two-year period. The migrant crisis at the EU-Belarus border, which began in the summer of 2021, and the Russian invasion of Ukraine in February 2022, once again triggered affected States to invoke derogation clauses. A reiterated resort to measures that should be “exceptional” sparked concern over the lawfulness of derogations in times of emergency, particularly in relation to the protection of democratic standards, the rule of law, and human rights.

## Lawfulness

Several instruments within the international system of human rights protection envision, and thus, allow, a restriction and/or provisional suspension of rights under extraordinary and exceptional conditions. However, States have no complete free will when derogating fundamental rights. In fact, derogation clauses typically limit the scope of the emergency measures, which are, in effect, exclusively considered an exceptional tool. Several rights, clearly stated in the provisions, are defined as non-derogable. Namely, despite emergency measures, they continue to be in effect under any circumstances.

The conceptualization and definition of what an “emergency” *de facto* entails can vary and encompass a wide variety of circumstances. Nevertheless, it is commonly agreed upon that emergency powers should be characterized by two fundamental traits, namely temporariness and exceptionality.<sup>1</sup> Most notably, the measures taken to counter crises should always conform to the actual situation and the duration of the phenomenon.

<sup>1</sup> Oren Gross, “Once More unto the Breach: The Systemic Failure of Applying the European Convention on Human Rights to Entrenched Emergencies,” *The Yale Journal of International Law*, vol. 23: 437, (1998): 445, [https://openyls.law.yale.edu/bitstream/handle/20.500.13051/6386/14\\_23YaleJIntlL437\\_1998\\_.pdf?sequence=2](https://openyls.law.yale.edu/bitstream/handle/20.500.13051/6386/14_23YaleJIntlL437_1998_.pdf?sequence=2).

## European Regional System

Within the European Union framework, the 1950 European Convention on Human Rights (ECHR), enables the States to ratify the Convention to derogate from the ECHR's rights obligations through its derogation clause of Article 15.<sup>2</sup> The Article states that "in time of war or other public emergency threatening the life of the nation", derogations from the rights foreseen in the ECHR are permitted. Derogations are accepted only through provisions that are "strictly required" by the exceptional circumstances and are always compatible with the contracting States' international law obligations.<sup>3</sup>

Exceptions concerning several rights protected by articles of the Convention are, however, listed in the second paragraph of the same Article. These cover Article 2 on right to life, albeit with exceptions "in respect of deaths resulting from lawful acts of war", Article 3 on prohibition of torture, Article 4 par. 1 on prohibition of slavery and servitude, and Article 7 on prohibition of punishment without law.<sup>4</sup> These rights continue to be in effect and cannot be affected by the emergency measures introduced. Finally, the third paragraph clarifies the steps contracting States must follow in order to invoke Article 15 and derogations.

As for the definition of the circumstances that may justify a resort to emergency regulations and suspension of the enjoyment of certain rights, the European Court of Human Rights (ECtHR) was called to interpret the meaning of "public

emergency threatening the life of the nation", as expressed in Article 15. The Court described the situation that may justify derogations from fundamental rights as "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed".<sup>5</sup> Numerous judgements by the ECtHR recognized that a regional crisis may be considered a public emergency if its features correspond to the conditions outlined in Article 15 par. 1. Furthermore, the Court stressed how exceptional measures should be allowed only when ordinary measures or less intrusive provisions, such as lighter restrictions, foreseen by the ECHR, prove to be insufficient to tackle a public crisis.<sup>6</sup>

Rulings from the ECtHR underlined the Contracting States' primary responsibility, through their legislative and judicial bodies, to objectively assess and verify the existence or not of a condition of national public emergency and to identify the proper, proportionate actions to counter it. Nevertheless, the Court monitors and ensures that, throughout the duration of the emergency, States do not take measures that exceed the "extent strictly required by the exigencies" and that conflict with international law.<sup>7</sup>

Overall, the Court may judge on whether the chosen measures are essential, in that ordinary legislative instruments are inadequate to counter the emergency. Moreover, the Court aims to prevent the exploitation of the emergency for the purpose of the States' deterioration

2 Council of Europe, European Court of Human Rights, "Guide on Article 15 of the European Convention on Human Rights. Derogation in Time of Emergency", updated on December 31, 2021, 6, [https://www.echr.coe.int/documents/Guide\\_Art\\_15\\_ENG.pdf](https://www.echr.coe.int/documents/Guide_Art_15_ENG.pdf).

3 *Ibid.*

4 *Ibid.*, 5.

5 Council of Europe, European Court of Human Rights, "Guide on Article 15 of the European Convention on Human Rights. Derogation in Time of Emergency", updated on December 31, 2021, 6, [https://www.echr.coe.int/documents/Guide\\_Art\\_15\\_ENG.pdf](https://www.echr.coe.int/documents/Guide_Art_15_ENG.pdf).

6 *Ibid.*

7 *Ibid.*, 8.



of democratic standards and pluralism. States are thus continuously asked to demonstrate how the urgent circumstances specifically require suppression of fundamental rights.

Furthermore, the ECtHR emphasized, on several occasions, how democratic standards must be upheld even during times of emergencies. Thus, fundamental rights such as freedom of speech and opinion must not be neglected at the expense of emergency regulations.<sup>8</sup>

As for the second paragraph of Article 15, listing non-derogable rights, in time it was integrated by a number of protocols to the ECHR. These protocols, namely Protocol No. 6-7 and Protocol No. 13, provide derogation clauses. Article 3 of Protocol No. 6 to the ECHR aims to impede derogations from the prohibition of the death penalty in times of peace and limitation of the death penalty in times of war.<sup>9</sup> On the other hand, Protocol No. 7, on the principle of *ne bis in idem*, prohibits a derogation from the mentioned fundamental principle, which safeguards the right not to be tried or punished twice, in its Article 4, par. 3.<sup>10</sup> Finally, Protocol No. 13 of 2002, on the abolition of the death penalty in all circumstances, prohibits derogations from the same provision under Article 2.<sup>11</sup>

Finally, the third paragraph underlines the formal requirements and procedures that the Contracting States must undergo

to derogate from rights envisioned by the Convention. First of all, the Secretary General of the Council of Europe must be notified in a timely manner in order to render the derogating measures public, otherwise the clause cannot be applied. The Secretary General must be informed at the end of the derogation period, as well. A further formal prerequisite for Contracting Parties to publicly introduce the intention to derogate through Article 15 of the ECHR would be a declaration of a state of emergency or martial law.<sup>12</sup> Additionally, the motives behind the choice to opt for emergency measures and derogations should be provided to the Secretary General.<sup>13</sup>

## United Nations System

On the other hand, at a broader level, human rights law foresees derogations through Article 4 of the 1966 United Nations International Covenant of Civil and Political Rights (ICCPR).<sup>14</sup> Again, as in the case of the ECHR, the Article states how derogations are allowed in times of emergency of public relevance that “threatens the life of the nation”, however with specifications. The States that have ratified the Covenant can temporarily be exempted from their obligations under the ICCPR, “to the extent strictly required by the exigencies of the situation”, in continuation of their existing obligations under international law and without any form of discrimination “solely on the ground of race, colour, sex, language,

<sup>8</sup> *Ibid.*, 8-9.

<sup>9</sup> Council of Europe, “Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, as amended by Protocol No. 11”, April 28, 1983, 2.

<sup>10</sup> Council of Europe, “Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11”, April 22, 1983, 34.

<sup>11</sup> Council of Europe, “Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the Abolition of the Death Penalty in all Circumstances”, May, 3, 2002, 2.

<sup>12</sup> Liberty (The National Council for Civil Liberties), “Liberty Briefing on Derogations and the Human Rights Act”, September 2016, 3-4, <https://www.libertyhumanrights.org.uk/wp-content/uploads/2021/04/Liberty-Briefing-on-Derogations-and-the-Human-Rights-Act.pdf>.

<sup>13</sup> Council of Europe, European Court of Human Rights, “Guide on Article 15 of the European Convention on Human Rights. Derogation in Time of Emergency”, updated on December 31, 2021, 14, [https://www.echr.coe.int/documents/Guide\\_Art\\_15\\_ENG.pdf](https://www.echr.coe.int/documents/Guide_Art_15_ENG.pdf)

<sup>14</sup> UN General Assembly, International Covenant on Civil and Political Rights, December 16, 1966 (entered into force 23 March 1976), art. 4.

religion or social origin".<sup>15</sup>

Again, paragraph 2 of the same Article 4 provides a list of those rights that cannot be suspended. These are Article 6, right to life, Article 7, prohibition of torture, Article 8 par. 1 and 2, prohibition of slavery and servitude, Article 11, prohibition of imprisonment for inability to fulfil a contractual obligation, Article 15, unlawful punishment of a criminal offence not representing a criminal offence when it was committed, Article 16, right to recognition before the law, and Article 18, right to freedom of thought, conscience and religion.<sup>16</sup> Similarly to the ECHR, the non-derogable rights catalogue was integrated by Article 6 of the Second Optional Protocol to the International Covenant on Civil and Political Rights of 1989, on the abolition of the death penalty.<sup>17</sup> General Comment No. 29 of the ICCPR, specifies in paragraph 11 that breaches in humanitarian and international law, including collective punishments, arbitrary deprivations of liberty, right to a fair trial, can be equally deemed as non-derogable rights although not being listed in Art. 4, par. 2.<sup>18</sup>

The third paragraph of Article 4 requires States triggering it to notify the other States, through the intermediation of the United Nations Secretary-General, "of the provisions from which it has derogated and of the reasons by which it was actuated" as well as "on the date on which it terminates such derogation".<sup>19</sup>

The Article following the derogation clause in the Covenant, Article 5, acts as a safeguard in relation to Article 4. It states that all the provisions of the Covenant, including the derogation clause, must not be used as a pretext to "engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation". Nor, on the other hand, should States derogate from or restrict fundamental rights that are not considered -or are less considered- in the context of the ICCPR.<sup>20</sup>

General Comment No. 29 to the ICCPR of August 2001, which replaced General Comment No. 5, provided further guidance on Article 4 par. 2 of the General Comment underlining the two essential prerequisites required to trigger Article 4 of the Covenant. The first one is the existence of an effective situation of public emergency that corresponds to the conditions stated in the text of the clause. Secondly, as expressed in the Article,<sup>21</sup> the existence of a public emergency must be officially and publicly declared, with the introduction of a state of emergency.<sup>22</sup>

The third paragraph of the General Comment provides additional information on the circumstances where an invocation of Article 4 would be deemed not only adequate but also necessary. States should justify their decision to trigger the provision, and introduce subsequent derogation measures, and legitimate them. The measures adopted should

<sup>15</sup> *Ibid.*

<sup>16</sup> UN General Assembly, International Covenant on Civil and Political Rights, December 16, 1966 (entered into force 23 March 1976)

<sup>17</sup> UN Human Rights Committee, "General Comment no. 29, States of Emergency (Article 4): International Covenant on Civil and Political Rights", August 31, 2001, 2, par. 7.

<sup>18</sup> *Ibid.*, par. 11.

<sup>19</sup> UN General Assembly, International Covenant on Civil and Political Rights, December 16, 1966 (entered into force 23 March 1976), art.4, par.3.

<sup>20</sup> *Ibid.*, art.5.

<sup>21</sup> *Ibid.*, art. 4.

<sup>22</sup> UN Human Rights Committee, "General Comment no. 29, States of Emergency (Article 4): International Covenant on Civil and Political Rights", August 31, 2001, 2, par. 1-2.

be taken “to the extent strictly required by the exigencies of the situation”<sup>23</sup> in relation to “to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency”.<sup>24</sup> In this regard, the fourth paragraph also introduces what could be considered the third fundamental requirement for emergency provisions and derogations, along with temporariness and exceptionality, namely proportionality.

Another requirement of States aiming to invoke Article 4 is providing information concerning their own obligations under international law, and most notably humanitarian law, to ensure that they are compatible with the derogations.<sup>25</sup>

The two derogation provisions are, to a certain extent, linked since Article 15 of the ECHR was written on the basis of the draft version of the current Article 4 of the ICCPR.<sup>26</sup>

## Conclusions

The two provisions, both legally binding, provide States with a potentially dangerous weapon. Nonetheless, the articles, as well as the rulings, the General Comments and Protocols, all stress the need to trigger derogation clauses only in circumstances that prove to be unmanageable through common law. Both the ECtHR and the ICCPR stress the importance of preserving the rule of law, even in times of emergency, most importantly to prevent misuse of derogations for the purpose of power abuse and authoritarianism. Thus, States should always try to objectively analyze the circumstances, and resort to mere restrictions of rights if it is perceived as sufficient.

<sup>23</sup> *Ibid.*, art.4.

<sup>24</sup> UN Human Rights Committee, “General Comment no. 29, States of Emergency (Article 4): International Covenant on Civil and Political Rights”, August 31, 2001, 2, par. 4.

<sup>25</sup> *Ibid.*, par.10.

<sup>26</sup> Council of Europe, European Court of Human Rights, “Guide on Article 15 of the European Convention on Human Rights. Derogation in Time of Emergency”, updated on December 31, 2021, 5, [https://www.echr.coe.int/documents/Guide\\_Art\\_15\\_ENG.pdf](https://www.echr.coe.int/documents/Guide_Art_15_ENG.pdf)



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