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by

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THE QUALITY OF DEMOCRACY EMBEDDED INTO POLITICAL CULTURE

A Comparative Study of Luxembourg, Hungary, and the United Kingdom

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Acknowledgements

Abstract

The thesis focuses on three main questions: the quality of democracy, democratic backsliding, political culture, and the relationship among them. The theoretical basis of the thesis starts with the quality of democracy model of Larry Diamond and Leonardo Morlino. The theoretical purpose of the research is to reconceptualise the quality of democracy and embed it into political culture to find answers to democratic stagnation and backsliding experienced in European states today. To achieve this objective, the thesis offers a four-level model of political culture that provides a foundation for explaining the links among different aspects of political culture and factors of democratic quality. Additionally, the thesis proposes a two-fold hierarchical interpretation of the factors of the quality of democracy to define the deficiency needs of democratic functioning. The main hypotheses cover the connections among the three factors mentioned above. The first hypothesis focuses on the continuity and fragmentation of political culture as explanatory factors that play a crucial role in the thesis. The second hypothesis examines the 'citizen dimension' of democratic quality and its impact on democratic stability through factors such as the citizens' interest in the political dynamics of their own country, their perceptions of their democracy, and their confidence in democratic institutions. The third hypothesis investigates the potential reasons and levels of democratic stagnation and backsliding in democracies, arguing that political culture and the weakening of the rule of law are the main influencing factors, as the latter serves as the basis and guarantee for the other factors of the quality of democracy. The empirical research is based on a comparative analysis of the quality of democracy in three European countries with fundamentally different democratic systems and traditions of democratic evolution: Luxembourg, the UK, and Hungary. The methodology used is based on the most-different cases with similar results model.

Résumé

La thèse vise à analyser non seulement trois questions principales la qualité de la démocratie, le recul démocratique, la culture politique mais aussi la relation à celles-ci. Le point de départ théorique de la thèse est le modèle de la qualité de la démocratie de Larry Diamond et Leonardo Morlino. L'objectif théorique de la recherche est de reconceptualiser la qualité de la démocratie et de l'intégrer dans la culture politique pour trouver des réponses à la stagnation et au recul démocratiques actuels observés dans des États européens. Pour cet objectif, la thèse propose, premièrement, un modèle de culture politique à quatre niveaux qui fournit une base pour l'explication des liens entre les différents aspects de la culture politique et les facteurs de qualité démocratique. Deuxièmement, une double interprétation hiérarchique des facteurs de la qualité de la démocratie, définissant les besoins fondamentaux du fonctionnement démocratique. Les principales hypothèses portent sur les liens entre les trois facteurs susmentionnés. La première hypothèse introduit un facteur explicatif qui joue un rôle clé dans la thèse : la culture politique ; plus spécifiquement, la continuité et la fragmentation de la culture politique. La deuxième hypothèse se concentre sur la dimension citoyenne de la qualité démocratique et son impact sur la stabilité démocratique à travers les facteurs suivants : l'intérêt des citoyens pour la dynamique politique de leur propre pays, leurs perceptions de leur démocratie, leur confiance dans les institutions démocratiques. La troisième hypothèse vise les raisons et les niveaux potentiels de stagnation et de régression démocratiques dans les états observés, en faisant valoir que les principaux facteurs d'influence sont la culture politique et l'affaiblissement de l'état de droit ; ce dernier étant le fondement et la garantie pour les autres facteurs de la qualité de la démocratie. La recherche empirique est basée sur une analyse comparative de la qualité de la démocratie dans trois pays européens avec des systèmes politiques et des traditions d'évolution démocratique fondamentalement différents – le Luxembourg, le Royaume-Uni et la Hongrie – à travers une méthodologie basée sur le modèle des cas les plus différents avec résultats similaires.

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I Introduction

The motivations behind the thesis are varied. First, it aims to contribute to the body of studies on the relationship between political culture and the quality of democracy. Second, it seeks to find explanations for democratic backsliding through a comparative analysis based on a concept that embeds democratic quality into political culture. Third, it aims to demonstrate findings that are relevant beyond the selected three cases. Finally, it aims to seek possible solutions for democratic backsliding.

October 2018 marks the start of the research presented by the doctoral thesis. It proved to be a thrilling period to observe British politics: after the 2016 Brexit referendum, which, with a 72.2% turnout and 51.9% of the votes, gained the support of the majority of the UK citizens[1], but before the realisation of Brexit itself. As the consequence of the referendum, in February 2020, after a series of heated debates in the House of Commons and the rejection of the Conservative Brexit deal on multiple occasions, the UK eventually left the EU. Even though the difference between the voting results of the Remain and Brexit camps was marginal, the general narrative of the consecutive Conservative governments during parliamentary debates, EU negotiations, and public communications focused on "delivering the will of the people". In November 2018, Theresa May ex-prime minister of the UK addressed 'the nation' in a letter: "From my first day in the job, I knew I had a clear mission before me - a duty to fulfil on your behalf: to honour the result of the referendum and secure a brighter future for our country by negotiating a good Brexit deal with the EU"[2]. UK parliamentarians had their integrity challenged (representing their constituencies vs making responsible decisions) which was topped by the fact that the referendum is not a legally binding democratic instrument in the UK. Brexit caused distress not only to the political elites of the UK, to the Union, and the citizens, but challenged the traditional British constitutional structure itself, which inspires questions regarding the stability of democratic quality in the country.

Luxembourg, a tiny country with a population not exceeding 700,000, is a unique consociative democracy with a strong liberal constitutional tradition and a general aptitude for cooperation, both externally (the Grand Duchy is one of the founding members of the EU) and internally (the consensus-driven behaviour of political groups). A country, where, as surveys show, the

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[1] BBC News: EU Referendum Results. Source: https://www.bbc.co.uk/news/politics/eu_referendum/results (Accessed on: 10/02/2023)
[2] BBC News: Theresa May's 'letter to the nation' in full. Source: https://www.bbc.com/news/uk-politics-46333338 (Accessed on: 10/02/2023)

people's support for democracy and trust in public institutions are particularly high, and which generally performs well in democracy indices too. However, from a socio-political perspective, democracy in the Grand Duchy appears to be challenged. Luxembourg, a country of multiculturalism and multilingualism, with over 50%, is the EU member state with the highest proportion of non-national residents.[3] As a result of the 2015 referendum, which could have barely rejected the idea of giving national elective rights to the foreigner residents more clearly, the 2020-2023 constitutional reform package could not demonstrate substantial democratic innovations in this regard. Although the reform does give way to the possibility to include non-national residents in referenda (solely consultative), the question of the democratic deficit due to the underrepresentation of virtually half of the society is still pending.

In July 2014, in Băile Tuşnad, Romania, Viktor Orbán Hungarian prime minister declared that Hungary is an 'illiberal state', as liberal democracy neither had obliged the previous governments to serve the national interests nor had protected the families from falling into debt slavery due to the failed foreign currency loans. Orbán argued as follows: "(…) the Hungarian nation is not simply a group of individuals but a community that must be organised, reinforced and in fact constructed. (…) the new state that we are constructing in Hungary is an illiberal state, a non-liberal state. It does not reject the fundamental principles of liberalism such as freedom (…), however, it does not make this ideology the central element of state organisation; instead, it includes a different, unique, national approach".[4] In 2014, the European Parliament triggered Article 7(1) TEU based on the "existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded"[5]. In 2022, the European Parliament further condemned the "deliberate and systematic efforts of the Hungarian government" to undermine European values and declared that the country can no longer be considered a full democracy, but an "electoral autocracy"[6]. The new Hungarian illiberalism, the mechanics of populism, the deterioration of democracy along with the rising authoritarian tendencies, and

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[3] Research Luxembourg (2022): Luxembourg Has the Highest Proportion of Foreign-Born Residents in Europe. Source: https://www.researchluxembourg.org/en/luxembourg-has-the-highest-proportion-of-foreign-born-residents-in-europe/ (Accessed on: 10/02/2023)
[4] Viktor Orbán's speech about the illiberal state. 2014, Băile Tuşnad, Romania. Source: https://www.youtube.com/watch?v=ZVwILpDagpg (Accessed on: 10/02/2023)
[5] European Parliament (2018): EP Resolution 2017/2131(INL). Source: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340_EN.html (Accessed on: 12/02/2023)
[6] European Parliament (2022): MEPs: Hungary can no longer be considered a full democracy. Source: https://www.europarl.europa.eu/news/en/press-room/20220909IPR40137/meps-hungary-can-no-longer-be-considered-a-full-democracy (Accessed on: 12/02/2023)

the Orbán regime's repeated popular reinforcement through democratic elections provide a particularly attractive topic for academics in political science.

One may raise the following questions: what makes a democracy "strong", "weak", or "vulnerable"? How long do we have to look back in time to gain a genuine understanding of the political consequences of today's democratic challenges in these countries? To explain these political dynamics and political challenges, the thesis offers a conceptual framework which places the evolution of the democratic political culture in the spotlight. For the exploration of the latter, the thesis thus uses a framework which explains the situation of democratic quality today in these countries through their political cultures. Our hope is that by identifying the major shifts and challenges to the political cultures of our selected cases, we might understand better today's democratic challenges these countries are facing. Our conclusions may allow us to forecast the dynamics of potential democratic improvement or backsliding and may permit theoretical concepts valid beyond the comparative case study.

Linking the quality of democracy to political culture is not new neither to the academic literature nor to practical democracy assessment frameworks. A practical example of the latter, the Economist Intelligence Unit's annual democracy index, besides, government functioning, democratic participation, or civil rights, uses political culture among its variables. As to the literature, in 2015, Weßels found that "longstanding democracies in Europe face much less change and decline in support than the new democracies of the 1990s"[7] and "the younger a democracy is, the more vulnerable it is". Furthermore, in Western Europe "the idea of democracy, its norms and its rules are so highly relevant to the people and constitutionally so strongly protected that (…) rollback of the normative dimension of democracy seems rather unlikely"[8].

Weßels thus introduces a concept of democratic vulnerability, explaining it by the age of democracy. The thesis is inspired by the latter concept but also aims to elaborate it. The research investigates the historical perspective by identifying three characteristics of political culture based on the literature of democracy studies: continuity, stability, and fragmentation. The objective is to find correlations among the latter three variables and use them to analyse democratic stagnation and decline in the case study. Beyond identifying the above three

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[7] Weßels, B. (2015): Political Culture, Political Satisfaction and the Rollback of Democracy. Global Policy Volume 6. Supplement 1. June 2015. p. 96
[8] Ibid., p. 104

characteristics, the thesis also offers an easy, four-level model for political culture to make it possible to connect the latter to the factors of the quality of democracy.

The thesis encompasses a multidisciplinary approach by linking political science and law. The comparative study is built on a most different cases design. Comparing Hungary, Luxembourg, and the UK using the most different cases research methodology can provide valuable insights into the variations in political culture and the quality of democracy among these countries. Since these three countries represent a diverse set of political systems, the comparison of these countries can provide insights into the various challenges facing democratic institutions in different contexts. Comparing these countries using the most different cases research design methodology allows us to control for external factors that might influence the quality of democracy. Understanding the factors that contribute to the strength or weakness of democratic institutions in different contexts may help improve democratic practices and ensure that democratic values are upheld.

I.1 Research Questions

The research questions which lead the thesis are shown in the table below, followed by a visual abstract.

Table 1: Research Questions

Exploratory	**What is the relationship between the quality of democracy and political culture?**
	To what extent and how does a country's political culture determine the quality of democracy in that country?
	Why do we experience democratic backsliding or stagnation in all three selected cases – the UK, Luxembourg, and Hungary?
	What is the relationship between political culture and democratic stability?
	What is the relationship between democratic backsliding and the quality of democracy?
Predicting	How to prevent democratic backsliding?

I.2 Visual Abstract

Figure 1: Visual Abstract

POLITICAL CULTURE

Fragmentation
Stability
Continuity

SYSTEM

Type of democracy
Constitutional order
Pluralism

INSTITUTIONS

Goverment
Parliament
Judiciary

CIVIL SOCIETY

Political parties
Civil society organisations
Trade unions

THE CITIZEN

Citizen trust
Perceptions
Level of interest

The Rule of Law
The Functioning of Civil Society

THE QUALITY OF DEMOCRACY

WHY? HOW?

Decreasing
or stagnating?

Increasing?

BACKSLIDING,
STAGNATION

IMPROVEMENT

COMPARATIVE CASE STUDY

I.3 Structure

The purpose of the first major, theoretical part of the thesis is to explore some key concepts of modern democracy, followed by the framework on the quality of democracy. This first part introduces two interpretations of possible hierarchical systems of the factors of democratic quality. The first, top-down/institutional approach places the rule of law on the bottom of the pyramid, identifying it as the most important 'deficiency need' for a democracy without which the rest of the elements cannot function 'healthily'. The second, bottom-up interpretation outlines a pyramid which relies on the functioning of civil society. Later, the chapter introduces the literature on political culture, and explains the four-level model the thesis uses for connecting the former to democratic quality. The first part also includes an explanation of the case study (including the case selection), the research methodology, as well as the hypotheses, The second part focuses on empirical research based on a logic which follows the macro, meso, and micro levels of political culture. The thesis is guided by the identified variables and investigates citizen trust and perceptions, the constitutional traditions, the democratic evolution, the situation of fundamental rights, the civil society, and the question of political parties and political plurality in the case studies. The third part includes the analysis based on the empirical research and collects the empirical findings, deducing theoretical conclusions.

II Theoretical Framework

II.1 Concepts of Modern Democracy

The purpose of the first part of the research is to summarize and compare some key concepts of modern democracy: the democracy framework of Robert A. Dahl, Rawl's normative democracy concept, the deliberative democracy theory by Jürgen Habermas, and the framework of liberal democracy intertwined with democratic quality by Larry Diamond and Leonardo Morlino.

II.1.1 Dahl's Theory on Democracy

In his 1998 work 'On Democracy', Robert A. Dahl starts his explanation of democracy by depicting a cooperative association, which association he identifies with the state. This 'association' needs a constitution which enables it to deliberate, discuss, and decide on policies. By the assumption that all members are capable of learning what is to be known, thus all are equally qualified, the constitution must be 'democratic'. However, Dahl points out that various sorts of constitutions are called democratic while they are differentiated in many ways. Consequently, no single definition exists for 'the democratic constitution'. Still, there are commonalities in these constitutions, a set of principles, such as "all members are to be treated as if they were equally qualified to participate in the process of political decision making, (…) provided they have adequate opportunities to learn about the matters by inquiry, discussion, and deliberation"[9]. This is what Dahl defines as *political equality*.

Dahl identifies five fundamental criteria that must be understood as the criteria for a democratic process. Dahl considers these criteria obligatory if the members of the 'association' are to be politically equal, presenting them as guides for formulating constitutions and political institutions.

(1) Effective participation: "Before a policy is adopted by the association, all the members must have equal and effective opportunities for making their views known to the other members as to what the policy should be."[10] The term concerns members (the citizens) of democracy. Citizens must have both the ability and the opportunity to provide questions, give

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[9] Dahl, R. A. (1998): On Democracy. Yale University Press, New Haven and London. p. 36
[10] Ibid., p. 37

suggestions, provide reasoning, and indicate preferences that can be found on the political agenda.

(2) Voting equality at the decisive stage: "When the moment arrives at which the decision about policy will finally be made, every member must have an equal and effective opportunity to vote, and all votes must be counted as equal."[11] Furthermore, this equality must be a reality and not just a spoken idea.

(3) Enlightened understanding: "Within reasonable limits as to time, each member must have equal and effective opportunities for learning about the relevant alternative policies and their likely consequences."[12] There must be ways for the members of the democracy to learn about the different choices provided to them. In this way, each citizen can make a choice according to their interest. Therefore, each citizen is *enlightened with understanding* as to what the best decision might be for the representation of their interest.

(4) Control of the agenda: "The members must have the exclusive opportunity to decide how and, if they choose, what matters are to be placed on the agenda. Thus, the democratic process required by the (...) preceding criteria is never closed. The policies of the association are always open to change by the members, if they so choose."[13] Citizens must have the ability to help form the actual agenda. In other words, citizens should be allowed to indicate both general and specific matters that should be discussed and eventually decided upon, according to their interests.

(5) Inclusion of adults: "All, or at any rate most, adult permanent residents should have the full rights of citizens that are implied by the first four criteria. Before the twentieth century, this criterion was unacceptable to most advocates of democracy."[14] Simply put, the democratic process must be available to all citizens within the democratic system.

Nonetheless, we see a more limited form of democracy in Dahl's theory of polyarchy, where he depicts two dimensions, namely opposition (organised contestation through regular, free, and fair elections) and participation (the right of all adults to vote and contest for office). Plus, he adds a third dimension, without which the first two cannot prevail: civil liberty. Besides the right to participate (vote and contest for office), polyarchy encompasses the freedom to speak and publish dissenting views, freedom to form and join organisations, and alternative sources

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[11] Ibid., p. 37
[12] Ibid., p. 37
[13] Ibid., p. 38
[14] Ibid., p. 38

of information as well.[15] However, in modern history there has not been a perfect democracy in which all citizens have equal political resources and in which the government is completely responsive to all citizens, that is why Dahl uses the term polyarchy to characterise a rather limited form of democracy that has been attained to date.[16]

Dahl furthermore assumes that a "key characteristic of democracy is the continuing responsiveness of the government to the preferences of its citizens, considered as politically equal"[17]. For this, Dahl states that "all citizens must have unimpaired opportunities (1) to formulate their preferences, (2) to signify their preferences to their fellow citizens and the government by individual and collective action (Habermas calls these private and public autonomies), and (3) to have their preferences weighed equally in the conduct of the government, that is, weighed with no discrimination because of the content or source of the preference"[18].

Along with the statements above, Dahl defines eight requirements for democracy[19]:

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[15] Diamond, L. (2003): "Defining and Developing Democracy" in: The Democracy Sourcebook. ed. Dahl, R. A., et al. pp. 31-32

[16] Diamond, L. (2003): "Defining and Developing Democracy" in: The Democracy Sourcebook. ed. Dahl, R. A. et al. The MIT Press, Massachusetts. p. 38

[17] Dahl, R. A. (1971): Polyarchy. Yale University Press, New Haven and London. p. 1

[18] Ibid., p. 2

[19] Ibid., p. 3

Figure 2: Dahl's Eight Requirements for Democracy
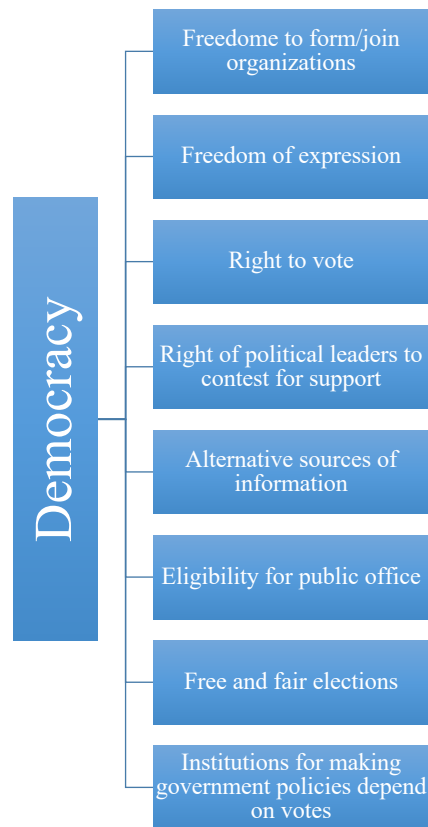
For methodological considerations, based on the above characteristics ("guarantees") Dahl deduces two different theoretical dimensions of democratisation: a scale reflecting the eight characteristics, with the aim of comparing regimes in terms of opposition, public contestation, and political competition; secondly, a scale reflecting the breadth of the right to participate in public contestation, with the aim of comparing regimes in terms of inclusiveness.[20]

II.1.2 Liberal Democracy and the Quality of Democracy

II.1.2.1 Liberal Democracy

Liberal democracy is the starting point for understanding the concept of the quality of democracy. Larry Diamond distinguishes liberal democracies from electoral democracies. Electoral democracy is a civilian, constitutional system in which the legislative and chief

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[20] Dahl, R. A. (1971): Polyarchy. p. 4

executive offices are filled through regular, competitive, multiparty elections with universal suffrage, with minimalist conceptions of electoral democracy, minimum levels of freedom (of speech, press, organisation, and assembly). Diamond calls this concept "flawed", pointing out that it privileges elections over other dimensions of democracy and ignores the degree to which multiparty elections may exclude segments of society from contesting for power.[21]

According to Diamond, liberal democracy however can overcome the flaws of electoral democracy by relying on **vertical accountability of the rulers to the ruled and horizontal accountability of officeholders to each other**, on provisions "for political and civic pluralism as well as (provisions) for individual and group freedoms beyond periodic elections, where **freedom and pluralism are secured by the rule of law** in which legal rules are applied fairly, consistently, and predictably across equivalent cases, irrespective of the class, status, or power of those subject to the rules"[22].

In line with the above statements, Diamond distinguishes ten components of liberal democracy[23]:

- vertical accountability, meaning the control of the state and its key decisions
- horizontal accountability, meaning the executive power is constrained constitutionally by the autonomous power of other government institutions
- all groups of society that adhere to constitutional principles have the right to form a party and contest elections
- minority groups are not prohibited from expressing their interests in the process of political decision-making, or from practising their culture
- citizens have multiple channels for expressing and representing their interests and values, including forming or joining independent associations
- alternative sources of information (free, independent media)
- freedom of belief, opinion, discussion, speech, publication, assembly, demonstration, and petition is guaranteed
- political equality of citizens under the law
- independent, non-discriminatory judiciary

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[21] Diamond, L. (2003): "Defining and Developing Democracy" in: The Democracy Sourcebook. ed. Dahl, R. A., et al. pp. 32-33
[22] Ibid., pp. 34-35
[23] Ibid., pp. 35-36

- the rule of law protects citizens from unjustified detention, exile, terror, torture, and undue interference of their personal lives both by state and non-state forces.

II.1.2.2 Democratic Quality Assessment by Larry Diamond and Leonardo Morlino

The quality of democracy assesses the functioning of the given democratic system while providing a set of minimum standards to improve the functioning of democracy, and to facilitate comparisons between different states.

Diamond and Morlino present a multidimensional normative framework for the quality of democracy. When describing democratic quality, Diamond and Morlino focus on what system can be understood as a 'good' democracy. *What are the features of a good democracy? To what extent is it possible to understand democratic quality as a universal norm? How to frame and assess the quality of democracy?* "First, **deepening democracy is a moral good** (...), second, **reforms to improve democratic quality** are essential if democracy is to achieve the **broad and durable legitimacy** that marks consolidation; third, long-established democracies must also reform if they are to attend to their own gathering problems of public dissatisfaction."[24]

In their work 'Assessing the Quality of Democracy', Diamond and Morlino elaborate on democratic quality by setting up a system of eight strongly interdependent - at times overlapping – dimensions that constitute a good or high-quality democracy, where "improvement in one dimension can have diffuse benefits for others"[25]. Furthermore, "each democracy must make an inherently value-laden choice about *what kind of democracy* it wishes to be"[26].

Table 2: L. Diamond and L. Morlino: Eight Dimensions of Democratic Quality

PROCEDURAL	*SUBSTANTIVE*	*Linking procedural and substantive dimensions*
rule of law	civil and political freedoms	responsiveness

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[24] Diamond, and Morlino (eds)(2005). Assessing the Quality of Democracy. The John Hopkins University Press, Baltimore. Introduction. p. 9

[25] Ibid., p. 10

[26] Ibid., pp. 10-11

participation	political (and economic and social) equality	
competition		
horizontal accountability		
vertical accountability		

Diamond and Morlino define the factors of democracy at a minimum level. "Democracy requires: 1) universal, adult suffrage; 2) recurring, free, competitive and fair elections; 3) more than one serious political party; and 4) alternative sources of information"[27].

The Factors of the Quality of Democracy Model

(1) Rule of Law. Diamond and Morlino identify the 'good' democracy with liberal democracy when seeking to depict its characteristics in a comprehensive manner. Liberal democracy requires "a strong, vigorous, diffuse and self-sustaining rule of law"[28] which they present through the following ten criteria:

- the law is equally enforced toward everyone.
- the legal state is supreme throughout the country.
- corruption is minimized, detected, and punished.
- the state bureaucracy at all levels competently, efficiently, and universally applies the laws.
- the police force is professional, efficient, and respectful of individuals' legally guaranteed rights and freedoms.
- citizens have equal and unhindered access to the justice system.
- criminal cases and civil and administrative lawsuits are heard and resolved expeditiously.
- the judiciary at all levels is neutral and independent.
- rulings of the courts are respected and enforced.
- the constitution is supreme and is interpreted and defended by a Constitutional Court.[29]

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[27] Ibid., p. 11
[28] Ibid., p. 14
[29] Ibid., p. 14-16

Traditions and political culture are highlighted in the aspect of rule of law. 'The most important conditions aiding the development of the rule of law are the diffusion of liberal and democratic values among both the people and, especially, the elite; strong bureaucratic traditions of competence and impartiality; and the institutional and economic means for fully implementing a rule of law'. According to the analysis, the existence of a mobilized and aware civil society and efficient democratic instruments of competition are crucial so that voters can remove public officials who obstruct rule of law reforms.

(2) Participation. As Diamond and Morlino explain, "no regime can be a democracy unless it grants all of its adult citizens formal rights of political participation". Furthermore, the authors define participation as the citizens' "right to vote, to organize, to assemble, to protest, and to lobby for their interests"[30]. Diamond and Morlino link the dimension of participation to the conditionality of equality, political culture, and education: "inequalities in political resources can make it much more difficult for lower-status individuals to exercise their democratic rights of participation"[31].

(3) Competition. Competition means that a liberal democracy must have regular, free and fair electoral competition between different political parties. As Diamond and Morlino also emphasize, "electoral systems based on proportional representation score well on one element of competitiveness"[32], however, democracy may experience a trade-off, as this happens at the expense of another element of competitiveness, the ease of alternation of power (e.g., majoritarian systems such as the UK).

(4) Vertical Accountability. As Diamond and Morlino define, "accountability is the obligation of elected political leaders to answer for their political decisions when asked by citizen-electors or other constitutional bodies (...). Accountability can be either vertical or horizontal. Vertical accountability is that which citizens as electors can demand from their officials in the course of campaigns and elections, and which political and civil society actors can exercise at moments of political controversy"[33]. Through two assumptions rooted in the liberal tradition, Diamond and Morlino explain the essential nature of accountability, pointing out the interconnectedness of all of the eight dimensions: firstly, "if citizens are genuinely given the opportunity to evaluate the government's performance, they are in fact capable of doing so,

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[30] Ibid., pp. 14-16
[31] Ibid., pp. 17-18
[32] Ibid., pp. 17-18
[33] Ibid., pp. 19-21

possessing above all a relatively accurate perception of their own needs and preferences", and secondly, "citizens, either alone or as part of a group, are the only possible judges of their own interests and needs; no third party can determine them".[34]

(5) Horizontal Accountability. When explaining why they distinguish two separate types of accountability, Diamond and Morlino argue that "democratic quality also requires that office holders answer for their conduct to and have it reviewed by other institutional actors that have the expertise and legal authority to control and sanction their behaviour. In contrast to vertical accountability, the actors are, more or less, political equals"[35].

(6) Freedom. When Diamond and Morlino talk about freedom, they understand it as the complex of political, civil, and social rights. Under political rights they mention the "rights to vote, to stand for office, to campaign, and to organize political parties"[36]. Under essential civil rights, David and Morlino mean in particular "personal liberty, security, and privacy; freedom of thought, expression, and information; freedom of religion; freedom of assembly, association, and organization (including the right to form and join trade unions and political parties); freedom of movement and residence; and the right to legal defence and due process"[37].

(7) Equality. Under equality Diamond and Morlino mean "the formal political equality of all citizens"[38], which relies on two fundamental principles that must prevail in every democracy: the principles of equal rights under the law, and one person one vote. The value that "every citizen and group have the same rights and legal protections, and also meaningful, reasonably prompt access to justice and to power" is presented as a cornerstone of a good democratic system too, as these principles entail as well "prohibition of discrimination on the basis of gender, race, ethnicity, religion, political orientation, or other extraneous conditions".[39]

(8) Responsiveness. The last dimension of the conceptual framework of the quality of democracy is the one that links all other factors together. In nutshell, responsiveness means government responsiveness to the expectations, interests, needs, and demands of citizens[40].

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[34] Ibid., pp. 19-21
[35] Ibid., pp. 21-25
[36] Ibid., pp. 25-26
[37] Ibid., pp. 25-26
[38] Ibid., pp. 26-29
[39] Ibid., pp. 25-26
[40] Ibid., pp. 29-31

II.1.2.3 Other Approaches for Assessing Democratic Quality

In his work on the quality of democracy in Eastern Europe after the fall of the socialist regimes, Andrew Roberts collects the parameters of different democratic quality assessment frameworks, i.e., the frameworks of Altman and Pérez-Liñán, Beetham et al., Diamond and Morlino, Lijphart, O'Donnel, and Putnam et al. [41]

Table 3: Democratic Quality Assessment Frameworks (A. Roberts)

Altman and Pérez-Liñán (2002)	Beetham et al. (2002)	Diamond and Morlino (2005)	Lijphart (1999)	O'Donnel (2004)	Putnam et. al. (1994)
Effective civil rights	Citizenship, law, and rights	Rule of law	Democracy	Elections	Policy process
Effective participation	Representative and accountable government	Participation	Women's representation	Government	Policy pronouncements
Effective competition	Civil society and popular participation	Competition	Political equality	Legal system	Policy implementation
	Democracy beyond the state	Vertical accountability	Electoral participation	State and government	
		Horizontal accountability	Satisfaction with democracy	Courts	
		Freedom	Government-voter proximity	State institutions	
		Equality	(fighting) Corruption	Social context	

[41] Roberts, A. (2009): The Quality of Democracy in Eastern Europe – Public Preferences and Policy Reforms. Cambridge University Press, Cambridge. p. 27

		Responsiveness	Popular cabinet support	Human development	
			Kinder and gentler qualities	Human rights	

After providing the above comparison, Roberts discusses certain preconditions which are necessary for the improvement of democratic quality, such as human development. The latter factor was pointed out by O'Donnell who argued that a country must achieve a certain level of human development for the citizens to be able to exercise "the agency on which democratic procedures are based"[42]. Further preconditions collected by Roberts are the rule of law as a sort of basis for other democratic quality factors to perform well, participation, civil society, socio-economic equality, and the fight against corruption (Diamond and Morlino mention it under the rule of law).

In later sections the thesis offers two ways to interpret democratic quality factors, placing them in a hierarchical system. The first interpretation relies on the rule of law as the basis of democratic functioning and democratic quality. The second interpretation puts the focus on civil society and the quality of its functioning.

II.1.3 Rawl's Normative Political Justice

II.1.3.1 Three Pillars of a Democratic Political Culture

In his work 'A Theory of Justice' (1971), fundamental for the evolution of the concept of liberal democracy, Rawls names three (widely acknowledged) pillars of a democratic political culture: freedom, equality, and fairness, i.e., citizens are *free and equal*, in a *fair* system. The question he raises is about the different definitions and interpretations of these pillars. Synthesising the characteristics of liberal political concepts, he finds that (1) **a liberal political conception of justice** will ascribe to all citizens rights and liberties, e.g., the freedoms of thought, expression, conscience, and association (2); the **priority of these rights and liberties**, and (3) means provided to the citizens to make **effective use** of their freedoms. Furthermore, regarding the institutions of liberal democracy, he points out several demands: "a decent distribution of

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[42] Ibid., p. 28

income and wealth; fair opportunities for all citizens, especially in education and training; government as the employer of last resort; basic health care for all citizens; and public financing of elections"[43].

II.1.3.2 The Free and Equal, Reasonable and Rational Citizen

The freedom and equality of citizens is a long-standing pillar of democracy. The counterpart of citizen rights and equality is the **(self-)engagement** of the citizens, i.e., the utilisation of the rights. In his concept explained in 'On Democracy', Dahl, for instance, calls this condition "effective participation" and "enlightened understanding". In his theory of two moral powers, Rawls also names the criteria of **reasonable and rational citizens**. Under reasonable, he understands the capacity for a "sense of justice", while under rational, he refers to the capacity for "a conception of the good".[44]

II.1.3.3 Two Principles of Justice

Rawls defines two principles of justice: "first: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all"[45], where point (a) refers to the principle of fair equality of opportunity: "in all parts of society there are to be roughly the same prospects of culture and achievement for those similarly motivated and endowed"[46], and (b) refers to the difference principle: the regulation of wealth distribution. The first principle enjoys priority, as in Rawl's understanding fundamental rights must not be traded off against collective social advantage of other nature (e.g., economic growth)[47]. In 'Political Liberalism' (1995), he further confirms the priority of the rights as "an essential element (…) of political liberalism"[48]. Rawls's concept points out the nature of the relationship between the individual and the collective: "each person possesses

[43] Stanford Encyclopedia of Philosophy (2008): John Rawls. Source:
https://plato.stanford.edu/entries/rawls/#LegLibPriLeg (Accessed on: 11/07/2022)
[44] Rawls, J. (1995): Political Liberalism. Columbia University Press, New York. pp. 173-211
[45] Rawls, J. (1999): A Theory of Justice (Revised edition). The Belknap Press of Harvard University Press, Cambridge, Massachusetts. p. 53
[46] Ibid., p. 63
[47] Ibid., pp. 65-73
[48] Rawls, J. (1995): Political Liberalism. p. 173

an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason, justice denies that the loss of freedom for some is made right by a greater good shared by others"[49].

II.1.3.4 Perfect and Imperfect Procedural Justice

Rawls distinguishes perfect and imperfect procedural justice. The former (the cake division example) depicts a solution for the division of goods which, firstly, includes a definition of fair division itself determined a priori, and secondly, suggests that there is a possibility for a procedure resulting in the desired outcome.[50] The latter, i.e., imperfect procedural justice is demonstrated by a criminal trial example:

> "Different arrangements for hearing cases may (...) be expected in different circumstances to yield the right results (...). A trial, then, is an instance of imperfect procedural justice. Even though the law is carefully followed, and the proceedings fairly and properly conducted, it may reach the wrong outcome. (...) In such cases we speak of a miscarriage of justice: the injustice springs (...) from a fortuitous combination of circumstances which defeats the purpose of the legal rules. (...) while there is an independent criterion for the correct outcome, there is no feasible procedure which is sure to lead to it."[51]

II.1.3.5 The Liberal Principle of Legitimacy

In his work, 'Political Liberalism' (1993), Rawls explains the liberal principle of legitimacy as follows: "our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason. (…) To this adds it adds that all questions arising in the legislature that concern or border on constitutional essentials, or basic questions of justice, should also be settled, so far as possible, by **principles and ideals** that can be similarly endorsed. **Only a political conception of justice that all citizens might be reasonably expected to endorse can serve as a basis of public**

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[49] Rawls, J. (1999): A Theory of Justice. p. 3
[50] Ibid., pp. 74-75
[51] Ibid., p. 75

reason and justification".[52] In addition, by the 'criterion of reciprocity' (i.e., the reciprocity between law and the citizens), the citizens must have confidence that everyone can reasonably accept the enforcement of the laws, and "those coerced by law must be able to endorse the society's fundamental political arrangements freely, not because they are dominated or manipulated or kept uninformed"[53].

II.1.4 Habermas's Discourse Theory of Deliberative Democracy

II.1.4.1 Discourse Theory: Argumentation as a Social Practice

Habermas's discourse theory calls for a pragmatic analysis of argumentation as a social practice, while reconstructing the normative presuppositions (ideals and rules) beyond the social debate. In his discourse theory of deliberative democracy, Habermas applies his theory in practice by connecting it with the real institutional context of political decision-making. Argumentation as an instrument (argument as a product, as a procedure, and as a process) has a central place in Habermas's concept.[54] In the context of modern society, argumentation means public deliberation, discussion, and debate on policy issues. Habermas uses the term 'discourse principle' (valid for all types of practical discourse, not only moral discourse) for his conception of practical discourse. The discourse principle can be defined as follows: a rule of action is justified and valid only if all those affected by the given action could accept it in a reasonable discourse.[55]

Habermas is highly concerned by two aspects of practical discourse: moral and legal-political discourse, which we can lead back to the traditional dichotomy of law and morality. In his discourse theory of morality, the question in focus is discursively justifying norms with the specific content of moral norms, such as obligations that bind persons in general. Like Kant, Habermas considers morality a matter of unconditional moral obligations: prohibitions, positive obligations, and permissions that regulate interaction amongst persons.[56] His discourse principle articulates a crucial assumption: one may be morally impartial only by engaging in

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[52] Rawls, J. (1995): Political Liberalism. p. 137
[53] Stanford Encyclopedia of Philosophy (2008): John Rawls. Source: https://plato.stanford.edu/entries/rawls/#LegLibPriLeg (Accessed on: 11/07/2022)
[54] Habermas, J. (1984): The Theory of Communicative Action (Volume One): Reason and the Rationalization of Society. p. 26
[55] Habermas, J. (1990): Moral Consciousness and Communicative Action. Cambridge, MA: MIT Press. p. 66
[56] Stanford Encyclopedia of Philosophy: Jürgen Habermas. Source: https://plato.stanford.edu/entries/habermas/

real discourse with all those affected by the issue in question. This assumption leads us to his 'dialogical principle of universalization': a moral norm is valid only if the foreseeable consequences and side effects of its general observance for the interests and value-orientations of each individual could be jointly accepted by all concerned without coercion[57]. He considers this a principle of real discourse: "an individual's moral judgment counts as fully reasonable only if it issues from participation in actual discourse with all those affected, where the principle of universalization requires that one gains the reasonable agreement of others in the process of forming one's conscience"[58].

Habermas acknowledged the need to put this highly idealized concept down to earth and connect it with real life. In moral discourse, one must test alternative normative interpretations of the particular situation for their acceptability before those involved, on the assumption that one is applying valid general norms. The problem, however, is that discourse cannot include all members of society who are affected by the given issue. Habermas thus assumes that the best achievable result is partial justification: arguments that are not conclusively convincing for all.[59] Clearly, one can see the limit of his theory in this practical aspect.

In his discourse theory of law and politics, the central question is to provide a normative account of legitimate law. In his 1996 work, 'Between Facts and Norms', he demonstrates his deliberative democracy theory. He starts with the problem of social stability, which he links with legitimacy. This requires social accordance on what to consider true, right, and good.

Figure 3: Habermas – Normative Accordance and Stability

In the history of Western modernization, religious pluralism and functional differentiation gave ground to conflict over what is good and what is right. Modern law, however, can be understood as a functional solution to the potential conflicts rooted in modernization, where modern law

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[57] Habermas, J. (1998): Inclusion of the Other: Studies in Political Theory. p. 42
[58] Stanford Encyclopedia of Philosophy: Jürgen Habermas.
[59] Ibid.

is essentially concerned with the definition and protection of individual freedoms in the institutional context. According to his theory in Between Facts and Norms, to be legitimate, modern law must secure the private autonomy of those subject to it, which presupposes an established legal code of equal citizenship in terms of basic rights for individual freedom.

II.1.4.2 Habermas's Typology of Basic Rights

The following list demonstrates Habermas's typology of basic rights[60]:

1. "Basic rights that result from the politically autonomous elaboration of the right to the greatest possible measure of equal individual liberties."
2. "Basic rights that result from the politically autonomous elaboration of the status of a member in a voluntary association of consociates under law."
3. "Basic rights that result immediately from the actionability of rights and from the politically autonomous elaboration of individual legal protection."
4. "Basic rights to equal opportunities to participate in processes of opinion-and-will-formation in which citizens exercise their political autonomy and through which they generate legitimate law."
5. "Basic rights to the provision of living conditions that are socially, technologically, and ecologically safeguarded" for citizens to have equal opportunities.

Basic rights can secure freedom only if citizens can also understand themselves as the authors of the laws interpreting their rights (through private and public autonomy). Consequently, the inclusion of political participation in such a set of basic rights is inevitable. Each of private and public autonomy can be fully realized only if the other is fully realized as well.[61] Public autonomy presupposes participants who understand themselves as privately autonomous, which in turn presupposes that they can shape their individual freedoms through the practice of public autonomy.[62]

Thus, Habermas considers private and public autonomy as a system of basic rights generated by reflection on the nature of discursive legitimation, where the system of basic rights articulates the normative framework for constitutional democracies.[63] Public autonomy is

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[60] Habermas, J. (1996). Between Facts and Norms. The MIT Press. Cambridge, Massachusetts. pp. 122-123
[61] Stanford Encyclopedia of Philosophy: Jürgen Habermas.
[62] Ibid.
[63] Ibid.

practised through public discourse which impacts political decision-making in legislative bodies.

II.1.4.3 Habermas's Democratic Principles

In his "democratic principle of legitimacy", Habermas states that "only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted"[64]. In line with the above statement, conflict resolutions must happen through a fair bargaining process. [65]

For a better understanding, I summarise Habermas's three principles in the table below.

Table 4: Habermas's Democratic Principles

	Discourse Principle	**Principle of Universalization**	**Principle of Legitimacy**
Definition	A rule of action is justified and valid only if all those affected by the given action could accept it in a reasonable discourse.	A moral norm is valid only if the foreseeable consequences and side effects of its general observance for the interests and value-orientations of each individual could be jointly accepted by all concerned without coercion.	Only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted.
Purpose	Action gains justification only by social discourse.	A (universalized) norm gains justification only by social discourse.	Legitimacy gains justification only by discursive legislation.

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[64] Habermas, J. (1996). Between Facts and Norms. p. 110
[65] Stanford Encyclopedia of Philosophy: Jürgen Habermas.

Criteria	Impartiality, discourse.	Social agreement through real discourse.	Involvement of the whole of the society.

II.2 Methodology

II.2.1 Introduction to the Choice of Methodology

When choosing a model as a starting point for the thesis, the first question is which of the outlined frameworks is the best suiting for linking theory with real institutional and societal context. The second factor is to consider the potential variables for the comparative analysis. The third factor is the transparency of the model regarding its applicability in practice.

After introducing different frameworks on democracy, the democratic quality model of L. Diamond and L. Morlino appears to be the most suitable starting point for linking aspects of democratic quality to political culture and conducting the analysis to meet the objectives of the thesis. The democratic quality model is sufficiently transparent as it breaks down governmental functioning into its elements by categorising them into three main dimensions and eight sub-dimensions. Thus, the model provides the possibility for the conduction of a comparative analysis per component of democratic quality. A comparative case study of democratic functioning requires this type of approach as the model also gives way to link theory with reality in a transparent and efficient way. Furthermore, the model of Diamond and Morlino consists of eight sub-dimensions. The elements of the quality of democracy model provide good grounds for rethinking the concept of democratic quality and linking it with political culture for guiding the analysis.

The thesis maintains the link between the quality of democracy model and the model of liberal democracy as described by Diamond: a high-quality democracy presupposes a liberal democracy. Diamond's concept includes several normative factors which are considered indispensable elements of today's modern democracy not only by academic forefathers and peers, but by international organisations, such as the Council of Europe, too.

The quality of democracy model of Diamond and Morlino has its limits (for instance, in terms of depicting the hierarchical and interdependent relationship between its factors as well as missing a real profound grasping of some normative elements such as academic or media

freedom, transparency, and the fight against corruption, or the societal and citizens' perceptions of democratic functioning). These limits, on the other hand, serve the model in the sense that it makes quantitative analysis more feasible than a concept encompassing a potential hierarchical categorisation or relationships between the factors. Nevertheless, the thesis approaches the question of democratic quality in a broader sense. Firstly, it considers historical perspectives through the evolution of the democratic political culture. Secondly, it offers two interpretations of a hierarchical model of democratic functioning. Thirdly, it involves subjective democratic quality and links it to democratic stability and vulnerability. It focuses on the level of citizens through the following factors: the citizens' perception of their democratic system, their confidence in democratic institutions as well as in that their democratic system is functioning well, and their general interest in the political dynamics of their country.

Commonly used in political science, the comparative method gives an opportunity for more comprehensive explanations. Furthermore, it is an efficient tool for testing the hypotheses and a helpful method for further building theories.[66] As Lijphart argues, the method can be particularly useful for the "systematic analysis of a small number of cases"[67] - which is the core of the research's empirical part.

II.2.2 Research Design: Most Different Cases, Similar Outcome

The thesis builds on a comparative research design and uses the case selection technique of most different systems with a similar outcome (i.e., some type of democratic stagnation or backsliding). The design stems from the theory laid down by John Stuart Mill's "System of Logic" of 1843 and helps understand the underlying reasons of certain events that happen similarly in cases which are substantially differ from each other. That is what the field of scientific methodology calls most different systems (cases) with similar outcomes. First, to gain a deeper understanding about the quality of democracy, one must analyse countries which already have substantive democratic systems. Another option for analysis could be the comparative analysis of countries which are somewhere on the path of democratic transition (so-called hybrid regimes; the EIU democracy index places these between full/flawed

[66] Collier, David (1993): The Comparative Method. Political Science: The State of Discipline II, Ada W. Finifter, ed., American Political Science Association, 1993, Source: https://ssrn.com/abstract=1540884 (Accessed on: 15/02/2020)
[67] Lijphart, A. (1971): Comparative Politics and Comparative Method in "American Political Science Review" (65). pp 682-93.

democracies and authoritarian regimes) but do not have yet a substantive democracy. The thesis chooses the first option, as the main goal is to understand the reasons for the fallbacks of democratic quality in already functioning democracies and to find possibilities for helping stop democratic backsliding as well as for improvement.

Thus, the empirical part compares three cases which, although all considered democratic systems and European countries, are substantially different in their ways of democratic functioning, history, and political culture. Moreover, all three of them suffer some level of democratic backsliding or stagnation, due to different reasons. The thesis collects and analyses these reasons, explaining them through the features of the countries' political cultures.

Table 5: Variables

Independent variable:	**Political Culture**
Factors	(1) The continuity of the political culture
	(2) The stability of the political culture
	(3) The fragmentation of the political culture

Dependent variable A	**Democratic Quality**
Factors	(1) Constitutional and rule of law traditions
	(2) The functioning of the civil sphere (parties and organisations)
	(3) The citizens' perception of their own democracy, their confidence in institutions, and their level of interest in politics
	(4) Fundamental rights protection
Dependent variable B	**Democratic Backsliding**
Dependent variable C	**Democratic Stability**

To investigate the relationship among the above factors, political culture, democratic quality, democratic backsliding, and democratic quality, is not only reflected in the main hypotheses of the thesis but is also its the key objective. According to this model, the independent variable

influences the dependent variable, i.e., political culture influences (A) the quality of democracy, (B) democratic backsliding[68], and (C) democratic stability.

For making the analytical part of the thesis feasible, it is necessary to narrow down the number of factors covered in the analysis. The analysis of political culture, the independent variable, is conducted through the following aspects. Firstly, the tool: the analysis follows a four-level model of political culture consisting of macro, meso/I, meso/II, and micro levels which we explain in more detail in a later chapter. Secondly, the independent variables: the continuity, the stability, and the level of fragmentation of the political culture which the thesis defines in a later section.

Thirdly, among the dependent variables, the first element is the quality of democracy. The thesis focuses on the following four factors: firstly, the constitutional and rule of law traditions, which factor corresponds to the macro level of our analytical model of political culture and will help us investigate the provability of Hypothesis I. Secondly, the functioning of the civil sphere (parties and organisations), including the legal framework facilitating the functioning of the civil society – corresponding to meso/I and meso/II levels of our political culture model. The third variable, a grasp on subjective democratic quality, the citizens' perception of their democracy, their confidence in institutions, and their level of interest in politics, corresponds to hypothesis II and the micro level of the analytical model.

The second dependent variable is democratic backsliding. Referring to the hypotheses; certain settings of political culture may provoke democratic backsliding. One might pose the question, though, whether the improvement of quality of democracy and democratic backsliding are inversely proportionate. The answer is not so evident, as different dimensions of democratic quality might weigh differently while assessing the overall quality of democratic functioning in a country. A practical example: improving academic freedom in country X by granting state funding for students at independent foreign universities which work in that country will not help solve the issue of a reduction of the protection of ethnic, religious, or sexual minority rights (whereas minority protection is ideally constitutionalised in a high-quality democracy), or, certainly not in the short term. Granting state funding for these students does, however, contribute to the quality of democracy. The relationship between the improvement of the quality of democracy and democratic backsliding is therefore rather complex, they are not each other's antonyms. Thus, democratic backsliding must be considered a separate variable.

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[68] The framework tackles democratic stagnation under democratic backsliding.

Although not each other's antonyms, democratic quality and backsliding are in a close relationship, since if there is backsliding, it often means a weakening in one or more aspects of democratic quality. For understanding democratic backsliding better, we introduce two pyramids of democratic quality. The first pyramid reflects a top-down perspective, playing the rule of law at the bottom (basis) of the pyramid. The second one takes a bottom-up approach and defines the quality of the civil sphere and its functioning as its basis. On Maslowian grounds, both determine different categories of necessities of good democratic functioning: deficiency and growth needs. **The eroding of deficiency needs provokes the strongest types of backsliding** – as we found in the case of Hungary and in the UK. The thesis handles democratic stagnation as a part of its democratic backsliding definition, as stagnation means the lack of growth, while **a high-quality democracy inherently entails not only the possibility but also the willingness for democratic innovation and improvement.** One shall also consider the different channels of democratic backsliding: our different cases reveal the role of different actors which are responsible for backsliding or stagnation – at different levels of the political culture.

The third dependent variable is democratic stability. If we consider democratic stability with a similar normative approach as above, we can note that democratic stability does not mean democratic stagnation. A high-quality democracy demands democratic stability. Therefore, a *stable* high-quality democracy is looking for improvement, resulting in a **stable pattern of the willingness for democratic innovations** for higher democratic quality.

In our analysis, stability has a three-fold meaning. Firstly, the stability of the democratic political culture, one of our independent variables: (1) the stability of political culture itself, (2) the stability of progress in the quality of democracy within the political culture (i.e., the *stable pattern* pointed out above). Secondly, the stability of democratic institutions, which, however, is a dependent variable in our analysis. Thirdly, at the level of the citizens, **stability stems from the continuity** of democratic practices such as political participation (elections, petitioning), and holding the democratic institutions accountable. Therefore, the prediction is as follows: **the continuity of democratic practices provides for democratic stability** not only on the macro and meso but also on the micro level of political culture.

II.2.3 The Comparative Case Study: Case Selection Criteria

The purpose of the following pages is to explain the reasons for comparing the United Kingdom, Hungary, and Luxembourg to analyse the socio-political and institutional context and dynamics by embedding democratic quality into political culture.

II.2.3.1 Liberal-Illiberal Tradition

When choosing the subjects for the comparative analysis in a most different cases with similar outcome framework, the aim is to select EU member states of the most possible different roots, history, and forms of democracy. Firstly, whether there is a liberal or illiberal tradition in their historical and constitutional democratic evolution, as well as how the political system affected the concept of democracy in these countries. On the one hand, it is possible to list several traditionally strong democracies within the EU, however, these democracies have sometimes followed different paths of democratic evolution. It is possible to categorize these democracies on diverse bases, e.g., whether we talk about a majoritarian or non-majoritarian consensus democracy. The latter traditions - deeply rooted in political culture - are strongly intertwined with a country's electoral and legal system as well, furthermore, have an impact on representation and political pluralism.

On the other hand, some countries that were set on the path of democratisation from 1989, even though legally committed to common European values (including liberal democracy, respect for human rights and the rule of law) have recently turned to a different path. Nation, the preservation of national identity and sovereignty have become the focus points, accompanied by rising authoritarian tendencies, provoking the regression of constitutional democratic stability and of the rule of law, and other aspects of the liberal democratic quality concept. These illiberal patterns also mean turning away from the normative basis of the European Union.

The populist challenge to liberal democracy is an urgent issue in today's Europe. According to Bugaric, while there has been significant progress in the development of electoral democracy in the Central-Eastern European region, constitutional liberalism and the rule of law still remain weak; only strong, independent, and professional legal institutions and respect for the rule of

law can bring further consolidation of democracy in the region of Central and Eastern Europe.[69] The two most remarkable examples are Hungary and Poland, which tendentially seem to reject individualism, human rights, and diversity. Instead, these countries turn towards a traditional narrative. Both countries have implemented measures which curbed democratic checks and balances, and weakened institutions, i.e., weakening the powers of the constitutional court or cutting the number of ombudsmen, endangering the impartiality of the judicial system and the free media in the countries.

II.2.3.2 EIU Democracy Index and the Phenomenon of Stagnation/Backsliding

The populist-illiberal challenge leads us to the second question: democratic stagnation and backsliding. As shown in the previous chapters, there is no consensus on a unique definition and conceptual framework on democracy in the general literature. Democracy manifests in different ways according to the different host political cultures. However, taking a glance at the global context, according to Larry Diamond, since 2006 we have been living through a mild democratic recession. In his work "Is Democracy in Decline?", Diamond points out a decline of freedom and the rule of law. He explains that political leaders are "eroding democratic checks and balances, overriding term limits and normative restraints, violating opposition rights, and accumulating power and wealth for themselves and their families, cronies, clients, and parties"[70], and Western democracies are often no exceptions.

As the EIU DI 2016 report explains, out of the 21 countries in Western Europe 13 suffered a regression as their scores declined between 2006 and 2016, while two countries stagnated and six improved.[71] Based on World Values Survey data, cynicism in the developed democracies of North America and Western Europe about democracy as a political system has grown among young generations, indicating that Millennials are more indifferent regarding whether they live in a democratic regime or not than those born in the interwar period.[72] The explanation for the regression varies, including factors such as the financial crisis of 2008-2009, growing unemployment, inequality, and poverty. The prominence of populist movements both in richer and poorer European states suggests that democratic regression is not solely the product of the

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[69] Bugaric, B. (2008): Populism, Liberal Democracy, and the Rule of Law in Central and Eastern Europe in Communist and Post-Communist Studies 41(2). June 2008. pp. 191-203

[70] Diamond, L. (2014): Is Democracy in Decline? Source: http://nextgenerationdemocracy.org/624/ (Accessed on: 02/02/2019)

[71] The Economist Intelligence Unit: Democracy Index 2016. p. 17

[72] Ibid., p. 19

economic crisis. Growing disaffection with the institutions of representative democracy has been a key factor as well "in the rise of insurgent, populist, anti-mainstream parties and politicians in Europe and North America"[73].

Besides measures relating to the market economy and the capacity of implementing the acquis, the European Union Membership criteria (or Copenhagen criteria) determine specific political requirements for the state aspiring to join the community. More precisely, the Treaty on European Union sets out the conditions (Article 49) and principles (Article 6(1)) to which any country wishing to become an EU member must conform, requiring the "stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities"[74]. Furthermore, Art. 2 of the Treaty on European Union states: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail".[75]

Still, out of the 27 EU Member States, the Democracy Index 2022 of the Economist Intelligence Unit (EIU DI) identifies only 11 countries as full democracies, while the rest of the countries fall into the flawed category. Hungary, along with several other countries of the region, such as Romania, Croatia, and Bulgaria, shows the weakest scores among flawed democracies. The 2022 EIU DI report identifies worldwide 24 full- and 48 flawed democracies, 36 hybrid-, and 59 authoritarian regimes.[76] As a comparison, during 2016 and 2017 (before the start of the research), the Index identified 19 full democracies among the examined 167 countries. The report further defined 57 flawed democracies, 40 hybrid regimes, and 51 authoritarian regimes.[77] During this period too, out of the 28, only 11 EU member states were categorised as fully democratic by the Index. The other 17 member states all scored as flawed democratic regimes.[78] The ratio of EU members who are either full or flawed democracies only slightly

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[73] Ibid., p. 4
[74] EUR-Lex: Accession Criteria. Source: http://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhague.html
[75] Treaty on European Union. Source: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF (Accessed on: 10/02/2023)
[76] The Economist Intelligence Unit (2022): Democracy Index 2022 – Frontline Democracy and the Battle for Ukraine. p. 3
[77] The Economist Intelligence Unit (2016): Democracy Index 2016. p. 3
[78] The results are the same in the 2017 ranking.

changed. The UK (still a full democracy), however, is not an EU member state anymore, Malta saw a fallback, and France achieved a place in the group of full democracies.[79]

Table 6: EIU: Full and Flawed Democracies, 2016-2017

Full democracies / EIU Democracy Index 2016-2017: 11	Flawed democracies / EIU Democracy Index 2016-2017: 17
Sweden, Denmark, Ireland, Finland, Luxembourg, Netherlands, Germany, Austria, Malta, the UK, Spain	Portugal, Italy, France, Estonia, Czech Republic, Belgium, Cyprus, Lithuania, Slovenia, Latvia, Slovakia, Greece, Bulgaria, Croatia, Hungary, Romania, Poland[80]
Full democracies / EIU Democracy Index 2022: 10	**Flawed democracies / EIU Democracy 2022: 17**
Sweden, Denmark, Ireland, Finland, Luxembourg, Netherlands, Germany, Austria, Spain, France, UK	Portugal, Italy, Estonia, Czech Republic, Belgium, Cyprus, Lithuania, Slovenia, Latvia, Slovakia, Greece, Bulgaria, Croatia, Hungary, Romania, Poland, Malta[81]

The fact that the majority of EU member states cannot fulfil the criteria of full democracy as defined by the EIU framework seems not in line with the normative purposes of the EU. The results sustain the widely researched democratic differentiation in the EU and support academic observations on the general democratic setback in Europe.

For the identification of the four different types of regimes, the assessment of the EIU DI relies on five variables: electoral process and pluralism, civil liberties, functioning of government, political participation, and political culture.[82] There are similarities between the assessment parameters of the EIU DI and the dimensions of the quality of democracy model explained before, as we find both procedural and substantive elements within the EIU framework as well.

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[79] The Economist Intelligence Unit (2022): Democracy Index 2022 – Frontline Democracy and the Battle for Ukraine.
[80] The Economist Intelligence Unit (2016): Democracy Index 2016. Table 2., pp. 8-11
[81] The Economist Intelligence Unit (2022): Democracy Index 2022 – Frontline Democracy and the Battle for Ukraine. Table 2, pp. 7-11
[82] The Economist Intelligence Unit Report (2017): Democracy Index 2017. Free Speech Under Attack. p. 2.

For a better understanding, the following table compares the two frameworks in line with procedural and substantive aspects of the functioning of democracy.

Table 7: The EIU DI and the Factors of the Quality of Democracy

EIU Democracy Index Parameters	Quality of Democracy Model Parameters	*Aspect*
electoral process and pluralism	rule of law	*procedural*
civil liberties	civil and political freedoms	*substantive*
functioning of government	rule of law horizontal accountability vertical accountability responsiveness	*procedural*
political participation	participation competition	*procedural*
political culture	political, economic, and social equality	*substantive*

Based on the 2017 EIU DI Results, in terms of electoral system and pluralism, Luxembourg (in tie with Finland, and Denmark) led the EU member states with a maximum point of 10, while the UK was attributed 9.58 points. On the other hand, Hungary was the weakest country with lower points (8.75) than all other countries that once belonged to the Eastern Bloc.[83] EIU

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[83] Ibid., pp. 5-6

DI 2022 maintains the Grand Duchy's prestigious 10 points as well as the UK's 9.58 points but shows a decline in the Hungarian result (8.33)[84].

In EIU DI 2017, regarding government functioning, the strongest EU member states were Sweden, Denmark, Finland, the Netherlands, and Luxembourg. On the other hand, Latvia, Lithuania, Hungary, and Croatia had the lowest scores. Despite being a strongly procedural democracy, the UK received a relatively low score (7.50) in terms of democratic governmental functioning.[85] The scores of 2022 do not show any changes in the cases of the UK and Luxembourg, however, Hungary scored better (6.79) than five years before (6.07).[86]

In 2017, regarding participation, with equally 8.33 points the leaders among the EU member states were Sweden, Denmark, the UK, Ireland, and Germany. However, Hungary, with 4.44 points, scored the lowest (for comparison, Senegal, Honduras, and Mali have the exact same score). Luxembourg scored 6.67.[87] In 2022 Hungary shows a significant increase in its participation score (6.11), while the UK and Luxembourg preserved their scores.[88] The aspect of political participation is the weakest point of the Grand Duchy's democracy performance. The reason for the low score might be the exclusion of foreigner-residents from national elections, even though they represent approximately half of the society.

In the competition of political culture scores, in 2017 with the maximum 10 points, the leaders within the EU were Sweden and Ireland, followed by Luxembourg, Finland, and Malta (8.75). The UK was given 8.13 points, while Hungary scored 6.88.[89] EIU DI 2022 shows a significant drop in the UK's score (6.88), while Hungary's and the Grand Duchy's score remains the same.[90]

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[84] The Economist Intelligence Unit (2022): Democracy Index 2022 – Frontline Democracy and the Battle for Ukraine. Table 2, pp. 7-8

[85] The Economist Intelligence Unit Report (2017): Democracy Index 2017. Free Speech Under Attack. pp. 5-6

[86] The Economist Intelligence Unit (2022): Democracy Index 2022 – Frontline Democracy and the Battle for Ukraine. Table 2, pp. 7-8

[87] The Economist Intelligence Unit Report (2017): Democracy Index 2017. Free Speech Under Attack. pp. 5-6

[88] The Economist Intelligence Unit (2022): Democracy Index 2022 – Frontline Democracy and the Battle for Ukraine. Table 2, pp. 7-8

[89] The Economist Intelligence Unit Report (2017): Democracy Index 2017. Free Speech Under Attack. pp. 5-6

[90] The Economist Intelligence Unit (2022): Democracy Index 2022 – Frontline Democracy and the Battle for Ukraine. Table 2, pp. 7-8

EIU DI 2017 showed similarly strong scores in the case of the UK and Luxembourg (9.12 and 9.71, respectively), while Hungary received 7.06.[91] In 2022, the scores are almost identical: only Hungary shows a decrease (6.76).[92]

Table 8: EIU Democracy Index - Comparison

EIU DI	Electoral		Government		Participation		Pol. Culture		Civil liberties	
Year	2017	2022	2017	2022	2017	2022	2017	2022	2017	2022
LU	10	10	8.93	8.93	6.67	6.67	8.75	8.75	9.71	9.71
UK	9.58	9.58	7.50	7.50	8.33	8.33	8.13	6.88	9.12	9.12
HU	8.75	8.33	6.07	6.79	4.44	4.44	6.88	6.88	7.06	6.76

The above table shows that our selected cases, Luxembourg, the UK, and Hungary score significantly differently in the EIU DI framework. Luxembourg and the UK are considered full-democracies, while Hungary is a flawed-democracy. The Grand Duchy, except for political participation, has the best scores among the three countries. Luxembourg and the UK are both strong in terms of electoral processes. Hungary, however, has generally weak scores, the weakest among the three. The UK sees a significant drop in terms of political culture, while Luxembourg's low participation score stagnates.

II.2.3.3 BTI Index

Considering the selection of a post-Eastern Bloc EU member state for the comparative research, the third element is democratic transition. The selection relies on the framework and results of the Bertelsmann Stiftung's Transformation Index (BTI). The BTI transformation index reflects the assessment of the progress of democratic transformation in 137 countries[93].

Firstly, the components the BTI Index uses when assessing transformation. The Index consists of text analyses and numerical assessments. In its analysis of transitional change, it starts with the status (or phase) of transformation, by dividing it into political and economic aspects. Within the perspective of political transformation, firstly, one finds the status of stateness,

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[91] The Economist Intelligence Unit Report (2017): Democracy Index 2017. Free Speech Under Attack. pp. 5-6
[92] The Economist Intelligence Unit (2022): Democracy Index 2022 – Frontline Democracy and the Battle for Ukraine. Table 2, pp. 7-8
[93] BTI Transformation Index: The Status Index 2022. Source: https://atlas.bti-project.org/1*2022*CV:CTC:SELHUN*CAT*HUN*REG:TAB (Accessed on: 10/02/2023)

under which the BTI examines the state's monopoly on the use of force, state identity, the impact of religious dogmas, as well as the status of basic administration. Secondly, the Index assesses political participation: the availability of free and fair elections, an existence of an effective power to govern, association and assembly rights, and freedom of expression. Thirdly, it assesses the rule of law, under which it tackles factors such as the separation of powers, the independence of the judiciary, the prosecution of office abuse, and civil rights. The fourth segment of analysis on political transformation is the examination of the stability of democratic institutions in the state, where the BTI distinguishes components such as the performance of democratic institutions and the commitment to democratic institutions. Fifthly, the BTI investigates the situation of political and social integration, where it analyses the party system, interest groups, the approval of democracy itself in the country, and social capital. Within economic transformation, the Index considers characteristics such as the level of socioeconomic development, the quality of the organisation of the market and competition, currency and price stability, private property, welfare, economic performance, and finally, sustainability. Among these, the case selection focuses on the political aspects of the Index.

The purpose of the following table is to compare the transformation assessment criteria of the BTI Index with the applicable model of the dissertation, namely, the quality of democracy model of L. Diamond and L. Morlino.

Table 9: Comparison of the BTI Framework and the Quality of Democracy Model

	BTI Assessment Political Parameters	**Quality of Democracy Model Parameters**	*Aspect*
Stateness	state's monopoly on the use of force, state identity, the status of basic administration	rule of law as: the legal state is supreme throughout the country, corruption is minimized, the state bureaucracy at all levels competently, efficiently, and	*procedural*

		universally applies the laws, the police force is professional, efficient, and respectful of individuals' legally guaranteed rights and freedoms	
Participation	free and fair elections, an existence of an effective power to govern, association and assembly rights, and freedom of expression	participation competition civil and political freedoms equality	*procedural and substantive*
Rule of Law	separation of powers, the independence of the judiciary, the prosecution of office abuse	rule of law as: the law is equally enforced toward everyone, citizens have equal and unhindered access to the justice system, criminal cases and civil and administrative lawsuits are heard and resolved expeditiously, the judiciary at all levels is neutral and independent, rulings	*procedural*

		of the courts are respected and enforced, the constitution is supreme, and is interpreted and defended by a Constitutional Court	
Stability of democratic Institutions	performance of democratic institutions and the commitment to democratic institutions	rule of law

horizontal accountability

vertical accountability | *procedural* |
| **Political and Social Integration** | party system, interest groups, the approval of democracy itself in the country | civil and political freedoms

equality

responsiveness | *procedural and substantive* |

As the table shows, by linking their parameters, one can point out that the compositions of the Transformation Index and of the democratic quality assessment framework have several commonalities. As the purpose is to choose countries for the comparison with different types of democracy and traditions in terms of democratic development, selecting a relatively new European democracy, i.e., a post-Eastern Bloc country from the CEE region, serves the criteria of the most different cases research design.

In 2018, at the start of the research, in the region of East-Central and Southeast Europe - considering only those countries which are part of the EU -, ranking no. 18, **Hungary scored the lowest** (for comparison, Estonia, the Czech Republic, and Poland take place no. 2, no. 3, and no. 5, respectively).[94] The remarkably low score associated with Hungary points out the issue of democratic divergence, not only in the EU but within the Central Eastern European region as well. The above data further inspired the selection of the Hungarian case for the analysis.

Figure 4: Hungary's BTI Scores 2012-2022

BTI Index 2022 shows that among the observed countries (137), Hungary is no. 48 in political transformation, no. 24 in economic transformation, and only no. 102 in the governance index ranking.[95] In comparison, other post-Eastern Bloc EU member states, such as Poland, Romania, or Croatia perform significantly better in every aspect of the ranking, and so did they in the previous years. In the CEE region, between 2018-2022 Hungary had the overall worst scores in the Transformation Index, and the largest drop in scores between 2012-2022 (-1.86).[96] BTI data confirms the selection of Hungary as the CEE EU member state, as the country shows the most severe democratic decline in the period, significantly more severe than the decline of Poland's scores.

II.2.3.4 Europeanisation

The concept of Europeanisation refers to different phenomena, such as Westernisation or the process in which political and economic patterns of the European Union become part of the organisational logic of national politics and policymaking of a member state. As Ladrech defined, Europeanisation is "an incremental process of re-orienting the direction and shape of politics to the extent that EC political and economic dynamics become part of the organisational logic of national politics and policymaking"[97].

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[94] BTI Transformation Index: Data on East-Central and Southeast Europe. Source: https://bti-project.org/en/reports/regional-dashboard/ESE?&cb=00000 (Last accessed on: 19/02/2023)
[95] BTI Transformation Index: Hungary. Source: https://atlas.bti-project.org/1*2022*CV:CTC:SELHUN*CAT*HUN*REG:TAB (Accessed on: 10/02/2023)
[96] Ibid.
[97] Ladrech, R. (1994): Europeanization of Domestic Politics and Institutions: The Case of France. Journal of Common Market Studies (March 1994).

According to Radaelli's definition, Europeanisation is "a process involving, a) construction, b) diffusion and c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures and public choices"[98]. Europeanisation is linked with the concept of multi-level governance: respecting competences, sharing responsibilities and cooperating between the various levels of governance, namely the EU, the member states, as well as the regional and local levels. The concept of Europeanisation is also linked with the principle of subsidiarity, according to which actions at the EU level must be justified considering the possibilities available on the national (or local) level.

On the other hand, besides the institutional and governmental aspects, Europeanisation raises other questions, such as national identity and sovereignty, which have recently changed the political agenda in several EU member states. In general terms, populist parties have opened debate on questions such as globalisation versus national sovereignty, cosmopolitanism versus national identity, and open borders versus immigration controls - questions which has been rather excluded by mainstream parties. However, this new pattern in politics served as a catalyst for political activity as it motivated citizen participation and debate: it is enough to think of the electoral turnout of the Brexit referendum.[99] Nevertheless, EU member states are differentiated based on the extent of social consensus on EU membership. However, the underlying reasons often vary.

The selection of Luxembourg, the UK, and Hungary offers an intriguing comparative study based on sharp differences in terms of Europeanisation, too. In Luxembourg, one of the six signatories of the EEC and EURATOM, an economic liberal democracy strongly based on fundamental values and rights, with a constitutional tradition and constitutional democratic evolution relying on the highest European standards. One of the capitals of the EU, with a strong socio-political consensus about the integration. The latter is reflected by the fact that most Luxembourgish political parties are pro-European. Furthermore, the recent constitutional reforms (2020-2023) enshrined cherishing European integration.

On the other hand, one can observe sharply different patterns in the cases of Hungary or the UK. The UK, a procedural democracy, with an emphasis on the rule of law, has been a prominent actor in the EU since its accession in 1973 and contributed to the evolution of the

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[98] Cini, M. (2007): European Union Politics. Oxford University Press, Oxford. p. 407
[99] The Economist Intelligence Unit: Democracy Index 2016. pp. 23-24

EU on many levels. As an example, the legal systems in the UK and in the continental European states are different: civil law and common law systems. Nonetheless, the UK has had a massive impact on the practice and case law of the ECJ (for instance, it was only after the UK's accession that the ECJ began explicitly to refer to previous judgements as "precedents"[100]). One must however note the British opt-outs in the EU, such as in the case of the Schengen agreement, or the Economic and Monetary Union. Furthermore, there had been no socio-political consensus within the country regarding EU membership. Instead, it has posed a major social cleavage and democratic challenge to the UK, which resulted in the 2016 referendum and Brexit. Brexiters won the (consultative) referendum with only a slight majority (51.89%) against Remainers. The debates – on the one hand, on sovereignty and nationality, on the other hand, on parliamentarism and constitutionalism – both before and during Brexit revealed a series of questions regarding the functioning of the UK's democracy and constitutional order, representing a fascinating case for researching the relationship between political culture, democratic quality, and democratic backsliding.

Hungary joined the EU in 2004 and has not become a prominent actor since. Despite its liberal aspirations and democratic progress in the 1990's and the 2000's, since 2010 populism has gained weight in the country. Divergence from the fundamental values as well as the political-legal bases of the EU prevails, which is shown not only in the fact that the general populistic narrative of the government frequently opposing the EU comparing Brussels to Moscow but also in procedural and substantive terms – such as the rule of law, the diminished independence of the judiciary, the undermining of media and academic freedom.

II.2.3.5 Lijphart's Typology

After considering liberal and illiberal traditions, the EIU Democracy Index, and the Transformation Index, the next question is how representation and party pluralism function in a democracy; intertwined, with a country's political and electoral system. The question relates to Lijphart's typology of democratic systems, which divides democracy into two forms, namely majoritarian (or unitary) and non-majoritarian models, the latter including consensus and consociational systems. The typology of democracies is derived from the ten variables upon which Lijphart's two-dimensional conceptual map of democracy is based, such as the effective

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[100] Edward, D.: The British Contribution to the Development of Law and Legal Process in the European Union. p. 32

number of parliamentary parties, executive dominance, electoral disproportionality, the pluralism of interest groups, bicameralism, constitutional rigidity, or the independence of the central bank.[101] Essentially, Lijphart's typology connects the study of democracy with the study of electoral systems and pluralism, which will play a key role in my research. In Patterns of Democracy, while defining democracy as "government by and for the people", Lijphart poses the question: "Who will do the governing and to whose interests should the government be responsive?"[102] The majoritarian model of democracy answers this question in terms of the 'majority of the people', while the consensus model aims for broader participation in government and larger support in society. According to his definition, consensus democracies have multiparty systems, parliamentarism with large and inclusive cabinet coalitions, proportional electoral systems, corporatist interest group structures, federal structures, bicameralism, rigid constitutions protected by judicial review, and independent central banks. In contrast, in majoritarian systems political power is concentrated in the hands of a simple majority. In nutshell, we talk about a two-party system with a highly centralized political system.

Lijphart defines the UK as an 'almost pure majoritarian democracy' (therefore also called 'Westminster democracy model'), whilst categorising most continental European systems as consensus democracies[103]. Furthermore, Lijphart talks about plural, semi-plural, and non-plural societies. However, Lijphart emphasises that a non-plural society does not mean a homogenous society, as "most of the nonplural societies are religiously divided to at least some extent and must contain at least one or more small minorities"[104].

Referred to by Lijphart, Gabriel A. Almond distinguished the Anglo-American and the Continental European types of democracy, and a third group consisting of the "Scandinavian and Low Countries"[105].

Table 10: Almond's Typology of European Political Cultures

Anglo-American	Continental European	Scandinavian and Low Countries

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[101] Lijphart, A. (1999): Patterns of Democracy - Government Forms and Performance in Thirty-Six Countries. pp. 244-245

[102] Ibid., p. 1

[103] Ibid., p. 7.

[104] Ibid., p. 58.

[105] Lijphart, A. (2007). Thinking about Democracy - Power Sharing and Majority Rule in Theory and Practice. p. 25

homogeneous, secular political culture	fragmentation of political culture	combining characteristics from the other two
highly differentiated role structure	separate political sub-cultures	

Lijphart defines four types of democracy[106]:

Table 11: Lijphart's Typology of Representation Systems

Representation	**Presidential**	**Parliamentary**
Plurality Elections	e.g., USA, Philippines	e.g., UK, India, Malaysia
Proportional Representation	e.g., Latin-American states	e.g., Western Europe, except France and Switzerland

Lijphart points out that most EU countries traditionally belong to the type of democracy which combines proportional representation with a parliamentary system, except for the majoritarian model of the UK and the semi-presidential system in France. Although 'Thinking about Democracy' has been published in 2007, after the accession of ten new member states of the integration, Lijphart has not really touched the case of the countries of Central and Eastern Europe. When he refers to the region, he refers to it as newly democratised or democratising countries "which are trying to make democracy work in the face of economic under-development and ethnic divisions"[107]. An objective of the thesis is to understand better the process of democratisation and its links to political culture and constitutionalism – a further reason for the selection of a post-Eastern Bloc country as one of the three countries for the comparative case study.

II.2.3.6 Summary of the Case Selection for the Comparative Study

The empirical objective of the research project is to explore the divergence of European democracies through the offered framework of political culture and democratic quality. The comparative analysis requires examples, firstly, for traditionally strong democracies from Western Europe, but with different roots and legacies of liberal democracy, and models where it is possible to point out democratic flaws. Secondly, an example from the CEE region, with

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[106] Ibid. pp. 162-163.
[107] Ibid. p. 169.

trends of de-democratisation. At the time of the case selection, all three selected counties – the UK, Luxembourg, and Hungary – belonged to the same elite group of countries: the European Union. However, their democratic systems show remarkable differentiation.

Applying Lijphart's typology, it seems reasonable to use countries with different democratic systems and traditions to investigate how different elements of the quality of democracy model prevail in these models and how they are determined by political culture. The selection of the UK, the "almost pure" and perfect example of the majoritarian systems with the longest historical democratic tradition and compare it with a continental-European consensus-type democracy, where constitutionalisation started in the mid-19th century and a post-Eastern-bloc relatively new democracy and EU member state fulfils the requirements of the most different cases research design. First, the UK is an obvious choice as its majoritarian democracy differs from all other continental European examples. Secondly, from the group of "low countries" (Almond), led by the question of populism and illiberal trends and data found in the EIU Democracy Index and the Transformation Index, the best possible choice is Hungary. Finally, from the traditionally strong Western-European consensus/consociational systems, led by data shown before as well as by the unique character of its socio-political setup (a consociational system with grand coalition government and an ever-increasing social fragmentation), the choice is Luxembourg.

Different elements of democratic quality have very different weights in the three cases as well. For instance, the UK is traditionally strong in rule of law, however, shows weaknesses in other aspects of democratic quality, such as political pluralism, competition, or equality; furthermore, the constitutional crisis revealed by the Brexit process. Luxembourg is considered a strong consensus democracy, however, not flawless, as we experience issues e.g., in terms of equality due to the high fragmentation and the democratic deficit posed by the ratio of national and non-national residents. Finally, Hungary has shown a decline in many aspects of liberal democracy since 2010. Along these examples of democratic challenges, first, the thesis seeks to define different levels of democratic backsliding and identify its reasons. Second, to prove the influence of political culture on the quality of democracy and on democratic backsliding. Third, to investigate the relationship between the latter two phenomena.

Therefore, the three democracies are significantly different, with the prospected similar outcome: some sort of democratic stagnation/backsliding. The common element of these three highly differentiated democracies can be, however, found in the nature of their democratic political culture. A characteristic, an independent variable, that gave ground to democratic

stagnation: the challenged stability of their democratic political cultures in recent years. These reasons provide for the applicability of a most different cases with similar outcomes research methodology.

II.2.4 The Encounter of Political Science and Law in the Research of the Quality of Democracy and Political Culture

This thesis adopts a multidisciplinary approach by bridging the fields of political science and law to explore the complex relationship between the quality of democracy and political culture. By incorporating insights from both disciplines, the thesis aims at a more comprehensive understanding of the factors that shape democratic systems.

Within this multidisciplinary framework, a crucial aspect that emerges is the role of the rule of law in sustaining and enhancing democracy. The rule of law establishes a framework for the protection of individual rights, the maintenance of democratic stability, and the prevention of arbitrary exercises of power. Through the lens of political science, the rule of law is frequently studied in relation to its role in safeguarding civil liberties, ensuring equal access to justice, and promoting accountability and transparency in governance. Simultaneously, the field of law provides insights into the legal foundations of democracy. It examines constitutional frameworks, legal systems, and the evolution of legal norms, all of which shape the democratic landscape. Considering the constitutional democratic evolution of the studied countries helps comprehend the historical and legal developments that have influenced their present democratic systems and the democratic challenges they may face today. This approach acknowledges that the current state of democracy is influenced by historical events.

The multidisciplinary approach linking political science and law is vital for the analysis of the links between the quality of democracy and political culture. It permits the investigation of the interplay between legal frameworks, institutional structures, political processes, and socio-cultural dynamics (i.e., the macro, the meso-institutional, and the meso-societal levels of political culture).

II.2.5 Qualitative Interviews

In this comparative study, qualitative interviews are employed as a methodological tool to enhance the empirical analysis of the relationship between the quality of democracy and

political culture in the United Kingdom, Hungary, and Luxembourg. While quantitative data provides valuable insights into broad trends and patterns, qualitative interviews offer a more in-depth understanding of the subject matter by exploring the perspectives, experiences, and motivations of experts from each country.

Qualitative interviews help capture the nuanced complexities inherent in the political culture of each country and its influence on the quality of democracy. Interviewing experts who possess a deep understanding of the political landscape in their respective countries allows for a holistic investigation of the main elements of the research design, offering unique insights that quantitative data alone may not reveal.

The inclusion of qualitative interviews is particularly pertinent to the chosen research design, which utilises a most different cases, similar outcomes approach. This research design seeks to compare cases that exhibit divergent characteristics but ultimately yield comparable outcomes—in this case, some level of democratic stagnation or backsliding. Qualitative interviews are helpful for contextualising the findings at the different levels of the countries' political cultures. Furthermore, they provide a deeper understanding of the underlying dynamics and intricacies that shape the relationship between political culture and the quality of democracy. The data collected through the qualitative interviews are processed through coding and thematic categorization, to identify the key themes.

II.2.3 Hypotheses

To formulate hypotheses, first, we recall that the very idea of the thesis is to investigate and conceptualise the relationship between four main theoretical elements: the quality of democracy, political culture, democratic stability, and democratic backsliding. Why is it so often today that we hear "democracy is in crisis"? What causes this crisis, and what are the deepest roots of these causes? What is the relationship between these causes? Is it possible to 'heal' deteriorating democracies?

One of the suggestions of the thesis is that different types of democratic backsliding cause the crisis of liberal democracy, and the reason for backsliding is a deterioration in terms of the rule of law. The rule of law sustains the quality of democracy, ergo, the weakening of the rule of law provokes democratic backsliding. In our understanding of the relationship between the rule

of law, other procedural elements of democratic quality, and civil-political freedoms[108], the rule of law is the foundation of democratic quality. Furthermore, the substantive pillar of democratic quality cannot exist without legal guarantees in a democracy, whether by constitutionalisation or at the level of ordinary law. In conclusion, legally guaranteeing both the procedural and substantive democratic quality factors is the basis of high-quality civil society as well as of high-quality democracy. This outlines a relationship between the rule of law and individuals too (see Tom Bingham's explanation of the relationship between the rule of law and human rights[109]).

We suggest the investigation of the rule of law and other factors of democratic quality in broader bedding, through a country's political culture.

Figure 5: Research Elements
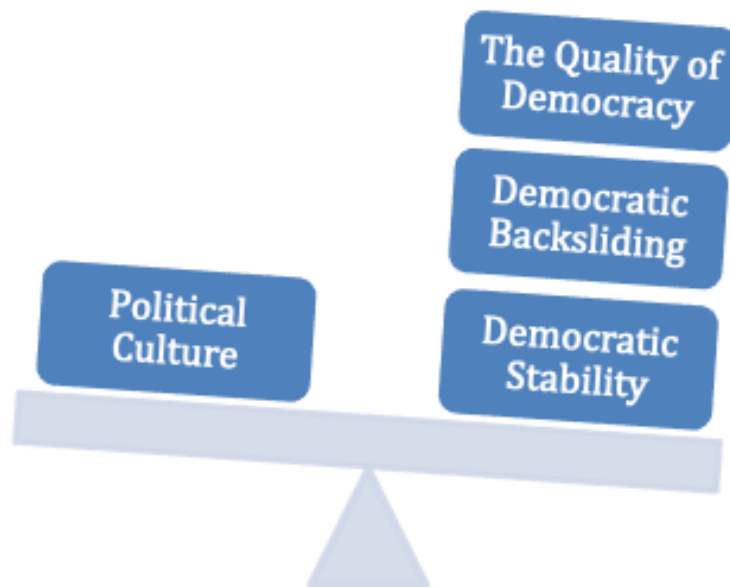
The thesis poses the following questions: how does political culture impact democratic functioning (improvement or backsliding) and its stability? Which aspects of political culture explain which dimensions of democratic quality? Which aspects of political culture are

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[108] I.e., electing, competing, organising parties, public office, campaign, agenda control, demonstration, petition, thought, expression, deliberation, association, privacy, religion, education, legal defence, and publication.
[109] Bingham, Tom (2011): The Rule of Law. Penguin Books Ltd., London. Chapter 7: "Human Rights". pp. 136-174

responsible for democratic stagnation or backsliding? What are the factors of political culture which help reveal its relationship to democratic quality?

Another motivation is to understand the role of civil society and individual citizens in this equation. How do the citizens' perceptions about their own democracy relate to democratic stability?

The above observations led me to the formulation of the following hypotheses:

Table 12: Hypotheses

Hypotheses	Sub-Hypotheses
I Political culture affects democratic quality.	I/a The quality of democracy is affected by the constitutional settings and traditions of a democratic system, i.e., the macro level of political culture.
	I/b The continuity of the political culture affects democratic quality.
	I/c The fragmentation of the political culture affects democratic quality.
II Democratic quality and democratic stability are dependent on the civil society and the citizenry, i.e., the meso and micro level of political culture.	II/a The quality of democracy is affected by the nature and functioning of the civil society.
	II/b The perceptions of the citizens about their democracy, their values, their confidence in public institutions, and their general interest in politics impact democratic quality.
	II/c The perceptions of the citizens about their democracy, their values, their confidence in public institutions, and their general interest in politics impact democratic stability.
	III/a The nature of democratic backsliding is affected by a country's political culture.

III Political culture affects the nature and extent of democratic backsliding.	III/b The main cause of democratic backsliding is the weakening of the rule of law.
	III/c The strength of the constitutional traditions of a democracy influences democratic backsliding.

II.3 Modelling the Quality of Democracy

The following section covers two levels: (1) conception (top down – institutions), and (2) perception (bottom up – citizens).

The objective of the first level is to conceptualise democratic quality, using the model of Diamond and Morlino as a starting point, involving further elements which may also be considered as bases of "good democratic functioning". First, the concept of the rule of law, using the definition of Diamond and Morlino, completing it with additional elements collected from documents that the previous parts of the research elaborated on. Furthermore, regarding the substantive dimension of the quality of democracy, the thesis includes two diagrams which, in line with the distinction of Diamond and Morlino, categorise freedoms of political participation and competition as well as civil and personal freedoms. The title of the first category derives from the concept that these freedoms (e.g., the right to vote, to run the elections, to organise political parties, to public office, to campaign, to control the agenda, to demonstrate, and to petition) are strongly linked with participation and competition. The chart, moreover, explores the relationship and dynamics between the procedural and substantive pillars which 'hold' or 'maintain' the freedoms, and are in all cases overlapping. This leads us to the concept that basically all factors of substantive nature must have a procedural background (i.e., constitutionalisation, other legal guarantees) to find validation in practice. The political-societal debate, however, which might rise around these factors deserves further attention (– e.g., whether minority rights are represented both at substantive and procedural levels). The second graph shows the relationships between the freedoms already explained in the first one.

The second level is the level of perception. At this level, the research aims to show how the citizens feel about democracy. More precisely, their perception about democracy and their confidence in public institutions, moreover, whether the citizens feel that their voice is heard, that they matter, and the extent to which the citizens are interested and are willing to participate.

Participate, as to exercise the freedoms mentioned above, but also, on an informal ground, the willingness to discuss or debate public issues with family and friends. These causal relations are sustained by fundamental freedoms such as the freedoms of participation, civil freedoms, equality, transparency, and responsiveness, and are also influenced by the quality of knowledge and understanding about political dynamics and democracy itself (see Dahl on enlightened understanding). These factors have, again, both substantive and procedural sides. On this second level, the citizen is our "unit", thus it represents a "grassroots" approach, the bottom-up dimension. The latter, top-down democratic elements (rule of law, constitutionalism, democratic institutions, etc), contribute to democratic stability, too.

II.3.1 Conceptualising Democratic Quality: A Top-Down Approach

II.3.1.1 The Rule of Law

The rule of law serves as one of the key elements of the empirical part of the research, as its components (i.e., the supremacy of the state and the constitution, corruption, the independence of the judiciary, efficient and universal application of the law towards all citizens) are well comparable variables in any member state of the EU. The empirical chapter will investigate these structures in three cases which have gone through significantly different historical developments, and which have different political structures – in light of the interrelation between the rule of law, the liberal/illiberal dichotomy, and democratic backsliding.

Hypothesis I suggest that the weakening of the rule of law is the main source of democratic backsliding. In line with this, the above pyramid marks the rule of law as the foundation of democratic quality since all other elements of democratic functioning are dependent on the rule of law. To illustrate this, the thesis includes three pyramids for the interpretations of the hierarchy of democratic quality factors. The first one solely includes the factors of the model of Diamond and Morlino. The second (procedural approach) and third (substantive approach) pyramids shown and explained in a later chapter of the thesis are completed with additional elements of democratic functioning.

To prove the validity of the hypothesis that the weakening of the rule of law is the *origo* of democratic backsliding first we must gain a deeper understanding of the rule of law itself. To understand the rule of law, we shall specify that we use the term in its modern sense, since the birth of state sovereignty. Mr Martin Laughlin, a UK expert, in a publication written for the

Venice Commission, explains that "the way the 'rule of law' presents itself as meta-legal principle various according to the different histories, cultures and practices of European governing regimes"[110], meaning that it is very challenging, if not impossible, to lay down one single definition to it. It, rather, is a matter of interpretation. Certainly, the rule of law has its dimensions or levels, it intertwines with political culture as Laughlin implies, thus, it has country-specific characteristics, and it can be both procedural and normative in its nature. A way to start with is distinguishing two main approaches to the rule of law. First, the Anglo-Saxon Rule of Law definition (meaning, the rule of the law in the state), which traditionally entails a procedural concept of the rule of law. Second, the rule of law in a Rechtsstaat sense (i.e., 'state of law', 'rule under the law'), stemming from German language areas, influential in most EU member states today (e.g., FR: 'état de droit', IT: 'stato di diritto', HU: 'jogállam' – all derivatives of the German term 'Rechtsstaat').

Although different rule of law concepts evolved in various historical periods and regions, they were primarily driven, first, by the motivation to impose limitations to the omnipotence of the state power; second, by the purpose of establishing legal frameworks to counterweight absolute power. Below we summarize the definitions of the Rechtsstaat and the Rule of Law.

The English Tradition of Rule of Law

Emerging in the 17th century, the Anglo-Saxon rule of law concept is based on the idea that all people and human institutions are subject to certain socially accepted legal principles. The rule of law represents the primacy of the common law against arbitrary power, and at the same time embodies the idea of equality before the law. From the Glorious Revolution (1689) on, the concept of the rule of law in England was closely intertwined with the idea of parliamentary sovereignty, meaning, the English Parliament, with unlimited legislative power, establishes the laws binding for everyone. The parliament exercises this power exclusively, with no authority bearing control over parliamentary law-making (i.e., there is no constitutional authority, unlike in the Rechtsstaat type of democratic systems, such as Luxembourg or Hungary). Procedurally, judges cannot annul the laws created by the parliament, so the judiciary takes a lower place in the hierarchy compared to the parliamentary legislation. The executive body, based on the majority rule (the political group with the most supporters can exercise the decision-making

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[110] Laughlin, M.; European Commission for Democracy through Law / Venice Commission (2009): The Rule of Law in European Jurisprudence. Source: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-DEM(2009)006-e. Accessed on: 15/01/2022. p. 3.

power) is the government which works under the control of the parliament. The sole limits to parliamentary sovereignty are the instrument of the royal prerogative and former parliamentary decisions.

Dicey (1885) identified three guiding principles which underpinned the British constitution. First, the legislative sovereignty of Parliament; second, the universal rule throughout the constitution of ordinary law; and third, the impact of conventions on the constitution. As Laughlin further explains, Dicey suggested that the rule of law had three primary meanings: "(1) the 'absolute supremacy (...) of regular law as opposed to the influence of arbitrary power'; (2) equality before the law, or 'the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law Courts'; and (3) the concept was a formula for expressing the fact that in the English system 'the principles of private law have (...) been by the action of the Courts and Parliament so extended as to determine the position of the Crown and of its servants' "[111]. Furthermore, Dicey points out the following principles: (1) state authorities do not have absolute power, and criminals can only be punished based on prior legal orders; (2) everyone is subject to the ordinary laws applied under the ordinary commissions, and this is the guarantee of equality before the law; (3) the same laws apply to both the representatives of the state government and the citizens of the state.[112] The first point is the nullum crimen sine lege principle. The latter two principles are called 'equality in and before the law'. These principles of the rule of law are widely applied in democratic systems and are referred to by international organisations, too (see the Rule of Law checklist of the Venice Commission). However, Walters points out that "Dicey gave little direct attention to the formal qualities for law of generality, prospectivity, clarity, stability, intelligibility, consistency (...), that theorists like Lon Fuller and Joseph Raz would later identify with the rule of law"[113].

In Raz's concept, the rule of law has two main focuses: (1) to be ruled by and obey the law; (2) the nature of the law must allow that people are able to be guided by it. The latter principle implies the following: first, "all laws should be prospective, open, and clear. If it is to guide people, they must be able to find out what it is. For the same reason, its meaning must be clear. An ambiguous, vague, obscure, or imprecise law is likely to mislead or confuse at least some of those who desire to be guided by it. Second, laws should be relatively stable. They should

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[111] Ibid. pp. 4-5
[112] Földi, A. (2014): Összehasonlító jogtörténet – Az Alkotmánygondolat fejlődése. Eötvös Lóránt University, Budapest. pp. 181-186
[113] Walters, M. (2020): The Supremacy of Ordinary Law. In A.V. Dicey and the Common Law Constitutional Tradition: A Legal Turn of Mind (Cambridge Studies in Constitutional Law, pp. 226-258). Cambridge University Press, Cambridge. p. 230

not be changed too often. If they are frequently changed people will find it difficult to find out what the law is at any given moment and will be constantly in fear that the law has been changed since they last learnt what it was. Third, the making of (…) laws should be guided by open, stable, clear, and general rules. Fourth, the independence of the judiciary must be guaranteed."[114]

The Rechtsstaat

The Rechtsstaatsprinzip (the principle of 'rule under the law'; 'state of law') of the civil law tradition emerged in the first half of the 19th century when the German Confederation (Deutscher Bund) provided its member states with the legal possibility to create their different constitutions. The idea of the Rechtsstaat emerged as a counterweight to Polizeistaat (police state). In Laband's words, it is the antonym of despotism (i.e., arbitrariness)[115]. Laughlin points out that initially, "it was used as a descriptive category applicable to all modern states which used general laws to harmonize the sovereign concentration of political power with liberal policy"[116].

The first example of the interpretations of the Rechtsstaatsprinzip is the concept created in the first half of the 19th century by Robert von Mohl, a German jurist. Mohl's concept of the Rechtsstaat entails the principle that the actions of the state must be regulated by law which is subordinated to and at the same time connected with the freedom of man and the idea of free expression of the individual. Therefore, the 'rule of law' itself is subordinated to a normative purpose. While in the English common law tradition the rule of law is the purpose itself, the Rechtsstaatsprinzip confers a normative purpose on the state. Mohl's concept relies on the following three ideas: (1) governmental order must be conceived to be the product of the earthly aims of free, equal, and rational individuals; (2) governing order must be directed towards the promotion of the liberty, security, and property of the person; and (3) a rationally organised

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[114] McCrudden, C. (2022): The post-Brexit Breakdown of the Rule of Law in the UK, Verfassungsblog. Source: https://verfassungsblog.de/the-post-brexit-breakdown-of-the-rule-of-law-in-the-uk/ (Accessed on: 11/01/2023)
[115] Meierhenrich, J. (2021): Rechtsstaat versus the Rule of Law. In J. Meierhenrich & M. Loughlin (Eds.), *The Cambridge Companion to the Rule of Law* (Cambridge Companions to Law, pp. 39-67). Cambridge University Press, Cambridge. pp. 59-60
[116] Laughlin, M.; European Commission for Democracy through Law / Venice Commission (2009): The Rule of Law in European Jurisprudence. Source: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-DEM(2009)006-e. Accessed on: 15/01/2022. p. 6

state, i.e., a responsible government, judicial independence, parliamentary representation, rule by law, and the recognition of fundamental freedoms and civil liberties.[117]

In the same era as Mohl, F. J. Stahl (as Meierhenrich notes, "Mohl's intellectual enemy") formulated a formal Rechtsstaat concept. According to Stahl, in a Rechtsstaat, the directions of the functioning of the state are defined by legal instruments, just as the limits of the freedoms of its citizens. Stahl's Rechtsstaat concept entails a formal approach[118]. The central idea, as in the case of R. Gneist's approach, is procedural justice[119]: if a legal norm is created by respecting the procedural rules of the creation of laws, it has a binding force regardless of its content. This proceduralist 'State of Law' definition establishes a relationship between the law, the public bodies, and the individuals (citizens) in which the authority cannot intervene with the privacy of the individual without a legal basis. Gneist, another 'proceduralist' thinker, placed the principle of 'government by law' in the focus. For Gneist, "the achievement of procedural justice is more important than the pursuit of more far-reaching, substantive forms of justice"[120].

Meierhenrich calls the Rechtsstaat and the English-style rule of law "rival ideas of freedom"[121]. As the author explains, "the key difference between the Rechtsstaat tradition (…) and the rule of law tradition has to do with the question of where the rights of individuals originate". Meierhenrich refers to the explanation of Zweigert and Kötz: "Common law comes from the court, continental law from the study; the great jurists of England were judges, on the continent professors"[122]. Furthermore, "in the civil law tradition 'lawyers think abstractly (…); in England concretely"[123]. Meierhenrich points out that of the two concepts, the Rechtsstaat is the least legalistic, as it is "inherently political"[124] (the reason why Kelsen rejected it).

Rule of Law and Constitutionalism

The idea that the absolute monarchy should be replaced by a state with a constitution that applies the principle of the separation of powers and ensures the civil and political freedoms of the population (the citizens) emerged during the civil revolutions. The requirement of constitutionality was more often aimed at ensuring that the organisation and functioning of the

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[117] Ibid., p. 6
[118] Ibid., p. 7
[119] Meierhenrich, J. (2021): Rechtsstaat versus the Rule of Law. p. 59
[120] Ibid., p. 59
[121] Ibid., p. 64
[122] Ibid., p. 64
[123] Ibid., p. 64
[124] Ibid., p. 64

state comply with the principles and norms contained in certain legal codes, i.e., the constitution.

The constitution has a double meaning: (1) in a narrow, procedural understanding, the written basic law itself (charter constitution); (2) in a broader, substantive sense, the idea of constitutionality. Constitutionalism entails the following principles: the unity of state power, national sovereignty, the principle of separation and equality of powers; the rule of law, the equality of law, equality before the law, the constitutional guarantee of freedom rights, and the respect of the constitution itself (guaranteeing the compliance of ordinary laws).

According to the Stanford Encyclopaedia of Philosophy, constitutionalism is the idea, often associated with the political theories of John Locke and the founders of the American republic, that government can and should be legally limited in its powers, and that its authority or legitimacy depends on observing these limitations. In the political realm, norms create legislative, executive, and judicial powers and, also, the limitations of these powers at the same time in the form of freedoms and rights, as well as the scope and means of authority.[125]

Laughlin poses the question of whether the rule of law shall be considered as one principle of constitutionalism, or, rather a meta-principle, which overarches the principles of constitutionalism (i.e., (1) the supremacy of the constitution, (2) the constitution is the fundamental law of the land, and (3) the judiciary is the ultimate guardian of the constitution.[126] In this thesis we argue that the rule of law is indeed a meta-principle, which goes beyond these three constitutional principles, laying down the grounds for the very existence of constitutionalism, as well as for a good quality democratic functioning.

As mentioned earlier, Hans Kelsen rejected the idea of a rule of law concept which is political (thus impure). In 'Pure Theory of Law' (1967), Kelsen explains how laws and norms relate to each other. Kelsen defines "norm" as follows: "norm is the meaning of an act by which a certain behaviour is commanded, permitted, or authorized"[127]. Norms have validity in space and time, which Kelsen calls "the special and temporal sphere of validity of norms"[128]. Regarding the relationship between norms and law, Kelsen explains the following: "an act or an event gains its legal-normative meaning by another legal norm that confers this normative meaning on it.

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[125] Stanford Encyclopaedia of Philosophy. Source: https://plato.stanford.edu/entries/constitutionalism/. (Accessed on: 11/10/2021)
[126] Laughlin, M.; European Commission for Democracy through Law / Venice Commission (2009): The Rule of Law in European Jurisprudence. Accessed on: 19/01/2022. p. 2
[127] Kelsen, H. (1967): Pure Theory of Law. Translation from the Second German Edition by Max Knight. University of California Press, Berkeley and Los Angeles. p. 14
[128] Ibid., p. 12

An act can create or modify the law if it is created in accordance with another, 'higher' legal norm that authorizes its creation in that way. And the 'higher' legal norm, in turn, is legally valid if and only if it has been created in accord with yet another, 'higher' norm that authorizes its enactment in that way."[129]

What we can understand from this argument, first, is that a sort of hierarchy of norms exists. Second, that laws and norms shape each other, and are, indeed, intertwined. According to Kelsen, "the basic norm is the content of the presupposition of the legal validity of the constitution of the relevant legal system"[130]. Thus, the constitution is the peak of the legal mountain. The normativity of law in Kelsen's theory means that legal norms are derived from the *basic norm* of each legal/normative system.

Since the birth of modern international treaties (of which the interpretation and functions are laid down in the Vienna Convention of 1969), one must also consider the impact of international legal norms on the above-mentioned legal-normative hierarchy. International treaties, such as the Universal Declaration of Human Rights, lay down those normative pillars which cannot be disregarded by the national law of the member countries, and shall be enacted in the constitutions of the member countries (in other words, they must be constitutionalised).

Rule of Law in the Classical Liberal Approach

Laughlin points out that the rule of law, in the understanding of classical liberalism, has two branches: the rule by law and the rule of law.[131] First, as Laughlin explains, in the concept of **the rule by the law**, "law is recognized to be the essential means through which the business of governing is conducted. This is the core meaning of the expression, 'government according to law': government must be able to specify a law that authorizes each and every one of its actions."[132] This alone, however, clearly does not guarantee the democratic functioning of the system, as it does not mean more than complying with the law, without requiring the law to have a normative perspective. I.e., authoritarian regimes may comply with this principle, too, where the law is a reflection of the arbitrary will of the authoritarian leader, and not the people.

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[129] Stanford Encyclopaedia of Philosophy. Source: https://plato.stanford.edu/entries/lawphil-theory/. (Accessed on: 07/02/2022)
[130] Ibid. (Accessed on: 07/02/2022)
[131] Laughlin, M.; European Commission for Democracy through Law / Venice Commission (2009): The Rule of Law in European Jurisprudence. pp. 11-15
[132] Ibid., p. 11

As Laughlin refers to Schmitt, the law must have certain "qualities". Laughlin recalls Fuller's list of such qualities that the law must bear: "laws should (1) take the form of general rules, which should (2) be publicly promulgated and (3) be of prospective effect. The rules should also (4) be clear and understandable, (5) exhibit a degree of consistency or freedom from contradiction, (6) maintain a degree of constancy over time and (7) should not demand action that is impossible to perform. Fuller argues finally that (8) there should be a significant degree of congruence between the rules as promulgated and their enforcement by officials".[133] Raz's additional criterion: "the conditions of impartial and effective enforcement of the rule-order"[134], i.e.: "respect for the principle of judicial independence, which is the pre-condition of impartial administration of the rules; adherence to the principles of adjudicative fairness, which ensures the integrity of rule-based dispute resolution; establishment of judicial review of governmental action, which protects against the erosion by governments of the rule-based regime; and ease of citizen access to the courts, which safeguards their rights"[135].

To sum up, the concept of the **rule by law**, consequently, seeks to "develop a concept of law as a system of rules and then to elaborate the institutional conditions that protect the integrity of that rule system"[136]. As explained above, rule by law does not guarantee a democratic type of functioning alone, dictatorships may be compatible with it, too.

Second, **the rule of law**: seeking the conditions of legitimate political rule; a more explicitly political concept, which reflects classical liberal ideas too. Laughlin argues that "the particular form of rule is irrelevant to the rule by law aspect, it becomes the central issue for the political aspect"[137], i.e., the rule of law. Contrary to the concept of the rule by law, dictatorship is antagonistic and fundamentally destructive to and of the values inherent in the concept of the rule of law. The law must not be an instrument of personal rule; "political aspect of the rule of law must incorporate protections against the possibility of dictatorship". At this point we return to the idea of constitutionalism, as Laughlin argues that the objective of the political aspect is to create a set of constitutional rules with three key aims: (1) to ensure that governmental action is fully institutionalised; (2) to ensure that governmental powers are differentiated and dispersed; (3) to ensure that the motivations of those exercising governmental authority do not seek to subvert this institutionalised order.[138] What Laughlin discusses here is the rule of rules,

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[133] Ibid., p. 12
[134] Ibid., p. 13
[135] Ibid., pp. 13-14
[136] Ibid., p. 14
[137] Ibid., p. 14
[138] Ibid., p. 14

although, he also notes that there are limitations of the feasibility of the concept in contemporary reality as the concept relies on "an idealised model of a limited government"[139].

Rule of Law in Rawls's Normative Theory on Justice – The Primacy of Freedom

In Rawl's 'A Theory of Justice', the rule of law is, firstly, presented as the principle to protect the rights of the individual.

Secondly, Rawls emphasises that "the rule of law is closely related to liberty"[140]. He defines the legal system as follows: "a coercive order of public rules addressed to rational persons for the purpose of regulating their conduct and providing the framework for social cooperation"[141]. From this definition, he derives the notion of legitimate expectations: "given that these rules are fair or just, then once men have entered into these arrangements and accepted the benefits that result, the obligations which thereby arise constitute a basis for legitimate expectations"[142]. Furthermore, Rawls points out that justice and the rule of law are connected to each other.

In Rawls's words, the rule of law arises when the concept of formal justice, the regular and impartial implementation of public rules are applied to the legal system. He identifies the following precepts of justice associated with the rule of law: (1) the actions which the rules of law require and forbid should be of a kind which men can reasonably be expected to do and to avoid. (2) those who enact laws and give orders do so in good faith. Legislators and judges, and other officials of the system, must believe that the laws can be obeyed; and they are to assume that any orders given can be carried out. (3) the requirement that a legal system should recognise impossibility of performance as a defence, or at least as a mitigating circumstance. In enforcing rules, a legal system cannot regard the inability to perform as irrelevant. Furthermore, (4) the principle that similar cases must be treated similarly; (5) the consistency of law; (6) the nullum crimen sine lege principle; and finally, (7) the guidelines for judicial processes: the appropriate application and enforcement of the law by independent and impartial courts and judges.[143]

Concluding on the relationship between justice and the rule of law, Rawls explains that "in applying the principle of legality we must keep in mind the totality of rights and duties that defines the liberties and adjust its claims accordingly. Sometimes we may be forced to allow

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[139] Ibid., p. 14
[140] Rawls, J. (1999): A Theory of Justice. p. 207
[141] Ibid., p. 207
[142] Ibid., p. 207
[143] Ibid., pp. 208-210

certain breaches of its precepts if we are to mitigate the loss of freedom from social evils that cannot be removed, and to aim for the least injustice that conditions allow."[144]

Rule of Law in the Quality of Democracy Model

The rule of law definition of the Diamond-Morlino concept follows the spirit of liberal democracy. In their model of the quality of democracy, Diamond and Morlino mark the rule of law as one of the procedural pillars, where the rule of law encompasses ten basic principles: the law is equally enforced toward everyone; the legal state is supreme throughout the country; corruption is minimised, detected, and punished; the state bureaucracy at all levels competently, efficiently, and universally applies the laws; the police force is professional, efficient, and respectful of individuals' legally guaranteed rights and freedoms; citizens have equal and unhindered access to the justice system; criminal cases and civil and administrative lawsuits are heard and resolved expeditiously; the judiciary at all levels is neutral and independent; rulings of the courts are respected and enforced; and the constitution is supreme and is interpreted and defended by a Constitutional Court.[145]

In the first place, in a democratic system, it is the rule of law that guarantees the protection of citizen rights (Rawls). Furthermore, rule of law maintains order, limits the power of the government, as well as holds government legally accountable. Rule of law guarantees the equality of the citizens under the law, as well as that the law is fairly, impartially, and consistently enforced by courts that are independent of the other branches of government.[146]

The rule of law is the supreme check on political power, without which no democracy could survive, as it also protects both the majority and the minority from arbitrary power, further, as L. Diamond defines it, the rule of law means that laws and legal procedures apply fairly and equally to all citizens. When explaining their democratic quality model, Diamond and Morlino point out further characteristics of a liberal democracy based on a strong, vigorous, diffuse, and self-sustaining rule of law. The rule of law is interdependent with all other factors of the model. Moreover, according to Hypothesis I, it sustains the other components. The purpose of the below pyramid is to illustrate this relationship. This first pyramid of democratic quality includes the factors defined by Diamond and Morlino:

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[144] Ibid., p. 213
[145] Diamond, and Morlino (eds)(2005). Assessing the Quality of Democracy. The John Hopkins University Press, Baltimore. 14-16
[146] Stanford Encyclopedia: Larry Diamond on Democracy. Source: https://web.stanford.edu/~ldiamond/iraq/DemocracyEducation0204.htm (Accessed on: 11/10/2020)

Figure 6: The Rule of Law as the Basis of the Quality of Democracy

participation,
competition, equality,
accountability, freedoms,
responsiveness

rule of law
*sustaining the other factors of the
quality of democracy*
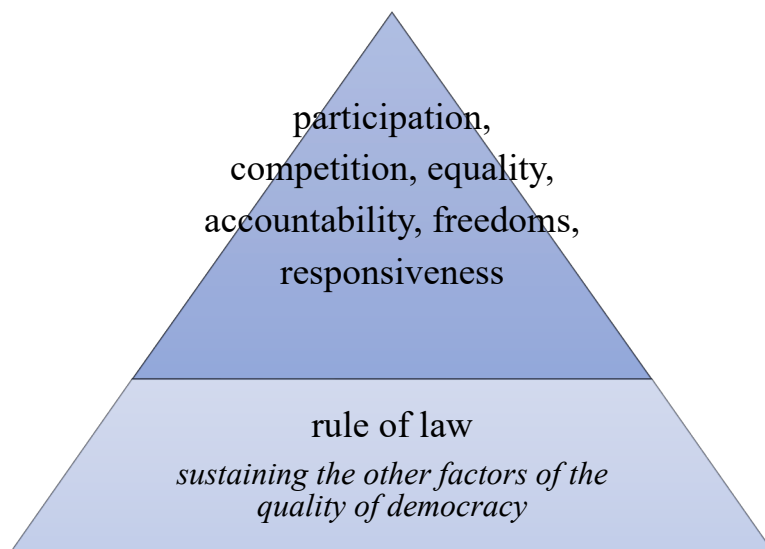
An example of a practical instrument, a guideline for high-quality rule of law is "The Rule of Law Checklist" of the Venice Commission. It includes benchmarks such as legality and legal certainty, the prevention of abuse of power, equality before the law and non-discrimination, accessing justice, and corruption criminalisation and prevention. Legality means the supremacy of the law, the duty to implement the law, as well as compliance with the law. It determines the relationship between international and domestic law, legislation powers and procedures of and by the executive. Legal certainty covers the accessibility of legislation as well as court decisions, the foreseeability of the laws, and the stability and consistency of law. Legal principles and doctrines: non-retroactivity, nullum crimen sine lege and nulla poena sine lege (no crime and punishment without law), res judicata (final judgment), and non bis in idem (not twice for the same thing). Prevention of abuse implies legal safeguards by public authorities. Equality refers to both equality in law (treating similar situations equally and different situations differently and guarantee equality with respect to any ground of potential discrimination) and before the law (universal subjection of all to the law; the law shall be equally applied, and consistently implemented; equality shall result in substantively equal treatment for which "differentiations may have to be tolerated and may even be required"). The principle of access to justice requires the independence and impartiality of the judiciary and the individual judges, as well as of the Bar and of the prosecution service. The principle of a fair trial is crucial: its preconditions are access to courts, the presumption of innocence, and effective court decisions.

II.3.1.2 Constitutions, Constitutional Amendments, and Constitutional Courts

Principles for creating constitutions include transparency, openness, inclusiveness, adequate time frames, the inclusion of pluralistic views, and debate. The process of the preparing phase shall include the political forces, non-governmental organisations, citizen associations, academia, as well as the media, and requires parliamentary flexibility and the spirit of compromise. The aim is the largest consensus possible within the society, as well as a broad public consultation in order to promote public trust. The constitution itself must lay down fundamental principles and secure the respect of international treaties. It shall include the separation of the church and the state, the protection of fundamental rights and freedoms, and the protection of all religions. In a systematic order, the constitution must differentiate principles, legal guarantees, freedoms, and responsibilities. It is indispensable to separate constitutional issues from ordinary law. Values shall be left to the society.

The supremacy of the constitution must be respected in the legal order of the state; the constitutional court exercises control over the parliament and the legislation (constitutional justice). Issues belonging to the level of ordinary law shall not be constitutionalised, as it would deprive the constitutional court of its power to control the parliament (the bad practice of shielding ordinary law from constitutional review). Constitutional amendments have three criteria: a thorough preparatory work, a wide and inclusive social debate, and a large political consensus over the amendment. The case law of a state's constitutional court is critical in the development of the law, and it also represents the safeguarding system of the constitution. Finally, using the constitution and constitutional amendments as political instruments carries the risk of concreting the system (making modifications by future governments – which do not obtain a two-thirds majority of seats in the parliament – problematic), and it undermines democracy.

The budgetary independence of the constitutional court (CC), as well as avoiding both the re-election of constitutional court judges and the politicisation of the constitutional court (e.g., the appointment of CC judges) are also key factors in a well-functioning democracy. It is recommended that the members of the CC are elected by the judges themselves, as it helps ensure the continuity of the CC.

The Judiciary

Judicial independence is noted among the guarantees of the rule of law in the framework of Diamond and Morlino, and generally goes together with the idea of democratic rule of law traditions. On its informative site to the people, the UK judiciary defines it as follows: "Judges must be free to exercise their judicial powers without interference from litigants, the state, the media or powerful individuals or entities, such as large companies"[147]. The independence of the judiciary entails principles such as (1) the irremovability and impartiality of judges, as well as their external (shielding the judge from any influence deriving from other state powers) and the internal (ensuring that a judge makes decisions only on the basis of the Constitution and laws and is not influenced by any other factors) independence; (2) accountability realised through a pluralistic structure (power shall not be centralised in the hands of one single person). Also, the impartiality of the courts requires procedural practices such as transparent criteria (set up beforehand by law) for the allocation of cases to individual judges.

For a better understanding of the standards of judicial independence, we study the Opinion of the Venice Commission on two widely criticised Hungarian bills: Acts CLII and CLXI of 2011. In its opinion on Act CLXII of 2011 and CLXI of 2011 of Hungary, the European Commission for Democracy for Law (VC) commented on the reform along with the Fundamental Law of 2011. The Opinion collects the European standards for the independence of the judiciary: 1) ECHR (Art. 6): the right to a fair trial entails the independence of the judiciary; 2) Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities; 3) VC Report on Judicial Appointments; 4) VC Report on Independence of the Judicial system, Part I: The independence of judges; 5) Consultative Council of European Judges (CCJE) Opinion No. 1: On Standards Concerning the Independence of the Judiciary and the Irremovability of Judges.

In the case of observing the deterioration of Hungarian judicial independence, the VC specifically refers to the above-mentioned principle of the irremovability of the judges ("judges must not be under the threat of being transferred from one court or tribunal to another, as this threat might be used to exercise pressure on them and to attack their independence"[148]), as well as the principle of the freedom to decide. The VC emphasises that independence not only

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[147] UK Courts and Tribunals Judiciary. Source: https://www.judiciary.uk/about-the-judiciary/our-justice-system/jud-acc-ind/independence/ (Accessed on: 15/05/2021)

[148] Venice Commission (2012): Opinion on act CLXII of 2011 on the Legal Status and Remuneration of Judges and CLXI of 2011 on the Organisation and Administration of Courts of Hungary. p. 21

concerns the tribunals but also the individual judges[149]. This independence has both external and internal dimensions, complementing each other: external independence, which shields the judge from any influence deriving from other state powers, and internal independence, which ensures that a judge makes decisions only on the basis of the Constitution and laws and is not influenced by any other factors (e.g. the instructions given by higher-ranking judges).[150] The VC highlights the importance of accountability within the judicial system, realised through a pluralistic structure instead of concentrating all competences in the hands of one person, as well as the importance of checks of power. Furthermore, the impartiality of the courts, which includes that the allocation of the cases to individual judges must happen through transparent criteria established by law beforehand.[151]

Fighting Corruption - Incriminating, Preventing, Monitoring, and Disclosing Corruption

Fighting corruption is another constituting element of the Diamond-Morlino definition of the rule of law. For achieving good results in terms of fighting corruption, ratification of ETS 173 and ETS 191 (the "guiding documents") is indispensable. Aiming at a detailed explanation, I collect elements from GRECO reports, more precisely, regarding three areas: incrimination of corruption, transparency of political party financing, and corruption prevention. To structure these principles, I categorise them (following the Diamond-Morlino democracy model dimensions) as procedural and substantive elements.

Starting with procedural rule of law elements of fighting corruption, legislating a coherent and consistent terminology and framework on active and passive bribery (according to the Council of Europe recommendation, as giving/receiving an undue advantage) is the core of incriminating corruption. Appropriate auditing within and outside public administrations, prevention of shielding offences, and effective fiscal legislation plus authorities shall be guaranteed. As to political parties and the transparency of financing, procedural factors are defining the clear legal status for parties (laid down by law), clarifying and unifying accounting duties as well as requirements for both political parties and their foundations for the sake of transparency, accuracy, and accountability. Effective, proportionate, and dissuasive sanctions in cases of infringement are to be laid down by law for cases of corruption offenses.

[149] Ibid., pp. 4-5
[150] Ibid., p. 20
[151] Ibid., p. 23

Independent, objective, external auditing by experts is crucial, to be applied both in the cases of the accounts of political parties and their foundations, as well as campaign expenditures. Fixing the period of political campaigns also serves transparency, accountability, and public confidence in political parties. Pro-active monitoring and investigation by competent state authorities on a regular basis are indispensable, as well as direct reporting of corruption offences of all weight. Strengthening the internal control mechanisms of parties contributes to corruption prevention on a high level as well, just like detailed codes of conduct, which aim at laying down the ethical standards for behaviour in cases of conflict of interest (third parties, lobbyists). The codes shall, inter alia, shall include the above-mentioned sanctions for infringement. It is important to clarify that the same behavioural standards shall apply to both MPs, members of the judiciary, and their staff, and that public officers are responsible for their staff when the latter is carrying out official duties. Furthermore, solely functional immunity for public officers shall be applied. These principles shall be sustained by effective and proactive supervision and law enforcement. Disciplinary proceedings shall be external, transparent, and accountable. Fixing the material threshold of benefits also helps compliance. Regarding the prosecution service, the re-election of the prosecutor general shall be avoided.

Substantive principles, which help the realisation of the procedural ones, are the highest transparency possible on all levels, i.e., horizontally on the institutional level, as well as vertically, through disclosure and communication of information towards the citizens. Transparency is crucial in the procedures for the appointment/promotion of judges and prosecutors, helped by objective criteria, as well as in the management of the courts, just as the principle of preserving the integrity of the judges. In-service training on the codes of conduct / ethical standards as well as on the preservation of integrity shall be provided for judges, MPs, and members of the prosecution service. Furthermore, the principles of transparent and fair public procurement and the independence of supervising authorities. Finally, the principle that the media reports freely corruption, which leads us to the next paragraph.

Concerning informing the citizens / public awareness, the principles of transparency, openness, adequate consultation in the work of the legislature, and disclosing information to the public on the highest possible level shall prevail. The information shared with the public shall be easily and timely accessible (online platforms), and transparent (i.e., precise, clear, trackable, understandable, and comparable). This sort of openness helps strengthen public confidence in the legislature, in the judiciary, as well as in the political parties. Consequently, it strengthens

legitimacy. A better image of public institutions regarding (the prevention of) corruption and higher trust in the public leads to a higher level of participation, thus, to a stronger democracy.

II.3.1.3 Responsiveness, Equality, and Freedoms

   Responsiveness

In the model of the quality of democracy, responsiveness serves as the bridge (or linkage) among all other procedural and substantive elements. Diamond and Morlino explain that democratic quality is "what it achieves in terms of government responsiveness to the expectations, interests, needs, and demands of citizens"[152]. As G. Bingham Powell portrays, democratic governments are responsive when the democratic process induces them "to make and implement policies that the citizens want".[153] Simply put, responsiveness means responding to citizen needs and demands. According to Powell, "the democratic process that produces responsiveness takes place in a chain of three linkages"[154]. Firstly, choices are structured in a way that distils citizens' diverse, multidimensional policy preferences into more coherent national policy choices offered by competing political parties (i.e., the electoral programmes of parties). Secondly, citizens' electoral preferences are aggregated (by very different institutional means in different types of democracies) into a government of policymakers (i.e., the elections. Thirdly, elected officials (and their appointees) then translate policy stances and commitments into actual policy outcomes.[155]

Figure 7: The Chain of Responsiveness:

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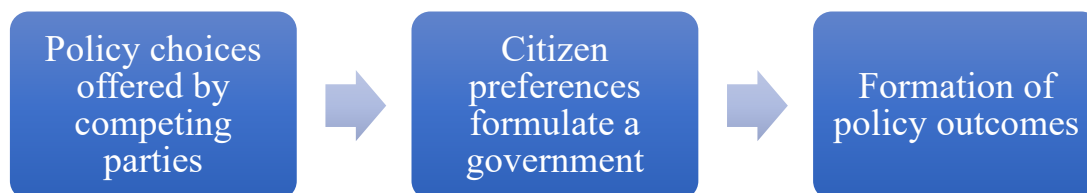
[152] Diamond, and Morlino (eds)(2005). Assessing the Quality of Democracy. The John Hopkins University Press. pp. 29-31
[153] Ibid. p. 27
[154] Ibid. p. 27
[155] Ibid. p. 27

Responsiveness, a comprehensive concept, is interconnected with all other elements of the democratic quality model. Responsiveness further depends on the political-institutional structures of the state. Connecting responsiveness with Lijphart's typology, for instance, "majoritarian systems make it possible for voters to bring in a new government with a decisively different policy course, but they may fail to be responsive to the needs and demands of different minorities, whereas consensual systems, based on proportional representation, are more broadly responsive in the latter respect but less so in their ability to mandate and empower a sharply different policy course"[156].

Freedoms and their Pillars

Let us start this part with the democratic cornerstone of equality of all citizens. Under equality Diamond and Morlino mean "the formal political equality of all citizens"[157], which relies on two fundamental principles that must prevail in every democracy: the principles of equal rights under the law, and one person one vote. Regarding the correlations within the model, as we have seen before, rule of law sustains equality from the legal aspect.

Furthermore, the value that "every citizen and group have the same rights and legal protections, and also meaningful, reasonably prompt access to justice and to power" is presented as a cornerstone of a good democratic system, as these principles entail as well "the prohibition of discrimination on the basis of gender, race, ethnicity, religion, political orientation, or other extraneous conditions".[158]

Thus, equality is linked with rule of law (i.e., equality in terms of law enforcement and the functioning of the judicial system), as well as with competition and competitiveness. Also, equality is co-dependent with freedom: equality does not exist without freedom, and vice versa. Furthermore, equality together with competition reaches back to the fundamental question of proportionality and proportional representation. Equality is a precondition of democratic rights. Let us see what these democratic rights of participation and civil/personal freedoms are, and what factors are necessary for their adequate functioning in a democratic system.

The following factors (Figure 8) shall be lifted to the constitutional level and protected by adequate legal guarantees (including the level of ordinary law). Cases of deviance from the protection of these principles must be a priori laid down by law. Diamond and Morlino divide

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[156] Ibid., p. 27
[157] Diamond, and Morlino (eds)(2005). Assessing the Quality of Democracy. pp. 26-29
[158] Ibid., pp. 25-26.

freedom into categories, i.e., political, civil, and social freedoms. Political freedoms cover the right to vote, the right to public office (presented by Dahl as 'eligibility to public office'), the right to compete, and the right to organise parties. As civil freedoms, Diamond and Morlino list personal liberty, the right to security and privacy, the right to change residence, the freedoms of thought, expression, information, religion, assembly and association, organisation, and the right to legal defence and a due process.

The following chart helps to understand the relationship between political and civil freedoms. In this interpretation, the rule of law is represented as the base of the diagram since these freedoms must be legally guaranteed at the constitutional level and facilitated by regulations at the level of ordinary law.

Figure 8: The Rule of Law as the Basis of Political and Civil Freedoms
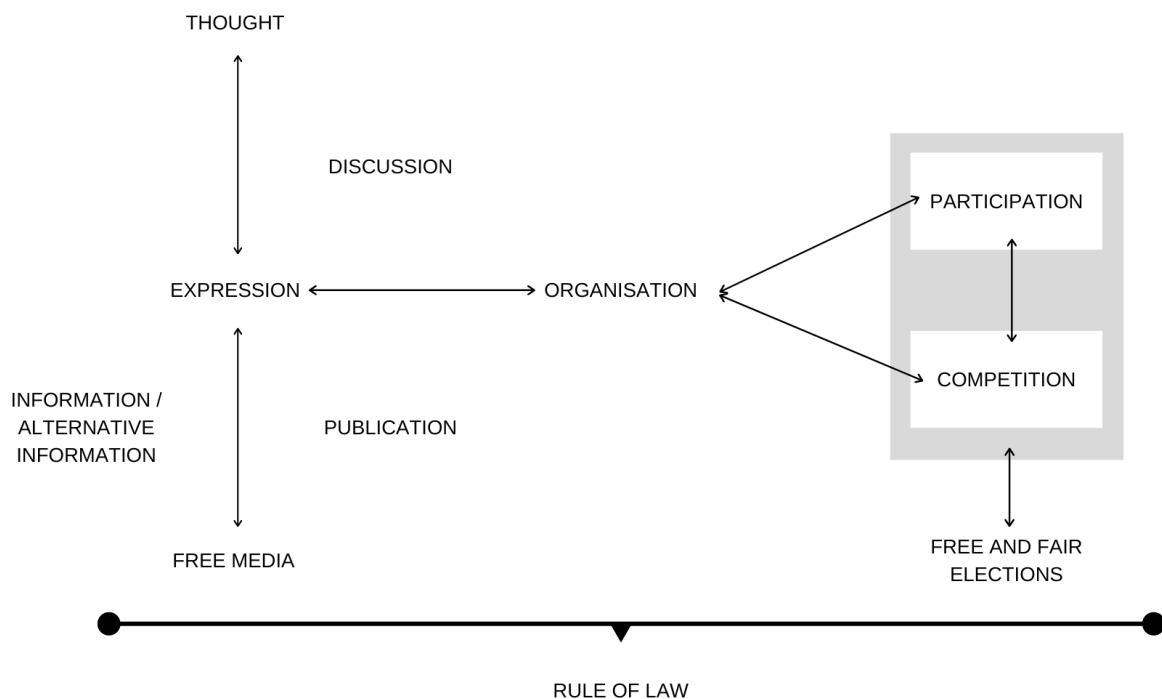
Firstly, competition is an essential part of the logic of the democratic system. The source of power is the demos, and the competition is happening for the representation of the demos. Competition in today's democracy, according to Diamond and Morlino, means that a liberal democracy must have regular, free and fair electoral competition between different political parties.[159]

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[159] Ibid., p. 10

Competition is sustained by rule of law and co-dependent with participation, accountability, equality, and political freedoms. Competition is highly affected by the characteristics of the political and electoral system of the state. Diamond and Morlino consider that "competition also depends on fairness in access to the mass media, pluralism in media ownership, some dispersion of economic resources in society, and the enforcement of political rights by an independent judiciary[160]. Also, competition is linked with horizontal accountability, because "the most important institutional guarantee of freedom and fairness (and hence competition and competitiveness) in elections is an independent and authoritative electoral commission"[161].

The key actors of political competition and democratic representation are political parties. As David Hume noted, "factions subvert government, render laws impotent, and beget the fiercest animosities among men of the same nation"[162]. Is Hume's argument still valid in today's democracies, or political parties are keener to work together for the public good? Among what conditions do political groups have more consensus-making capacity in a political culture?

Bluntschli points out that 'party' is a political category which is not universal on its own.[163] A 'party', which appears in a state on the condition of a free political life, is considered a logical category only in the context of and related to other parties, as *pars* presupposes the existence of other *partes*, and *partes* together serve as the representation of the society and politics of a country (cf. pars pro toto).[164] Mohl distinguishes parties from groupings on the basis of institutionalisation: "Something may be called a grouping when a particular question so passionately engages citizens (...) that together they loudly (...) demand a certain action, joining each other and working together to achieve its immediate implementation. (...) A state party includes all who want to direct state power in a particular way, or who want to create particular public structures and conditions."[165] The existence of political parties, therefore, is a fundamental in any democracy. Moreover, several modern constitutions give certain roles to political parties, e.g., being an instrument of popular sovereignty, their task is to represent the people and contribute to the shaping of public opinion. Therefore, the empirical part of the

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[160] Ibid., p. 13
[161] Ibid., p. 13
[162] Hume, D. (1742): Of Parties in General. in Scarrow, S. E. (eds.) (2002): Perspectives on Political Parties. Palgrave-Macmillan. New York. p. 33
[163] Bluntschli, C. J. (1869): What is a political party? in Scarrow, S. E. (eds.) (2002): Perspectives on Political Parties. Palgrave-Macmillan. pp. 75-83
[164] Ibid., p. 76
[165] Mohl, R. von (1872): Parties in the State. in Scarrow, S. E. (eds.) (2002): Perspectives on Political Parties. Palgrave-Macmillan. p. 84

thesis will engage the question of the constitutional role of parties and their ordinary law-level regulation in the selected cases.

Returning to the relationships depicted by the illustration, the second starting point is the freedom of belief which pairs up with the freedom of expression. The pair leads us to the freedom of organisation/association, i.e., the right to publicly share one's beliefs. The freedoms of belief and expression also lead us towards the democratic norm of free media and the freedom of accessing information (including alternative sources). The latter is important in both Dahl's and Diamond's concepts of liberal democracy. Media freedom links to the rule of law procedurally: the independence of media supervisory authorities. As laid down in the Venice Commission's (VC) Opinion on the Hungarian Media Legislation, a democracy provides scope for minorities and alternative points of view[166]. Media pluralism means the multiplicity of autonomous and independent media at both national, regional, and local levels, which have the freedom of reflecting different (minority) political or cultural points of view. Regarding the freedoms of expression and association, civil society organisations have a fundamental role in democratic society as well. This inspires our empirical research to cover besides parties the question of civil organisations too.

Further democratic norms derived from the freedom of thought are the freedom of education and academic freedom. Following Prof. Harmsen's definition, "academic freedom guarantees scholars the freedom to pursue their research and teaching, ideally guided only by their curiosity and disciplined only by the scientific rigor"[167]. Academic freedom, in a procedural sense, requires institutional autonomy. Such independence shall be sustained by public authorities through legal guarantees. The idea of free education and academic freedom connects to the principles of freedoms of thought/belief, expression, and association. Findings show the lack of unified norms regarding the functioning of foreign universities. In Hungary, the events concerning the Central European University show that standards in the field shall be created and promoted for the sake of academic freedom without borders.

A complementary democratic norm for the upper democratic freedoms is inclusiveness. As the VC lays down in its report of 2002 about Act CCVI of 2011 of Hungary,[168] the freedom of

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[166] Venice Commission (2015): Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) in Hungary. p. 5

[167] Harmsen, R. (2020): 'L'université et les droit fondamentaux' in Gerkrath, J. (2020): La défense des droits et libertés au Grand-Duché de Luxembourg. Larcier, Luxembourg. p. 105

[168] Venice Commission (2012): Opinion on Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary

thought/belief, the freedom of conscience, and the freedom of religion are pillars of democracy, these rights must not be derogated by national legislation. In a normative aspect, these freedoms are strongly linked to the principle of non-discrimination and the principle of protecting the rights and culture of citizens belonging to minority groups. In a well-functioning high-quality democracy, minority groups shall have adequate and efficient tools for exercising control over the political agenda. In line with the principles of non-discrimination and the protection of minority culture, one can claim that in a secularised state there is no room for favouring any religion in the constitution (e.g., in the case of the Hungarian Fundamental Law of 2011), as that would inevitably lead to discrimination of citizens belonging to minority religious groups.

Venice Commission reports show that the protection of minorities and minority languages covers guaranteeing and protecting the right to self-identification, equal opportunities in education (e.g., educational self-governance of minorities), preservation and development of minority cultural heritage, granting access to media, and maintaining balance and cohesion between the different linguistic groups of the society. As Diamond explains, cultural, ethnic, religious, and other minority groups shall not be prohibited (legally or in practice) from expressing their interests in political processes or from practising their culture, including nationality languages.[169] This principle laid down by Diamond relates to the freedom of education as well as academic freedom, the right of publication, expression, discussion, speech, assembly, demonstration, and the right to petition. Practical examples for the implementation of the above principles can include legal guarantees for the facilitation of nationality educational institutions (including higher-educational institutions), journals or other media items (e.g., television programmes) in nationality language, the formulation of nationality political parties, or granting places in the institutions of the executive proportionally for nationality representatives.

Considering free, fair, anonymous elections, the main principles are voting equality (one person, one vote), the secrecy of the vote, sufficient but reasonably limited timeframe for campaigns (cf. anti-corruption measures in political party financing), the inclusiveness and fairness of the electoral system (e.g. the methods how seats are allocated, the number of the seats, defining constituencies, mandate thresholds, requirements of support for running the elections, timeframes and deadlines), in line with the principle of transparency, efficient supervisory mechanisms before, during, and after the elections (cf. the instrument of election

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[169] Diamond, L. (2003): "Defining and Developing Democracy" in: The Democracy Sourcebook. ed. Dahl, R. A., et al. p. 35

and referendum observations during elections and in the pre- and post-voting periods), as well as non-discrimination and impartiality.

II.3.2 Conceptualising Democratic Quality: A Bottom-Up Approach

II.3.2.1 A Citizen-based Perspective of the Quality of Democracy

Following the collection of the legal duties of the state in terms of guaranteeing liberties, this section would like to investigate in what way civil society and the citizens contribute to the complexity of democratic functioning. The previous illustration pointed out that the rule of law is an essential pillar of democratic rights. The below illustration takes a step further, and besides acknowledging the role of the rule of law in democratic stability, it points out relevant factors at the civil level (including both the civil society and the individual citizens).

Figure 9: Freedoms through the Top-Down and Bottom-Up Approaches

POLITICAL FREEDOMS	VOTING COMPETING ORGANISING PARTIES PUBLIC OFFICE CAMPIAGNING AGENDA CONTROL DEMONSTRATION PETITION	THOUGHT, CONSCIENCE, BELIEF EXPRESSION/SPEECH DISCUSSION/DELIBERATION ASSEMBLY / ASSOCIATION PERSONAL LIBERTY, PRIVATE LIFE RELIGION EDUCATION, ACADEMIC FREEDOM LEGAL DEFENCE PUBLICATION	CIVIL FREEDOMS
RULE OF LAW Top-down	Constitutionalisation of rights and freedoms; Legal guarantees to accessing information (and alternative information), civic education, inclusive public dialogue, responsiveness, fighting corruption; Promoting equality of opportunity Promoting forums of exchange and deliberation	Understanding and supporting democratic values; Active participation; High level of interest; Forums of exchange and deliberation; Scuritny; Active articulation of demands; Social inclusiveness	CIVIL LEVEL Bottom-up
	PROCEDURAL	SUBSTANTIVE	

The top half of the table distinguishes political and civil freedoms. The bottom half shows two pillars which are necessary for the effective functioning of the upper rights and freedoms. The two pillars are, first, the legal perspective, a top-down interpretation, which ascribes certain

tasks to the state and to the law. The second pillar is a civil level, which consists of certain criteria of the democratic civic society.

Secondly, we raise the question: what is the relationship between assessed democratic quality and how the citizens feel about their democratic system? In their article published in 2018, Fuchs and Roller point out the importance of complementing both the concept and the assessment of objective quality of democracy with a subjective perspective. Thus, their objective is to conceptualise and measure the subjective quality of democracy to fully understand the quality of democracy[170]. They affirm that "objective structures" (i.e., the institutional-procedural aspect of the quality of democracy) and "subjective evaluations of citizens constitute entirely different dimensions and can vary independently"[171]. They observe **that the more citizens support normative conceptions of democracy, the higher the subjective quality of a democracy.**[172]

Fuchs and Roller refer to Mayne and Geissel, whose research objective in their 2016 article was to "put the demos back into the concept of democratic quality, which means that the citizen component is indispensable for the concept of democratic quality.[173] Mayne and Geissel identify three models of democracy, i.e., minimal-elitism, liberal-pluralism, and participatory and deliberative democracy, as well as three factors describing the citizen dimension, i.e., democratic commitments, political capacities, and political participation.[174]

Furthermore, Fuchs and Roller refer to Pickel et al. (2016), who "demonstrate empirically that objective and subjective evaluations of the quality of democracy differ" and "provide evidence for including the subjective perspective when measuring quality of democracy".[175] Pickel et al. use Democracy Barometer data for the macro, and ESS data for the micro levels of their analysis of democratic quality.[176]

When conceptualising the citizen dimension of democratic quality, Fuchs and Roller, starting from the V-Dem project, argue that the citizen perspective must be considered, as the citizens

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[170] Fuchs, D.; Roller, E. (2018): Conceptualizing and Measuring the Quality of Democracy: The Citizens' Perspective. Politics and Governance 2018, Volume 6, Issue 1, pp. 22–32
[171] Ibid., p. 23
[172] Ibid., p 31
[173] Ibid., p. 23
[174] Ibid., p. 23, referring to Mayne and Geissel (2016), pp. 636-639
[175] Fuchs, D.; Roller, E. (2018): Conceptualizing and Measuring the Quality of Democracy: The Citizens' Perspective p. 24
[176] Ibid., p. 24, referring to Pickel et al. (2016), pp. 648-653

are "the ultimate sovereign of democracy"[177]. They name this dimension **'subjective quality of democracy'**. They consider three already established democracy models, i.e., electoral, liberal, and direct democracy (also Altman, 2013; Diamond, 1999; Ferrin and Kriesi, 2016) for establishing a systematic relationship between the objective and subjective side of democratic quality.

For the assessment of the subjective quality of democracy, Fuchs and Roller focus on the citizens' attitude towards democracy, i.e., the citizens' support of democracy as a form of government in general. Rule of thumb: the percentage of citizens who support democracy shall be minimum 50%.

Talking about the link between liberal and direct democracy, they observe that liberal democracy "presupposes electoral democracy and complements it by the institutionalization of values which originate from the tradition of liberal thought. (...) If a liberal democracy is fully institutionalized in a country, then the quality of this liberal democracy is higher, the more citizens are in favour of electoral democracy while simultaneously supporting the most important characteristics of liberal democracy. (…) Provided that a liberal democracy has institutionalized some forms of direct participation and therefore can be understood as a direct democracy, then the subjective quality of the direct democracy is higher, the stronger citizen support for these forms of direct participation is".[178]

Their assessment framework for the subjective quality of democracy consists of four "quality dimensions" where we can observe an expansion of the quality of democracy as well as its criteria: (1) democracy, (2) electoral democracy, (3) liberal democracy, (4) direct democracy.

Table 13: Fuchs and Roller: Typology of Democracies

Democracy	**Electoral democracy**	**Liberal democracy**	**Direct democracy**
Democratic political system	Free elections	Civil rights protecting liberty against oppression	Preference for the option of referenda

Whether there is a preference for a strong leader above parliament and elections	Level of conviction that women shall have the same rights as men		
Having the army rule			

Their empirical results include an assessment of ten selected liberal democracies, however, neither the UK, nor Luxembourg or Hungary is presented.[179] Nevertheless, they compare the subjective democratic quality results with objective V-Dem results. Interestingly, when measuring the quality of electoral and liberal democracy, in all ten cases[180] the objective results are higher than their subjective counterparts.[181]

Fuchs and Roller thus argue that a measurement of the subjective quality of democracy is reasonable. They assume that the basic postulate of the concept of political culture, according to which support of democracy is of **relevance for the stability and functioning of a democracy**, can be expanded to the **subjective quality of democracy** as well. Furthermore, they conceptualise the subjective quality of democracy **as support** for different models of democracy and not as citizens' evaluation of democracy in their country. They observe **that the more citizens support normative conceptions of democracy, the higher the subjective quality of a democracy.** In their study, they assess four dimensions of the quality of democracy for European and non-European democracies and they compare these results with objective V-Dem index results. They conclude that **the subjective perspective of citizens is not fully determined by objective institutions and processes.** They propose that for the subjective perspective, historical traditions and cultural contexts play a crucial role, which factors we also emphasise in the model of linking political culture and the quality of democracy: the four levels of political culture, plus the historical context including the stability, continuity/permanence, and fragmentation/diversification of political culture.[182]

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[179] Ibid. pp. 27-29
[180] Norway, Switzerland, Sweden, Germany, USA, France, South Korea, Taiwan, Brazil, and India.
[181] Fuchs, D.; Roller, E. (2018): Conceptualizing and Measuring the Quality of Democracy: The Citizens' Perspective. p. 29
[182] Ibid., pp. 30-31

To sum up, Fuchs and Roller express the need for complementing the objective (institutional) assessment of the quality of democracy with the citizens' perspective for fully understanding the quality of democracy. The authors call this the "subjective quality of democracy" for which they propose an assessment framework through four factors. They test this framework on ten countries (five European, five non-European), proving the reasonability of the idea of assessing the subjective quality of democracy.

To further discover the literature, Mayne and Geissel argue that **"the overall level of democratic quality in a country can only be considered high when there is a tight fit between democratic institutions and the dispositions of citizens to breathe life into these institutions."**[183]

In their study, Mayne and Geissel select theory-driven indicators with the objective "to show how these different models place demands on citizens as much as they do on institutions and structures" as well as to find that the nature of institutional demands varying across models provokes variety in the nature of the demands placed on citizens.[184] In the framework of different democratic models and citizen dispositions, they analyse minimal-elitism, liberal-pluralism, participatory-deliberative models, democratic commitments, political capacities, and political participation, respectively.[185] They observe that "institutions and citizens stand in a mutually conditioning relationship" where the value of one is related to the value of the other. They conclude that "different models of democracy call for different types of commitments, capacities, and participation; as such, they demand different types of citizen-related indicators"[186]. They also point out that in terms of the future perspectives for the research on democratic quality, "scholars must aim to achieve theoretical consistency between institutional and structural indicators on the one hand and citizen-related indicators on the other".[187]

Following the point of view of Fuchs and Roller, that is not only reasonable but also necessary to complement objective assessments of democratic quality with subjective perspectives, as well as the idea of Mayne and Geissel about the interdependently conditioning relationship between citizen and institution, we find it important to highlight this subjective dimension of democratic quality in the thesis.

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[183] Mayne, Q., & Geissel, B. (2016): Putting the demos back into the concept of democratic quality. *International Political Science Review*, *37*(5), pp. 642
[184] Ibid., p. 638
[185] Ibid., p. 641
[186] Ibid., p. 642
[187] Ibid., pp. 642–643

The empirical part of the thesis includes three factors which shall help us understand the so-called subjective dimension: first, the citizens' perceptions about the functioning of their democracy, including support for democratic norms ("approval"); second, the citizens' confidence in the public institutions (parliament, government, judiciary, political parties), and third, whether the citizen is interested in participation (discussion of politics and public issues, acquiring information, willingness to use the instruments of participation, which, as explained before, are effective and multiple) and in the political dynamics of the country in general. Further on, the thesis aims to link the latter variables of subjective democratic quality to democratic stability for testing hypothesis II.

The main purpose is to discover the relationships between the quality of democracy, stability, and the bottom-up civil perspective. Besides the classic procedural and substantive factors, the civil level is the other fundamental vector and indicator of democratic quality. After all, democracy's main objective is to serve its citizens.

The following chart shows the relationship between the citizens and democratic stability.

Figure 10: Freedoms and Democratic Stability
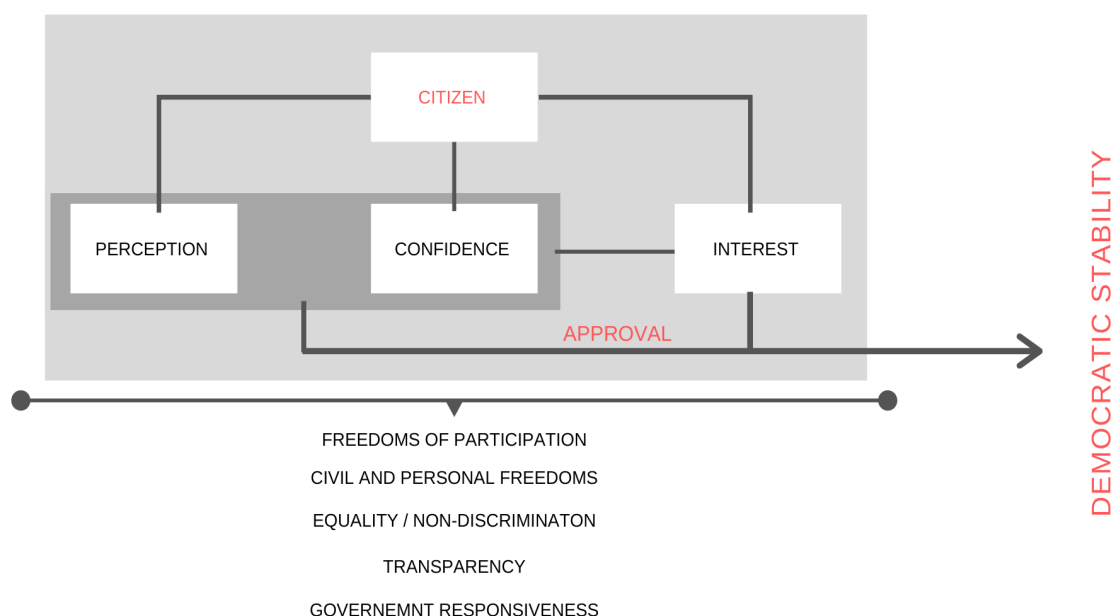
In case there is a positive perception of the democratic system, furthermore, the citizens have a good level of trust in public institutions, they feel represented and feel their voice is heard, they feel that they are considered important, and they have the willingness to discuss and

participate; from the bottom-up perspective, it contributes to democratic stability. The process is sustained by legally guaranteed political, civil, and personal freedoms, moreover, principles such as transparency and accessible and understandable information, non-discrimination, and effective responsiveness to the citizens' demands. One must note that the condition for this process is the citizens' awareness and approval of democratic values. Unless knowledge and support of democratic values, confidence can be high and citizen perception can be positive about a non-democratic system. In the empirical part, Hungary will show exactly the latter trend: according to Eurobarometer data, confidence in democratic institutions doubled since Orbán's victory in 2010 and the electorate kept re-electing him in 2014, 2018, and 2022, granting the Fidesz-KDNP[188] coalition higher and higher legitimacy, with high turnout.

The research suggests embedding the above process into political culture, just like the balance of political and civil liberties, relying on legality and the civil dimension. Let us imagine that all factors, all the dynamics that the paper explained earlier in this chapter are embedded in a country's political culture. In this interpretation, political culture is both the alpha and the omega. It represents the base on which the rule of law and the substantive elements of democratic quality stand as pillars, holding the rights and freedoms which citizens exercise. Clearly, political culture affects citizen confidence in institutions and parties, as well as the extent of approval of democracy and its norms. The above dynamics inspire our hypotheses: the rule of law is the basis of the quality of democracy model, but political culture is what determines democratic quality generally. Political culture, though, is ultimately not something rigid. It is in constant change. However, the change is slow and must be observed through the course of history. Identifying historical events which reveal, for instance, external breaks or an internal necessity to change helps us understand more of the character of the processes of political-cultural change.

II.3.2.2 Subjective Democratic Quality in the Thesis

Besides explaining the quality of democracy through political culture, we find it necessary to include the subjective dimension of democratic quality in its definition. In a later chapter, the thesis offers a four-level model for political culture to make it possible to link political culture to democratic quality. The model engages the objective and subjective characteristics of

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[188] Fidesz: Fiatal Demokraták Szövetsége (EN: Alliance of Free Democrats). KDNP: Kereszténydemokrata Néppárt (EN: Christian Democratic People's Party), the electoral allies since the 2010 national elections in Hungary.

democratic quality on the macro, meso, and micro levels. Therefore, the macro and meso I (meso-institutional) level of the model relates to objective democratic quality, while the micro (the individual citizen) level relates to subjective democratic quality. Our meso II (meso-societal) level, however, represents a link between objective and subjective democratic quality. The meso II level represents the transfer of individual citizen values and perceptions about democracy to a group level, where the manifestation of participation connects to the institutional level and other key procedural elements of democratic quality, such as the rule of law and competition, as well as substantive factors of equality and political and civil rights, where the rule of law is the basis of the functioning of all other factors.

As mentioned earlier, what we would like to focus on within the subjective dimension of democratic quality are the citizens' confidence in public bodies, and their perceptions of democracy, which also sheds light on the level of their approval of democratic norms, and their level of interest in participation and politics. The **quality of democratic culture**, based on linking political culture with the concept of the quality of democracy, sheds a light on the subjective quality of democracy too; shown by the meso II (societal) and micro (individual citizen) levels of the political culture model of this thesis, which we explain in a later chapter.

II.3.3 Two Pyramids of Democratic Quality

This chapter suggests two hierarchical interpretations of the elements of the quality of democracy. The precondition of the interpretation of democratic quality through the below pyramids is to lay down that we talk about a democratic political culture where these factors of democratic quality are present (at least, to some extent). In line with Hypothesis I, we consider the rule of law the foundation of democratic quality, as it is the rule of law which guarantees the realisation and the sustainability of the other elements. The first pyramid in the sub-chapter on the rule of law did not set up a hierarchy among other factors democratic quality. It solely attempted to demonstrate that the rule of law is the *fundamentum* of the system of factors of democratic quality, including the factors of democratic quality defined by Diamond and Morlino.

In psychology, the Maslow Pyramid (although Maslow himself did not arrange these needs in a hierarchical order) identifies and hierarchises the motivations of individual human beings and categorises them as '***deficiency needs'*** and ***'growth needs'***. Deficiency needs are fundamental needs which if suffer deprivation, it leads to a state of deficiency, i.e., physiological needs,

safety needs, belonging and love needs, and esteem needs. Growth needs consist of cognitive needs, aesthetic needs, self-actualisation, and transcendence, where the latter marks the highest spiritual need of the individual.

Maslow's elements can be applied to democratic functioning and democratic quality, the framework proposes a similar categorisation to the factors of democratic quality.

If we model the quality of democracy in such a way, 'deficiency needs' mean the fundamentals of democratic functioning, while 'growth needs' consist of factors which, firstly, stem from and can't exist without the fundamental elements, and secondly, may give ground for further, more specific democratic improvements. Our question, while attempting to create such a pyramid for the different factors of democratic quality, is which are those factors that are indispensable for the realisation and growth of the other factors? In the next pages, we demonstrate two approaches to this question: **a procedural and a substantive hierarchisation of the pillars of democratic functioning.** The division of the two pyramids corresponds to our two different – top-down and bottom-up – approaches to democratic quality. (I.e., the first pyramid of procedural elements corresponds to the top-down, while the second pyramid of substantive elements corresponds to the bottom-up approach.)

II.3.3.1 The Procedural Pyramid of the Quality of Democracy

The Procedural Pyramid of the Quality of Democracy

Figure 11: The Procedural Pyramid of the Quality of Democracy
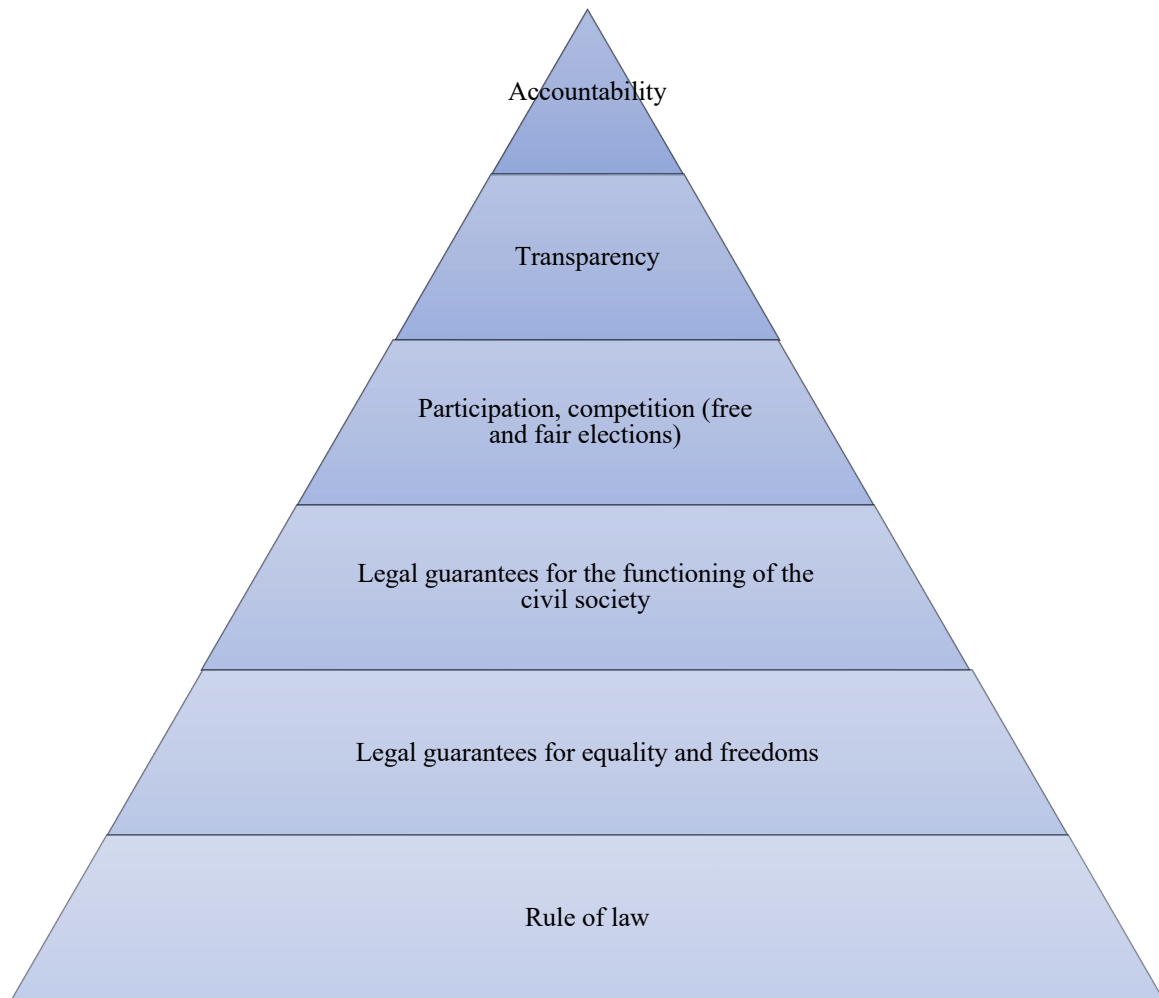
The first pyramid of democratic quality organises procedural factors of democratic functioning in a hierarchical system under two categories: deficiency and growth factors. The pyramid reflects a top-down / institutional approach.

Firstly, (1) the rule of law, (2) constitutional guarantees for equality, including minority protection (i.e. ethnic, linguistic, religious, social, and sexual minorities, including gender minorities, and persons with disabilities) and political and civil freedoms, including freedoms which are derived from the norms of free speech and expression, i.e., academic freedom, and the freedom of information (press and media, be it radio, printed, or online), and (3) the legal guarantees for the functioning of the civil society are the factors which constitute the *'deficiency needs'*, i.e., the fundamentals of democracy, which are indispensable for the upper levels of the pyramid. Secondly, (4) participation, competition (free and fair elections), (5) transparency, (6) and accountability (horizontal and vertical) are the factors which constitute the *'growth needs'*. In this interpretation, the bottom three levels give grounds to the upper

three levels, meaning, the former elements are indispensable for the realisation of the latter ones, and work as guarantees when it comes to the functioning of this proposed system of democratic quality factors.

II.3.3.1 The Substantive Pyramid of the Quality of Democracy

The second pyramid of the quality of democracy – the second, **substantive, bottom-up interpretation** of the hierarchical visualisation of the quality of democracy – is led by the following question: what is the relationship between the quality of the functioning of the civil society and other factors of democratic quality?

Figure 12: The Substantive Pyramid of the Quality of Democracy
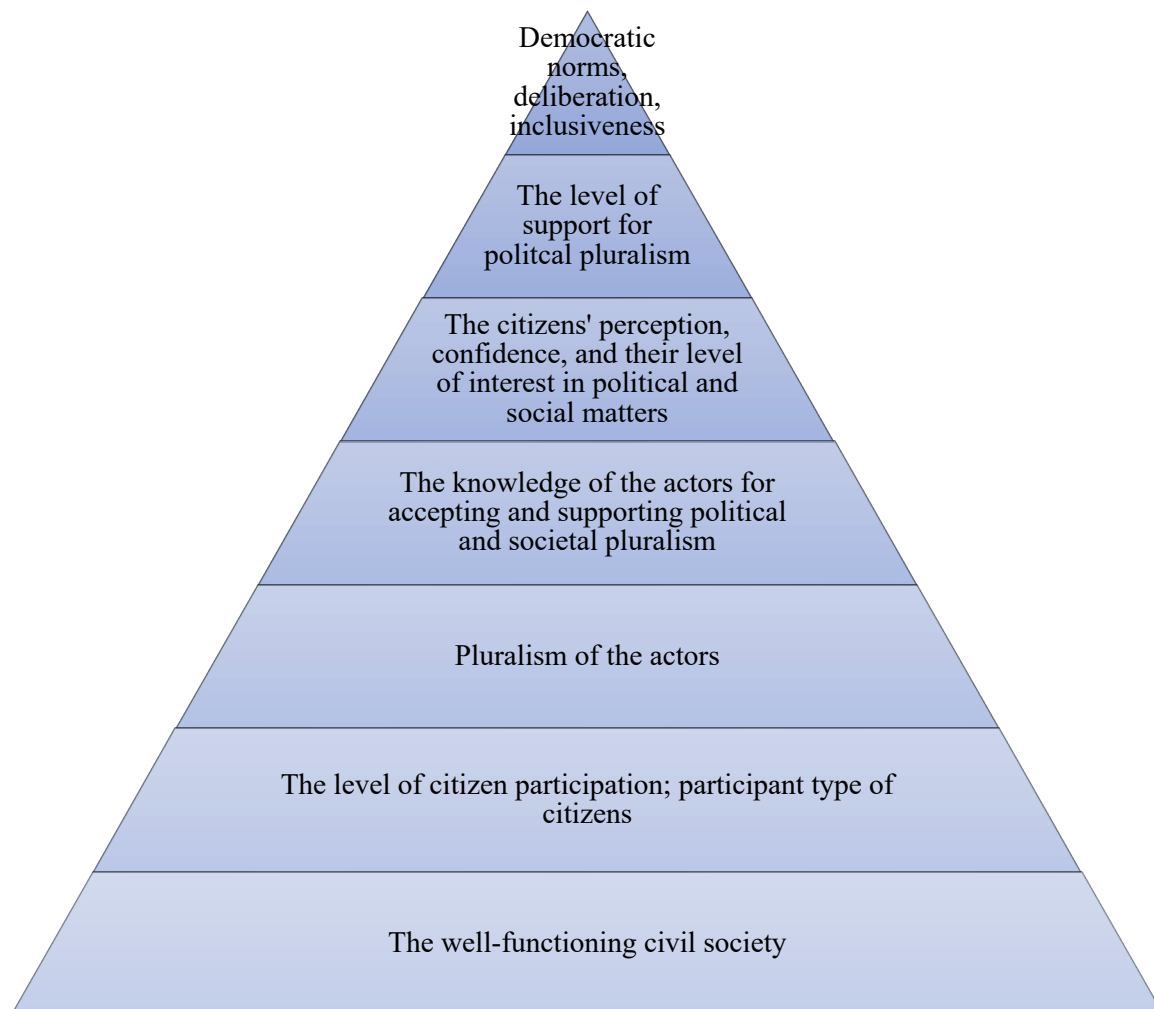
One must keep in mind that the law is the reflection of the values that are created at the level of the society. The latter, for the realisation of high-quality democratic functioning, requires a

thriving civil society, a civic culture. Therefore, the good functioning of the civil society is the basis of this pyramid. One can find a double interpretation: the well-functioning civil society is the fundamental on which the other elements rely, but also, the other elements help build a well-functioning civil society. Thus, these factors are in a rather interdependent relationship with each other. If we intend to use Maslow's distinction of deficiency and growth factors, the well-functioning civil society is the one that belongs to the former category, while the other elements, i.e., the level of citizen participation, the pluralism of the actors (in social, political, economic senses), the level of knowledge of the latter for accepting and supporting pluralism itself, the citizens' perception about their political system, their confidence in public bodies and political parties and their support for the pluralism of political parties at the same time, deliberation, inclusiveness, and the level of rootedness of democratic norms in the citizenry constitute the 'growth factors'. As explained above, in this case, the growth factors are derived from the deficiency factor, as the growth factors help build the deficiency factor (i.e., they are in an interdependent relationship).

One shall associate these thoughts with Jürgen Habermas's terminology. Deliberation and the civil sphere are key aspects of Habermas's deliberative democracy theory, as we discussed in earlier chapters. Furthermore, another factor that we must involve here is the question of **consensus**. Habermas's theory defines consensus as the "output" factor, which appears valid in the case of our second pyramid of the quality of democracy as well. In our theory, all the levels of the above pyramid might lead to the same output: consensus.

However, it is crucial to understand that, as Valeria Ottonelli explains, "consensus must be sought; that reaching consensus must be intentional and not just the mere outcome of a deliberative process".[189] We would like to associate the requirement of "intention" with the middle level of the above pyramid, i.e., *the knowledge of the actors for accepting and supporting political pluralism,* as the factor of knowledge and understanding will lead to intention for consensus, as well as for a higher level of support of democratic norms, which will eventually lead to higher democratic stability, too.

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[189] Friberg-Fernros, H., et al (2019): "Deliberation after Consensus: Introduction to the Symposium," Journal of Public Deliberation: Vol. 15: Iss. 1, Article 12.
Source: https://www.publicdeliberation.net/jpd/vol15/iss1/art12. (Accessed on: 15/02/2022)

II.4 The Quality of Democracy Embedded into Political Culture

II.4.1 Political Culture in the Literature

The following chapter will introduce some key interpretations of political culture, covering the constituting elements of political culture. The objective is to explore these definitions while comparing them. Our first important observation is that the mainstream concept is to date the concept of Almond and Verba from the 1960's. Our second observation is that these definitions summarised below reflect each other, taking the Almond and Verba concept as a starting point. Evidently, the thesis will only use elements of these concepts. However, it is difficult to sharply distinguish the usage of these concepts, exactly because they are often close to each other and reflect on each other. The analysis will use a three-level model of political culture of which the objective is to link the levels of political culture with the concept of the quality of democracy.

II.4.1.1 Why Political Culture Matters

Pye points out that the theory of political culture "was developed in response to the need to bridge a growing gap in the behavioural approach in political science between the level of micro-analysis based on psychological interpretations of the individual's political behaviour and the level of macro analysis based on the variables common to political sociology."[190] Briefly, linking the levels of micro- and macro analyses in terms of the citizen's political behaviour and political sociology. Political culture attempts to "**integrate psychology and sociology** in order to be able to apply to dynamic political analysis both the revolutionary findings of modern depth psychology and recent advances in the sociological techniques for measuring attitudes in mass societies. Within the discipline of political science, the theory signals an effort to apply an essentially behavioural form of analysis to the study of such classic concepts as political ideology, legitimacy, sovereignty, nationhood, and the rule of law[191]. "In sum, the political culture provides structure and meaning to the political sphere in the same manner as culture in general gives coherence and integration to social life."[192]

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[190] Pye, Lucien W. (1965) in Verba, S. and Pye, L. W. (eds)(1969): Political Culture and Political Development. Princeton University Press. p. 8
[191] Ibid., p. 8
[192] Ibid., p. 8

Pye finds it important to consider political culture in the inclusion of individual psychology in the field of political science, bringing together macroanalysis and microanalysis. The four-level model of political culture the thesis chose to use is built on the same structural logic: the system-, the institutional-, and the collective civil level on the macro and meso levels, and the individual citizen's perceptions and values on the micro level. According to Pye, applying the analysis of political culture to the question of political development makes it possible "to throw light on the various combinations and constellations of values which may govern different patterns of development"[193]. Instead of "political development", the thesis focuses on linking these levels of political culture with factors describing the quality of democracy. Since the thesis does not have the objective to challenge the idea that liberal democracy is normatively the best possible form of democracy (Diamond and Morlino, Fukuyama), the quality of democracy depicts the nature of the 'end result' of the process of political development: liberal democracy. This thought is also sustained in the theory of Habermas, according to whom a robust civil society can only thrive in a liberal political culture and socialisation.[194] As he explains in Between Facts and Norms, "democratic institutions of freedom disintegrate without the initiatives of a population *accustomed* to freedom" and are "regenerated from traditions and preserved in the associations of a liberal political culture".[195] Furthermore, according to Habermas, "the decentring of power must be associated with a liberal political culture supported by corresponding patterns of political socialization" (an "enlightened political socialisation")[196]. One may associate the premise of decentralisation with Lijphart's consensus and consociative model(s) of democracy which suit best a fragmented social/political culture.

Therefore, the link between liberal political culture and democracy appears evident if we presume 1) that civil society is one key factor of democratic functioning, and 2) that civil society functions with a high quality against a liberal political cultural background. As the good functioning of the civil society is one of the pillars of the quality of democracy, and it functions better in a liberal milieu, **there seems to be a link between political culture and the quality of democracy.**

The importance of studying political culture, as Kavanagh points out: the approach "enhances our ability to describe and analyse the interactions between the political system and

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[193] Ibid., pp. 10-11
[194] Habermas, J. (1996). Between Facts and Norms. The MIT Press. Cambridge, Massachusetts. p. 371
[195] Ibid., pp. 130-131
[196] Ibid., p. 317

its culture"[197]. Furthermore, "by understanding the nature of the relationship between the political culture and the system's performance, we are better able to appreciate means by which progressive political changes might be brought about. This is particularly relevant to the many political scientists engaged in locating the conditions of stable democratic government"[198].

II.4.1.2 Almond and Verba: The Fathers of the Definition of Political Culture

Political Culture and a Stable and Well-Performing Democracy

The first systematic study of political culture is 'The Civic Culture: Political Attitudes and Democracy in Five Nations' by Gabriel Almond and Sidney Verba. Almond and Verba sought the characteristics a political culture shall have in order to foster democratic performance, therefore, to enhance the quality of democracy. In 'The Civic Culture', Almond and Verba argue that civic culture is the type of political culture which provides the most stable democratic system.

Elements of Political Culture Connecting Levels of the Political Structure

According to Almond and Verba, political culture is what connects individual attitudes with the political system structure. Almond and Verba state that the formation of a participatory state must reach beyond the institutional side of democracy (i.e., universal suffrage, political parties, and the elective legislature), because "a democratic form of political system requires a political culture consistent with it"[199]. Individual orientations and political objects are the two major building blocks of the theory of political culture of Almond and Verba. Political culture is **"the specifically political orientations - attitudes towards the political system and its various parts, and attitudes toward the role of the self in the system"**[200]; furthermore, political culture is "a set of orientations toward a special set of social objects and processes"[201]. This definition has remained to date the relevant definition of political culture.

The definition laid down in 'The Civic Culture' defines two main levels: one on the individual level, and one on the collective level, whereas the net of interactions between the citizens and

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[197] Pye, Lucien W. (1965) in Verba, S. and Pye, L. W. (eds)(1969): Political Culture and Political Development. p. 13

[198] Kavanagh, D. (1972): Political Culture. Studies in Comparative Politics. Published in association with Government and Opposition Ltd. London. p. 10

[199] Almond, G., Verba, S. (1963). The Civic Culture: Political Attitudes and Democracy in Five Nations. p. 3

[200] Ibid., p. 13

[201] Ibid., p. 13

the society (or polity) creates a bridge between the two. The theory of Almond and Verba relies largely on the citizens' perspective. On the other hand, Kavanagh mentions that Finer's definition of political culture seems to concentrate largely on the legitimacy of the rulers and political institutions and procedures.[202] The thesis chose four levels for the analysis of political culture to better understand the quality of democracy in the selected cases: a micro, a meso-institutional, a meso-societal, and a macro level of political culture. Individual orientations, both the attitudes towards the political system of one's own country and the assessment of one's own role in the system, need their own room for analysis – the micro level. For the latter, the research includes the comparative analysis of EVS, ESS, and Eurobarometer surveys.

As Lucian Pye interprets Almond's concept, the traditions and institutions of a country (polity), the passions and the collective reasoning of the citizenry, as well as the style and operating codes of leaders constitute "intelligible web of relations"[203]. Pye recalls Sydney Verba's definition: political culture "consists of the system of empirical beliefs, expressive symbols, and values which defines the situation in which political action takes place"[204]. As Pye explains Verba's words, political culture "encompasses both the political ideals and the operating norms of a polity"[205].

Political Objects and Individual Orientations

Based on the work of Almond and Verba, political culture develops on the level of the individual, but it formulates a consciousness manifested in group attitudes. Regarding its scope, besides the political culture of individuals, we consider the political culture of the political elite (government or opposition), political parties, members of the state bureaucracy, the citizenry, a country, region or the region's population, a nation, or generations. Political culture includes **political objects** formulated on the group level, such as "(1) specific *roles* or *structures,* such as legislative bodies, executives, or bureaucracies; (2) *incumbents* of roles, such as particular monarchs, legislators, and administrators, and (3) particular public *policies, decisions,* or *enforcement* of decisions"[206]. Moreover, the factors which define the individuals' attitudes, on the one hand, towards the system, and on the other hand, towards the role and position of the 'self' in the system are the **political orientations**, which the authors distinguish as "(1)

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[202] Kavanagh, D. (1972): Political Culture. Studies in Comparative Politics. p. 10
[203] Ibid., p. 7
[204] Ibid., p. 8
[205] Pye, Lucien W. (1965) in Verba, S. and Pye, L. W. (eds)(1969): Political Culture and Political Development. Princeton University Press. pp. 7-8
[206] Almond, G., Verba, S. (1963). Civic Culture: Political Attitudes and Democracy in Five Nations. p. 15

cognitive orientation, that is, knowledge of and belief about the political system, its roles and the incumbents of these roles, its inputs, and its outputs; (2) affective orientation, or feelings about the political system, its roles, personnel, and performance, and (3) evaluational orientation, the judgments and opinions about political objects that typically involve the combination of value standards and criteria with information and feelings"[207].

The Typology of Almond and Verba – Parochial, Subject, and Participant Political Cultures

Based on the relationship between institutions and citizens, Almond and Verba distinguish three major types of political culture. Firstly, the **parochial type** of political culture - without differentiation of specific political roles and expectations among actors, as Almond and Verba phrases, "political specialization is minimal"[208]: "the parochial tends to be unaware, or only dimly aware, of the political system in all its aspects".[209] Another characteristic of the parochial type is that "the individual thinks of his family's advantage as the only goal to pursue, or conceives of his role in the political system in familistic terms"[210]. Secondly, **the subject type**, in which differentiation of political roles and institutions exists, however, the passivity of citizens prevails: "a subject tends to be cognitively oriented primarily to the output side of government: the executive, bureaucracy, and judiciary"[211], "the law is something he obeys, not something he (the citizen) helps shape".[212] Thirdly, **the participant culture**, in which there is an interactive relationship between institutions and citizens" opinion and activity: "a participant is assumed to be aware of and informed about the political system in both its governmental and political aspects."[213] In this type of political culture the citizen has "the virtues of the subject – to obey the law, to be loyal – but he is also expected to take some part in the formation of decisions"[214].

Individual Orientations and Citizens' Perceptions of Democracy, Their Confidence in Institutions, and Their Interest in politics

As the structural functionalist theory of Almond and Verba argues, political culture is "the particular pattern of orientations to political action' in which every political system is

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[207] Ibid., p. 15
[208] Ibid., p. 19
[209] Ibid. p. 79
[210] Ibid., p. 120
[211] Ibid., p. 79
[212] Ibid., p. 118
[213] Ibid., p. 79
[214] Ibid., p. 118

embedded"[215]. In other words, the term refers to the "specifically political orientations - attitudes towards the political system and its various parts, and attitudes toward the role of the self in the system"[216]. Almond and Verba argue that the political culture of the nation is the specific distribution of patterns of political orientation (cognitive, affective, and evaluational), toward political objects among members of the nation. Firstly, cognitive orientation, i.e., "knowledge and belief about the political system"[217], secondly, affective orientation, i.e., "feelings about the political system, roles, personnel, and performance"[218], and thirdly, evaluational orientation, i.e., "the judgements and opinions about political objects"[219].

The cognitive, affective, and evaluational distinction of political orientation (which are clearly intertwined with the political objects) in the above theory can be paralleled with my analytical triad of perception, confidence, and interest: taking the substantive point of view of the citizens, democratic stability is facilitated by the triad of the citizens' **perceptions** about their democracy, the citizens' **confidence** in the democratic institutions, and the citizens' **interest** in the political dynamics of their democracy. These three strongly depend on the substantive dimension of the quality of democracy (freedoms of participation, civil and personal freedoms, equality, and government responsiveness). In addition, one must recognise the necessity of the latter factors to be guaranteed by law.

Returning to the theory of political orientation, cognitive orientation can be paired with perception, while affective and evaluational orientation can be paired with confidence: variables of the thesis to investigate the relationship between political culture and democratic quality.

A Three-Level Analytical Framework for Political Culture

First published in 'Comparative Politics: System, Process and Policy' (1966), the three-level model of political culture of Powell and Verba defines the aspects of political culture as 'system, process, and policy'. As the theory is explained in 'Comparative Politics Today – A World View' (Eleventh Edition, 2015), "a nation's political culture includes citizens'

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[215] Welch, S. (1993): The Concept of Political Culture. Scholarly and Reference Division, St. Martin's Press Inc. New York. pp. 3-4

[216] Almond, G., Verba, S. (1963): Civic Culture: Political Attitudes and Democracy in Five Nations. p. 13

[217] Ibid., p. 14

[218] Ibid., p. 14

[219] Ibid., p. 14

orientations at three levels: the political system, the political and policymaking process, and policy outputs and outcomes."[220]

Figure 13: The Three-Level Framework for Understanding Political Culture

System	people's views on the values and organisations of the system	e.g. national identity, national pride, legitimacy by the people
Process	expectations of the political rules and decision-making methods; individuals' relationship to the government	e.g. the role of the citizens, perceptions of political rights
Policy	the public's policy expectations for the government	e.g. the role of the government, policy priorities

At the system level, the model comprises orientations toward the political system, bringing the example of feelings of national pride (a manifestation of emotional ties to the nation). According to the authors, feelings of national pride tend to be higher in countries with long histories, and the factor is rather independent of the political or economic system of the country. The USA, Vietnam, Canada, Poland, and Turkey are mentioned as countries with strong national pride[221], but one can add both the UK and Hungary to the list. Secondly, popular legitimacy is pointed out as a base for stability. However, the motivations of the people(s) for granting legitimacy to a system vary. For instance, inheriting the throne in traditional societies, religion in theocratic systems, the communist ideology in the Soviet Union, or democratic norms such as free and fair elections, free competition, and universal suffrage in modern democracies. Thus, tradition, religion, ideology, or democratic norms.[222] The output is a "basic understanding" between the citizens and the institutions.

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[220] Powell, G. B. et al. (2015): Comparative Politics Today: A World View. Eleventh Edition. Pearson. p. 64
[221] Ibid., p. 64
[222] Ibid., p. 64

At the process level citizens' expectations and perceptions of the political processes are considered (expectations of the political rules and decision-making methods; individuals' relationship to the government).[223] A practical example of this is the level of support for democratic norms in a country (referred to as 'approval' in the chart of citizens' relation to democratic stability).

Finally, the policy level tackles the citizens' policy expectations and questions such as the role and the scope of the government (big vs. small government). Through the lens of the citizen: to what extent shall the government intervene? Who is responsible for the citizens' well-being?[224] Powell et al. argue that "formerly communist nations of Eastern Europe are more supportive of a large government role – reflecting both their social conditions and their past political ideologies"[225] and "in some Western nations, traditions include a large role for the government"[226]. The authors emphasise the role of cultural traditions and the nation's circumstances regarding how citizens evaluate the government's policy goals.[227]

To conclude, the model is built around citizens' perceptions and expectations; it focuses on how the citizens relate to *what* political decisions are made, *how* these decisions are made, and *who* makes the decisions. However, it doesn't really touch upon the institutional settings of the country.

Limits

Welch (1993) reflects on 'The Civic Culture' (1963), pointing out its limits: "to say that *The Civic Culture* deals with the relationship between political culture and democracy is accurate, but not very informative; to say exactly what relationship it establishes, or even tries to establish, is much more difficult".[228] Welch sees the quality of 'The Civil Culture' in its attempt to combine two distinct approaches, naming two projects: the comparative and the sociological projects. In the comparative project, political culture serves as the independent variable, while the sociological project focuses on social conditions which determine the functioning of democracy. Welch describes the combination of the two above 'projects' as a "contribution to the 'empirical theory of democracy', in which a range of sociological variables is taken to be explanatory"[229]. However, Welch's focus is on the relationship between these two dimensions

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[223] Ibid., pp. 65-66
[224] Ibid., p. 67
[225] Ibid., p. 68
[226] Ibid., p. 68
[227] Ibid., p. 68
[228] Ibid., p. 14
[229] Ibid., p. 15

found in 'The Civil Culture'. He concludes that the attempt of 'The Civic Culture' to found a scientific theory of democracy "yields a sociological theory of a degree of richness and complicity", but also points out that the criticism revolving around the work is based on data that the work itself provides.[230] Welch cites Geoffrey Roberts, who criticises 'The Civic Culture' for not taking into account 'critical factors' which are not to be defined by survey analysis, but throughout the analysis of democratic institutions. Such critical factors are, for instance, the existence and support for alternative political channels, or the "increasing gap between traditional political culture and 'alternative' political culture"[231].

II.4.1.3 R. A. Dahl on Political Culture

Like the concept of Almond and Verba, Dahl's approach of political culture, focuses on individual citizens and their 'orientations'. Dahl describes political culture as a factor explaining different patterns of political opposition. Furthermore, Dahl defines culture based on the following questions focusing on so-called orientations, describing the citizens: "(1) Orientations of problem-solving; **are they pragmatic or rationalistic?** (2) Orientations to collective action; **are they cooperative or non-cooperative?** (3) Orientations to the political system; **are they allegiant or alienated?** (4) Orientations to other people; **are they trustful or mistrustful?**"[232].

II.4.1.4 L. Pye's Concept on Political Culture

Lucian Pye's starting point is the Almond-Verba framework. Pye observes that "in any particular community there is a limited and distinct political culture which gives meaning, predictability, and form to the political process"[233] Pye refers to the notion of political culture as "mutually reinforcing" "coherent patterns" represented by "the attitudes, sentiments, and cognitions that inform and govern political behaviour in any society"[234].

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[230] Ibid., p. 29
[231] Welch, S. (1993): The Concept of Political Culture. Scholarly and Reference Division, St. Martin's Press Inc. New York. p. 24
[232] Kavanagh, D. (1972): Political Culture. Studies in Comparative Politics, published in association with Government and Opposition Ltd. London. p. 10
[233] Ibid., p. 7
[234] Ibid., p. 7

Levels

Pye defines the following factors as **indicators** of a country's political culture: (1) the scope of politics; (2) how ends and means in politics are related; (3) the standards for the evaluation of political action; (4) the values that are salient for political action.[235]

At the collective level, as Pye explains, political culture provides a "systematic structure of values and rational considerations which ensures coherence in the performance of institutions and organisations"[236]. Pye also talks about the "evolution of the institutions and value patterns which give substance to the contemporary political cultures"[237], which inspire us to analyse political culture by taking the macro and micro levels simultaneously. (One can however raise the question: is the direction of the interactions amongst these levels bottom-up or top-down, or both?) Correlating to the **micro level** of the model of political culture that this thesis uses, Pye points out that non-political (i.e., sociological, economic) individual behaviours also play a relevant role in the formation of political behaviour. The thesis, however, focuses on factors which connect more directly to the political dynamics of the country**,** i.e., the citizens' democratic values, their trust in the institutions, as well as their perceptions of their own democracy.

Meaning, Discipline, Relevance

Pye refers to Gabriel Almond's concept of political culture, according to which "every political system is embedded in a particular pattern of orientation to political actions".[238] Pye interprets Almond's observation as follows: "in any operating political system there is an ordered subjective realm of politics which gives **meaning** to the polity, **discipline** to institutions, and social **relevance** to individual acts"[239]. We can see a differentiation of levels in this definition: 'meaning' on the collective level, 'discipline' on the institutional level, 'social relevance' on the individual level.

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[235] Ibid., p. 10 referring to Lucian Pye, *Politics, Personality and Nation-Building* (New Haven, 1962) pp. 122-124
[236] Ibid., p. 7
[237] Pye, Lucien W. (1965) in Verba, S. and Pye, L. W. (eds)(1969): Political Culture and Political Development. p. 10
[238] Almond, "Comparative Political Systems," *Journal of Politics,* 18, 1956, and reprinted in *Political Behavior, a Reader in Theory and Research,* Heinz Eulau, Samuel J. Eldersveld, and Morris Janowitz, eds., Glencoe, 111., Free Press, 1956, pp. 34-42, as referred to it by Pye, Lucien W. (1965) *in* Verba, S. and Pye, L. W. (eds)(1969): Political Culture and Political Development. Princeton University Press. p. 7
[239] Pye, Lucien W. (1965) in Verba, S. and Pye, L. W. (eds)(1969): Political Culture and Political Development. p. 7

This differentiation of levels corresponds to the levels of the thesis's three-dimensional model of political culture:

a) discipline / institutional level – meso level, the institutions.
b) meaning / collective level – meso level, the societal dimension.
c) social relevance / individual level – micro level, the individual citizen.

The Individual Level

Political culture as understood at the individual level corresponds to our micro level, i.e., the level of the individual citizen.

Regarding political culture at the **individual level**, besides pointing out the 'social relevance of individual acts' provided by the 'ordered subjective realm of politics' (i.e., political culture) as mentioned above, Pye writes about a learning process which results in the incorporation of elements of the collective level at the individual level. Also, referring to Almond's theory, Pye explains that political culture provides "controlling guidelines for effective political behaviour"[240] for the citizen.

Figure 14: Transferral of Political Culture From the Collective to the Individual Level
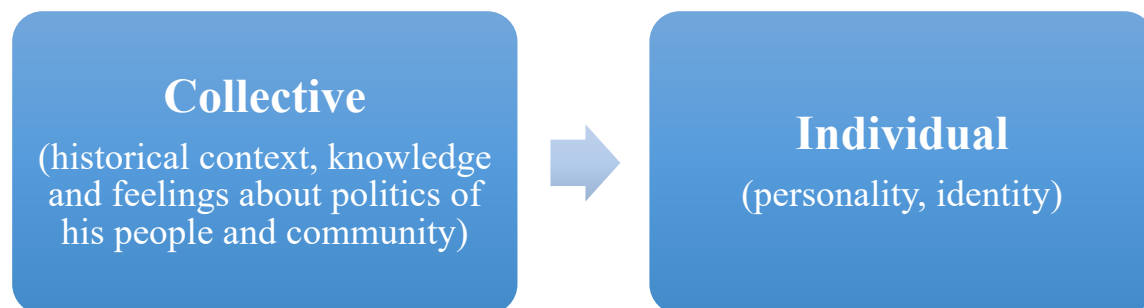
Pye observes that "the concept of political culture assumes that **each individual must, in his own historical context, learn and incorporate into his own personality the knowledge and feelings about the politics of his people and his community**. (...) Each generation must receive its politics from the previous one, each must react against that process to find its own politics, and the total process must follow the laws that govern the development of the individual personality and the general culture of a society."[241]

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[240] Ibid., p.7
[241] Ibid., p. 7

The two directions of the process of transferral of knowledge and feelings about politics:

    a) The process of transferral of knowledge and feelings about politics **from the collective to the individual level.**

    b) The process of transferral of knowledge and feelings about politics **from one generation to the other.**

These processes of transferral of knowledge and feelings about politics contribute to the continuity of the political culture, which factor – besides fragmentation and stability – we use for describing political culture.

History

Pye distinguishes the historical development of the country and the system as a whole and the life experiences of the individuals.[242] Pye: "A political culture is the product of both the collective history of a political system and the life histories of the individuals who currently make up the system; and thus, it is rooted equally in public events and private experiences"[243]. Furthermore, historical context plays an essential role too when the individual citizen learns and incorporates "into his own personality the knowledge and feelings about the politics of his people and his community."[244] The model of the thesis includes the concept of historical context in which the above-mentioned four levels are embedded. The historical context relies on three further factors, fragmentation, continuity, and stability, which are explained in detail in the next section.

II.4.1.5 S. Welch's Interpretation of Political Culture

Behaviouralism and Interpretivism

Welch (1993) observes political culture in light of democracy, modernity, national identity, and the characteristics of communist regimes. In introducing the concept of political culture, seeking criteria of distinction, Welch points out the distinction between Behaviouralism and Interpretivism. Welch points out that "the concept of political culture was in the vanguard of the behavioural revolution" and places the works of Almond and Verba (The Civic Culture) and of Pye and Verba (Political Culture and Political Development) in the behavioural

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[242] Ibid., p. 8
[243] Ibid., p. 10
[244] Ibid., p. 7

tradition. Behaviouralism is characterised by its scientific aspirations.[245] As it is possible to measure political culture in a quantitative manner, according to Welch, the concept served as a catalyst for Behaviouralism. On the other hand, interpretivism reflects the "meaning of political life, or the meaningful aspects of politics", and distrust merely quantitative methodologies. Welch recalls Charles Taylor's approach of distinguishing 'intersubjective' and 'common meanings' based on possible applicable methodologies: "intersubjective meanings are to be distinguished from 'common attitudes' of the sort whose presence survey methodology can expose"[246]. This leads us to the conclusion that **intersubjective meanings cannot be measured by quantitative methods**. However, they constitute the common meanings and shared attitudes: the **patterns in society** which we call shared values, and which are studied by quantitative scientific methods (cf. World Values Survey, European Values Study, etc.).

II.4.1.6 D. Kavanagh's Concept on Political Culture

Citizens' Orientations to Political Objects

"The emotional and attitudinal environment within which the political system operates"[247]: Kavanagh's definition resonates with the one of Almond and Verba. Kavanagh does not focus on the institutional, nor on the system level, but highlights political orientations (referring to Parsons), defining them as "predispositions to political action and are determined by such factors as traditions, historical memories, motives, norms, emotions and symbols"[248], breaking them down to their components, such as cognitions, affect, and evaluation. Cognitions as "knowledge and awareness of the political system", affect as "emotional disposition to the system", and evaluation as "judgement about the system", basing this distinction on the theory of Almond and Verba.[249]

Citizen Values and Perceptions

Kavanagh's observation about cognitions, affect, and evaluation, along with European Values Study and Eurobarometer surveys, further inspired us to include similar factors in the research.

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[245] Welch, S. (1993): The Concept of Political Culture. p. 6
[246] Ibid., p. 5
[247] Kavanagh, D. (1972): Political Culture. Studies in Comparative Politics. p. 10
[248] Ibid., p. 10
[249] Ibid., p. 11

The level of the **citizens' interest** in the political dynamics is a precondition for gaining and building awareness about the political system and dynamics. The questions of **citizen values** and **perception** about the system and dynamics correlate with the question of emotional disposition and with the evaluation of the system (i.e., judging the functioning of the system based on personal and collective values).

Kavanagh elaborates on political objects: they "include such parts of the political system as the executive, legislature and judiciary, the political parties and pressure-groups, the individual's view of himself as a political actor, and his views of other citizens".[250] Kavanagh focuses on the following question: what kind of orientations are held by which people towards which political objects?

II.4.1.7 The New Political Culture (NPC)

Clark and Hoffmann-Martinot explain that the concept of The New Political Culture (NPC) reaches back to the 1970's. The seven key ideas behind the NPC include: "it (1) redefines the classic left-right continuum; (2) distinguishes fiscal from social issues; (3) stresses social issues; (4) emphasizes market and social individualism; (5) reassesses the welfare state; (6) focuses political debate on issues more than party loyalty; and (7) is supported by younger, more educated, affluent individuals and societies."[251] The NPC focuses on issues such as "citizen democracy, environmentalism, gay rights, and abortion-generally consumption and lifestyle issues, with less emphasis on workplace and jobs than in the past"[252]. Characterised by 'issue-specific leaders', "NPC emerges more fully and forcefully in cities and countries with more highly educated citizens, higher incomes, and high-tech service occupations".[253]

II.4.2 Political Culture: Debates and Applicability

The concept of political culture has been a subject of controversy within political science due to the lack of consensus, the elusive nature of culture, generalisation challenges, and debates surrounding causality and determinism. While some scholars argue for its significance in understanding political behaviour and societal dynamics, others question its validity and

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[250] Ibid., p. 12
[251] Nichols Clark, T., Hoffmann-Martinot, V. (eds): The New Political Culture. Routledge, Taylor and Francis Group. p. 4
[252] Ibid., p. 3
[253] Ibid., p. 4

applicability. On the one hand, opponents of the concept of political culture argue against its utility and suggest alternative approaches for studying political phenomena. Critics highlight the difficulty in defining and operationalising political culture, raising concerns about its subjective nature and potential for oversimplification. When analysing the impact of French culture and society on the French revolution, Skocpol argues that focusing solely on cultural factors overlooks the role of other factors - such as economic and military factors as well as international relations - in shaping political outcomes.[254] In 'Social Revolutions in the Modern World', when discussing the influence of culture and ideology on revolutions, Skocpol criticises the anthropological conception of cultural systems as well as the deterministic assumptions associated with culture.[255] Answering to Sewell, for whom culture is a "constitutive of social order"[256], she identifies the risks of the anthropological approach. E.g., "one is tempted to treat fundamental cultural and ideological change as the synchronous and complete replacement of one society-wide cultural system by another"[257]. The latter argument is particularly important for comprehending the vulnerability of democratisation in Hungary. According to Skocpol, culture should be seen as one among multiple factors, rather than as the primary explanatory variable, to gain a comprehensive understanding of political phenomena: "No one cultural system will ever give us 'the key' to the processes and outcomes of revolutionary conflicts. We will make analytical progress, I argue, only if we examine cultural and ideological influences in the context of concrete political struggles."[258]

On the other hand, several prominent scholars have defended the concept of political culture, emphasising its value in comprehending political dynamics, such as Almond and Verba, Dahl, Pye, Powell, etc. Furthermore, in 'The Third Wave', Huntington supports the concept of political culture to comprehend political development and change. He asserts that political culture acts as a reservoir of attitudes and beliefs, influencing the trajectory of political systems. Huntington's work emphasises the significance of political culture in analysing democratic transitions and the challenges faced by emerging democracies.[259]

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[254] Skocpol, T. (1979): States and Social Revolutions: A Comparative Analysis of France, Russia, and China. Cambridge University Press, Cambridge. pp. 51-67
[255] Skocpol, T. (1994): Social Revolutions in the Modern World. Cambridge Studies in Comparative Politics, Cambridge University Press, Cambridge. p. 203, p. 199
[256] Ibid., p. 14, p. 203
[257] Ibid., p. 203
[258] Ibid., p. 15
[259] Huntington, S. P. (1991). The Third Wave: Democratization in the Late Twentieth century. University of Oklahoma Press.

Political culture, when observed on macro, meso, and micro levels, and placed in a historical context to investigate continuity and stability, becomes valuable for explaining the quality of democracy. Following Skocpol's argument, the thesis aims at linking political culture to concrete political phenomena, distinguishing three major analytical levels, including institutional perspectives. Analysing political culture at different levels, and along with specific 'political objects', allows for a comprehensive understanding of how values, attitudes, and behaviours shape democratic quality, as well as of the intertwined nature of the 'political objects' of the different levels of analysis.

First, at the macro level, studying political culture helps identify historical legacies and collective identities that influence the nature of the democratic system. It allows us to examine constitutional evolution and norms that impact the functioning of democratic institutions and the overall quality of democracy. Second, at the meso level, exploring political culture within specific institutional and societal contexts reveals how subcultures, interest groups, and organizations shape democratic participation and decision-making. Furthermore, it allows us to gain a more comprehensive understanding of the functioning of civil society, which is a pillar of democratic quality. Third, at the micro level, analysing political culture focuses on individual beliefs, values, and behaviours that influence democratic practices. It allows for an examination of citizens' political socialization, their levels of trust in institutions, and their understanding of democratic principles, all of which impact the quality, sustainability, and stability of democratic systems. Furthermore, placing political culture in a historical context enables us to explore its continuity and stability over time. By tracing the evolution of political culture and examining how it interacts with societal transformations, we can better understand the factors that contribute to democratic stability or the vulnerability of a democracy.

II.4.3 The Political Culture Model of the Thesis

II.4.3.1 Modelling Political Culture

The objective of the thesis is to observe the quality of democracy in the context of political culture and explore it in the three selected member states. Hypothesis II considers the citizens' perceptions about their own democratic system, the citizens' confidence in the institutions, and their interest in politics as well as in political participation. Hypothesis II connects the following key questions of the above four-level model of political culture (Powell et al.) with

the concept of the quality of democracy: how do citizens perceive their own democracy? How do citizens perceive their roles in the democratic system? What is the government's role? To what extent do citizens trust the institutions?

Since the mainstream understanding of political culture focuses rather on the citizens, for the purpose of creating better chances to link political culture to the quality of democracy, the thesis uses a different analytical framework for political culture. The framework covers both institutional and citizen dimensions. The framework does not oppose Powell's concept, it rather approaches political culture from a different angle. The thesis offers a macro – meso – micro division for investigating the elements of political culture for the purpose of transparency and feasibility. Advancing from the macro to the micro level, the thesis explores the political system, the institutions, the societal dimension, and the individual citizen – the dimensions which are represented on the three levels of the framework, respectively. This division has an important characteristic. It allows us to see the two sides of political culture: on the one hand, the system- and institutional levels, and on the other hand, the societal- and citizen levels (top-down and bottom-up). Taking these dimensions as the objects of the analysis allows the research to focus on both the institutional and the civil/citizen side of political culture.

As mentioned earlier, the model consists of three main levels: firstly, the macro level, which is defined by the type of the political system in the given country, including sub-types. In my case studies this means democracies, however, with considerably different characteristics. Let us take the example of the UK to briefly explain the macro level of political culture. At the macro level, the UK is a democracy. Beyond this – returning to Lijphart's typology of democracies – the UK is a majoritarian or Westminster-type representative democracy.

The essential characteristic that we shall consider on the macro level is the constitution of the country, along with the constitutional evolution as well as potential external and internal events that influenced the progression.

The meso level has two dimensions: the institutional dimension and the societal dimension, i.e., the civil society of the country. At the institutional level, one may consider the political-institutional characteristics of a country, the legal system, the electoral system, and other country-specific features regarding the institutional settings of the country (in the case of the UK, examples of these characteristics can be the common law system or the bi-cameral parliament). At the societal level, one shall consider institutionalised groupings of citizens: the political parties, civil society organisations, and trade unions, lobby groups, any other grouping

of citizens – the fact that these groupings are organised and institutionalised lifts them to the meso level. In addition, whether the society is fragmented or not, and other country-specific features.

Thirdly, the individual citizens (as well as their) the micro level of this framework. The citizen and how the citizen perceives their role in the system, their values, perceptions, and confidence in institutions and interest in politics, as well as the mechanisms through which these factors above form the system (i.e., responsiveness, participation, competition, equality, rights).

Figure 15: Political Culture at the Macro, Meso, and Micro Levels

Historical context	MACRO	Political system
	MESO	Institutions
		Societal
	MICRO	The citizen
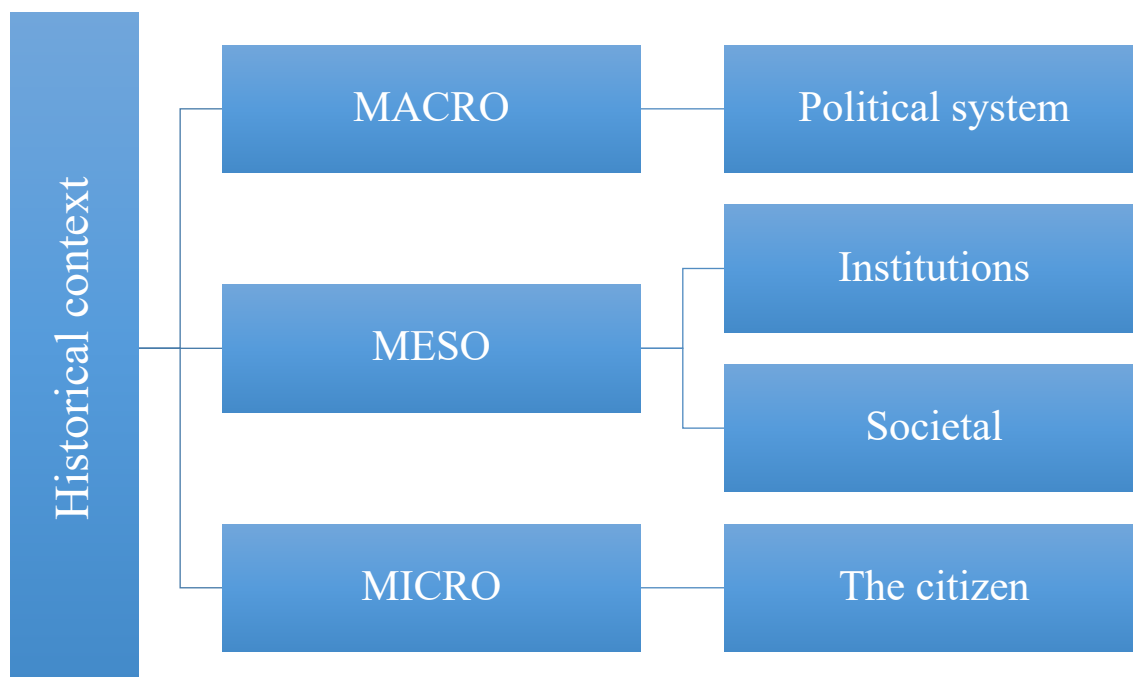
The advantages of the above analytical framework are transparency and better opportunities to link the concept of political culture with the institutional level, as well as with the procedural aspects of the quality of democracy.

II.4.3.2 Factors for Understanding Political Culture in its Historical Context

The thesis uses three factors to help explain and compare the political cultures of the three cases. The purpose of this section is to define each of these. The parameters are linked to the historical context of political culture and are related to questions such as *how fragmented or homogenous a country's political culture is, how stable that political culture is, and what factors serve its stability in light of the quality of democracy*, and *to what extent the given political culture is continuous*.

Figure 16: Fragmentation, Continuity, and Stability
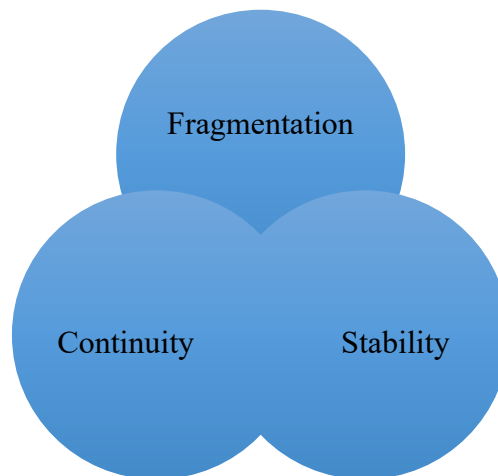
Fragmentation

Firstly, **Lijphart** talks about the parameter of fragmentation when he writes about political culture. Explaining his typology, Lijphart emphasises that it is the consociational (power-sharing) democratic system that is the most suitable in the case of a fragmented political culture.[260] In the consociational democratic system, firstly, the political elites understand the perils of political fragmentation, secondly, the elites have the ability and willingness to accommodate the divergent interests and demands of the subcultures**.** For this, the elites must have the ability to **transcend cleavages and to join in a common effort with the elites of rival subcultures** (for instance, in the form of a coalition government, like in the case of Luxembourg). This depends on their commitment to maintaining the system and improving its cohesion and stability.[261] Therefore, the **commitment to maintain the system of power-sharing affects the level of stability in the case of a fragmented political culture**. This characteristic leads us back to the definition of a consociational democratic system: "consociational democracy means government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy"[262].

Secondly, **Gabriel Almond's typology of democratic states** (*Table 9*) relies on the **homogeneity / fragmentation** of political culture. Almond distinguishes the Anglo-American (UK, USA), and the Continental European (France, Germany, and Italy) types of democracy,

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[260] Lijphart, A. (2007): Thinking about Democracy - Power Sharing and Majority Rule in Theory and Practice. p. 31-32
[261] Ibid., pp. 31-32
[262] Ibid., p. 31

and adds a third group called the Scandinavian and Low Countries. Almond characterises the Anglo-American (Westminster type) democracies as having homogeneous and secular political cultures (in the case of this dissertation, the UK), while the continental European states as having rather fragmented political culture (Luxembourg), and he also adds that Scandinavian and Low countries have characteristics of both (Hungary).[263]

Societal division is a tangible form of fragmentation, including e.g., religious, ethnic, or linguistic cleavages. The depth of divisions, the existence of sub-societies must be considered as well. Based on the aforementioned factors, Lijphart distinguishes three categories, i.e., **plural, semi-plural, and non-plural societies**.[264] However, Lijphart points out that one must not equate 'nonplural' with 'homogeneous', as "most of the nonplural societies are religiously divided to at least some extent and most contain at least one or more small minorities"[265]. In Patterns of Democracy, Lijphart also considers the population sizes of the 36 countries that he compares.[266]

Summing up, one may consider when assessing the level fragmentation of a democratic political culture on the macro and meso levels are:

1) at the macro level:

   a) What does the constitution of the democratic system reflect about the level of fragmentation? To what extent does the constitution represent the pluralistic nature of the society?

   b) Are democratic norms solidly present in the constitution?

   c) Federalisation or decentralisation?

2) at the meso/institutional level:

   a) The level of sharing the executive power (type of government, i.e., parliamentary, presidential, or hybrid systems?)

   b) The electoral system and the type of democratic representation (majority and plurality, or proportional method?)

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[263] Lijphart, A. (2007). Thinking about Democracy - Power Sharing and Majority Rule in Theory and Practice. p. 25
[264] Lijphart, A. (1999): Patterns of Democracy Government Forms and Performance in Thirty-Six Countries. pp. 57-59
[265] Ibid., p. 59
[266] Ibid., p. 61

3) at the meso/societal level:

   a) Political parties and the extent of their balanced presence in the political life

   b) Civil society organisations representing diverse social interests; the nature of public dialogue and responsiveness between decision-makers and organisations

   c) Demographic data indicating societal cleavages (language, religion, ethnicity)

   d) Interest groups, trade unions.

Stability

Democratic Stability – The Stability of the Democratic Political Culture

Stability describes the macro, meso-institutional, and meso-societal levels of the democratic political culture. A stable democracy does not work without a stable political culture; however, a stable political culture doesn't presuppose the existence of a stable democracy, or democracy at all. To resolve this, we must lay down that we talk about a **democratic political culture in a consolidated democracy.** In 'The Civic Culture', Almond and Verba explain that citizen participation and attitudes towards the government are essential in democratic transition and consolidation. Consolidation itself implies the unlikeliness of the given democratic system to "turn back" on the way of democratisation. One can think of two aspects when thinking about the stability of a democratic political culture: **(1) the stability of the democratic political culture itself, and (2) the stability of the progress in the quality of democracy.**

Another approach to the stability of political culture on the micro level brings us back to our second hypothesis, focusing on the relationship between the citizens' perceptions of the democratic system, the citizens' level of interest in the political dynamics, the citizens' confidence in public institutions and parties, and democratic stability. The positive nature of the perception about one's own democracy, i.e., the subjective democratic quality (Fuchs and Roller, 2018), in other words, **the subjective political system quality is not necessarily directly proportional neither to objective democratic quality nor to democratic stability**. It may entail **'political system stability',** though. The case study on Hungary demonstrates the latter phenomenon – the better the perception (therefore, the lesser the scepticism), the lesser the willingness for a change. This kind of stability may relate to the typology of citizens of Almond and Verba: the political majority of parochial and subject-type citizens (characterised by a lesser articulation of demands, lesser scrutiny, lesser awareness of democratic rights and

the lack of a continuous tradition of democratic values) maintain the stability of the illiberal regime.

Continuity

The continuity of a **democratic political culture** is the consistent existence and functioning of democratic values and infrastructure (including institutions) over the course of history.

When talking about the continuity of a democratic political culture, one may recall the historical institutionalist ideas of path dependency and critical junctures. Considering the relationship between the two factors, Skocpol and Pierson explain that "outcomes at a 'critical juncture' trigger feedback mechanisms (negative or positive) that reinforce the recurrence of a particular pattern into the future"[267]. According to Sewell, path dependence means that "what happened at an earlier point in time will affect the possible outcomes of a sequence of events occurring at a later point in time"[268]. Taking the example of the democratic challenges that the UK experienced after the 2016 Brexit referendum brings a nuance to the above logic. The UK is categorized as a full democracy (EIU democracy index), moreover, the country has a historical tradition of being a strong democracy. Still, one may observe that **the long-term continuity and permanence of a democratic culture does not necessarily mean that the democratic system cannot experience some sort of democratic decline**. In the case of Hungary, we observe a different pattern. Contrary to the UK, Hungary is not a traditionally strong liberal democracy. Although Hungary – a country which had experienced a far-right autocracy right after WWII, followed by the communist dictatorship – stepped onto the path of democratisation in 1989 (the critical juncture marking the creation of democratic institutions), a decline in the quality of democracy has been present since the 2010 elections. Therefore, when linking path dependency and the quality of democracy, based on the two examples above, one can observe that there is no 'lifetime guarantee' for good democratic functioning, neither if the country has been a strong democracy throughout centuries, nor if the country was set to democratisation with full force (a 'big boost'), making remarkable efforts (i.e., adapting

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[267] Pierson, P., Skocpol, T. (2002): Historical Institutionalism in Contemporary Political Science. In: Katznelson, I. & Milner, H.V. (eds.) Political Science: State of the Discipline. New York, W.W. Norton, pp. 693-721.
[268] Sewell, W.H. (1996): Historical Events as Transformations of Structures: Inventing Revolution at the Bastille. *Theory and Society* 25**,** pp. 862-863

international norms by participating to international treaties) in order to join a greater democratic community, such as the European Union.

Conclusions:

1)	The quality of democracy is not necessarily path-dependent (UK, HU).
2)	The stability of the democratic political culture is not path dependent.
3)	Breaks (critical junctures) in the continuity of political culture affect the stability of the political culture.

II.4.4 Linkages Between the Concept and the Analytical Framework of Political Culture and the Concept of the Quality of Democracy

II.4.4.1 Democratic Quality and Political Culture

Demonstrating links between democracy and political culture is evidently nothing new. However, the quality of democracy is a rather new field for researchers, thus its link to political culture is an exciting field worth discovering, as these discoveries might provide us with a better understanding of today's democratic decline in the European Union. Hypothesis I points out a relationship between political culture and the quality of democracy, suggesting the interpretation of democratic quality through a country's political culture. This idea is not new to the academic literature. Weßels, for instance, published on the link between political culture, political satisfaction, and democratic decline. Investigating whether there is a rollback of democracy in Europe, Weßels (2015) analyses two dimensions – political culture and political structures or institutions – along two aspects – the performance of democracy and the normative foundations of democratic order. Weßels concludes that "Europe cannot afford a continuing performance crisis if it wants to avoid a legitimacy deficit of democracy that goes beyond dissatisfaction with performance to eroding the support for the normative base of democracy."[269] Weßels connects the age of democracy and the level of democratic consolidation: "How long a democracy has existed is often related to the degree of democratic

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[269] Weßels, B. (2015): Political Culture, Political Satisfaction and the Rollback of Democracy. Global Policy Volume 6. Supplement 1. June 2015. p. 94

consolidation[270]; categorising European countries as follows: "those with continuous democratic experience since the end of the Second World War at the latest; the first countries of the third wave of democratization (Spain, Portugal and Greece); and the latter part of the third wave, eastern European nations that made the transition from communist rule to democracy around 1990"[271]. Weßels argues that "in general, longstanding democracies in Europe face much less change and decline in support than the new democracies of the 1990s and the first third wave."[272] On the example of Western European states, they conclude the following: "the idea of democracy, its norms and its rules are so highly relevant to the people and constitutionally so strongly protected that for the time being any rollback of the normative dimension of democracy seems rather unlikely" [273]; and "together with the strong support for democratic norms, democratic means should provide a very strong buffer against a rollback of democracy as a legitimate and supported political order."[274]

The author raises a question which provides the case study on Hungary with an important aspect: "to which degree the development of the practice of democracy and performance-related support may spill over to the normative dimension, i.e., support for democratic norms (…)"[275]. As shown in the chapter about citizen perceptions and trust in institutions, confidence in the Hungarian government was growing steadily between 2010 and 2019, despite the heavy and long-standing criticism of the Fidesz-KDNP governments for their illiberal practices from countless national and international actors, including the democratic opposition, national fundamental rights civil society organisations, and international organisations like the European Parliament or the Council of Europe. We concluded two findings regarding Hungary: (1) an increasing subjective democratic quality, and (2) a democracy concept of the citizens diverging from the definition of liberal democracy, which makes it possible to grant high legitimacy to Orbán's regime every four years since 2010.

Referring to Weßels's question, the process of spill-over from institutional democratic practices to the societal level of the political culture has not been sufficient to hinder the potential reversing of democratisation. Democratisation could not reach a genuinely

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[270] Ibid., p. 94
[271] Ibid., p. 95
[272] Ibid., p. 96
[273] Ibid., p. 104
[274] Ibid., p. 104
[275] Ibid., p. 103

consolidated status since the latter supposes the consolidation of democratic norms at the level of the citizenry too.

II.4.4.2 The Quality of Democracy Embedded in Political Culture

Based on the literature on democracy and political culture one can draw the following conclusion: **democratic stability requires a democratic political culture.** This section investigates the links between the different levels of political culture and the elements of the quality of democracy based on the four-level framework for political culture.

Diamond and Morlino highlight the importance of a country's political culture when they discuss the rule of law: "The most important conditions aiding the development of the rule of law are the diffusion of liberal and democratic values among both the people and, especially, the elite; strong bureaucratic traditions of competence and impartiality; and the institutional and economic means for fully implementing a rule of law"[276]. Our first observation is that the above argument closely resonates with the concept of Almond and Verba: Diamond and Morlino here talk about political objects (e.g., institutions and norms) as well as individual orientations (i.e., the necessity of democratic values of the citizens and the elite). Our second observation is that it is possible to organise all procedural and substantive pillars of democratic quality around the above framework for political culture.

The Macro Level

The macro level of the democratic political culture model poses a simple but essential question: what kind of democracy do we talk about?

As explained a bit earlier, the macro level is defined by the political system of the country. When it comes to democracies, where – pointed out while discussing Powell's levels of political culture – legitimacy is granted by democratic norms such as e.g., free elections of the political elite as well as free competition, **the role of the rule of law** is evident: a democratic system (including the democratic norms granting legitimacy) must be laid down in and guaranteed by the constitution. The examples for respecting and realising the rule of law are, firstly**, in the procedural sense**: the supremacy of the state, the supremacy of the constitution, the legal system of the country, constitutionalising democratic norms such as separation of powers and

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[276] Diamond, L. and Morlino, L. (eds)(2005). Assessing the Quality of Democracy. The John Hopkins University Press, Baltimore. pp. 14-16

checks and balances (e.g., an independent constitutional court), the secularisation of the state from the church. Secondly, **in the substantive sense**: constitutionalising democratic norms such as human rights protection (plus, referring to international treaties the country is part of in the constitution), the protection of minority groups and the prohibition of discrimination, the equality of citizens before the law, equal access to the justice system, the independence of the judiciary, and guaranteeing the freedoms of participation and personal freedoms to the people. However, one shall consider not only whether fundamental rights are guaranteed by constitution, but also the *means by which* these rights are guaranteed. The latter question leads us to the meso-institutional level.

The Meso Levels

On the meso level, the first pillar of democratic quality that I would like to touch upon is the rule of law.

Firstly, the rule of law connects to the institutional level. **In the procedural sense**, i.e., the effective and timely implementation of the law, the criteria that "the state bureaucracy competently, effectively, and universally applies the law", the implementation of legal principles in the country's legal order (such as non-reactivity, *nullum crimen sine lege*, *nulla poena sine lege*, *res judicata*, *non bis in idem*, etc.), that criminal cases and civil and administrative lawsuits are heard and resolved expeditiously, that rulings of the courts are respected and enforced, and the professional and efficient police force. Furthermore, one must consider the fight against corruption, the principle that the police respect the individuals' legally guaranteed rights and guaranteeing that the citizens have equal and unhindered access to the justice system. If at the macro level I took the example of the constitution, at the meso level I shall consider the level of ordinary law, i.e., how political and personal rights and other essential democratic principles such as transparency, inclusiveness, or the freedom of information are guaranteed and promoted by ordinary law, and how the practical realisation of rights are facilitated (and promoted) by law.

Regarding the societal direction of the meso level of political culture, reflecting the concept of democratic quality, one shall also consider the following question: to what extent and in what manners does the legal system of the country facilitate the 'healthy functioning' of the civil sphere? The existence of a mobilised and aware civil society willing to participate is crucial in terms of the quality of democracy. But what do these factors, i.e., mobilisation and awareness, and the willingness to participate depend on? For an adequately functioning democracy, the

meso/2 level, in principle, is a democratic culture: "a set of attitudes and behaviours that emphasize dialogue and cooperation, solving conflicts by peaceful means, and active participation in public space"[277].

It is essential that the **law facilitates the functioning of the civils society by guaranteeing** the possibility to participate and compete (e.g., political parties), or to contribute (i.e., access to deliberation, e.g., labour unions or civil organisations). The freedoms of participation and competition and the representation of different interests must be guaranteed by law. **Other substantive factors** which contribute to the good functioning of the civil society of the country (guaranteed at the macro and institutional levels as mentioned above) are the basic principles of equality and non-discrimination, transparency, information access and free media, and finally, in terms of responsiveness, the grouped efforts to articulate the citizens' demands. These democratic rights and principles are guaranteed by the macro and meso/institutional levels, while they are enjoyed by the actors of the meso-societal and micro levels.

The meso level connects to both procedural and substantive dimensions of the quality of democracy, i.e., horizontal and vertical accountability, participation and competition (including the quality of the opposition), as well as responsiveness. Responsiveness is the linking factor between the procedural and substantive dimensions in the Diamond-Morlino model of quality of democracy, and so is between the two directions of our meso level, moreover, between the meso and the micro level. It is worth observing the level of responsiveness of the meso/institutional level towards the meso/societal level, as well as responsiveness of both meso sub-levels towards the micro level (the individual citizen).

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[277] Bergan, S.: About the project Competences for Democratic Culture and Intercultural Dialogue. Education Department, Directorate of Democratic Citizenship and Participation Directorate General II Democracy, Council of Europe. Source: https://www.coe.int/en/web/education/about-the-project-competences-for-democratic-culture-and-intercultural-dialogue (Accessed on: 23/12/2020)

Figure 17: Responsiveness between the Levels of Political Culture
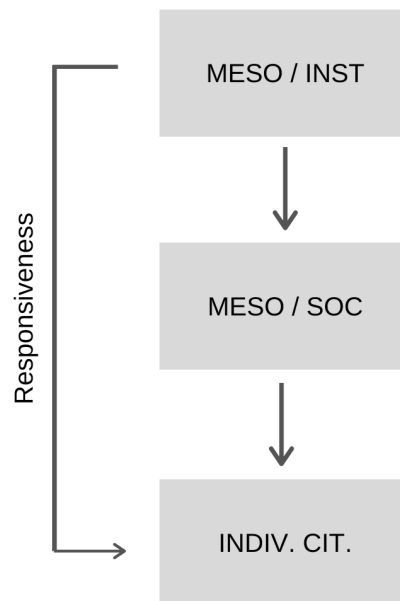
The Micro Level: The Individual Citizen

First, **a top-down** approach: to what extent and in what manners does the legal system of the country **guarantee political and individual rights** to the citizens? Secondly, **a bottom-up** perspective: **the perceptions and confidence** of the individual citizen of and in the political system, the politicians, the political parties, and the level of citizens' interest in the political dynamics of their country.

The idea of "a mobilised and aware civil society willing to participate" leads us to the individual citizens. This sub-dimension correlates with the Powell-Verba modelling of political culture on many levels, as the latter mostly focuses on the citizen perspective (i.e., people's views on the values and organisations of the system, expectations of the political rules and decision-making methods; individuals' relationship to the government, the role of the citizens, perceptions of political rights).

As mentioned earlier, in The Civic Culture, Almond and Verba talk about the individual citizen's "attitudes toward the role of the self in the system". When Dahl interprets citizen orientations, he poses four questions to understand the relationship between the system and the

individual.[278] When discussing the origins of the concept of political culture, Pye refers to the need of bridging the macro analysis and the micro level of the political behaviour of individuals. Henderson refers to Almond and Verba, Pye, and Putnam when she states that "the democratic health of a polity depends in part on levels of political engagement"[279]. This engagement encompasses, first, procedural democratic quality factors such as participation, competition, and the receiving ends of vertical accountability; secondly, the substantial factor of the demanding side of responsiveness. Moreover, the political engagement of the individual citizen is sustained primarily by substantial factors like equality and political / civil rights, and secondarily, by freedom of information, transparency, and access to deliberation, etc.

The micro level of the political culture relates to Hypothesis II. The thesis discovers the micro level through the citizens' perceptions of democracy, the public confidence in political bodies, the public interest in political dynamics, and participation.

II.4.5 Openness, Political Culture, and the Quality of Democracy

The openness of a society helps us understand the relationship between political culture and democratic quality. It may be investigated as a factor of political culture, besides the three other previous factors, i.e., stability, continuity, and stability, or elaborated on as a separate perspective.

The term 'open society', relying on a theoretical approach led by moral universalism, was first used by Henri Bergson in 1932 and was revised by Karl Popper around the end of World War II in his landmark work, 'Open Society and Its Enemies' (1945). Popper applies a historical approach to explain the rise of totalitarianism in the first half of the 20th century, going through key philosophical concepts to see 'what went wrong', and when. He starts his argumentation with Plato and ancient Athens. Popper explains that the uniqueness of the political system of ancient Athens and the breakdown of what he refers to "organic tribalism" (i.e., closed society) came with a price: to bear the strain of demands for being rational and responsible, especially in the times of social change: "the price we have to pay for being human"[280]. He observes the transitioning of 'tribal, collectivist society' into what he calls 'open societies', where the

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[278] Kavanagh, D. (1972): Political Culture. Studies in Comparative Politics, published in association with Government and Opposition Ltd. London. p. 10

[279] Henderson, A. et al (2014): Citizenship After the Nation State. Regionalisms, Nationalism, and Public Attitudes in Europe. Palgrave Macmillan. pp. 161-162

[280] Popper, K. (2013): Open Society and Its Enemies ('New One-Volume Edition'). Princeton University Press, Princeton and Oxford. p. 168

'collective' does not dominate the 'individual', or, in other words, the 'macro' is not more important than the 'micro'. He defines tribalism as "the emphasis on the supreme importance of the tribe without which the individual is nothing at all"[281], and links it with totalitarianism. He argues that totalitarianism is "not simply amoral: it is the morality of the closed society—of the group or of the tribe; it is not individual selfishness, but it is collective selfishness"[282]. On the contrary, in an open society, the complicated task of the 'individual', though, is to be an informed citizen as the 'collective' does not dictate behaviour for citizens for the benefit of the whole of society or common good, as in collectivism, where citizens are under control without individual freedoms for the sake of a higher purpose of the determined collective good.

In the first half of his benchmark work, Popper elaborates on the psychology of Plato, who identifies individualism with egoism[283], while collectivism with altruism, and for whom, essentially, everything is imperfect, everything decays and corrodes in the earthly realm – including political constellations. Regarding the question 'Who and how should rule the state?' Popper argues that Plato's approach to understanding all constituting parts of the realm is insufficient, since, for a deeper, true understanding, one must understand the 'whole' as well.

Regarding his criticism of the works of Hegel and Marx, Popper highlights historicism as a characteristic rendering their concepts delusional. Furthermore, he raises the question of predictability of collective-level behaviour in society, whether it is random or, it is possible to identify patterns, trends, and laws: "for even though they have given up any hope of arresting change, as historicists they try to predict it, and thus to bring it under rational control; and this certainly looks like an attempt to tame it"[284]. In fact, Popper refuses the predictability of human beings as well as the concept of 'the history of humanity as a whole'; he rather considers multiple parallel histories.

The question of predictability makes one recall Pye's concept of political culture where he identifies a two-dimensional transferral of values as well as perceptions, knowledge, and feeling about politics: first, from the collective to the individual level, and second, from one generation to the other. In our understanding, Pye's model of the transferral of values infers predictability of the country's political dynamics. However, one can think of different scenarios based on Pye's argumentation. The first possibility is that these intra-social processes serve the

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281 Ibid., p. 8
282 Ibid., p. 103
283 Ibid., pp. 96-97
284 Ibid., p. 420

continuity and stability of the political culture. Whether this is beneficial for the quality of democracy depends, evidently, on whether we talk about a high-quality liberal democracy (Diamond and Morlino). If political culture is passed from one generation to the next, it is likely that the *lack* of civic culture is also passed on to the next generation. A factor which might influence this process is technological innovation which facilitates both national and transnational communication (online press and media) and deliberation (social media and forums), therefore both national and transnational spreading of values. The second possibility deals with potential critical junctures which break the transferral of values, knowledge, or feelings. Wartime, for instance, reorganises both social and political structures and, besides political radicalisation and its impact on the transformation of collective values, the very loss of human lives breaks the transferral processes. Or, in the case of Hungary, as we argued earlier, besides the two lost world wars, the externally coerced communist/socialist shall be considered as such a critical juncture. Thus, 'shakes to the system' (critical junctures, such as wars) do bear the potential to provoke unpredictable political consequences.

In a 1974 interview, Popper explains the freedoms-based concept he means under an open society and connects its requirements with constitutionalism: "enemies are fascist and Nazis, as well as the communist dictatorship (…). What I meant under an 'open society' was a society where one can breathe freely, think freely, in which every person has a value, and in which society doesn't exert any superfluous constraints on people"[285]. In the interview Popper distinguishes "more or less open" and "not at all open" societies. He points out that Western societies were largely open even during the war. However, he elaborates on the changes since the war: parliamentary omnipotence means all-powerful ruling parties, which, consequently, means that the party leaders are all-powerful. Popper considers that it is the flaw of constitutions to give such power to parliaments while in a democracy there must be control and constraint, distribution of power constitutionalised. 'Not too much power' is the basic idea of democracy, which Popper also understands as a 'great experiment' in which the different forms of must be tested against each other.[286]

Karl Popper's argumentation reveal a relationship between openness and democratic quality: in the liberal democratic framework, the more open a civil society, the better for democratic quality.

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[285] Karl Popper on Open Society – Interview (1974). Source: https://www.youtube.com/watch?v=YVnlzYfIAj0 (Accessed on: 03/11/2022)
[286] Ibid.

II.4.6 Democratisation

The concept of democratisation is important for our case study on Hungary. Simply put, democratisation means a transition to a democratic system. As written above, it is not one static point, but a process which is often not linear. For instance, an authoritarian system might first transition into a minimal electoral democracy (illiberal democracy, according to Fareed Zakaria), and later might or might not continue its progress to a substantive liberal democracy.

Huntington first published his concept about the waves of democratisation in his 1991 publication in the Journal of Democracy[287]. He observes three waves of democratisation. He defines a democratic wave as "a group of transitions from nondemocratic to democratic regimes that occur within a specified period of time and that significantly outnumber transitions in the opposite directions during that period of time"[288].

Table 14: Huntington – Waves and Reverse Waves of Democratisation[289]

First, long wave of democratisation	1828–1926
First reverse wave	1922–42
Second, short wave of democratisation	1943–62
Second reverse wave	1958–75
Third wave of democratisation	1974–

Table 15: Huntington: Motives for Democratisation and for Transitioning Away from Democracy

Motives for Democratisation[290]	**Transitioning Away from Democracy[291]**
The deepening legitimacy problems of authoritarian regimes in a world where democratic values were widely accepted, the consequent dependence of these regimes on successful performance, and their inability to	The weakness of democratic values among key elite groups and the public.

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[287] Huntington, S. P. (1991). The Third Wave of Democracy. Journal of Democracy Vol.2. No.2 Spring 1991

[288] Huntington, S. P. (2012). The Third Wave: Democratization in the Late 20th Century. University of Oklahoma Press. Online Source: Google Books. p. 1983

[289] Huntington, S. P. (1991): Democracy's Third Wave in Journal of Democracy, Spring, 1991

[290] Ibid.

[291] Ibid.

maintain "performance legitimacy" due to economic (and sometimes military) failure.	
The unprecedented global economic growth of the 1960s, which raised living standards, increased education, and greatly expanded the urban middle class in many countries.	Severe economic setbacks, which intensified social conflict and enhanced the popularity of remedies that could be imposed only by authoritarian governments.
A striking shift in the doctrine and activities of the Catholic Church, manifested in the Second Vatican Council of 1963-65 and the transformation of national Catholic churches from defenders of the status quo to opponents of authoritarianism.	Social and political polarization.
Changes in the policies of external actors, most notably the European Community, the United States, and the Soviet Union.	The determination of conservative middle-class and upper-class groups to exclude lower-class groups from political power.
'Snowballing', or the demonstration effect of transitions earlier in the third wave in stimulating and providing models for subsequent efforts at democratization.	The breakdown of law and order resulting from terrorism or insurgency.
	Intervention or conquest by a non-democratic foreign power.
	'Reverse snowballing' triggered by the collapse or overthrow of democratic systems in other countries.

In his work 'The Quality of Democracy in Eastern Europe' (2010), Andrew Roberts gives five explanations for democratisation and democratic quality: (1) authoritarian legacies, (2)

transition and economic constraints, (3) socioeconomic modernisation, (4) post-socialist society, (5) political institutions.[292]

First, authoritarian legacies are a widely researched aspect of democratisation. These legacies are different manifestations, such as (1) the legacy at the level of the political society, (2) the way that political society was constituted under the old regime influences the way citizens interact with their new democratic government, (3) the newly created parties have weaker representation capacities, and (4) the inherited political dispositions of the citizenry.[293]

Second, transition constraints are the economic aspect of authoritarian legacies. A transitioning country must establish new economic institutions and implement major economic reforms. These processes are challenged by (1) the capabilities of the policymakers of the awakening democracy, (2) the citizens who struggle for survival and adaption to the new circumstances and may have difficulties with developing opinions and with participation.[294]

Third, Roberts emphasises that socioeconomic modernisation is one of the main drives of democratisation, as the transformation of a traditional rural society into an urbanized, educated one will eventually raise awareness, citizen scrutiny, and political accountability. He highlights five factors of modernisation: (1) education, (2) the media, (3) material security of the citizens, (4) urbanisation, (5) distribution of wealth. Capable citizens who have skills and the desire to participate in political life is the output of the modernisation process.[295]

Fourth, Roberts points out the relationship between civil society and democratic development which is one of the main focuses of our thesis as well. Roberts defines political society as the following: "the arena in which the polity specifically arranges itself to contest the legitimate right to exercise control over public power and the state apparatus"[296] and includes such core institutions as "political parties, elections, electoral rules, political leadership, interparty alliances, and legislatures"[297]. Roberts refers to Linz and Stephan (1996) who defined civil society as follows: that arena of the polity where self-organizing groups, movements, and individuals, relatively autonomous from the state, attempt to articulate values, create

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[292] Roberts, A. (2009): The Quality of Democracy in Eastern Europe – Public Preferences and Policy Reforms. Cambridge University Press, Cambridge. pp. 13-14
[293] Ibid., pp. 172-173
[294] Ibid., pp. 173-174
[295] Ibid., pp. 170-171
[296] Ibid., p. 171
[297] Ibid., p. 171

associations, and solidarities, and advance their interests. Finally, referring to Putnam, "a strong and vibrant civil society helps democracy to work better"[298].

Fifth, the establishment of new political institutions. Here Roberts refers to the differences between the majoritarian and non-majoritarian types of democracy and points out that while majoritarian institutions help accountability since it is clearer to the citizens which political group is responsible for which policy, this system type offers fewer choices. On the other hand, a consensus or consociative regime offers more diversity, but it is more difficult to clearly assign responsibility for decisions.

An additional aspect of the question of democratisation is the vulnerability of democratisation, which the thesis concludes through the case study on Hungary. As the process of democratisation has not been completed at all levels of the country's political culture, the achievements of institutional and some societal democratisation remain vulnerable to de-democratisation. The thesis covers several institutional and societal examples of this vulnerability in the next chapter.

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[298] Ibid., p. 171

III Empirical Research

III.1 Macro Level: Constitutional Traditions

In our first pyramid of the quality of democracy the rule of law is presented as the basis, the first 'deficiency need' for democratic functioning, which promotes the thriving of other factors, i.e., the 'growth-needs', of the quality of democracy. An essential element of the rule of law is the constitutional order in a democratic system, including the historical traditions of constitutional development, intertwined with the birth of popular sovereignty, the rise of fundamental rights and freedoms, as well as the institutional aspects of democracy, such as parliamentarism and democratic representation. Examining constitutional traditions permits us to understand the country's political culture in light of its continuity and stability. Therefore, the purpose of this chapter is to investigate the evolution of constitutionalism in our three case studies and to find out how these processes influenced political culture and the quality of democracy. In the case of Hungary, the focus is put on two political transitions, the one of 1989 and the one that started in 2011 (the period of democratic backsliding). In the case of the United Kingdom, Brexit serves as the empirical mirror to discover the links between the unique nature of the country's constitutional settings, political culture, and democratic backsliding. Regarding Luxembourg, the 2015 referendum on citizenship and voting rights as well as the recent constitutional reforms play the main role in the thesis's analytical reflections.

III.1.1 United Kingdom

This chapter first elaborates on key concepts and definitions to understand the composition of the British Constitution. Second, it collects the sources of the Constitution, including the timeline of important Acts of Parliament and a brief synthesis of the constitutional principles which are discussed by the constitutional case law. Third, it investigates the recent constitutional controversy which emerged after the successful Brexit referendum of 2016 as well as its impact on the UK's political culture.

III.1.1.1 The Pillars of the British Constitutionalism

Vick calls the British Constitution "to say the least, unique", "an odd one", making the UK a "rare example of a democracy without a written constitution"; furthermore, points out that

some scholars questioned its very existence[299]. Defining its characteristics, Vick highlights that the British constitution "is 'unwritten'; it contains 'non-legal' as well as 'legal' elements; it is not supreme law and is not superior to other categories of law; it is monarchical, but at the same time the power of the democratically elected House of Commons is supreme under it; it is unitary and centred on a controversial notion of parliamentary sovereignty; and it is extremely flexible"[300]. Indeed, "unlike most countries, the United Kingdom does not have a constitution in the sense of a single coherent code of fundamental law which prevails over all other sources of law" – concludes para. 40 of the judgement in (R) Miller v The Prime Minister[301]. However, whether it is correct to call it an "unwritten" constitution is dividing among scholars.

The two major principles which historically constitute the pillars of the uncanonised British constitution are parliamentary sovereignty and the rule of law[302]. These pillars determine the common law system, create the basis for the macro level of the country's political culture, and influence the country's democratic setup. In this chapter, we explain the Diceyan definitions of these two concepts which are crucial to understanding British constitutionalism.

The Diceyan Definition of Parliamentary Sovereignty

Dicey explains that "the sovereignty of Parliament is (from a legal point of view) the dominant characteristic of (the English) political institutions (…)"[303]; it "means (…) that Parliament thus defined has, under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament"[304]. Thus, in the Diceyan definition, the sovereignty of Parliament – a "constituent assembly"[305] –, means that the parliament has the exclusive right of legislation ("legislative supremacy of Parliament"), and the legal effect of its legislation is inevitable. Dicey defines law as "any rule which will be enforced by the Courts." The task of the courts is to obey the law, and there is nobody which, under the English constitution, may override or derogate from an Act of Parliament[306]. However, Dicey also

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[299] Vick, D. W. (2002) "The Human Rights Act and the British Constitution." in Texas international law journal 37.2. p. 331; p 333
[300] Ibid., p. 333
[301] United Kingdom Supreme Court (2019): [2019] UKSC 41
[302] McLean, I. (2010): What's Wrong with the British Constitution? Oxford University Press. p. 19
[303] Dicey, A. V. (1915): Introduction to the Study of the Law of the Constitution. Liberty Classics, Indianapolis. pp. 3
[304] Ibid., pp. 3-4
[305] Ibid., p. 36
[306] Ibid., p. 4

points out the lack of acceptance of an absolute dogma of parliamentary sovereignty (i.e., it is limited in its nature), even though "the doctrine of legislative supremacy of the Parliament is the very keystone of the law of the constitution"[307]. The reason for this difficulty lies in the differentiation of definitions of 'sovereignty'. Unrestricted power to Parliament, according to Dicey, is no more than a legal fiction (internal and external limits to the power of Parliament)[308], contrasting the commentaries of e.g., Lolme (1766, 1768) or Blackstone (1765), who considered Parliament rather 'omnipotent'[309].

As Parau notes, "Parliament is not merely a body of popular representatives, but an inter-institutional relationship between three 'constituent parts': the Crown, and the two Houses of Lords and Commons".[310] Parau quotes Dicey (1885, 1955): "if Parliament means the Queen, the House of Lords, and the House of Commons, or in other words, "The Queen in parliament", then, parliament sovereignty is the law enacted by The Queen-in-Parliament"[311]. As Parau points out, "today the sovereignty of the Queen-in-Parliament is still the fundamental ordering principle of the Westminster Model"[312]. The Cabinet, within the executive, however, is the body which has supreme responsibility for decision making: "it epistomises the informality of the UK constitutional system in that it lacks a grounding in statute and operates in a basis of convention"[313].

The Diceyan Definition of the Rule of Law

Dicey defines the rule of law as "the supremacy of the law"; "the security given under the English constitution to the rights of individuals"[314]. However, Dicey emphasises that the term might be a subject of ambiguity and explains three concepts which are necessary for understanding the "rule, supremacy, or predominance of law" with regards British constitutionalism: 1) prohibition of arbitrary power, i.e., "no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the

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[307] Ibid., pp. 25-26
[308] Ibid., p. 26
[309] Parau, C.: Core Principles of the Traditional British Constitutions. Source: https://www.politics.ox.ac.uk/materials/Core_Principles_of_the_British_Constitutions.pdf (Accessed on: 15/09/2022). pp. 1-2
[310] Ibid., p. 2
[311] Ibid., p. 2
[312] Ibid., p. 2
[313] Blick, A., Salter, B. (2021): Divided Culture and Constitutional Tensions: Brexit and the Collision of Direct and Representative Democracy. Parliamentary Affairs, Vol. 74, Issue 3, July 2021. p. 627
[314] Dicey, A. V. (1915): Introduction to the Study of the Law of the Constitution p. 107

ordinary legal manner before the ordinary Courts of the land"[315]; 2) legal equality, i.e., "every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals"[316]; 3) individual rights are derived from the decisions of the courts: "the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts; whereas under many foreign constitutions the security (such as it is) given to the rights of individuals results, or appears to result, from the general principles of the constitution"[317] ("there is in the English constitution an absence of those declarations or definitions of rights so dear to foreign constitutionalists"[318]).

A Constitution in "Constant Change"

Dicey quotes Tocqueville when explaining parliamentary sovereignty and the changing nature of the country's constitutional setup: "in England, the Parliament has an acknowledged right to modify the constitution; as, therefore, the constitution may undergo perpetual changes, it does not in reality exist; *the Parliament is at once a legislative and a constituent assembly*"[319]. Another term Dicey recalls is "flexibility" (Bryce).[320] McLean also points out that the United Kingdom's Constitution is in constant change.

According to McLean, in recent decades "the main drivers of change have been accessioning to the European Union; devolution to Scotland, Wales, and Northern Ireland; and developments in human rights law since the United Kingdom ratified the European Convention on Human Rights"[321]. The latest of the events that not only reveal but also shape the nature of the Constitution is the Brexit, which we elaborate on in the third sub-chapter.

III.1.1.2 The Sources of the UK's Constitution

McLean raises the point that it is inaccurate to call the UK's constitution 'an unwritten constitution'. In the United Kingdom, case law (landmark court decisions), statutory (codified) law, as well as numerous legal conventions and unwritten (but nevertheless binding) rules of

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[315] Ibid., p. 110
[316] Ibid., p. 114
[317] Ibid., p. 115
[318] Ibid., p. 116
[319] Dicey, A. V. (1915): Introduction to the Study of the Law of the Constitution. pp. Dicey, A. V. (1915): Introduction to the Study of the Law of the Constitution 36-37
[320] Ibid. p. 39
[321] McLean, I. (2010): What's Wrong with the British Constitution? p. 28

constitutional practise is what we understand under 'constitution'.[322] The foundational text for the UK's constitutional system is the Magna Charta Libertatum issued by King John of England (1215). In the course of history, economic, political, and social changes influenced the changes in the constitution of the country.

Case Law / Court Decisions

The list of constitutional case law of the BAILII's Open Law Project (last updated in July 2022) currently includes 278 cases from the period of 1616-2022 at different court levels.[323] Court levels include the House of Lords, the Court of Appeal of England and Wales, the Court of Appeal of Scotland, the Supreme Court (independent from the House of Lords since 2008), the Privy Council, the High Court of England and Wales, the High Court of Scotland, the Upper Tribunal, the Court of Session of Scotland.

Key principles that appear in the case law, based on data from BAILII's Open Law Project: prohibition of torture, legality, proportionality, the right to information about one's arrest and detention, transparency and horizontal accountability, the efficiency of judicial review, legitimate expectations, freedom of the press and of information, collective cabinet responsibility, the freedom of assembly, the right to protest, parliamentary sovereignty, procedural fairness, the right to fair trial, judicial review of government decisions, the separation of powers, the rule of law, the freedom of expression, the freedom of thought, conscience and religion, the freedom from discrimination on the basis of sexuality, the right to an oral court hearing, and the principle of equal pay.[324] Furthermore, the case law also provides clarification regarding the application of different ECHR articles, including Arts 2, 3, 5, 6, 8 (e.g., in terms of same-sex partnerships[325]; in terms of assisted dying[326]), 10, and 11.[327]

Acts of Parliament

The Acts of Parliament are one of the primary sources of constitutional law in the UK. An Act of Parliament is "a Bill that has been approved by both the House of Commons and the House

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[322] Georgetown Law Library – United Kingdom Legal Research Guide. Source: https://guides.ll.georgetown.edu/c.php?g=365741&p=2471214 (Accessed on: 16/09/2022)
[323] BAILII's Open Law Project (2022): Constitutional Law. Compiled by Conor Crummey. Source: https://www.bailii.org/openlaw/constitutional.html (Accessed on: 16/09/2022)
[324] Ibid.
[325] See R (Steinfeld) v Secretary of State for the International Development, 2018 UKSC32
[326] See R (Purdy) v DPP, 2009 UKHL45
[327] BAILII's Open Law Project (2022). (Accessed on 16/09/2022)

of Lords and been given Royal Assent by the Monarch (...) taken together, Acts of Parliament make up what is known as Statute Law in the UK"[328]. In the following section, we follow through the development of democratic norms and civil and human rights via the most important ones of these documents, as they provide insight into the character of the political culture and the nature of the roots of a traditionally high quality of democracy on the procedural level in the UK, i.e., the rule of law.

"Constitutional evolution from the Magna Carta to the end of the 1700s has consisted of placing limitations on the arbitrary power of the Crown"[329], paving the path of parliamentary sovereignty elaborated on above following Dicey's concept.

The table below shows the timeline of important Acts of Parliament (Parau referring to Norton; 1982, with additional Acts).

Table 16: Acts of Parliaments of Constitutional Importance

Magna Carta Libertatum (1215)
Act of Supremacy (1534)
Petition of Right (1628)
Bill of Rights (1689)
Act of Settlement (1701)
Act of Union (1707)
Great Reform Act (1832)
Parliament Acts (1911 & 1949)
Northern Ireland Act (1972)
European Communities Act (1972)

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[328] Official Website of the Parliament of the United Kingdom. Source:
https://www.parliament.uk/about/how/laws/acts/. (Accessed on 27/06/2022)
[329] Parau, C. E.: Core Principles of the Traditional British Constitutions. Department of Politics and International Relations, University of Oxford. Source:
https://www.politics.ox.ac.uk/materials/Core_Principles_of_the_British_Constitutions.pdf (Accessed on: 15/09/2022). p. 3

Constitutional Reform Act (2005)

European Union (Withdrawal) Act (2018)

The Magna Charta Libertatum, a cornerstone in English constitutionalisation, paved the way for English parliamentarism and democracy. Put forward by the barons of England and agreed by King John after an expensive war with Philippe II Auguste of France, the document established the limitations of powers of the monarch as well as the rule of law and accountability – factors which democracy studies today consider as indicators of the quality of democracy (Diamond, Morlino). The Magna Charta provided protection against the arbitrary use of power by the king, providing for the prohibition of new taxes without the approval of the council of barons, and it laid down democratic principles of crucial importance still relevant today, i.e., the rule of law: the norm that the law is above all, including the monarch, and applies to all equally; the right to justice and to a fair trial: "no free man shall be seized, imprisoned, dispossessed, outlawed, exiled or ruined in any way, nor in any way proceeded against, except by the lawful judgement of his peers and the law of the land" and "to no one will we sell, to no one will we deny or delay right or justice".[330]

The Magna Charta resulted first in the formation of the Council of Barons, and later (during the reign of Henry III, the son of John, and initiated by Simon de Montfort) the English Parliament (1265), marking the birth of parliamentary representation. Each county sent two knights who were selected by the county courts and had the right to comment on state affairs. Establishing the norm of representation and parliamentary deliberation, this body later became the House of Commons of the Parliament of England; from 1707 (the Act of Union), the House of Commons of Great Britain; from 1801, the House of Commons of the United Kingdom of Great Britain and Ireland; and finally, from 1927 on, the House of Commons of the United Kingdom of Great Britain and Northern Ireland.

The Bill of Rights of 1689, which inspired other key documents of civil and human rights, such as the US Bill of Rights (1789), the United Nations Declaration of Human Rights (1946), and the European Convention of Human Rights (1957), marks the birth of parliamentary sovereignty – traditionally considered besides the rule of law one of the two main pillars of the

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[330] Official website of the UK Parliament: The Contents of Magna Charta. Source:
https://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparliament/overview/magnacarta/magnacartaclauses/
(Accessed on : 22/09/2022)

Constitution of the UK. The Bill further limited the powers of the monarch to the benefit of the parliament. It established the principles of frequent parliaments, free elections, the freedom of speech within the English parliament, the right of petition, and the right to fair treatment of people by courts.[331]

Important cornerstones of the history of parliamentary evolution as well as democratic representation are the Parliament Acts 1911 and 1949. The House of Commons gained power vis á vis the House of Lords by the Acts, ending the legislative equality between the two branches, establishing the supremacy of the Commons, and terminating the veto right of the Lords in legislative processes. 2/(1) 'Restriction of the powers of the House of Lords as to Bills other than Money Bills prescribe the following: "if any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons [in two successive sessions] (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection [for the second time] by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: (...)"[332].

Furthermore, as a recent innovation, the Constitutional Reform Act of 2005 brought important changes. It enshrined the independence of the judiciary in law, including establishing the independence of the Supreme Court. As a result, since October 2009 the UK has had a Supreme Court separated from the House of Lords.[333] These principles (the separation of powers, the independence of the judiciary) is of crucial importance in the continental-European concept of the rule of law as well as the quality of democracy, and for higher institutional accountability. Key changes brought in by the Constitutional Reform Act are (1) a duty on government ministers to uphold the independence of the judiciary, barring them from trying to influence judicial decisions through any special access to judges; (2) reforming the office of Lord Chancellor, transferring their judicial functions to the Lord Chief Justice; "(3) an independent

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[331] Official website of the UK Parliament: Bill of Rights 1689. Source: https://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentaryauthority/revolution/collections1/collections-glorious-revolution/billofrights/ (Accessed on : 22/09/2022)

[332] Parliament Act 1911. Source: https://www.legislation.gov.uk/ukpga/Geo5/1-2/13/section/2 (Accessed on: 30/09/2022)

[333] House of Lords (2009): Briefing – Judicial Work. House of Lords, London. Source: https://www.parliament.uk/globalassets/documents/lords-information-office/hoflbpjudicial.pdf (Accessed on: 16/09/2022)

Supreme Court has been established, separate from the House of Lords and with its own independent appointments system, staff, budget and building; (4) an independent Judicial Appointments Commission, responsible for selecting candidates to recommend for judicial appointment to the Secretary of State for Justice. The Judicial Appointments Commission ensures that merit remains the sole criterion for appointment and that the appointments system is modern, open, and transparent; (5) a Judicial Appointments and Conduct Ombudsman, responsible for investigating and making recommendations concerning complaints about the judicial appointments process, and the handling of judicial conduct complaints (…)"[334].

Constitutional Conventions

Constitutional conventions, or 'non-legal constitutional rules' are a further characteristic of the UK's Westminster-type political culture at the macro level. These political written and unwritten customs are essential elements for guiding the government. Dicey defines conventions as "understandings, habits, or practices which, though they may regulate the (…) conduct of the several members of the sovereign power (…) are not in reality laws at all since they are not enforced by the courts"[335]. By Sir Ivor Jennings metaphor, "conventions provide the flesh which clothes the dry bones of the law"[336]. Marshall, however, points out that the 'general character' of constitutional conventions, just like the principle of sovereignty, has seen a lot of disputes. In short, these conventions deal with the responsibilities of the main bodies of the government. They may relate to the functioning of the parliament, to the relationship between the executive and the legislative branches of the parliament, to the prerogatives of the sovereign, to the devolved parliaments of Scotland, of Wales, and of Northern Ireland, and to legal processes, e.g., judicial independence. However, these are not enforceable by courts of law; "they are rules of non-legal accountability"[337]. An example that Marshall gives is the rules of ministerial responsibility.

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[334] Official Website of Courts and Tribunals Judiciary of the United Kingdom. Source: https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/constitutional-reform/ (Accessed on: 16/09/2022)

[335] Walters, Mark D. (2021): A. V. Dicey and the Common Law Constitutional Tradition, Ch. 8 – The Law of Parliamentary Sovereignty. Source: https://www.cambridge.org/core/books/av-dicey-and-the-common-law-constitutional-tradition/law-of-parliamentary-sovereignty/076AA0D59A67197EF03DB35D7506386F (Accessed on: 30/09/2022)

[336] UK Constitutional Law Association: Constitutional Conventions, Article 50 and Brexit. Source: https://ukconstitutionallaw.org/2016/07/15/robert-brett-taylor-constitutional-conventions-article-50-and-brexit/ (Accessed on: 30/09/2022)

[337] Marshall, G. (1984): Constitutional Conventions: The Rules and Forms of Political Accountability. Clarendon Press, Oxford. p. 1

Another country-specific characteristic of the British political culture which falls into the category of constitutional conventions is the royal (or Crown) prerogative – a customary privilege and immunity recognised in the common law system. As Blackstone defines it, the Royal prerogative is "that special pre-eminence which the King hath, over and above all other persons, and out of the ordinary course of the common law, in right of his real dignity"[338]. Walters elaborates on the royal prerogative as follows: "significant powers to engage on behalf of the state with other states on the international stage, and these powers cannot be limited or abolished by statute unless the Crown consents"[339]. The official website of the UK Parliament defines Crown Prerogative as "the term used to describe powers held by the Monarch or by Government ministers that may be used without the consent of the Commons or Lords"[340]. One form of Crown prerogative is "orders in council", which has been a 'collision zone' between the courts and the Crown, as exercising the prerogative may give ground for abuse of power. In *R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Bancoult (No 2)* Case (UKHL 61, 2008)[341], the case of removal of Chagos Islanders, the House of Lords found the exercise of the prerogative *ultra vires* (beyond power), upheld by the Court of Appeal and the Divisional Court as well. It is a landmark decision in democratic evolution as restricting the exercise of Crown prerogatives leads to a higher level of accountability, both towards democratic institutions and the citizenry. Furthermore, the decision exposes the royal prerogatives to the same quality judicial review as any other practice of the executive branch:

> "The principle of the sovereignty of Parliament, as it has been developed by the courts over the past 350 years, is founded upon the unique authority Parliament derives from its representative character. An exercise of the prerogative lacks this quality; although it may be legislative in character, it is still an exercise of power by the executive alone. Until the decision of this House in *Council of Civil Service Unions v Minister for the Civil Service* (1985 AC 374) it may have been assumed that the exercise of prerogative powers was, as such, immune from judicial review. That objection being removed, I see no reason why prerogative legislation should not be subject to review on ordinary

[338] Walters, Mark D. (2021): A. V. Dicey and the Common Law Constitutional Tradition, Ch. 8 – The Law of Parliamentary Sovereignty. Source: https://www.cambridge.org/core/books/av-dicey-and-the-common-law-constitutional-tradition/law-of-parliamentary-sovereignty/076AA0D59A67197EF03DB35D7506386F (Accessed on: 03/10/2022)
[339] Ibid.
[340] Official Website of the UK Parliament. Source: https://www.parliament.uk/site-information/glossary/crown-prerogative/ (Accessed on: 03/10/2022)
[341] United Kingdom House of Lords (2008): Judgments - R (On The Application of Bancoult) V Secretary of State For Foreign and Commonwealth Affairs [2008] UKHL 61. Opinions of the Lords of Appeal for Judgement. Source: https://www.bailii.org/uk/cases/UKHL/2008/61.html (Accessed on: 03/10/2022)

principles of legality, rationality, and procedural impropriety in the same way as any other executive action."[342]

Therefore, the Lords found that the practice and potential abuse of Crown prerogative is not in line neither with the principle of democratic representation ("abuse of power"), nor with legitimate expectations ("unfairness to the citizens on the part of a public authority") (Lord Carswell, para 133-135).

III.1.1.3 The Influences of the Constitutional Settings on the British Political Culture in Light of Brexit

How Brexit Provoked a Constitutional Controversy and a Divided Political Culture

The Brexit referendum of 2016 and the campaign which preceded it impacted the political culture of the UK in numerous ways. The international milieu for the referendum was defined by the refugee crisis which made migration a subject of political discussion across Europe, providing grounds for right-wing populists like Nigel Farage for anti-migration arguments and a campaign to leave the European Union. The referendum itself had a high turnout (72%); out of the 30 million votes 17.4 million were supporting Brexit. The referendum results were put through by the European Union (Withdrawal) Act (2018) based on *the will of the people* narrative, providing, on the one hand, for public legitimacy, but on the other hand, enhancing the multi-dimensional political cultural tension and divide which go beyond the question of EU membership.

Douglas-Scott argues that "the Brexit process was rendered highly problematic by the lack of any coherent conception of the British Constitution"[343]. One manifestation of this impact, Blick and Salter (2021) write about the collision of direct democracy (the referendum) and representative democracy (Parliament), which they explain through the constitutional tensions which emerged after the referendum.[344] Christiansen and Fromage point out that "the unique

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[342] Ibid., para 35.
[343] Douglas-Scott, S. (2016): Brexit, Article 50 and the Contested British Constitution. in Modern Law Review 79(6). p. 1019
[344] Blick, A., Salter, B. (2021): Divided Culture and Constitutional Tensions: Brexit and the Collision of Direct and Representative Democracy. pp 617-638

challenge of Brexit interacts with long-standing tensions in the relations between executives and legislatures"[345].

The referendum revealed deep cultural as well as geographical divisions: two camps with two different sets of values which go beyond the question of EU membership. Furthermore, it launched constitutional turmoil. The tensions have had both procedural ("what are the constitutional rules?", "what the rules shall be in the future?", and "how to apply them?"), and substantive aspects involving a wide range of actors, including institutions (the Civil Service, the courts, the Cabinet, the Parliament, and the monarchy[346]) and the citizens – in particular, the UK resident nationals, the UK resident non-national EU citizens, and the UK citizens residing in other member states of the EU.

Dividing values between the two camps were the interpretation of British citizenship, differing definitions and views on national and cultural identity, sovereignty (parliamentary-, popular-, and external sovereignty[347]), multiculturalism, feminism, the green movement, globalisation, immigration, and the homogeneity/heterogeneity of society and diversity. [348] The question of immigration with its associated economic concerns was one major platform of division as well as the drive for the debate around Brexit in the colliding Leave and Remain camps. Blick and Salter point out that the most important recurring factor in the studies around the referendum is the importance of English identity, "reflecting the growing significance of English ethnic majority nationalism in the UK's electoral politics as a response to the increasingly multicultural character of British society produced by immigration (Lodge et al., 2012; Kenny, 2014; Mann and Fenton, 2017)"[349]. The division has territorial aspects, too: first, England and Wales ('Leave') vs. Scotland and Northern Ireland ('Remain'), and second, London and its surroundings, Cardiff vs. with some exceptions, the rest of England and Wales[350]. Another aspect is the age of the voters: young people were keener to vote Remain than older voters: "over 70% of 18 to 24-year-olds who voted in the referendum backed Remain (...), with just

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[345] Christiansen, T. Fromage, D. (eds)(2019): Brexit and Democracy – The Role of Parliaments in the UK and the European Union. Introduction. Palgrave Macmillan. p. 9.
[346] Blick, A., Salter, B. (2021): Divided Culture and Constitutional Tensions: Brexit and the Collision of Direct and Representative Democracy p. 617
[347] Douglas-Scott, S. (2016): Brexit, Article 50 and the Contested British Constitution. pp. 1019-1020
[348] Blick, A., Salter, B. (2021): Divided Culture and Constitutional Tensions: Brexit and the Collision of Direct and Representative Democracy. pp 617-638
[349] Ibid., pp. 619-620
[350] EU Referendum: The result in Maps and Charts. Source: https://www.bbc.com/news/uk-politics-36616028 (Accessed on: 21/09/2022)

under 30% backing Leave" whereas "40% of those aged 65 and over supported Remain, while 60% placed their cross against Leave".[351]

Goodwin and Heath explain the Brexit vote through poverty and the lack of opportunities, finding that those with a lack of skills and qualifications as well as a low income and vulnerability to poverty were more likely to support Brexit.[352] Alabrese et al. (2019) find that support for Brexit is "associated with older age, white ethnicity, low educational attainment, infrequent use of smartphones and the internet, receiving benefits, adverse health and low life satisfaction"[353].

The constitutional consequences of this emerging division in the UK's political culture and Brexit itself were vast. As Blick and Salter explain, "withdrawal from the EU itself implied a change in a variety of constitutional areas, including the legal system, the relationship between the executive and Parliament, and the internal territorial governance of the UK"[354]. First, the importance of the application of a referendum as a tool of direct democracy in the political culture of the UK, and the questions around how to apply it, i.e., the voting system, the legal power, irreversibility, and the relationship between the results and the will of the parliament – all falling into the field of constitutional questions. Second, the tense divergence between the result of the referendum ('Leave' with a slight majority) and the will of the majority of MPs (leaning firmly towards 'Remain') – a clash, on the one hand of principle and political self-interest, and on the other hand, of direct and representative democracy.[355]

In addition, IS/B explained the shift of the UK's political culture as follows: "The main changes in political culture, I would say, have been the results of devolution and Brexit. The breakup of the UK has affected identities and shared cultures."

Supreme Court rulings in 2017 and 2019 created a precedent on the division of powers in the UK's constitutional system. The two cases are (1) R (Miller) v. Secretary of State for Exiting the European Union [2017] UKSC 5, concerning triggering Brexit without parliamentary

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[351] Curtice, Sir John (2018): How Young and Old Would Vote on Brexit Now. Source: https://www.bbc.com/news/uk-politics-45098550 (Accessed on: 21/09/2022)
[352] Goodwin, M., Heath, O. (2016): Brexit Vote Explained: Poverty, Low Skills and Lack of Opportunities. Joseph Rowntree Foundation. Source: https://www.jrf.org.uk/report/brexit-vote-explained-poverty-low-skills-and-lack-opportunities (Accessed on: 20/09/2022)
[353] Alabrese, E. et al. (2019): Who Voted for Brexit? Individual and Regional Data Combined. In European Journal of Political Economy, vol. 56. pp 132-150
[354] Blick, A., Salter, B. (2021): Divided Culture and Constitutional Tensions: Brexit and the Collision of Direct and Representative Democracy. p. 621
[355] Ibid. pp. 621-622

approval, and (2) R (Miller) v. The Prime Minister [2019] UKSC 41, concerning the legality of proroguing (suspending) Parliament.

Firstly, in **(R) Miller v. Secretary of State**, the Supreme Court ruled that **Article 50 cannot be triggered without parliamentary vote**.[356] The ruling reenforced the principle of parliamentary sovereignty, which had been challenged by the government's attempt to bypass Parliament in triggering Article 50. Secondly, in **(R) Miller v. the Prime Minister**, the Supreme Court provided a unanimous judgement which held the five week-long prorogation of the UK Parliament by PM Boris Johnson was unlawful, therefore null and void. [357] The reasoning of the ruling points out that the suspension of the parliament "had the effect of frustrating or preventing the ability of **Parliament to carry out its constitutional functions** without reasonable justification"[358]. The Supreme Court upheld the traditional principle of *parliamentary supremacy* and rejected the view of the government that the referendum result should determine the legal position[359]. The event revealed "fundamental legal differences over interpreting the country's unwritten constitution"[360], as well as a need for a canonised constitution; one that is not dependent on the judiciary. The ruling clarified the constitutional limits of the Prime Minister's power to prorogue Parliament and highlighted the role of the judiciary in upholding the rule of law and the UK's constitutional norms.

Payne explains the "need for a written constitution" through the Miller Case of 2017.[361] As Payne argues, "the obscurity of the UK constitution is dysfunctional and needs to be reformed by way of a written constitution"[362]. Another reason for canonisation the author provides is "to define properly the constitutional status of the devolution settlement in Scotland, Wales, and Northern Ireland"[363]. Payne also criticises the dependence of the constitution on the judiciary, especially when it comes to divisive questions (such as exiting the EU), as division might undermine public trust in judges and make them more vulnerable to criticism. Furthermore, as Payne points out, "in the absence of a written constitution designating the role of a top

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[356] UK Supreme Court (2017): Judgment in R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5
[357] UK Supreme Court (2019): Judgment in R (Miller) v Prime Minister [2019] UKSC 41
[358] "Johnson's suspension of parliament unlawful, supreme court rules". Source: https://www.theguardian.com/law/2019/sep/24/boris-johnsons-suspension-of-parliament-unlawful-supreme-court-rules-prorogue (Accessed on: 21/09/2022)
[359] Blick, A., Salter, B. (2021): Divided Culture and Constitutional Tensions: Brexit and the Collision of Direct and Representative Democracy. p. 626
[360] Ibid.
[361] Payne, S. (2018): the Supreme Court and the Miller Case: More Reasons Why the UK Needs a Written Constitution. The Round Table, 107:4, pp. 441-450.
[362] Ibid. p. 442
[363] Ibid. p. 449

constitutional court, the Supreme Court may lack institutional confidence in its role and authority and seek to portray its decisions as merely technical applications of the law rather than assertions of creative and active constitutional law-making"[364]. He points out moreover that "a written constitution would transform the position of the courts because they would not be the constituent power that had constructed the constitution"[365]. The constituent power would be delegated to other entities (the people, a constituent body, or Parliament), providing for independence from the judiciary.

To conclude, Brexit challenged the British constitution in several ways and provoked the revision of questions such as parliamentary sovereignty, the system of devolution, referenda, and the role of the judiciary. Firstly, the principle of parliamentary sovereignty got reenforced during the Brexit process. In the Miller case, the Supreme Court ruled that the government could not trigger Article 50 without parliamentary approval, asserting *the primacy of Parliament* in the constitutional process. Secondly, Brexit highlighted tensions between the UK government and devolved administrations in Scotland, Wales, and Northern Ireland, as they had differing views on Brexit and their future relationship with the EU. The withdrawal of the UK from the EU also raised concerns about the distribution of powers between the central government and devolved administrations. Thirdly, the use of a referendum to decide on such a significant issue as the UK's membership in the EU was unprecedented in UK constitutional history. The referendum lacked **clear rules and guidance on how the outcome should be implemented**, leading to legal and political uncertainty.[366] Finally, the role of the **judiciary in interpreting and enforcing the constitution** was tested during the Brexit process as well. The Supreme Court had to decide on several key Brexit-related cases, including the triggering of Article 50 and the prorogation of Parliament, which raised questions about the relationship between the judiciary, the executive, and Parliament. Overall, Brexit highlighted the need for constitutional revision and a clearer framework for decision-making in the UK.

III.1.2 Hungary

In Hungary, the constitutionalisation process started in 1848 along liberal ideas based on the English and Belgian examples (in terms of suffrage rights, even more liberal than the latter

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[364] Ibid., p. 442
[365] Ibid., p. 449
[366] Gordon, M. (2020): Referendums in the UK Constitution: Authority, Sovereignty and Democracy after Brexit. in European Constitutional Law Review, 16(2), pp. 213-248

two). However, the communist rule, which lasted 45 years, broke the process towards the sort of liberal democracy we know in Western-Europe today. A key reason for the historical events which broke democratic evolution and paved the path to "illiberal democracy" in Hungary, is to be found in geopolitical factors too. One of the losers of World War II, Hungary got under Soviet leadership and became a part of the Eastern Bloc. It is important to note that several members of the region, for instance, Czechoslovakia, Poland, or Romania, who had not ended up at the losing side, were predetermined to the same fate, their independence having been sacrificed to the cause of harmony among the "Big Three"[367]. During the Yalta Conference of 4-11 February 1945, the three major powers of the Allies, the USA, the Soviet Union, and the United Kingdom decided on the post-war reorganisation of the Central and Eastern European Region.[368]

III.1.2.1 1848 – Establishing Constitutional Monarchy and Parliamentary Democracy

The history of the codified, written constitution of Hungary reaches back to 1949[369]. However, laws and legal customs and principles which later affected the constitutionalisation of the country started to emerge, in the widest interpretation, from the 10th century. This historical (non-canonised) constitution had always reflected the changes and actual state of the legal order of the country.

The Civil Constitutional order was established in 1848 by the so-called "Laws of April" (1848:III)(created in March, but Ferdinand V ratified them on 11th April 1848), reflecting the liberal political ideas of the "Reform Era" and the Revolution of March 1848, establishing a constitutional monarchy in the country. The Kingdom of Hungary, after France and Belgium, became the third country in continental Europe to enact legislation on democratic parliamentary elections.

Contemporary political innovations influenced the politicians of the Reform Era, such as Lajos Kossuth, Ferenc Deák, and Ferenc Kölcsey, who often referred to the English constitution in order to implement practices such as the institution of civil parliamentarism, freedom of speech

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[367] Watt, D. C. (1989): Historiography – Britain and the Historiography of the Yalta Conference and the Cold War. Diplomatic History 1989 January, vol. 13. p. 78
[368] Ibid., p. 96
[369] Constitution of the Hungarian People's Republic. Source: https://net.jogtar.hu/getpdf?docid=94900020.TV&targetdate=ffffff4&printTitle=1949.+%C3%A9vi+XX.+t%C3%B6rv%C3%A9ny&referer=http%3A//net.jogtar.hu/jr/gen/hjegy_doc.cgi%3Fdocid%3D00000001.TXT
(Accessed on: 02/07/2022)

in the parliament, and the right to immunity in the functioning of the parliament. The transformation into a constitutional monarchy, just as in the case of Luxembourg in the same year, was influenced by the 1831 Belgian constitution: the monarch and the parliament exercise the legislative power together.

The Revolution of March 1848 codified principles and liberties such as the accountability of the government before the parliament, equality before the law, and the new law on suffrage (1848:V), transforming the old parliament system based on feudal estates into a democratic representative parliament, establishing one of the widest suffrage rights in Europe at the time. As Andás Gerő explains about representative parliament and suffrage, in comparison with the English example: "The 1848 Act was liberal. Its liberalism lay in the fact that men aged at least 20, meeting the property or income qualification for voting, as well as members of the intelligentsia, were guaranteed a voting right and those above 24 could be elected representatives. The extent of the liberalism of the 1848 Act is clear if we look at England, which was considered the model state of liberalism at that time, as the qualifications for suffrage and candidacy to meet there were higher. England had a much larger population but only a few hundred thousand more voters than Hungary did, and if we compare the Hungary of the time with other European states, we still get a highly positive picture, since this political right was held by some 7-8% of the population (or even 10% according to other – somewhat exaggerative – calculations). In sum, apart from Switzerland, Hungary had the lowest qualification for suffrage and candidacy in Europe in those days"[370]. Further enacted liberties were the freedom of the press (Law 1848:XVIII), the freedom of education (Law 1848:XIX), as well as the freedom of religion (Law 1848: XX).

Regarding the fragmentation of its political culture, as one of the two entities of the Austro-Hungarian Empire, the Kingdom of Hungary was ethnically heterogenous, but, as Gerő emphasises, showed a more homogenous picture than the other half of the Empire.[371] Only by the beginning of the 20th century, the Hungarians became the major ethnicity in the Kingdom (54.5% by 1910), partly due to the emigration of non-Hungarian nationalities, partly due to the assimilation of the Jewish population.

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[370] Gerő, A.: Nationalities and the Hungarian Parliament (1867-1918). Source: https://www.geroandras.hu/en/nationalities-and-the-hungarian-parliament-1867-1918/ (Accessed on: 02/09/2022)
[371] Ibid.

To conclude, Legislation 1848:III, with its 38 articles, established the constitutional foundations of governance in Hungary for a century. Szente confirms: the laws of April 1848 paved the way for modern European constitutionalism in the country.[372] Civil development and constitutionalisation, however, continued to unfold rather after the Austro-Hungarian Compromise of 1867.

After 1867, Hungarian public law made significant efforts to reconcile the constitutional consequences of the compromise with the historical constitution, and to verify legal continuity with the last period still considered constitutional, the public law situation according to the 1848 legislation.[373]

The democratic spirit followed through the era of Dualism, generally called Austria-Hungary – the Dual Monarchy of Austria and the Kingdom of Hungary – until 1918, the end of World War I. By the end of the Great War, however, Hungary collapsed. This point in the country's history, certainly a critical juncture, did not only mark the end of Austria-Hungary, but with the Trianon peace treaty of 1920 Hungary lost two-thirds of its territory and approximately half of its population. The Great War forced the country into an economic crisis. Although this could have, in theory, been, due to the end of the era of Austria-Hungary, an opportunity for self-identification and constitutional-democratic developments, the circumstances were disadvantageous, characterised by hyperinflation and severe food shortages, and an exhausted society.

The short-lived First Hungarian Republic, led by Károlyi was set up by November 1918, but failed to stem the discontent of the population. In March 1919, though, the social democrats allied with the communists. These were those ex-prisoners of war who returned from captivity from the almost newborn Soviet Union where they became influenced by Bolshevist ideology. With the lead of Béla Kun the Hungarian Socialist Federative Republic of Councils along with the dictatorship of the proletariat was declared.

It is important to note regarding the historical context of Hungarian political culture that the Bolshevik regime, which had lasted for 133 days, besides the left-wing intellectuals, got support from many of the Jewish population of Budapest too, which gave ground for the growing anti-Semitism in the upcoming decades. The political narratives of the upcoming

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[372] Szente, Z. (2010): Kormányforma és parlamentáris kormányzás a XIX. századi európai és a dualizmus kori magyar közjogban. Source: http://real-d.mtak.hu/403/4/dc_42_10_doktori_mu.pdf (Accessed on: 05/10/2022) p. 121
[373] Ibid., p. 119

Horthy era (until the end of WWII) often referred to the Bolshevist Republic of Councils as "Jewish Dictatorship", even though it was the very nature of the Bolshevik ideology (including atheism) which might have permitted Jewish individuals to achieve genuine equality in the society where they frequently had to face discrimination. Another characteristic of Horthy era is the 'us against' narrative against the Bolshevists.

III.1.2.2 The Socio-Political Reflections of the 1949 Constitution of the Hungarian People's Republic

The following section investigates the constitutional constructions of socialist-Hungary and its legacies.

The preamble of the 1949 Constitution revolves around the importance of the influence of the Soviet Union and defines socialist development as the key objective for the state: "The armed forces of the great Soviet Union liberated our country from the yokes of the German fascists, crushed the anti-people state power of the landlords and capitalists, opened the way to democratic development for our working people. The Hungarian working class, in alliance with the working peasantry and with the selfless support of the Soviet Union, having emerged to power through hard battles against the lords of the old order, has rebuilt our war-torn country. By the (…) leadership of our working class, enriched with the experiences of the socialist revolution of 1919, relying on the Soviet Union, our people have started to build the foundations of socialism, and our country is moving forward on the path of people's democracy towards socialism."[374]

The first chapter defines the Hungarian People's Republic: "Art. 1: Hungary: people's republic. Art. 2(1): The Hungarian People's Republic is the state of the workers and the working peasantry. Art 2(2): In the Hungarian People's Republic, all power is held by the working people. Town and village workers exercise their power through elected representatives who are responsible to the people. Art 3: The state of the Hungarian People's Republic protects the freedom and power of the Hungarian working people, the independence of the country, fights against all forms of human exploitation, and organises the forces of society for the construction

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[374] 1949. évi XX. Törvény – a Magyar Népköztársaság Alkotmánya (1949. XX. – Constitution of the People's Republic of Hungary). Source:
https://net.jogtar.hu/getpdf?docid=94900020.TV&targetdate=ffffffff4&printTitle=1949.+évi+XX.+törvény&referrer=http%3A//net.jogtar.hu/jr/gen/hjegy_doc.cgi%3Fdocid%3D00000001.TXT

of socialism. In the Hungarian People's Republic, a close alliance of the labour and the working peasantry is realised under the leadership of the working class."

Chapter 2 determines the social order. In Art 9, the Constitution lays down that the fundament of the social order of the Hungarian People's Republic is work. Furthermore, it lays down that (Art. 4) the means of production are in the hands of the state or the agricultural cooperatives, as well as that the "people's economy" is in the powers of the people. Furthermore, as we read in Art 5: "the economic life of the Hungarian People's Republic is determined by the state's national economic plan(s). State power (…) directs and controls the national economy in order to develop the productive forces, increase the public wealth, constantly raise the material and cultural standards of the workers, and increase the defence power of the country". Art. 7 of the 1949 Constitution recognises and grants the rights of the working peasantry to the land and sets the objective to enhance the socialist development of the agriculture by supporting the agricultural cooperatives. The following are determined as the propriety of the state ("as the propriety of the people"): the forests, the waters, the natural resources, the mines, the major industrial plants, the means of transport (i.e., railway, land- and water-, and airways), the banks, the post offices, the telegraph, the telephone, the radio, and the agricultural plants organised by the state. Art. 8 recognises private property which is gained by work; however, private property cannot harm the public interest. Art 9 determines that The workers, through their work and the enhancement of their work discipline, as well as the improvement of work methods, serve the cause of the construction of socialism. A key principle of the socialist ideology is also presented in this Article: "each based on their ability, to each based on their work".

Chapter 3 collects the major institutions of the state: Art 10 determines Parliament as the main institution of the State: "the highest organ of state power". As the Constitution lays down, the national assembly exercises all rights arising from popular sovereignty; it determines the organisation, directions, and conditions of governance. Parliament a) creates laws, b) determines the state budget, c) establishes the national economic plan, d) elects the Presidential Council of the People's Republic, e) elects the Council of Ministers, f) establishes and abolishes ministries, g) decides on the declaration of war and the conclusion of peace, and h) exercises public mercy. Parliament is elected for four years. Art 20 defines the tasks of the Presidential Council, including calling the parliamentary elections, convening the Parliament, initiating laws, and ordering referenda on issues of national importance.

Chapter 4 provides that the main organ of governance is the Ministerial Council of the People's Republic, consisting of (Art 23) the President of the Ministerial Council as well as the vice-

president(s), the state ministers, and the ministers who lead the respective ministries. Its tasks include, e.g., the direction of the ministries, the implementation of the laws and the decrees of the Presidential Council, and the realisation of the plans of the state economy.

Chapter 5 collects the organs of local administration, while Chapter 6 defines the judiciary. We learn from this chapter that the judicial tradition of the socialist era relies on the following anatomy: Supreme Court, high courts, county courts, and district courts, where the Supreme Court exercises normative control over all the courts regarding the judicial operation as well as the judgements. The president and the judges of the Supreme Court are elected by the national assembly for five years. Art. 41 says that "the courts (…) punish the enemies of the working people, protect the state, the economic and social order, the institutions of the people's democracy, and the rights of the workers, and educate the workers to respect the rules of socialist social coexistence. Furthermore, the Constitution lays down that the judges are independent and subject only to the law. Chapter 8 defines the role and tasks of the state prosecution.

Chapter 8 deals with the rights and duties of the citizenry, while Chapter 9 lays down the principles of elections in Socialist Hungary. Amongst the rights and duties of citizens, the right to work as well as the right to salary based on the quantity and quality of work are presented at the first place (Art. 45). Second on the list (Art. 46) is the right to rest and holiday. Thirdly, among citizen rights, it is declared that the Hungarian People's Republic protects the health of the workers and supports them in case of incapability to work. This support was realised through a widespread, state-funded health care system, a common feature of socialist countries of the region in the era. Art. 48 is about the rights to culture. Art. 49 provides the equality of the citizens: "(1) Citizens of the Hungarian People's Republic are equal before the law and enjoy equal rights. (2) Any kind of discrimination against citizens based on gender, religion or nationality is strictly punished by law. (3) The Hungarian People's Republic provides all nationalities living in its territory with the opportunity to be educated in their mother tongue and to nurture their national culture". Art 50 furthers the constitutionalisation of equality of the citizens by declaring that men and women have equal rights in the country. The protection of the institutions of marriage and family is also present in the constitution.

Further constitutionalised values are supporting scientific work which serves the cause of the working people, arts which depict the life of the people as well as which promote the victory of the people, and intellectuals who are "faithful to the people". Art. 54 provides that "the Hungarian People's Republic ensures citizens' freedom of conscience and the right to practice

religion freely", as well as secularisation (i.e., the separation of church and state) to grant the former. Regarding the freedom of speech, press, and organisation, we read the following: the state "ensures freedom of speech, freedom of the press, and freedom of assembly in accordance with the interests of the workers". Art. 56 provides that "in order to improve the social, economic, and cultural activities of the workers, the (state) constitutionally guarantees the right of association". This article places the active and self-conscious working citizen in the spotlight: the state, in the fulfilment of its tasks, relies on the organisations of these working citizens, e.g., trade unions, democratic women's organisations and youth organisations. The key tasks for these are the protection of the order of the people's democracy, active participation in the construction of socialism, widespread cultural education, the realisation of the rights of the people, and finally, cherishing international solidarity (with other socialist countries, evidently). Furthermore, the right to privacy is provided by the Constitution. The document also declares that "those foreign citizens who are persecuted for their democratic behaviour and their activities for the liberation of peoples enjoy the right of asylum in the Hungarian People's Republic", equating socialism with democracy. A particular duty of all citizens presented in the document is the protection of the homeland.

The "Fundamental Principles for Elections" Chapter of the Constitution (Art. 62-66) lays down that parliamentarians are elected by the voters of the Hungarian People's Republic on the basis of universal, equal and direct suffrage, by secret ballot and that elected representatives are obliged to report to their constituents about their work; furthermore, that voters may recall the elected representatives; that the right to vote belongs to every adult citizen of the Hungarian People's Republic, however, the law excludes the enemies of the working people and the mentally ill from the right to vote; that every citizen entitled to vote has one vote in elections; that all votes are equal; and finally, that anyone who has the right to vote can be elected as a member of the National Assembly.

What does this reflect?

The concept of people's democracy, a theoretical concept of Marxism-Leninism, is the core of the 1949 Constitution. This concept equates socialism with democracy, however, this regime has not much to do with the Western concepts of democracy, even in their most minimal interpretation which requires at least some sort of political competition, which, evidently, was not present in communist countries. Based on the 'disaggregation of political regimes by various dimensions of democracy' typology established by Howard and Roessler (2006),

socialist regimes of the region fall within the category of "Hegemonic Authoritarianism", as regular elections are a part of the political culture, however, these elections are not contested (i.e., lack of political competition). In fact, we talk about single-party systems ('party-state'), dominated by the local (national) Communist Party. People's democracy, a political system led by the proletariat, was officially presented as a result of a popular-democratic / socialist revolution thanks to the weakening of imperialism to which people's democracy opposed itself. However, its characteristics differed in each of the countries of the Eastern Bloc. After World War II, under Soviet influence right-wing parties collapsed, and by the unification of the left-wing parties the Hungarian Communist Party was born. The Communist Party dominated the political scene for 40 years, under the rule of two key figures (whose names also mark political eras in the history of the country): Mátyás Rákosi (1949-1956) and János Kádár (1956-1989). A cult of personality (an idealised, heroic image of the political leader) was a particular characteristic of both the Rákosi- and the Kádár-eras. The Revolution of 1956 is the borderline between the two eras.

The term "democracy" is to be found ten times in the ten-page-long document. First, a definition of "people's democracy" starts to be outlined in the preamble. People's democracy relies on socialist values, led by labour, leaving behind the "old order" of lords, and rejecting capitalism. Based on the 1949 Constitution, this regime defines the state as the people. The most important value is work. The right to work and the right to salary are listed as the first and second rights under Chapter 8, "Rights and Duties of Citizens". The wording of the document suggests that some rights are explicitly constitutionally guaranteed only to the workers (the term "workers" is used), e.g., the right to assembly to establish organisations (e.g., workers' unions, youth and women's associations such as the KISZ – Communist Youth Organisation) for the enhancement of the construction of socialism.

Equality of the citizens, furthermore, equality between men and women are present in the constitution (especially the right to work) as well as the protection of minority rights, i.e., the rights to education in minority languages. One must, however, recognise the ideological dominance of the "collective" over the "individual", which reflects through various channels, i.e., the value of work as well as on the constitutional principle that private property cannot harm the interest of the public. Freedoms, such as speech, press, and assembly, are all defined in the 1949 Constitution based on the "interest of the workers". The words "work", "worker", and "working" are present 71 times on the ten pages.

The role of the working citizen is depicted as the essence of the system, *the people's democracy*, where the citizen functions as a part of the collective: an active and 'self-conscious' citizen, who works for the construction of socialism, thus, to the benefit of all. However, this "self-consciousness" did not permit a freedom of choice of ideology; all freedoms had to be interpreted through the ideology of socialism, and no polarisation of values was allowed. Through the lens of the political culture concept of Almond and Verba, the political culture of the people's democracy requires a massively distorted version of the participant type of citizen, where the beliefs, values, and symbols which determine political action are homogenous. This homogeneity of beliefs, values, and symbols is unified in a top-down manner, by the dissemination of the communist ideology, throughout several channels of state propaganda, e.g., press, radio, television, education, workers' associations, film, theatre, and other artistic platforms. With the terminology of Almond and Verba, we observe distorted cognitive and evaluative orientations in the political culture of the communist dictatorship, i.e., political institutions, norms, ideals, values, the political statuses and roles, including one's own role, political opportunities, knowledge, beliefs, and judgements about politics in the country and in general. Even though liberal democracy started to emerge in the era of 'Dualism' (1867-1914), the distortions of the communist dictatorship led to a still persevering lack of understanding of liberal democracy among the general population of the 20th century, leaving no room for a historical development of democratic values, nor a democratic political culture. Therefore, we experience a lack of democratic stability in today's Hungary.

The prohibition of polarization of the values, beliefs, and self/collective consciousness, especially after the fall of the revolution of 1956, was one of the reasons for which the average Hungarian citizen got alienated from political life in general, diminishing the average citizen to the parochial type. This reveals to us a dissonance between the top-down narrative about the importance of the active citizen ready to work for socialism and the apolitical reality of the citizenry.

III.1.2.3 The Democratic Constitution of 1989 - Restarting Democratisation and Democratic Constitutionalisation

As one of the most important elements of the Hungarian democratic transition, the (third) Republic of Hungary was proclaimed on October 23, 1989. The 1989 Constitution of the Hungarian Republic is the result and cornerstone of this regime change. As a result of the

democratic transitions of 1989, the Soviet-style dictatorial, one-party state systems came to an end in Hungary, as well as in other countries of the Eastern bloc. The Constitution of 1989 was in force until December 2011, when the second FIDESZ government led by Viktor Orbán reformed it.

How does the 1989 Constitution define democracy?

In the preamble of the Constitution, we read that the objective of the document is the "facilitation of a peaceful political transition to rule of law ('état de droit'), implementing a multi-party system, parliamentary democracy, and a social market economy"[375].

The 1989 Constitution as a Cornerstone of Democratisation

The democratic Constitution of 1989 can be regarded as the recommencing of the democratisation process previously broken by a series of historical events ('critical junctures'). Chapter 1 starts with the declaration that Hungary is a republic (Art. 1). Art. 2 lays down that Hungary is an independent, democratic 'état de droit', where all power belongs to the people who exercise this power through elected officials as well as directly. The prohibition of arbitrary cessation of power is included in this article, too.

One of the key innovations of the democratic transition is the introduction of a multi-party system, which is also reflected in Art. 3 of the Constitution: "In the Republic of Hungary, parties may form and operate freely while respecting the Constitution and constitutional law". We talk about returning to a political culture with a multi-party system. From 1869 (the first elections of the era of the 'Dualism', two years after the Austro-Hungarian Compromise which established the 'dual monarchy' of Austria-Hungary) to the end of World War I, the Hungarian public sphere was rich with political parties, e.g., the Ferenc Deák-led Deák party which later, by fusing with the central-left, became Liberal party which won all the elections of the era except the one in 1905, the far-left, the conservatives, the independence party, the Catholic people's party, and nationality parties, such as the 'Szász' (Saxon), Romanian, Serbian, and Slovak. World War I put an end to the era of Austria-Hungary. With the Treaty of Trianon of 1920, Hungary lost two-thirds of its territory. Soon antisemitic sentiments started to rise in the country which led to Numerus Clausus[376] Act of 1920 which limited the number of Jewish

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[375] The Constitution of the Republic of Hungary (1989). Source: official website of the Constitutional Court of Hungary: https://www.alkotmanybirosag.hu/alkotmany-1989 (Accessed on 05/07/2022)
[376] Act XXV of 1920 – Act on the Rules of Admission to the Universities of Science, Technology, Economy, and Law

people who could gain admission to universities in the country. In the 20s-30s, relevant parties were the Christian Conservative Agrarian Unity Party which drifted to fascism in the 30s, the national people's party, the Christian-socialists, and the social-democrats. The political life of the 1920s-30s was dominated by Christian-conservative political forces. After the decades of the socialist state-party system the democratic transition and the Constitution of 1989 re-introduced the multi-party system into the country's political culture.

Art. 3 also determines the role of the political parties: to contribute to the shaping and expression of the will of the people.

Art. 4 of the 1989 Constitution mentions the role of trade unions and other organisations of the representation of the interests of the citizens. Art. 6 expresses the principle of cooperation for European unity for the fulfilment of the freedoms, welfare, and safety of European peoples; furthermore, it expresses responsibility for Hungarians living outside the borders and for promoting their relationship with Hungary. This principle was raised to the constitutional level for the first time since the Treaty of Trianon (1920), with which Hungary lost not only a massive part of its territory but also a relevant number of its Hungarian-speaking population.

Art. 7, besides defining legislation and the actors who are entitled to make legislation, recognizes the general rules of international law, and guarantees the harmonisation of national law with international law.

Art. 8 is an article on human rights protection: "(1) the Republic of Hungary recognises the inviolable and inalienable fundamental rights of people; respecting and protecting them is the primary duty of the state. (2) In the Republic of Hungary, the rules regarding fundamental rights and duties are established by law, but the essential content of a fundamental right cannot be restricted". The Article also determines that fundamental rights can only be limited in case of a state of emergency.

Art. 9 determines a liberal economy for the country, emphasising the protection of private property. Art. 15 protects the institutions of marriage and family, which principle was already present in the 1949 Socialist Constitution. Further principles present in this chapter are the protection of the youth and education, social security for those in need, and the right to a healthy environment.

Chapter 2 deals with the definition and the roles of the National Assembly ("the body of the highest state power and of people's representation") and its members, the rules of decision-making (i.e., legislation) including voting systems, the duties of communication, i.e., vertical

accountability, between officials, the roles of the President of the Republic as well the Constitutional Court. Among its constitutionalised tasks we find that the National Assembly (1) creates the Constitution of the Republic of Hungary; (2) creates laws; (3) defines the socio-economic plan of the country; (4) establishes the balance sheet of the public finances, approves the state budget and its implementation; (5) decides on the Government's programme; (6) concludes international agreements; (7) decides on the declaration of martial law and the issue of making peace; (8) declares a state of emergency; (9) declares a state of emergency in the event of armed acts aimed at overthrowing the constitutional order or the exclusive acquisition of power; 10) elects the President of the Republic, the Prime Minister, members of the Constitutional Court, parliamentary commissioners, the President and Vice-Presidents of the State Audit Office, the President of the Supreme Court and the Chief Prosecutor.

The new institutions of the democratic transition are independent control institutions such as the Constitutional Court, the ombudsman, and the State Audit Office. The establishment of such institutions were out of the question in the communist era, which promulgated the unification of power, and not the sharing of power.

In Article 26 about the interactions of Parliament with the President of the Republic, we recognise the principles of checks and balances, direct democracy (participation), horizontal accountability, and responsiveness to citizen demands. Regarding the constitutional checks of legislation, Art. 26 reads that "(4) before signing the law, the President of the Republic shall send it to the Constitutional Court for an opinion within the deadline mentioned in paragraph (1) if the President considers any of its provisions to be unconstitutional. (5) If the Constitutional Court - in an extraordinary procedure - finds the law unconstitutional, the President of the Republic returns the law to the Parliament, otherwise the President is obliged to sign the law and order its promulgation within five days". Furthermore, Art. 26 lays down that "(6) the President of the Republic shall only sign the law submitted to a referendum if it has been confirmed by the referendum".

Art. 27 introduces the institution of Ombudsman for citizen and minority rights, an institution of civil right protection at the meso-institutional level of political culture which was reformed in 2011 by the second Orbán-government: the three special functions (civil rights, minority rights, and data protection) were unified into one position (i.e., the commissioner of fundamental rights). Art. 28 concludes the roles of and requirements for referendums.

Chapter 4 (Art. 32) introduces the Constitutional Court, fulfilling one of the fundamental requirements of democratic institutional functioning. Its task is as follows: "(1) With the exception of the cases specified in the Constitution, the Constitutional Court reviews the constitutionality of legislation, and performs the tasks assigned to it by law". It is important to note that the Constitution, in cases defined by law, allows all citizens to request the procedure of the Constitutional Court. The 15 Judges of the Constitutional Court are elected by the National Assembly with a two-thirds majority of the votes.

Art. 35 concludes the role and tasks of the government[377]. Such a list of tasks is not present in the 2011 Fundamental Law of the country, making the comparison of the normative aspects of the role of the government difficult. Nevertheless, the 1989 constitution presents principles such as protecting the constitutional order and rights of persons and organisations, scientific-cultural development, and a social health-care system as well as its financing.

Chapter 10 and 11 lay down the functioning of the judiciary and the prosecution service, including the Supreme Court as well as its president and judges. As defined in the Constitution's Art. 47, the task of the Supreme Court is "to ensure the unity of the application of the law for the courts". The principle of the independence of the judges, as well as the prohibition of conflict of interest (e.g., political party membership or any political activity) are emphasised in the Constitution. Besides detailing the functioning of the judicial and prosecution services, the chapters establish vertical accountability between institutions, e.g., the State Prosecutor is obliged to report to the National Assembly.

Chapter 12 is the longest part of the 1989 Constitution, aiming at constitutionalising internationally recognised norms and fundamental rights, following continental European constitutional traditions. Art. 54-56 list rights such as the right to life and dignity, the prohibition of torture, cruel, inhuman, and humiliating actions as well as human experiments. Art. 57 lays down essential legal principles such as prohibiting punishment and imprisonment

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[377]Article 35 of the Constitution of the Republic of Hungary (1989): "The Government a) protects the constitutional order, protects and ensures the rights of natural persons, legal persons and organisations without legal personality; b) ensures the implementation of laws; c) manages the work of the ministries and other directly subordinate bodies, and coordinates their activities; d) ensures the legality control of local governments; e) ensures the development of socio-economic plans and ensures their implementation; f) defines the state tasks of scientific and cultural development and ensures the necessary conditions for their realization; g) defines the state system of social and health care and ensures the financial coverage of the care; h) manages the operation of the Hungarian Defence Forces and law enforcement agencies; i) takes the necessary measures to prevent an elemental disaster that threatens the safety of life and property, as well as its consequences as well as to protect public order and public safety; j) contributes to the definition of foreign policy; concludes international agreements on behalf of the Government of the Republic of Hungary; k) represents the Republic of Hungary in the institutions of the European Union with governmental participation (…)."

without law and nullum crime sine lege ('no crime without law'), granting speedy judicial proceedings, equality before the law and equal application of the law, and the right to judicial proceedings before an independent and impartial judiciary, the presumption of innocence, the right for legal defence, and the right to judicial review. The rights to privacy and the principle of data protection are also presented.

Art. 60-63 deal with the freedom of thought, belief, and religion as well as the rights to the free expression, practice, and education of these; determine a secular state; the right to information of public interest, the freedom of the press ("the Republic of Hungary recognises and protects the freedom and the diversity of the press"); aims at a de58mocratic public opinion ("in order to form a democratic public opinion, everyone has the right to adequate information regarding public affairs"); and grant the right to assembly and to establish organisations (except militia).

Regarding the public media, which has entirely got under the control of the governing parties after the reforms starting in 2011, the 1989 Constitution lays down the principles of reflecting the diversity of the society, the impendence of its supervision, and public monitoring and scrutiny. These principles have eroded since the start of the reform of the media in Hungary, too. Article 61 states the following: "in the Republic of Hungary, public media services help to nurture and enrich national self-identity and European identity, Hungarian and minority languages and culture, strengthen national unity, and satisfy the needs of national, ethnic, family, and religious communities. The public media service is supervised by an autonomous public administrative authority with members elected by the Parliament; and an independent board of owners, as well as individual communities of citizens (defined by law), watch over the realisation of its goals".

Art. 70/A lays down that the state protects the fundamental rights of each person on its territory without discrimination on the grounds of race, colour, sex, language, religion, political or other beliefs, national- or social origins, or financial, birth, or other situations, and guarantees the punishment of discrimination by law. Another important democratic principle in this article is the promotion of legal equality with measures aimed at eliminating inequalities of opportunity.

Art 70/B-F lay down the right to work, the freedom to choose the work and profession, to rest and to holidays (the latter was present in the communist constitution as well, namely, place second – after the right to work – in the list of rights and duties). The articles include the norm of 'equal pay for equal work' without any discrimination, and the right to establish or join organisations (e.g., trade unions) for the protection and promotion of one's economic and social

interests. Furthermore, the right to the highest possible level of physical and emotional health which the state helps by organising the protection of the workers, the organisation of the health care institutions and the medical service. Art 70/E grants the right to social security, realised by social insurance and the network of social institutions, as well as the right to pensions. Art. 70/G deals with the principles of the freedom of education and arts, which, as explained through the reports of the Venice Commission, is another field that reflects decline due to the 2011 constitution and its amendments. Art. 70/G reads "(1) the Republic of Hungary respects and supports the freedom of scientific and artistic life, academic freedom, and the freedom of teaching. (2) Only practitioners of science are entitled to decide on issues of scientific truth and to determine the scientific value of research". Art. 70/F guarantees the right to cultivation through obligatory and free education for all.

Among duties, the Constitution of 1989 lists, for instance, the protection of the country, defence obligations during a state of emergency (Art. 70/H), taxation, and the obligation for parents to take care of the education of minors.

One can conclude that the 1989 Constitution was indeed a modern, European-style constitution, fulfilling essential characteristics such as the constitutionalisation of internationally recognised legal norms and principles, guaranteeing personal freedoms (belief, religion, association), the freedom of the press and academic freedom, as well as guaranteeing fundamental human rights, and establishing a democratic way of power-sharing and accountability between the institutions of governance and judiciary. The Constitution of 1989 was of crucial importance and set Hungary on the path of democratisation – not merely on the institutional-, but also on the social level. Through the lenses of historical institutionalism, the transition as well as the new Constitution it drew with itself shall be considered a critical juncture, which furthered democratisation and Europeanisation. In 1989 the EU started its PHARE programme for supporting the economic transition of Poland and Hungary. In 1994 Hungary submitted its application for EU accession, and in 1995 the country has joined NATO. In 2003 a referendum was held on the EU accession, where 84% voted yes. Since the 1st of May 2004, with nine other countries (except Cyprus and Malta, all countries of the CEE region), Hungary has been a member of the EU.

Until the early 2010s, One could have thought that path-dependency (a theory of historical institutionalism), more precisely, a path-dependency of democratisation was set up for the country by the political events of the 20 years after the transition. However, the dynamics of democratisation have changed after 2010. The first major station of the process of democratic

backsliding that started with the election of Orbán (for the second time, following his prime ministership of 1998-2002) was the adoption of the new Fundamental Law.

III.1.2.4 The Fundamental Law of 2011 – Investigating the Democratic Decline at the Constitutional Level

Criticised by many regarding its amendments as well as because it was created and implemented without broad public consultation, Hungary's New Fundamental Law was adopted by the Fidesz-KDNP[378] two-thirds-led parliament in April 2011. The following chapter investigates **how the new Fundamental Law reflects a democratic decline in the country in comparison with the 1989 Constitution, what principles and values it includes and represents, and how it defines democracy.**

The Fundamental Law[379] starts off with a strong value-representation: "Isten, álld meg a magyart!", i.e., "God bless Hungarians" – the first sentence of the national anthem of the country, reflecting the Christian traditions (mostly Catholic, and partly reformed with the seat in Debrecen) of the country. The first preamble is titled "The National Credo", reflecting a nation-based narrative, listing what the Hungarian nation is "proud of" as well as their "beliefs" (e.g., 'family and 'nation' are presented as the most important frameworks, on the basis the values of loyalty, faith, and love). The preamble "recognises" that Christianity has the power to sustain the nation, and "honours" the different religious traditions of the country. Aspirations for cooperation with other nations, praising the cultural heritage of the country and the nation, the protection of the cultural heritage of the minorities living in the country as well as recognising these as parts of the political culture, and a commitment to support the poor. Furthermore, a promise to keep the unity of the Hungarians living beyond the borders of the country: "we promise to preserve the intellectual and spiritual unity of our nation, torn apart by the storms of the last century".

The condemning of the Communist regime, due to which the country had lost its sovereignty for more than four decades, as well as a rejection of the Constitution of the 1949 strongly appears in the following part of the preamble: "We do not recognise the suspension of our historical constitution due to foreign occupations"; and "we do not recognise the communist

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[378] A coalition government including two parties, i.e., the Orbán-led Fidesz and the Christian Democratic People's Party
[379] Fundamental Law of Hungary (2011). Source: https://net.jogtar.hu/jogszabaly?docid=a1100425.atv (Accessed on 11/07/2022)

constitution of 1949 because it was the basis of a tyrannical rule, therefore we declare it invalid."

The last bit of the preamble shows an ambivalence, as it declares that the new Fundamental Law is "a living framework that expresses the will of the nation, the form in which we want to live" and "we, the citizens of Hungary, are ready to base our country's order on the cooperation of the nation". However, as mentioned earlier, the Fundamental Law was written and adopted in a particularly short time, without a comprehensive consultation with the civil society and the citizens.

The Core Text of the 2011 Fundamental Law[380]

After the National Credo, the core text of the constitution is divided into three chapters: 1) Foundation, 2) Freedom and Responsibility, and 3) The State, followed by closing provisions.

1) Foundation

The chapter of Foundation collects elements of national self-determination, such as declaring that the name of the country is Hungary (previously, Hungarian Republic), that the country is an independent and democratic 'état de droit', that the source of power is the people, and that the people exercise power through elected representatives or, exceptionally, directly. It also lays down essential principles such as the separation of power, and the prohibition of obtaining or exercising power by force. In this chapter, the promotion of the interest of Hungarians beyond the borders of the country is included as well[381]. The promotion of the importance of the nation is reflected in the fact that the national symbols, i.e., the flag and the coat of arms, are visually included in this chapter (Art. I).

Art. L, a particularly problematic article in terms of equality and social rights, declares that "Hungary protects the institution of marriage as a community of life between a man and a woman, created on the basis of a voluntary decision, as well as the family as the basis for the survival of the nation. The bases of the family are marriage and the parent-child relationship.

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[380] Fundamental Law of Hungary (2011). Source: https://net.jogtar.hu/jogszabaly?docid=a1100425.atv (Accessed on 13/07/2022)
[381] Art. D of the Fundamental Law of Hungary: "With the unity of the Hungarian nation in mind, Hungary bears responsibility for the fate of Hungarians living outside its borders, promotes the survival and development of their communities, supports their efforts to preserve their Hungarianness, the enforcement of their individual and community rights, the establishment of their community self-governments, their prosperity in their homeland, as well as their cooperation with each other and with Hungary."

The mother is a woman, the father is a man. This means the constitutionalisation of the prohibition of same-sex marriage or adoption.

Art. R reflects, again, the importance of Christianity as it states that "the protection of Hungary's constitutional self-identity and Christian culture is the duty of all organs of the state". Furthermore, Art. XVI of Chapter "Freedom and Responsibility" declares that "Hungary ensures education according to the value system derived from our country's constitutional self-identity and Christian culture."

2) Freedom and Responsibility

This second chapter of the Fundamental Law consists of 31 articles.

Freedoms and principles represented in the constitution are human dignity; the prohibition of torture, humiliating actions or punishments, slavery, human experiments, cloning; the rights to freedom and personal safety; the prohibition of imprisonment without law; the principle that "(literal) life imprisonment can only be imposed for the commission of an intentional, violent crime"; timely police and court proceedings; the protection of private property; the right to respect for one's private-, and family life, for one's home and good reputation, and to the safety of one's home; the right to data protection and learning and spreading information of public interest; the right to the freedom of belief, consciousness, and religion as well as the free choice, change, expression (in a group or alone), and teaching of these. As Art. VII/(4) defines, the criteria for acknowledgement as a 'church' is cooperation with the state "for the achievement of common objectives".

Furthermore, the right to peaceful assembly; to establish or join associations; the rights for political parties and trade unions to organise themselves freely, whereas parties contribute to the expression and shaping of public opinion; the freedom of expression (of opinion); the freedom and diversity of the press, guaranteed by the state; the principle that political advertisements can only be spread in the period of the campaign without financial compensation; the principle that exercising the freedom of expression neither can harm the dignity of others, nor can harm the Hungarian nation or the dignity of ethnic, racial, or religious communities (protection against hate speech). Moreover, the freedom of scientific research and arts, and "the freedom of learning and teaching within the framework defined by law" (Art. X/(1) as well as laying down that the universities are independent; however, "the management systems of state institutions of higher education are determined by the Government within the framework of the law, and their management is supervised by the Government" (Art X/(3)).

Further rights are the right to cultivation; to choose one's profession freely and to establish businesses, whereas "everyone is obliged to contribute to the growth of the community"; the right to inheritance, whereas "property comes with social responsibility" (Art. XIII/(1)). Art. XV guarantees the right to equality before the law as well as that the fundamental rights equally apply to everyone without discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion, belonging to any national / ethnic or social group, financial or birth status; furthermore, lays down that men and women are equal ("are of equal rights"); and the protection of families, children, women, the elderly, and persons with disabilities with specific measures.

Art. XVI (mentioned earlier due to the representation of Christian values it includes) deals with the protection of children: "(1) All children have the right to the protection and care necessary for their proper physical, mental and moral development. Hungary protects children's right to self-identity according to their birth sex and ensures education according to the value system based on our country's constitutional self-identity and Christian culture."

Rights and principles in further articles of the chapter are about employees; the prohibition of child labour; granting social security for all citizens, including support for mothers, ill or disabled persons, widowed persons, orphans, etc; the rights to physical and psychological health; the right to a healthy environment; the right to political participation, including voting and candidacy for the national assembly, local government, and European elections; to rightful and timely administrational proceedings; to free movement; to independent and impartial court proceedings throughout fair and open trials, in a timely manner; the presumption of innocence; the right to legal defence; the prohibition of retroactive effect; the right to appeal / judicial review. Art. XXIX defines the nationalities living on the territory of the country as "factors for the formation of the state" and grants the rights of Hungarian citizens belonging to any of the nationalities to freely express and cherish their self-identity, including the usage of and education in their mother tongue. Art. XXX and XXI lay down the duties of taxation and the defence of the country.

3) The State

In 54 articles, the chapter expresses the constitutional requirements of the functioning of the democratic institutions, i.e., the National Assembly, the referendum, the president of the republic, the constitutional court, the judiciary, the prosecution service, the commissioner for fundamental rights (Ombudsman before), the local governments, public money, the military,

the police, as well as provisions for state of emergency. The reform of the judiciary system, jeopardising its independent functioning, received criticism from academics, international organisations, such as the Venice Commission of the Council or Europe and the European Parliament, and NGOs.

National and International Examples of the Criticism of the Fundamental Law

(1) National Example of Criticism

As a reaction to the new Fundamental Law emerging from within Hungary, TASZ (Társaság a szabadságjogokért – The Hungarian Civil Liberties Union) published the following in April 2011:

- *"The new constitution will be **the constitution of the government**. The democratic **opposition parties did not participate** in the debate on the constitution. The government allocated a total of 9 days for the parliamentary debate, which it conducted with itself and Jobbik.*

- *Hungary's new constitution was drawn up **without the involvement of society**. Two weeks after the mailing of the 12-point questionnaire, the draft of the new constitution was already in front of the Parliament, so obviously the answers sent back could not be considered when finalising the text.*

- *The government did not justify **the need for the new constitution**. The current constitutional arrangement was created in 1989-90, the constitution only kept the year 1949 in its title. The 1989 constitution was the basis for the establishment of the third Hungarian republic, which recognises, respects, and protects fundamental rights and is based on the division of powers.*

- *The new constitution **transforms the rules for participation in elections**, so Hungarians living abroad can also participate in elections. This means that people who do not bear the consequences of this political decision, because they do not live here, will also vote.*

- *The new constitution sets a **conservative-Christian value system** as a model. The new constitution excludes those who think differently. The conservative-Christian worldview can also play a role in the interpretation of fundamental rights.*

- *The new constitution **treats non-heterosexual people as second-class citizens**. The new constitution does not include the prohibition of discrimination on the grounds of sexual orientation and excludes the possibility of marriage between same-sex couples in the future.*

- *The level of **protection of human rights is significantly reduced**. The new constitution opens the possibility of restricting or even completely banning abortion. Many social rights are listed only as state goals in the new constitution.*

- *The **enforceability of human rights is decreasing**. The powers of the Constitutional Court are narrowing. The possibility that anyone can turn to the Constitutional Court will cease to exist.*

- *The new constitution does not adequately ensure the independence of the courts.*

- *The **ombudsman system is being transformed**: the independent institutions of the Minority Commissioner, the Future Generation Commissioner, and the Data Protection Commissioner will also cease to exist.*

- *The **government majority can cement its own political ideas for a long** time by classifying the tax and pension rules as **two-thirds majority laws**. It makes the work of the next government more difficult by making the adoption of the budget dependent on the Budget Council delegated by state leaders."[382]*

(2) International Example of Criticism

The Venice Commission (VC), among other actors of both European and International political spheres, criticised the new Hungarian constitution. In 'Opinion on The New Constitution of Hungary (2011)', The VC states that it generally welcomes post-communist countries to adopt a new constitution which guarantees democracy, fundamental freedoms, and the rule of law, taking the provisions of ECHR as a standard. However, it points out that The flexibility of parliaments is essential to adapt to the changes within the society ("the functionality of a democratic system is rooted in its permanent ability to change"[383]). The Opinion emphasises that the objective of cardinal laws is laying down fundamental principles, and not "detailed rules of certain issues", otherwise democracy itself is at risk[384]. Instead, the Constitution's task is securing the respect for international human rights treaties, which must also serve as the base for constitutional provisions. Protection of all religions and religious traditions must be laid down, while values should be left to ethical debate within the society ("a Constitution should avoid defining or establishing once and for all values of which there are different justifiable conceptions in society"[385]). Furthermore, the VC clarifies that "constitutions should provide a

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[382] TASZ – Társaság a szabadságjogokért (2011): Mi a baj az új alkotmánnyal? Source:
https://tasz.hu/cikkek/mi-a-baj-az-uj-alkotmannyal (Accessed on 18/10/2022)
[383] Venice Commission (2011): Opinion on the New Constitution of Hungary. p. 6
[384] Ibid., p. 6
[385] Ibid., p. 9

clear differentiation between principles, legal guarantees, freedoms and responsibilities and present them in a systematic order"[386]. Any restriction of fundamental rights must be provided for by law in accordance with the European legal standards (ECHR, Charter).[387] The VC highlights two further principles for a well-functioning democracy: "a separation between state and churches is an inevitable consequence of the rule of law, respect of human rights and the idea of democracy"[388], and "a constitutional culture which clearly separates constitutional issues from ordinary politics and sees the constitution as a commonly accepted framework for ordinary democratic processes (...) is a precondition for a fully successful and legitimate constitution-making process."[389]

In the case of the 2011 Fundamental Law, though, the VC addresses Hungary with a series of both procedural and substantive criticism. Among procedural issues one finds the following points: (1) while provided with legal significance, the Preamble's text lacks precision and contains controversial statements.[390] (2) Too extensive use of cardinal laws, imbalance compared to ordinary legislation: "the more policy issues are transferred beyond the powers of simple majority, the less significance will future elections have and the more possibilities does a two-third majority have of cementing its political preferences and the country's legal order.[391] (3) No courts' interpretive obligations are laid down.[392] (4) The lack of a clear hierarchy of legislative acts.[393] (5) The potential risk that constitutional provisions of freedom and responsibilities might be eroded by 'special Acts'.[394] (6) The election of the president of the Constitutional Court as well as the potential further undermining and limitation of the powers of the Court.[395] (7) The lack of a clear statement that courts constitute a separate power and shall be independent.[396] (8) The lowering of the judges' retirement age from 70 to 62 as it concerns hundreds of Hungary's most experienced judges.[397] (9) The limitation of the competences of the Constitutional Court regarding public finances (i.e. taxation and budgetary matters).[398]

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[386] Ibid., p. 13
[387] Ibid., p. 13
[388] Ibid., p. 16
[389] Ibid., p. 4
[390] Ibid., p. 8
[391] Ibid., p. 6
[392] Ibid., p. 7
[393] Ibid., p. 12
[394] Ibid., p. 13
[395] Ibid., pp. 19-21
[396] Ibid., p. 21
[397] Ibid., p. 22
[398] Ibid., p. 25

Among substantive and institutional issues, the VC articulates (1) the weakening of the parliamentary majority's powers and of the position of the Constitutional Court in the Hungarian system of checks and balances.[399] (2) The lack of clarity and consistency of main principles and values between the provisions serving the interpretation of the Constitution.[400] (3) The lack of reference to international human rights instruments.[401] (4) The definition of the nation and the way the Constitution expresses Hungary's responsibilities with regard to the Hungarian nation within and beyond the borders of the country.[402] (5) The lack of protection of languages of national minorities.[403] (6) The definition of marriage and family excludes same-sex couples, going against the emerging European consensus towards legal recognition of such couples (even though there are no established unique European standards in this field).[404] (7) The vagueness of constitutional provisions regarding freedom and the responsibilities of the individual towards the community.[405] (8) The principle of protection of human (foetal) life from the moment of conception is in conflict with Art. 8 of ECHR (protection of private life).[406] (9) The fact that the Constitution does not explicitly mention the abolition of the death penalty (Protocol 6 and Protocol 13 to the ECHR).[407] (10) Constitutional provisions regarding life imprisonment without parole fail to comply with European standards.[408] (11) The freedom of the press is presented as a state obligation rather than an individual right, thus it seems to be dependent on the state's will.[409]

An aspect which must be mentioned together with constitutional reforms is whether changes are implemented regarding the functioning of the constitutional court (CC) as well. In 2011, the Venice Commission published its opinion on the changes implemented in Hungary. First, the VC points out concerns regarding the infringement of the powers of the CC by the new constitution adopted in 2011, and by Act CLI 2011, implementing the changes regarding the court. In the Opinion, the VC points out the following principles. The budgetary independence of a constitutional court contributes to its institutional independence ("no punishment for unwelcomed decisions"), which helps guarantee impartiality and respect for the fundamental

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[399] Ibid., p. 19
[400] Ibid., p. 7
[401] Ibid., p. 7
[402] Ibid., pp. 8-10
[403] Ibid., p. 11
[404] Ibid., p. 11
[405] Ibid., p. 13
[406] Ibid., p. 14
[407] Ibid., p. 15
[408] Ibid., p. 15
[409] Ibid., p. 16

right to a fair trial.[410] The VC points out that the elimination of the re-election of Constitutional Court (CC) judges strengthens the independence of the judges. The Commission also refers to the importance of avoiding the politicisation of the CC, with particular attention to the appointment of the members of the CC.[411] However, the election of the CC's President is 'preferable' by the judges themselves instead of the two third majority of the Parliament, as the first provides "a stronger safeguard for the independence of the CC".[412] The continuity in the membership of the CC has to be ensured.[413] (Continental) European standards provide members of the CC with "immunity from prosecution for acts performed in the exercise of their functions"[414]. In light of these principles, the VC finds it problematic that the President of the CC is elected by the Parliament (qualified majority of two-thirds), and not by the judges themselves.[415] Also, as pointed out before, the Fundamental Law does not lay down explicitly the principle of the independence of the CC and its judges. Consequently, the VC emphasises that the Act on the CC should include the above principle. Furthermore, the Opinion covers the question of exclusion of members of the CC, if the member has become 'unworthy' of the position. The VC finds the term vague; no clear definition of unworthiness is provided by the Act. This, however, should be compensated by procedural safeguards (e.g., qualified majority or unanimity of the other judges).[416] Regarding the complaint procedures falling within the competences of the CC, i.e. the ex-ante and the ex-post reviews of legal acts, as well as the constitutional complaint procedure, the VC suggests their clarification without reducing their scope, as well as the simplification of the filter criteria.[417] Moreover, the VC points out the incoherence regarding the tasks of the prosecutor general: the Act provides the prosecutor general with the competence of defending individual interest in certain cases, while his or her task is to defend the public interest.[418] Finally, the VC also emphasises that the cardinal elements in the Act should be restricted to fundamental principles while all technical details should be regulated at the level of ordinary law, and recalls its critique on the limitation of the Constitutional Court's control powers in budgetary matters.[419]

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[410] Venice Commission (2012): Opinion on Act CLI of 2011 on the Constitutional Court of Hungary. p. 3
[411] Ibid., p. 4
[412] Ibid., p. 4, referring to CDL-AD(2011)016, para. 94
[413] Ibid., p. 5
[414] Ibid., p. 5
[415] Venice Commission (2012): Opinion on Act CLI of 2011 on the Constitutional Court of Hungary.
[416] Ibid., p. 6
[417] Ibid., pp. 7-8
[418] Ibid., p. 8
[419] Ibid., p. 13

The 2013 mega-amendment of the constitution annulled all the CC's decisions before 1 January 2012, therefore the decisions prior to that date have no longer any legal effect, meaning that it is not possible to rely on the rights-protecting and norm-establishing practices of the CC, which is an important factor of democratic backsliding in the country. Moreover, there is an essential conflict of interest in the practice of appointment of the CC's judges. It is the national parliament that appoints the fifteen judges of the CC, while the CC's task is to supervise the acts of the parliament. Two-thirds of the votes of MPs are necessary for the election of judges, however, since 2010, the Orbán-led Fidesz has been maintaining its two-thirds majority in the assembly, which gives an extraordinary, distorted power to the government.

We observe that the listed issues reflect divergence both from European standards and the previously started process of democratisation institutionalised by the Constitution of 1989 and are an important factor to understand the democratic backsliding in the country.

The Amendments of the Fundamental Law

Following the question of the problematic unclarity of the limits of the powers of the government and its consequences, we shall investigate the amendments of the Fundamental Law, too.

As Roznai explains, after the enactment of the new Fundamental Law, the constitutional transformation in the country continued with a series of amendments, including the 'infamous' Transitional Provisions. These included holding accountable the Hungarian Socialist Party, successor of the Hungarian Socialist Workers' Party, for the crimes of its predecessor; furthermore, "removing the President of the Supreme Court from office; enabling Parliament to enact regulations which effectively stripped the courts of jurisdiction over matters concerning the legal status of religious communities; prohibiting the HCC from reviewing fiscal laws enacted at any time that public debt exceeds 50% of the GDP (which has been the case in Hungary for decades)"[420]. In 2012, the Constitutional Court, in a ten-to-five decision, struck down key articles in the Transnational Provisions, as they found that the articles were rather permanent in nature, and not "transitional", and the government exceeded its power with their adaptation, i.e., with their constitutionalisation. Roznai explains that the Constitutional Court argued that the Transitional Provisions as a separate legal regulation break up the unity

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[420] Roznai, Y. (2022). Constitutional Transformation: Hungary. In D. Law (Ed.), *Constitutionalism in Context* (Comparative Constitutional Law and Policy, pp. 136-156). Cambridge, Cambridge University Press. p. 149

of the Fundamental Law and cannot be regarded as part of the Fundamental Law. Its position as a formal source of law is ambiguous, and it conflicts with the unified legal document character of the Fundamental Law[421].

(1) The Fourth Amendment

Following this action of the Constitutional Court, Orbán's government responded with the Fourth Amendment to the Fundamental Law, criticised by the Venice Commission, amongst many others, including international experts and academics. Roznai argues that the Fourth Amendment sought to eliminate the basis of the Constitutional Court's 2012 decision "by incorporating the contents of the Transitional Provisions directly into the text of the Fundamental Law"[422], severely cutting the competences of the Constitutional Court.

The Venice Commission also published an Opinion on the Fourth Amendment in 2012. In its Opinion, the VC relies on the three Pillars of the Statute of the Council of Europe: human rights, democracy, and the rule of law. The Opinion highlights checks and balances as well as judicial independence as democratic principles, which are a part of the rule of law.[423]

There is a set of principles of constitutionalism and the rule of law which are represented in the Opinion: the separation of powers and the principle of checks and balances; the supremacy of the constitution; parliaments controlled by constitutional court; constitutional justice.[424]

The Opinion explains that constitutional amendments require three criteria: (1) thorough preparatory work, (2) wide public debate, and (3) large political consensus.[425] Furthermore, it is the duty of the Constitutional Court to practice control over whether constitutional amendments violate fundamental rights (recalling the Austrian example).[426] Regarding the importance of case law: the task of the CC is to safeguard the supremacy of the constitution by interpreting it, which practice leads to the coherent development of law on the basis of principles laid down in the constitution.[427] The document explains: "it is inherent in a constitutional court's approach to interpret a constitution on the basis of its provisions and the principles contained in it. These principles transcend the constitution itself and directly relate

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[421] Ibid., referring to Constitutional Court Decision 45/2012 (XII. 29) on the unconstitutionality and annulment of certain provisions of the Transitional Provisions of the Fundamental Law of Hungary. p. 150
[422] Ibid., p. 151
[423] Venice Commission (2012): Opinion on the Fourth Amendment to the Fundamental Law of Hungary. p. 5
[424] Ibid., p. 18
[425] Ibid., p. 20
[426] Ibid., p. 20
[427] Ibid., p. 21

to the basic principles of the Council of Europe: democracy, the protection of human rights and the rule of law".[428]

Finally, the principle of constitutional revision: legitimisation through the parliament (constituent), therefore, by the people; thus, it is an expression of popular sovereignty. [429]

Regarding the issues with the Fourth Amendment of the Fundamental Law, first, the VC finds that the constitutionalisation of provisions of ordinary law is problematic in the sense that it excludes the possibility of review by the constitutional court.[430] Secondly, recalling Art. 8 ECHR, The Commission considers the family concept laid down by the amended constitution too narrow: "(...) marriage as the union of a man and a woman (...). Family ties shall be based on marriage or the relationship between parents and children"[431]. The Opinion opposes Article U of the amendment with Art. 6 (principle of the right to a fair trial), 7 (the principle of legality)., and 8 (the principle of protection of private life) of ECHR. Article U concerns the criminal and civil responsibility of the political organisations of the communist regime, their leaders, and the successor organisations.[432] The Opinion points out that Article U uses general terms without providing the examination of each individual case and the criteria laid down are vague.[433] The principle of proportionality is highlighted. Furthermore, according to the VC, such questions should be regulated by the penal code or ordinary law instead of the constitution.[434]

Considering the question of the recognition of the churches, the VC recalls Art. 9.1 ECHR, namely, the right to practice the religion in worship, teaching, practice, and observance, and the need to protect religious organisations - independently of their recognition of the parliament, as well as that states need to be neutral and impartial (also: Art. 14 ECHR).[435] The fourth amendment to the Fundamental Law provides the two-thirds majority of the parliament with the power of legal recognition of the churches. The VC emphasises that the term 'community goals' lacks precision, thus leaves too much discretion to the parliament.[436]

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[428] Ibid., p. 22
[429] Ibid., p. 23 referring to CDL-AD(2012)010
[430] Ibid., p. 18
[431] Ibid., p. 6
[432] Ibid., p. 7
[433] Ibid., p. 8
[434] Ibid., p. 8
[435] Ibid., p. 10
[436] Ibid., p. 10

The Commission recalls Decision 1/2013 of the Constitutional Court of Hungary which annulled the original constitutional provision regarding media access of parties during campaign, reasoning that the article provided only very limited time frameworks and was "gravely disproportionate".[437] The VC shares the point of view that the prohibition of political advertising in commercial media "will deprive the opposition parties of an important chance to air their views (...) and to counterweight the dominant position of the Government in the media"[438].

Concerning the limitations of freedom of speech (especially, hate speech), the VC refers to Article 10.2 ECHR: "a limitation on the freedom of expression must be foreseen by law"[439]. The VC criticises the lack of clarity and precision regarding the definition of terms used in the fourth amendment (hate speech; "violating the dignity of any ethnic, racial, or religious community"[440]).

The VC also points out that raising the question of financial regulations for universities to the constitutional level prevents review by the Constitutional Court. The fourth amendment creates a basis for legislation regulating the organisation of universities, and "for the government to determine the rules of financial management and to supervise their financial management"[441].

The VC emphasises that the question of homeless persons "illegally staying in a public area as a permanent abode", should be regulated by ordinary law, and not raised to constitutional level, as this way, the constitutional court cannot review it.[442]

The Commission criticises that the Fourth Amendment raises the position of the President of the NJO to the constitutional level (upon the proposal of the President of the Republic, Parliament elects them for nine years, by a two-thirds majority). According to the VC, the amendment jeopardises its dialogue with the Hungarian government, as it represents a "step back".[443]

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[437] Ibid. pp. 10-11 referring to Chapter IV, section 1.2. of Decision 1/2013 of the Constitutional Court of Hungary
[438] Ibid., p. 12
[439] Ibid., p. 13
[440] Ibid., p. 13
[441] Ibid., p. 14
[442] Ibid., p. 16
[443] Ibid., pp. 16-17

The VC underlines that although the practice of transferring cases had previously been found contrary to the ECHR, now, by the Fourth Amendment, it has been lifted to constitutional level as well. The VC has clearly been opposing the practice of transferring cases.[444]

Shielding legislation from constitutional control: the VC points out that the Fourth Amendment affects the role of the Constitutional Court in several ways. The dynamic ("consistent pattern"): two directions of reaction to CC decisions: (1) constitutionalising the provision in question; (2) changing the functioning of the CC.[445]

- Annulation of Transitional Provisions (45/2012) by the CC – the reintroduction of provisions by the Fourth Amendment into the Fundamental Law (e.g. constitutionalising the practice of transferring cases by the Supreme Prosecutor, although the provision had been annulled by the CC in Decision 166/2011; Decision 164/2011 annulled the Church Act on a procedural basis: the reaction was to modify the procedure itself which allowed the parliament to re-adopt the Act, followed by giving the law constitutional protection in the Transitional Provisions)[446].

- Even though the VC had previously criticised numerous Transitional Provisions, they have been maintained and reinforced.

- CC Decision 45/2012 declares that the series of amendments to the FL jeopardises "the stability and the endurance of the Constitution as well as the principles and the requirements of a constitutional State under the rule of law"[447].

- A systematic approach of "shielding ordinary law from constitutional review", the VC points out, raises concerns, as it undermines the role of the CC, which goes against the rule of law as well as democracy itself. This results in the infringement of democratic checks and balances and the separation of powers.[448]

- According to the VC, there was no justification to repeal the CC's former case law (without a limitation in time, concerning all cases before 1st January 2012) "in order to enable the CC to renew its jurisdiction in cases where it is necessary", as argued by the Hungarian authorities, especially because the basic principles of the CoE (i.e. democracy, the protection of human rights, and the rule of law) are reflected in the case law of the CC since its establishment.[449]

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[444] Ibid., p. 17
[445] Ibid., p. 18
[446] Ibid., p. 19
[447] Ibid., p. 19 referring to Point 2.2 of Decision 45/2012 of the Constitutional Court of Hungary
[448] Ibid., p. 20
[449] Ibid., p. 22

- Regarding the possibility to review budgetary laws, the VC repeats its "serious concerns about the limitation of the competence of the CC to review legislation".[450]

The VC also raises concerns regarding the excessive use of cardinal laws (requiring two-thirds majority) which may be difficult to amend in the future. The VC considers cementing economic, social, fiscal, family, educational etc. policies by cardinal laws a serious threat to democracy.[451]

Finally, the Commission highlights that a constitution shall not be used as a political instrument, as that undermines democracy in Hungary.[452]

(2) Amendments Six, Seven, Nine, and Eleven

The Sixth and Seventh Amendments drifted the country further towards illiberal democracy[453]. The Sixth Amendment (2016) permitted the national assembly, through the declaration of a 'state of terrorism threat', to suspend laws and implement certain 'extraordinary measures. The Seventh (2018) Amendment reinforces the predominance of Christianity explained above. It provides that "'[a]lien peoples cannot be settled in Hungary' and that '[t]he protection of Hungary's constitutional self-identity and Christian culture is the obligation of all organs of the state'" [454]; furthermore, "it prohibits homelessness on the grounds of protecting the public use of public space, and it inhibits protests by providing that 'the right to assembly cannot involve the violation of others' private and family life or home'"[455].

In its 'Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020,' the Venice Commission expressed its concerns regarding the Ninth amendment to the Fundamental Law. The amendment covers four main fields: (1) marriage and family, including sexual orientation and gender identity; (2) legislative procedural questions; (3) public interest asset management and the definition of public funds; (4) questions of war and state emergency.[456] The modified article of the Foundations part of the Fundamental Law on marriage and family is as follows: "(1) Hungary shall protect the institution of marriage as the union of *one* man and *one* woman [previously: a man and a woman] established by

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[450] Ibid., p. 26
[451] Ibid., p. 29
[452] Ibid., p. 32
[453] Roznai, Y. (2022): Constitutional Transformation in Hungary. in Law, D. S. (eds.) (2022): Constitutionalism in Context. Cambridge University Press, online publication. p. 153
[454] Ibid., p. 153
[455] Ibid., p. 153
[456] Venice Commission (2021): Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020. Source: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)029-e (Accessed on: 24/01/2023). pp. 3-4

voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage or the relationship between parents and children. *The mother shall be a woman, the father shall be a man.* (2) Hungary shall support the commitment to have children. (3) The protection of families shall be regulated by a cardinal Act"[457]. The VC points out that the amendment was submitted to the parliament during a state of emergency, during the Covid-19 pandemic. This is particularly important as the state of emergency permitted a fast enactment. The VC notes that due to the swift legislative process, the public had no opportunity to comment on the draft amendment – no public consultation took place. The procedure was not compatible neither with the VC Rule of Law checklist nor with the Commission's Report on Respect for Democracy, Human Rights, and the Rule of Law during states of emergency.[458] Furthermore, the VC points out "the instrumental attitude of Hungary's governing majority towards the Fundamental Law, and recalls the principle that the constitution "should provide a sense of constitutionalism in society, a sense that it truly is a fundamental document and not simply an incidental political declaration. Hence, both the manner in which it is adopted and the way in which it is implemented must **create in the society the conviction that,** by its very nature, **the constitution is a stable act**, **not subject to easy change** (…). Constitutional and ordinary politics need to be clearly separated **because the constitution is not part of the 'political game' but sets the rules for this game.** Therefore, a constitution should set neutral and generally accepted rules for the political process. For its adoption and amendment, a wide consensus needs to be sought."[459] Incompatible with these guiding principles, the VC finds that the definition of marriage belongs to the Hungarian state and its constituent legislator. However, for high democratic quality, for inclusivity, the constitutionalisation of the definition of such normative questions must happen with broad consultation with both the meso/societal and the micro levels of the political culture, i.e., a consensus of different parties of the political palette, and the involvement of the civil society and the citizens.

The (last) Eleventh Amendment was submitted by a Fidesz MP on 21 June 2022 with the declared purposes of reinforcing "historical self-identity, the preservation of traditions, and the strengthening of the national character of democracy", asking for the re-establishment of the

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[457] Ibid., p. 5
[458] Ibid., p. 4
[459] Ibid., pp. 4-5

usage of the historical term "vármegye", literally "castle-county" (used between 1000 and 1920), replacing the term "megye" (county).[460]

III.1.3 Luxembourg

The tradition of constitutionalism is an essential element of the political culture (more specifically, the macro level of the political culture) of the Grand Duchy, reaching back to the 19th century. Therefore, investigating the constitutional tradition is essential to understanding the quality of democracy in the country. In the case of Hungary, in contrast, the lack of the tradition of constitutionalism is the factor which is determinative.

Luxembourg has been an independent sovereign state since the Treaty of London of 19 April 1839[461]. The Grand Duchy's modern constitution was adopted in 1868 and has been amended 35 times ever since. The latest amendment took place in 2016. The 1868 constitution was a result of a series of amendments of the first real democratic constitution of the country of 9th July 1848, known as the "Liberal Constitution" (having had copied most of its provisions from the 1831 Belgian Constitution), which was already amended in 1856.

III.1.3.1 The Constitution of 1848 – The Birth of the Constitutional Monarchy

The 1848 Constitution[462] was written in a strong liberal spirit, establishing essential pillars of democracy, i.e., constitutional monarchy, the separation of powers, including balancing the legislative and executive powers and granting remarkable importance to the Chamber (both as a legislative and a supervisory institution of democracy). Furthermore, recognising fundamental rights and liberties of the citizenry (Chapter II – The Luxembourgish and Their Rights), such as individual liberty (Art. 13), equality before and in law, the freedom of opinion (Art. 25), the freedom of the press (Art. 25), and the freedom of assembly (Art. 26) and association (Art. 27). Art. 15 integrates the principle of nullum crime sine lege, Art. 20 prescribes the freedom of religious cults.

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[460] Kreft-Horváth, M. (2022): 'Visszahozná a vármegyéket a Fidesz alaptörvény-módosítása' *in* Magyar Nemzet. Source: https://magyarnemzet.hu/belfold/2022/06/visszahozna-a-varmegyeket-a-fidesz-alaptorveny-modositasa (Accessed on 18/07/2022)
[461] Official Website of the Government of the Grand Duchy of Luxembourg: "Political System". Source: https://gouvernement.lu/fr/systeme-politique.html (Accessed on: 02/09/2022)
[462] Constitution du 8 juillet 1848 du Grand-Duché de Luxembourg. Source : https://legilux.public.lu/eli/etat/leg/ordr/1848/07/09/n1/jo (Accessed on: 08/08/2022)

Furthermore, we shall mention the principles of universal suffrage and the accountability of the government to the parliament (i.e., horizontal accountability in the Diamond-Morlino model of the quality of democracy). The 1848 Constitution, as another important step of democratic evolution, in its Chapter III – The Powers of the Grand Duke, established the accountability of the Grand Duke, who must swear to observe the Constitution and the laws of the ordinary level before the deputies (another example of horizontal accountability).

Regarding the judiciary system, the Constitution lays down the role of the law in the establishment of courts and jurisdictions (Art. 88), the organisation of a "superior court of justice" (Art. 89), the practice of public hearings (Art. 90), the principle of conflict of interest (Art. 96). It is, however, the Grand Duke who has the right to directly appoint judges; district court judges were appointed for life (Art. 93-94). The principle of an independent judiciary is not present yet either in the Constitution of 1848.

III.1.3.2 The 1868 Modern Constitution and its Reforms

Luxembourg's traditional constitution adopted the liberal spirit of the Belgian Constitution of 1831. An example of the liberal approach, Art. 10 of the 1868 amended Constitution further defined the institution of naturalisation of foreigners – already included in Art. 11 of the 1848 Constitution – by giving them the same political rights as the citizens of the Grand Duchy. Art. 10: "[Naturalisation] equates foreigners with Luxembourgers, for the exercise of political rights". [Today, according to STATEC data, 195 nationalities live together in the Grand Duchy[463], which provides the country with a unique political culture. Indeed, migration has been an essential element of the formation of Luxembourg's diverse political culture. Immigration to the country started in the 1870s. Its first wave started with Italian immigrants (1870-1960), and was followed by several other waves, particularly from Portugal, in the 1960s.[464]]

Art. 24, 26, and 28 include several important democratic rights of the citizenry, which were originally established by the 1848 Constitution. Art. 24 lays down that "the freedom to express one's opinions by speech in all matters, and the freedom of the press are guaranteed, except for

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[463] Government of the Grand Duchy of Luxembourg: Une histoire jalonné pas les migrations. Source: https://luxembourg.public.lu/fr/societe-et-culture/population/emigration-immigration.html (Accessed on: 10/08/2022)
[464]LISER: Total resident population of Luxembourg from 1905 to 2011 (according to age, gender, and nationality – census data. Source: https://www.liser.lu/ise/display_indic.cfm?id=382 (Accessed on: 10/08/2022)

the repression of offences committed during the exercise of these freedoms"; furthermore, "censorship can never be established", "no guarantee may be required from writers, publishers, or printers". Art. 26 prescribes that "Luxembourgers have the right to associate", as well as that "this right cannot be subject to any prior authorisation". Art. 28 provides for the secrecy of the letters and telegrams.[465]

The 1868 Constitutional amendment maintains several powers of the monarch, in relation to the Chamber. First, legislative powers i.e., (Art. 34), "the Grand Duke sanctions and promulgates the laws; and "he announces his resolution within six months of the vote of the Chamber". Second, (Art. 37) the monarch has the right to command the army and declare war, with the duty of informing the Chamber.

Art. 37 of the reformed constitution of 1868 reflects two elements of crucial importance in light of the democratic evolution of the Grand Duchy: "Commercial treaties and those that could encumber the State or individually bind the Luxembourgish, and in general all those relating to a matter that can only be regulated by law, only take effect after having received the consent of the Chamber. No cession, no exchange, no addition of territory can take place except by virtue of law". The first essential characteristic is the power of the parliament (the Chamber of Deputies). As Art. 37 lays down, the consent of the Chamber is required, for instance, for establishing binding treaties. Secondly, besides the power and role of the Chamber, the article reflects the importance of the rule of law, too. Furthermore, the provisions of Art. 51 lay down that "the organisation and the method of election of the Chamber are regulated by law. The electoral law fixes the number of deputies according to the population. This number may not exceed one deputy for four thousand inhabitants, nor be less than one deputy for five thousand five hundred inhabitants. The election is direct". Elementary characteristics added to the constitutional-democratic setup by this article are direct democracy and proportional representation.

Art. 52 repeats the provisions of Art. 53 of the Constitution of 1848 about being elector and eligible: "one must: 1) be Luxembourgish by birth or be naturalized; 2) enjoy civil and political rights; 3) be at least 25 years old; 4) be domiciled in the Grand Duchy". However, the new Art. 52 introduces a tax to be paid by the citizens for participating in the election as electors, besides

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[465] Loi du 17 octobre 1868 du Grand-Duché de Luxembourg, portant révision de la Constitution du 27 novembre 1856. Source: https://legilux.public.lu/eli/etat/leg/loi/1868/10/17/n1/jo (accessed on: 10/08/2022)

meeting the four conditions above. Universal suffrage, however, accordingly to the era, has not been established until the constitutional amendment of 1919.

Another manifestation of the rule of law and the supremacy of the Constitution is presented by Art. 57, prescribing an oath to be taken by the deputies: "I swear loyalty to the King Grand Duke, obedience to the Constitution and the laws of the State. So help me God!".

A particularly important power of the Grand Duke, laid down by Art. 76, is the power of organisation of "his" government, "composed of minimum of three members", alongside the council for deliberation on draft legislation and amendments, of which the organisation is regulated by ordinary level law. The latter reflects a direction towards deliberative and consensus democracy models which influence democratic functioning in today's Luxembourg.

In 1919 a further important constitutional reform was adopted in the Grand Duchy by public consent, through a referendum, in the spirit of direct democracy. After WWI, just like Hungary (although with substantial differences) Luxembourg found itself in a "heavy crisis of doubt".[466] The arising questions revolved on the one hand, around the possibility of a personal union with Belgium with the reign of King Albert of the Belgians (promoted by the liberals), and on the other hand, around the possibility of establishing a republic instead (promoted by the socialists).[467] Two important historic momentums which one shall note are, firstly, the abduction of Marie-Adélaïde to the advantage of Charlotte, and secondly, the fact that under the influence of the Allies, Luxembourg left the German Customs Union 'Zollverein', which provoked economic hesitations whether Luxembourg shall join up with Belgium or France in the form of an economic union. Eventually, in September 1919 the Reuter government brought the questions to the people through a referendum on the following two questions: 1) the form of the state and the future of the monarchy, 2) an economic union with either France or Belgium. 77,8% voted for Grand-Duchesse Charlotte versus 19,7% for the reform of the state as a republic. The city with the most votes for a republic was Esch-sur-Alzette, the second largest city in the country. The referendum of 1919 is an important event in Luxembourgish democratic development since the citizens confirmed their will for the Grand Duchy to remain a constitutional monarchy. The referendum entailed a constitutional amendment as well for consolidating the parliamentary democracy in the country. The amendments of Art. 52 included, e.g., the reform of the electoral system on the principle of proportional representation:

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[466] Trausch, G. et al. (2002): Histoire du Luxembourg – le destin européen d'un « petit pays ». Éditions Privat, Toulouse. p. 239
[467] Ibid., p. 239

"The deputies are elected on the basis of pure and simple universal suffrage, by list system, according to the rules of proportional representation, in accordance with the principle of the smallest electoral quotient and according to the rules to be determined by law"; furthermore, the reinforcement of referendums: "voters may be called upon to vote by way of referendum in the cases and under the conditions to be determined by law".[468] Regarding the question of an economic union with one of the neighbouring countries, as it was expected, a grand majority of 73% voted for France, while only 27% for Belgium.[469] However, the possibility of the economic union was eventually refused by France in May 1920, resulting in the establishment of the Belgium-Luxembourg Economic Union in 1921.

The next crucial step, 'La loi muselière' of the 1930s attempted to restrain the liberty of establishing certain political organisations. The draft legislation proposed by the increasingly authoritarian right wing might be regarded as the first step back in the development of democracy in the Grand Duchy, an instance of democratic backsliding, as the law would have resulted in the dissolution of the Communist Party. However, in 1937, the draft legislation was rejected by a referendum in the milieu of political radicalisation Europe-wide. The referendum results, although the people rejected the draft legislation by only a very slight majority (50,7% no vs. 49,3% yes), represent an important decision for the country's political culture. The will of the people reinforced the stability and continuity of the process of the development of the democratic political culture which legally started in the mid-19th century. It is important to note, though, that the instrument of the referendum was not used again until the 2005 referendum on the EU Constitution.

The period after WWII (the end of neutrality) marks another essential step on the path of developing a substantive democracy. Europeanisation and the recognition of the supremacy of international and European Law, starting with the foundation of The Benelux, a customs union agreement in 1944, entering into force in 1948[470]. Luxembourg was one of the first countries in Europe which recognised the supremacy of international law, which influenced the further process of Europeanisation in the region. However, in comparison, neither the United Kingdom nor Hungary has ever accepted the supremacy of the jurisdiction of the European Court of

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[468] Modification de la Constitution. – art. 52. Source : https://legilux.public.lu/eli/etat/leg/loi/1919/05/15/n3/jo (Accessed on: 12/10/2022)

[469] Trausch, G. et al. (2002): Histoire du Luxembourg – le destin européen d'un « petit pays ». pp 240-241

[470] Government of the Grand Duchy of Luxembourg: The Benelux. Source: https://gouvernement.lu/en/dossiers/2018/benelux.html (Accessed on: 03/10/2022)

Human Rights in constitutional matters. In the latter two, the recognition of the ECtHR has been limited to the level of ordinary law.

The next major step was the creation of the Constitutional Court via the 1996 reform of Art. 95 of the Constitution. The reform had been preceded by the decision of the European Court of Human Rights in Procola v Luxembourg (1995), which, among other recommendations, highlighted the need for a constitutional court. Before the establishment of Constitutional Court, it was the Conseil d'État (State Council) which held its role and tasks, similar to the case of the UK, where the House of Lords held the functions of the Supreme Court which was established by the Constitutional Reform Act of 2005. In Procola v Luxembourg, the ECtHR found that Art. 6 of the European Convention on Human Rights was violated because of the participation of the same institution, namely, the Council of State, in more than one phase of the case. In its judgment "the Court notes that four members of the Conseil d'Etat carried out both advisory and judicial functions in the same case. In the context of an institution such as Luxembourg's Conseil d'Etat the mere fact that certain persons successively performed these two types of functions in respect of the same decisions is capable of casting doubt on the institution's structural impartiality. (…) It follows that there has been a breach of Article 6 para. 1 (art. 6-1).[471]" The judgment has an important role in the evolution of the quality of democracy in the Grand Duchy as it enhanced the principle of separation of powers by delegating judicial competences of the Council of State to a constitutional court.

Following a vast consultation with international bodies, such as the Council of Europe a series of important constitutional reforms took place in the Grand Duchy for finding answers to several issues of democratic functioning. The process, starting in 2003 and marking 13 amendments so far, is still ongoing. Art. 114 of the Constitution as amended in 2003 laid down that all constitutional reforms must be adopted by two consecutive successful votes in the Chamber. Furthermore, it prescribes that "the text adopted at first reading by the Chamber of Deputies is submitted to a referendum, which replaces the second vote of the Chamber, if within two months of the first vote a request is made either by more than a quarter of the members of the Chamber, or by twenty-five thousand voters registered on the electoral lists for the legislative elections"[472]. It is important to note that referendums in Luxembourg, although mandatory, are only "of an advisory nature within the framework of drawing up a new

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[471] Council of Europe – European Court of Human Rights (1995): Case of Procola v Luxembourg Judgement. pp. 10-11
[472] Loi du 19 décembre 2003 portant révision de l'article 114 de la Constitution

Constitution"[473], therefore, similarly to the UK's and contrary to Hungary's legal system, they are not legally binding.

In 2008 the Venice Commission published an interim opinion concerning the Draft Constitutional Amendments of the Grand Duchy, with the focus on 'determining fundamental rights and their restrictions. The VC explains in the document that fundamental rights and freedoms must be laid down in a constitution: "a national constitution should guarantee the human rights and public freedoms which are designated as 'fundamental' at State level".[474] The interim opinion emphasises that the text of the draft review on public freedoms and fundamental rights "does not entirely correspond to the relevant international treaties applicable in Luxembourg, particularly in connection with restrictions on rights and freedoms"[475], and recommends clearly stating in the Constitution that "the substantive provisions of international human rights conventions are directly applicable and take precedence over the whole domestic legal system"[476]. The opinion points out the importance of the legality principle and the prohibition of preventive measures which are solidly presented in the draft review. However, the opinion suggests laying down an up-to-date catalogue of fundamental rights, such as dignity, equality, freedom, the right to life, safeguards in cases of deprivation of liberty, and general guarantees relating to a fair trial[477]. The opinion adds that the constitutionalisation of these rights "would have the effect of placing them under the jurisdiction of the Constitutional Court"[478].

In 2009, Art. 34 of the Constitution was amended as follows: "the Grand Duke promulgates the laws within three months of the vote of the Chamber"[479], which entails an essential change in the expression of the function of the monarch: from now on, the Grand Duke does not "approve" but "promulgates" the law. Jean-Claude Juncker, prime minister at the time, explained: "to respect the Grand Duke's freedom of conscience (…), we have reached a common agreement with the Grand Duke and the leaders of the parliamentary groups: we must proceed with a modification of the Constitution, which consists in the fact that the Grand Duke will continue to promulgate the laws in the future as head of the executive power, but that he

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[473] Official website of the Government of the Grand Duchy of Luxembourg: Principles – Referendum. Source: https://elections.public.lu/en/systeme-electoral/referendum-mode-emploi/principes.html (Accessed on: 13/10/2022)
[474] Venice Commission (2009): Interim Opinion on the Draft Constitutional Amendments of Luxembourg. p. 7
[475] Ibid., p. 20
[476] Ibid., p. 20
[477] Ibid., pp. 4-7
[478] Ibid., p. 7
[479] Loi du 12 mars 2009 portant révision de l'article 34 de la Constitution

will no longer need to sanction them as an element of the legislative power, because in the term 'to sanction' the word 'approve' is of course included"[480].

The 2015 Constitutional Referendum is the latest innovation regarding the quality of democracy in Luxembourg. Although all three questions of the advisory referendum were rejected, the debates which emerged in its context raised crucial questions linking to the democratic functioning of the Grand Duchy, where almost half of the residents do not hold citizenship. One can regard the failure of the 2015 Referendum as a limitation of the development of the quality of democracy, which has a high importance as it happened with the direct involvement of the citizens. It is a major element of democratic stagnation in the recent history of the country, as the people rejected democratic innovation by voting against the inclusion of a wider segment of the society, namely, the younger citizens between the age of 16 and 18 as well as the residents who do not hold citizenship. The latter, though, is not entirely excluded from influencing some specific fields of Luxembourgish domestic legislation (social rights). However, the representation does not take place by chosen parliamentarians in the Chamber of Deputies, but, for instance, through trade unions, such as the Independent Luxembourg Trade Union Confederation (OGBL).

III.1.3.3 The Reform Package of 2023 – Constitutional Modernisation

Since 2015, four fields have dominated the questions around constitutional reforms, namely, justice, the organisation of the state, rights and liberties, and the relationship between the Chamber of Deputies and the Conseil d'État (Council of State). The purpose of the reform is to establish a "modern, reorganised" constitution for the Grand Duchy. By October 2022, the four proposals for constitutional amendments were adopted by a first vote. The second vote took place in December 2022. During the first vote, the constitutional proposals gained the support of most political parties – deputies of the Christian Democrats (CSV), the Democratic Party (DP), the Socialist Party (LSAP), the Greens (déi Gréng), and the Piraten Party voted yes, the leftist déi Lénk abstained, and the conservative ADR voted no. Altogether, in all four fields, more than two-thirds of the deputies supported the proposals.[481] As stated on the website of the Chamber, the objective is "to modernize the terminology" as well as "to adapt the texts

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[480] Projet de révision de l'article 34 de la Constitution déposé á la Chambre des députés. Source : https://gouvernement.lu/fr/actualites/toutes_actualites/articles/2008/12-decembre/03-revision-constitution.html (Accessed on: 12/10/2022)
[481] Official website of the Chamber of Deputies of Luxembourg. Source: https://www.chd.lu/fr/node/9 (Accessed on: 17/10/2022)

to the actual exercise of powers and the functions of the institutions".[482] The Committee on Institutions and Constitutional Revision of the Chamber of Deputies of the Grand Duchy decided to reform provisions relating to (1) the functioning of justice (revision proposal 7575), (2) the organisation of the State, its territory, its inhabitants, the Grand Duke, the constitutional monarchy, the Government, the relations between the State and the religious communities, the municipalities (revision proposal 7700), (3) the rights and freedoms (revision proposal 7755), and (4) the relationship between the Chamber of Deputies and the Council of State (revision proposal 7777).[483]

At the second constitutional vote in the Chamber of Deputies, the four proposals for the revision of the Constitution were supported by most of the parties, i.e., by the DP, the LSAP, déi Gréng, and the CSV, and the Piraten deputies. ADR rejected the proposals on a second occasion, while déi Lénk abstained again. Once signed by the Grand Duke, the reform will enter into force six months after publication in the Official Journal (foreseeably mid-2023).

As shown below, we can talk about comprehensive reforms, concerning every chapter of the constitution. A new characteristic of the provisions is that they include certain constitutional objectives to the state, such as the objective of ensuring that everyone has the right to proper housing, the protection of cultural heritage and access to culture, or public dialogue. The particularity of these constitutional objectives is that they do not confer rights directly to the citizens, i.e., they are not invocable in court. For instance, according to Section 4 of the Revisional Proposition, the constitutional objective to ensure the right to appropriate housing "requires the legislator to take the necessary initiatives to enable everyone to have decent housing, however, it does not create an individual right to housing that can be invoked in court"[484].

The purpose of the below tables is to give a summary of the constitutional changes proposed for revision and accepted by double voting in the Chamber (proposals 7700, 7575, 7755, and 7777).

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[482] Ibid.
[483] Ibid.
[484] Official website of the Chamber of Deputies of Luxembourg. 7755 Proposition de la revision du chapitre II de la Constitution. Source: https://wdocs-pub.chd.lu/docs/exped/0120/165/241650.pdf (Accessed on: 07/02/2023). p. 4

Proposal for Revision of Chapters I, II, III, V, VII, VIII, IX, X, XI, and XII of the Constitution (7700) – The Organisation of the State[485]

Table 17: Proposal for Revision of Chapters I, II, III, V, VII, VIII, IX, X, XI, and XII of the Constitution (7700) – The Organisation of the State

No.	Topic	Sub-Topic	Change
7700	**The State, its territory, and its inhabitants**	The rule of law	Explicitly enshrines the rule of law.
		Sovereignty resides in the nation	"The proposed revision tries to respond precisely to the long-controversial question of the rules of sovereignty by providing that sovereignty resides in the Nation. This notion is to be taken in a broad sense which nowadays is largely confused with that of the people. It is from the Nation alone that all the powers of the State emanate."[486]
		Luxembourgish language	Luxembourgish as (a) language of the country is constitutionalised.
		National symbols	The flag, the coat of arms, and the anthem constitutionalised.
		Multilingualism	Devotion to multilingualism (i.e., Luxembourgish, French, and German) is now enshrined in the text.
		European integration	Devotion to European integration (based on French and German examples) is now enshrined in the text.

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[485] Official website of the Chamber of Deputies of the Grand Duchy of Luxembourg. 7700 Proposition de la revision du chapitres I, II, III, V, VII, VIII, IX, X, XI, et XII de la Constitution. Source: https://wdocs-pub.chd.lu/docs/exped/0114/122/229221.pdf (Accessed on: 08/02/2023)
[486] Ibid., p. 3

	The Grand Duke	Canonising provisions about the head of state	The revision integrates all the provisions concerning the Head of State into the very body of the Constitution
		Accession to office and circumstances	Regulates in detail all the questions relating to accession to the office of Head of State, to the abdication and at the regency, and the case of temporary incapacity or refusal to exercise the functions of the Head of State.
	The Government	The executive power	Explicitly expresses that the government is the executive power and exercises its functions without the authority or control of the Grand Duke.
		The number of ministers	There is no longer any indication of the minimum number of ministers.
		Motion of censure	Enshrines the practice of motions of censure against the Government.
		Accountability of the government as a whole	Establishes a liability regime like what is applicable to deputies. The old system of the indictment of members of the Government by the Chamber of Deputies is abandoned.[487]

Proposal for Revision of Chapter VI of the Constitution (7575) – Justice[488]

Table 18: Proposal for Revision of Chapter VI of the Constitution (7575) – Justice

No.	Topic	Sub-Topic	Change

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[487] Ibid., p. 5
[488] Official website of the Chamber of Deputies of Luxembourg. 7575 Proposition de la révision du chapitre IV de la Constitution. Source: https://wdocs-pub.chd.lu/docs/exped/0108/065/216656.pdf (Accessed on: 06/02/2023)

7575	**Justice**	Organisation	Enshrines in the text the notion of 'judicial power' for a clear separation of the three branches of power.
			Constitutional Court is named to settle any conflicts of attribution of competences of administrative and judicial branches (courts).
		The National Council of Justice	Strengthening the independence of justice and its transparency.
			Appointment of magistrates.
			Ascribed role in the disciplinary proceedings initiated against magistrates.
		Legal guarantees for litigation	Guarantees for litigants in the context of legal proceedings.
		Constitutional Court	New competence to solve any conflict of power.
			A law passed by a qualified majority may extend the powers of the Constitutional Court.

Proposal for Revision of Chapter II of the Constitution (7755)– Fundamental Rights and Civil Liberties[489]

Table 19: Proposal for Revision of Chapter II of the Constitution (7755)– Fundamental Rights and Civil Liberties

No.	Topic	Sub-Topic	Change
7755		Asylum	The right to asylum, independently of the obligations resulting both from international

Fundamental Rights and Civil Liberties		law, e.g., the Geneva Convention of 1951, and EU Law.
	Dignity	New article on the inviolability of human dignity.
	Freedoms	The rights to freedom of thought, conscience and religion are reinforced.
		The right to informational self-determination.
		The protection of personal data.
		The specification that freedom of worship is not equivalent to freedom of religion.
	Transversal Clause / limitation of rights	Any limitation of the exercise of constitutional freedoms must be provided for by law and respect their essential content.
	Equality before the law	The inclusion of the limits of the principle stemming from judgments of the Constitutional Court. "The law may provide for a difference in treatment which stems from an objective disparity, and which is rationally justified, adequate and proportionate to its aim."[490]
		Enshrining the equal rights to persons with disabilities.
		Specification of the right to a judge (based on the Swiss example).
		The principles of legality and non-retroactivity of incriminations and penalties are introduced.

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[490] Ibid., pp. 3-4

		Timely handling of cases by public authorities	For public authorities, the duty to respond within a reasonable time to any request signed by one or more persons addressed to them.
	Constitutional objectives for the State (do not confer directly invocable rights on citizens)	The rights of children	"Ensuring that each child benefits from the protection, measures and care necessary for his well-being and development and that each child can express his opinion freely on any matter that concerns him, taking into account his age and his discernment."[491]
		The rights of animals	"Recognising animals as non-human living beings with sentient beings and ensure that their well-being is protected."[492]
		Culture and cultural heritage	"Guaranteeing access to culture and the right to cultural development and promote the protection of cultural heritage."[493]
		Academic freedom	Promoting the freedom of academic research.
		Public dialogue	Guaranteeing public dialogue.
		Family	The protection of the family and the right to found a family.
		Work	The right to work.
		Appropriate housing	The right to appropriate housing to live in dignity.

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[491] Ibid., pp. 7-8
[492] Ibid., pp. 7-8
[493] Ibid., pp. 7-8

		Environment	The protection of the environment.

Proposal for Revision of Chapters IV and IVbis of the Constitution (7777) – Direct Democracy and Parliamentary Control[494]

Table 20: Proposal for Revision of Chapters IV and IVbis of the Constitution (7777) – Direct Democracy and Parliamentary Control

No.	Topic	Sub-Topic	Change
7777	**Direct democracy**	Legislative initiative	A new instrument of direct democracy, it will allow citizens and civil society to submit legislative ideas in a more precise and binding way than by way of a simple petition.
		Referendums	More flexible; a separate article dedicated to the instrument of the referendum.
			Opens room to a wider scope of voters beyond nationals.[495]
	Parliamentary control over the government	Committees of inquiry	"The Chamber must set up a commission of inquiry when at least one-third of the deputies so request, and no longer on the request of a majority."[496]
	Council of State (CS)	Chamber and CS relationship	The Chamber can now submit legal questions to the CS.

Summary of the Main Elements of the Reform Package[497]

Table 21: Summary of the Main Elements of the Reform Package

Summary: Constitutional Reform of 2023	
Judicial	The National Council of Justice (Conseil National de la Justice).
Powers of the Chamber of Deputies	Easier access to the rights of inquiry and the motion of confidence / motion of censure regarding the Government.
	The definitive role of the Chamber as the executive power.
New freedoms constitutionalised	The right to found a family.
	The protection of personal data.
	The right to informational self-determination.
Normative elements	The safeguarding of biodiversity and the fight against climate change.
	The recognition of animals as sentient beings and the protection of their well-being.
	The right to appropriate housing.
	The protection of cultural heritage.
	The value of multiculturalism.
	The value of European Integration.
National symbols	The Luxembourgish language.
	The flag, the coat of arms and the national anthem.

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[497] Official website of the Chamber of Deputies of Luxembourg (2022): Une Constitution du XXIème siècle. Source: https://www.chd.lu/fr/node/1038?fbclid=IwAR0-sWR_fBis68QmOEvS5oKOvLjLPxgHz2R755eCdRh70-CWzftafx6Rtnk (Accessed on: 07/02/2023)

Direct democracy	New referendum concept.
	Citizens' and the civil society now have the right of legislative initiative.

The Venice Commission commented on the proposals in 2019. The Opinion specifically refers to Art. 11 (1) which states that "Luxembourgers shall be equal before the law"[498] in light of Protocol no. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms and Art. 26 of the International Covenant on Civil and Political Rights on the prohibition of any discrimination regarding persons' equality before the law.[499] Furthermore, the document refers to ECtHR decision in Koua Poirrez v France: "very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention"[500]. The Opinion highlights the importance of the issue in light of the high diversity of Luxembourgish society. Furthermore, regarding the "transversal clause" on the potential limitation of rights, the document points out that under the ECHR, an absolute right cannot be balanced against the needs of others or the public interest, therefore, the list of these rights must be strict. The fact that the Constitution defines "the nation" as the source of sovereignty is also pointed out, recalling that many modern liberal constitutions replaced the term *nation* with *people* in their wording: "nation is an indeterminate and opaque concept, whereas people is legally more precise, because it refers to all citizens"[501].

One may conclude that the constitutional changes reflect a significant advancement in the quality of Luxembourgish democracy both from institutional and societal perspectives. On the one hand, among the institutional innovations, it establishes a more transparent relationship between the Chamber of Deputies and the Council of States, gives more power to the Chamber (for instance, by providing better access to the instrument of motion of censure), and creates a new organ, the National Council of Justice for strengthening transparency and judicial independence.

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[498] Official website of the Chamber of Deputies of the Grand Duchy of Luxembourg. 7755 Proposition de la revision du chapitre II de la Constitution. p. 5
[499] Venice Commission (2018): Opinion No. 934/2018: Luxembourg – Opinion on the Proposed Revision of the Constitution. p. 8
[500] Ibid. p. 6
[501] Ibid. p. 4

When asking about the constitutional reform's impact on the quality of Luxembourgish democracy, IS/G pointed out the benefits of the newly established National Council of Justice in terms of the rule of law: "we have recently contributed to a better functioning of the rule of law thanks to the strengthening of independent justice via a succession of laws to reinforce the number and quality of resources (beyond legal), and by guaranteeing its independence by establishing the CNJ National Council of Justice." IS/G further highlighted the reforms' importance in the evolution of the constitutional monarchy in the Grand Duchy as they clarify the roles of the institutions, and strengthen parliamentarism, transparency, and accountability: "This constitutional reform is an essential step; a representative parliamentary democracy in the form of a constitutional monarchy; it clarifies the institutional game in Luxembourg; the three powers operate independently of each other, but in dialogue and mutual respect. Parliamentarianism is strengthened, especially by clarifying the role of the parliament: preparation of laws and control over the executive – the methods of this control are reinforced and clarified by the instruments of committee of inquiry, motions of confidence and censure, and by access to information and documents."

IS/K argued as follows: "In regard to the main challenges to the quality of Luxembourgish democracy, the constitutional reform does not improve the situation. While new instruments, such as the legislative citizens' initiative or the reinforcement of national parliament's powers, indicate that the constitutional reform clearly goes in the right direction, it neglects the most urgent challenge for Luxembourgish democracy: the lack of political representation of foreign residents in Luxembourg."

On the note of the constitutional reforms, IS/L pointed out that the new provisions guarantee equal treatment to everyone living on the territory of Luxembourg, granting rights and protection to people regardless of their nationality, so that "no one is excluded from the protection of rights and freedoms".

The constitutional reforms not only enshrine a new set of rights but also establish new ways of direct democratic participation. By giving the right of legislative initiative to the people, and by opening to extend the circle of voters in referenda beyond the nationals, the Constitutional reform gives a remarkable boost to the meso-societal and micro levels of the country's political culture.

III.1.4 Constitutional Reform and Public Dialogue

III.1.4.1 United Kingdom

There is no consensus in the general literature on the question of whether public dialogue can apply to the UK constitution. The key elements of the debate are the essential nature of parliamentary sovereignty and privilege, as well as executive dominance. Young (2017) argues in favour of a "bipolar sovereignty" as a "feasible interpretation of the UK constitution".[502] Young concludes that democratic dialogue is feasible for the UK constitution. However, they also point out "some of the ways in which the UK constitution may detract from the ability of democratic dialogue to achieve its normative advantages", which claims rely on parliamentary sovereignty as the basis of the rule of law and the common law system, and executive dominance.[503] Regarding 'executive dominance', Young argues that it per se may not undermine the application of democratic dialogue to the United Kingdom, however (…) it should affect the extent to which the judiciary should give weight to legislative determinations of human rights" and that a potentially "more damaging impact of executive dominance relates to the extent to which the legislature performs its assigned role in accounts of democratic dialogue"[504].

III.1.4.2 Hungary

The creation and enactment of the 2011 Fundamental Law received criticism from various national and international actors. One of the key questions of the criticism was about the lack of sufficient public exchange when creating the new constitution. In a high-quality democracy, however, an extensive reform of the constitution cannot happen without broad and inclusive consultation with the citizens — we learn from the Venice Commission (VC) regarding the case of drafting the Fundamental Law of Hungary in 2011.[505]

The VC lays down that the drafting and adaptation of a new constitution require the largest consensus possible within the society, the importance of guaranteeing fundamental rights,

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[502] Young, A. L. (2017): Democratic Dialogue and the Constitution. Oxford University Press, Oxford
[503] Ibid., pp. 208-209
[504] Ibid., p. 208
[505] Venice Commission (2011): Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution of Hungary

democracy, and the rule of law.[506] Key principles that the VC articulates regarding constitutional reforms in the Opinion are "transparency, openness and inclusiveness, adequate timeframe and conditions allowing pluralism of views and proper debate of controversial issues, are key requirements of a democratic Constitution-making process"[507]. Furthermore, "a wide and substantive debate involving the various political forces, non-government organisations and citizens associations, the academia and the media is an important prerequisite for adopting a sustainable text, acceptable for the whole of the society and in line with democratic standards. Too rigid time constraints should be avoided".[508] The VC especially emphasises three key factors in the process of drafting and adopting a new constitution: flexibility, openness, and a spirit of compromise[509].

The Opinion of the VC points out several problems arising during the drafting of the Fundamental Law of Hungary: firstly, the lack of dialogue between the majority and the opposition during the elaboration of the draft[510], secondly, the lack of transparency[511], thirdly, the inadequate consultation with and of the society regarding the main constitutional challenges[512], and finally, that only a limited public debate could have been taken place due to the restricted timeframe.[513] The Opinion mentions the 2010 limitation of the powers of the Constitutional Court as well, in particular in the context of the opposition's withdrawal from participating in the drafting of the new constitution.[514]

Establishing the new constitution this way was possible because of the overpowered national government, which, with two-thirds majority, was able to recreate the constitutional system of the country. The overpowered government is a common element of the Hungarian and UK cases. However, in Hungary, it is not a tradition of the political culture, but partially stems from a relatively wide acceptance of and legitimization by the electorate, besides policy changes such as the modification of the electoral law.

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[506] Venice Commission (2011): Opinion on the New Constitution of Hungary. p. 6
[507] Venice Commission (2011): Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution of Hungary. p. 5
[508] Ibid., p. 5
[509] Ibid., p. 15
[510] Ibid., p. 5
[511] Ibid., p. 5
[512] Ibid., p. 5
[513] Ibid., p. 5
[514] Ibid., p. 3

III.1.4.3 Luxembourg

The case of Luxembourg is unique due to the very fact that approximately half of the residents of the country does not hold citizenship. Thus, going beyond the proposals of the Venice Commission, on the principles of inclusiveness, recalling Habermas's normative principles of discourse, legitimacy, and universalization (all who are affected shall be included in the process through social discourse, as the constitution indeed has a normative role as well), public consultation shall include the non-citizen residents, too. In the case of Hungary, we saw that the formulation of the new constitution lacked public consultation. How has the Luxembourgish government approached the question? After the failed referendum of 2015, the Chamber of Deputies focused on three perspectives of public dialogue. Firstly, the organisation of information meetings regarding the constitutional reform proposals. Secondly, the creation of an informative website. The objective of the latter (www.ärvirschléi.lu, i.e., "your recommendation") was to "enable citizens to submit proposals for the revision of the Constitution"[515]. The participation took place between July 2015 to July 2016 and "yielded some participatory and deliberative outcomes, including the elaboration of several constitutional amendments"[516]. In terms of the quality of Luxembourgish democracy, this participatory process and the formulation of constitutional amendments might be seen as an example, on the one hand of public dialogue and direct democratic participation, and on the other hand, of government responsiveness. According to data from the Venice Commission, in the provided period of approximately three months, 139 citizens and/or associations submitted proposals, followed by the public hearing of 38 citizens. The rights of children, the rights of animals, social dialogue, scientific research, and equal access to culture were some fields where citizen proposals were included in the draft constitutional provisions.[517] However, as Burks and Kies highlight, the website itself missed becoming a platform for deliberation for the people.[518] Furthermore, the participative process excluded the non-citizen residents.

Thirdly, the CONSTITULUX project initiated by the Research Chair in Legislative Studies of the University of Luxembourg in partnership with TNS ILRES sought to understand the expectations and interpretations of citizens of Luxembourgish nationality in light of the

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[515] Official website of the Chamber of Deputies of Luxembourg. Source: https://www.chd.lu/fr/node/9 (Accessed on: 17/10/2022)

[516] Burks, D., Kies, R. (2021): Deliberative Constitution-making in Luxembourg. Source: http://hdl.handle.net/10993/46518 (Accessed on: 17/10/2022)

[517] Venice Commission (2019): Luxembourg – Proposition de révision portant instauration d'une nouvelle constitution – Rapport de la Commission des institutions et de la révision constitutionnelle (6.6.2018)

[518] Burks, D., Kies, R. (2021): Deliberative Constitution-making in Luxembourg.

constitutional reform. 60 Luxembourgish citizens above age 16 were selected for the focus groups (citizen forums) taking place in 2016 on the draft constitutional revisions. On these forums, "citizens 1) raised pertinent questions, 2) identified short- and long-term concerns and 3) suggested improvements to the draft articles"[519]. According to Burks and Kies, the forum, however, lacked "maxi-public engagement" and "generated little concrete action from the Government". From the perspective of the quality of democracy, the case of the citizen forum and its outputs were an example of low government responsiveness and were questionable in terms of inclusiveness too since the forum excluded the non-citizen residents of the Grand Duchy.

Another example of the exclusion of non-citizen residents from part-taking in deliberation on a matter that shall require social assent is the Biergerkommitee Lëtzebuerg 2050, aiming at discussing and evaluating the 'Luxembourg in Transition' project, providing feedback, developing an understanding of how Luxembourg shall approach the objective of carbon-neutrality by 2050, and elaborating recommendations to political decision-makers[520]. Theoretically, the Biergerkommitee could have been a great platform for exercising deliberative democracy, as it must have been the intention when the idea came up to launch such an initiative allowing citizens to speak up and make recommendations after exchanging with experts. As the official website of the 'Luxembourg in Transition' project explains, "based on the applications received, TNS Ilres has assembled a group of people who best reflect the diversity of the Luxembourgish population by taking age, gender, level of education, professional background, and country of origin into account. 5 of the 30 participants are cross-border commuters since they are also affected by current spatial planning decisions"[521]. On the contrary, one can observe a bias regarding the selection of participants: the massive overrepresentation of people with a university education (over 80%). This bias was probably hidden in the very purpose of the initiative itself as the Ministry and TNL-Ilres must have been trying to find participants who are linguistically capable. Furthermore, minimum the passive understanding of Luxembourgish was a requirement for participation, which, again, excluded numerous groups of society, as many of the residents who do not hold citizenship couldn't have fit this requirement. However, the essence of Habermas's deliberative democracy is the inclusion of all groups who are concerned by the given question or policy issue. This is

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[519] Ibid.
[520] Luxembourg in Transition: Spatial Visions for the Zero-Carbon and Resilient Future of the Luxembourg Functional Region. Source: https://luxembourgintransition.lu/en/citizens-committee/ (Accessed on: 17/10/2022)
[521] Ibid.

especially true when it comes to questions that infer norms which demand wide support from the society, such as becoming a zero-carbon society by 2050 (the principle of universalization, meaning the universality of the norm itself).

Following Habermas's principles, inclusion advances legitimacy. Legitimacy and constitution are inseparable. Therefore, constitutional reforms must rely on an inclusive process. In line with this, the normative objective of guaranteeing public dialogue is introduced in the 2020-2023 Constitutional reform package, accepted by the Chamber in December 2022 by the majority of parties.

III.2 Macro Level: The Situation of Fundamental Rights

Fundamental rights and freedoms are one of the essential ('deficiency') factors of the quality of democracy without which the possibility for other dimensions of the quality of democracy to evolve is less sufficient. This section investigates the current situation of the protection of fundamental rights and freedoms in the three case studies, as well as the civil society engagement in the field.

III.2.1 The Situation of Fundamental Rights and Freedoms in the United Kingdom

This section focuses on the UK's Human Rights Act 1998 (the pillar of fundamental rights protection in the country) and its legislative reform proposed by the government in June 2022.

III.2.1.1 The Human Rights Act 1998 (HRA1998)

The Human Rights Act 1998 was introduced by Tony Blair's government and incorporates the European Convention on Human Rights into domestic British law. The fundamental rights protected by the HRA are the right to life, in line with and by reference to the ECHR, are the prohibition of torture and inhuman treatment, protection against slavery and forced labour, the right to liberty and freedom, the right to a fair trial, the nullum crimen sine lege principle, the respect for privacy and family life, and the right to marry, the freedom of thought, religion, and

belief, free speech and the right for peaceful protest, the prohibition of discrimination, the protection of property, the right to education, and the right to free elections.[522]

The HRA is a "culmination of a long-running constitutional debate over whether to adopt a Bill of Rights"[523]. Vick summarises the relevance of the Act on the protection of fundamental rights in the UK as follows: "By incorporating most of the substantive provisions of the ECHR into the domestic law of the United Kingdom, the Human Rights Act marks a **dramatic shift** in how individual rights are conceptualized under British law. Traditionally, civil liberties – including fundamental ones such as freedom of expression, freedom of religion, and the right to privacy – were seen as 'residual' in nature: 'they are the residue of freedom left behind after the legal restrictions have been defined' by legislation or the common law. The British constitution has traditionally eschewed broadly worded textual pronouncements of fundamental rights, preferring, instead, to rely on the democratic process, the rule of law, and the United Kingdom's complex system of checks and balances to safeguard civil liberties"[524]. However, as Vick explains, the above approach "has been repeatedly questioned over the past two decades. The Human Rights Act, which puts courts and other public authorities under a positive duty to 'give effect' to the rights enumerated in the European Convention in their day-to-day activities, marks a shift in the perception of civil liberties from residual freedoms to positive rights."[525]

III.2.1.2 The EU Charter of Fundamental Rights

During its EU membership, the UK (besides Poland) had a protocol on the application of the EU Charter of Fundamental Rights in its national legislation. Art. 1.1. lays down that "The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms"[526]. Art. 1.2.:

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[522] Human Rights Act 1998 (1998 c. 42). Source: https://www.legislation.gov.uk/ukpga/1998/42/section/1 (Accessed on: 08/01/2023)
[523] Vick, D. W. (2002) "The Human Rights Act and the British Constitution." in Texas international law journal 37.2. pp. 329-330
[524] Ibid., p. 330
[525] Ibid., p. 330
[526] Consolidated version of the Treaty on the Functioning of the European Union - PROTOCOLS - Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom. Source: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E%2FPRO%2F30 (Accessed on: 15/01/2023)

"In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law"[527].

III.2.1.3 Brexit and Fundamental Rights

An aspect we certainly must investigate is how Brexit affected the situation of fundamental rights in the UK. Brexit had an influence on the protection of rights. Fundamental rights have been debated since 2016 by academics and political actors in the UK on countless occasions. An example is the "Human Rights in the UK" debate in the UK Parliament, debated on 13 February 2019. Shepard et al. explain that the reasons for the parliamentary debate are three-fold: 1) the progress of the Brexit procedure, 2) Theresa May "casted doubts as to her commitments to protect human rights", 3) the Manifesto of the Conservative Party "pledged that the Human Rights Act would not be reappealed while Brexit was underway"[528].

Thematic Analysis of the Debate in the House of Commons on Human Rights in the UK, 13 February 2019

Using a qualitative data analysis tool, the research identifies the main themes of the debate[529] as follows:

- The European Convention on Human Rights (ECHR)
- The Human Rights Act of the UK
- The EU Charter
- Institutional and ideological separation of the EU and the Council of Europe / ECHR / ECtHR
- Leaving the ECHR and the ECtHR
- National sovereignty
- Declining Human Rights Protection

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[527] Ibid.
[528] Sheppard, T. et al. (2019) : Brexit and the incorporation of the Eu Charter into UK law. Source: https://fra.europa.eu/en/content/brexit-and-incorporation-eu-charter-uk-law (Accessed on: 15/01/2023)
[529] House of Commons of the UK (2019): Human Rights in the UK. Volume 654: debated on Wednesday 13 February 2019. Source: https://hansard.parliament.uk/Commons/2019-02-13/debates/D3018F3E-4DAB-4D0C-B9D7-CF1B84DBD204/HumanRightsInTheUK?highlight=eu%20charter#contribution-91D60ABD-AC2C-4C90-BBAF-22C9A788D3FF (Accessed on: 10/01/2023)

Table 22: Debate in the House of Commons on Human Rights in the UK, 13 February 2019

ECHR	"What does the ECHR actually protect? (…) It protects liberty and security, and the right to a fair trial and not to have legislation applied retroactively. It protects the right to privacy, freedom of conscience and religion, and freedom of expression and association. It protects the right to get married if one wishes to and provides effective remedies and protection against discrimination. Who could disagree with any of that? My challenge to those who say that we should have a British Bill of Rights is to ask which of those rights they would take out and not include in that Bill. I remember asking Ministers that question when I first came to Parliament in 2015, but answer came there none."
	"(Places) human rights into categories, of which the most familiar is civil and political rights such as the right to life, the right to vote or the right to free expression. Those rights are central to the ECHR and the Human Rights Act, but there is a whole other dimension of human rights that is essential to defining the nature of our society: social and economic rights, such as the right to health, the right to shelter or the right to work."
	"As has been said, the UK was one of the first to sign up to the ECHR in 1951, before it came into force in 1953. It has been strengthened over the years by protocols, and the 1998 Act was a huge step forward in putting those rights on a footing whereby they could be enforced in the UK's domestic courts. As my hon. Friend the Member for Cheltenham (Alex Chalk) set out, the ECHR reflects—not in totality, but in large parts—domestic laws both passed by Parliament and in previous common law."
	"(…) strong examples of practical cases where the Human Rights Act and the incorporation of the ECHR into UK law has made a difference to those seeking justice in this country over the past two decades."
HRA 1998	"Does the Minister recognise the limitations of the Human Rights Act without the protections of the EU charter of fundamental rights, and can he explain how his party's Government are preserving those rights before the UK leaves the EU?"
	"(…) what would the governing party's policy be on repeal of the HRA once the Brexit process has been completed or at least got to the position of being implemented? For all those reasons, the central purpose of today's debate is to seek an assurance from the Minister that there will be no attempt to repeal,

	undermine, weaken, or amend the provisions of the Human Rights Act 1998."
	"The one area where the Human Rights Act, in the sense of the incorporation of the ECHR into UK law, has made a big difference is in family law, particularly in rights to see children."
	"It is concerning that while the Human Rights Act is said to be safe for the duration of the Brexit process, recent events have made it clear that the current UK Government have not lost sight of a long-standing desire on the part of some in the Conservative and Unionist party to repeal and replace the Act."
	"(…) concern has recently raised its head again about the Government's long-term intentions regarding the repeal of the Human Rights Act 1998. It is difficult to remember what we all talked about in those dim and distant days before Brexit, but in 2015 and 2016 the current Prime Minister's avowed desire to get rid of the Human Rights Act was a huge issue."
EU Charter	"Government were keen to ensure that the EU charter of fundamental rights would not be included in British legislation, despite opposition from my party and many others. Their case was that including the charter would be unnecessary duplication, since all the individual rights in it were replicated elsewhere. That was not quite true—some rights in the charter are not in the ECHR—but, in any case, it missed the main point: the charter's purpose was not just to define people's rights, but to create obligations on EU member states regarding how those rights would be upheld and, in particular, to assert their primacy over other legislation."
	"(…) if Brexit happens, we shall lose the charter of fundamental rights. That charter protected a wide-ranging list of fundamental rights and principles, covering certain social and citizens' rights, and going considerably further than the ECHR. The UK Government have tried to argue that the charter did not add anything to the corpus of UK law, but that is demonstrably false, even going by the UK Government's own right-by-right analysis from 2017. That highlights how limited UK domestic protections are in certain key areas. That is not just my view; it was echoed by the Joint Committee on Human Rights, of which I am a member."
	"That charter protected a wide-ranging list of fundamental rights and principles, covering certain social and citizens' rights, and going considerably further than the ECHR. The UK Government have tried to

	argue that the charter did not add anything to the corpus of UK law, but that is demonstrably false, even going by the UK Government's own right-by-right analysis from 2017. That highlights how limited UK domestic protections are in certain key areas."
	"The Scottish Parliament tried to preserve the benefit of the charter of fundamental rights on or after exit day, in so far as it applied to retained EU law in Scotland. It did that in a Scottish Parliament Bill called the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill. Most regrettably, British Law Officers objected to the Bill and held it up until the European Union (Withdrawal) Act 2018 was passed. That retrospectively changed the powers of the Scottish Parliament so that the continuity Bill, in so far as it attempted to preserve the charter in Scotland, was ultra vires. That was a retrograde step."
Separation of the EU and the CoE/ECHR/ECtHR	"The ECHR is the creature not of the European Union, but of the Council of Europe—an organisation to which this country subscribes and that involves 47 European countries, 40% of which are not members of the European Union—so one wonders why this is even being talked about in the context of Brexit."
	"I start by making the point that the convention is not the same as the Human Rights Act, and the European Union is not the same as the Council of Europe. The two are very different and we should take them as such. I have a lot of time for the convention, and I agree with much of what the hon. Gentleman said about it. I was particularly irritated during the referendum campaign that a lot of people got the ECHR confused with the European Court of Justice. The two are completely separate. One is owned by the European Union and the other by the Council of Europe."
Leaving the ECHR and the ECtHR	"The Labour party is very committed and passionate about the ECHR and the UK's signatory status, and about its incorporation into our domestic law. However, there is real concern about the governing party's position, particularly that of the Prime Minister, on the ECHR."
	"On our future commitment to the ECHR, at the moment there is real concern that the Conservative party's position is to remain a signatory for the duration of this Parliament only."
	"So regardless of the EU referendum, my view is this: if we want to reform human rights laws in this country, it isn't the EU we should leave, but the ECHR and the jurisdiction of its court ".

	"We will not repeal or replace the Human Rights Act while the process of Brexit is underway, but we will consider our human rights legal framework when the process of leaving the EU concludes. We will remain signatories to the European Convention on Human Rights for the duration of the next parliament."
	"In his response, the Minister has an opportunity to explain, because although we know what the position is for this Parliament, we do not know what it will be for the next Parliament. The hon. Member for Henley said, quite rightly, that these are time-honoured principles. Why, according to the Conservative party, are they only good enough for this Parliament? Why are they not good enough for the next Parliament, the next 10 Parliaments or the next 20 Parliaments?"
	"On our future commitment to the ECHR, at the moment there is real concern that the Conservative party's position is to remain a signatory for the duration of this Parliament only."
	"(…) the big question mark that she raised over whether Britain would continue to observe the ECHR involved us all in a lot of debate."
Sovereignty	"It has been suggested that a commitment to the ECHR, if taken seriously, is in some ways a hindrance to the process of government and that it prevents the Government from acting freely. Some people on the extreme wings of the Brexit movement would suggest that it means foreign interference with the ability of an independent United Kingdom to do whatever it wants. Well, it is a good hindrance, because it obliges us to conform to international norms of civilisation to which most people throughout the world subscribe."
Declining Human Rights Protection	"I am deeply concerned by the huge hole that will be left in human rights protection after Brexit, especially in the event of a no-deal Brexit. However, even while the UK remains a member of the European Union, human rights have been considerably worn down as a result of austerity policies."
	"I believe that human rights are in a precarious position in the UK at the moment, because despite a clear commitment from the Prime Minister that Brexit would not result in a diminution of rights protections, the UK Government have not to date lived up to that commitment either in the context of Brexit or more widely, as we can see from the UN rapporteur's report and the huge concern caused by the Windrush scandal and other aspects of the hostile environment policy. Many of us feel that the

	Government have refused to engage with people's concerns about the impact of Brexit on human rights."

In addition, IS/B explains the following: "There has been a decline under the current government, with restrictions on things like the right to protest, the right to strike, the rights of asylum seekers etc., but not to the extent that I think we could talk of a long-term trend, i.e., a Labour government would be likely to reverse this."

III.2.1.4 The Human Rights Act Reform

Boris Johnson's Conservative government promised in its manifesto[530] (2019) "to 'update the Human Rights Act' to ensure a 'proper balance' between human rights, national security, and effective government"[531]. Furthermore, the Johnson government communicated that the objective is to "restore Parliament's role as the ultimate decision-maker on laws impacting the UK population"[532] by modifying the powers of the court. Consequently, the Government published a Bill of Rights Bill which would repeal the Human Rights Act 1998 and replace it with a new framework to implement the European Convention on Human Rights. Boris Johnson's Government missed undertaking any public or Parliamentary scrutiny of the Bill before its presentation. Compared to the introduction of the Human Rights Act, the latter was preceded by a consultation paper and public and specialist scrutiny and gained support from the Labour and Liberal parties before its introduction to the House of Commons. The proposal was introduced to the Commons on 22 June 2022 by the Dominic Raab-led Conservative government. The Liz Truss government wanted to review the ways how to deliver it. The Bill has not yet had its second reading and there is no date yet scheduled by the Sunak government.[533]

Concerns have been addressed regarding the text[534] both among associations and opposition parties such as the Labour Party and the Scottish National Party. In November 2022, the Law

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[530] Conservative Party (2019): Conservative Party Manifesto 2019. Source: https://www.conservatives.com/our-plan/conservative-party-manifesto-2019 (Accessed on: 23/01/2023)
[531] Young, A. L. (2022): Human Rights Act Review: A British Bill of Rights? Source: https://constitutionallawmatters.org/2022/01/human-rights-act-review-a-british-bill-of-rights/ (Accessed on: 23/01/2023)
[532] Ibid.
[533] House of Commons of the UK (2022): Research Briefing: Human Rights Act Reform. Source: https://commonslibrary.parliament.uk/research-briefings/cbp-9581/ (Accessed on: 12/01/2023)
[534] House of Commons of the UK (2022): Bill 117 2022-23 as introduced (Bill of Rights Bill). Source: https://publications.parliament.uk/pa/bills/cbill/58-03/0117/220117.pdf (Accessed on: 13/01/2023)

Society (LS), the independent professional body for solicitors in England and Wales among whose tasks the protection of human rights is mentioned[535], expressed its concerns regarding the legislative reform. The LS is "concerned that the Bill of Rights Bills would damage the rule of law and make it harder for people to protect their rights"[536]. We learn from their publication that the proposed new Bill of Rights Bill will return to the House of Commons for a second reading in its original form, with no amendments by opposition parties. The LS finds this as a potential backsliding of human rights protection: "(we) strongly encourage the government to rethink the Bill to not unduly diminish human rights protections in UK law or impede British citizens' ability to access justice in our domestic courts"[537].

The most important changes, once the Bill is adopted:

Table 23: HRA 1998 vs Bill of Rights Bill

No Change	Change
The **rights laid down by the ECHR** and their ability **to be enforced** before national courts	Introducing a new **permission stage**, requiring claimants to prove they have (or would) suffer significant disadvantage as a result of a breach of their rights before they can take their claim to court
UK membership of ECHR, including the governmental obligation to secure the Convention rights in the UK	Setting **a higher threshold for challenges** to deportations for foreign national offenders based on the right to private and family life
The duty of **public authorities to observe the Convention rights**	**Removing the duty on courts to interpret** legislation **compatibly** with convention rights
	Removing the duty on courts to consider how the **ECtHR has interpreted** a right
	Limiting the interpretation of rights to a **literal reading of the text of convention rights**
	Requiring courts to **observe the views of parliament** "when balancing right issues"

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535 The Law Society. Source: https://www.lawsociety.org.uk/about-us/ (Accessed on: 12/01/2022)
536 The Law Society (2022): Human Rights Act reforms and the Bill of Rights Bill. Source: https://www.lawsociety.org.uk/topics/human-rights/human-rights-act-reforms (Accessed on: 12/01/2022)
537 Ibid.

A clear distancing from the ECHR and ECtHR is outlined. Firstly, UK national courts would no longer be obliged to observe the interpretations of the ECtHR; secondly, UK national courts would no longer be obliged to observe the ECHR when reviewing the legislation.

The LS expresses the following concerns regarding the proposed changes: "The Human Rights Act (…) strikes the right balance between the democratic powers of the executive, Parliament, and the courts. We do not believe there is a case for the sweeping reforms proposed in the Bill of Rights Bill". Regarding the Bill's impact on access to justice and the rule of law, the LS concludes that the Bill would diminish the quality of the protection of human rights since (1) "it significantly weakens the ability to enforce these rights through the courts to hold the state accountable for human rights violations"; (2) "the Bill makes it harder to access the courts and limits the protection they can provide"; (3) "it restricts (…) rights across the board and reduces rights for certain categories of people". Thus, the proposed Bill would "(1) damage the rule of law, (2) prevent access to justice, (3) reduce or remove rights, (4) lead to more cases being taken to the ECtHR, (5) impact devolution, (6) create legal uncertainty".[538]

III.2.1.5 The e-Petition Against the Reform of the Human Rights Act 1998

After the public consultation on the Human Rights Legislation Reform, e-petition 607712 "Do not reform the Human Rights Act" was initiated and signed by more than 230,000 citizens in the UK. This number is more than twice as high as the required 100,000 signatures[539] for parliamentary debate. The e-petition demanded the following: "the proposed Human Rights Act reforms must be withdrawn. The Government must not make any changes to the Human Rights Act, especially ones that dilute people's human rights in any circumstances, make the Government less accountable, or reduce people's ability to make human rights claims"[540]. The petition was debated in October 2022.

Thematic Analysis of the Debate in the House of Commons on the Human Rights Legislation Reform, 24 October 2022[541]

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[538] Ibid.
[539] Government of the UK: Petitions Parliament and the Government. Source: https://www.gov.uk/petition-government (Accessed on: 16/01/2023)
[540] Petitions UK Government and Parliament (2022). Source: https://petition.parliament.uk/petitions/607712 (Accessed on 16/01/2023)
[541] House of Commons of the UK (2022): Human Rights Legislation Reform. Volume 721: debated on Monday 24 October 2022. Source https://hansard.parliament.uk/commons/2022-10-24/debates/50DDC65F-5AA6-4EFF-A6D3-6816F5417778/HumanRightsLegislationReform

The themes identified in the transcript of the debate:

- Reforming HRA2018
- HRA vs Parliament representing the will of the people
- HRA vs Government
- British Law vs ECHR

Table 24: Debate in the House of Commons on the Human Rights Legislation Reform, 24 October 2022

Reforming HRA2018	"Reforms to the Human Rights Act would bring clarity to the currently opaque human rights standards, specifically those imported and adopted from the European Convention on Human Rights. It is important to note that that does not mean reduced rights for people at home. Any update to the Human Rights Act should not seek to scrap people's fundamental human rights, and any update to the Act should retain the ECHR and its original principles."
	"Axing the Human Rights Act would dramatically reset our strategic international position and the rights and freedoms afforded to British citizens."
	"The Scottish Government have been clear that they oppose this legislation."
	"The Human Rights Act, as it currently exists, protects all of us; we lose it at our peril. It is essential that we are allowed to challenge public authorities when they get it wrong. The Human Rights Act has changed many lives for the better. It must be protected and built on, and not subject to reforms that reduce its scope and limit what people can rely on it for."
	"As the Committee responsible for scrutinising the Government's human rights record, we have conducted two inquiries considering plans to reform the Human Rights Act. During our inquiries, we heard evidence from experts with a diverse range of views and from people who have benefited from using the Human Rights Act. Having considered all that evidence, we remain of the view, which we have expressed in a number of previous reports, that the Human Rights Act is functioning as intended and enables human rights to be enforced effectively in the United Kingdom, with little need for recourse to the European Court of Human Rights. For that reason, based on the evidence we have heard and the information we have

	considered, we believe that the Government have failed to make the case for repealing and replacing the Human Rights Act with a Bill of Rights."
	"The Bill of Rights simply does not reflect what the Government heard from Parliament's Committees, their own commissioned independent review, or their consultation exercise."
	"(…) the Human Rights Act is viewed internationally as the gold standard and a model example of how human rights can be effectively embodied into domestic law and practice."
	"Another important thing that the Human Rights Act has done is embed a human rights culture in public authorities. We heard from a number of witnesses—including an NHS trust, the National Police Chiefs' Council and the British Association of Social Workers—that the Human Rights Act has placed human rights at the centre of decision-making in public authorities, and that the legal framework assisted them in making complex decisions."
	"The Human Rights Act has been central to the devolution of justice and policing in Northern Ireland, and of course we know that it is embedded in the Good Friday agreement. It also plays a very important role in the constitutional underpinning of the Scottish Parliament and the Welsh Senedd."
	"The Joint Committee on Human Rights is not saying that there should not be any amendments to the Human Rights Act, but we would like human rights protections to be strengthened rather than weakened."
	"If this Government—my Government—are to reform human rights, they should make the standards higher. Let us do human rights better, rather than water them down."
	"The Human Right Act aims to protect every individual across our society. We lose that at our peril. It is an essential law that has allowed us to challenge public authorities when they get things wrong. It has helped to secure justice on issues from the right to life to the right of freedom of speech. The Human Rights Act has changed many lives for the better; it must be protected and not subject to reform that reduces its scope or limits when people can rely on it. The reform is a threat to how and when we can challenge those in power; it will strip some people's rights away and require people to have permission from a judge before they can take a state to court."

	"(…) any reform to the Act will be in full compliance with the European convention on human rights, and with the UK's other international obligations, including the Belfast/Good Friday agreement, the Northern Ireland protocol, and our trade and co-operation agreement with the European Union."
HRA vs Parliament	"(…) we must ensure that the Human Rights Act and its interpretations are not used to undermine the desired will of the public or that of our democratically elected Parliament."
HRA vs Government	"(…) update the Human Rights Act to ensure a proper balance among the rights of individuals, our national security and effective government."
British Law vs ECHR	"The British people rightly believe that they should be subject to British law, made by British lawmakers for whom they have voted and by British judges."
	"(…) here is a middle way between protecting people's fundamental human rights and continuing to enshrine the ECHR in British law."
	"The Human Rights Act received Royal Assent in 1998 and came into force in 2000. Tony Blair's aim was to incorporate into UK law the rights contained in the ECHR, which took effect in 1953, but after such a long time, the Human Rights Act could not have foreseen the incredibly complex challenges that we face today. It is absolutely right that the Government review that Act with a focus on the modern era, while reinforcing the primacy of UK law and protecting the fundamental freedoms that we all enjoy."
	"(…) pledge to establish the legal supremacy of the UK Supreme Court so that UK courts can disregard rulings from the ECHR."
	"The Government have stated a wish to comply with the human rights convention, but they would also seek to mandate our judges to disregard some of its most basic principles and protections."
	"The reform would likely see more cases going to Strasbourg, not less, and would once again expand the power of the Executive, which would be more free to rule by regulation and restrict the interpretive power of the courts."
	"British common law traditions have actually greatly developed both the convention itself and the development of the Strasbourg Court's jurisprudence."

In conclusion, the proposed change, inferring more weight to the views of the UK parliament while limiting the national courts to a literal reading of the Convention rights without room for

a broader interpretation, poses risks to the democratic checks and balances and separation of powers (pillars of democratic quality). Thus, the Bill carries a risk for democratic backsliding. Second, the process of presenting and introducing the reform, and the fact that it is planned to be brought back to the House of Commons without modification despite the received criticism and the lack of prior broad consultation, is illustrative of the consensus-making struggles in British politics. Third, we observe a distancing from the internationalisation of democratic norms and fundamental rights protection. This poses a paradox, as while (gaining back) sovereignty takes a primary role in the political debate and governmental narrative, the input the UK has had on the ECHR and ECtHR is fundamental.

The planned reform of the Human Rights Act (as introduced), if once accepted, would inevitably impact the quality of democracy in the UK. The passing of the reform as it was introduced would mean weaker protection of rights. The future of the reform must be observed to deduce definitive conclusions, as momentarily we can only talk about a risk of backsliding. As we learn from the thematic analysis of the debate on the e-petition for not reforming the Human Rights Act, the Council of Europe communicated to the Joint Committee on Human Rights of the UK Parliament, the Human Rights Act 1998 is considered as a standard for the protection of fundamental rights. We also learnt from the report of the Law Society of England and Wales that the criticised Bill of Rights Bill would return to the Commons for a second reading without amendments, thus, excluding opposition voices. Such a normative-legislative reform, however, should include the voices of the wider political palette. To conclude, weakening the protection of fundamental rights to the benefit of governmental power poses a risk of potential democratic backsliding.

III.2.2 The Situation of Fundamental Rights and Freedoms in Hungary

While the Venice Commission (VC) has not published documents pointing out deterioration in the protection of fundamental rights and freedoms neither in Luxembourg nor in the United Kingdom, it has formed opinions on the freedom of conscience and religion, on the rights nationalities, on the Fourth Amendment of the Fundamental Law of Hungary, on the freedom of expression and assembly, as well as on academic freedom and the freedom of the press and the media. This section investigates thematically the criticism formulated in the respective VC Opinions along with international and European standards and principles of the protection of fundamental freedoms which are laid down in the documents.

III.2.2.1 Freedom of Consciousness and Religion

In its Opinion in 2012, the VC declares that "freedom of thought, conscience and religion is one of the foundations of a democratic society", and "it may only be restricted by strict criteria set out in international instruments"[542](ECHR, ICCPR). Furthermore, The VC recalls that the right to freedom of religion and conscience goes beyond merely granting privileges, state subsidies and tax benefits to recognised churches. Thus, it is essential that it cannot be derogated at all and cannot be restricted on national security grounds.[543] The VC stresses that the freedom of thought, conscience, and religion, as laid down by Art. 9 of ECHR, and Art. 18 of ICCPR, is strongly linked to the freedom of association and the principle of non-discrimination.[544] Regarding the principles of equality and non-discrimination, the Commission finds it crucial to "assure that any differentiations among religions are justified by genuine, objective factors and that the risk of prejudicial treatment is minimised or better, totally eliminated"[545].

Even though the Act CCVI of 2011 guarantees the right to freedom of conscience and religion, the VC finds it problematic that the Act does not mention the right to freedom of thought and to freedom of conviction.[546] Based on the case law of ECtHR on Art 9 and 11 ECHR, the VC also raises concerns about the de-registration of more than 300 churches based on the new Act in question, as the "deprivation of the legal status of churches has to be considered as a limitation of the freedom of religion".[547] Furthermore, the VC holds that the deprivation of the legal status of these churches does not meet the international standards for the limitation of the fundamental right to freedom of thought, conscience, and religion (Art. 9.2 ECHR and Art 18.3 ICCPR).[548]

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[542] Venice Commission (2012): Opinion on Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary. p. 15
[543] Ibid., p. 5
[544] Ibid., p. 5
[545] Ibid., p. 14
[546] Ibid., p. 6
[547] Ibid., p. 13
[548] Ibid., p. 13

III.2.2.2 The Rights of Nationalities

In its Opinion regarding the protection of the rights of nationalities in Hungary, the Venice Commission refers to the following international and European Standards[549]:

- Framework Convention on National Minorities

- European Charter for Regional or Minority Languages

- International Covenant on Civil and Political Rights

Principles of fundamental rights presented by the VC are the protection of rights of persons belonging to national minorities, and of minority languages, the right to the individual free self-identification, the individual right to equal opportunities in education, the promotion of the use of nationalities' languages in education, educational self-governance of nationalities, stability and continuity of minority education, preservation and development of the cultural and religious heritage of nationalities, access to information and media, maintaining cohesion between different linguistic groups of the country: "fair balance between the protection of the right to use the minority language and the protection of the official State language"[550].

The VC highlights that although the Fundamental Law of Hungary contains general anti-discriminatory clauses in its Preamble, declares that "nationalities living in Hungary shall be constituent part of the State" and lays down the protection of their rights to freely express and preserve their identity and culture as well as to use their own languages, the VC points out that the Fundamental Law has been phrased in a rather non-inclusive way, opposing the words "we, the Hungarian nation" to "the nationalities living with us"[551] (us – them approach). Also, the explicit guarantees for the protection of the languages of national minorities are missing, just like the explicit declaration of the protection and promotion of the rights of persons belonging to a national minority.[552] The Act defines nationalities based on several conditions: language, culture, traditions, the desire to preserve these, and to be resident in Hungary for at least one century. The Commission finds the criterion of 'one hundred years' rather restrictive.[553] The VC also expresses its concerns regarding the abolishing of the position of "an independent,

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[549] Venice Commission (2012): Opinion on the Act on the Rights of Nationalities of Hungary. pp. 3-4
[550] Ibid., p. 15
[551] Ibid., p. 5
[552] Ibid., p. 5
[553] Ibid., p. 8

separate and autonomous minority ombudsperson"[554], and finds that the new framework laid down by the cardinal law in question "sometimes lacks legal clarity"[555].

III.2.2.3 Freedom of Expression, the Freedom of the Press: The Hungarian Media Legislation

In its Opinion on the Hungarian Media Legislation, the Venice Commission relies primarily on the following democratic principle: the independence of media regulatory authorities against any interference by political forces.[556] The VC recalls that democratic governance does not stem only from the political will of the people through free and fair elections resulting in a legitimately elected government but is "also reflected in governance which provides democratic scope for minorities and alternative points of view"[557]. The Commission highlights that where one of the political groups is particularly influential, media pluralism requires "special measures of protection"[558]. Concerning the lawfulness of limitations: the VC refers to Art. 10 ECHR: "content-based restrictions in the media have to be 'prescribed by law' and 'necessary in a democratic society', 'in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary' ".[559] Furthermore, Art. 11 of the EU Charter guarantees media pluralism. In its opinion on laws "Gasparri" and "Frattini" of Italy, the VC held that "media pluralism is achieved when there is a multiplicity of autonomous and independent media at the national, regional and local levels, ensuring a variety of media content reflecting different political and cultural views"; "while external pluralism relates particularly to the private sector, internal pluralism has increasingly become associated with the public sector".[560]

According to the VC, a country's media legislation should rather be left to ordinary law or soft law instruments instead of cardinal law, recognising another example of cementing the political preferences of the two-thirds majority governing parties.[561] The VC points out that in circumstances where there is no supermajority in the parliament, a qualified majority is the

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[554] Ibid., p. 16
[555] Ibid., p. 17
[556] Venice Commission (2015): Opinion on the Media Law of Hungary. p. 17
[557] Ibid., p. 5
[558] Ibid., p. 5
[559] Ibid., p. 7
[560] Ibid. p. 13 referring to Venice Commission CDL-AD(2005)017
[561] Ibid., p. 6

guarantee of cross-party cooperation.[562] Regarding the question of limitations of media content, the Commission points out that even though the legislation is particularly lengthy and detailed, the provisions are often vague and not sufficiently clear, however, clarity is indispensable for restriction in order for it to be 'lawful'.[563] Furthermore, The VC raises concerns regarding the "mere threat of heavy sanctions" (imposed by the Media Council) for illegal content, which "may have a chilling effect on the journalists and media outlets, revealing a lack of proportionality".[564] Also, the VC addresses concerns regarding the procedure for applying sanctions and recommends the Media Council to clarify the policy guidelines on the interpretation of the Press Act on illegal content as well as on the application of its sanctioning powers.[565] The Commission questions whether " 'balance' should become an enforceable legal obligation of every particular media taken alone", when it comes to "information". The VC lays down that "information (facts) needs to be thorough and accurate" instead.[566]

The VC criticises the excessively broad powers of the Media Authority, raising concerns regarding the independence of the media in Hungary. Also, the VC draws attention to the strong institutional links between the public service media (MTVA) and the Media Council. In fact, the MTVA (Media Service Support and Asset Management Fund) is directly managed by the Media Council, whose President is nominated by the PM and formally appointed by the President of the Republic (it is only a nominal power, though, as the President does not have the possibility to reject the appointee based on his/her personality[567]).[568] The VC recommends modifying "the rules of election of the members of the Media Council in order to ensure fair representation of socially significant political and other groups and of the media community" in the institution, and advises the "decentralisation of the governance of the public service media providers".[569]

III.2.2.4 Academic Freedom: The Hungarian Tertiary Education

Regarding the legislative changes affecting the situation of academic freedom in Hungary, the VC referred to the following principles in its Opinion published in 2017: the freedom to provide

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[562] Ibid., p. 17
[563] Ibid., p. 7
[564] Ibid., p. 11
[565] Ibid., p. 12 and p. 27
[566] Ibid., p. 13
[567] Ibid., p. 16
[568] Ibid., p. 20
[569] Ibid., pp. 26-27

services, the freedom of establishment, the very principle of academic freedom, the right to education, the freedom to conduct business as provided by the EU Charter which applies to Hungary.[570] Further international and European standards regarding **the right to and the freedom of education**: Art 2 of Protocol 1 to the ECHR, which also implies the freedom to provide for private education: the "freedom to establish and maintain education institutions coexisting alongside the state-run system of public education"[571]; the "right of access to educational institutions existing at a given time" and the "right to obtain official recognition of the studies"[572].

An essential aspect of academic freedom is institutional autonomy. Academic freedom is not explicitly provided for in the ECHR, however, the question appears in the ECtHR case law, alongside the freedom of expression.[573] Furthermore, ICESCR (International Covenant on Social, Economic and Cultural Rights) explicitly guarantees academic freedom and institutional autonomy in Art. 13. This approach is confirmed by the UN CESCR (Committee in Economic, Social, and Cultural Rights): "right to education can only be enjoyed if accompanied by the academic freedom of the staff and students"[574], and this freedom requires institutional autonomy in the higher education. Derived from its definition, academic freedom encompasses other internationally recognized and protected fundamental rights, such as the freedom of opinion, expression, and association (UDHR, ICCPR).

The Opinion also refers to the VC "Rule of Law Checklist" (Section A.5): the principles of transparency, inclusiveness, democratic legitimacy, and accountability are "key requirements of any democratic processes in society governed by the rule of law"[575].

Finally, the principles of comprehensive responsibility of public authorities to guarantee academic freedom and institutional autonomy, as well as for the legal framework in which higher education and research are conducted, the degree structure of the higher education system, the framework for quality assurance, the recognition of foreign qualifications, and ensuring transparent information about higher education systems (CM/Rec(2007)6; CM/Rec(2012)7). However, wide discretion is left to the national authorities with regards the

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[570] Venice Commission (2017): Opinion on Act XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education. p. 6
[571] Ibid., p. 12
[572] Ibid., p. 12
[573] Ibid., p. 13
[574] Ibid., p. 13
[575] Ibid., p. 16

specific legal framework to deal with these responsibilities.[576] There is a **lack of unified European norms** and models regarding the question of foreign universities in a country[577] which is a critical question for Hungarian democracy, considering that the functioning of Central European University became impossible due to the changes in the legislative framework on higher education.

The Commission criticises the way the Act has been adopted, and based on Hungarian opposition and international criticism, points out the key role of the Central European University in light of the new legislation. The VC highlights its concerns about the *general approach* taken by the parliamentary majority when adopting legislation, pointing out in the case of the new higher education Act the limited time framework, the lack of impact assessment or public consultation, the lack of consultation with the universities in question or with the Hungarian academic community.[578] Thus, the VC finds the legislation as well as the way it has been adopted problematic in terms of transparency, inclusiveness, democratic legitimacy, as well as accountability[579], and points out various aspects of proportionality issues (e.g., the troublesome deadlines of compliance with the new rules laid down by the Act for the Universities).

Based on the principles of the rule of law and the protection of human rights referred to above, the VC is highly concerned by the introduction of such restrictive rules concerning foreign universities which are already established in Hungary and have been lawfully operating there ever since "without very strong reasons, coupled with strict deadlines and severe legal consequences"[580].

III.2.2.5 Human Rights: The "Stop Soros" Draft Legislative Package

The Venice Commission provides several European norms in its Opinion (2015) on the 'Stop Soros' legislative package, which the thesis discusses in the chapter on the legislative background of the functioning of civil society. On the one hand, the Guidelines on the Protection of Human Rights in the context of accelerated asylum procedures, Committee of Ministers of the CoE (2009) lays down that "asylum seekers must receive the necessary social

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[576] Ibid., pp. 16-17
[577] Ibid., p. 29
[578] Ibid., p. 16
[579] Ibid., p. 16
[580] Ibid., p. 29

and medical assistance"[581]. Resolution on the Criminalisation of irregular migrants (2015) calls on the member states to give access to essential rights to irregular migrants, such as medication and education, and declares that "the threat of prosecution on charges of aiding and abetting irregular migration"[582] needs to end.

On the other hand, Council Directive 2002/90/EC calls for the "strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit, and residence", and, in Art. 1, calls on the member states to adopt measures to sanction on assisting illegal migration. However, Art. 1 also provides that the member states may decide not to apply the sanctions in cases where the behaviour aims to provide humanitarian assistance.[583] Furthermore, Council Conclusions on migrant smuggling of 10 March 2016 underlined the need for a "coherent, credible and effective policy with regard to preventing and countering migrant smuggling, which fully respects human rights and the dignity of the smuggled migrants as well as of those providing humanitarian assistance"[584].

There is no clear and unified EU norm laid down whether financial gain or profit from facilitating irregular migration must be a requirement for punishment. 24 EU member states do not require the element of profit for facilitating irregular entry to be punishable (financial gain is an aggravating circumstance, however, but not an element of the criminal offence), while in 14 EU member states facilitation of stay is punishable only if done for profit.[585] In several countries, "humanitarian assistance" is named (at least in some forms) as a reason for exemption from punishment, however, Hungarian criminal provisions (Art. 353-354 of the Criminal Code) do not have such a provision.[586] In contrast, in the UK, Section 25A of the Immigration Act 1971 provides that the criminal offence doesn't apply to actions of a person acting on behalf of an organisation which aims to assist asylum-seekers and does it in a non-profit way.[587] In Luxembourg, Art. 382-4 of the Criminal Code provides that the criminal offence of facilitating entry or stay of an irregular migrant only applies to those committing such action with a "lucrative goal"[588].

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[581] Venice Commission; OSCE/ODIHR (2018): Joint Opinion on the Provisions of the so-called "Stop Soros" Draft Legislative Package which Directly Affect NGOs. p. 7 referring to Council of Europe: Committee of Ministers (2009): Guidelines on the protection of human rights in the context of accelerated asylum procedures
[582] Ibid., p. 7 referring to Council of Europe: Parliamentary Assembly (2015): Doc. 13788, 7 May 2015, Criminalisation of irregular migrants: a crime without a victim
[583] Ibid., p. 7
[584] Ibid., p. 8 referring to Council of the European Union (2016): Press release 120/16
[585] Ibid., p. 8
[586] Ibid., p. 9
[587] Ibid., p. 9
[588] Ibid., p. 11

The VC underlines the principles of freedom of association (Art. 11 ECHR, Art. 22 ICCPR), the freedom of expression (Art. 19 UDHR, Art. 10 ECHR., Art. 19 ICCPR), and the freedom of movement (Art. 2 Protocol 4 to the ECHR, Art. 12 ICCPR) as well. According to the VC, the "freedom of association is at the core of a modern democratic and pluralistic society", and "it serves as a barometer of the general standard of the protection of human rights and the level of democracy in the country"[589]. The Commission recalls that, even though not an absolute right, the right to freedom of association can be limited "only under strict conditions": the principles of legality (by means prescribed by law), legitimate aim, necessity in a democratic society as well as proportionality.[590] Similarly, restrictions of the freedom of expression must meet strict criteria which are laid down in Art. 10(2) ECHR and in Art. 19 ICCPR. Legality, i.e., must be prescribed by law, which law is adequately accessible and foreseeable; legitimacy, i.e., the restrictions must pursue a legitimate purpose; a necessity in a democratic society, i.e., the restriction must respond to "a clear pressing and specific social need"[591] and must be proportional.

Finally, the Opinion highlights the international principle of non-refoulement: Art. 33 1951 Convention Relating to the Status of Refugees: prohibition of expelling or returning a refugee to the frontiers of territories where his life or freedom would be threatened on grounds of his race, religion, nationality, membership of a social group, or political opinions.[592]

> *Criticism of the Draft Legislation (Draft Article 353/A of the Criminal Code; Draft Article 46/F of Chapter V of the Police Law "Border and Security Restraining Measure")*

First, the VC stresses that the criminalisation of activities of persons working for NGOs in the framework of their functions may be an interference with their freedoms of association and expression.[593] This means a limitation of the rights to these liberties. The VC analyses whether the principles of legality, legal purpose (legitimacy), and necessity (and proportionality) are respected by the provisions of draft Article 353/A, referring to the standards mentioned above.[594] The draft Article cannot qualify as a legal basis as laid down in Art. 11 ECHR, as it

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[589] Ibid., p. 14
[590] Ibid., p. 14
[591] Ibid., p. 15
[592] Ibid., p. 15
[593] Ibid., p. 17
[594] Ibid., pp. 18-20

lacks the required clarity and precision – it does not meet the criteria of legality (Art 10-11 ECHR, Art. 19 and 22 ICCPR).[595]

The Commission emphasises that, although "the introduction of a criminal offence establishing criminal liability for intentionally assisting irregular migrants to circumvent immigration rules is not in and by itself contrary to international human rights standards and may be considered as pursuing the legitimate aim of prevention of disorder or crime under the second paragraph of Article 11 ECHR"[596], by criminalising "organisational activities which are not directly related to the materialisation of the illegal migration" (e.g. preparing or distributing informational materials), provisions of draft Article 353/A go "far beyond that"[597]. According to the VC, there are circumstances among which assistance is a "moral imperative or at least a moral right", thus the draft Article "may result in further arbitrary restrictions to and prohibition through heavy sanctions of the indispensable work of human rights NGOs and leave migrants without essential services provided by such NGOs"[598]. The Commission highlights that as it criminalises the initiation of an asylum procedure, Draft Article 353/A entails a risk of criminal prosecution for individuals and organisations providing lawful assistance to migrants.[599] Taking into consideration that profit is not a requirement for punishment (only an aggravating circumstance), the VC finds it problematic that the draft Article misses to include a humanitarian exception clause.[600]

III.2.3 The Situation of Fundamental Rights and Freedoms in the Grand Duchy of Luxembourg

III.2.3.1 The Tradition of Fundamental Rights Protection in the Grand Duchy

The current Constitution dating from 1868 has undergone some modifications regarding rights and freedoms, but the basic conception of the fundamental rights of the current text hasn't changed much. The protection of rights and freedoms in Luxembourg is guaranteed by the Constitutional Court, which is regularly called upon to rule on the conformity of one or more legislative provisions with the rights and freedoms guaranteed by the Constitution. As the

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[595] Ibid., p. 19
[596] Ibid., p. 25
[597] Ibid., p. 25
[598] Ibid., p. 25
[599] Ibid., p. 25
[600] Ibid., p. 25

summary of proposal 7755 of the new constitutional reform points out, "at first glance the statement of fundamental rights in the Luxembourg Constitution seems to be quite succinct. However, Luxembourgers also benefit from the protection of the fundamental rights guaranteed by international texts (…), including the conventions (…) of the UN, (…) the European Convention on Human Rights (ECHR) and its additional protocols, and the Charter of Fundamental Rights of the European Union.[601] As pointed out before, an innovation the reform brings, for instance, is the right to asylum independently of the obligations resulting both from texts of public international law, such as the Geneva Convention of 1951 and the law governing the European Union.[602]

Concerning the actual state of rights and liberties in the Grand Duchy, Gerkrath argues that what we are expressing is "the expression of new interpretations of rights in response to new struggles for human dignity"[603]. Gerkrath points out that "for more than 30 years, the situation of fundamental rights and freedoms has been characterized by a density and a certain complexity resulting from the coexistence of several layers of legal sources"[604], as fundamental rights in the Grand Duchy are guaranteed at national, international, and European level. Gerkrath lists the key legally binding documents that relate to the protection of fundamental rights – based on legal hierarchy – are, (1) international treaties: the European Convention on Human Rights (ECHR), the Charter of Fundamental Rights of the European Union (CFREU), and several international conventions under the UN, i.e., the Universal Declaration of Human Rights of 1948, the seven additional protocols which add additional rights to the ECHR and of which six have been ratified by Luxembourg, the conventions of the International Labour Organisation, the nine optional protocols relating to the treaties of the UN, the Declaration on the Rights of Peasants (2018), (2) the Constitution of the Grand Duchy of Luxembourg, and (3) ordinary laws.[605]

Braum explains that fundamental rights are a basic pillar of the Luxembourg cooperation and development policy, as "they are necessary to ensure the sustainability of the policies of

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[601] Chamber of Deputies of the Grand Duchy of Luxembourg: 7755 Proposition de révision de la Constitution. Source: https://www.chd.lu/fr/dossier/7755 (Accessed on: 07/02/2023)
[602] Ibid.
[603] Gerkrath, J. (2020): La défense des droits et libertés au Grand-Duché de Luxembourg. Larcier, Luxembourg. p. 39
[604] Ibid., pp. 39-40
[605] Ibid., p. 40

poverty reduction, economic growth, and environmental protection"[606]. Fundamental rights are also a key component in the strategy of the development policy of the Grand Duchy, which links essential points such as sustainable development, regional development, and access to social services. Braum points out that these practices follow "the political realisation that the objectives of the development policy cannot be achieved without the simultaneous development of the principles of the rule of law"[607]. These are political dynamics which relate to the entire realm of the country's political culture, from the rule of law to the individual citizen, and are grounded in its continuity and stability.

Academic freedom is cherished in the Grand Duchy, and the University of Luxembourg as a public institution is associated with a specific social role.[608] For the fulfilment of this role, following the recommendations of the Council of Europe, two key principles must be respected, namely, academic freedom and institutional autonomy. Recommendation 1762 of the Parliamentary Assembly of the Council of Europe expresses that "4.1. academic freedom in research and in training should guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction; 4.2. the institutional autonomy of universities should be a manifestation of an independent commitment to the traditional and still essential cultural and social mission of the university, in terms of intellectually beneficial policy, good governance and efficient management"[609]. The University of Luxembourg is involved in education about fundamental rights and provides a forum of public debate and deliberation.[610]

The institutional protection of fundamental rights in the Grand Duchy's political culture is three-fold: the Council of State, the constitutional court, and the ordinary courts are the key actors. Durdu explains that the protection of the fundamental rights and freedoms is one of the main missions of the Council of State. Its function as "adviser" to the Chamber of Deputies and the government is enriched by the function of "guardian" or "advocate" of fundamental rights of the citizens, acting solely in the general interest.[611] However, its practices go beyond

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[606] Braum, S. (2020): 'Les droits fondamentaux comme paradigme de la politique luxembourgeoise de coopération et de développement' in Gerkrath, J. (2020): La défense des droits et libertés au Grand-Duché de Luxembourg. Larcier, Luxembourg. p. 83
[607] Ibid., p. 83
[608] Harmsen, R. (2020): 'L'université et les droit fondamentaux' in Gerkrath, J. (2020): La défense des droits et libertés au Grand-Duché de Luxembourg. Larcier, Luxembourg. p. 104
[609] Ibid., p. 105
[610] Ibid., pp. 110-111
[611] Durdu, A. (2020): 'Le Conseil d'État, gardien des droits et libertés fondamentaux' in Gerkrath, J. (2020): La défense des droits et libertés au Grand-Duché de Luxembourg. Larcier, Luxembourg. pp. 127-143

the mere role of a guardian as the Council of State is engaged in the evolution of rights and freedoms as well. Durdu brings two practical examples of such norm entrepreneurship. First, when in 2006 the Chamber of Deputies moved forward in the field of the fight against smoking by transposing a European directive with reference to a WHO convention as well, the Council of State expressed its regrets that the bill did not provide effective measures for the protection against exposure to tobacco smoke while such measures are recommended by WHO. Second, in 2002 the government proposed to extend the legal effects of the partnership to same-sex couples, adapting the French model. However, the Council of State supported a more progressive solution, based on the Belgian practice: the establishment of the right of same-sex marriage, which the Belgian Senate voted for in late 2002.[612] The opinion of the Council of State was not followed by the Chamber of Deputies and same-sex marriage became legal only in 2015.

As mentioned in the chapter about the relationship between constitutionalisation and political culture, the Constitutional Court (CC) of the Grand Duchy was created in 1996, following the judgment of the European Court of Human Rights in Procola v Luxembourg, 1995, which showed the necessity for the establishment of such an institution under the principle of separation of powers. The tasks of the CC are "to rule on the constitutionality of laws", and "to decide as to the conformity of the laws with the Constitution and the two jurisdictions: 1) ordinary courts law, and 2) the administrative jurisdiction. It is however not possible for citizens to directly appeal to the CC"[613].

III.2.3.2 Changes Brought by the Constitutional Reform of 2023

The 2023 reform of the Constitution adds a set of new rights as shown in Table 18. Firstly, the new provisions reinforce the classic fundamental freedoms of belief, expression, and association, and introduce changes in the field of asylum, human dignity, and informational self-determination, furthermore, more specific provisions regarding equality before the law and its exceptions, the legality and non-retroactivity of incriminations and penalties, the timely handling of judicial cases, and a transversal clause for the determination of circumstances of limitation of fundamental rights. Secondly, the Constitution has been enriched with a set of

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[612] Ibid., pp. 129-143

[613] Government of the Grand Duchy of Luxembourg: Justice – In Compliance with the Luxembourgish Constitution, Courts and Tribunals are responsible for Exercising Judicial Power. Source: https://luxembourg.public.lu/en/society-and-culture/political-system/justice.html (Accessed on 12/12/2022)

(directly not applicable) state objectives for strengthening democracy, including the protection of the rights of children, the access to cultural heritage, cherishing academic freedom and public dialogue, the protection of families and the right to found a family, the right to work, the right to appropriate housing and to live in dignity. On the other hand, observed by the Venice Commission, the wording of the new provision "all Luxembourgers are equal before the law" might be subject to exclusive interpretation. According to Council of Europe guidelines, however, nationality in general shall not be a factor in the consideration of equality before the law.

III.3 Macro and Meso Levels: Fighting Corruption

III.3.1 How Does Corruption Affect the Quality of Democracy?

In line with Dahl's analyses on **political equality**, one can define corruption as gaining influence over the government and political decisions by corrupting public officials, and not through an elective public office - in other words, bypassing the democratic criteria of **free and fair elections**.[614] Szarek-Mason (2010) concludes that there are two distinct definitions of corruption at the EU level: (1) the criminal law definition which is limited to outlawing bribery, and regarding corruption prevention, "the EU accepts very broad and inclusive definition of corruption as an 'abuse of power for private gain', which puts it in the mainstream of international organisations"[615]. Szarek-Mason points out that the EU does not have a clear competence under the EC or the Treaties to prevent and combat corruption within its member states and argues for a more coherent anti-corruption policy.[616]

Controlling, monitoring, and punishing corruption, crucial in a democratic system, have several linkages with the quality of democracy framework. Firstly, it affects **equality and competition**. In both 'On Political Equality' (2006) and 'On Democracy' (1998), Dahl recalls Acton's often-quoted thought about corruption: "power corrupts, and absolute power corrupts absolutely". According to Dahl, "whatever the intentions of rulers may be at the outset of their rule, any commitment they may have to serve 'the public good' is likely to be transformed in time into an identification of 'the public good' with the maintenance of the their own powers

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[614] Dahl, R. A. (2006): On Political Equality. Yale University Press, New Haven and London. pp. 54-55.
[615] Szarek-Mason, P. (2010): The European Union's Fight Against Corruption - The evolving policy towards Member States and candidate countries. Cambridge University Press, Cambridge. p. 40
[616] Ibid., p. 2

and privileges".[617] As laid down in the CoE Twenty Guiding Principles for the Fight Against Corruption, 'the fight' encompasses ensuring the **freedom of the media** as well as rules on the financing of political parties, thus it is linked to the democratic requirements **of fair competition and equality**, too. Furthermore, one can simply not talk about a **responsive democratic system** which doesn't do its best to take control over corruption. Corruption excludes responsiveness – it invalidates Powell's chain of responsiveness.

Secondly, in line with the above definition, a relationship with the **rule of law** is clear: the rule of law encompasses control over corruption. One can find that the transformation assessment criteria of the BTI Index include that rule of law requires the minimisation of corruption. Furthermore, according to Diamond and Morlino, liberal democracy requires "a strong, vigorous, diffuse, and self-sustaining rule of law", where "corruption is minimised, detected and punished in the political, administrative, and judicial branches of the state"[618].

Thirdly, corruption and the lack of control over corruption are closely linked with both **horizontal and vertical accountability**. In Patterns of Democracy, Lijphart links accountability and corruption and places them in the context of the comparison of majoritarian and consensus democracies. He points out the following: even though one may think that accountability for political decisions may be higher and thus corruption may be lower in majoritarian democracies than in consensus systems, this is not the case in reality. Based on Transparency International's corruption index applied to the thirty-six cases of his study, Lijphart concludes that there is no significant relationship between consensus democracy and corruption. In fact, "consensus democracies are slightly less likely to be corrupt than majoritarian systems"[619]. When Diamond talks about vertical accountability of the rulers to the ruled, and horizontal accountability of office holders, he points out that "(accountability) constrains executive power and so helps protect constitutionalism, legality, and the deliberative process"[620]. Besides the crucial criterion of the independence of the judiciary, he mentions "institutionalized means to monitor, investigate, and punish government corruption at all levels[621]. In "Consolidating the Third Waves Democracies", Diamond again links the need for

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[617] Dahl, R. A. (2006): On Political Equality. p. 5
[618] Diamond, and Morlino (eds)(2005). Assessing the Quality of Democracy. The John Hopkins University Press, Baltimore. Introduction. pp. 14-16
[619] Lijphart, A. (1999): Patterns of Democracy - Government Forms and Performance in Thirty-Six Countries. p. 289
[620] Diamond, L. (2003): 'Defining and Developing Democracy' in Dahl et. al. (eds)(2003): The Democracy Sourcebook. The MTI Press. p. 34
[621] Ibid., p. 34

controlling corruption with accountability as well as the rule of law.[622] Also, liability and accountability are encompassed by the Council of Europe's Twenty Guiding Principles for the Fight Against Corruption (1997).

Based on the conceptualisation of the quality of democracy and its linkages with corruption, one can see the need for the establishment of international and European standards in the field of monitoring and criminalizing corruptive behaviour. To this objective, the Council of Europe introduced the Criminal Law Convention on Corruption as well as its Additional Protocol.

III.3.2 GRECO: Guidelines for Fighting Corruption and Country Reports

The Council of Europe Group of States Against Corruption (GRECO), established in 1999, monitors the observance of the Twenty Guiding Principles and the implementation of the Criminal Law Convention, the Civil Law Convention on Corruption, as well as two recommendations on codes of conduct for public officials and the funding of political parties.[623] The main objective of the GRECO group is to "improve the capacity of its members to fight corruption by following up, through a dynamic process of mutual evaluation and peer pressure, compliance with their undertakings in this field"[624].

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[622] Diamond, L. et al (1997): Consolidating the Third Waves Democracies - Regional Challenges. The John Hopkins University Press. p. Introduction. p. 18
[623] Szarek-Mason, P. (2010): The European Union's Fight Against Corruption - The evolving policy towards Member States and candidate countries. p. 37
[624] The Statue of GRECO, Art. 1.

III.3.2.1 The Twenty Guiding Principles for the Fight Against Corruption:

Table 25: GRECO: Twenty Guiding Principles for the Fight Against Corruption[625]

GRECO – Twenty Guiding Principles	Prevention and Awareness
	Criminalisation
	Independence
	Deprivation of Proceeds from Offences
	Prevention of Shielding Offences
	Limitation of Immunity
	Trainings and Specialisation
	Effective Fiscal Legilsation and Authorities
	Transparency and Efefctiveness in Public Administration
	Code of Conduct for Public Officials
	Appropriate Auditing within Public Administrations
	Appropriate Audtiting outside Public Administrations
	Liability / Accountability
	Transparent and Fair Public Procurement
	Code of Conduct for Parties and Campaigns
	Media which Freely Reports Corruption
	Civil Law: Fight and Remedies
	Reserach
	Organised Crime
	International Co-Operation

Although the Guiding Principles are not binding, the states are called to follow them in their national legislations (soft-law instruments). As mentioned before, compliance is monitored (peer pressure for enforcing compliance with the recommendations – OECD Working Group on Bribery monitoring and evaluating compliance with the 1997 Recommendation on Combatting Bribery in International Business Transactions).[626]

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[625] Council of Europe (1997): Resolution 97 (24) On the Twenty Guiding Principles for the Fight Against Corruption. Committee of Ministers. Source: https://rm.coe.int/16806cc17c on 14/12/2018 (Accessed on: 12/10/2019)

[626] Szarek-Mason, P. (2010): The European Union's Fight Against Corruption - The evolving policy towards Member States and candidate countries. pp. 29-42

III.3.2.2 Evaluation Rounds III and IV

Table 26: GRECO Evaluation Rounds III and IV Thematic

GRECO Evaluation Round III and IV Thematic

Round III (2007)	Round IV (2012)
• **Incriminations** provided for in the **Criminal Law Convention on Corruption** (ETS 173), its **Additional Protocol** (ETS 191) and **Guiding Principle 2** (GPC 2) • **Transparency of Party Funding** with reference to the Recommendation of the Committee of Ministers to member states on common rules **against corruption** in the **funding of political parties and electoral campaigns** (Rec (2003) 4)	**Prevention of corruption** in respect of members of parliament, judges, and prosecutors • ethical principles and rules of conduct • conflict of interest • prohibition or restriction of certain activities • declaration of assets, income, liabilities, and interests • enforcement of the rules regarding conflicts of interest • awareness

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Evaluation Round III

GRECO asks states to provide precise information about legal definitions for instance on bribery and political parties as well as about the case law, legislative amendments, and sanctions regarding bribery. Furthermore, details on the number of political parties and on the rules for participating in elections, and whether there is a threshold to enter the parliament, as well as to provide an overview of the rules and principles on financing at the national level of parties, organisations affiliated to parties, as well as electoral campaigns, on restrictions on the acceptance of various sources for funding of such entities, whether there is direct/indirect public funding, and/or private funding in the country.

(A) Criminalisation of Corruption

Ratification of the Criminal Law Convention on Corruption, Council of Europe (ETS 173) by the selected member states: Hungary (2000), UK (2003), Luxembourg (2005).

Table 27: Council of Europe: Standards and Definitions for the Incrimination of Corruption

Incrimination of Corruption: CoE Standards and Definitions

Criminal Law Convention on Corruption (ETS 173)	Additional Protocol to ETS 173
Bribery of domestic public officials (active and passive)	Bribery of domestic arbitrators (active and passive)
Bribery of members of domestic public assemblies	Bribery of foreign arbitrators
Bribery of foreign public officials	Bribery of domestic jurors
Bribery of members of foreign public assemblies	Bribery of foreign jurors
Bribery in the private sector	
Bribery of officials of international organisations	
Bribery of members of international parliamentary assemblies	
Bribery of judges and officials of international courts	
Trading in influence	

(B) Transparency of Party Funding

Relevant document: Recommendation Rec(2003)4 / CoE

Principles Laid Down in the Document:

Public *and* private support to political parties (Art. 1): both the states and its citizens are entitled to support political parties.

- **Donations** (Art. 3): the Recommendation lays down the principles which should be implemented by states when regulating donations to parties: avoiding conflict of interest; transparency of donations and avoiding secret donation; avoiding prejudice to the activities of parties; ensuring the independence of parties. Furthermore, states should require that donations are made public, especially beyond a certain fixed ceiling, consider limitations on the value of donations, as well as adopt measures for preventing the circumvention of such limits.

- **Donations from foreign donors** (Art. 7): states should specifically limit, prohibit, or otherwise regulate donations from foreign donors.

- **Transparency** (Art. 11, 12, 13b): (1) requiring political parties and affiliated entities to keep proper books and accounts; (2) requiring political parties to specify all donations (including nature and value); (3) obligation for parties to present and make public the accounts: regularly, but at least annually.

- **Supervision** (Art. 14): states should provide independent monitoring in respect of the funding of political parties and electoral campaigns, which independent monitoring should include supervision over the accounts of parties and expenditures for campaigns, as well as their presentation and publication.

- **Sanctions** (Art. 16): the requirement of the infringement of rules concerning the funding of parties and electoral campaigns to be subject to effective, proportionate, and dissuasive sanctions.

(a) Hungary: Round III / Themes 1-2

In the relevant country report, GRECO concludes that Hungary has made remarkable progress regarding the incrimination of corruption, implementing provisions covering a big variety of corruption offences, sometimes even going beyond the requirements of ETS 173. However, the report criticises that the Additional Protocol (ETS 191) has not been ratified by the time of the report. GRECO addresses further four recommendations besides the need for ratification of the Protocol, including the explicit criminalisation of foreign passive bribery in the private sector as well, the criminalisation of bribery of domestic arbitrators (as laid down in ETS 191), the extension of the three-year minimum limitation period regarding bribery and trading in

influence, as well as to revise the practice of automatic exemption from punishment in cases of 'effective regret'.[627]

Regarding the second theme, the transparency of the funding of political parties, GRECO, despite finding the Hungarian system rather developed, points out several serious issues which might potentially give space to corrupt practices. The problems highlighted are is in line with the harsh criticism which has been coming from various Hungarian state institutions, political actors, and society as well. In the report, GRECO formulates ten recommendations to Hungary, including revising the two-thirds majority rule for adopting legislation concerning financial management and operation of parties; ensuring that parties and their foundations can be readily identified in the registries of associations; requiring parties to keep proper books and accounts and these can easily and timely be accessed by the citizens; ensuring that parties (and their foundations) are subject to equivalent legal requirements when it comes to donations, also including the disclosure of the identity of the donors (no anonymous donations); revising the length of the campaign period as well as how income and expenditure are reported to the public during the campaigns; introducing independent auditing of the accounts; and ensuring that sanctions for the infringement of political financing rules are effective, proportionate, and dissuasive.[628]

By 2012, Hungary, according to the Third Round Compliance Report, has implemented or dealt with satisfactorily six of the fifteen GRECO recommendations.[629] The majority of the fulfilled recommendations concern the incrimination of corruption, leaving the issues regarding the funding of political parties, electoral campaigns, and the transparency of these mostly unsolved. Severe defects in the system of the transparency of party funding still prevail, as confirmed by the Second Compliance Report of 2014.[630] One positive factor is that in the meantime, Hungary has ratified the Additional Protocol (ETS 191).[631]

Principles for party funding presented in the compliance report:

- transparency, accuracy, and accountability of the accounts of political parties.

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[627] GRECO (2010): Evaluation Report on Hungary on Incriminations (ETS 173 and 191, GPC 2) (Theme I). Third Evaluation Round. pp. 24-26
[628] GRECO (2010): Evaluation Report on Hungary. Transparency of Party Funding. Theme II. Third Evaluation Round. pp. 25-27
[629] GRECO (2012): Compliance Report on Hungary "Incriminations (ETS 173 and 191, GPC 2) and "Transparency of Party Funding". Third Evaluation Round.
[630] GRECO (2014): Second Compliance Report on Hungary "Incriminations (ETS 173 and 191, GPC 2) and "Transparency of Party Funding". Third Evaluation Round.
[631] GRECO (2015): Addendum to the Second Compliance Report on Hungary "Incriminations (ETS 173 and 191, GPC 2) and "Transparency of Party Funding". Third Evaluation Round.

- transparency encompasses easy and timely access by the public.

- parties and their foundations are subject to equivalent legal requirements in respect of donations (over a certain value).

- precise rules for the evaluation of in-kind donations.

- to prevent the ban on anonymous donations to political parties from being circumvented.

- sanctions in case of infringement of the rules are effective, proportionate, and dissuasive.

- auditing of party accounts must be independent and conducted by certified experts.

- disclosure of revenues and expenditures during campaigns to the public.

- limiting the campaign period in a fixed manner for facilitating more accurate accounting.

- ensuring "frequent, pro-active, and swift" monitoring of political financing by the relevant authority (in the case of Hungary, the State Audit Office), including preventing measures as well as more in-depth investigations.

(b) Luxembourg: Round III / Themes 1-2

The GRECO Evaluation Report of 2008 finds that Luxembourgish legislation on incrimination of corruption is in line with the standards laid down in ETS 173 to a large extent. However, the Report criticises that, in the absence of dual criminality, Luxembourg is only able to prosecute its nationals "when they have committed a serious, and not a lesser, corruption offence abroad", as well as that because of the reservation to Art 17 of ETS 173, Luxembourg cannot prosecute offences against domestic and other officials committed by foreign nationals outside the territory of Luxembourg.[632] GRECO addresses seven recommendations to Luxembourg regarding the incrimination of corruption, including refining the definitions of active and passive bribery (i.e., 'giving' and 'receiving') and aligning the wording of the different provisions of the Luxembourgish Criminal Code in this field (i.e., 'indirectly', 'grant', and 'unlawfully'); rewording provisions on bribery in the private sector preventing the exoneration of prosecuted employees from their liability; refining the provisions regarding trading in influence offences in line with ETS 17; ensuring that additional penalties (e.g., ineligibility) can be applied in corruption cases even in lesser offences; and abolishing the requirement of dual criminality for lesser offences ('délits') committed by Luxembourgish citizens abroad in

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[632]GRECO (2008): Evaluation Report on Luxembourg on "Incriminations" (ETS 173 and 191, GPC 2) (Theme I). Third Evaluation Round. p. 19

all circumstances as well as withdrawing (or not renewing) the reservation relating to Art 17 of ETS.[633]

Regarding the second theme, the transparency of political party funding, GRECO finds several gaps, despite the progress Luxembourg made with the new political party funding legislation in 2007. The Evaluation Report on Theme II addresses Luxembourg with ten recommendations of procedural nature, including providing training to local officials on the new party funding legislation and its financial and accounting aspects; regular evaluation of the system to determine the changes and clarifications needed; to provide political parties with a clear status (parties lacked real legal status or personality when the report was made); clarifying the accounting obligations, establishing uniform arrangements for determining which services and in-kind benefits have to be included in the bookings, clarifying the nature and period of expenses during election campaigns; ameliorating the parties' internal control systems; that transparency is a must when it comes to financing campaigns including of candidates for elections, meaning accounting duties, control and sanctions, just like in the case of parties; separating clearly the financing of parliamentary groups and that of political parties; clarifying the indispensability of reporting suspected offences directly to the law enforcement authorities; facilitating the functioning of the national Court of Auditor; and finally, the principles of effective, proportionate, and dissuasive sanctions in cases of infringement of the rules are presented as a recommendation – like in the case of the Hungarian country report.[634]

According to the First Compliance Report of 2010, Luxembourg only fulfilled three recommendations out of the seventeen, and a further six recommendations have been partly implemented, showing little or no progress regarding the recommendations about political financing. GRECO finds the level of compliance with the recommendations "globally unsatisfactory".[635] This changed by 2011, when the number of fulfilled recommendations increased to seven. However, a series of issues regarding political financing still prevail (e.g. the question of legal personality / clear status of political parties, adequate training to public officials on the new legislation, or the clear separation of financing parties and parliamentary groups).[636] In the Second Compliance Report (2012), the number of recommendations with

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[633] Ibid. p. 20
[634] GRECO (2008): Evaluation Report on Luxembourg on the "Transparency of Political Party Funding" (Theme II). Third Evaluation Round. pp. 15-17
[635] GRECO (2010): Compliance report on Luxembourg. "Incriminations (ETS 173 and 191, GPC 2); "Transparency of Political Party Funding". Third Evaluation Round. p. 12
[636] GRECO (2011): Interim Compliance Report on Luxembourg. "Incriminations (ETS 173 and 191, GPC 2); "Transparency of Political Party Funding". Third Evaluation Round. p. 13

which Luxembourg has dealt adequately raised to thirteen. By 2012, Luxembourg had made considerable progress, e.g., the major political parties started to publish annual accounts, accompanied by lists of donors and donations. However, according to the Report, Luxembourg is still facing issues regarding a transparent political party and campaign financing.[637]

Principles in the Compliance Report:

- prosecution of corruption offences of all weight, and not only serious offences.

- the absence of dual criminality shall not be an obstacle in the way of the prosecution of corruption offences.

- active and passive bribery are to be defined as the practices of 'giving' and 'receiving' an undue advantage.

- preventing the exoneration of prosecuted employees from their liability in the private sector.

- ineligibility as an additional punishment in case of corruption offences.

- providing training to local officials on the new party funding legislation and its financial and accounting aspects.

- indispensability of real and clear legal status for political parties.

- the clarity of accounting duties, including in-kind donations.

- transparency of expenses and revenues during election campaign periods.

- improving the internal control systems of parties.

- direct reporting of all corruption offences to the authorities.

- principles of effective, proportionate, and dissuasive sanctions in cases of infringement of the rules.

(c) United Kingdom: Round III / Themes 1-2

As the Evaluation Report points out, the criminalisation of bribery in the UK stands on two pillars: firstly, the common law (unwritten law based on custom and precedent) and secondly, statutory (i.e., parliamentary) legislation. The latter is sustained by three rather old legislations, namely, the Public Bodies Corrupt Practices Act of 1889, the Prevention of Corruption Act of 1906, and the Prevention of Corruption Act of 1916. Complementary sources of law, for

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[637] Ibid., p. 13

instance, is the Anti-Terrorism Crime and Security Act of 2001.[638] English Common Law and Scottish Common Law define bribery differently. The definition of the common law offence of bribery as applied by the English Common Law (England, Wales, and Northern Ireland) includes both giving and receiving a bribe, while in Scotland these are determined as separate offences.[639] The above statutes have the objective to fill the gaps not covered by the anyways broad and encompassing common law.

Although it is found that the criminal law on corruption in the UK complies with the relevant provisions of ETS 173, GRECO addresses two recommendations. Firstly, to process with the efforts to revise the existing legislation on corruption offences for providing a clearer definition of all sorts of practices of bribery, and secondly, to incriminate trading in influence as laid down in Art. 12 of ETS 173, and to withdraw or not to renew the reservation relating to this article of the Criminal Law Convention.[640]

Considering the question of political party financing, the relevant statute is the Political Parties Elections and Referendums Act of 2000, which lacks the legal or other definition of political parties (i.e., their status is not defined). However, parties as well as their obligations are indeed recognised by law.[641] Party funding can happen through direct or indirect public funding, or private funding (including membership fees, funding from trade unions, elected representatives, private businesses, and anonymous and foreign contributors, where in both cases the threshold - amongst other criteria - is £200).[642] In the UK, political parties and their accounting units are required to keep accurate booking of their income and expenditure, as well as to submit four types of statutory returns to the Electoral Commission (donation returns, loan returns, an annual report of the party's Statement of Accounts, and a return of campaign expenditure).[643] The document described three types of public registers, serving the transparency of political party financing. Firstly, the public register of donations. Secondly, the public register of loans. These two are updated on a quarterly basis. Thirdly, the public register

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[638] GRECO (2008): Evaluation Report on the United Kingdom on "Incriminations" (ETS 173 and 191, GPC 2) (Theme I). Third Evaluation Round. p. 16
[639] Ibid. p. 3
[640] Ibid. pp. 19
[641] GRECO (2008): Evaluation Report on the United Kingdom on Transparency of Party Funding (Theme II). Third Evaluation Round. p. 3
[642] Ibid. pp. 6-10
[643] Ibid. pp. 13-15

of party campaign expenditure.[644] Furthermore, parties and their auditing units must have their accounts and campaign expenditure checked externally by "suitably qualified" auditors.[645]

The Report concludes that the overall situation is rather satisfying the UK regarding the transparency of party funding, nevertheless, it addresses the country with six recommendations. Firstly, establishing a common format for parties' accounts and returns ensuring that the information to be made accessible to the public is 'coherent, meaningful, and comparable'; secondly, subjecting candidates and third parties to the same transparency standards regarding loans which are comparable to standards applying to political parties; thirdly, increasing transparency of financing at the constituency level; fourthly, reinforcing the regulating function of the Electoral Commission as well as promoting a proactive approach for the institution in investigating financial irregularities; fifthly, introducing more flexible sanctions in cases of "less serious violations of the political financing rules"; and sixthly, carrying out objective research on future police investigation and prosecution regarding political financing offences.[646]

According to the first Compliance Report (2010), the UK has partly implemented the two recommendations regarding the incrimination of corruption offences, i.e., progress has been made in terms of reforming the existing system and implementing more comprehensive legislation.[647] However, the UK has only implemented in a satisfactory manner one recommendation regarding the transparency of party funding (i.e., increasing transparency of financing at the constituency level), and issues still prevail, for instance, in terms of establishing a uniform format for party accounts and making the information public in a coherent way as well as of setting standards of transparency in the case of loans used by candidates and third parties similarly as in the case of political parties.[648] By 2012, according to the Second Compliance Report, the UK has complied with both incrimination recommendations as well as four out of six political party financing recommendations satisfactorily.[649] The two problematic fields where compliance requirements have not been yet fulfilled are strengthening the transparency of loans used by candidates and third parties, and carrying out objective research

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[644] Ibid., pp. 16-17
[645] Ibid., p. 18
[646] Ibid., pp. 28-29
[647] GRECO (2010): Compliance report on the United Kingdom. "Incriminations (ETS 173 and 191, GPC 2); "Transparency of Political Party Funding". Third Evaluation Round. pp. 2-4
[648] Ibid., pp. 4-8
[649] GRECO (2012): Second Compliance report on the United Kingdom. "Incriminations (ETS 173 and 191, GPC 2); "Transparency of Political Party Funding". Third Evaluation Round. p. 4

concerning future police investigation and prosecution in respect of political financing irregularities.[650]

Principles in the Compliance Report

- clear definition of active and passive bribery to be laid down by law.

- the requirement to provide a fully coherent and consistent terminology and legal framework for corruption offences serves the interests of both public officials and the public.

- clear status of political parties to be laid down by law.

- the incrimination of trading in influence as a form of corruption.

- proportionate sanctions, i.e., more flexible sanctions in cases of "less serious violations of the political financing rules".

- the principle of independent and objective external auditing of party accounts and campaign expenditures.

- the information to be made accessible to the public must be coherent, meaningful, and comparable.

- same transparency standards regarding loans for candidates and third parties which are comparable to the standards applying to political parties.

- broader role for bodies like the UK Electoral Commission in the investigation of financial offences.

(d) Principle Synthesis

Procedural: providing a fully coherent and consistent terminology and legal framework concerning active and passive bribery defined by law as giving / receiving an undue advantage; laying down a clear legal status for political parties; clarifying accounting duties, including in-kind donations; accuracy and accountability of party accounts, including in-kind donations; equivalent standards requirements for parties and their foundations; no anonymous donations; effective, proportionate, and dissuasive sanctions; independent and objective external auditing of party accounts and campaign expenditures conducted by experts; fixed campaign period for facilitating financial transparency; frequent, pro-active, and swift monitoring and investigation by the competent state authorities; direct reporting and prosecution of corruption offences of

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[650] Ibid., pp. 4-7

all weight; punishment of corruption offences shall include ineligibility; he role of internal control systems of parties.

Substantive: transparency of party accounts, including in-kind donations; providing training to local officers on financial transparency and corruption prevention.

Responsiveness: easy and timely access to coherent, meaningful, and comparable information for the public including revenues and expenditures during campaigns.

Evaluation Round IV

Thematic: corruption prevention in respect of members of the parliament, judges, and prosecutors. Leading factors in the Fourth Evaluation Round: ethical principles, rules of conduct and conflicts of interest; prohibition or restriction of certain activities; declaration of assets, income, liabilities, and interests; enforcement of the applicable rules; awareness.[651]

(a) Hungary

Firstly, GRECO points out that even though openness and transparency are laid down principles in the work of legislatures, the application of the principles is not proven by the reforms during 2010-2012 (cf. chapter about Venice Commission). GRECO welcomes the fact that a Code of Ethics for judges has been implemented in Hungary, however, emphasises that clarifications and accompanying in-service training shall constitute future objectives.[652] GRECO addresses seven recommendations to Hungary regarding members of the parliament, i.e., (1) ensuring transparency and consultation when processing legislative proposals, and introducing rules for the MPs on how to interact with lobbyists; (2) code of ethics / conduct for MPs covering situations of conflicts of interests, as well as providing training and counselling about it; (3) ad hoc disclosure in case of conflict of interest in the parliamentary proceedings; (4) ensuring the right application of obligation of the MPs to disclose outside occupations and activities of a non-fiscal character, as well as that all declarations follow a format which allows for public scrutiny (by electronic means); (5) the procedure of lifting the immunity of an MP shall not hamper the criminal investigation in cases of corruption offences; (6) ensuring effective supervision and law enforcement, as well as adequate and proportional sanctions; (7)

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[651] GRECO (2015): Evaluation Report on Hungary; Corruption prevention in respect of members of parliament, judges and prosecutors. Fourth Evaluation Round. p. 5
[652] Ibid., pp. 3-4

dedicated and regular trainings for MPs on ethics and conduct in cases of conflicts of interest and on corruption prevention.[653]

Regarding judges, GRECO addresses six recommendations, including (1) strengthening the role of the National Judicial Council and weakening the powers of the President of the National Judicial Office (PNJO); (2) providing equal treatment of all judges within the evaluation system of judges, whether employed for an indefinite time or not; (3) reducing the power of the PNJO to the minimum in terms of re-assigning ordinary judges without their consent; (4) further improvements of the Code of Ethics for Judges (adopted in 2014), particularly regarding conflicts of interest and other integrity-related matters; (5) only functional immunity for ordinary judges (i.e., immunity limited to activities relating to their participation in the administration of justice); (6) providing training on ethics for judges.[654]

GRECO addresses further five recommendations to Hungary regarding prosecutors: (1) revising the possibility to re-elect the Prosecutor General, as well as the possibility to maintain the PG in office after the expiry of their mandate by a minority blocking the election in the parliament of a successor; (2) establishing strict criteria for the removal of cases from subordinate prosecutors; (3) functional immunity for prosecutors, similarly as recommended for judges; (4) external transparent and accountable disciplinary proceedings; (5) training and counselling on ethics and integrity matters for prosecutors, particularly for the implementation and development of the Code of Ethics and Standards of Professional Conduct for Prosecutors.[655]

The Compliance Report on Hungary regarding corruption prevention in respect of members of parliament, judges, and prosecutors (GRECO 76) is not accessible to the public ("confidential").

(b) Luxembourg

The report points out that Luxembourg has traditionally been 'a country unscathed by corruption'. Nevertheless, in recent years, significant progress has been made in the country regarding corruption prevention (e.g., incrimination of corruption; implementation of a Code

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[653] Ibid., pp. 51-52
[654] Ibid., pp. 51-51
[655] Ibid., pp. 51-52

of Conduct for MPs; constitutional reforms for creating an independent Prosecutors Office and a National Council of Justice).[656]

GRECO addresses five recommendations to Luxembourg regarding MPs, including (1) preventing corruption and safeguarding integrity with the help of a code of conduct, laying down ethical standards (in line with the objective of the draft code of conduct of the time), as well as clarifying the rules through an implementing instrument; (2) improving the declaration system, i.e., submitting precise and pertinent data, and considering including information on assets of spouses and dependent family (not necessarily to be made public); (3) consistent rules on gifts and other benefits (i.e. determining a limitation of all sort of benefits); (4) Code of Conduct to include rules on behaviour with third parties; (5) effective monitoring and sanctions for breaches of the rules laid down in the (future) code of conduct.[657]

Regarding judges, GRECO makes the following seven recommendations: (1) reviewing and strengthening the transparency of the procedures for the promotion of judges and prosecutors: objective criteria and periodic appraisal; (2) introducing harmonised management of the courts that meets transparency criteria and helps preserve the general integrity of judges; (3) clarifying the status of roles on recusal applicable to members of the courts, with uniform application to the various categories of persons required to decide cases; (4) clarifying which of the provisions of the General Civil Service Regulations are in force; (5) more clear and coherent rules on incompatibilities and secondary activities in respect of all persons required to sit as judges or act as prosecutors; (6) systematic and centralised information on disciplinary procedures and sanctions; (7) dedicated training programmes for preventing corruption and preserving integrity.[658]

GRECO addresses Luxembourg with two recommendations regarding prosecutors, i.e., (1) ensuring greater independence and objectivity regarding the decisions of the prosecution service; (2) involving the (future) collegial body for the judiciary in the supervision and disciplinary decisions regarding prosecutors, as well as clarifying the disciplinary arrangements and the consequential sanctions.[659]

According to the first Compliance Report, by 2015 Luxembourg only implements completely one recommendation out of fourteen, namely, the one recommending the implementation of

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[656] GRECO (2013): Evaluation Report on Luxembourg; Corruption prevention in respect of members of parliament, judges and prosecutors. Fourth Evaluation Round. p. 4
[657] Ibid., pp. 49-50
[658] Ibid., pp. 49-50
[659] Ibid., pp. 49-50

consistent rules on gifts (based on the principle of prohibition). Nevertheless, Luxembourg partly implements eight recommendations, while not giving effect to five of them at all. GRECO concludes that compliance is, however, not "globally unsatisfactory".[660] By October 2017, the number of completely implemented recommendations raises to four. Six recommendations remain partly implemented, while four recommendations have not been given effect at all. Progress has been made in terms of clarifying the status of the various rules on recusal applicable to members of the courts, as well as implementing systematic and centralised information on disciplinary procedures and sanctions for the prosecution service.[661]

(c) UK

According to GRECO's report on the UK, the country has taken important measures for the prevention of corruption in all fields of concern. A code of conduct with detailed guidelines on ethical behaviour has been adopted in both of House of Commons and the House of Lords and is reviewed regularly. Furthermore, the Report emphasises that the judiciary enjoys the highest level of confidence among UK citizens among the institutions (reputation of independence, impartiality, and integrity of the members of the judiciary).[662]

Nevertheless, GRECO addresses altogether eight recommendations to the UK. Firstly, five recommendations concerning the MPs, i.e., (1) clarifying that MPs can be responsible for their staff when carrying out official duties on behalf of the MP, as well as that the same standards shall be applicable for the conduct of the staff as for the MPs (Wales and NI too); (2) lowering the thresholds for reporting financial holdings (e.g., stocks and shares) (Scotland, Wales, and NI too); (3) implementing clear guidelines about the acceptance of gifts, as well as lowering the thresholds for registering such gifts (Scotland, Wales, and NI too); (4) reviewing the Codes of Conduct for MPs to ensure that both Houses as well as their staff have clear guidance on how to deal with lobbyists and third parties (Wales and NI too); (5) ensuring that the sanctions in force are effective, proportionate, and dissuasive, as well as clarifying these in the Code of Conduct.[663]

The Report gives two further recommendations regarding the judges, namely (1) ensuring the security of tenure for judicial office holders by reviewing the number of fee-paid judges; and

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[660] GRECO (2015): Compliance Report on Luxembourg; Corruption prevention in respect of members of parliament, judges and prosecutors. Fourth Evaluation Round. pp. 19-20
[661] GRECO (2015): Second Compliance Report on Luxembourg; Corruption prevention in respect of members of parliament, judges and prosecutors. Fourth Evaluation Round. pp. 8-14
[662] GRECO (2012): Evaluation Report on the United Kingdom; Corruption prevention in respect of members of parliament, judges and prosecutors. Fourth Evaluation Round. pp. 2-3
[663] Ibid., pp. 45

(2) enhancing the guidance and counselling on judicial ethics, i.e., training including a systematic component on ethics, expected conduct, corruption prevention, and conflicts of interest.[664]

GRECO addresses one last recommendation to the UK regarding prosecutors: (1) introducing regular in-service training in ethics.[665]

In the Compliance Report of 2014, GRECO finds that the UK completely implemented four recommendations and partly implemented the other four recommendations.[666] By March 2017, the number of implemented recommendations raises to seven. The only recommendation that has only been partly implemented is the one which requires ensuring the security of tenure for judicial office holders by reviewing the number of fee-paid judges (with a view to reducing it in favour of salaried judges).[667]

(d) Principle Synthesis

Procedural:

- Codes of conduct and ethical standards with the aim of corruption prevention and preservation of integrity.

- Code of conduct shall cover situations of conflicts of interest as well as behavioural / ethical standards for dealing with lobbyists and third parties.

- Codes of conduct and ethical standards are not only applicable for MPs and the members of the judiciary, but also their staff. Furthermore, MPs can be responsible for their staff when carrying out official duties on behalf of the MP, thus, the same standards shall be applicable to the conduct of the staff as to the MPs.

- Clear and coherent rules on incompatibilities and secondary activities in respect of judges and prosecutors.

- (Solely) functional immunity and lifting immunity in an efficient and expedited way when necessary.

- Effective supervision and law enforcement in cases of breaching rules.

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[664] Ibid., pp. 45-46
[665] Ibid., p. 46
[666] GRECO (2014): Compliance Report on the United Kingdom; Corruption prevention in respect of members of parliament, judges and prosecutors. Fourth Evaluation Round. pp. 20-21
[667] GRECO (2017): Second Compliance Report on the United Kingdom; Corruption prevention in respect of members of parliament, judges and prosecutors. Fourth Evaluation Round. pp. 6-9

- External transparent and accountable disciplinary proceedings.

- Sanctions in force are effective, proportionate, and dissuasive, and clarified in the codes of conduct.

- Systematic and centralised information on disciplinary procedures and sanctions.

- Clear and consistent rules on gifts, e.g., determining a limitation of all sorts of benefits (for instance, 150 EUR in the case of Luxembourg) for the members of all three branches of power.

- Equal treatment of judges regardless of the period they are involved in the judicial work.

- The prosecutor general shall not be re-elected.

Substantive:

- Transparency in the procedures for the promotion of judges and prosecutors based on objective criteria and periodic appraisal. Harmonised management of the courts that meets transparency criteria and helps preserve the general integrity of judges.

- In-service training for MPs, judges, and prosecutors about the relevant codes of conduct and ethical standards, as well as on corruption prevention and integrity.

Responsiveness:

- Openness, transparency, and adequate consultation in the work of the legislature.

- The highest possible level of disclosure of information to the public in an accessible (preferably electronic) way in terms of parliamentary proceedings as well as disclosing outside occupations; providing precise and pertinent data when submitting declarations and considering including information on assets of spouses and family for better transparency.

III.4 Meso Level: The Functioning of Civil Society – Organisations and Political Parties

The relevance of civil society in political dynamics and in political culture is frequently emphasised in political theory. Putnam argues that a strong and vibrant civil society is

necessary for democracy to function. Furthermore, where civil society is dense, and where citizens join more of these voluntary groups, democracy should function better. A. Roberts invites the definition of civil society from Linz and Stephan (1996): "that arena of the polity where self-organising groups, movements, and individuals, relatively autonomous from the state, attempt to articulate values, create associations, and solidarities, and advance their interests"[668]. As Roberts explains, according to Putnam (1993), joining organisations has both internal effects on individual citizens and external effects on the polity. The internal effects are in the creation of citizens willing to cooperate with each other and make sacrifices for the benefit of their community. By associating with each other in such organisations, individuals become more tolerant and public-spirited. Compared to Plato's rigid identification of the two pairs of 'individualism and egoism/selfishness' and 'collectivism and altruism', Putnam's argumentation offers a compromise: the individual citizens of an individualist society are able to sacrifice their own interests for a perceived common good, accordingly to their value system, by associating with each other, gaining new sorts of inter-personal understanding. The output is a sort of collectivism that relies on collective interest articulation and interest-aggregation of individualistic citizens. Civil society and a factor identified as 'democracy beyond the state' are included in the democratic quality assessment framework of Beetham et al. (2002) as well.[669] When assessing political transitioning and governance, The BTI (Transformation Index), besides civil society participation, works with the following factors: assembly rights, interest groups, approval of democracy, and social capital.[670]

One can identify three levels within the above dynamic: (1) the individualistic society, (2) fragmented collectivism, and (3) the individualistic citizen. We use the term 'fragmented collectivism' to describe separate manifestations of collectivism for different groups of the society formulated based on certain characteristics, for instance, ethnic, linguistic, sexual minorities, trade unions, or civil society organisations for a certain cause (e.g., environmentalists), with the purpose of more efficient interest-representation and practices of scrutiny over political decision-makers.

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[668] Roberts, A. (2009): The Quality of Democracy in Eastern Europe – Public Preferences and Policy Reforms. p. 171
[669] Ibid., p. 27
[670] BTI Transformation Index: Methodology. Source: https://bti-project.org/en/methodology#Analytical%20framework (Accessed on: 12/03/2022)

This chapter focuses on the following questions: What legal background is necessary for institutionally guaranteeing a well-functioning civil society, and how does this relate to the different dimensions of the quality of democracy?

III.4.1 Civil Society Organisations

III.4.1.1 The Situation of Civil Society Organisations in The United Kingdom

Report on the Legal Background for Civil Society Organisations

A 2017 report for the European Agency for Fundamental Rights prepared by Ms Laura Wills, University of Nottingham[671] describes the legislative regulatory environment for the work of NGOs in the UK. The reports list the following three acts.

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (2014) made changes to the legal requirements for organisations, and persons participating in election campaigns. The act introduced new national spending limits for campaigns. The report for FRA explains that the caps introduced by the act "saw a dramatic reduction in the total amount of money that can spent on an election campaign, roughly 60 % in England and 70 % in Scotland, Wales and Northern Ireland: GBP 319,800 in England (from GBP 793,500); GBP 55,400 in Scotland (from GBP 108,000); GBP 44,000 in Wales (from GBP 60,000); GBP 30,800 in Northern Ireland (from GBP 27,000)"[672]. The Act did not remain without criticism. Several stakeholders pointed out that the drastic decrease in the cap might have a chilling effect on civil society. Firstly, according to Tax Research UK, the Electoral Commission (the UK's national election commission) expressed its concerns about the regulatory uncertainty the Act brought on as well as the ambiguity regarding the definition of 'political campaigning'[673] (the original document published by the Electoral Commission is not accessible anymore). Secondly, the report for FRA reveals that an inquiry by the Commission on Civil Society and Democratic Engagement of the UK Parliament was conducted in 2015. The inquiry found that 63% of the "respondents had indicated that

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[671] Wills, L. (2017): 'Standing and Operational Space of Non-Governmental Organisations (NGOs) in Contributing to respecting and Promoting Fundamental Rights in EU Member States – United Kingdom' for European Agency for Fundamental Rights (FRA).
[672] Ibid., p. 3
[673] Tax Research UK (2013): The Electoral Commission says the government's lobbying bill is bad law that's unenforceable and a massive burden on free speech.

compliance with the act would make some or all of their organisational or charitable objectives harder to achieve"[674]. Thirdly, in September 2015, a motion (EDM 471, 2015) in the UK Parliament called for the replacement or suspension of the TLNPCTUA Act: the motion "acknowledges that over 50 charities and campaign groups provided evidence to the Commission, with a significant number indicating that they took a step back from campaigning during the general election campaign; and believes that these findings raise very serious questions over the impact of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 and that the recommendations of the report, that Part 2 of the Lobbying Act be repealed, or at least suspended (…)"[675]. The motion was supported by 35 MPs, out of which 32 MPs were from the Scottish National Party. Fourthly, as the report prepared for the FRA points out, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association also noted concerns over the chilling effect of the act.[676] Fifthly, the National Council for Voluntary Organisations opposed the Act, too, with the support of several civil society organisations of the UK such as Action for Blind People, Action for Children, Campaign to Protect Rural England, Diabetes UK, Guide Dogs, Islamic Relief UK, the National Union of Students, Population Matters, Greenpeace UK, etc.[677]

One learns from the report that the **Terrorist Asset-Freezing etc. Act (2010)**[678] caused struggles for NGOs falling under its scope. The report reveals that civil society organisations that operate in territories under the de facto control of proscribed groups raised concerns regarding the effect of the Terrorist Asset-Freezing etc. Act. The report explains that in 2014 the Charity Commission, a governmental organ, issued a regulatory alert regarding aid convoys to Syria about potential risks that aid convoys to Syria may be abused for non-charitable purposes and facilitating travel for British foreign fighters. As a response, during 2013-14, the House of Commons Home Affairs Committee highlighted concerns that the alert was impacting charities trying to move funds into areas of conflict, thus, fulfilling their mission as a charity organisation. The government have since published Guidance for NGOs on how to

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[674] Ibid., p. 4
[675] UK Parliament: Report by the Commission on Civil Society and Democratic Engagement. EDM 471, 2015. Source: https://edm.parliament.uk/early-day-motion/48253/report-by-the-commission-on-civil-society-and-democratic-engagement (Accessed on: 23/12/2022)
[676] Wills, L. (2017): 'Standing and Operational Space of Non-Governmental Organisations (NGOs) in Contributing to respecting and Promoting Fundamental Rights in EU Member States – United Kingdom' for European Agency for Fundamental Rights (FRA). p. 4
[677] National Council for Voluntary Organisations: a letter to Ms Chloe Smith MP, Minister for Political and Constitutional Reform. Source: http://blogs.ncvo.org.uk/wp-content/uploads/2013/08/Chloe-Smith-non-party-campaigning-final.pdf (Accessed on: 23/12/2022)
[678] Terrorist Asset-Freezing etc. Act 2010. Source: https://www.legislation.gov.uk/ukpga/2010/38/introduction (Accessed on: 23/12/2022)

operate within the counter-terrorism legislative framework both within and outside the UK, in questions such as prosecutions under relevant counter-terrorism legislation and financial services for NGOs. An important step in avoiding NGOs getting hindered in their activities, in 2012 the Charity Commission issued a compliance toolkit on how NGOs can protect themselves from harm and how to comply with the counter-terrorism legislation.[679]

The third item, **The Compact (The Coalition Government and civil society organisations working effectively in partnership for the benefit of communities and citizens in England; 2010)**[680] lays down the relationship between government and civil society organisations. The Compact defines its purpose laying down "an agreement between the Coalition Government, and their associated Non-Departmental Public Bodies, Arm's Length Bodies and Executive Agencies, and civil society organisations (CSOs) in England", and furthermore, that "the agreement aims to ensure that the Government and CSOs work effectively in partnership to achieve common goals and outcomes for the benefit of communities and citizens in England"[681]. The document defines the outcomes of an effective partnership between the government and civil society organisations as "1) a strong, diverse, and independent civil society; 2) an effective and transparent design and development of policies, programmes, and public services; 3) responsive and high-quality programmes and services; 4) clear arrangements for managing changes to programmes and services; 5) and finally, an equal and fair society"[682]. In addition, the compact lays down the undertakings for each goal on both the sides of the Government and NGOs. The new 2010 version of the Compact, however, is shorter and no longer includes a separate Codes of Practice. Furthermore, the document tackles civil society as a whole rather than solely covering the voluntary and community sector. Furthermore, its content focused more on public service delivery that the relationship between the government and the third sector. In addition, we learn from the report for FRA that in 2011 an independent panel[683] was established to monitor the independence of the voluntary sector. The fourth and final mission of the Panel considers the Compact an instrument that "could be used to enhance

[679] Wills, L. (2017): 'Standing and Operational Space of Non-Governmental Organisations (NGOs) in Contributing to respecting and Promoting Fundamental Rights in EU Member States – United Kingdom' for European Agency for Fundamental Rights (FRA). pp. 5-7
[680] See: Government of the United Kingdom: The Compact: The Coalition Government and civil society organisations working effectively in partnership for the benefit of communities and citizens in England. Source: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/61169/The_20 Compact.pdf (Accessed on: 23/12/2022)
[681] Ibid., p. 6
[682] Ibid., p. 7
[683] See: Independence Panel (2015): An Independent Mission: The Voluntary Sector in 2015. Source: http://www.civilexchange.org.uk/wp-content/uploads/2015/02/Independence-Panel-Report_An-Independent-Mission-PR.pdf (Accessed on: 23/12/2022)

independence in the voluntary sector but criticise it as being weak alongside government failings to 'Compact proof' new policies and ensure that the Charity Commission is equipped to carry out a strategic role. The report calls for a redrafting of the Compact for one which has more teeth"[684].

Organisations in the Context of Brexit

Brexit boosted the activities of certain organisations in the UK. The website of the UK government presents a list of NGOs within the framework of the "EU Settlement Scheme" for the purpose of community support for vulnerable citizens. The governmental website defines these organisations as follows: "organisations funded to provide support to vulnerable and at-risk EU citizens applying to the EU Settlement Scheme. Charities, local authorities, and voluntary organisations across the UK are being funded to provide help and information to vulnerable EU, EEA and Swiss citizens applying to the EU Settlement Scheme. Practical support is available for a range of needs including disabled people, children, those with severe mental health conditions, victims of human trafficking or domestic abuse, those without a permanent address, those who are homeless and those who are elderly or isolated"[685]. We currently find 69 NGOs on the list – some of them with a local, some with national, and some with an international scope.[686] Although the list is extensive, the "find support near you option" helps people navigate among the organisations based on location.

The Civil Society Alliance (CSA), which started off as "Brexit Civil Society Alliance", is a new project set up to develop a collective civil society voice through collaboration, knowledge and information sharing, mutual support, and participation. Their purpose is to "engage with and empower organisations across the UK to ensure strong geographic representation and impact on current, anticipated, and evolving policy developments"[687]. A similar organisation we found in the Luxembourgish case study is The Circle (Cercle de cooperation des ONGD du Luxembourg).

In an interview given to VONNE (Voluntary Organisations Network North East), Jane Thomas from CSA shared the following: "one of the biggest things - and biggest challenges - is the

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[684] Wills, L. (2017): 'Standing and Operational Space of Non-Governmental Organisations (NGOs) in Contributing to respecting and Promoting Fundamental Rights in EU Member States – United Kingdom' for European Agency for Fundamental Rights (FRA). p. 9
[685] Official Website of the UK Government. Source: https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens/list-of-organisations (Accessed on: 22/12/2022)
[686] Ibid.
[687] Civil Society Alliance. Source: https://civilsocietyalliance.uk (Accessed on: 22/12/2022)

politics of Brexit. It has thrown a spotlight into the nooks and crannies of the UK's constitutional and parliamentary process and what it has shown are the inherent weakness in our system and current arrangements"[688]. Furthermore, "Brexit has exposed the inability of our parliamentary system and our political party system to respond to the challenges of complex legislation made one hundred times worse with a minority government reliant on the DUP. It has brought to the fore how powerful the executive can be, how legislators can avoid scrutiny and debate and a breakdown of party discipline. The complexity and the politics of Brexit have had a really negative effect in enabling people and organisations to engage in any meaningful way. And the ability for organisations or civil society to make any interventions or have any impact has been difficult when it's hard to find where the traction is"[689]. When talking about the activities of CSA, J. Thomas mentions "visiting different parts of the UK to have conversations with local civil society groups to link them with what we are doing and to have discussions on Brexit impacts and mitigation"[690]. She expresses concerns regarding "preparedness, the capacity, and therefore ability, to respond to Brexit" as it "is nigh on impossible for many smaller and even charities" and the challenge of mobilisation of those organisations "which are the most disengaged and remote from Westminster".[691] J. Thomas explains that in the time of preparation for Brexit after the referendum took place, "civil society organisations have been relatively compliant. Some of this is down to legal issues such as requirements from Boards and Article of Association. Some of it is undoubtedly down to the fact that the Lobbying Act has cast a long shadow. But the need for amplification of voices when key legislation is making its way through parliament is even more acute when parliamentarians themselves don't know what to do - or how to do it"[692]. She emphasises the importance of including organisations in legislative procedures about their functioning, too: "going forward we need to turn up the volume and to have a place at the table when key legislation that affects all our organisations and communities is being debated".[693] She believes that "what is needed is a clear steer from civil society groups and organisations on how to respond to the challenges of Brexit and to ensure voices are heard. It could be a huge

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[688] Thomas, J. for Voluntary Organisations' Network North East. Source : https://www.vonne.org.uk/new-frontiers-reflections-civil-society-and-brexit-0 (Accessed on: 22/12/2022)
[689] Ibid.
[690] Ibid.
[691] Ibid.
[692] Ibid.
[693] Ibid.

opportunity to mobilise and strengthen the power and influence of the sector if we get it right".[694]

Linking the question to our political culture model, one can conclude the redefinition of the role of civil society organisations in the context of Brexit (meso/II level). This, though, must be supported on the institutional (meso/I) level, too. First, by the inclusion of representation from civil society organisations in the legislative process, second, by reforming the existing legislative acts which currently make it difficult for organisations to fulfil their redefined role.

III.4.1.2 The Situation of Civil Society Organisations in Hungary

The Authoritarian Legacy of a Weak Civil Society

In 'The Quality of Democracy in Eastern Europe', A. Roberts argues that due to communist legacies civil, civil society was extremely weak in the region when the democratic transition started. The reason for this is that "communist regimes eliminated civil society and tainted the very idea through forced-mobilisation of citizens in regime sponsored-organisations"[695]. Communist ideas and ideals permeated every segment of social life, leaving no room for alternative, diverse beliefs. Furthermore, at the time of the start of democratisation, economic hardships also stood in the way of civil action which limited the ability of the mass public to control their rulers. Putnam emphasises that the economies of Hungary and other post-Eastern bloc countries were "in shambles" after the communist/socialist era.

Concerns about authoritarianization, i.e., growing state control over civil society organisations emerged in interview answers. During our interview, IS/J expressed concerns regarding the situation of civil society organisations: "the state has brought down its own civil organisations and supports them. It criminalizes the independents and does not take them into account" – pointing at a common feature of authoritarian regimes.

The Exclusivity of the Government's Human Rights Round Table

Currently, 76 civil society organisations are members of the Human Rights Round Table created by the Human Rights Committee of the Hungarian Parliament in 2012, and a further 40 organisations take part with a right to comment and deliberate in the sessions of the Round

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[694] Ibid.
[695] Roberts, A. (2009): The Quality of Democracy in Eastern Europe – Public Preferences and Policy Reforms. p. 14

Table. The organisations' specifications include the promotion of the rights of the Roma, the rights of the family and children, the promotion of African culture, the rights of women, the rights of persons with disabilities, LGBTI+ persons, the Hungarian Red Cross, the rights of nationalities (Bulgarians, Croatians, Germans, Rusyns, Slovakians, Slovenians, Ukrainians. [696]

However, several major civil organisations which have a particular role in fundamental rights promotion are not to be found of the list on 116 civil society organisations. Firstly, TASZ (The Hungarian Civil Liberties Union, created in 1994) which we mentioned earlier regarding the criticism around the 2011 Fundamental Law of Hungary. According to their self-description, TASZ "has been working for everybody being informed about their fundamental human rights and empowered to enforce it against the undue interference by those in positions of public power" and "we use all possible means to help those brave citizens who stand up for a more equal and free country (…) since there is no freedom without courage"[697]. TASZ covers several fields of rights and democracy itself, including, freedom of assembly, expression, conscience, and information, the rule of law, data protection, Roma rights advocacy, political participation, the right to self-determination, and the rights of disabled persons. In 2021, TASZ provided free legal aid in more than 4,000 cases and currently has more than 200 cases pending in courts. They continuously publish "legal snippets" in specific fields, the last one was published in autumn 2022: "Protesting Public Education as a Teacher, Parent, and Student"[698]. Secondly, the Hungarian Helsinki Committee (HHC, created in 1989 and providing professional legal assistance to refugees, detainees, and victims of law enforcement violence since 1994). The main areas of the activities of the HHC are "the protection of the rule of law, the protection of the rights of refugees, monitoring law enforcement activities, and the protection of rights of detainees and fairness in the criminal justice system"[699]. The HHC is also active in publishing articles in the fields of its activities. In the field of the rule of law, they currently have 241 articles, grouped in four categories: independence of the judiciary, Coronavirus pandemic and state of emergency, their cases at the ECtHR, and government attacks on NGOs.[700]

Thirdly, Amnesty International Hungary – another key actor in civil rights protection in the Hungarian societal sphere. AI Hungary covers democracy-related questions such as the rule of

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[696] Official Website of the Hungarian Government. Source: https://emberijogok.kormany.hu/emberi-jogi-kerekasztal (Accessed on: 26/10/2022)
[697] TASZ (2022): Egyenlő, bátor, szabad. Source: https://tasz.hu/egyenlo-bator-szabad (Accessed on 26/10/2022)
[698] TASZ (2022): Tiltakozás a közoktatásban. Source: https://tasz.hu/tiltakozas-a-kozoktatasban (Accessed on 26/10/2022)
[699] Hungarian Helsinki Committee. Source: https://helsinki.hu/en/about/ (Accessed on 26/10/2022)
[700] Ibid. Source: https://helsinki.hu/temaink/jogallam/ (Accessed on: 25/10/2022)

law, gender equality, and individual privacy, and they provide education in human rights questions.

The HHC argues that the rule of law has seriously been declining since 2010. TASZ also criticises the deterioration of the rule of law in several of their articles (e.g., the criticism of the draft legislation on public dialogue, or publishing about the different EU procedures against Hungary because of issues which relate to the quality of the rule of law)[701]. Like the above two organisations, Amnesty also formulates criticism regarding the respect of the rule of law in Hungary in their media releases.[702]

Such clarity and impartiality in the communications of civil society organisations towards the citizens is crucial as it has a potential to enhance the citizens' awareness, knowledge, and understanding of socio-political questions, and scrutiny over their government's actions. Although, in the case of the three organisations mentioned above, the clarity and criticism they use in their communication might have got them excluded from the official dialogue with the government, i.e., the Round Table. One can conclude that the Hungarian government is only open to dialogue with (and contribution from) such civil society organisations which do not emphasise the deterioration of the quality of democracy in the country, ergo, the dialogue is biased and exclusive.

Even though several rights, freedoms, and basic principles of democracy have been damaged and consequently, there is severe democratic backsliding in the country at the macro and meso-institutional levels of the political culture, civil society shows a nuanced picture. However, the most important actors of civil rights protection activism are excluded from dialogue with the government which further lessens the quality of government responsiveness and hinders the functioning of civil society. IS/J explained that "although it is possible to establish civil society organisations, the ones that are not loyal to the government do not get subsidies but are criminalized and delegitimized. The government creates and finances parallel civil organisations based on the 'divide and rule' principle".

Efficient and inclusive dialogue supports democratic political culture, which is one of the pillars of good democratic functioning, contributes to a higher quality of democracy. Hungary shows a lack of efficient and inclusive public dialogue, which, first, stems from the incomplete

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[701] TASZ. Source: https://tasz.hu/temaink/category/jogallam?q= (Accessed on: 26/10/2022)
[702] Amnesty International Hungary: What is Wrong with the Rule of Law Today in Hungary? Why is it Important in the EU? Source: https://www.amnesty.hu/jogallam/ (Accessed on: 25/10/2022) and Is Hungary still a State of Law? Source: https://www.amnesty.hu/jogallam-e-meg-magyarorszag/ (Accessed on: 26/10/2022)

democratic transformation, and second, affects the dynamics of its political culture, thus its performance in terms of democratic quality. This conclusion supports our third hypothesis which focuses on the impact of political culture on the quality of democracy.

Report on the Legal Background for Civil Society Organisations

Out of the expert reports provided to the European Union Agency For Fundamental Rights (FRA) about "Standing and Operational Space of Non-Governmental Organisations (NGOs) in Contributing to Respecting and Promoting Fundamental Rights in EU Member States" on Hungary, the UK, and Luxembourg, the one on Hungary is far the longest (43, 18, and 14 pages, respectively). The following documents present the situation of the three states' government funding for NGOs, including legal background, trends, and developments (or declines) between 2011-2017, as well as the access NGOs have to political decision-making processes.

In the case of Hungary, the report for the FRA mentions six relevant legislative changes since 2010 for exposing the legal background for the functioning of NGOs, in line with six major topics laid down by FRA guidelines, including freedom of expression, access to information, association, charitable (non-profit) status, legislative processes.[703]

The first three legal documents, i.e., Acts CLXXV/2011 and V/2013, and Government Decree 350/201, "brought about changes concerning the establishment and dissolution of civil organisations e.g., on the compulsory content of the founding documents, on the conception and termination of membership to an association, on the competence of the general assembly of associations, and to the conditions of public utility (non-profit) status"[704], furthermore, obliged NGOs to reregister their civil status and instead of merely determining their sphere of interest based on a state-provided list of activities, as before, under the new policy, "they must designate and exact legal provision of any related acts that underline that the concerned activity is a state task and is of public utility"[705]. Furthermore, "the new conditions of public utility status required non-governmental organisations (NGOs) to prove that they have adequate public support and resources to fulfil a public utility activity, as prescribed by law" and the re-

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[703] Mink, J. (2017): 'Standing and Operational Space of Non-Governmental Organisations (NGOs) in Contributing to respecting and Promoting Fundamental Rights in EU Member States - Hungary' for European Agency for Fundamental Rights (FRA). pp. 3-21
[704] Ibid., p. 4
[705] Ibid., pp. 5-6

registration of their public utility status[706]. "Under the new rules, associations aspiring for this status have to designate an exact legal provision of any related acts, which underscores that the activity concerned is a state task and is of public utility."[707]

As the report for the FRA states, in Háttér Society's (Háttér Társaság – an LGBTI+ rights protection NGO) experience, "courts were rather reluctant to accept exact legal provisions Háttér Society designated as grounds of public utility status, even if governmental guidance explicitly referred to the same provisions to this end. Similarly, while most provisions of the Civil Code are of dispositive nature and allow deviation the court regarded them compulsory elements of founding documents"[708].

One can consider the latter provision an obstacle to the establishment and functioning of "public utility" NGOs, and, since their creation is dependent on legal provisions enacted by the parliament where the government has been holding two-thirds of the seats since 2010, the requirement undermines the freedom of creating such NGOs. Consequently, the definition of public utility stems from the government, and not from the civil society, which hinders healthy democratic functioning at the meso/II - societal level of our political culture model. This provokes a blockage of common interest formation, communication, and common action in the civil sphere. The fact that (groups of) citizens do not have the possibility to establish NGOs freely, independently from what the government find useful for the public heavily diminishes the quality of democracy at the meso level, and indirectly, on the micro level, too.

The Opinion of the Venice Commission on the Deteriorating Situation of Civil Society Organisations

The Venice Commission provided an opinion on civil society organisations in 2017. The Opinion highlights several standards in the Document, such as the important role of civil society organisations (CSOs) in modern democracies, enabling citizens to associate for the promotion of certain goals.[709] It continues with international and European standards on the freedom of expression and the freedom of association: Art 19 and 20 UDHR; Art 19 and 21 ICCPR, Art 10 and 11 ECHR; UN Declaration on Human Rights Defenders, CoE Guidelines on the Legal Status of NGOs and the Role in a Pluralistic Democracy; CoE CM/REC(2017)14

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[706] Ibid., pp. 4-5
[707] Ibid., pp. 5-6
[708] Ibid., p. 8
[709] Venice Commission (2017): Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad. p. 6

on the Legal Status of NGOs in Europe.[710] Furthermore, Principle 7 of the Venice Commission-OSCE Joint Guidelines on Freedom of Association lays down the following: "associations shall have the freedom to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities. States shall not restrict or block the access of associations to resources on the grounds of the nationality or the country of origin of their source, nor stigmatize those who receive such resources. This freedom shall be subject only to the requirements in laws that are generally applicable to customs, foreign exchange, the prevention of money laundering and terrorism, as well as those concerning transparency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards.[711] The principle of proportionality regarding applying sanctions in cases of non-fulfilment of registration, reporting, and disclosure obligations[712], as well as the principle of transparency which shall apply to all civil society organisations, not only to those receiving foreign funding[713].

The VC raises its concerns regarding the context and circumstances of the Draft Law, as it has been a trend, a rhetoric, among Hungarian leading politicians of the government parties for years to describe civil organisations receiving foreign funding as a "threat to national security and independence" (an antagonistic rhetoric that stigmatises these organisations as "foreign agents" – CoE Commissioner for Human Rights Nils Muižnieks).[714] Furthermore, the VC highlights the lack of "meaningful consultation" with the public prior to the submission of the draft.[715]

The VC questions "whether the government with the enacting of the draft is pursuing a legitimate purpose"[716], and particularly concerned by the following manifestation of the stigmatising rhetoric on such organisations, i.e. how they are introduced in the preamble of the draft law: "recognising that the support provided by unknown foreign sources to organisations established under the freedom of association may be capable of being used by foreign interest

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[710] Ibid., p. 6
[711] Ibid., p. 10 referring to VC-OSCE Joint Guidelines on Freedom of Association
[712] Ibid., pp. 14-15
[713] Ibid., p. 18
[714] Ibid., p. 7
[715] Ibid., p. 8
[716] Ibid., p. 9

groups to promote – through the social influence of these organisations - their own interest instead of community objectives in Hungary's social and political life".[717]

Although the VC acknowledges that there might be reasons to limit foreign funding of civil organisations, such as "prevention of money-laundering and terrorist financing"[718] as well as that transparency is a 'legitimate aim', it raises doubts that the Draft Law is "based on the erroneous and harmful assumption that receiving foreign funding necessarily equals representing "foreign" interests that are inevitably ill-intentioned and at odds with Hungarian public interest", as described by the CoE Commissioner for Human Rights.[719]

The issues outlined by the Venice Commission's opinion show a drastic deterioration regarding the freedom of NGOs. However, we are not only talking about the decrease of the freedom of NGOs, but also stigmatization, persecution. Earlier we talked about the links between "fear-spreading" and authoritarian tendencies, and the influence on political psychology their roots in political culture. Below is the governmental campaign "Stop Soros", a propaganda based on a conspiracy theory, attempting to unify Hungarian voters against György Soros and the civil organisations he is funding (through The Open Society Foundation) which "want to bring migrants of Muslim and African origin to Hungary". The government introduced the conspiracy theory to public consciousness as the "Soros Plan". The campaign against Soros started in 2013 with an article published in a Hungarian political journal 'Heti válasz' (which stopped its operation in 2018) about "the NGOs controlled by György Soros". In 2017, Hungary held a so-called national consultation on the "Soros Plan". The main claims of the national consultation sheet were the following:

- György Soros wants to persuade Brussels to resettle at least one million immigrants from Africa and the Middle East to the territory of the European Union, including Hungary.

- György Soros, together with Brussels leaders, also wants to get the EU member states, including Hungary, to dismantle the border protection fences and open the borders to immigrants.

- Part of the Soros plan is that the immigrants gathered in Western European countries are compulsorily distributed by Brussels, with particular regard to Eastern European countries.

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[717] Ibid., p. 9
[718] Ibid., p. 11
[719] Ibid., p. 11 referring to Ref. CommHR/NM/sf021-2017

- Based on the Soros plan, Brussels should oblige all member states, including Hungary, to pay 9 million HUF (around 20,000 Euros) in state aid to each immigrant.

- György Soros also wants to ensure that migrants receive a lighter sentence for the crimes they commit.

- The goal of the Soros plan is to push the languages and cultures of European countries into the background in order for the integration of illegal immigrants to take place sooner.

- Part of the Soros plan is to launch a political attack on countries that oppose immigration and hit them with harsh penalties.[720]

The findings indicate that democratisation has not been completed at the meso/II level of Hungarian political culture. In conclusion, the political milieu, the legal changes, the new administrative burdens, and the governmental narrative and practice of fear-spreading and scapegoating are making the life of NGOs hard in Hungary. Consequently, establishing a genuine culture of NGOs with high civil engagement and participation – one of the main pillars of healthy democratic functioning – is stuck at the present.

III.4.1.3 The Situation of Civil Society Organisations in the Grand Duchy of Luxembourg

There is a high and diverse involvement of NGOs in the country's democratic life. Ecology, human rights, development of third world countries, and trade unions (35% of Luxembourgish residents have a trade union membership). Luxembourg shows a strong level of participation; however, the fact that political participation is limited in the case of non-citizen residents is problematic also in terms of civil engagement.

Report on the Legal Background for Civil Society Organisations

The expert report prepared in 2017 for FRA mentions three Acts regarding the legal framework for NGOs.[721] Firstly, the Act of 9 May 2012[722] amending the amended Act of 1996 regarding development cooperation "had the effect of including explicitly the topics of human rights and

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[720] 444.hu Online Newspaper (2017): Itt a teljes nemzeti konzultácios kérdőív. Source: https://444.hu/2017/09/28/itt-a-teljesen-nemzeti-konzultacios-kerdoiv (Accessed on: 22/12/2022)

[721] Greijer, S. (2017): 'Standing and Operational Space of Non-Governmental Organisations (NGOs) in Contributing to respecting and Promoting Fundamental Rights in EU Member States - Luxembourg' for European Agency for Fundamental Rights (FRA). pp. 3-6

[722] Journal official du Grand-Duché de Luxembourg: Loi du 9 mai 2012 modifiant la loi modifiée du 6 janvier 1996 sur la coopération au développement. Source : https://legilux.public.lu/eli/etat/leg/loi/2012/05/09/n1/jo (Accessed on: 20/12/2022)

participative democracy as transversal issues in the approach of Luxembourg non-governmental organisations (NGOs) working on development cooperation and humanitarian action, and set up a government fund to develop NGOs and clarified the rules regarding who can obtain such a statute and benefit from government funding.[723]

Secondly, Act of 27 May 2016 regarding the reform of the legal publication system for companies and associations brought "no significant impact on the day-to-day work of civil society actors, since the amendments are of an administrative nature and affect mainly certain formalities related to the registration and public disclosure of NGOs"[724].

Thirdly, draft legislation 7082 amending the amended Act of 6 January 1996 regarding development cooperation which was supposed to enter into force on 1 January 2017.[725] The report for FRA explains that the draft legislation was "part of the so-called Luxembourg package for the future (*Zukunftspak 2015*) and specifically regards the funding for NGO development, introducing certain limits to the co-financing of projects"[726]. Furthermore, "the Luxembourg Circle of NGOs participated in government negotiations around the measures and managed to obtain a higher co-financing percentage for projects aimed at strengthening human rights".[727] Among the motivations of the draft legislation, we find the necessity to reform the existing provisions (1996) relating to the intervention thresholds of projects of non-governmental development organisations in order to take account of the negotiations between the Department of Development Cooperation of the Ministry of Foreign and European Affairs and the Cooperation Circle of Development NGOs (Cercle de coopération des ONG-D luxembourgeoises).[728] The draft was first delayed by the Council of State: "the Council of State doubts that, with regard to the content of Article 32(3) of the Constitution, Article 12 of the amended law of 6 January 1996 on development cooperation and action humanitarian law, which provides the legal basis for the draft Grand-Ducal regulation (EC no.: 51.953), corresponds to the wish of the constituent according to which 'the principles and essential

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[723] Greijer, S. (2017): 'Standing and Operational Space of Non-Governmental Organisations (NGOs) in Contributing to respecting and Promoting Fundamental Rights in EU Member States - Luxembourg' for European Agency for Fundamental Rights (FRA). p. 3
[724] Ibid., pp. 3-6
[725] Ibid., p. 6
[726] Ibid., p. 6
[727] Ibid., pp. 3-6
[728] Chambre des députés (2016): No. 7082 Project de loi modifiant la loi modifiée du 6 janvier 1996 sur la coopération au développement et l'action humanitaire. Source : https://wdocs-pub.chd.lu/docs/exped/0000/032/325.pdf (Accessed on: 19/12/2022)

points' remain in the domain of formal law"[729]. The draft is marked as withdrawn on the website of the Chamber.

The report for the FRA explains that in Luxembourg, most NGOs are legally non-profit associations (association sans but lucrative: asbl). There is no specific statute or legislation in Luxembourg for NGOs. Nevertheless, the Ministry of Foreign Affairs recognises NGOs working in development cooperation and humanitarian action through a separate approval system.[730]

Since there is no specific statute for human rights NGOs, the report finds that there are no statistics regarding government funding for NGOs working on human rights.[731] Also, there is no specific legislation regarding access to the decision-making process for NGOs working on human rights protection and promotion. However, the report mentions Act of 28 July 2011 ratifying the Convention on the Rights of Persons with Disabilities through which the government commits to implementing the Convention on the Rights of Persons with Disabilities (CRPD) and designs the national bodies that shall be responsible for its implementation and monitoring. While the act makes no direct reference to NGO participation, the CRPD does. Although there is no legislative framework on the question, the report includes some practical examples of engagement of NGOs in decision-making: 1) inter-ministerial committees with civil society participation, 2) the above-mentioned CRPD, 3) the Open Government Partnership.[732]

Organisations in the Grand Duchy

The list of Luxembourg's NGOs accredited by the Ministry of Foreign Affairs currently consists of 91 NGOs with a focus on human rights protection at the international level, which is a high number compared to the size of the country. The list includes NGOs with a diversity of scope, i.e., the Luxembourgish branches of international organisations such as Amnesty International, ECPAT International, CARE International, Handicap International, SOS, and the Association luxembourgeoise pour les Nations Unies. We find several organisations with

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[729] Chambre des Députés (2016) : No. 7082 Project de loi modifiant la loi modifiée du 6 janvier 1996 sur la coopération au développement et l'action humanitaire – Avis du Conseil d'état. p. 2. Source: https://wdocs-pub.chd.lu/docs/exped/0000/133/1330.pdf (Accessed on: 19/12/2022)
[730] The list of these NGOs can be found at: https://cooperation.gouvernement.lu/en/partenaires/ong-partenaires.html (Accessed on: 21/12/2022)
[731] Greijer, S. (2017): 'Standing and Operational Space of Non-Governmental Organisations (NGOs) in Contributing to respecting and Promoting Fundamental Rights in EU Member States - Luxembourg' for European Agency for Fundamental Rights (FRA). pp. 8-9.
[732] Ibid., pp. 10-13

country-specific scope, such as Aide au Vietnam, Aide au Bénin, Aide à l'Enfance de l'Inde et du Népal, les Amis de Gambie, and Les Amis du Tibet.

Besides the above-mentioned NGOs with a humanitarian focus, a field demonstrating high civil activity is the promotion of LGBTI+ rights. There are four NGOs for the purpose of LGBTI+ rights protection: Rosa Lëtzebuerg (RL), Cigale which was created by RL but later became independent, ITGL (Intersex and Transgender Luxembourg), and the LGBT+ Student Association at the University of Luxembourg. We present the activities of two of these: RL and Uni.lu LGBT+.

During a meeting with members of RL, the members talked about their activities which include 1) collaboration with the Red Cross to campaign about PrEP, 2) lobbying at ministries of the government, 3) advocating for same-sex marriage and adoption, 4) education and sensibilization, 5) cultural events, 6) the representation of the Grand Duchy at ILGA Europe, 7) networking with the other national LGBT+ organisations, 8) and the organisation of the annual Pride in Luxembourg. They expressed that they would like to become an umbrella organisation for LGBT+ rights protection. Future projects they have include the creation of Rainbow House Luxembourg on the example of Rainbow House Brussels, the creation of a free magazine related to the LGBT+ culture, as well as the creation of the Queer Archive of Luxembourg. RL members expressed difficulties to collaborate with governmental ministries on questions which fall into the scope of different ministries, for instance, the question of medical practices on intersex newborns ("gender-normalizing" surgery).

Uni.lu LGBT+ a.s.b.l. is a student association at the University of Luxembourg created in 2019 and is the youngest of LGBT+ rights promotion organisations. The association's mission is to "offer a safe space for anyone who comes from a minority sexual/romantic/gender identity, so they can meet and go to accessible and inclusive events"[733]. Uni.lu LGBT+ campaigns for the rights of LGBT+ people at the University of Luxembourg and collaborates with the wider community including other national organisations in the field. Activities include education and sensibilization (e.g., round table talks on LGBT+-related questions), creating a safer environment at the university for LGBT+ students and staff, and advocacy for trans and non-binary rights at the university and in the broader community.

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[733] Université du Luxembourg: Student Associations. Source: https://wwwen.uni.lu/students/student_participation/student_associations_clubs_and_partners/lgbt (Accessed on: 22/12/2022).

The Cercle de coopération des ONG-D luxembourgeoises (Cooperation Circle of Non-Governmental Development Organisations) is an umbrella organisation which reflects the Grand Duchy's participation culture. The Circle was created in 1979 by six Development NGOs (NGDOs) for the purpose of convergence. Today it holds 86 member organisations. The mission of the NGDOs is to fight poverty at the global level via international solidarity and social change. The Circle's official website states the following: "Luxembourg has a strong civil society and around a hundred NGOs are specialized in development or humanitarian action. (…) While promoting the complementarity of the various NGDOs and the diversity of the sector, the vision of a fair and united world can be achieved through a rich collaboration within the Circle by ensuring an essential place for its members. The Circle (…) aims to create spaces for exchange and learning, to allow stronger and more visible cohesion in the sector, and to highlight the issues and challenges of international solidarity. Its role is also to defend the interests of NGDOs and to challenge our ways of life and our policies to create a fair and united world"[734]. In their multiannual plan for 2019-2022, we find that the declared unified role for the of Luxembourgish NGDOs shows the willingness for active participation to attain social change: "The Circle and its member-associations must also act as actors - even promoters - of social change that aims both to fight against social injustices and to question the economic and political thinking at the root of these injustices"[735]. We find further elements of the self-definition as an important actor and contributor: "The Circle and its member-associations also have an important part to contribute to these changes, because they are a sort of spokesperson for the direct and indirect beneficiaries of the NGDO partners in the countries of the South. The coherence of the policies pursued by Luxembourg and the European Union will have to be examined even more closely and the Circle, as well as its member associations, will have to equip themselves with the necessary means to be able to denounce harmful developments and to be able to propose – if necessary – alternatives".[736] Long-term goals of The Circle's multiannual plan besides the role in social change include a strong community formed by the NGDOs and the international representation of Luxembourgish NGDOs.[737]

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[734]Official Website of Cercle de cooperation des ONGD du Luxembourg. Source : https://cercle.lu/notre-vision/ (Accessed on : 20/12/2022)

[735] Cercle de cooperation des ONGD du Luxembourg : Plan pluriannuel 2019-2022. p. 2 Source : https://cercle.lu/wp-content/uploads//2019/11/Cercle_plan_pluriannuel-2019_2022.pdf (Accessed on: 20/12/2022)

[736] Ibid., p. 2

[737] Ibid., p. 12

III.4.2 Constitutional and Ordinary Law Level Regulation of the Role and Financing of Political Parties

The document by the Venice Commission which discusses the state funding of political parties in Europe is the Guidelines on Political Party Regulation (Second Edition) adopted by the Council for Democratic Elections and the Venice Commission in 2020. The report provides guidance and recommendations on the regulation of political parties, including their funding, in a comprehensive manner. Besides collecting the relevant democratic principles, such as the freedoms of expression and association, it covers various aspects of party regulation, including party registration, the transparency of party financing, inter-party democratic functioning, and legal aspects, such as remedies for violations of party rights and obligations. The guidelines emphasize the importance of **a pluralistic political environment** and the **need for political parties to operate freely**, without undue restrictions.[738]

Regarding party **financing**, the guidelines stress the need for **transparency and accountability**, including disclosure of sources of funding and expenditure, and the establishment of independent oversight mechanisms. The guidelines also recommend that **state funding** of political parties be provided in a **transparent and equitable** manner **based on** objective criteria such as **electoral performance**. Overall, the guidelines aim to promote a legal and regulatory framework that supports a **diverse and pluralistic political milieu for the meso level of political culture**, with fair and transparent rules for the operation and financing of political parties.[739]

The document defines **the role of political parties in democracies** as follows:

> *"Political parties contribute to the performance of at least three vital functions in a democracy. First, they facilitate the cooperation and coordination of individuals in the exercise of their fundamental rights of association and expression. Second, they further the cooperation and coordination among the holders of public office, both within parliaments and across levels and institutions of government, thus facilitating the coherence and effective making and implementation of policy. Third, they provide a means to connect the organisations of citizens to the officeholders through the formulation of political programmes between which voters can choose the nomination and support of candidates in elections, and by taking collective*

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[738] Venice Commission, OSCE/ODIHR (2020): Guidelines on Political Party Regulation, Second Edition. Source: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)032-e (Accessed on: 08/03/2023)

[739] Ibid.

responsibility for government in a way that would be impossible for officeholders individually."[740]

III.4.2.1 The United Kingdom

Constitutionalisation of Political Parties

Regarding the 'constitutionalisation of the role of political parties', one can immediately think of two important characteristics of the British political culture. Firstly, the strong tradition of two competing political sides – the Conservatives and the Labour – i.e., the two-party system, which historically devoted particular importance to these alternating political forces. As we saw in earlier chapters, before and during the Brexit process, new political forces are gaining more public support, e.g., Nigel Farage's UKIP which took an important role in the initiation of Brexit, obtained 12,6% of the votes in 2015, but failed to succeed later[741]; or the Liberal Democrats who gained 7,4% in the 2017 and 11,6% in the 2019 national elections. Secondly, the lack of a canonised constitution, which, contrary to Luxembourg or Hungary, makes it difficult to talk about constitutionalisation in terms of parties. We did not find a clear concept of the role of political parties in the British democratic system; however, parties are strictly regulated by statutes.

Regulating the Functioning and Financing of Political Parties

In the UK, unlike in many continental-European democracies, political parties are primarily funded through private donations, membership fees, and fundraising activities. However, the government also provides some funding to political parties in the form of "short money"[742] and "Cranborne money"[743]. Firstly, short money is a parliamentary funding scheme designed to help opposition parties carry out their parliamentary duties. It is paid to parties in the House of Commons that have either at least two members elected, or one member elected and more than 150,000 votes. The amount of short money is calculated based on the number of MPs and the number of votes a party received in the most recent general election. Secondly, Cranborne

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[740] Ibid., p. 9

[741] In 2018 Farage founded a political party called the 'Brexit Party' which was renamed to Reform UK in 2021 to represent broader objectives other than Brexit.

[742] UK Parliament: Short Money. Source: https://www.parliament.uk/site-information/glossary/short-money/ (Accessed on: 21/12/2022)

[743] UK Parliament: Cranborne Money. Source: https://www.parliament.uk/site-information/glossary/cranborne-money/?id=32625 (Accessed on: 21/12/2022)

money is a similar scheme for the House of Lords; calculated based on the number of peers a party has. In addition to these schemes, parties can also claim back some of their election expenses from the government, based on the number of votes they receive in the given election.

Three relevant bills regarding the functioning of political parties are the Representation of the People Act 1983 (RPA 1983), the Registration of Political Parties Act 1998 (RPP 1998), the Political Parties, Elections and Referendums Act 2000 (PPERA 2000), and the Political Parties and Elections Act 2009 (PPEA 2009). The 1983 reform of the RPA is a consolidation of a series of previous acts which were merged into the RPA.[744] The Act was last modified in November 2022 which is not yet possible to access on the website of the UK government at the time of the completion of the research.[745]

PPERA 2000 was enacted "to establish an Electoral Commission; to make provision about the registration and finances of political parties; to make provision about donations and expenditure for political purposes; to make provision about election and referendum campaigns and the conduct of referendums; to make provision about election petitions and other legal proceedings in connection with elections; to reduce the qualifying periods set out in sections 1 and 3 of the Representation of the People Act 1985; to make pre-consolidation amendments relating to European Parliamentary Elections; and for connected purposes"[746]. As we read in the above introduction, the law created an Electoral Commission with a role to supervise the registration of parties and new ways to regulate the finances of political groups. Part II (General Limits) defines the maximum of campaign spending for parties contesting one or more constituencies in England, Scotland, or Wales at £ 30,000 "multiplied by the number of constituencies contested by the party in that part of Great Britain"[747]; or "if greater (…) the appropriate amount is (a) in relation to England, £ 810,000; (b) in relation to Scotland, £ 120,000; and (c) in relation to Wales, £ 60,000. (…) "Where a registered party contests one or more constituencies in Northern Ireland, the limit applying to campaign expenditure which is

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[744] RPA 1983 Chapter 2: "An Act to consolidate the Representation of the People Acts of 1949, 1969, 1977, 1978, and 1980, the Electoral Registers Acts of 1949 and 1953, the Elections (Welsh Forms) Act 1964, Part III of the Local Government Act 1972, sections 6 to 10 of the Local Government (Scotland) Act 1973, the Representation of the People (Armed Forces) Act 1976, the Returning Officers (Scotland) Act 1977, section 3 of the Representation of the People Act 1981, section 62 of and Schedule 2 to the Mental Health (Amendment) Act 1982, and connected provisions; and to repeal as obsolete the Representation of the People Act 1979 and other enactments related to the Representation of the People Acts".
Source: https://www.legislation.gov.uk/ukpga/1983/2 (Accessed on: 30/01/2023)
[745] Official website of the Government of the UK: Representation of the People Act 1983 Source: https://www.legislation.gov.uk/ukpga/1983/2 (Accessed on: 30/01/2023)
[746] Official website of the Government of the UK: Political Parties, Elections, and referendums Act 2000. Source: https://www.legislation.gov.uk/ukpga/2000/41 (Accessed on: 31/01/2023)
[747] Ibid.

incurred by or on behalf of the party in the relevant period in Northern Ireland is £ 30,000 multiplied by the number of constituencies contested by the party there"[748].

PPERA 2000 Chapter II – Restrictions on Donations to Registered Parties" defines "permissible donations" as well as "permissible donors". The law lays down that parties can only accept a donation from a permissible donor; furthermore, prohibits donations from unidentified sources. The Act defines permissible sources as follows: (a) an individual registered in the electoral register; (b) a company (legally registered and incorporated within the UK); (c) a registered party; (d) trade unions legally registered in the UK; (e) a building society; (f) a limited liability partnership legally registered and functioning in the UK; (g) a friendly society legally registered in the UK; (h) "any unincorporated association of two or more persons which does not fall within any of the preceding paragraphs but which carries on business (…) in the United Kingdom (…)".[749] PPEA 2009 brought modifications to PPERA 2000. For instance, regarding the declaration of sources of donations by the donors, in case of donations exceeding £ 7,500.

In addition, regarding state subsidies to political organisations, IS/B shared the following: "there is very little state support of organisation involved in politics. Unions have been undermined from the Thatcher years onwards. Their association with the Labour Party has also been weakened. Membership of trade unions has been in decline for a long time in the UK as elsewhere".

III.4.2.2 Hungary

Constitutionalisation of Political Parties

From 1989 on, Hungary's constitutional democratic transition paved the way for forming political parties.[750] The questions about political parties were among the most essential ones in the period of political transition. One can observe a transition from a one-party system to a multi-party system, i.e., putting an end to the overarching political monopoly of the Hungarian

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[748] Ibid.
[749] Ibid.
[750] Magyarország a XX. században – I. kötet: Politika és társadalom, hadtörténet és jogalkotás. A jog szerepe a rendszerváltozásban. Source: https://mek.oszk.hu/02100/02185/html/95.html (Accessed on: 07/12/2022)

Socialist Workers' Party (MSZMP)[751] to give way to the newly emerging forces of the country's political life.

In the 1949 Communist constitution, although the Hungarian Workers' Party permeated not only the political but also the social life of the country ('party state'), the word 'party' was not included. Thus, the role of 'the party' (for instance, as the 'depository' of the interests of the working people) was not constitutionalised. In 1989, one of the first of legislative questions was to create a legal basis for the establishment of new political parties and the re-establishment of the old ones from before the socialist regime (for instance, the Independent Smallholders' Party). In 1988, several new democratic parties (Fidesz, Alliance of Young Democrats; MDF, the Hungarian Democratic Forum; and SZDSZ, the Alliance of Free Democrats) joined with other organisations to form what became known as "the Opposition Round Table" (*Ellenzéki kerekasztal*).[752]

The 1989 Constitution includes the word 'party' sixteen times. In Art. 3 the Constitution (1) enshrines the freedom to establish political parties; (2) lays down that the role of parties is to contribute to the formulation and expression of the will of the people; (3) and that parties cannot exercise public authority directly – parties and public authority are separated (unlike in the Communist and Socialist regimes).[753] In addition to developing and debating the regulatory concept of the new constitution, the most important goal of the legislative processes of 1989 was to establish laws that guarantee the right of association and assembly, and which dissolve the legal constraints that hindered the organisation of the new political forces. These laws, Act II/1989 on the right of association, and Act III/1989 on the right of assembly were adopted by the Parliament in its session of January 1989. II/1989 already ensured the right to found political parties, although the law regulating the registration and management of parties was adopted later. By this legislation, the Hungarian political system became, in principle, a multi-party system, and shortly the Central Committee of the Hungarian Socialist Workers' Party, the only functioning party of the socialist era, formally renounced its role as the leading political force.[754] The new Fundamental Law of 2011, in Article 8, maintains the freedom of establishing

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[751] 1948-1956: Hungarian Workers' Party; 1956-1989: Hungarian Socialist Workers' Party.

[752] Roznai, Y. (2022): Constitutional Transformation: Hungary. *in* D. Law (Ed.), *Constitutionalism in Context* (Comparative Constitutional Law and Policy, pp. 136-156). Cambridge: Cambridge University Press. p. 143

[753] 1989 Constitution of Hungary. Source: https://www.alkotmanybirosag.hu/alkotmany-1989 (Accessed on 23/01/2023)

[754] Magyarország a XX. században – I. kötet: Politika és társadalom, hadtörténet és jogalkotás. A jog szerepe a rendszerváltozásban. Source: https://mek.oszk.hu/02100/02185/html/95.html (Accessed on: 07/12/2022)

parties as well as their role as contribution to the formulation and the expression of the will of the people; furthermore, that they cannot exercise public authority in a direct manner.[755]

Regulating the Functioning and Financing of Political Parties

The year of the transition saw a law for laying down the foundations for the legal background of political party functioning and financing. 'Act XXXIII/1989 on the functioning and financing of parties' summarises the role of parties as follows: "The social purpose of parties is to provide organisational frameworks for the formation and expression of the will of the people, as well as for citizen participation in political life"[756]. The motivation for the law is "to promote the freedom of association and political rights of citizens, as well as the democratic display and representation of various interests and values in society"[757]. Its Chapter IV on 'The Assets and Financing of The Party' has been amended several times, the last of these modifications took place in 2022. Modified Art. 4 determines that party assets consist of membership fees, state support from the central budget, and contributions from Hungarian citizens including inheritance. Furthermore, it prescribes that only Hungarian nationals can contribute to the assets of political parties, that other countries cannot finance national political parties, and nor can legal persons and organisations without legal personality.[758]

Act LXXXVII/2013 on the transparency of campaign costs for the election of parliamentarians had the following motivations: (1) making campaign costs transparent, (2) thus promoting equal opportunities for candidates and organisations running in the parliamentary elections, (3) creating the conditions for the exercise of rights (…) and protecting the purity of the election of members of parliament.[759] In Art. 1/1 the law provides 1 million HUF (approximately 2500 EUR) state support to each candidate in the parliamentary elections. Art. 7/c limits campaign costs to a maximum of 5 million HUF (12,500 EUR). Art. 8/1 provides that the candidates who receive state support must file in their accounting to the Treasury within fifteen days after the election results become legally binding.[760]

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[755] Fundamental Law of Hungary 2011. Source: https://net.jogtar.hu/jogszabaly?docid=a1100425.atv (Accessed on: 23/01/2023)
[756] 1989. évi XXXIII. törvény a pártok működéséről és gazdálkodásáról. Source: https://net.jogtar.hu/jogszabaly?docid=98900033.tv (Accessed on: 23/01/2023)
[757] Ibid.
[758] Ibid.
[759] 2013. évi LXXXVII. törvény az országgyűlési képviselők választása kampányköltségeinek átláthatóvá tételéről. Source: https://net.jogtar.hu/jogszabaly?docid=a1300087.tv (Accessed on: 23/01/2023)
[760] Ibid.

According to Transparency International Hungary, campaign financing has been the biggest corruption risk in Hungary. As TI published its observation about the new legislation: "the majority of the parties' revenue comes from subsidies from the state budget, while only a small part of it consists of party members' contributions. Today in Hungary, even the most politically committed citizens do not feel the need to financially contribute to the activities of their preferred party. (…) in accordance with the new regulation apart from state funds and member contributions parties can only accept financial support from natural persons of Hungarian nationality"[761]. Furthermore, "the financial management of the parties is not transparent enough: there is no clear-cut regulation regarding the deadline by which parties are obligated to publish their financial reports on their websites. Moreover, the reports are not detailed enough to provide deeper insight into their finances"[762]. Therefore, TI found that Act LXXXVII/2003 failed to fulfil the commitments to a law which makes campaign financing resistant to corruption and provide absolute transparency regarding expenditures: "if legal funds are not sufficient, the parties will look for illegal financing options"[763]. TI concluded that "the weakness of the Act is that it fails to render fraud impossible, and it does not initiate ways of control suitable for revealing attempts at fraud", moreover, "the Act is insufficient for extinguishing campaign corruption because it creates as many loopholes as it eliminates"[764].

The purpose of the 2017 amendment of Act LXXXVII/2003 was to fight 'fake parties[765]'. According to the modification, if a party that received state support for its campaign does not achieve a result of at least 1% in the parliamentary elections, it is obliged to repay support received from the state.[766] In 2014, the sum of the fines imposed by the Hungarian Tax Authority on small unknown parties ('fake parties', sometimes: 'business parties') – for missing the timely return of the so-called recommendation forms for validation – was more than 5 million EUR, of which only 10,000 EUR was paid.[767] As reported by the Hungarian intelligence service, during the campaign for the 2022 national elections, the candidate of the unified opposition, Péter Márki-Zay received financial support of approximately 4,5 million EUR from an American organisation called Action for Democracy. However, based on the

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[761] Transparency International Hungary: Elections, Party- and Campaign Financing. Source: https://transparency.hu/en/kozszektor/valasztasok-part-es-kampanyfinanszirozas/ (Accessed on: 23/01/2023)
[762] Ibid.
[763] Ibid.
[764] Ibid.
[765] "Kamupárt", in English, "fake party": a widespread expression in Hungarian politics, media, and academics.
[766] 2017. évi CLX. törvény Az országgyűlési képviselők választása kampányköltségeinek átláthatóvá tételéről szóló 2013. évi LXXXVII. törvény módosításáról
[767] Mérce (2017): Ugrott a kamupártok 2014-es tartozása. Source: https://merce.hu/2017/12/27/ugrott-a-kamupartok-2014-es-tartozasa/ (Accessed on: 23/01/2023)

Hungarian legislative framework, the support received was legal since Márki-Zay's organisation, 'Mindenki Magyarországa Mozgalom', (MMM, in English: Everybody's Hungary Movement) is not a political party: "Hungarian laws strictly prohibit parties from accepting campaign subsidies from abroad. But MMM is not a party, but a movement, so there is no legal obstacle for it to receive support from abroad"[768]. The latter is an example of exploiting the 'little doors' of the system of the financing of political parties and organisations, as the law differs in the case of parties and organisations. Nevertheless, the investigation of the case by the State Security Committee of the Hungarian Parliament continues in 2023.[769]

To conclude, the legislative framework of party financing still leaves a lot of room for corruption. As we learn from the publication of Transparency International Hungary, campaign financing has been an important corruption risk in the country, still leaving several opportunities ('little doors') to exploit the system.

III.4.2.3 Luxembourg

Constitutionalisation of Political Parties

An important step in the evolution of democratic quality as well as the functioning of the socio-political sphere, constitutionalisation of the role of political parties took place in 2008. Before, "in addition to the Netherlands, Belgium, Denmark and Ireland, Luxembourg was one of the few countries in Europe that did not mention political parties in their written constitutions"[770].

To understand the process of constitutionalising the role of political parties, we analyse the content of the revisional proposition (no. 5673), primarily, to reveal the motivations for the constitutional revision. In the next part, we discover the evolution of the financing of political parties, too.

Following two decades of debate, the following constitutional article was proposed and adopted in Luxembourg in 2007: "32bis: The political parties contribute to the formation of the popular will and to the expression of universal suffrage. They express democratic pluralism"[771]. The

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[768] Telex (2022). Source: https://telex.hu/belfold/2022/12/07/koranyi-david-action-for-democracy-adomanyok-marki-zay-peter-kampany (Accessed on: 23/01/2023)

[769] Telex (2022). Source: https://telex.hu/belfold/2022/12/08/nemzetbiztonsagi-bizottsag-zart-ules-kampanyfinanszirozas (Accessed on: 24/01/2023)

[770] Borz, G. (2017). Justifying the constitutional regulation of political parties: A framework for analysis. in International Political Science Review / Revue Internationale de Science Politique, 38(1), 99–113. p. 101

[771] Chambre des députes du Grand-Duché de Luxembourg (2007): 5673 Proposition de loi portant création d'un article 32bis nouveau de la Constitution.

text was adopted by the Commission of Institutions and Constitutional Revision (Commission) in 2006, and the article was proposed as a constitutional revision.

The Commission highlights in the proposition for constitutional revision that discussions on and attempts for the inclusion of political parties in the constitution dated back to the 1980s[772]: "The freedom to create political parties and trade unions was ultimately not formally enshrined in the Constitution on the basis of the argument that the right of association constitutes a general and unrestricted freedom which also applies to political parties and trade unions"[773]; "(…) the former commission had ruled that 'it was not appropriate to mention political parties in the Constitution as the right of association is a general right enjoyed by Luxembourgers'"[774]. The argument was the following: "specifically mentioning political parties in the constitutional provision devoted to this right could be interpreted as an attempt to qualify, or even restrict, their freedom"[775].

This argumentation was accepted by the Council of State; however, the question became subject to revision in the 2000s, influenced by the practice of other EU countries. From 2004 on, debates in the Commission started to converge on the question, and the majority opinion supported the recognition of political parties in the constitution. As the proposal states, in August 2004 "the Government expressly recognized that in a representative democracy, the political parties constitute a basis of the popular will" thus "the State shall allow parties to carry out their task through material support conditioned by strict rules of control and transparent management of party finances"[776]. Within the course of the following two years, the article got adapted.

The motivations for the constitutional revision are expressive regarding the formation of the country's democratic functioning. One may identify four elements regarding these motivations, i.e., 1) the lack of previous constitutionalisation of the existence of political parties; 2) learning from other EU countries; 3) revising the definition of political parties; and 4) linking political parties with fundamental democratic principles.

The lack of previous constitutionalisation of the existence of political parties. The document points out that "while political parties constitute an essential element of the functioning of institutions in a democratic regime, the Luxembourg Constitution ignores this

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[772] Ibid., p. 1
[773] Ibid., pp. 1-2
[774] Ibid., p. 2
[775] Ibid., p. 2
[776] Ibid., p. 2

social reality; (…) the electoral law does not mention political parties and is limited to recognising the existence of candidates grouped together on lists"[777].

Learning from other EU countries. Following the European trend to enshrine the existence, role, and mission of political parties in the constitution, mentioning the French, Spanish, Italian, Portuguese, and Greek examples. We observe here a diffusion of norms supported by the process of Europeanisation.

Revising the definition of political parties. The previous definition of political parties[778], based on the law of January 1999, was "the association of natural persons, whether or not endowed with legal personality, which contributes, in compliance with the fundamental principles of democracy, to the expression of universal suffrage and the popular will in the manner defined in its statutes or its program"[779]. Besides the expression of universal suffrage and the popular will, the constitutional revision adds a further dimension to this definition, i.e., democratic pluralism. The proposal provides a clear justification: "democracy will only be able to function fully if there are several independent parties reflecting the different currents of political thought. The voter must have a choice between several political options. The parties must be the expression of this pluralism of ideas."[780] Furthermore, the text adds that "political parties are much more than a simple specific expression of the right of association, but a determining form of the expression of the sovereign power that resides in the nation"[781].

Linking political parties with fundamental democratic principles. Throughout the redefinition of political parties and enshrining them in the constitution as the expression of the triad of the democratic principles of universal suffrage, popular will, and democratic pluralism, political parties are recognised as a key channel of democracy.

Regulating the Functioning and Financing of Political Parties

In parallel with the constitutionalisation of the existence and democratic role of political parties, the need for establishing and regulating their public and private financing emerged as well. Parliamentarians of the Grand Duchy explain the following: "by the law of 21 December 2007 regulating the financing of political parties, Luxembourg made a fundamental change

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[777] Ibid., p. 1
[778] The document notes that the term 'political party' is used in a generic sense and includes other political groupings, too.
[779] Chambre des députés du Grand-Duché de Luxembourg (2007): 5673 Proposition de loi portant création d'un article 32bis nouveau de la Constitution. p. 2
[780] Ibid., p. 3
[781] Ibid., p. 3

compared to the very liberal and not very transparent pre-existing regime"[782]. This section observes the motivations that drove the original legislative proposal of 2007 establishing regulation over the financing of political parties as well as the practices it laid down.

One can identify five motivations for the legislative process on the financial regulation of political parties: 1) complementing the process of constitutionalisation; 2) the confidence of citizens; 3) the establishment of balanced financing for political parties; 4) to follow the recommendations of the Council of Europe; 5) fighting corruption and establishing the financial independence of political parties; 6) normative adaption.

Complementing the process of constitutionalisation proposed by constitutional revisional proposition no. 5673. "Since the advent of universal suffrage in 1919, political parties have singularly shaped democracy. They not only play the role of actors during elections but they are considered essential to the democratic organisation as well as to the expression and manifestation of political pluralism. They carry out the important mission of establishing political information, training, and debate. As political parties perform an essential function in our contemporary democracies, state subsidization, within the framework of predefined rules, thus seems adequate and fair".[783]

The confidence of citizens. As for the motivations for the draft legislation on the regulation on the financing of political parties, the document highlights the necessity to preserve the confidence of citizens in politics.[784]

The establishment of balanced financing for political parties, i.e., the need for establishing an equilibrium between private and state financing.

To follow the recommendations of the Council of Europe.[785] The proposition cites Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, which lays down that "political parties are a fundamental element of the democratic systems of states and are an essential tool of expression of the political will of citizens"; furthermore, "political parties and electoral campaigns funding in all states should be subject to standards in order to

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[782] Chambre des députes du Grand-Duché de Luxembourg (2007): 7509 Proposition de loi 1. portant modification de la loi modifiée du 21 décembre 2007 portant réglementation du financement des partis politiques 2. portant modification de la loi électorale modifiée du 18 février 2003. p. 1
[783] Chambre des députes du Grand-Duché de Luxembourg (2007): 5700 Proposition de loi portant réglementation du financement des partis politiques. p. 1
[784] Ibid., p. 2
[785] Ibid., p. 2

prevent and fight against the phenomenon of corruption". The Recommendation serves as the basis for the following article of the legislative proposition: "The rules applicable to the financing of political parties and electoral campaigns must be based on the following principles: a reasonable balance between public and private financing, fair criteria for the distribution of state contributions to parties, strict rules governing private donations, ceilings on party spending related to election campaigns, full transparency of accounts, the establishment of an independent audit body, and meaningful sanctions against parties and candidates who violate the rules".[786]

Fighting corruption and establishing the financial independence of political parties. The draft legislation points out that "legislation on the financing of political life in general and of political parties was born of an absolute necessity following scandals which for the most part gave rise to legal inquiries which often revealed a link between financing illicit political parties and corruption. This caused a loss of credibility of parties in public opinion. In Luxembourg, there is a common political will to legislate in this area to ensure (1) the absolute transparency of the financing of political parties; (2) equal opportunities and rights for political parties; (3) the independence of political parties; and (4) the absence of any conflict of interest."[787]

Normative adaption. The legislative proposal acknowledges the importance of the proper legal regulation of party funding as well as the role of political parties in a liberal democracy. The document quotes political scientist Ingrid van Biezen (University of Birmingham 2000-2009) who explains the role of parties: "Political parties are vital political institutions in contemporary democracies. They are essential to democratic organization and to the expression and manifestation of political pluralism. They perform various functions, all of which, to varying degrees, are essential to liberal democracy. They fulfil an important mission by enabling individuals and groups to become integrated into the political system, they mobilize the public and (…) during elections, and they make a fundamental contribution to the expression of all social interests. Political parties also play a major role in recruiting political elites by nominating and selecting candidates for public office; they are essential to the organization of government; finally, they exercise an important function by making political decisions and implementing them in political practice"[788].

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[786] Ibid., p. 2
[787] Ibid., pp. 1-2
[788] Ibid., p. 2

Following these motivations, the draft legislation, firstly, provides a definition of political parties, which is more specific than the definition of the constitutional revisional proposition, but generally recites the same concept: "a group of natural persons, whether or not endowed with legal personality, which contributes, in compliance with the fundamental principles of democracy, to the expression of universal suffrage and the popular will in the manner defined in its statutes or its program"[789]. In addition, the draft legislation also lays down the basics for other aspects of political parties, i.e., composition, revenues, donations, expenditures, and political mandates. Art. 4 lays down that "to be able to benefit from the allocation, a political party must have presented a complete list in the four electoral constituencies during the legislative elections and have presented a complete list in the single national constituency during the European elections"[790]; and "the party must have obtained at least two percentage points of the totality of the votes in all four electoral constituencies for the national elections as well as a national average, furthermore in the single national constituency for the European elections"[791]. This condition requires an active contribution to political life both in terms of national and European elections. Art. 5 determines a yearly allocation of 100.000 Euros (and additional sums after each percentage point won at the national and European elections) for political parties who fulfil all the conditions of Art. 4. Art. 11 requires the political parties fulfilling the conditions to commit **10% of the state allocation to policy research, training, and studies**. Regarding private funding, Art. 13-16 of the draft legislation express that only natural persons can donate to political parties as well as to their components; that donations from legal entities and not permitted; that the natural persons who donate to parties must be registered annually by the beneficiaries; that political parties must provide **a list of donations over 250** Euros which must be submitted each year together with the party's accounts to the President of the Chamber of Deputies; that anonymous donations are prohibited; and finally, that the payments that political representatives make personally on the basis of their remuneration to their political parties or their components are not considered as donations and are not limited[792]. In the case of non-compliance with accounting and reporting obligations, the document prescribes several penalties (i.e., reduction of the amount of the yearly funding, fines, or confiscation of donations; Art. 22-24).[793]

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[789] Ibid., p. 7
[790] Ibid., p. 8
[791] Ibid., p. 7
[792] Ibid., p. 9
[793] Ibid., p. 10

The law of 2007 has been amended twice since its adoption. The first modification follows the recommendations of different actors, including the Chamber of Deputies, the Court of Auditors, and the Group of States against Corruption (GRECO) which published opinions in 2008 and 2011 on the transparency of political party funding in Luxembourg. 1) the amendments reinforced the publicity of the accounts and balance sheets and proving documents provided by the political parties, this way strengthening **transparency**; 2) the donation regime has been clarified; 3) false statements have been **criminalised**; 3) the amendments subjected all political parties and groups of candidates standing in legislative or European elections to certain rules relating to the financing of political parties.[794] The second amendment took place in 2016. It established new conditions for financial allocation granted to political parties, i.e., compliance with certain rules making it possible to have a balanced **representation of candidates of both sexes** on the lists for the national and European elections.[795]

In the 2019-2020 ordinary session the Chamber of Deputies proposed and accepted a third amendment of the law of 2007 on the regulation of the financing of political parties, driven by the discussions of the Commission for Institutions and Constitutional Revision following the legislative elections of October 2018 and the European elections of June 2019. The document determines two purposes for the amendment: 1) to adapt the allocations granted to political parties by providing the parties with the financial means necessary to fully accomplish their missions in the public interest, therefore, in line with their constitutional definition; 2) to clarify and complete the law in order to make it possible to regulate and understand certain specific situations arising from the composition of certain lists of political parties and the emergence of the phenomenon of personal campaigns led by candidates. For the latter, by ensuring that all parties participating in national elections are treated on an equal footing and that the legal obligations imposed on parties are fully respected – therefore aiming at **strengthening transparency, political pluralism**, **and further principles of the quality of democracy such as participation and political competition.** The amendment "provides for the **prohibition of any individual campaign by a candidate whose income and expenditure are not included in the account of the political party** concerned"[796]. As the document explains it, "the

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[794] Chambre des députes du Grand-Duché de Luxembourg (2007): 7509 Proposition de loi 1. portant modification de la loi modifiée du 21 décembre 2007 portant réglementation du financement des partis politiques 2. portant modification de la loi électorale modifiée du 18 février 2003. pp. 1-2
[795] Ibid., pp. 1-2
[796] Ibid., p. 2

establishment of a written statement from each candidate on the acceptance of donations is supposed to **strengthen the legal framework for donations to political parties**"[797].

III.5 Micro Level: Perceptions on Democracy and Politics, and Confidence in Institutions, Interest in Politics in Hungary, the UK, and Luxembourg

III.5.1 The Micro Level of Political Culture

The analysis at the micro level of our political culture model focuses on three factors regarding the individual citizens. Firstly, the citizens' perceptions of their own democratic systems, secondly, the individual citizens' confidence in the democratic institutions of their own countries, and thirdly, the level to which the individual citizens are interested in the political dynamics of their own countries. Analysing data published in EVS 2018 helps us gain a deeper understanding regarding these factors. Hypothesis II points out the linkage between the three factors and **democratic stability**, which shall be considered an additional dimension of the quality of democracy.

It is important to note that the surveys included in this chapter, **in the case of Luxembourg generally include not only the citizens but also the resident foreigners.** For simplicity, the term "citizen" is used when we talk about the perceptions, confidence, and values of Luxembourgish society.

III.5.2 European Values Study 2008 and 2017

From the European Values Surveys 2008 and 2009, the following set of questions may help understand the links between political culture and the quality of democracy.[798]

The following table data from EVS 2008 (based on the Atlas of European Values).[799]

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[797] Ibid., p. 2

[798] At the time of processing data from EVS 2017, data is not available about EU averages. It is also important to note that comprehensive data regarding the whole of the UK is not accessible by the time of the completion of the thesis: data not available from Northern Ireland.

[799] Atlas of European Values Online Version: European Values Study 2008: Integrated Dataset (EVS 2008). GESIS Data Archive, Cologne. Retrieved from:
http://www.atlasofeuropeanvalues.eu/new/zieeuropa.php?year=2008 (Las accessed on: 03/04/2023)

Table 28: EVS 2008 - HU, UK, LU

European Values Study 2008 *Voter Preferences, Perceptions of Democracy, and Confidence in Institutions in HU, UK, and LU (%)*		
Whether democracy is the best political system		
HU	UK	LU
82	86	91
Whether the best political system is run by experts		
HU	UK	LU
84	53	45
Whether the best political system is a military regime		
HU	UK	LU
6	10	4
Whether the best political system is run by a strong leader		
HU	UK	LU
27	29	37
Whether citizens have confidence in the civil services		
HU	UK	LU
41	43	70
Whether citizens have confidence in the government		
HU	UK	LU

17	19	68

Whether citizens have confidence in the parliament

HU	UK	LU
21	23	68

Whether citizens have confidence in the political parties

HU	UK	LU
10	14	40

Whether citizens have confidence in the European Union

HU	UK	LU
51	25	67

Whether citizens have confidence in the justice system

HU	UK	LU
39	51	68

Whether citizens have confidence in the press

23	15	50

Whether citizens believe, despite having problems democracy is still the best sort of political system, compared to others

HU	UK	LU
81	88	94

Whether democracy is indecisive

HU	UK	LU

63	55	59

Whether democracy is not good in maintaining order

HU	UK	LU
45	33	27

Whether citizens discuss politics frequently with their friends

HU	UK	LU
7	13	19

Whether citizens follow politics in the media

HU	UK	LU
59	47	73

Whether citizens are satisfied with the functioning of their own government

HU	UK	LU
25	36	57

Whether citizens find politics important

HU	UK	LU
24	43	49

Whether citizens are interested in politics

HU	UK	LU
38	42	55

Participation in elections: whether citizens would vote if there was an election held tomorrow		
HU	UK	LU
74	73	77
Whether citizens are satisfied with the development of democracy in the country		
HU	UK	LU
21	32	75
Whether citizens consider giving people more say in important government decisions an important goal for the next 10 years		
HU	UK	LU
59	59	42
Whether citizens consider the protection of the freedom of speech an important goal for the next 10 years		
HU	UK	LU
16	49	36

The following table summarises data from EVS 2017[800,801]

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[800] Atlas of European Values Online Version: European Values Study 2017: Integrated Dataset (EVS 2017). GESIS Database, Cologne. Source: https://www.atlasofeuropeanvalues.eu/maptool.html (Last accessed on: 05/04/2023)

[801] Chambre des Députés du Grand-Duché de Luxembourg: European Values Study 2017 results for Luxembourg. Data made accessible for the Research Chair in Legislative Studies at the University of Luxembourg

Table 29: EVS 2017 - HU, UK, LU

European Values Study 2017 *Voter Preferences, Perceptions of Democracy, and Confidence in Institutions in HU, UK, and LU (%)*		
Whether democracy is the best political system		
HU	UK	LU
93	94	92
Whether the best political system is run by experts		
HU	UK	LU
76	55	41
Whether the best political system is run by a strong leader		
HU	UK	LU
22	28	26
Whether citizens have confidence in the civil services		
HU	UK	LU
55	56	72
Whether citizens have confidence in the government		
HU	UK	LU
39	30	67
Whether citizens have confidence in the parliament		

HU	UK	LU
36	33	69

Whether citizens have confidence in the political parties		
HU	UK	LU
16	17	27

Whether citizens have confidence in the European Union		
HU	UK	LU
44	33	61

Whether citizens have confidence in the justice system		
HU	UK	LU
50	65	73

Whether citizens have confidence in the press		
HU	UK	LU
20	14	50

Whether citizens follow politics in the media A/ on the radio		
HU	UK	LU
26	20	47

B/ on television		
HU	UK	LU
49	33	49

C/ on social media		
HU	UK	LU
23	20	37

D/ in daily newspapers		
HU	UK	LU
17	19	50

Whether citizens are satisfied with their own government		
HU	UK	LU
45	38	N/A

Whether citizens are satisfied with the functioning of their political system		
HU	UK	LU
41	46	72

The extent to which one's country is governed democratically		
HU	UK	LU
48	62	80

Whether citizens find politics important		
HU	UK	LU
30	54	65

Whether citizens are interested in politics		
HU	UK	LU
11	16	67

Participation: national elections (people who usually or always vote)		
HU	UK	LU
91	84	79
Participation: local elections (people who usually or always vote)		
HU	UK	LU
90	80	82
Participation: European elections (people who usually or always vote)		
HU	UK	LU
80	57	80
Participation: fair chance to participate in politics		
HU	UK	LU
10	25	N/A
Participation: ability to participate in politics		
HU	UK	LU
5	14	N/A
Participation: voters are bribed in elections		
HU	UK	LU
50	22	7
Participation: opposition candidates are prevented from running		
HU	UK	LU
31	19	7

Participation: rich people buy elections		
HU	UK	LU
44	42	7

III.5.2.1 Citizen Perception of Democracy and the Functioning of the Government

Among important political changes in the period between EVS 2008 and EVS 2017, one must consider the impact of Brexit. The referendum on whether the UK shall maintain its EU membership and the execution of the will of the people resulting from it strengthened confidence in democracy in general. Accordingly with the majoritarian democracy tradition of the country (Lijphart), even though there wasn't a remarkable difference between the leave and remain results, the voice of the majority was respected and executed. Secondly, this period has seen a political shift in Hungary. Since 2010, Viktor Orbán has been the prime minister of the country, and in 2022 he started his fourth consecutive (and overall, fifth) prime ministership. Despite the numberless the academic literature, all the democracy indices, EU-, Venice Commission-, civil and human rights protection NGO reports, and international press articles observing and warning about the democratic fallback in the country, EVS 2017 data show an increase in the confidence in public institutions and democracy itself, too. 11% more people consider democracy the best political system and confidence in the government grew by 22% (from 17% to 39%). Similarly, the confidence in the national parliament, where the Orbán-led FIDESZ has had two-thirds of the seats in all cycles since 2010, increased by 15% (from 21% to 36%).

Based on data provided by EVS 2008, a remarkably high percentage of citizens of all three countries in question consider **democracy the best political system** (82%, 86%, and 91%, respectively). The EU-wide trend shows similar results. EVS 2017 confirms the strong prevalence of this value in all three cases.

In EVS 2008 results, results vary more across the EU regarding the question of whether the **political system should be run by experts**. Second highest result in the EU, a striking 84% of Hungarian citizens think that having experts run the country instead of governments is a good idea, while with 53% the UK is in the mid-range, and, with 45%, Luxembourg has a relatively

low rate compared to the EU average. EVS 2017, however, sees a drop in the percentage of Hungarians who believe that an expert-led system is the best possibility (76%), while the UK has similar results as in 2008 (55%). In EVS 2017, Luxembourg has the lowest percentage in the question among the three cases: 41%.

Regarding **preference for a strong leader** who is unconcerned with parliament or elections, in 2008 all three member states are in the mid-range compared to the EU average, with Hungary representing the lowest rate amongst the three with 27%. This number even lessened by 2017 (22%). In comparison, EVS 2008 and 2017 results from Luxembourg show a shift in the preference for a strong leader. Results of the 2008 survey showed that a relatively high percentage (37%) of Luxembourgish citizens and foreigner-residents believed a strong leader, unconcerned with parliament and elections, would be a very or fairly good idea. According to the results of EVS 2017, the rate dropped to 26%. The UK showed a similarly low result in both EVS 2008 and 2017: 29% and 27%, respectively.

In EVS 2008, **satisfaction with the functioning of one's own government** shows remarkably different results: while, in the EU, Luxemburgish citizens are the most satisfied with how the government works (57%), Hungary represents the lowest rate (25%). UK respondents fall into the mid-range, compared to the EU average. In the same question, EVS 2017 sees a slight increase in the UK (from 36% to 38%), while quite a prominent increase in Hungary (from 25% to 45%). The level of dissatisfaction with the functioning of the government means a higher level of citizen scrutiny.

High percentages of both Hungarian, Luxembourgish, and UK citizens think that **democracy is, despite its flaws, still the best** possible political system (81%, 94%, 88%, respectively). Regarding whether **democracies are indecisive**, all three cases show results falling into the mid-range of the list of EU member states, while there is differentiation regarding whether citizens believe that **democracy has issues with maintaining order**: 45% of Hungarian responders agree with the statement, while in the UK and in Luxembourg the rate is 33% and 25%, respectively. Still, Hungarian data shows the lowest percentage in the Central and European region. (no 2017 data)

In the question of **satisfaction with the development of democracy** in one's own country, with 75%, Luxembourg, represents the highest rate in the 2008 survey, while, with only 21% of citizen satisfaction, Hungary has the second lowest result. Results in the UK (32%) are also rather weak, compared to the EU average.

As EVS 2008 data show, both in the UK and Hungary 59% agreed that **giving people more say** in important government decisions shall be a goal for the next ten years. In Luxembourg, the rate is 42%. Secondly, whether the **protection of the freedom of speech** shall be an important goal for the upcoming 10 years, with 16% Hungary, like other member states in the CEE region, represents a low rate. The results in Luxembourg and in the UK are 36% and 49%, respectively.

III.5.2.2 Citizen Confidence in, in the Justice System, in the Government, in the Parliament, in the Press, and in Political Parties

According to data from EVS 2008, with 68 %, Luxembourg has the highest **confidence in the national government.** However, with 17%, Hungary represents the second lowest result in the EU. Like Hungary and other CEE EU member states, the UK show a low rate too: only 19% of UK citizens find their government trustworthy. However, EVS 2017 sees significant growth in terms of trusting the government in Hungary. The increase from 17% to 39% during Viktor Orbán's consecutive prime ministerships elevates the country (together with Austria) to the top of the list of countries in terms of confidence in the national government in the CEE region. In the UK, the rate of public confidence in the government raised to 30%, which is a significant growth, too. Brexit, evidently, had a role. The key argumentation of the government during the Brexit people was to "deliver the will of the people", attempting to strengthen the public perception of legitimacy: 1) strengthening the confidence of the people that their will is the core of their democracy; 2) the UK gaining its sovereignty back from the European Union. Luxembourg shows a different image of public confidence in the government compared to the UK and Hungary: the trust of citizens appears stable and strong. With 68% and 67% in the 2008 and 2017 surveys, Luxembourg is one of the observed countries with the highest public confidence in the government. High trust prevails despite (or along with) the high fragmentation of society and political culture.

Similarly, regarding **confidence in the national parliament**, with 68% Luxembourg demonstrates a particularly high result in the EVS 2008 (the second highest result in the EU). This result is even higher in the 2017 EVS: 69%. With 23% and 21% respectively, the UK and Hungary both show weak results. With the lowest and second lowest percentage in the Western European region in the two questions regarding confidence in the national government and parliament (19% and 23%, respectively), the UK shows similarly weak results in 2008 as the

CEE member states. However, just like the rate of confidence in the government, the rate of confidence in the parliament increased both in the UK and in Hungary, as EVS 2017 findings show (to 33% in the UK and to 36% in Hungary). The underlying reasons are, again, in the case of the UK, Brexit and the country's regained sovereignty, and in the case of Hungary, PM Orbán's popularity that kept gaining his party "two-thirds parliaments" during four consecutive cycles.

Considering **confidence in political parties**, in EVS 2008, most of the EU member states shows remarkably low rates (UK 14%, HU 10%). In 2008, 40% of Luxembourgish citizens, however, have confidence in political parties, which is, again, the second highest rate in the EU. While EVS 2017 saw a slight increase in the UK and Hungarian rates (17% and 16%, respectively), it also outlines a significant decrease regarding public trust in Luxembourgish political parties: 27%.

Regarding the **trust in the justice system**, based on EVS 2008, Luxembourg, with a rate of 68%, is again among the member states with the highest results, while with 51%, the UK is in the mid-range, compared to the EU average. Hungary, like other CEE member states (post-Eastern bloc member states), as well as some Mediterranean countries, shows a lower rate of 39%. By 2017, results had improved significantly in the cases of both the UK and Hungary (65% and 50%, respectively), while the Luxembourgish case shows a striking 73% of public confidence in the justice system.

Both EVS 2008 and 2017 show a low level of public trust in the press in the cases of the UK and Hungary. Results from the UK are stagnating at around 15%, while in Hungary we can observe a slight decrease (from 23% to 20%). Contrarily, in Luxembourg, public trust in the press reached 50% in both surveys.

Finally, when it comes to **confidence in civil services**, Luxembourg shows an outstandingly high rate in 2008: 70%, which is the highest in the EU. Hungary and the UK are both in the mid-range, with 41% and 43%, respectively. EVS 2017 results show an increase in all three cases (HU: 56%, UK: 55%, LU: 72%).

III.5.2.3 Participation and the Level of Interest in Politics

According to EVS 2008, there is a general, EU-wide tendency not to **discuss politics with friends frequently**. Out of the three cases, Luxembourgish citizens are the keenest to discuss

politics (19%), while the UK and Hungary have lower results, 13% and 7%, respectively. This question is not present in the EVS 2017 questionnaire.

Whether **citizens follow politics in the media**, in EVS 2008, with only 47% the UK represents the lowest result in the whole of the EU. Hungary is, with 59%, in the mid-range, while, with 73%, Luxembourg is among the member states where following politics in the media is of higher importance to citizens. The EVS 2017 questionnaire distinguishes following politics A) on television, B) on social media, and C) in daily newspapers. Television wins the race in both the UK and Hungary, while following politics on social media and in the papers is particularly unpopular both in these two countries. Luxembourgish results again show a quite different picture: half of the Luxembourgish citizens and non-national residents follow politics every day or several days a week in the newspapers and on the television (50% and 49%). The radio and social media are also important channels for gaining political information (47% and 37%).

On the question of whether **citizens find politics important**, EVS 2008 shows low Hungarian results (24%), like other post-Eastern Bloc EU member states. With 43%, UK is in the mid-range compared to the whole of the EU, while Luxembourg, again, is among the member states at the top of the list. EVS 2017 shows an increase in this regard too, both in the UK and in Hungary (54% and 30%, respectively).

Regarding the **citizens' level of interest in politics**, with 55% Luxembourg is bordering the top range in EVS 2008 results, while both the UK and Hungary represent the mid-range of the list of EU member states in this question. While EVS 2017 shows a significant drop compared to the 2008 results and a generally very low level of interest in politics in Hungary (11%) and in the UK (16%), Luxembourg is one of the observed countries with the highest results[802] in the 2017 survey: a striking 67% of the population is very or somewhat interested in politics.

Another indicator to investigate is political participation. EVS 2008 inspected whether citizens would **participate in the elections** if they were held tomorrow. Luxembourg, Hungary, and the UK had similar results (77%, 74%, and 73%, respectively), falling into the mid-range regarding the whole of the EU. EVS 2017 distinguishes questions based on different elections and counts both who "usually or always vote": A) participation in national elections (people who usually or always vote), B) participation in local elections (people who usually or always vote), C) participation in European elections (people who usually or always vote). In the

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[802] According to data available at the time of the completion of the thesis, Luxembourg has the highest interest in politics. Data is not available from Belgium, Greece, Moldova, Kosovo, Latvia, and Ireland.

question of participating in the national elections, Hungarians show a particularly high percentage, 91%, while results from the UK also show a high willingness to cast votes on Commons representatives. Despite the mandatory voting system, the Luxembourgish results are the lowest (79%) among the three cases.[803] The results regarding participation at municipal elections are quite similar: Hungarians show the most enthusiasm (90%), secondly, Luxembourg (82%), and lastly, the UK (80%). In light of Brexit, it is not much of a surprise that the UK shows the lowest result in terms of willingness to participate in European elections (57%). Hungarian and Luxembourgish results are identical (80%).

Finally, two new questions introduced in EVS 2017 which give information regarding the perceptions about political participation are 1) if opposition candidates have the chance to run elections, 2) if the rich can buy elections. Regarding the first question, 31% of Hungarians believe that opposition candidates are prevented from running. The percentages are significantly lower both in the UK and in Luxembourg (19% and 7%). Results from the UK and Hungary are similar regarding if the rich can buy elections (42% and 44%). On the other hand, the result from Luxembourg is only 7%.

III.5.3 Eurobarometer Surveys

Table 30: List of Eurobarometer Surveys Used

PERIOD	2007-2019[804]
DATA	EB67-EB92
DOCUMENTS	First Results reports
	Public Opinion in the European Union reports
	European Citizenship reports
	Europeans' Views on the Priorities in the European Union reports
	National reports for UK, HU, LU

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[803] One shall note that EVS surveys are conducted in Luxembourg with the engagement of non-national residents too. This group of the population does not have the right to vote in national elections. This may have altered the outcome of the survey.

[804] Eurobarometer: Eurobarometer data EB67-EB92. Source: https://europa.eu/eurobarometer/surveys/browse/all/series/4961 (Last accessed on: 13/04/2023)

	Factsheets for UK, HU, LU
	Qualitative Report: Europeans and the European Union
	Flash Eurobarometer: Perceived Independence of National Justice Systems
	Special Eurobarometer: Media Pluralism and Democracy

III.5.3.1 Confidence in Democratic Institutions

For getting a more detailed picture of citizen confidence in public institutions in the three countries, the thesis includes data from Eurobarometer reports (2007-2019). According to data availability, the research focuses on public trust in the national parliaments and in the national governments. Data on confidence in the national justice system as well as in political parties are not provided from EB 75 (Spring, 2011) on. Also, data is not provided by EB 74 (Autumn 2010) on citizen confidence in institutions.

Citizen Confidence in National Parliaments

Figure 18: Eurobarometer 2007-2019: Trust in National Parliaments (1)
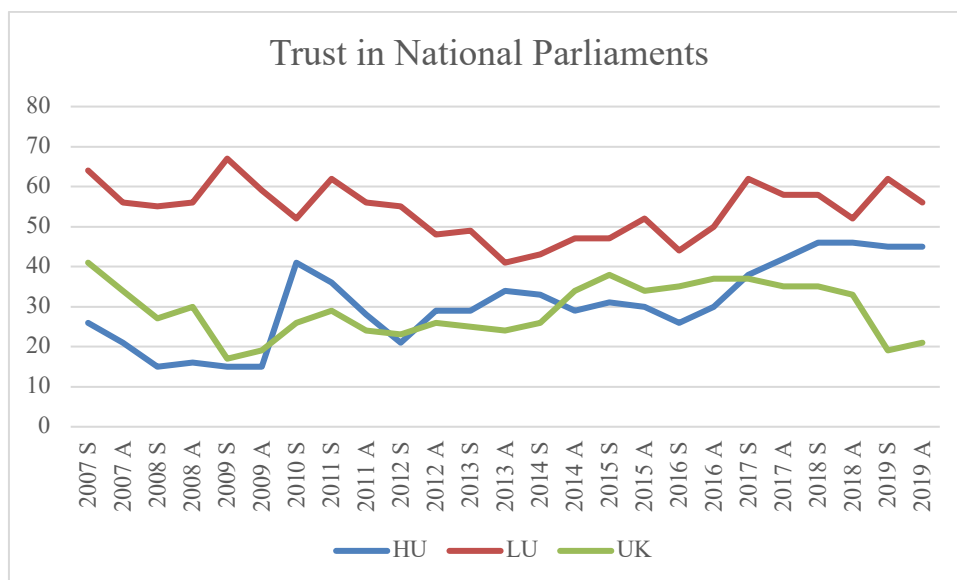
One can observe a low level of citizen trust in the British parliament during the period of the analysis. The importance of citizens' confidence in the national parliament gains additional importance considering that parliamentarism and parliamentary sovereignty is one of the main pillars of British constitutionalism. Elections to the House of Commons took place every two

years between 2015 and 2019 (i.e., in 2015, in 2017, and in 2019), which is a new trend and challenge for British democracy and parliamentarism. Data show a significant drop in 2019, thanks to the parliament's struggle around delivering Brexit.

Luxembourg, on the other hand, shows a strong level of citizen trust in the Chamber of Deputies. In line with EVS 2008 results which show that Luxembourg is the 2nd among the countries where citizen confidence in the national parliament is the highest, Luxembourg is among the top EU member states in this regard according to the Eurobarometer survey data as well. Even though the level of trust shows a decrease in 2013 as well as in 2016, 41% and 44% respectively, the confidence of the people in the Chamber was steady and relatively high between 2016 and 2019.

In Hungary, 2006 autumn saw wide demonstrations against the socialist-liberal government. It is not surprising that between 2007-2010, the confidence rate in both the national parliament and government is outstandingly low. Results see a significant (+26%) leap from 2009 to 2010 following the parliamentary elections of 2010, resulting in the formation of the new right-wing Orbán government.

Figure 19: Eurobarometer 2007-2019: Trust in National Parliaments (2)
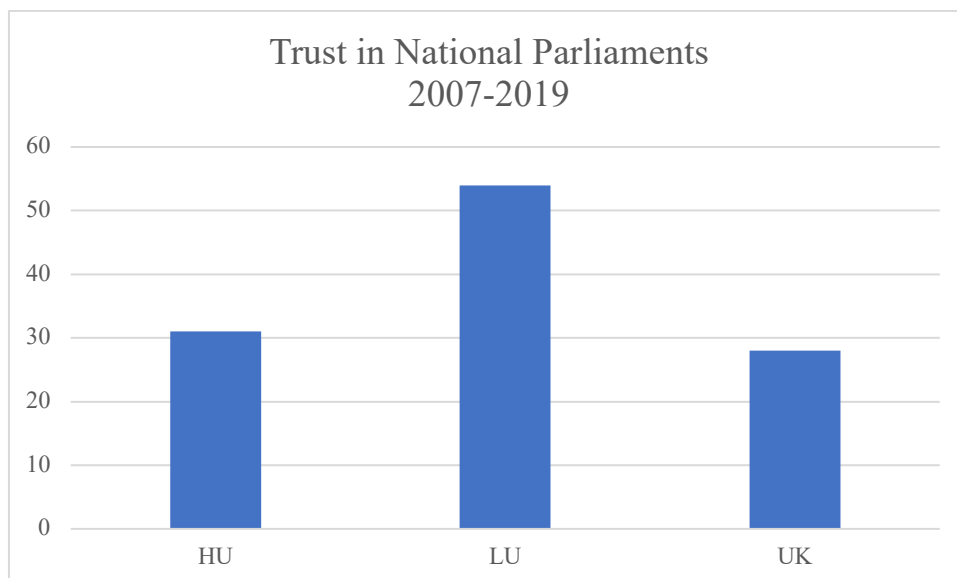
The chart above shows the average rate of citizen trust in the national parliament in the three countries for a period of 12 years. Eurobarometer 92, 2019 Autumn provides the last available reports before Brexit happened. Compared to both the EU average and the two other member states, Luxembourg shows remarkably good results with rates over 50% in the majority of the investigated reports. We observe a significant strengthening of public trust in the Hungarian

parliament, particularly, after 2016. The confidence in the two-thirds Fidesz(-KDNP) parliament shows a steady growth (from 30% to 45% between 2016-2019). In the UK, however, the low citizen trust in the parliament allows us to conclude a weakening citizen trust in the constitutional system, which may pose a risk to legitimacy and democratic quality.

Citizen Confidence in National Governments

Figure 20: Eurobarometer 2007-2019: Trust in National Governments (1)
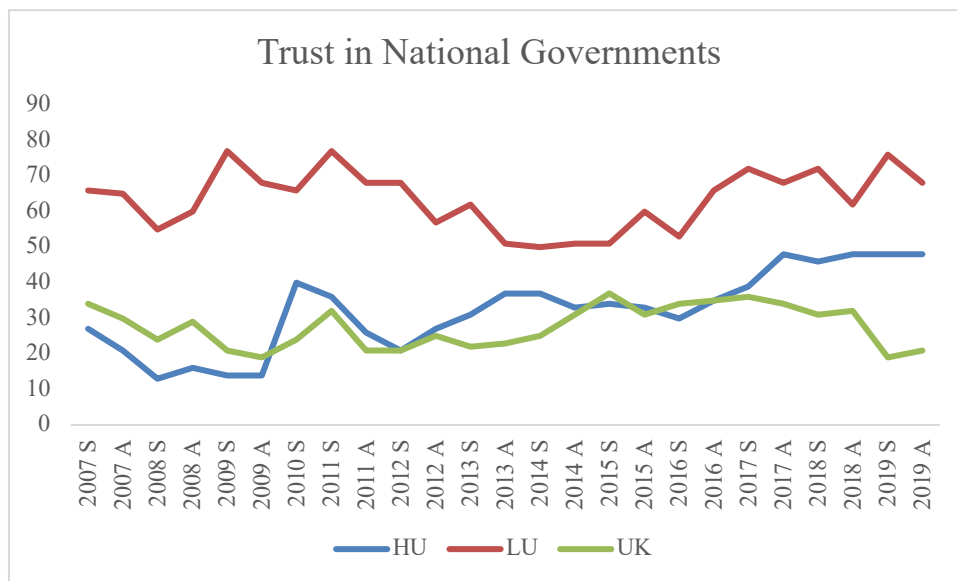
Without exception, the rate of citizen confidence in their national government exceeded 50% in Luxembourg, which is the most remarkable fact in the period. Moreover, both EB 91 and 92 (2019) show that the people of Luxembourg trust their government the most in the European Union. The other two countries represent much weaker results, close to the European averages. One can see the same leap regarding Hungarian citizens' trust in their government as in the case of their national parliament because of the change of the government after the 2010 elections. The peak is 2017 Autumn with 48%, just prior to the elections of April 2018, where the government parties won two-thirds of the seats again. While in 2008-2009 data show a level of confidence of a rate of 14%, by 2019 almost half (48%) of Hungarians trust their government, which is a massive increase, further legitimising Orbán's regime.

Figure 21: Eurobarometer 2007-2019: Trust in National Governments (2)
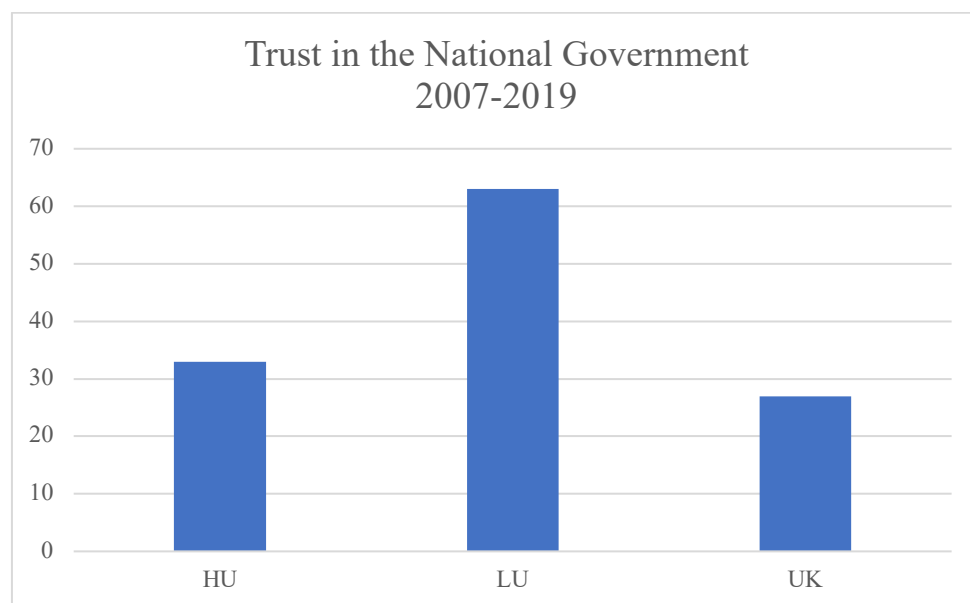
The chart above demonstrates the average rate of citizen trust in the national government in the three countries between 2007-2019. Luxembourg produced a very high average of 62,6%, which rate is more than twice bigger than the EU average. Since the country is a strong democracy, we conclude that such a level of public trust provides for a high level of stability. The latter, furthermore, contributes to the high-quality Luxembourgish democracy. Hungarian citizens' confidence in their government was almost equivalent to the EU average, and the UK lagged by only a few percent. Unfortunately, there is no Eurobarometer data regarding the changes in public trust in the institutions after Brexit was delivered.

Which Institution Do Citizens Trust More in the Three Countries?

Table 31: Eurobarometer 2007-2019: Average Trust in Parliaments and Governments

Average Trust	National Parliament 2007-2019	National Government 2007-2019
HU	31	33
LU	54	63
UK	28	27

As the table above shows, in the examined period of 2007-2019, in the case of Hungary and Luxembourg, the average citizen trust in the national government was higher than in the parliament. As previously shown, Hungarian citizens' confidence in their government has

grown at a massive pace in the period, reaching almost 50% by 2019. Although Luxembourgish citizens and residents show high average confidence in the Chamber of Deputies, the overall trust in the government is 9% higher. The high confidence in the government might be led back to the nature of the coalition government and the consociative democratic model, and the strong consensus-making capacity of political parties. The Luxembourgish coalition Regierung covers a spectrum of political ideologies, i.e., DP: liberal democracy, LSAP: socialists, déi Gréng: greens), generally providing for a higher and stronger representation of the Grand Duchy's fragmented society and political culture than a mono or bi-party government could, like in the UK or Hungary.

In Hungary, though, we see high confidence in the bi-party Fidesz-KDNP (Christian democrats) coalition government, where the role of the latter party is significantly lower than the one of Fidesz, and without genuine political autonomy. In Hungary, voting behaviour and the electorate are more homogenous, granting continuous two-thirds governments for the party coalition since 2010. Observing the growth of trust in the government, we shall conclude that the centralised political focus provided by the Fidesz-KDNP alliance does not fail on the people's perception of representation. The latter observation reveals that the subjective quality of democracy in Hungary might be different than the objective measurements show. Consequently, the democracy concept of the citizenry, though, might differ from liberal democratic definitions, too.

Contrary to the other two case studies, UK citizens have slightly better confidence in their national parliament than the government, however, after 2016 the trends are quite similar. In early 2007, the parliament enjoyed significantly higher confidence of British citizens than the national government (41% and 34%, respectively). As shown before, trust in both institutions strongly diminished after the 2016 Brexit referendum, due to the struggles of delivering a sensible Brexit deal. Heavy drops after 2016 in the level of trust in the government: from 36% to 21%; in the level of trust in parliament: from 37% to 21%.

To conclude, according to data provided by Eurobarometer between 2007-2019, Luxembourgish citizens and residents have the strongest confidence in their government (63%), with a good level of confidence in the Chamber as well. Hungary and the UK show weaker average results in the period, especially the UK, where, after the Brexit referendum, public trust in both democratic institutions decreased. Data on Hungary show a +21% growth in trust in the government. These results allow us to conclude the below observations.

Table 32: Eurobarometer 2007-2019: Subjective Democratic Quality in HU, LU, UK

1	a weakening subjective democratic quality in the UK;
2	a steadily strong subjective democratic quality in Luxembourg;
3	an increasing subjective democratic quality in Hungary.

III.5.3.2 EB 69 and EB77: The Values of Citizens

In the investigated period (2007-2019), two Standard Eurobarometer surveys covered the question of the values of European citizens, namely, EB69 (Spring 2008) and EB77 (Spring 2012).

Table 33: EB69: Top 3 Values / HU, LU, UK

EB 69: Top 3 Personal Values	**LU**	**HU**	**UK**
No. 1	Peace (52%) Human rights (52%)	Peace (51%)	Respect for human life (43%)
No. 2		Respect for human life (48%)	Human rights (35%)
No. 3	Respect for human life (51%)	Human rights (36%)	Peace (33%)

Table 34: EB69: The Importance of Democracy, the Rule of Law, and Equality among Top 3 Values / HU, LU, UK

EB 69: Rate of Democracy, Rule of Law, and Equality	**LU**	**HU**	**UK**

Mentioned among Top 3 Personal Values			
Democracy	20	24	21
Rule of Law	12	14	**32**
Equality	17	23	25

Table 35: EB77: Top 3 Values / HU, LU, UK

EB 77: Top 3 Personal Values	LU	HU	UK
No. 1	Peace (48%)	Respect for human life (49%)	Respect for human life (48%)
No. 2	Respect for human life (46%)	Peace (42%)	Human rights (34%)
No. 3	Human rights (41%)	Human rights (35%)	Peace (31%); Rule of Law (31%)

Table 36: EB77: The Importance of Democracy, the Rule of Law, and Equality among Top 3 Values / HU, LU, UK

EB 77: Rate of Democracy, Rule of Law, and Equality Mentioned among Top 3 Personal Values	LU	HU	UK
Democracy	21	27	25

Rule of Law	12	14	**31**
Equality	21	21	25

According to Eurobarometer data, the three pillars of democratic quality, i.e., the support for democracy, the rule of law, and equality, had the most important role in the responses of UK citizens. In 2008, 32%, while in 2012, 31% mentioned the '**rule of law**' among the most important personal values. With the latter result, in 2012, the rule of law was the third most frequently mentioned value altogether in the UK. The rates of people mentioning either democracy, equality, or the rule of law among their top three values were the lowest in the case of Luxembourg. However, by 2012 we show an increase in the rate of mentioning '**equality**' among the top three personal values. In both studies, Hungarian citizens mentioned '**democracy**' among their values by the highest percentage among the three parameters in both studies. Human rights, respecting human life, and peace were mentioned the most frequently by the peoples of the three countries. The prevalence of democracy, the rule of law, and equality among the top three citizen values was altogether slightly lower in the case of Luxembourg both in the results of EB69 and EB77.

III.5.3.3 The Perceived Independence of the National Justice Systems: Flash Eurobarometer 2016, 2017, 2018

Based on factsheets for Luxembourg, Hungary, and the UK provided by the Flash Eurobarometer reports (2016, 2017, and 2018), the following charts help the comparison of public opinions about judicial independence in each sample country as well as the EU average.

Figure 22: Flash Eurobarometer 2016: Citizen rating of national justice systems in terms of independence of the courts and judges (%)
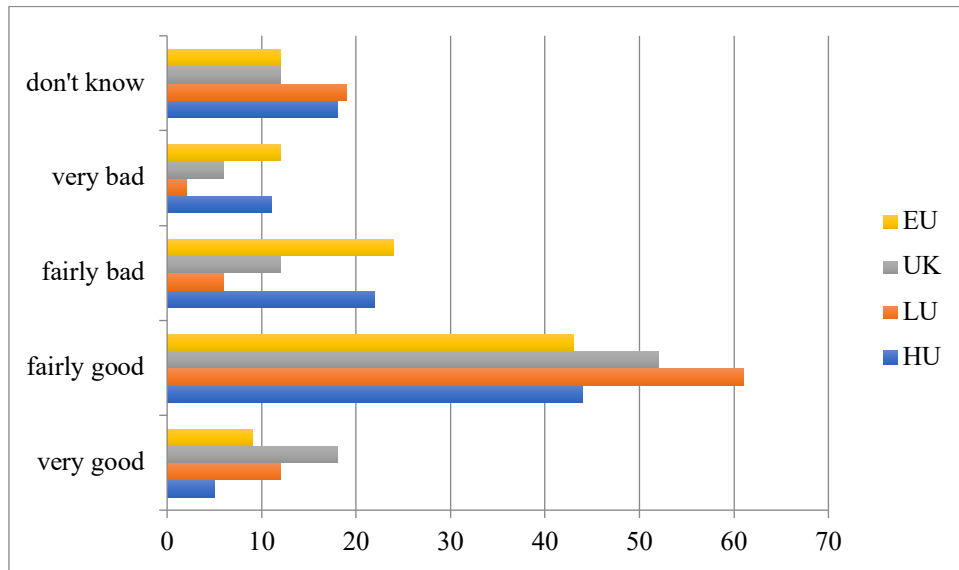
Figure 23: Flash Eurobarometer 2017: Citizen rating of national justice systems in terms of independence of the courts and judges (%)
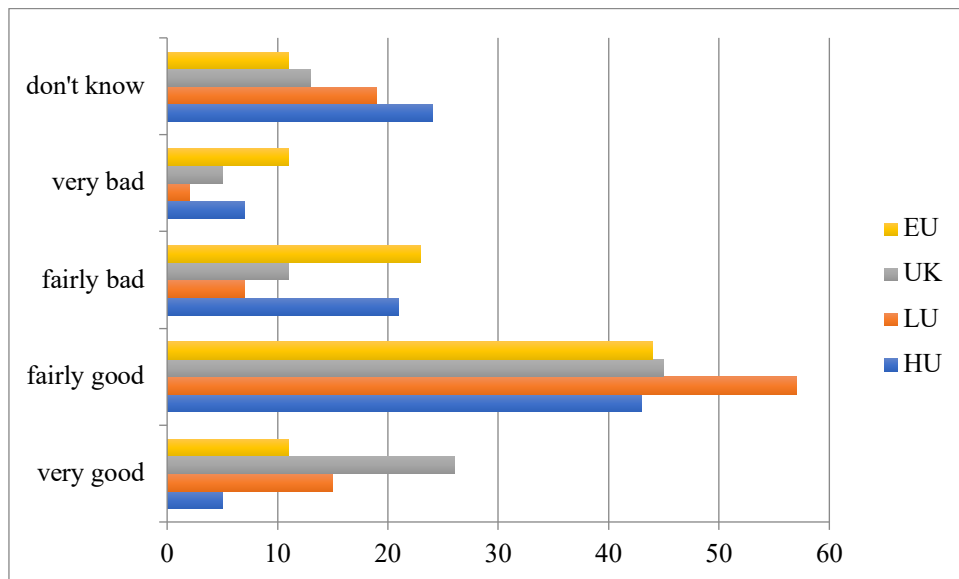
Figure 24: Flash Eurobarometer 2018: Citizen rating of national justice systems in terms of independence of the courts and judges (%)
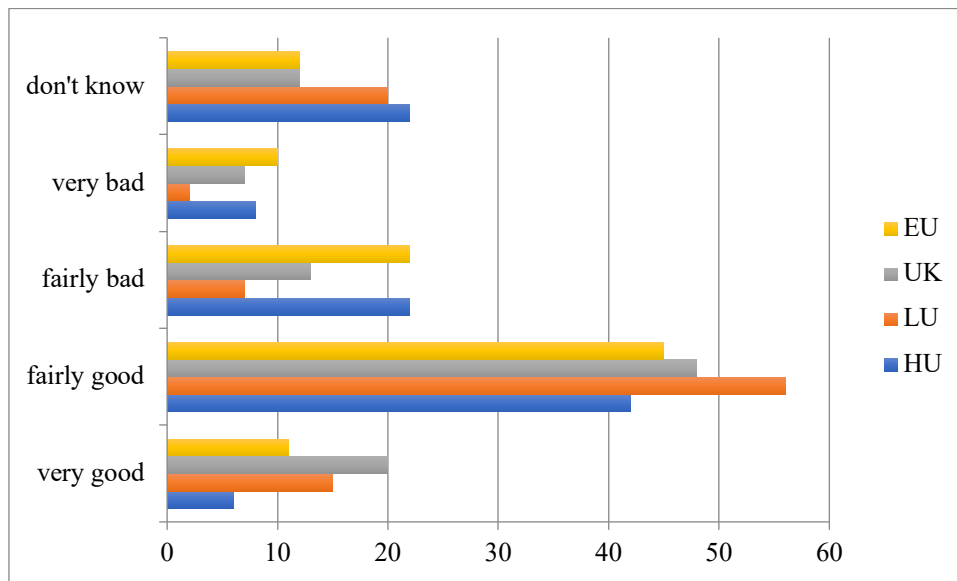
In 2016 – and the trend goes on throughout 2017 as well as 2018 – the Hungarian national justice system is perceived as less independent than in the other two countries or the European average, while the Luxembourgish, again, have the highest confidence in the independence of the courts and judges out of the three cases. The UK results fall only slightly behind (by 3%). Regarding the negative assessments, Luxembourgish results point out that only a small segment (8%) of citizens believe that the national courts and judges are not independent. The rate is higher both in the UK and in Hungary, 18% and 33% respectively, while the EU average is as high as 36%. Also, a higher proportion of Luxembourgish and Hungarian respondents are indecisive in the question than UK citizens or the average European. By 2017, the proportion of those Hungarian citizens who cannot decide whether the courts and judges are independent or not increases to 24%, whilst the rates remain the same or very close to the ones of 2016 in the other two countries. UK citizens become more convinced by the independence of the judicial system (an 8% increase in the rate of those who believe the courts and judges are very independent, and a 7% decrease in the rate of those who believe the courts and judges are fairly independent). 2017 sees only slight changes in the case of Luxembourg. In 2018, the number of those who believe that the judicial system is very independent falls back by 6% in the UK, which represents the biggest change compared to the 2017 results in the three countries, as well as the EU average.

Figure 25: Flash EB 2016-2018: average of positive and negative perceptions about the independence of the courts in the three countries
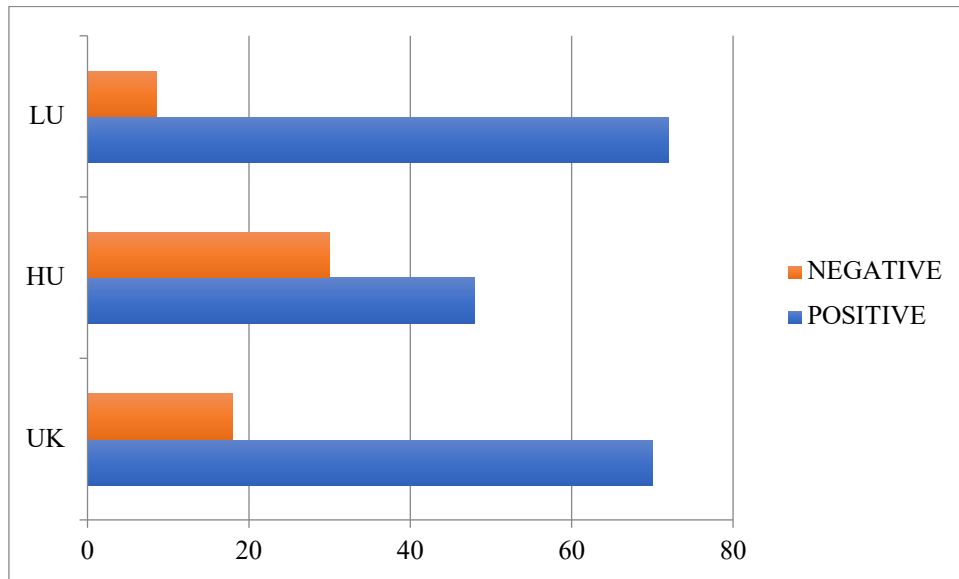
The above chart shows the rate of the average positive and negative perceptions of citizens regarding the independence of the judiciary, 2016-2018. In the period, altogether Luxembourg had the strongest confidence in judicial independence, followed by the UK, and then Hungary.

III.5.3.4 Special Eurobarometer 2016: Media Pluralism and Democracy

Figure 26: Public opinion on whether the national media provides trustworthy information
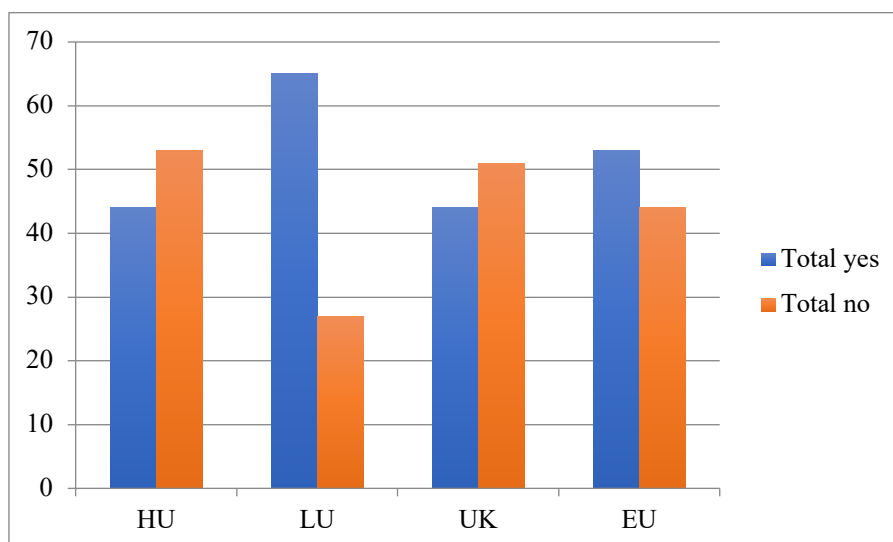
Figure 27: Public opinion on whether the media is more free and independent than five years ago
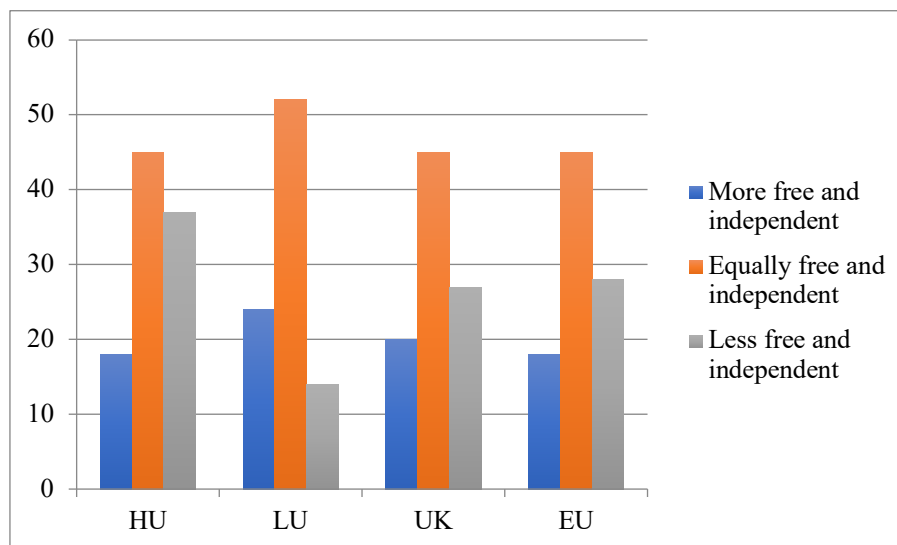
Hungary's media legislation reform received wide national/opposition and international criticism (e.g., the Venice Commission's report on the media law in Hungary, 2015). Not surprisingly, the 2016 Special Eurobarometer on Media Pluralism shows a low faith (18%) in the improvement of media freedom in the five-year long period prior to the survey. This number mirrors the EU average, too. 45% of the people thought there was no change regarding the freedom of the media compared to the previous five years, while 37% recognized backsliding. The majority of Luxembourgers (52%) felt no change, 24% found media freedom improving, while 14% thought the media is less free and independent than five years ago. In the UK the trends are like those of Hungary. 45% found that the media is just as free and independent as before. However, while only 20% of respondents felt an improvement, 27% thought media freedom was in decline compared to the past.

III.5.4 European Social Survey: Europeans' Understandings and Evaluations of Democracy – Topline Results Round 5 and 6 for UK and Hungary

Data Sources: *Trust in Justice: "Topline Results from Round 5 of the European Social Survey" (Jackson et al) and "Europeans' Understandings and Evaluations of Democracy: Topline Results from Round 6 of the European Social Survey" (Ferrin, M., Kriesi, H.)*

III.5.4.1 ESS: Dimensions of Democracy

Table 37: Dimensions and Sub-dimensions of Democracy in the European Social Survey Round 6 Module

ELECTORAL DIMENSION[805]	
Competition	Free and fair elections
	Differentiated offer by parties
	Opposition free to criticise the government
Vertical accountability	Retrospective accountability via elections
	Justification of decisions by the government
Deliberation	Participation in political discussion
Responsiveness	Responsiveness to citizens
	Responsiveness to other EU governments
LIBERAL DIMENSION	
Rule of law	Equality before the law
Horizontal accountability	Checks and balances on government power via the courts
Minority rights	Protection of minority rights
Freedom of expression	Freedom to express one's views
Freedom of the press	Media freedom

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[805] Ferrin, M., Kriesi, H. (2014): Europeans' Understandings and Evaluations of Democracy: Topline Results from Round 6 of the European Social Survey' based on 'European Social Survey Round 6, 2012. p. 3

	Media reliability
SOCIAL DIMENSION	
Social justice	Protection against poverty
	Reduced income inequality
DIRECT DEMOCRACY DIMENSION	
Direct participation	Citizen participation via referenda
INCLUSIVENESS DIMENSION	
Inclusiveness	Inclusiveness of participation rights (migrants)
TYPE OF REPRESENTATION DIMENSION	
Type of representation	Majority vs. proportional

III.5.4.2 People's Views Regarding Democracy in their Own Countries

According to the survey, both the UK and Hungary belong to those 24 participating countries where, on a 0-10 scale, the **level of support for the idea of democracy** is above 8.[806] Regarding **what people consider essential in a democracy**, in the case of the UK, all the liberal-, the social-, and the direct democracy indexes including all their constituting factors, such as competition, responsiveness, accountability, the rule of law, minority rights, or freedom of expression and the freedom of the media, are between 3 and 4 (with the direct democracy index showing the highest mean), while in Hungary the results are all between 5 and 6 (with the social democracy index winning). This implies that Hungarians are more demanding about their democratic system than UK citizens.

Considering **how people see the functioning of their own democratic system**, the UK performs relatively better regarding the procedural features of electoral democracy as well as

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[806] Ibid. p. 4

liberal democracy (functioning of the institutions). In the UK, all three dimensions – liberal, social, and direct democracy – are evaluated between 4,5 and 6 on a 0-10 scale, whilst in Hungary, none of the indexes reaches 5 (with the social democracy index barely reaching 4 points). Sub-dimensions of liberal democracy represent the best performance results both in the UK and in Hungary, while social democracy indexes are the lowest in both countries. It is noticeable that in the UK the performance of the government has a better evaluation than the importance the citizens associate with these three dimensions of democracy, while in Hungary experiences are the opposite: citizens, again, are seemingly more demanding towards democracy.

Figure 28: ESS Round 6 Results for Hungary
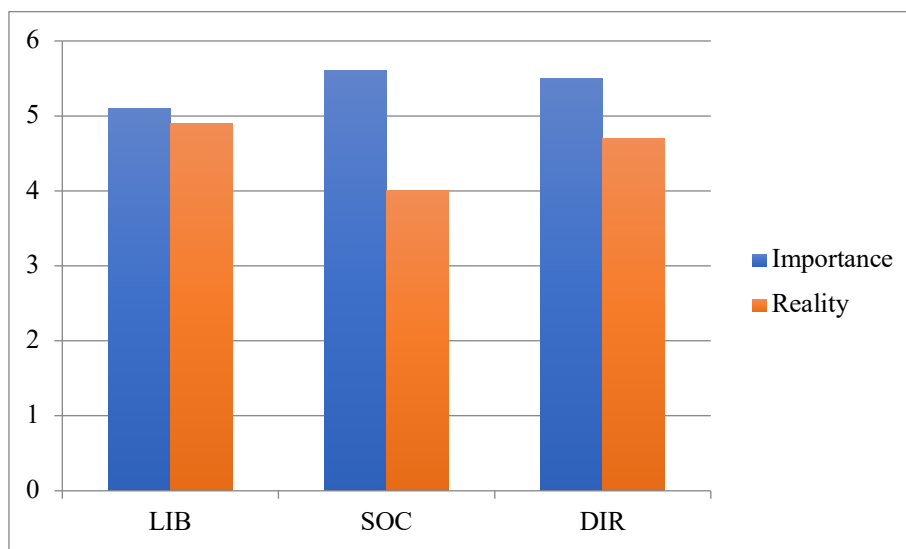
Figure 29: ESS Round 6 Results for the UK
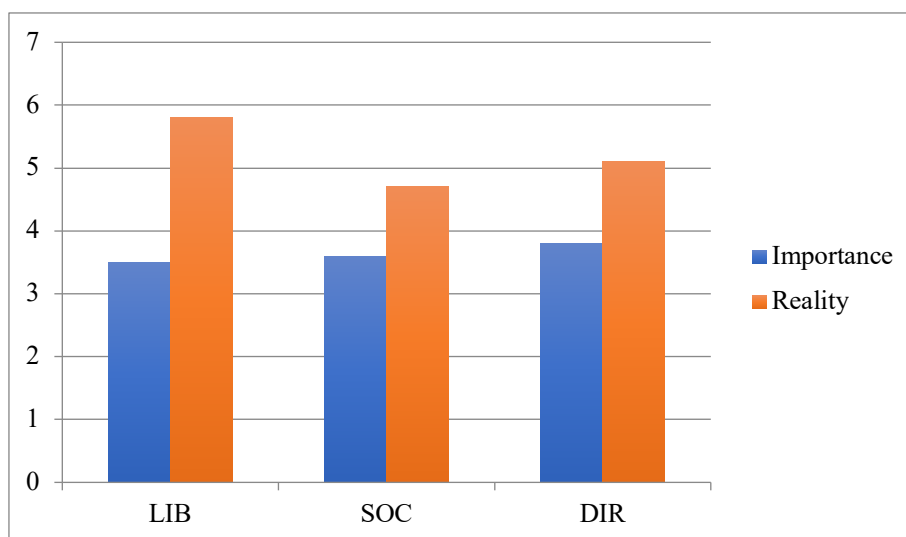
III.5.4.3 Trust in Justice: Topline Results from Round 5

Trust in the justice system is interconnected with legitimacy: citizens, 'outsource' deterrence and justice functions to the institutions, and in return, they expect them to be fair, impartial, and effective. Trustworthiness of institutions is defined by ESS along three dimensions: effectiveness, procedural fairness, and distributive fairness, while legitimacy is sought in people's consent to power as well as their sense of the normative justifiability of power.[807] Also, legitimacy consists of three elements: legality, shared values, and consent (Beetham).[808]

Firstly, the question of citizen trust in courts: how fair the citizens consider the courts are to majority vs. minority ethnic groups, as investigated by ESS Round 5. As ESS results show, in Hungary the extent to which citizens perceive their courts to be biased by race (whether minority or majority) is much greater than in the case of UK citizens. In Hungary, 54% believe that the courts are partial, and the extent to which citizens believe that a person from a minority ethnic group is more likely to be found guilty is 42%. In contrast, UK results show higher equality in the question: 61% think that both a person belonging to the majority ethnic group and a person belonging to a minority ethnic group have the same chance to be found guilty, whilst 30% believe that persons of minority ethnicity are more likely to be convicted.

Figure 30: ESS Round 5, views on how fair the courts are to majority vs minority race - HU

ESS Round 5, views on how fair the courts are to majority vs minority race - HU

■ Person from minority / ethnic group more likely to be found guilty

■ Person from majority / ethnic group more likely to be found guilty

■ Same chance to be found guilty

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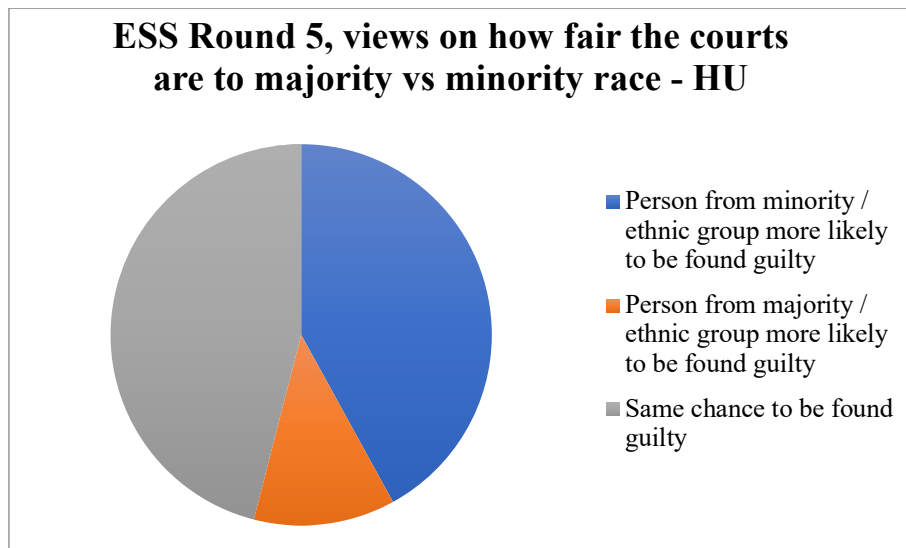
[807] Jackson, J. et al (2011): Topline Results from Round 5 of the European Social Survey. pp. 8-10.
[808] Ibid., pp. 3-4
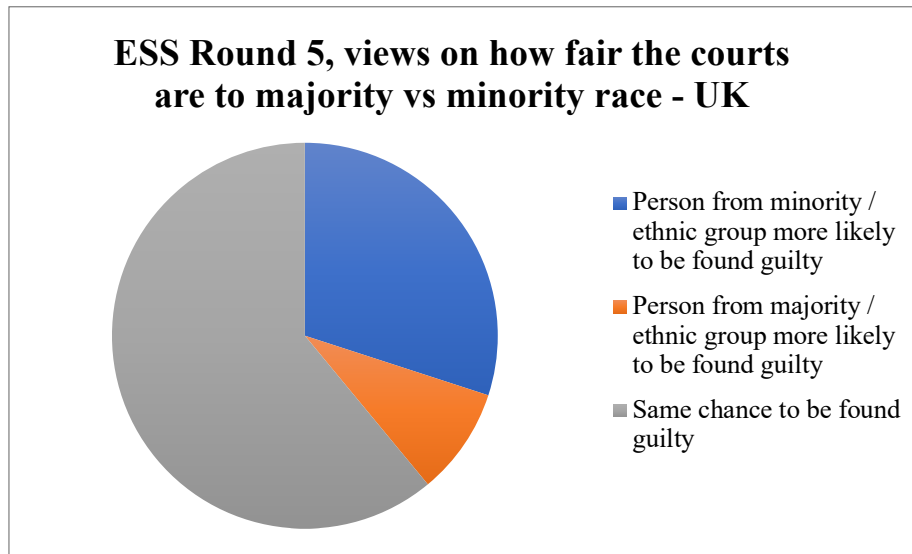
Secondly, regarding whether citizens believe their courts are capable of making fair and impartial decisions, both Hungary and the UK reach a point between 6 and 6,5. However, when it comes to how often courts make mistakes that let guilty people go free, UK citizens appear to be more critical than Hungarians (5,2 and 4,4 points respectively). Finally, regarding the corruption of judges, UK citizens perceive their judicial system as less corrupt than how Hungarians perceive their own (2,5 and 3,7 respectively).

III.5.4.4 Flash EB (2016, 2017, 2018) and ESS Round 5: Public Opinion on the National Justice System

Data from the three Flash Eurobarometer reports as well as the report on trust in the national justice systems from the 5th round of the European Social Survey allows us to compare two cases of the case study: the UK and Hungary. According to the findings of the Flash EB (2016, 2017, 2018) and ESS round 5, Hungarians are more sceptical about the independence of their courts and judges than UK nationals, furthermore, the judicial system in Hungary is perceived as more corrupt than those in the island country. While 61% of UK respondents believe that their courts and judges are unbiased by race, the rate in Hungary is 46%, whereas 42% of the citizens of the post-Eastern bloc member state believe that a person from a minority race or ethnicity is more likely to be found guilty than a person belonging to the majority ethnic group. In the UK the latter is 30%. The overall picture is that UK citizens perceive their justice system as more independent and reliable than Hungarians. However, based only on the result of Flash

EB, Luxembourg shows the highest level of trust towards their national judiciary system in terms of the independence of the courts and judges.

III.6 Micro Level: Education For Democratic Citizenship

The purpose of this section is to understand what education for democratic citizenship is, its importance regarding the quality of democracy, its relationship with political culture at its different levels, and its situation in our three case studies. Before investigating the status of education for democratic citizenship in the three cases, let us recall the recommendations laid down in the Charter on Education for Democratic Citizenship and Human Rights of the Council of Europe as a reference point.

III.6.1 Council of Europe: Charter on Education for Democratic Citizenship and Human Rights Education / Recommendation CM/Rec(2010)7

Firstly, the Recommendation gives a definition of education for democratic citizenship. According to the document, *"education for democratic citizenship means education, training, awareness raising, information, practices and activities which aim, by equipping learners with knowledge, skills and understanding and developing their attitudes and behaviour, to empower them to exercise and defend their democratic rights and responsibilities in society, to value diversity and to play an active part in democratic life, with a view to the promotion and protection of democracy and the rule of law"*[809]. Enhancing the understanding of democracy amongst the citizens is a key aspect of 'good democratic functioning', as Diamond and Morlino put it. After all, how could one expect citizens to behave in a way that contributes to 'good' democratic functioning and enforces his or her democratic interests, or to demonstrate "democratic approval" (a key factor of democratic stability), or deliberate on political issues and will to participate, if the citizen does not have sufficient knowledge about democracy and his or her democratic rights? **Education for democratic citizenship may be a pillar of the democratic culture, it may strengthen participation (therefore, invoke a growth in the amount of 'participant type citizens') and the willingness to scrutinize decision-makers and hold them accountable.**

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[809] Council of Europe (2010): Recommendation CM/Rec(2010)7. p. 7

Secondly, according to the Recommendation, "human rights education means education, training, awareness raising, information, practices and activities which aim, by equipping learners with knowledge, skills and understanding and developing their attitudes and behaviour, to empower learners to contribute to the building and defence of a universal culture of human rights in society, with a view to the promotion and protection of human rights and fundamental freedoms."[810] In both definitions, distributing knowledge and enhancing understanding are the key objectives, which goes beyond the individual citizen – the micro level of our political culture model –, spreading to the societal level – meso/2 level of the model.

The Recommendation includes the following principles. Firstly, "the aim of providing every person (…) with the opportunity of education for democratic citizenship and human rights education"[811], secondly, it states that the above process requires the involvement of different stakeholders, such as **policymakers, educational professionals, learners, parents, institutions, authorities, civil servants, NGOs and youth organisations, and of course the media**. Regarding the objectives of education for democratic citizenship: "teaching and learning practices and activities should follow and promote democratic and human rights values and principles; in particular, the governance of educational institutions, including schools, should reflect and promote human rights values and foster the empowerment and active participation of learners, educational staff and stakeholders, including parents; (...) the promotion of social cohesion and intercultural dialogue and the valuing of diversity and equality, including gender equality; (...) to develop knowledge, personal and social skills and understanding that reduce conflict, increase appreciation and understanding of the differences between faith and ethnic groups, build mutual respect for human dignity and shared values, encourage dialogue and promote non-violence in the resolution of problems and disputes."[812] Besides understanding and knowledge, a third objective the document emphasises is empowering citizens „with the readiness to take action in society in the defence and promotion of human rights, democracy and the rule of law"[813].

One must realise the evidence of linkages between the level of the aforementioned factors (and citizen behaviour) and the nature and quality of a country's democratic political culture. The

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[810] Ibid., p. 7
[811] Ibid., p. 8
[812] Ibid., p. 9
[813] Ibid., p. 9

better the factors the Recommendation points out, the better the quality of the country's democratic culture, and the lesser the chance for future democratic backsliding.

Weinberg and Flinders, adapted from Westheimer and Kahne (2004, p. 240) the typology of citizens.

Figure 32: The Three Types of Citizens

	The individualised citizen	The participatory citizen	The justice-oriented citizen
Nature	Acts responsibly in his/her community. Works and pays taxes. Obeys laws. Recycles, gives blood. Volunteers to 'lend a hand' in times of crisis.	Active member of community organisations and/or improvement efforts. Organises community efforts to care for those in need, promote economic development or clean up the environment. Knows how government agencies work. Knows strategies for accomplishing collective tasks.	Critically assesses social, political and economic structures to see beyond surface causes. Seeks out and addresses areas of injustice. Knows about democratic social movements and how to effect systemic change.
Behaviour	Contributes food to a food drive.	Helps to organise a food drive.	Explores why people are hungry and acts to solve root causes.
Assumptions	To solve social problems and improve society, citizens must have good character, they must be honest, responsible and law-abiding members of the community.	To solve social problems and improve society, citizens must actively participate and take leadership positions within established systems and community structures.	To solve social problems and improve society, citizens must question, debate and change established systems and structures that reproduce patterns of injustice over time.

The above typography can be compared with the one of Gabriel Almond and Sydney Verba. While Almond and Verba identify the parochial, the subject, and the participant type of citizen, Westheimer and Kahne pin down the following three types: individualised, participatory, and justice oriented. The key difference of the two models is that all three types of citizens in the latter model (even the 'individualised type') shall be considered 'participant' (to a different extent), while the parochial and subject types of the traditional model of Almond and Verba are either oriented towards day-to-day survival or, although having a certain level of understanding and knowledge about political dynamics, they are rather the 'subject' of the system, and do not take part in its formulation and shaping through participation or scrutiny.

III.6.2 Education for Democratic Citizenship in Luxembourg, the UK, and Hungary

III.6.2.1 Luxembourg

Starting with Luxembourg, the very first question to answer is whether an organisation for the matter exists in the country. The relevant organisation is the Zentrum fir Politesch Bildung (ZPB) which has a programme for education on citizenship, which, in line with the Council of Europe Recommendation, includes learning about democracy, education for Europe, education for sustainable development (education for global citizenship), cultural education, media education, as well as human rights education.[814]

The principles laid down by the ZPB regarding education on citizenship: „Ban on indoctrination include, firstly, "the ban on indoctrination differentiates citizenship education from indoctrination and manipulation" as "in a democratic society, citizens, i.e., children, young people and adults, must form their judgment independently"[815]. Secondly, the controversy rule, which "requires that what provokes controversy in science and politics to be presented in the same way in citizenship education. It is therefore a question of examining in detail the different points of view, options, or models of interpretation"[816]. This entails a "student-centred and action-oriented teaching: the student should be able to analyse a political situation to find the means and procedures that will enable him to exert influence in the direction that suits him" with the objective of developing "the ability to act concretely, a logical consequence of the two principles mentioned above".[817]

III.6.2.2 United Kingdom

According to Beauvallet's publication in Revue Française de Civilisation Britannique (2016), "citizenship education at secondary school level across the UK is taught in different ways: as a statutory subject in England and Northern Ireland; as a non-statutory subject in Wales; as a

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[814] Fondation Zentrum fir Politesch Bildung: https://zpb.lu/zpb/le-zpb-et-leducation-a-la-citoyennete/#1511969161145-5b18bf68-84d0. Accessed 17/11/2020.
[815] Ibid.
[816] Ibid.
[817] Ibid.

cross-curricular theme in Scotland"[818]. The drive behind the improvement of citizenship education in the UK from the late 1990s on was "concerns over low participation and a lack of trust in politicians and politics among young people"[819]. Thus, the two key factors are, firstly, participation, which is a procedural aspect of the quality of democracy in the model of Diamond and Morlino; secondly, confidence which is one of the essential factors at the micro level of the political culture model this thesis uses.

In the assessment of the efficacy of citizenship education, Beauvallet recalls a 2010 study, according to which "there has been a marked and steady increase in young people's civic and political participation and indications that these young people will continue to participate as adult citizens. In contrast, there has been a hardening of attitudes toward equality and society, a weakening of attachment to communities and fluctuating levels of engagement, efficacy, and trust in the political arena"[820]. These results show a "mixed picture": based on these results one can assume that citizen education has a limited power of enhancing democratic quality. The efforts of citizenship education, nevertheless, are not to be underestimated. In the practical (bottom-up) sense, knowledge, besides (the top-down) legal guarantees, is the foundation of most factors that are considered elements of the quality of democracy.

The organisation with the key focus on citizenship education in the UK is the Association for Citizenship Teaching (ACT). As stated on their website, "ACT is the subject association for Citizenship representing teachers and others involved in Citizenship education", "founded in 2001 (…) and set up as a registered charity"[821]. "Politicians from all parties, teachers and young people campaigned for citizenship education to be part of the curriculum (...)". As a result, Citizenship has been a statutory National Curriculum subject in England since 2002.[822]

The quality of citizenship education is backed by another organisation, Democratic Life (DL), which states that "citizenship education is essential for preparing young people for our shared democratic life". The organisation draws attention to the importance of the quality of citizenship education.[823] Seeking the definitions of citizenship and citizenship education, one can find the following on the website of DL: "Citizenship involves people acting together to

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[818] Beauvallet, A. (2016): Four Nations Going Their Own Ways? Citizenship Education in the United Kingdom », *Revue Française de Civilisation Britannique* [Online], XXI-1 | 2016, Online since 18 July 2016. http://journals.openedition.org/rfcb/727 (Accessed: 27/11/2020)

[819] Ibid., p. 5.

[820] Ibid., p. 6.

[821] ACT Official Website (2020): https://www.teachingcitizenship.org.uk/about-act (Accessed 01/12/2020)

[822] Ibid.

[823] Democratic Life Organisation Official Website (2020): http://www.democraticlife.org.uk (Accessed: 02/12/2020)

address issues of common concern to maintain our democratic culture and to improve society. To achieve this goal, Citizenship education teaches the knowledge about politics, the law and the economy and skills to participate effectively and responsibly in public and democratic life. Through citizenship education, students explore questions about democracy, justice, inequality, and how we are governed and organised; learn to work together to create solutions that try to address challenges facing neighbourhoods and wider communities; develop political literacy to make a positive contribution to society as informed and responsible citizens"[824].

The essential elements in the above definition and how they relate to political culture: knowledge and understanding (micro level), working together, and addressing challenges facing wider communities (meso/2 level), inspiration for making a „positive contribution" to society, with responsibility (both meso/2 and micro).

III.6.2.3 Hungary

According to Kaposi, "the new National Core Curriculum (NAT) of 2010 assigns an important role to the national tradition and to the development of national identity, including the nurturing of the identity of those belonging to Hungarian nationalities and minorities."[825] As Kaposi explains, "the part of the text on Education for Citizenship and Democracy in Development Areas is based on the principle that Hungary is a democratic state under the rule of law, in which the constitutional order can be derived from fundamental human rights, and the state's task is to guarantee these inalienable rights, full and predictable legal certainty for the individual, equality before the law and the courts. Consequently, social community norms are guaranteed by laws, i.e., the rule of law prevails at all levels of public life. (…) The document defines active citizenship, which on the one hand, creates harmony between individual goals and the public good, and on the other hand ensures social cohesion (cohesion), and can be based on a national self-awareness, which in the long run can also be interpreted as a nation-building and unification program. The expectations set out in the document articulate the development of an active civic attitude based on universal human rights, complemented by a focus on human dignity and the denial of non-violence (…). Compliance with the rule of law and coexistence, as well as the principle of equity, which essentially means ensuring equal

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[824] Ibid.
[825] Történelemtanítás online történelemdidaktikai folyóirat (online journal): http://www.folyoirat.tortenelemtanitas.hu/2016/02/kaposi-jozsef-allampolgarsagra-demokraciara-neveles-06-03-02/ (Accessed: 02/12/2020)

opportunities (educational, cultural, etc.) for members of society, appear to be the determining criteria for citizenship."[826]

Thus, today, citizenship education falls within the field of history education in Hungary. The National Core Curriculum has the following points in this regard are as follows. "(Art 1.1) History education shall help students to (point 4) be familiar with the functioning of a democratic state, the rule of law and human rights; (points 7-11) strengthen the national identity that sees the nation as having evolved throughout history group as well as a natural point of reference; – the development of a European civilizational identity based on the basic values of antiquity, Judeo-Christian culture and the Enlightenment; – develop a democratic commitment that values majority decision-making, human rights and the protection of minorities, and takes active steps to exercise and protect them; – develop social responsibility, sensitivity, empathy, solidarity and adherence to norms, which consider responsibility for the community and individual choices to be fundamental values; – develop individual initiative and responsibility, which at the same time considers freedom and responsibility to be fundamental and to ensure sustainable development for the community."[827]

As Gomboczné highlights in her article (2016), "certain associations of the Hungarian social sphere specifically aim to promote democratic education, such as the DIA (Foundation for Democratic Youth), the Kurt Lewin Foundation, and the Civitas Association. In some high schools, remarkable results have been achieved in the development of alternative methods to promote democratic behaviour – for instance, in the Alternative High School of Economics. Yet experience shows that good methods that have already been tried do not reach the walls of schools in a comprehensive way"[828].

In conclusion, the characteristics are the **emphasis on religion; nationalism; the lack of independent classes specifically for education on democratic citizenship.**

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[826] Ibid.
[827] Nemzeti Alaptanterv (Hungarian National Core Curriculum): https://www.oktatas2030.hu/wp-content/uploads/2018/08/a-nemzeti-alaptanterv-tervezete_2018.08.31.pdf (Accessed on: 12/12/2020)
[828] Taní-Tani Online Pedagogic Forum: http://www.tani-tani.info/az_aktiv_allampolgarsagra_neveles_oktataspolitikai_koncepcioi (Accessed: 02/12/2020)

III.7 Micro Level: Political Participation

III.7.1 Participation in The United Kingdom

Data on election turnouts[829] in the UK between 1997-2019 show a moderate level of participation. As the table below shows, participation in national elections slightly decreased after the 1997 elections. In the examined period, the overall average turnout was 65,1%.

Figure 33: UK: Elections Turnout 1997-2019 (1)
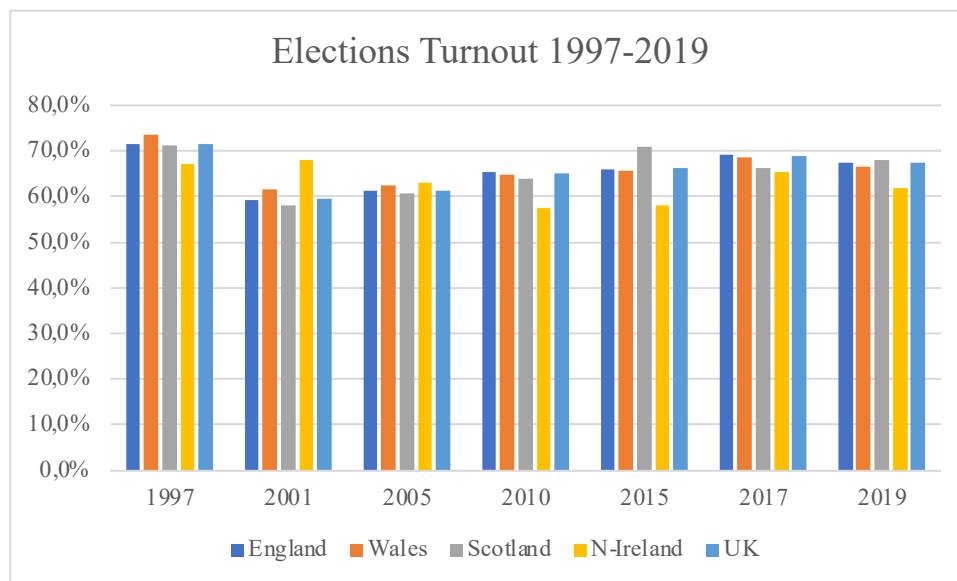
In the period of 1997-2019, by an average of 66,2%, Wales shows the highest participation at national elections, while by 63%, Northern Ireland has the lowest turnout.

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[829] UK Parliament House of Commons Library (2022): UK Election Statistics: 1918-2022: A Century of Elections. Source: https://commonslibrary.parliament.uk/research-briefings/cbp-7529/ (Accessed on: 27/02/2023)

Figure 34: UK: Elections Turnout 1997-2019 (2)

Turnout 1997-2019

	England	Wales	Scotland	N-Ireland
Turnout	~65.7%	~66.2%	~65.7%	~63.0%
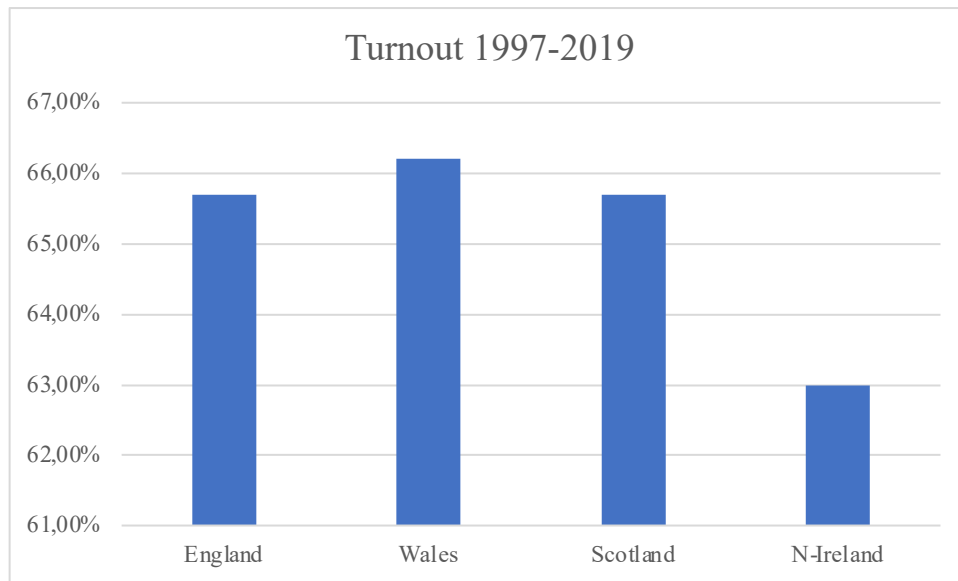
Data from EVS 2008 and 2017 contribute to the understanding of the generally moderate turnout. The majority of respondents were not satisfied with their government as shown by both EVS surveys (64 and 62%, respectively). UK respondents showed a generally low level of trust in the parliament, in the government, and in political parties, and the level of interest in politics significantly decreased from 2008 to 2017. Similarly, Eurobarometer 2007-2019 data show a generally low trust in the democratic institutions of the UK.

Comparing the results of EVS 2008 and EVS 2017, UK citizens showed an increase in trust in the government and in the parliament; however, the level of trust was relatively low (30% and 33%, respectively). In 2017, 84% and 80% responded positively to the idea of participation in national and local elections, respectively. As EVS 2017 results show, the rate of those who believe that voters are bribed was low in the UK (22%). Compared to the generally low trust in democratic institutions, the trust in political parties was even lower (17%). Distrust in the parliament, the government, and parties appear together with a low percentage of the belief that the system ensures that everyone has a fair chance to participate in politics (25%).

A low rate of UK citizens follow politics on the radio and on social media; in 2017, television is still the most important source of information and tool for shaping public opinion. The level of interest in politics saw an immense drop. While in 2008, 42% showed great or a certain level of interest in politics, in 2017, the rate was as low as 17%. On the other hand, to the question of whether politics are important, more people responded positively than before (54%).

Therefore, politics are considered rather important by the majority of respondents, but the interest in politics is low.

The 2016 Brexit referendum saw relatively high participation. 51,9% supported leaving the EU against 48,1% who voted 'remain'.

Figure 35: Brexit Referendum (1)
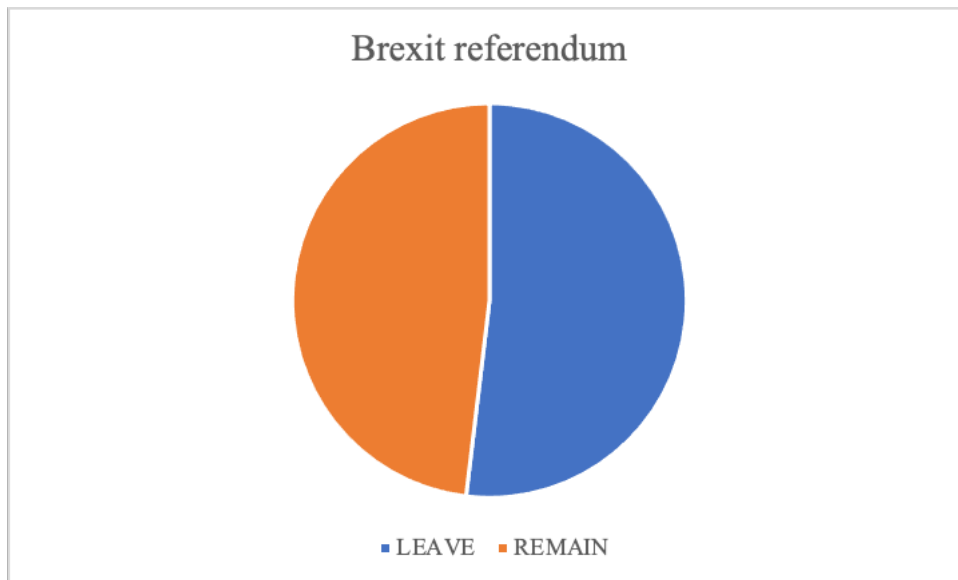
Participation in the Brexit referendum of 2016 was higher than the general trend regarding national elections, even though the referendum in the UK is solely consultative. As the chart shows, from roughly 46 million citizens registered on the list of voters 33,5 million votes were cast. This means a 72,2% turnout.[830]

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[830] The Electoral Commission (2016): Report on the 23 June 2016 referendum on the UK's membership of the European Union. Source: https://www.electoralcommission.org.uk/sites/default/files/pdf_file/2016-EU-referendum-report.pdf (Accessed on: 01/03/2023)

Figure 36: Brexit Referendum (2)
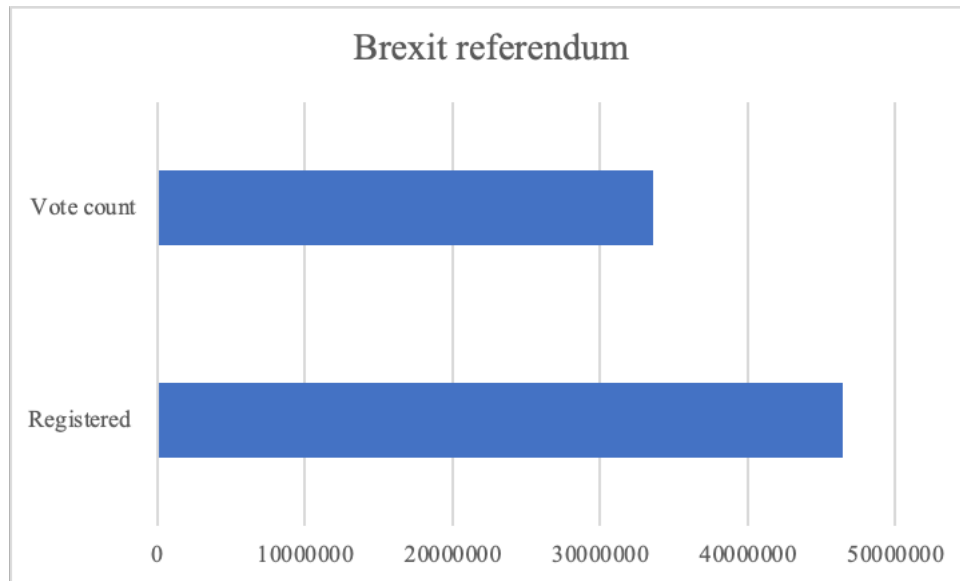
An example of the role and importance of raising public awareness of politics and democratic participation is the practice of the national Electoral Commission before the Brexit referendum. The report of the commission shows that the people felt rather well-informed on the referendum, except for the consequences of a leave vote. The organisation initiated a multimedia campaign about the referendum to increase public awareness and to "provide all adults with the information they needed to take part in the referendum rather than prioritising those in under-registered groups"[831]; including "signposting people to information on the arguments for either outcome of the referendum"[832] as it was requested by citizens, for gaining more clarity. The campaign included a voter's guide and ran on multiple online and offline platforms, such as television, radio, in the streets, and on social media, encouraging people to take part in the referendum ("you can't miss it"). The target was to spread information to at least 80% of the population. The organisation's report shows that 66% of the population reported to have seen at least one element of the campaign UK-wide. We find the highest percentages in Scotland and Northern Ireland (73% and 74%, respectively)[833], which is remarkable since these two countries voted remain. In comparison, the success of the awareness campaign reached 65% and 64% of the people in the UK and in Wales, respectively. Altogether 69% reported to had had sufficient information to vote with confidence.[834] The report shows

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[831] The Electoral Commission (2016): Report on the 23 June 2016 referendum on the UK's membership of the European Union. p. 37
[832] Ibid., p. 37
[833] Ibid., p. 41
[834] Ibid., p. 41

that the most important difficulty regarding the level of information was about what would happen in the event of a 'leave' outcome: 41% found it easy it obtain information against 45% who found it difficult.[835] Furthermore, 80% of voters showed confidence that the referendum was well run, while 29% felt that a little or a lot of electoral fraud could have taken place.[836] The latter group has concerns including the security of postal voting, that fraud is a general issue, and the occurrence of multiple registrations.

The referendum was surrounded by heated deliberation on sovereignty and immigration, strong populistic slogans, and created significant cleavages, sometimes within families. Brexiter slogans and arguments included "we want our country back" (Nigel Farage); "we want our country back"; "take back control"; and taking back the "right to act independently".[837] The development of these stems from UKIP leader Nigel Farage, whose rhetorical skills as a politician certainly influenced the dynamics of the campaign. One can suggest a link between the high participation at the EU referendum and the gravity of these slogans and arguments.

III.7.2 Participation in Hungary and the Reformed Electoral System

Figure 37: HU: National Elections Turnout 1998-2022

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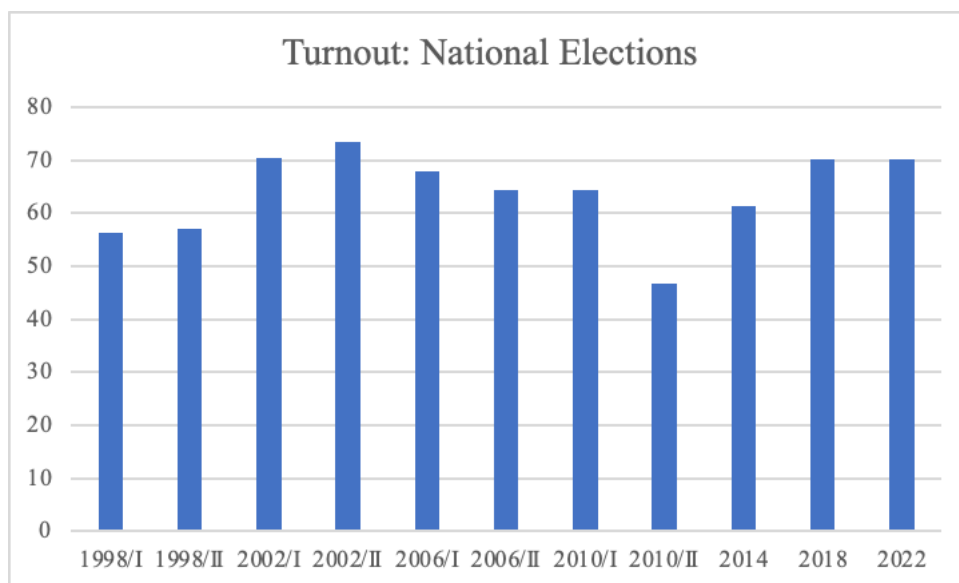
[835] Ibid., p. 45
[836] Ibid., pp. 75-76
[837] Morillas, P. (2017): Setting the Brexit Agenda: Populism and UKIP in the United Kingdom. Source: https://www.cidob.org/en/articulos/cidob_report/n1_1/setting_the_brexit_agenda_populism_and_ukip_in_the_united_kingdom (Accessed on: 02/03/2023)

The above table summarises voter turnout in the national elections between 1998-2022[838]. After losing the elections of 2002 to the Socialist-Liberal party alliance (MSZP and SZDSZ), Orbán's Fidesz, in alliance with the Christian Democrats, was re-elected in 2010 and has been in government since with relatively high participation.

The electoral law changed in 2011. The new electoral law introduced a single-round election system, reduced the number of MPs from 386 to 199, reduced the number of constituencies from 176 to 106, raised the proportion of single-member constituency mandates from 46% to 53%, changed the nomination system, and eliminated compensative mandates. Furthermore, suffrage was extended to Hungarian citizens over the borders who do not have permanent residence in the country. Hungarian NGO Political Capital Institute concludes in its analysis that the new electoral law represents a shift towards the majoritarian principle and "threatens future election results to become even more disproportional when comparing mandate proportions in Parliament to proportions of votes cast for party lists"[839]. In addition, the law benefits the right wing by the way constituencies are drawn:

"(it) fails to establish that constituencies should be drawn in a way that best reflects the municipal structure of any given region. In the absence of such principles, most of the cities concerned (such as Miskolc, Szeged and Pécs) have been divided into constituencies in a way that some suburban settlements have been added to them as well (…). Note that in Debrecen and Székesfehérvár, there are electoral districts that have been carved out without adding such small, suburban settlements as well. This is the first point where one can suspect that the designers of the electoral map were influenced by electoral databases from the past".[840]

The report points out that the new electoral law, like the Fundamental Law, is a one-party law which was enacted without the consideration of differing opinions of other political parties of the national parliament. Controversies around the law revolve around two issues: "the suspicion of gerrymandering and the decision to compensate the winner in single-member-constituencies (…) a solution unknown to election systems in the rest of the world".[841]

During the 2022 elections, participation was particularly high in Budapest. The capital city is divided into 18 constituencies. The average turnout in the constituencies was 75,3%, higher

[838] Nemzeti Választási Iroda: Országgyűlési választások. Source: https://www.valasztas.hu/orszaggyulesi-valasztasok (Accessed on: 27/02/2023)
[839] Political Capital (2012): The New Electoral Law in Hungary – In-Depth Analysis. Source: https://www.valasztasirendszer.hu/wp-content/uploads/PC_ElectoralSystem_120106.pdf (Accessed on: 27/02/2023)
[840] Ibid.
[841] Ibid.

than both the national average 70,22%, and all the other 19 electoral districts of the country. 17 out of the 18 constituencies elected the candidates of the united opposition. All other constituencies of the country elected the candidates of the Fidesz-KDNP party alliance. This example demonstrates well the shifting political fragmentation of the capital and the rest of the country.

EVS 2008 and 2017, in line with the results of Eurobarometer data from the same period, show an important increase in terms of citizens' trust in the national parliament and government. Furthermore, satisfaction with the government grew from 25% to 45% in the period. In 2017, 41% of Hungarian respondents show satisfaction with their political system, while in 2008, only 21% were happy with the development of democracy in the country. Trust in political parties was very low in both surveys (10% and 16%, respectively). A relatively high percentage of respondents share an interest in following politics on television (49%), which shows that television, similarly to the UK, is still the main source of political information in 2017. However, the latter data is not in line with the very low results regarding interest in politics which fell to 11% in 2017. The rate of those who find politics very or somewhat important was also relatively low: 30%.

In the 2017 survey, a striking 50% of respondents found that voters are bribed in elections. In addition, 5% found that it is possible to participate in politics, while 10% found that the system ensures fair conditions for participation. Morale for participation appeared to be high, on the other hand: 91%, 90%, and 80% would have participated in national, local, and European elections, respectively.

On the one hand, a growing approval for Orbán's illiberal regime is shown through the data (both EVS and Eurobarometer), which is in line with the election results of the past three general elections which repeatedly re-legitimized the system. On the other hand, the rate of citizens who showed interest in politics and found it important was low. Respondents did not show much faith in the possibility of participation but expressed by a significant percentage that voters can be bribed.

This increase in public trust in the government allows us to make two observations. First, the MSZP-SZDSZ government (a coalition of the Hungarian Socialist Party and the Alliance of Free Democrats) had particularly low confidence among the people as well as a low reputation, especially after ex-PM Ferenc Gyurcsány's speech in Őszöd (Hungary), delivered at the closed congress of the Socialist Party in 2006. The speech, in which Gyurcsány criticised the Socialist

Party and expressed his concerns about misleading the people and not delivering promises (all this in the context of a debt crisis), was leaked and consequentially led to the collapse of both the socialist and the liberal parties and destroyed the political left. The leaked speech from Őszöd was a turning point in the history of post-Socialist Hungary and prepared the path for Orbán's success, including the phenomenon of such a significant growth in confidence in the government, outlined by EVS data. The second observation stems from the fact that PM Orbán's governments (in coalition with the Christian democrats) between 2010 and 2022 managed to take two-thirds of the parliamentary seats each national election. The 39% confidence rate is still lower than what two-thirds representation in the national assembly could imply. This discrepancy sustains the claim about the distortions in the electoral system of the country.

III.7.3 Participation Culture in Luxembourg

It is essential in understanding Luxembourg's participation culture that it is mandatory for all registered voters to participate in elections and referendums; unjustified abstentions are punishable by a fine.[842] During the "Chamberwalen", the citizens from four electoral districts elect 60 deputies for a term of five years. The Southern district is represented by the most deputies (23). The tables below gather data regarding election participation between 1999-2018.

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[842] Official Elections Website of the Grand Duchy of Luxembourg: Principles – Legislative Elections. Source: https://elections.public.lu/en/systeme-electoral/legislatives-mode-emploi/principes.html (Accessed on: 12/12/2022)

Figure 38: LU: Elections turnout 1999-2018
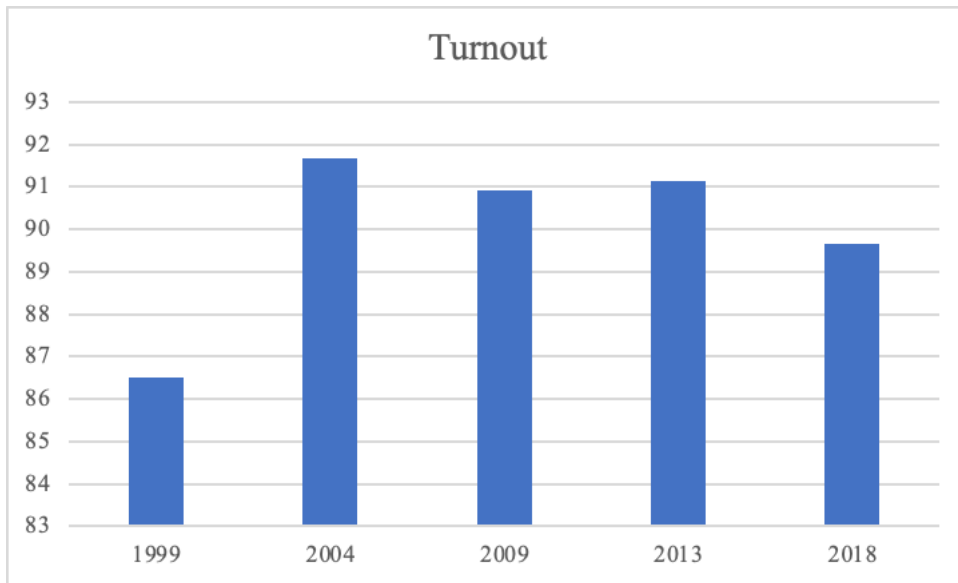
Figure 39: LU: Number of registered voters 1999-2018
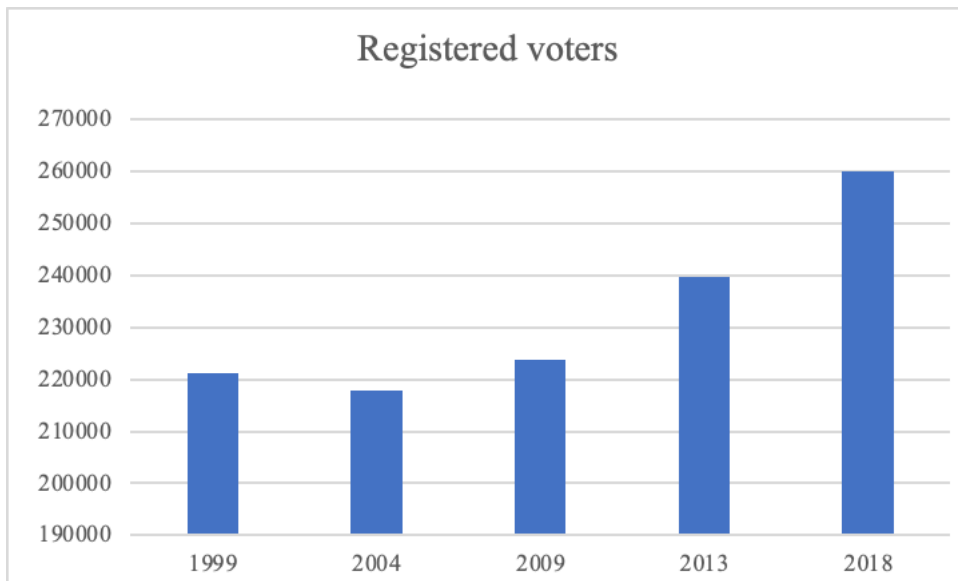
Figure 40: LU: Vote count vs. registered voters 1999-2018
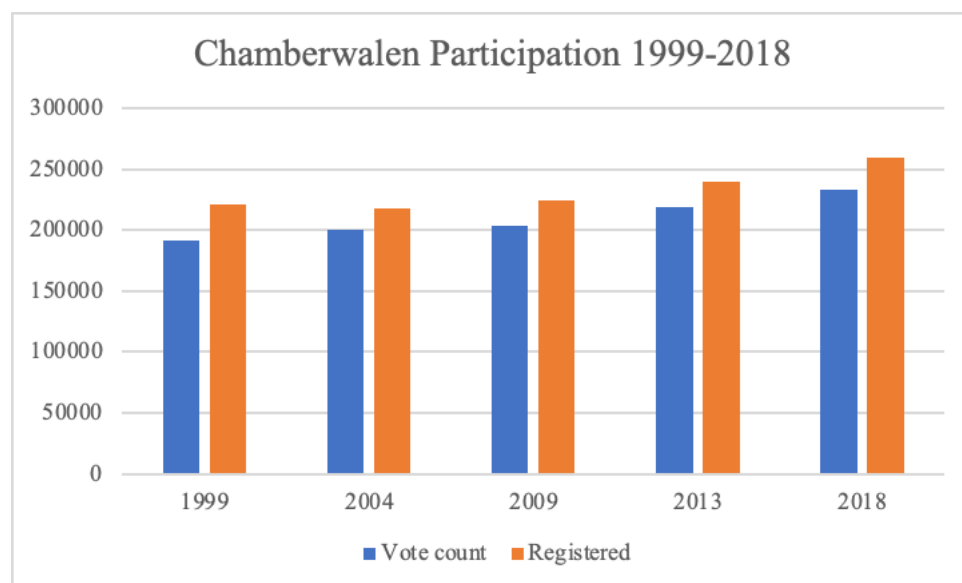
The above tables show data[843] on voter turnout and the number of registered voters in the national elections 1999-2018. Data observes a gradually rising number of registered voters from 2004. Between 2004 and 2018, the number of registered voters grew by 16 percent. Data show that in 2018, 45,52% of all candidates were women, which is a significant growth compared to the 2013 national elections, where the ratio of women was 34,44%.[844] Data does not show any significant growth in the number of blank votes in the period.

In the Grand Duchy, participation is a part not only of the political culture, but of the Luxembourgish culture itself, too. The number and diverse scope of civil society organisations, especially relative to the size and population of the Grand Duchy, sustain the above idea. Strong mobilization and engagement at the level of civil society as a part of the political culture (meso/II level), if supported by the actors at the meso/I institutional level throughout inclusion in decision-making and responsiveness to the demands of organisations, is beneficial for the quality of democracy. In addition, through the lenses of the concept of Almond and Verba, participant citizens contribute to a higher-level democratic quality.

EVS results showed a high level of public satisfaction with the extent to which the Grand Duchy is governed democratically, with the functioning of their own democracy, as well as with the development of democracy in the country. Luxembourgish answers show the highest

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[843] International Foundation for Electoral Systems: Grand Duchy of Luxembourg. Source: https://www.electionguide.org/countries/id/126/ (Accessed on: 27/02/2023)
[844] IPU Parline: Luxembourg Chamber of Deputies. Source: https://data.ipu.org/node/100/elections?chamber_id=13451&election_id=27890 (Accessed on: 27/02/2023)

interest in politics not only among our three cases but compared to all other countries included in the Survey (where data available) [845]: the rate of positive responses to interest in politics grew from 55% to 67%. The high level of interest indicates that the high turnout at elections and referendums does not necessarily stem from the mandatory nature of participation.

In EVS 2017, Luxembourgish results show the highest level of interest among the three countries in following politics on different media platforms. The most important source of gaining political information remains daily newspapers (50%), followed by television (49%), radio (47%), and social media (37%). There is a strong overall interest in following politics through these channels which is another element of the Luxembourgish participant culture.

Eurobarometer results 2007-2019 equally show that confidence in the national parliament and government is significantly higher than in the other two cases. The generally stable positive perception about how democracy works in Luxembourg (which includes the answers of non-national residents too), paired with the high level of confidence in democratic institutions and the high level of participation reveal the strengths of the meso-societal level of Luxembourgish political culture. The exceptionally high level of interest in politics is a further pillar of the participant culture. The challenges to democratic quality and to Luxembourg's participant culture are, however, firstly, the lack of involvement of the 47% of the society that does not hold citizenship, secondly, the decreased level of confidence in political parties, as data from EVS show (the rate of those who have a large or certain amount of trust in parties dropped from 40% to 27% between 2008 and 2017, which could potentially be followed by a further decrease due to the regulations to tackle the COVID-19 pandemic).

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[845] At the time of the completion of the thesis, data is not available on Belgium, Greece, Ireland, Northern Ireland, Moldova, Latvia, and Kosovo. Atlas of European Values. Source: https://www.atlasofeuropeanvalues.eu/maptool.html (Accessed on: 28/02/2023)

IV Analysis

IV.1 Country Specific Characteristics of Political Culture

IV.1.1 United Kingdom

IV.1.1.1 Political Culture Without a Canonised Constitution

The above observations allow us to conclude that Brexit has not only had a destabilising impact on the macro level of the political culture in the United Kingdom through undermining constitutional stability by shaking parliamentarism, but also affected other levels of the country's political culture, and provoked democratic backsliding, in several fields. Brexit showed us the weaknesses of a British constitutional constellation, i.e., the lack of a canonised written constitution. Brexit tested the UK's parliamentary system, and independently from how parliamentarism stands the tests, it deepened the social division within British society.

IS/B explained the following: "Parliament is fairly toothless in the UK; that is the tradition. But there have been some changes over time: more backbench independence; a somewhat more assertive House of Lords, although there are severe limits on what it can do; the introduction of select committees 40 years ago, which play some role in holding the government accountable. When a government has a majority like Boris Johnson's, controlling members of his/her own party can be equally or more important than the opposition. That is what we are seeing at the moment. But this is more his own party controlling him than the parliament." Regarding the role of the Supreme Court: The court's ruling on Johnson's attempt to prorogue parliament, along with one or two other rulings on Brexit issues, showed that it can be effective in extremis. But this is over the government, the executive, rather than the legislature. Legislative power is relatively weak in the UK."

IV.1.1.2 The Devolution of the Parliament and Fragmentation on the Macro Level of the Political Culture

The United Kingdom has a segmented structure on the macro level of its political culture due to the nature of the Union: not a federal system but presents federal features; without a federal constitution but with overwhelming power for Westminster.

A unique characteristic of the meso/institutional level of British political culture is the system of devolution, "the process of transferring power from the centre (Westminster) to the nations and regions of the United Kingdom"[846]. At the end of the 1990s, the new system of devolution followed wider trends of the democratic world (Belgium, Canada, Australia, the USA, etc), but with significant differences. "Under the UK constitutional tradition of parliamentary sovereignty devolution is, in theory, reversible."[847] Since the powers of the devolved subnational and sub-ordinated assemblies remain under the control of the centre, the state, de jure, is a unitary state. The relevant legislative acts for the establishment of the devolved institutions are (1) the Scotland Act 1998, (2) the Government of Wales Act 1998, and (3) the Northern Ireland Act 1998, establishing the Scottish Parliament, the Welsh Senedd, and the Northern Ireland Assembly.[848]

Reflecting the explanation of Democratic Audit, while in a federal system, there is a clear and constitutionalised set of roles and competences of the central and sub-national governments, the British system greatly relies on the principle of parliamentary sovereignty, meaning that "the Westminster Parliament cannot bind itself legally. (…) major policies (especially defence, foreign affairs, and most tax-raising and welfare) are 'reserved powers' belonging solely to the UK centre"[849]. Although different competences have been devolved to the sub-national assemblies, "as a matter of strict law, the UK Parliament has merely authorised the devolved legislatures to make laws on certain matters, without relinquishing its own authority to make law on any matter it chooses — including devolved matters"[850]. Therefore, the so-called 'Westminster reserved powers model' means that the UK Parliament retains the power to make laws on certain reserved matters, even if they are devolved to the Scottish Parliament, the Welsh Parliament, and the Northern Ireland Assembly.

Prof. Blick compares the UK system with federalism as follows:

> "Devolution is not synonymous with federalism. (…) But devolution and federalism have points of similarity, and in implementing devolution the UK could be said to have moved in a federal direction (…). As a consequence of devolution, the UK now has a series of territorial

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[846] Official Website of the UK Parliament: House of Commons Library (2022): Introduction to devolution in the United Kingdom. Source: https://commonslibrary.parliament.uk/research-briefings/cbp-8599/ (Accessed on: 03/02/2023)
[847] Ibid.
[848] Ibid.
[849] Democracy Audit (2022): How Democratic are the Basic Structures of the UK's Devolution Settlement? Source: https://www.democraticaudit.com/2018/11/20/audit2018-how-democratic-are-the-basic-structures-of-the-uks-devolution-settlement/ (Accessed on: 03/02/2023)
[850] Ibid.

sub-units with legislative and tax-raising powers that are to some extent politically entrenched. The system is subject to oversight by a Supreme Court. In this sense it has federal features, with the devolved territories akin to the 'states' of a federal constitution, and the UK institutions comprising the federal tier. However, in contrast to the arrangements typically found in federations, the UK lacks a 'written' constitution to which all institutions are subject, with the Westminster Parliament retaining ultimate legal 'sovereignty'. Nor is there a chamber within the UK legislature that gives specific representation to the sub-UK territories. The Joint Ministerial Council, established to provide a forum in which the UK and devolved executives can consult (…), is widely regarded as a flawed and ineffective institution. The comprehensive and consistent coverage of a federal constitution is absent."

Brexit revealed sub-national cleavages. London, Scotland, and Northern Ireland voted to remain with a high percentage, while England and Wales supported Brexit. Democracy Audit points out a 'legal fog' around the allocations of different competences to the centre and sub-ordinated assemblies in light of Brexit, explaining the following:

"On the one hand the Brexit process involves the UK as a whole leaving behind a series of international treaty obligations, and treaty-making is clearly a Westminster reserved function; in addition, Westminster ministers argue that where a common policy previously applied within the EU to the whole UK territory (as with international trade) then for economic integration reasons it must continue to have a common policy stance post-Brexit. However, on the other hand, many of the EU powers that are being repatriated under Brexit cover areas, such as agriculture, fisheries, transport (...), that clearly fall within the ambit of the devolved government in Scotland and (to a lesser degree) Wales."[851]

Critics pointed out the lack of inclusivity of the sub-national parliaments in the definition of the Brexit approach by Westminster, too: "the devolved governments have been largely excluded from the process of defining the UK's approach to Brexit and its negotiations with the EU, despite early promises by Westminster to the contrary"[852]. As a positive notion, though, as Nicola McEwen writes, "the extent of collaboration between the Scottish (SNP) and Welsh (Labour) governments has been unprecedented and key to their capacity to exert influence over the UK government"[853]. One manifestation of the cooperation of the devolved bodies is the Miller Case we mentioned before in the thesis. All three governments submitted applications together with the case, arguing that the consent of the Scottish Parliament, the Senedd, and the

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[851] Ibid.
[852] Ibid.
[853] McEwen, N. (2018): Article 50 One Year On: Devolution. UK in a Changing Europe. Source: https://ukandeu.ac.uk/article-50-one-year-on-devolution/ (Accessed on: 03/02/2023)

Northern Ireland Assembly was a condition to invoke Article 50. Although in Miller vs. Secretary of State the UK Supreme Court ruled that a parliamentary vote was mandatory for the invocation of Article 50 by the government (Theresa May at the time), it rejected the applications of the sub-national governments.[854]

A second example we would like to mention is the limitation of powers of the Scottish Parliament when Westminster vetoed the transgender recognition reforms (to make it easier to change gender) passed by the Scottish Parliament. According to Mark Drakeford, first minister of Wales, the veto "set a dangerous precedent"[855] as it shows that the central parliament can intervene in devolved matters at its will. Westminster can legally do this under section 35 of the Scotland Act 1998, arguing that the Scottish reform would have brought modifications of the law in some fields belonging under "reserved matters" (i.e., central competencies), such as the equality of opportunity, taxing, and social benefits.[856]

IV.1.1.3 The Shadow Cabinet

The institution of the Official Opposition Shadow cabinet[857] is a specific characteristic of the British parliamentary culture and the Westminster-type democratic system. The shadow cabinet, in practice, is an alternative cabinet, formed under the leader of the opposition, consisting of opposition spokespeople, who, as "shadow ministers", mirror the members of the governing cabinet. However, without executive power and responsibility. The importance of the shadow cabinet is to be found in its tasks of scrutinising and holding accountable the government and providing alternative policies.

The general literature, as Eggers and Spirling point out, has much more focus on the governing cabinet than on its opposition shadow counterpart, and there is no clear academic consensus on when exactly the institution of shadow cabinet emerged. Eggers and Spirling point out that "the

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854 Supreme Court of the United Kingdom (2017): 2017 UKSC 5. Judgement. Source: https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf (Accessed on: 03/02/2023)
855 BBC News (2023): Gender Reform: Drakeford Says Scottish Law Block is a Dangerous Precedent. Source: https://www.bbc.com/news/uk-wales-politics-64304540 (Accessed on: 03/02/2023)
856 UK Government Scotland Equality Hub: Policy statement of reasons on the decision to use section 35 powers with respect to the Gender Recognition Reform (Scotland) Bill. Source: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1129495/policy-statement-section-35-powers-Gender-Recognition-Reform-_Scotland_-Bill.pdf (Accessed on: 03/02/2023)
857 In September 2022, Hungary (not for the first time during its history) also saw the birth of a shadow cabinet in the Országgyűlés (the national parliament), when the Democratic Coalition announced that it would form a 'shadow government' (árnyékkormány) under the leadership of Klára Dobrev, the "shadow prime minister". To date, there is no info on their website regarding their programme. See: https://dobrevarnyekkormany.hu/program

informal practice by which a parliamentary opposition critiques the government has a long history: it was well underway by the 1720s, with the present-day term of the 'His Majesty's loyal Opposition' first appearing in debate in 1826"[858]. An essential parliamentary Act which gives further orientation in the question is the Second Reform Act (1867; expanded the suffrage), after which the opposition became gradually more aggressive in its agenda-setting incentives. Eggers and Spirling explain the following: "(…) the Shadow Cabinet emerged as a collection of opposition leaders with specific designs on governmental roles, putting forth a more unified policy-based appeal than had been previously used in elections. (…) analysts have pointed to early campaigning efforts by Liberal leader William Gladstone in the late 1870s as the start of this process"[859]. The authors also point out that in procedural terms, the shadow cabinets are relatively weak, due to the overpowered government which is not hindered much in imposing their will (IS/B pointed this out too). Consequently, "the opposition rarely achieves legislative victories"[860]. In their analysis based on the established metric for measuring the individual agenda-setting abilities of MPs and the opposition, Eggers and Spirling focus on the period between 1832-1915. They found that the governing "cabinet was always more bursty than the opposition, on average", however, as noted above, the opposition started to grow more assertive after the SRA (1867).

On the one hand, the institute of the shadow cabinet, although not having executive powers, represents scrutiny over the government and seeks more balance between the two major political groups in the Commons. On the other hand, it provides a boost to parliamentary deliberation. With more power and responsibility assigned to the opposition shadow cabinet, the parliament could be a decision-making forum with better representation of political interests and the citizens, which is essential in a system where two alternating major parties dominate politics for centuries, under majority rule. Furthermore, giving more competence to the opposition cabinet, or ascribing obligations to the governing and the shadow cabinets for consultation and exchange of views on policy questions, might raise the consensus-making capacity in policy matters. Nevertheless, as Roberts pointed out, it would be more difficult to assign accountability for specific decisions.

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[858] Eggers, A., Spirling, A. (2016): The Shadow Cabinet in Westminster Systems: Modeling Opposition Agenda Setting in the House of Commons, 1832–1915 (no specific page number accessible in the online version)
[859] Ibid.
[860] Ibid.

IV.1.1.4 Brexit Caused Legal Uncertainty and Challenged the UK's Democratic Political Culture

Brexit gave birth to countless situations where British (and other EU) citizens could not have relied on legal certainty anymore (e.g., pension rights of those British citizens who were employed in other EU member states) – the essential principle for the law to be certain and coherent, i.e., clear, precise, and foreseeable, predictable in its application. Legal certainty is a pillar of the rule of law (Radbruch), furthermore, it is a general principle of EU law. However, while exiting the EU, the UK failed to provide its citizens with this general principle.

IS/B points out "Brexit is also relevant. Brexit was partly supposed to be about parliament "taking back control." Thus, some people would argue that Brexit has enhanced democracy and accountability; but others would argue that it has not, in the sense that a government with considerably less than 50% of the popular vote is less constrained. Lastly, the Supreme Court showed that there are limits on what a government can do when it ruled against Boris Johnson's attempt to prorogue parliament. In sum, I do not think we can talk about improvement or decline in the UK; despite Brexit, things have stayed largely the same over the last 10-15 years and what really matters, as it always has, is the size of a government's majority in the House of Commons".

Brexit also caused a democratic backsliding in terms of the rule of law. McCrudden (Queen's University Belfast) points out a "breakdown" of the rule of law in the post-Brexit UK: "The sad reality is that Brexit has contributed to an emerging breakdown of the Rule of Law in the United Kingdom (…) And by Brexit, I do not mean only the simple act (…) to leave the European Union, but the ideology of Brexit. (…) the ideology of Brexit was not one simple idea but an amalgam of separate and sometimes contradictory principles, and it is obvious that the success of the referendum was due to the Leave campaign's ability to persuade voters to vote leave for entirely different reasons. The famous slogan: 'Take Back Control' left open what a post-Brexit society should become. (…) 'taking back control' became, in effect, the only principle and anything that stood in the way of achieving that result was to be sacrificed, including the Rule of Law."[861]

During our interview IS/D, explained their concept of political culture, the British political culture, and how Brexit challenged it. They define political culture as follows: "(…) dominant

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[861] McCrudden, C. (2022): *The post-Brexit Breakdown of the Rule of Law in the UK, Verfassungsblog. Source:* https://verfassungsblog.de/the-post-brexit-breakdown-of-the-rule-of-law-in-the-uk/ (Accessed on: 11/01/2023)

perceptions around the way things are done, how society is governed; and the democratic and social contract, such as norms. (…) And then also dominant perceptions. These things comprise political culture. The previous ways of seeing the social contract (the democratic contract), of organising the state and society, and the perceptions. (…) and the way it was done historically. And then it's constantly constituted by present-day practices that either validate or re-validate those norms, challenge those norms (…). Challenge that culture, and either it holds in much the same way that it always has, or it breaks open and changes and modifies slightly. Certain elements of the British political culture have remained sort of steadfast and strong. As time has evolved, and as challenges have come in terms of norms and perceptions of the way in which essentially the state and society should be run (…), the core elements have remained, and others have been challenged and been modified."

They explain that the British political culture, due to the nature of its constitution, is norm-based: "so you have historically held and created sort of norms around how state and society interact, the terms of that interaction through obviously popular sovereignty and then the procedures that uphold it and what it looks like for politicians and elected members of parliament and then governments to appeal to those norms. It's all essentially built up over centuries and it looks and functions a particular way. And in the UK. In particular, without the Constitution, it really is very norm-based like."

IS/D identifies Brexit as an internal challenge to the British political culture. "(…) in light of Brexit, which, of course, we can talk (about) the challenge (it poses to) points of the political culture. (…) (Brexit) became a challenge to the political culture of the UK, and the way politics is done because they were elected again, and then, again. The internal party fight became a challenge to the political culture of the UK. (…) the referendum on the European Union led to something that has never been done before and really should never be a question. Sovereignty put to a majority vote – we already decided that that isn't a legitimate way of dealing with those questions. Referendums for information, only on domestic issues, not international affairs, etc.; but anyway, they decided to do that. And I think that was a real challenge point for political culture in the UK and it came from within rather than from the outside. And then the second one, within the party, (…) power tussles around the same question meant that decisions were taken that went against norms of political culture."

IV.1.1.5 Rising Political Activity and Citizen Scrutiny

However, the emerging need for a canonised constitution brought on by Brexit and the public and political debate that the preparation of it might provoke will probably have a positive impact on the quality of the UK's democracy, also since it would have to happen with a wide and profound public dialogue. Both deliberation on the level of the citizens, dialogue between political parties and their voters demand education and sufficient information about legal, socio-political, and public matters.

Plus, throughout the debate around Brexit, and more specifically, its legal realisation, we were witnessing an ever-growing level of activity in the UK Parliament, creating a "new parliamentary normal". The 2017-2019 Parliament held the longest parliamentary session since the English Civil War (298 sitting days; approximately 2658 hours).[862] The session also saw the first 'successful' confidence vote in the House of Commons in the history of the UK Parliament. The confidence motion is a democratic practice relying on convention in the case of the UK, "founded on the recognised position of the Opposition as a potential government"[863]. The precedent of finding the government in contempt of the House for the first time has the potential to establish a higher level accountability (both horizontal and vertical) in the long run, which is certainly beneficial for the quality of the country's democracy. The 2019 general election, which saw the victory of the Boris Johnson-led Conservatives (43.6%) was by some interpreted as a public approval of Brexit. Even though Johnson could not gain the majority of the votes, he could beat Labour's Jeremy Corbyn by a landslide victory.

One can observe a rise in the diversification of voter preference compared to the results of the 2017 elections, namely, a rise in the number of votes for the liberal democrats. While in the elections of 2017, LD won 7.4% of the votes in Great Britain, in 2019 11.6% cast their vote for them. Furthermore, two new parties won seats in the parliament: the Alliance Party of Northern Ireland and the Social Democratic and Labour Party (one and two seats of the 650, respectively).

Another factor which might benefit democracy in the UK in the long run is that Brexit "shook up" political awareness. In a survey by Britain Thinks, 68% responded that their impression of

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[862] House of Commons Library (2019): Is this the longest parliamentary session ever? Source: https://commonslibrary.parliament.uk/is-this-the-longest-parliamentary-session-ever/?utm_source=https://www.hansardsociety.org.uk (Accessed on: 28/09/2022)
[863] UK Parliament: Confidence motions. Source: https://erskinemay.parliament.uk/section/4683/confidence-motions/ (Accessed on: 28/09/2022)

their national parliament got slightly or much worse since the 2016 referendum. Also, in the Hansard Society's 2019 Audit of Political Engagement, 57% of respondents expressed less confidence in their MPs.[864] More awareness might be followed by a higher demand for accountability of political actions by the citizens, and a higher level of democratic scrutiny.

An important example of the rising citizen scrutiny are petitions to the Parliament. Firstly, the 'Revoke Article 50 and Remain in the EU' petition of 2019 engaged more than 6 million citizens[865]; secondly, the petition of 2016 for a second EU referendum was signed by more than 4 million citizens[866]; and thirdly, the 'Do not prorogue Parliament' petition of 2019 gained more than 1,7 million signatures[867]. Even though these petitions failed, they mobilised and engaged citizens. This raising engagement might not have had an immediate response and direct impact due to insufficient government responsiveness (a pillar of democratic quality) but serves democratic quality in the long run.

Furthermore, an example of civil deliberation is the Citizens' Assembly on Brexit. The aim of the initiative was to "show what a diverse sample of the UK electorate concluded about the Brexit options when they had had the chance to learn about them, listen to the arguments, and reflect on their own preferences and those of their fellow members"[868]. It was not the first of its kind; other initiatives for deliberation were, for instance, the Assembly North (2015) and Assembly South (2015). The Assembly on Brexit gathered fifty randomly selected voters to learn about their views and perceptions on how Brexit should take place. As the report highlights, "the Assembly offers a model for how high-quality democratic discussion might be fostered on a wide range of issues in the future. It shows that the deliberative approach can be employed with great success even on a contentious and polarising issue such as Brexit"[869]. Compared to the Luxembourgish experience of the Biergerkommittee, diversification regarding social class was higher in the case of the Citizen's Assembly on Brexit. While the

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[864] Hansard Society (2020): A New Normal? Parliament after Brexit. Source: https://www.hansardsociety.org.uk/publications/parliament-brexit-procedure-constitution-2017-2019#public-attitudes (Accessed on 30/09/2022)
[865] UK Government and Parliament Petitions. Source: https://petition.parliament.uk/archived/petitions/241584 (Accessed on: 15/11/2022)
[866] UK Government and Parliament Petitions. Source: https://petition.parliament.uk/archived/petitions/131215 (Accessed on: 15/11/2022)
[867] UK Government and Parliament Petitions. Source: https://petition.parliament.uk/archived/petitions/269157 (Accessed on: 15/11/2022)
[868] Renwick, A. et. al (2017): A Considered Public Voice on Brexit: The Report of the Citizens' Assembly on Brexit. Source: https://westminsterresearch.westminster.ac.uk/download/1f5fe9ee6777f06dfe343f5732bdec757edb6b4fe994de1ac63a2bfc496e381a/2889394/Citizens-Assembly-on-Brexit-Report.pdf (Accessed on: 02/03/2023) p. 5
[869] Ibid., p. 8

Biergerkommittee consisted of a very high percentage (over 80%) of citizens holding a university degree, the composition of the Brexit Assembly shows a balance of citizens from the ABC1 (middle class) and C2DE (working class) social groups, proportionally representing the UK population.[870] The latter difference can be explained by the fact that participation in the Luxembourgish committee was tied to the understanding of the Luxembourgish language and it did not proportionally represent the social construction of the Grand Duchy.

IV.1.1.6 The Growing Fragmentation of the Meso-Societal Level of Political Culture as a Drive for Brexit

Regarding the factors identified earlier for investigating the historical context of a political culture, we consider the question of fragmentation important for understanding the democratic crisis Brexit has provoked. By accessioning the European Economic Community in 1972, a process of fragmentation had started in the country's political culture which went beyond the already existing differences among the English, the Welsh, the Scots, and the Northern Irish. New (ethnic, linguistic, religious) factors of fragmentation appeared with the growing immigration into the UK, which had its first major peak after the 2004 EU enlargement. The political uncertainty brought on by the Brexit referendum of 2016 caused a significant drop in the numbers (although the net migration was still positive).[871] The process of fragmentation played a factor in the emerging nationalist sentiments and influenced the debate about interpretations of citizenship and national identity, leading to voting the UK out of the European Union, and the constitutional crisis afterwards. This proves that political culture does have an influence on the quality of democracy (hypothesis III). Shifts at different levels of political culture without a proper adaption to these on the political level has a risk to provoke democratic backsliding.

IV.1.1.7 Low Consensus-Making Capacity and Overpowered Government

As we learnt through the typology of Lijphart, and as Eggers and Spirling note, "Westminster governments are typically single party, and face few serious institutional impediments to

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[870] Ibid., p. 21 and p. 27
[871] The Migration Observatory at the University of Oxford (2022): EU Migration to and from the UK. Source: https://migrationobservatory.ox.ac.uk/resources/briefings/eu-migration-to-and-from-the-uk/ (Accessed on: 27/09/2022)

imposing their will"[872]. As mentioned before, among others, Roberts explains the trade-off between representativity and more transparent accountability for policy decisions.

One must observe a link between the majoritarian nature of the UK's political system and the political dynamics around Brexit which, accompanied by countless heated and passionate deliberations in the House of Commons, were dominated by the governing Conservative Party.

Delivering the will of the people – this was the mainline narrative of conservative UK politicians while the Jeremy Corbyn-led Labour lobbied for a second referendum ("must go back to the people"[873]) and a general election. In January 2019, the House of Commons voted down Theresa May's Brexit deal by 432 (of which 118 MPs were Conservative rebels) votes against 202 after which Corbyn tabled a vote of no confidence in the hope of new general elections.[874] The May Government survived the vote.[875] In March 2019, just two weeks before the date the UK was due to leave the EU, May's deal proposal got rejected again by the UK Parliament by 149 votes.[876] Consequently, May resigned in May 2019.[877]

In December 2019 Boris Johnson won the general election with 43.6 % of the votes (1.1 percentage points more and winning plus 48 seats compared to what the Conservatives gained in 2017), while Labour took only 32.1% (7.9 percentage points and 60 seats less compared to 2017). Johnson's win against Corbyn was interpreted as the public confirmation of legitimacy of their way of dealing with Brexit (with or without a deal), especially because Johnson achieved the biggest Conservative majority in decades, by devoting his government to delivering Brexit within months. David Runciman argues that 1) while Johnson and the conservatives had a clear position on the question, the Labour didn't ("something beats nothing in politics"), and voter preference leaned towards certainty; 2) Corbyn's weakness and failure as a party leader are both factors which played a role in Johnson's triumph in 2019.

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[872] Eggers, A., Spirling, A. (2016): The Shadow Cabinet in Westminster Systems: Modeling Opposition Agenda Setting in the House of Commons, 1832–1915. In 'British Journal of Political Science', 48(2), 343-367. Published online by the Cambridge University Press.
[873] BBC News (2019): Jeremy Corbyn: Brexit 'must go back to the people'. Source: https://www.bbc.com/news/av/uk-politics-49396648 (Accessed on: 12/12/2022)
[874] BBC News (2019): Brexit: Theresa May's deal is voted down in historic Commons defeat. Source: https://www.bbc.com/news/uk-politics-46885828 (Accessed on: 12/12/2022)
[875] BBC News (2019): May's government survives no-confidence vote. Source: https://www.bbc.com/news/uk-politics-46899466 (Accessed on: 12/12/2022)
[876] BBC News (2019): Brexit: MPs reject Theresa May's deal for a second time. Source: https://www.bbc.com/news/uk-politics-47547887 (Accessed on: 12/12/2022)
[877] BBC News (2019): Theresa May quits: UK set for new PM by end of July. Source: https://www.bbc.com/news/uk-politics-48395905 (Accessed on: 12/12/2022)

An example of the heated debates is the one of 20 December 2019 on the EU Withdrawal Bill. The government presented a new Brexit bill, while Opposition Leader J. Corbyn challenged not only the prepared deal but also the government's overall Brexit approach.

"Over the past three and a half years, the Government's mishandling of Brexit has delivered nothing but political gridlock, chaos, and economic uncertainty. It has paralysed our political system, divided communities and nations, and become a national embarrassment on an unprecedented scale. (…) This deal will not protect or strengthen our rights or support our manufacturing industry and vital trading relationships (…). Neither will it address the deep inequality in our system, nor secure the interests of every nation and region in the United Kingdom. Instead, under the Conservatives, this deal will (…) take us away from the essential principles that we believe in: a country that looks after everybody and protects those communities left behind by the excesses of the free market. This deal does not bring certainty for communities, for business or for the workforce. In fact, it does the opposite and hardwires the risk of a no-deal Brexit next year. (…) That is why Labour will not support the Bill, as we remain certain that there is a better and fairer way for this country to leave the European Union. (…) This deal is a roadmap for the reckless direction in which the Government and the Prime Minister are determined to take our country. They have done their utmost to hide its likely impact (…)."[878] On the same day, the government presented a so-called guillotine motion to be able to cut the debate around the new bill short.

51% represents "the will of the people", and 43.6% was enough in the UK for the biggest majority in the parliament in decades. In line with the winning majority principle, the side that lost might not be sufficiently represented. We can conclude that failing to provide a higher level of representation of diverging interests is disadvantageous for the democratic quality of the UK.

In our interview, IS/B pointed out the issue of the overpowered government explaining the following: "It is difficult to generalize for the UK over 10-15 years. This is because the answer depends quite a lot on the balance of power in the House of Commons. One of the most famous descriptions of British government in the 1970s was 'an elective dictatorship'. This was because a majority in the House of Commons meant that a government could more or less do

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[878] Official website of the UK Parliament – Hansard (2019): European Union (Withdrawal Agreement Bill). Volume 669: debated on Friday 20 December 2019. Source: https://hansard.parliament.uk/Commons/2019-12-20/debates/FE5B9762-F298-457B-8306-98D2D1D3519B/EuropeanUnion(WithdrawalAgreement)Bill (Accessed on: 08/02/2023)

what it wanted. That has not changed much, although the reform to the House of Lords under Tony Blair made the balance between parties more even than before in that chamber (it had always had an in-built Conservative majority before then). Academics have also been noting greater backbench independence in the House of Commons for some time. This means that in the last 10-15 years, coalition governments have been constrained in the House of Commons. But with a healthy majority, Boris Johnson—or any government with this kind of majority— can still do more or less what it wants."

IV.1.1.8 Threat and Brexit

Fear and the 'us against them' narrative accompanied the political campaigns surrounding Brexit. Malka et. al. found that "citizens who are culturally conservative tend to be more open to authoritarian governance compared to citizens who are culturally progressive"[879] as well as that the citizens of English-speaking democracies with protection-based and conservative values were more open to authoritarian governance. Their findings suggest that within English-speaking democracies the types of citizens who would be most receptive to appeals such as anti-migration populism will also be more inclined toward an anti-democratic sentiment[880].

Stevens and Banducci investigate Brexit through the lenses of Authoritarianism studies. The Leave campaign presented both the British system and the EU as a political structure as a failure. During the campaign, this narrative put the focus on the lack of control over immigration to the country both in the cases of the Labour Party and the Conservatives, particularly after 2004 with the accession of the Central-Eastern European countries.[881] Stevens and Banducci prove that "perceptions of the economic/cultural threats of immigration (…) have relatively stronger effects on libertarians, who are otherwise less likely to be pro-Brexit", thus it was not only amongst authoritarians for whom concerns about the control of borders provoked pro-Brexit attitudes.[882] However, a perceived normative threat did push authoritarians more than libertarians towards the pro-Brexit direction, which is a recurring factor in studies of right-wing authoritarianism (RWA).

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[879] Malka, A., et al. (2021): Who Is Open to Authoritarian Governance within Western Democracies? Source: https://www.cambridge.org/core (Accessed on: 31/10/2022) p. 8
[880] Ibid., p. 13
[881] Stevens, D., Bandolucci, S (2022): The Authoritarian Dynamic and Brexit: Understanding the Relationship between Authoritarianism and Wanting to Leave the EU. pp. 6-7
[882] Ibid., p. 27

It is an interesting parallel with how threat had been used in the narratives preceding and around the Brexit and how "threat" has been a political tool frequently used by the Hungarian government after 2011. There are clear differences, though. Firstly, the fact that the Brexit vote showed very close results, the society in the UK was not at all homogenous on the question. Contrarily, in Hungary Fidesz won four consecutive elections, gaining 2/3 of the seats in the Parliament, which shows a more homogenous answer from the people. Secondly, one must remember that democratic traditions and political culture are massively different in the two cases.

The element we observe to be relevant in both cases is migration, even if it types of migration in question differ. In the case of the UK, we talk about the intra-EU migration which challenged the concept of nationality and identity, while in the case of Hungary, the migration crisis has been exploited to the benefit of the government via propagandistic tools. The Hungarian referendum of 2015 about the Migrant Quota (like the 2022 referendum on LGBTQ in education) did not gain validation by the electorate, though, as the participation remained under 50%.

Therefore, migration as a perceived economic and cultural threat is a commonality in the case studies of the United Kingdom and Hungary. We conclude that "spreading threat", i.e., making people perceive certain social phenomena as "threats" and backing the process by disinformation, is certainly not beneficial for democratic functioning.

When asking them about their opinion on the relationships between the people's interest in politics and the quality of democracy, IS/D pointed out the role of the media in raising fear, and the abusive way it might shape public interest: "There is a filter of the media in terms of shaping confidence in politics. (The media) definitely shapes interests, but in an abusive way. Like, I'm going to make you care about it. I'm making you fearful and scared of".

IV.1.2 Hungary

IV.1.2.1 The Promotion of the Nation Constitutionalised

The first element of the nation-promoting characteristic of the constitution is the establishment of a 'National Credo'. The usage of the word Credo ("hitvallás") has a religious connotation, furthermore, The promotion of the importance of the nation is also reflected in the fact that the national symbols, i.e., the flag and the coat of arms, are visually included in the constitution.

The purpose of listing what the nation can or shall be proud of (e.g., becoming a part of Christian Europe a thousand years ago, the contribution of the Hungarians – "with their talent and diligence" – to the common European values, protecting Europe in battles, as well as the "great intellectual creations of the Hungarian people") is to boost the national pride among the citizens. Emphasising "heritage", a unique language, the Hungarian culture, as well as the languages and culture of the minorities in the country, and the contribution to European diversity with the country's rich culture can also be pointed out here.

IV.1.2.2 Not Inclusive at the Constitutional-Normative Level

The first element of exclusivity stems from the fact that the Fundamental Law was created and adopted by the governing parties, without a relevant public dialogue, and lead us to a problematic legitimacy. Fleck et al., when conducting an analysis on the creation of the Fundamental Law from three aspects, i.e., (1) formal legality, (2) adherence to rules of preparation, and (3) availability of the required social and political support, argue that during its enactment "the new Fundamental Law was only supported by the governing party alliance and was rejected by other parliamentary and extra-parliamentary parties". Fleck et al. define this as a "questionable legitimacy of constitution-making solely by the governing majority" and argue that this deficiency of legitimacy will remain in the future.[883]

The second factor is the exclusiveness of LGBTIQ+ persons from the definition of family, laid down by the Fundamental Law. Art. L defines the marriage of a man and a woman as well as the conventional style family as the bases for social relationships and the "survival of the nation", excluding the rights of LGBTIQ+ persons to marry and establish a family. However, based on 2021 IPSOS data, 46% of Hungarians support same-sex marriage, and 20% support the possibility of some sort of legal recognition of same-sex couples. The rate of those supporting same sex-marriage shows a 16% increase since 2013. Regarding adoption, IPSOS data show that 59% of Hungarians (an increase of 17% since 2013) think that same-sex couples should have the same rights to adopt children as heterosexual couples do, and 62% think that same-sex couples are just as likely as other parents to successfully raise children.[884] Based on these data, the constitutionalisation of the exclusion and prohibition of rainbow married couples

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[883] Fleck, Z. Et al. (eds. Arató, A. et al.) (2011): Opinion on the Fundamental Law of Hungary. Source: https://lapa.princeton.edu/hosteddocs/amicus-to-vc-english-final.pdf. (accessed on 18/07/2022) pp. 4-7
[884] LGBT+ Pride 2021 Global Survey. A 27-Country Ipsos Survey. Source: https://www.ipsos.com/sites/default/files/ct/news/documents/2021-06/LGBT%20Pride%202021%20Global%20Survey%20Report_3.pdf (accessed on 13/07/2022)

and families is not in line with the opinion of the majority of society. However, with 33% fulfilment of the "respect of human rights and full equality", Hungary, in tie with Albania and Serbia, ranks only 26th on the ILGA-Europe's Rainbow Map and Index.[885] [886] Furthermore, Art. VI of the Freedoms and Responsibilities chapter expresses the right to respect for one's private life and family. Guaranteeing one's right to respect for their family and private life and determining what family is (i.e., a union between a woman and a man, as well as "the mother is a woman, the father is a man") while excluding the possibility of LGBT+ marriages and their chance to establish a family, are particularly disharmonious. Art XVI/(1) expresses a rather unusual constitutional guarantee: the right of the children to their self-identity based on their birth sex. In this case, "right" becomes "exclusion" again: a manifestation of the rejection of transgendered and non-binary children, a particularly vulnerable group. The approach presented in the Fundamental Law misses respecting the Charter of Fundamental Rights of the European Union, of which Hungary is a part without any opt-out. Art. 21 of the Charter lists the prohibition of discrimination on the grounds of sexual orientation: "1. any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion, or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited"[887], establishing the norm of the protection of LGBTIQ+ persons. However, the Fundamental Law of Hungary clearly discriminates against this group of society with its definition of marriage and family which undoubtedly disrespects the "any discrimination shall be prohibited" provision of the Charter. As shown before, the problem was addressed by the Venice Commission too in its report on the Ninth Amendment to the Fundamental Law.

IV.1.2.3 Dominant Christian Values, a Homogenous Political Culture, and a Collectivistic Approach

Another element of exclusivity one must note is the predominance of the "Christian culture". Christianity appears in various chapters of the constitution, including the preamble, Art. R, and Art. XVI. In the preamble, Christianity is determined as a power to sustain the nation. The constitutionalisation of the dominance of the Christian culture appropriates values such as

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[885] ILGA-Europe(2021): Rainbow Europe Map 2021. Source: https://www.ilga-europe.org/files/uploads/2022/04/Rainbow-Europe-Map-2021.pdf (accessed on 13/07/2022)
[886] In comparison Luxembourg ranks 3rd, while the UK the 10th.
[887] Charter of Fundamental Rights of the European Union (2000/C 364/01), Art. 21 Non-discrimination

family, parenting, and education, inferring a lack of inclusiveness and establishing dissonance with some constitutionalised fundamental freedoms (belief, religion).

An interesting sentence of the Fundamental Law's preamble which leaves room for different interpretations is the following: "We believe that individual freedom can only unfold in cooperation with others". A possible interpretation of this principle is that the "collective" (the society) gains importance over the "individual", shifting towards a more collectivistic approach, giving the impression of opposing the highly individualistic nature of Western societies. The prerequisite of such dynamics of the political culture is to have a certain level of homogeneity, which is fulfilled in the case of Hungary. One of the indexes of homogeneity is religion. According to data from the Hungarian Central Office of Statistics (KSH), in the 2011 Census[888], almost four million citizens identified as Catholic, while the number of all reformed Christians was approximately 1,4 million. The number of those belonging to other Christian denominations was approximately 130,000. The number of those who didn't identify with any religion was 1,7 million, while 2,7 million did not answer. Altogether 5,4 million citizens identified with one of the Christian denominations.[889] These data reflect the importance of Christianity and Christian values in Hungarian society, which contributes to both the continuity and the homogeneity of the Hungarian political culture. Another essential index of homogeneity is to be seen in the level of ethnic division, which is particularly low in Hungary. According to the data of the 2011 Census, 8,5 million out of 10 million of the habitants identified as Hungarian. The biggest ethnic minority was and still is the Roma (300,000 in 2011), while the second largest minority is the Germans (186,000).[890] This infers a homogeneity in terms of language as well.

These characteristics, i.e., a rather homogenous political culture (since the 1920 Treaty of Trianon with which the country lost two-thirds of its territory) may support a more collectivistic approach than what is present in Western-European political cultures. The reason for the homogenous nature is to be found in several factors. Firstly, Hungary is a linguistic island in Europe with a Uralic (non-Indo-European) language, which makes society less accessible to foreigners, and integration is difficult. Secondly, Christianity's "unifying power", as declared in the Fundamental Law of 2011, has been present in the history of the country almost since its foundation. In 1000, Stephen I of Hungary organised the country's Christian church and

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[888] Data of the Census of 2022 is not yet available.
[889] Central Office of Statistics of Hungary – KSH (2011): Census of 2011. Source: https://www.ksh.hu/nepszamlalas/tablak_teruleti_00 (accessed on 13/07/2022)
[890] Ibid.

established the *Regnum Hungariae* (the Kingdom of Hungary), a Christian state which persisted until 1918.

The emphasis on the importance of the family is a further element of the collective approach, i.e., "the family is the basis of the national survival" (Preamble), and "adult children are obliged to take care of their parents in need" (Art. XVI/(4)).

IV.1.2.4 Free and Diverse Press, Free Education?

Regarding the cementation of illiberalism in Hungary, one must consider the fact that the real debates as well as the media platforms that carried them has disappeared from the public eye for more than a decade.

Although Art. IX/(2) of the Fundamental Law provides that "Hungary recognizes and protects the freedom and diversity of the press, ensures the conditions for free information necessary for the development of democratic public opinion", the state media freedom has been one of the key indicators of democratic decline, i.e., the weakening of the quality of democracy in the country.

According to independent assessments, the quality of media freedom has clearly diminished in Hungary since 2010. For instance, in the Reporters Without Borders's Press Freedom Index 2022 Hungary ranks exceptionally low: no. 85th (no. 92 in 2021). Only three other EU member states have worse results among the 28, namely Bulgaria (91st) and Greece (108th).

Art. IX misses elaborating on specific provisions related to freedom of expression, i.e., provisions regarding public media providers, or provisions which would guarantee in principle the independence of the public media. More specifically, criticism revolved around the following aspects of the media reform starting in 2010: (1) the adoption of legislation under the parliamentary procedure of individual members' bills, (2) the highly hierarchical structure of media supervision, (3) the managerial authority of the Chairperson of the Regulatory Authority, (4) the lack of provisions ensuring the independence of the Authority, (5) the extensive supervisory and sanctioning power of the Authority, (6) the considerable impact of certain provisions on the content of programming, (7) the lack of media-specific regulation, (8) the lack of transparency in the bidding process for licences, and finally, (9) the vagueness of norms potentially conducive to arbitrary application and enforcement.

By 2020, the public media in Hungary was diminished to the level of a platform of government propaganda, where scrutiny is silenced.[891]

Academic freedom is not a constitutionalised principle. Art. X expresses a guarantee for "the freedom of learning and teaching within the framework defined by law", diminishing the question of academic freedom to the level of the ordinary law while it should be an absolute right granted by the constitution.

On 15 July 2022, the European Commission decided to bring Hungary to the Court of Justice of the European Union over its anti-LGBTIQ+ law (the infamous "Propaganda Law") as well as for the disablement of Klubrádió, an independent radio channel which had to cease its activity in February 2021 due to licence expiration, which the government refused to renew. The reasons are "discrimination against people on the basis of their sexual orientation and gender identity" and "attacks on independent media".[892] According to the Commission's report, the new legislation breaches a series of EU laws, such as 1) the Audiovisual Media Services Directive, 2) the e-Commerce Directive, 3) Art. 56 of TFEU on the freedom of service-providing, 4) the EU Charter's provisions on the freedom of expression and information, the right to private and family life, the principle of non-discrimination. The Commission concluded that these breaches, due to their gravity, mean the breaching of Art. 2 TEU.[893] At the time of the completion of the thesis, there is no ECJ ruling available on these infringements.[894]

IV.1.2.5 The Overpowered Government and Autocratisation

In Art. 1, Chapter 'The State', the Fundamental Law lists the tasks of the National Assembly. However, compared to the 1989 Constitution, the new Fundamental Law shows a step back in terms of determining the tasks and competences of the government. The Fundamental Law lays

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[891] European Parliament (2020): Press Release of the LIBE Committee: Veszélyben a média sokszínűsége, elhallgattatják a bíráló hangokat - figyelmeztet az EP. Source: https://www.europarl.europa.eu/news/hu/press-room/20201120IPR92117/veszelyben-a-media-sokszinusege-elhallgattatjak-a-biralo-hangokat-mondja-az-ep (accessed on 15/07/2022)

[892] Baczynska, G., Campenhout, C. (2022): EU Executive Will Sue Hungary Over LGBT Law, Radio Broadcaster. In Reuters, source: https://www.reuters.com/world/europe/eu-commission-sue-hungary-over-anti-lgbt-law-politico-2022-07-15/ (accessed on 15/07/2022)

[893] European Commission (2022): Press release: Commission refers Hungary to the Court of Justice of the EU over violation of LGBTIQ rights (15/06/2022). Source: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2689 (Accessed on: 12/10/2022)

[894] European Commission: INFR(2021)2130. Source: https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=false&active_only=0&noncom=0&r_dossier=2021%2F2130&decision_date_from=&decision_date_to=&EM=HU&title=&submit=Search (Accessed on: 14/03/2023)

down that the tasks and competences of the government "cover everything that is not expressly referred to the tasks and competences of other bodies in the Basic Law or legislation". The vague wording of the article and the lack of a clear definition of the government's duties and competences give room for arbitrariness. This risk is particularly important in light of the fact that Viktor Orbán's party, Fidesz (together with the less relevant Christian Democrats) could take two-thirds of the parliamentary seats in all elections since 2010, allowing the field of legislation to entirely drift into the hands of the government. The lack of clearly determined tasks and the two-thirds representation of Fidesz-KDNP, with a low opposition of the opposition parties create a milieu which is particularly risky regarding the quality of democracy in the country.

Table 38: HU: Constitutional definitions of the government: 1989 vs. 2011

Constitution of the Republic of Hungary (1989), Art. 35	Fundamental Law of Hungary (2011), Chapter "The State", Art. 15
"The Government a) protects the constitutional order, protects and ensures the rights of natural persons, legal persons and organisations without legal personality; b) ensures the implementation of laws; c) manages the work of the ministries and other directly subordinate bodies, and coordinates their activities; d) ensures the legality control of local governments; e) ensures the development of socio-economic plans and ensures their implementation; f) defines the state tasks of scientific and cultural development and ensures the necessary conditions for their realization; g) defines the state system of social and health care and ensures the financial coverage of the care; h) manages the operation of the Hungarian Defence Forces and law enforcement agencies; i) takes the necessary measures to prevent an elemental disaster that threatens the safety of life and property, as well as its consequences as well as to protect public	"(1) The Government is the general body of the executive power, whose tasks and competences cover everything that is not expressly referred to the tasks and competences of other bodies in the Basic Law or legislation."

order and public safety; j) contributes to the definition of foreign policy; concludes international agreements on behalf of the Government of the Republic of Hungary; k) represents the Republic of Hungary in the institutions of the European Union with governmental participation (…)."	

In 2022, the BTI Transformation Index ranked Hungary in terms of 'Governance' no. 102 out of the 137 investigated cases, emphasising that "the Hungarian government was preoccupied with further cementing its power and ideological narrative".[895] According to BTI Index results, the 'Governance Performance' index fell from 6,7 to 4,6 between 2008 and 2022[896]. In the EIU Democracy Index 2021 where Hungary is categorised as a flawed democracy, on a 0-10 scale, the 'functioning of the government' score of the country is 6,43, which is particularly low amongst the scores of the EU member states (only Romania has a lower score). The V-Dem Democracy Report 2022 names Hungary among "the top ten autocratizers", where "anti-pluralist parties drive the autocratisation" (i.e., Viktor Orbán's Fidesz).[897] The Report emphasises the abuse of government power in the country: "anti-pluralist parties and their leaders lack commitment to the democratic process, disrespect fundamental minority rights, encourage demonization of political opponents, and accept political violence. These ruling parties tend to be nationalist-reactionary and have used government power to push forward autocratic agendas. (...) In Hungary, Prime Minister Orbán used his control over the media to slander civil society figures and independent media ahead of the 2022 general elections. These tendencies often coincide with increasing polarization".

IV.1.2.6 Threat as a Political Tool

Threat has been a key element of government propaganda since 2010; the latest example is how Orbán's government used the threat of the war in Ukraine to win the elections earlier this

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[895] BTI Bertelsmann Stiftung Transformation Index (2022): Hungary. Source: https://bti-project.org/en/reports/country-dashboard/HUN (accessed on 15/07/2022)

[896] Ibid. and Democracy, Market Economy, and Governance Performance Scores of Hungary, according to the Transformation Index of the Bertelsmann Stiftung (BTI) from 2008 and 2020. Source: https://www.statista.com/statistics/1013532/hungary-bti-transformation-index-score/ (accessed on 15/07/2022)

[897] V-DEM (2022): Democracy Report 2022. Source: https://v-dem.net/media/publications/dr_2022.pdf p. 23 (accessed on 15/07/2022)

month. The last days of his campaign used the narrative that Hungary can only stay out of military conflict with Russia if the people vote for him, because the opposition wants to bring Hungary into the war and send the Hungarians to fight (this claim had no grounds, but appeared to be successful, as Fidesz won by 71%). The war in Ukraine has been the latest among the series of threats "applied" in the governing parties' narrative in the past decade. Others were, of course, Brussels (paralleling it with Soviet-era Moscow, "colonising" Hungary), the migrants (the term refugee wasn't often used in media), George Soros "financing organisations to bring migrants to Hungary", NGOs, and lately the gender question (on which we just had a so-called "referendum" with absolutely nonsense questions, under a "child protection" narrative).

Parallelly with the usage of fabricated enemies, the public communication of Prime Minister Orbán often aims to transfer the image of protection. As seen earlier, EVS 2008 and 2017 data showed that only a low ratio (of Hungarian citizens believes that a strong leader who is not concerned by democratic institutions would be a very or fairly good idea. These data outline a contradiction considering the role and image of Viktor Orbán in the history of Hungary's democratic transition, the fact that he was re-elected for the fourth consecutive time as prime minister in April 2022, and his campaign before the latter national elections. PM Orbán's social media posts in the last weeks of the campaign sustain his image as a "strong leader". The PM presented himself and his party, FIDESZ, as the "protector" of the country, who "will not allow that Hungarian families become the ones who pay the price of the war in Ukraine" and will protect the people from the war and the economy, too. The term "protect" is frequently used in his communication. As Julia Sonnevend put it in an interview, PM Orbán presents an image similar to David fighting Goliath.[898]

The following list includes examples of the frequency of the term "protect" in Orbán's Facebook posts, April 2022 - May 2022:

- "We protect the reduction of utility charges"[899]

- "We protect the reduction of the utility charges; we protect the families"[900]

[898] Friderikusz Podcast (2022): We Desire Magic, Not Facts – Sonnevend Julia media researcher. Source: https://www.youtube.com/watch?v=2i-23zV6KgQ (Accessed on: 30/03/2023)
[899] Viktor Orbán's Official Facebook Page. Source: https://fb.watch/dn4ZCh6xLU/ (Retrieved on 01/06/2022)
[900] Ibid. Source: https://www.facebook.com/photo/?fbid=559382782225991&set=a.347694613394810 (Retrieved on 01/06/2022)

- "We protect our nations in the era of threats" (meeting with Marine Le Pen)[901]

- "We protect our achievements"[902]

- "We protect the utility charges"[903]

- "(…) it is more and more difficult and costly to protect the families"[904]

- "We protect the Hungarian people"[905]

- "We protect the peace and security of Hungary"[906]

- "I am going to form a government that is able to protect Hungary in the dangerous decade ahead us"[907]

- "The government in Hungary does everything in order to protect the families from the consequences of the increasing prices"[908]

- "We protect the Hungarian families!"[909]

- "We protect and strengthen the families!"[910]

- "Only FIDESZ can protect the Hungarian families, only a 'national' government can represent the interests of Hungary in a responsible way."[911]

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[901] Ibid. Source: https://www.facebook.com/photo/?fbid=559982222166047&set=a.347694613394810 (Retrieved on 01/06/2022)

[902] Ibid. Source: https://fb.watch/dn5wMP4MS-/ (Retrieved on 01/06/2022)

[903] Ibid. Source: https://fb.watch/dndpDKd_4x/ (Retrieved on 01/06/2022)

[904] Ibid. Source: https://www.facebook.com/orbanviktor/posts/pfbid02GQ5JY8g3awP2HTqWFQwaTvuHE4sCxAZYGx3krkuK xj6bDPduyDniKqxtZZ4HF4K1l (Retrieved on 01/06/2022)

[905] Ibid. Source: https://www.facebook.com/photo/?fbid=555967605900842&set=a.347694613394810 (Retrieved on 01/06/2022)

[906] Ibid. Source: https://fb.watch/dn5WjZNHS7/ (Retrieved on 01/06/2022)

[907] Ibid. Source: https://www.facebook.com/orbanviktor/posts/pfbid0DALvQCpizUDcBDG4sEaJfCN2ecdX9DsbvynWTX4Rcn eeSByK7wJbx1XvXMBAvTYbl (Retrieved on 01/06/2022)

[908] Ibid. Source: https://www.facebook.com/orbanviktor/posts/pfbid02E3wdsgbBSuYv11HAZxDGc5SHwQKUeKCFtdNNBSC zfh8Lux6w83KuTkidhksBRjdl (Retrieved on 01/06/2022)

[909] Ibid. Source: https://www.facebook.com/orbanviktor/posts/pfbid0sgM33ygVid69pYZvVQF6Rr7d6jFN3vFFZx9sT8zWZUk RSNz6smF8kWzKfBJvskBKl (Retrieved on 01/06/2022)

[910] Ibid. Source: https://fb.watch/dneb_jmvfq/ (Retrieved on 01/06/2022)

[911] Ibid. Source: https://www.facebook.com/photo/?fbid=521237002707236&set=a.347694613394810 (Retrieved on 01/06/2022)

IV.1.2.7 The Legacy of the Socialist Era is Still Relevant

The communist party-state style governing, the collectivistic shift, the attacks on press/media and academic freedom with the purpose of lessening the diversity of opinions and unifying public thinking, furthermore, the 'dogmatisation' of certain norms (e.g., Christian education, the exclusion of the option of LGBTIQ+ marriages and families from the constitution, while norms shall be created on the level of the society, are indicators of a shift back towards the communist style of governance, although the condemning of the communist regime is relevant in the Fundamental Law. A particularly long article is devoted to condemning the 1949 communist constitution and the regime itself (the word 'communist' is present 14 times in the document). The basis of the parallel with the communist regime is the autocratisation which started in 2010 with the (second) election of Viktor Orbán. As V-Dem Report 2022 states, "among the union members, Hungary and Poland are among the top autocratisers in the world over the last decade", defining Hungary as an electoral autocracy.[912]

Let us investigate how this relates to the societal level of the country as well as its political culture. First, political participation, a building block of healthy democratic functioning and democratic quality, is generally low in the country. In the EIU Democracy Index 2021, Hungary was given a point of 5,00[913] in terms of political participation, the lowest score in the EU. However, EIU points out a general trend of increased popular participation in politics since 2010. They "interpret this increased popular engagement in politics as being a reaction to the shortcomings of democratic governance and as a demand for more representation and accountability"[914]. However, as research shows, this is not the case in Hungary, and the reasons are to be found, again, in the political culture. The political culture index for Hungary in the EIU report 2021 is 6,25[915], which is relatively low compared to Western-European countries, but high in the CEE region (Hungary has the same score as the UK). The report concludes that "Eastern Europe as a whole continues to be held back by a weak political culture, difficulties in creating institutions aimed at safeguarding the rule of law and persistent issues with corruption"[916]. The report outlines a general declining trend in the political culture global scores, too, especially from 2020 to 2021[917]. The reason for this might be the dissatisfaction

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[912] Ibid., p. 25
[913] Economist Intelligence Unit (2021): Democracy Index 2021. p. 13
[914] Ibid., p. 26
[915] Ibid., p. 13
[916] Ibid., p. 11
[917] Ibid., p. 25

with the coronavirus pandemic management strategies of the governments. Furthermore, the report refers to World Value Survey data regarding the confidence in democracy in the Eastern European region (under which they mean the Central and Eastern Europe): "World Values Survey indicate that many citizens in Eastern Europe have low confidence in democracy as a form of government and believe that democratic governance leads to poor economic performance." However, in Hungary, as we read in EVS data, the confidence in democracy and democratic institutions such as the parliament and the government rose significantly from 2008 to 2017. The reason for this might be the continuity of Orbán's regime, which, even though certainly not a stable substantial democratic political culture, provided the citizens with a certain level of safety and stability, which supported confidence in "democracy" and "democratic institutions". The answer to this ambivalence is to be found in the nature of the democracy definition and democracy perception of the Hungarian citizens: a rather minimalistic democracy concept based on free elections and equality in and before the law, not fulfilling all elements of the substantive side of liberal democracy. The reason, as emphasised before, is the lack of continuity (i.e., the break due to the Soviets-implied 45-year-long communist regime) in the process of the development of the democratic political culture, unlike Western European countries, where liberal democracy developed from grassroots and gradually, organically, throughout the course of time. Thus, one can conclude a '*false democratic stability'* in Hungary, where the political culture, although the indices show a growth of confidence in democracy and democratic institutions, only partially relies on substantial democratic values. The majority of the voters, as the "permanence" of Orbán's illiberal regime reflects, are not aware of (or passive regarding) democratic criteria such as the plurality of the media, a proper independent judiciary, or ideals such as a broad consultation with the citizens and the civil society before the creation of a new constitution.

However, Hungarian citizens appear to be relatively more aware of corruption, which is a very significant issue in the country, like in other post-Eastern bloc EU member states. Trading Economy Index 2021 December shows that Hungary, after Bulgaria, is the EU member state with the second worst corruption score.[918] Transparency International's Global Corruption Barometer (EU) 2021 report shows that 40% of Hungarian citizens think that corruption is

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[918] Trading Economics Corruption Index. Source: https://tradingeconomics.com/country-list/corruption-index?continent=europe (Accessed on: 24/01/2023)

rising in the country.[919] 69% think that "government corruption is a big problem".[920] According to the TI survey, 32% believe that the prime minister is corrupt, while 39% share the same concern regarding the parliament.[921] In line with the growing citizen concerns about corruption, the 2021 December evaluation report of GRECO on Hungary's corruption prevention in respect of parliamentarians and the judiciary indeed shows that the government has not made sufficient effort to implement the recommendations of the CoE sub-organisation. Out of the 13 recommendations, three remain partly implemented, one has been sufficiently implemented, but nine remain not implemented.[922] GRECO stresses the need for further measures "to adopt a code of conduct for members of parliament, to further develop rules obliging MPs to disclose in an *ad-hoc* manner potential conflicts between their parliamentary work and their private interests, to ensure a uniform format of asset declarations and to review the broad immunity enjoyed by MPs as well as to ensure the effective supervision and enforcement of rules of conduct, conflict of interest and asset declaration."[923]

The lack of deeply rooted democratic values in the society can also be led back to authoritarian legacies. To the question of whether the rule of law is important to Hungarian citizens, IS/J answered, "they are not interested in it and do not have knowledge about it", however, "an autonomous, economically underserved, informed citizenry is the key to democratic stability". The lack of understanding is coupled with the institutional trend of reducing opportunities for citizen scrutiny. IS/J points out that "the options that help the legal system to be respected are becoming more and more scarce".

Insufficient knowledge and understanding are also an authoritarian legacy that persists. According to IS/J, "people don't know the roles and tasks of the government and parliament. Many don't even know what political parties exist. (…) There is no efficient control from the parliament over the government, and from the constitutional court over the legislature", which shows the lack of horizontal accountability in the Hungarian political system.

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[919] Transparency International (2021): Global Corruption Barometer European Union 2021. Source: https://images.transparencycdn.org/images/TI_GCB_EU_2021_web_2021-06-14-151758.pdf (Accessed on: 24/01/2023). p. 9

[920] Ibid., p. 11

[921] Ibid., p. 52

[922] GRECO (2021): Fourth Evaluation Round. Corruption Prevention in Respect of Members of Parliament, Judges, and Prosecutors. Third Interim Compliance Report Hungary. Source: https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a7f171 (Accessed on: 23/01/2023)

[923] Ibid., pp. 8-9

IV.1.2.8 Judicial Independence is in Deterioration

We found several references in the democracy concepts outlined in the first part of the thesis to the role of judicial independence in the quality of the rule of law and in the quality of democracy. 1989 brought a shift, i.e., the establishment of an independent judiciary for the new Republic of Hungary born together with a democratic constitution. We see, however, a decline in terms of judicial independence since the re-election of Orbán in 2010 and the new Fundamental Law of 2011. The weakening of judicial independence, together with the weakening of the rule of law, is one of the most evident and widely commented characteristic of the de-democratisation / reverse transition of the country. Acts CLII and CLXI of 2011 – which we explained in an earlier chapter through the study of the Opinion published by the Venice Commission – brought legislative changes to the functioning of the judiciary which clearly reflect the deterioration. When addressing the issues with the new legislations[924], the Commission's starting point is the fact that the Fundamental Law of 2011 contains solely "insufficiently detailed guarantees" for the independence of the judiciary by its rather vague and general provisions, leaving it to cardinal laws to define the rules for the organisation of the courts. The VC points out that this entails a risk of radical changes.[925] The principle of the independence of the judiciary is only laid down in the constitution through the separation of powers, and not stated clearly and evidently by the provisions.[926]

Firstly, the issues with judicial independence are explained in the Opinion as follows. Regarding the position of the president of the National Judicial Office, the VC emphasises its vast powers without sufficient accountability. Concerning the newly established institution of the National Judicial Office, which replaces the National Council of Judges: the VC has "serious doubts about the reform model chosen, which concentrates very large competences in the hand of one individual person"[927], namely, the President of the National Judicial Office (NJO), as this model sacrifices judicial self-government and the societal influence on the judicial system. The "overwhelmingly strong" position of the President of the NJO is strongly

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[924] European Standards for the Independence of the Judiciary 1) ECHR (Art. 6): the fundamental right to a fair trial entails the independence of the judiciary; 2) Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities; 3) VC Report on Judicial Appointments; 4) VC Report on Independence of the Judicial system, Part I: The independence of judges; 5) Consultative Council of European Judges (CCJE) Opinion No. 1: On Standards Concerning the Independence of the Judiciary and the Irremovability of Judges.
[925] Venice Commission (2012): Opinion on act CLXII of 2011 on the Legal Status and Remuneration of Judges and CLXI of 2011 on the Organisation and Administration of Courts of Hungary. p. 5
[926] Ibid., p. 6
[927] Ibid., p. 7

criticised: "(...) powers are very comprehensive. Some of them fall within the usual competences of a head of judicial administration. Others do not. Some of them are described in rather broad terms without clear criteria governing their application. This raises concern, especially because they are exercised by a single person."[928] Furthermore, the right to initiate legislation goes against provisions of the constitution, which only gives such powers to the president of the republic, the government, and the parliament.[929]

Concerning the question of accountability, a procedural base of a democracy: although there is transparency regarding the powers and competences of the President of the NJO and they have reporting duties (to the National Judicial Council - NJC -, to the Curia, to the regional courts of appeal, the Parliament, furthermore, his or her annual reports on the general situation of the courts have to be made accessible for the citizens), the VC considers that such reporting is not sufficient: the Act on the Organisation and Administration of Courts of Hungary (AOAC) "should also relate the reports to the criteria relevant for the decision reported upon and which criteria may be applied"[930]. Another issue is that the National Judicial Council (NJC), the institution which supervises the President of the NJO, is dependent on the latter – "the President of the NJO controls those who should control the President"[931]. The VC declares that as the principal supervisory organ depends on the President of the NJO as well as the "unreasonably high procedural obstacles" in the way of removing him or her from the position, the accountability of the President of the NJO is "clearly insufficient".[932]

Concerning the National Judicial Council (NJC), the VC concludes that its composition and the uniformity of the process through which the members of the NJC are elected can lead to the weakening of public (vertical) accountability.[933] Furthermore, considering its scarce competences defined by the provisions of AOAC (Section 103), the NJC has no sufficient tools to conduct effective supervision.[934] Regarding the guarantees for the individual judges, in particular, the competences of the President of the NJO in the appointment of judges, the VC finds it highly problematic that there are neither conditions nor criteria laid down under which the President of the NJO can exercise these powers.[935] Moreover, the VC declares that "the new system for the appointment of judges, established in the AOAC results in a reduction of

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[928] Ibid., p. 11
[929] Ibid., p. 11
[930] Ibid., p. 12
[931] Ibid., p. 13
[932] Ibid., p. 13
[933] Ibid., p. 14
[934] Ibid., p. 15
[935] Ibid., p. 17

the guarantees for an objective candidate selection"[936], and raises its concerns regarding the fact that "the AOAC gives the President of the NJO excessive weight in the appointment of court presidents[937]. Concerning the allocation of the cases, the VC points out that "in order to prevent any risk of abuse, court presidents and the President of the NJO should not have the discretion to decide which cases should be transferred or to select the 'sending' or 'receiving' courts"[938], and highlights its concerns once again about the lowering of the judges' retirement age from 70 to 62.[939]

Secondly, in Opinion CDL-AD(2012)020 on the amendments of the cardinal acts on the judiciary, the VC points out three "most urging issues"[940]. Firstly, the wide discretionary powers of the President of the NJO. Secondly, the procedure of election of the aforementioned. Thirdly, the procedure of transfer of cases "which includes no criteria for the selection of cases to be transferred and for the selection of the court to receive the cases."[941] The amendments in question attributed wider competences to the NJC, i.e., to give a preliminary opinion about persons nominated to fill the position of President of the NJO and eliminated the possibility of re-electing the President of the NJO. Although many of his or her powers has been transferred to the NJC, the President of the NJO remains the "pivotal element of the Hungarian judicial system".[942] With the amendments, the VC finds the President of the NJO more accountable, however, according to the Opinion, his or her competences are still too extensive.[943] Regarding the question of the transferring of cases, the VC stresses that the progress made is not sufficient: "the system of the transferring of cases is not in compliance with the principle of the lawful judge, which is essential to the rule of law; it should be revised".[944]

IV.1.2.9 The Vulnerability of Democratisation

Hungary's democratic transition belonged to the third wave of democratisation. Several items of Huntington's list of factors of de-democratisation apply to Hungary. The primary reason is to be found in the weakness of democratic values among the political elite groups and the

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[936] Ibid., p. 18
[937] Ibid., p. 19
[938] Ibid., p. 25
[939] Ibid., p. 27
[940] Venice Commission (2012): Opinion on the Cardinal Acts on the Judiciary that were Amended Following the Adoption of Opinion CDL-AD(2012)001. p. 4
[941] Ibid., p. 4
[942] Ibid., p. 17
[943] Ibid., p 17
[944] Ibid., p 18

citizenry. No undemocratic foreign power, quite the opposite, as Hungary is a member state of the EU, the elite club of European democracies. However, in light of A. Roberts theory of democratisation, in the case of Hungary, the legacies of the socialist era where the reason mentioned in point 6 applied are still relevant today. Regarding the reverse snowballing concept, the only member state of the EU whose democratic backsliding is often compared to Hungary is Poland.

Through the lenses of Robert's concept, and in light of the past three decades, we can conclude that Hungary is a country of the ex-Eastern bloc that has had good grounds for achieving a substantive and sustainable liberal democracy. The grounds were strengthened by the EU membership too. However, the process of democratisation took a reverse direction from 2011 on. We can talk about a second transition: a de-democratisation accompanied by the authoritarian trends the Hungarian government has manifested since 2011. The two main factors that contribute to this reverse democratisation are, first, the political milieu that had started to change from 2006 on (we observe an ever-growing public mistrust in the socialist and liberal parties and their competence); second, the fact that due to the legacies of the socialist structures, democratisation has not become complete on the level of the society, i.e., the meso/II and micro levels of our model of political culture. The incompletion of social democratisation manifests in most factors: citizen participation, citizen scrutiny over political dynamics, the willingness to hold politicians accountable, to express their demands to the decision-makers (individually or in an organised form). These ideas were mostly absent in the socialist era, dominated by the socialist ideology and the MSZMP (the Hungarian Socialist Worker's Party). To conclude, the fact that democratisation has never been complete at the level of the civil society and the citizenry (meso/II and micro levels) confers vulnerabilities on Hungarian democracy.

To questions regarding the shifts of the democratic political culture and the influence of political culture on the vulnerability of democratisation, IS/J argued as follows:

> "Instead of a democratic culture based on cooperation, solidarity, and equal rights, the models provided by the political actors as well as the legislative changes are strengthening the culture of an autocratic system". (…) "With the two-thirds laws, the ruling elite created the possibility of easily changing the constitutional system and occupying the media and thus determine what information should reach the people. Opinion polls show that Hungarian society is closer to Moldovan and other post-Soviet ones than to Central European ones, i.e., it wants a more authoritative and stronger

leader and does not tolerate political disputes. The explanation for this is that the establishment of a strong middle-class[945] did not really take place in Hungary, an autonomous, economically independent, self-aware citizenry was never formed. If so, then it was the Jews and Germans who were partially dragged away, deprived of their possessions and lives, and displaced. The bondman and gentry mentality remained. Where the above process took place were the territories annexed by the Treaty of Trianon: at the time the middle-class was stronger in Cluj (Kolozsvár) and Košice (Kassa) than on the territory of today's Hungary. The tragic thing is that this is approximately two-thirds of the society; the remaining one-third live in the post-enlightenment period, but they are in minority. This minority has left or is leaving Hungary nowadays, thus it is even less able to become a decisive force. In Hungary, losing revolutions have a tradition; persistent resistance has never been strong, rather flare-ups and then compromise with those who crushed the revolution (see 1867 and the 1970s, the consolidation after the revolutions). All of this could perhaps have been changed if the first step after the democratic transition had been the democratisation of education; the new generation could have learned to express their opinions, to behave democratically, to know that they have rights even at school and can exercise them. They could have learned the techniques and benefits of conflict management, win-win situations and cooperation, as opposed to the search for individual solutions and submission to force and power. This did not happen: the teachers were neither prepared, nor had the means for this transformation. Politics did not emphasize this either. Fidesz topped this by saying that only strength and power matter and enshrined this in law. In Hungary, the laws do not limit those in power as in a liberal democracy but protect them. Social solidarity and civic self-awareness have never been strong, rather the search for individual ways ('we'll solve it smartly'), but today there isn't any other option."

An empirical example: democratic trends before the EU accession of Hungary. 2001[946] and 2002[947] European Commission reports found Hungary prepared for EU accession in terms of democratic functioning and the rule of law, acknowledging significant improvements regarding

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[945] The Hungarian term is "polgárosodás".

[946] Commission of the European Communities (2001): 2001 Regular Report on Hungary's Progress Towards Accession.

[947] Commission of the European Communities (2002): 2002 Regular Report on Hungary's Progress Towards Accession.

the efficiency of the judicial system, the reforms of the public administration, the smooth parliamentary functioning, the stable law-making processes, emphasised the full-strength operation of the constitutional court, and praised the Ombudsmen system. The latter was abolished in 2011, replaced by the commissioner for fundamental rights. The 2001 report also highlighted Hungary's efforts in terms of fundamental rights protection (e.g., signing Protocol 12 to the ECHR on the prohibition of discrimination). These reveal that 12-13 years after the transition and the establishment of the new constitutional democratic order, Hungary demonstrated progress in terms of further democratisation at the macro and meso-institutional level of political culture.

The parliamentary debate of 29 November 2001 gives a picture of the democratic values of the political elite which governs the country today. The debate was held on the necessity to hold a referendum before the EU accession. During the debate, Viktor Orbán (PM, Fidesz) assesses the EU accession as "the tool for catching up Hungary's lag", pointing out two fields. Firstly, the accession would help Hungarian citizens to achieve the Western quality of life sooner; secondly, as another material benefit, the accession could strengthen the national economy. The PM "agrees with those who say that there is a linkage between the competitiveness and economic strength of a country, and the real content of a country's national sovereignty". Orbán perceives that the EU accession, in line with the thought above, will strengthen Hungary's sovereignty, despite transferring several competences to Brussels. The PM sees the EU as a community with its problems; thus, a choice between different types of problems.[948]

On the other hand, J. Szájer (long-term and key Fidesz-party politician) mentions the democratisation with regard to the EU accession. Szájer describes the EU accession as not only a political objective but an opportunity for which Hungary has been waiting for a long time ('a new chapter'). He explains that before the collapse of the Eastern bloc, the system which had been forced to the country knew no freedom or democracy, a system which degraded and disrespected human rights. According to the MP, the legacy of the communist era has its "permanent stains on the history of Hungarian citizens". This is one of the main reasons why accessing the EU enjoys such a wide support in Hungarian society. The political transition of 1989 has brought the long-sought chance for Hungarians to live in a democratic and modern state. Regarding corruption, Szájer points out that Hungary has made progress in terms of restraining corruption, but also adds that corruption is not only a Hungarian phenomenon, but

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[948] National Assembly of Hungary (2001): European Integration Debate 29th November 2001. Source: http://www.parlament.hu/biz39/eib/link1/vita011129.htm (Accessed on: 19/12/2018)

it is also present in Western democracies. He emphasises that the progress regarding corruption prevention "can never stop even in the most developed democracies". Regarding minority questions and equality: concerning the integration of the Roma minority, Szájer points out the key factors are education and occupation, and that Hungary expects help from the EU. J. Szájer, however, abandoned his democratic opinions in later years. The politician, a member of the European Parliament at the time, was responsible for the national consultation before the new constitution of 2011. He drafted the Fundamental Law and handled the received recommendations and ideas on his iPad himself. As stated on his blog: "a 21st-century constitution, on a 21st-century device".[949]

IV.1.2.10 Citizen Mobilisation Centralised in Big Cities

As a form of citizen security, demonstrations against governmental actions are limited to Budapest and a few other bigger cities, such as Debrecen, Szeged, or Pécs. Budapest, the capital city with an opposition mayor and local government, saw several demonstrations against government policies since the re-election of Orbán in 2010. During spring 2017, a series of demonstrations took place against the so-called "Lex-CEU", a reform of the higher education system which made it impossible for the Central European University (CEU) to continue its functioning in Budapest. A dozen of the demonstrations took place in Budapest, but other cities (Debrecen, Pécs, Sopron, Szeged, Békéscsaba, Nagykanizsa etc.) joined too. After the elections of 2018, when Fidesz won again with two-thirds, more than a hundred thousand people joined the rally against Orbán and his party. In 2021, a series of demonstrations took place against the nationally and international widely criticised, Russian style anti-LGBT law (Act LXXIX of 2021) intentionally creating confusion between paedophilia and homosexuality. Another form of citizen scrutiny, a petition was also created by and signed by more than 133,000 people[950]. Debrecen, the second biggest city in the country, has been having a Fidesz-led local government since 1998. Although it is considered a bastion for the governing political parties, 2022 saw examples of citizen mobilisation in Debrecen. The city joined the mobilisation for the situation of the educational system. The demands of the demonstration of 14 October 2022 asked for improved rights for the teachers and students, for organised cooperation between

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[949] Heti Világgazdaság (2011): iPaden írja az alkotmányt Szájer József. Source: https://hvg.hu/itthon/20110302_szajer_ipad_alkotmany (Accessed on: 20/02/2020)
[950] Szabad a hang (2022): "Nem akarunk orosz mintájú törvényeket!" Petition. Source: https://szabad.ahang.hu/petitions/nem-akarunk-orosz-mintaju-homofob-torvenyeket (Accessed on: 16/10/2022)

trade unions and political decision makers responsible for education, for more modern higher-education programmes for pedagogues, for a more considerate educational strategy, and for the re-establishment of the rights of teachers for a strike.[951] We conclude that citizen mobilisation for scrutinising anti-democratic government policies concentrates on Budapest and other major cities. The lagging democratisation on the meso/II level of Hungary's political culture impacts the quality of democracy in the country. We argue that due to the lack of complete democratisation at the level of civil society and individual citizens, institutional democratisation has never reached true stability, and remained vulnerable. This vulnerability is the key reason why de-democratisation could start in Hungary after 2010.

In an interview, IS/J explained that "although the level of self-organisation of the society has never been strong, in the past 10-15 years politics teach a lesson to anyone who shows any level of self-organisation, e.g., the Free SZFE movement[952], the teachers' movement, and the Medical Chamber)". IS/J expressed that "system-level changes are necessary".

IV.1.2.11 Weakened Opposition and Low Consensus-Making Capacity

Public confidence in socialist and liberal politicians started to diminish heavily from 2006 on, especially after the leaking of the so-called Őszöd speech of ex-PM Ferenc Gyurcsány, who led the Socialist-Liberal majority in the parliament. October 2006 (the 50th anniversary of the 1956 revolution against the communist regime) saw heavy demonstrations in Budapest which resulted in aggressive police responses. These events led to the weakening of public trust in the governing political forces. The loss of confidence was furthered by the economic crisis of 2008-2009 due to which many families remained unable to pay their foreign currency loans. 2010 marks the beginning of the second prime ministership of Viktor Orbán, who, after 1998, managed to win the elections again, and in coalition with the Christian Democrats, gained a 2-3 majority in the parliament. Since the prominent Orbán victory of 2010 which, alongside an ever-growing electoral turnout, repeated in 2014, 2018, and 2022, opposition parties tried different strategies. The liberal SZDSZ, however, did not survive the public trust crisis. An example of opposition strategies is the "United for Hungary" political alliance which formed for the 2022 national elections with the inclusion of six major parties of the current Hungarian

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[951] "El a kezekkel a tanárainktól", demonstration in Debrecen, Hungary, 14/10/2022. Source: https://www.youtube.com/watch?v=L_vJFtmsoJo (Accessed on 15/10/2022)
[952] Free SZFE was a movement to stand up for the independence of the Hungarian University of Theatre and Film Arts (SZFE) due to growing political influences.

opposition: DK (Democratic Coalition), Jobbik Magyarországért Mozgalom ("Jobbik" – For a Better Hungary Movement), Momentum, MSZP (the socialists), LMP ("Politics Can be Different" - the greens), and PM (Dialogue for Hungary). The leadership of the opposition alliance, i.e., the alliance's candidacy for PM in the 2022 elections, was decided by public vote, organised in two rounds. Conservative Péter Márki-Zay, candidate of "Everyone's Hungary Movement" (not a political party but an association) gained the most votes and became the candidate for prime ministership. Although the allied opposition achieved very good results in the opposition-led Budapest, the overall results showed the easy triumph of the Fidesz-KDNP alliance.[953] Outside the capital city, the Opposition Alliance could win solely two constituencies. The weakness of the opposition's alliance can be found in its political fragmentation: the ideology of the six member parties covered the political palette from far-right to liberalism which caused confusion among the electorate. The six parties of the alliance divided the constituencies. It was, therefore, possible, that an individual who had been a socialist for decades had to face that their constituency had a Jobbik (a traditionally far-right party) candidate, which potentially made it difficult for the citizen to vote for the alliance candidate.

Despite the united efforts in the 2022 elections, today's political opposition in Hungary is clearly struggling. Potentially, the creation of a well-defined political identity (or different identities) beyond opposing the Fidesz regime could attract a wider range of voters, over the borders of Budapest.

The low consensus-making capacity stems from the fact that the Fidesz-KDNP coalition has been governing the country by a two-thirds majority since 2010. The two-thirds majority has been granting a political capacity to the governing parties which made them so overpowered that they are not even forced to seek cooperation with opposition parties.

IV.1.3 Luxembourg

IV.1.3.1 A High Consensus-Making Capacity in Domestic Politics and Legislation

In Lijphart's typology, the consociative – power-sharing type is the most suitable system for a country with such a segmented society as the Luxembourgish, as the consociative political

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[953] 2022 Hungary National Elections results. Source: https://www.portfolio.hu/valasztas (Accessed on: 14/02/2023)

system relies on characteristics such as a grand coalition, proportional representation, segmental autonomy, and mutual veto. In the Luxembourgish case of consocialism, one can observe a high consensus-making capacity which proves to be beneficial for the quality of democracy in the country. The failed 2015 referendum reveals the capacity for consensus-making through the

For many years in the past, the government has consisted of two parties (the Christian social CSV plus either the democratic DP or the socialist LSAP). In the last two cycles, however, coalitions of three parties (the Greens, the DP and the LSAP) have formed governments.[954] The experience of how the different political forces dealt with the failure of the 2015 referendum is a remarkable example of high consensus-making capacity. The 2015 referendum was a defeat for the government as all three questions were voted down by the 250,000 eligible voters with particularly high percentages. Referendums are solely consultative in Luxembourg. Voting in referendums is mandatory in Luxembourg, just as in general and European elections. The country consists of one single electoral constituency when it comes to referendums (just as in the case of European elections).

The main two main purposes of the 2015 referendum were to give voting rights to foreigners and younger people (the referendum proposed to lower the age requirement for voting to 16 years) and to limit the duration for which a person can be continuously a member of the government to a maximum of ten years. Extending voting rights to a wider segment of society means a higher quality of democracy in terms of political and civil freedoms, while limiting the duration of office one can hold is a well-known practice among democratic checks and balances. Lowering the age limit was rejected by 80,87%, extending the voting rights (on a voluntary basis) in national elections to those foreigners who had been residing in the country for a minimum of ten years and had already participated in municipal or European elections was rejected by 78,02%, and the limitation of the consecutive term of office to ten years was rejected by 69,93%. The Luxembourgish citizenry clearly expressed that they do not want elective rights to the Chamber of Deputies to become separated from citizenship.

These numbers indeed meant a defeat to the Xavier Bettel-led government, a coalition of three political parties, i.e., DP (the democratic party), LSAP (the Socialists), and DG (the Greens); a

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[954] Le Gouvernement du Grand-Duché de Luxembourg (2020): Gouvernements du Grand-Duché de Luxembourg depuis 1848. Source: https://data.public.lu/en/datasets/gouvernements-du-grand-duche-de-luxembourg-depuis-1848/

defeat which could have provided grounds for attacks from the political opposition. Still, immediately after the failed referendum, an agreement of political forces was born to create new legislation on citizenship to enlarge the body of the citizenry – a compromise which made the accession to citizenship easier but also respected the results of the referendum.

The new law on citizenship can be seen as a proof of high capacity for consensus-making – a characteristic of the Luxembourgish political culture. The political parties of Luxembourg have not provoked a democratic backsliding even in a sensitive situation such as the failure of the referendum. Instead, they mutually recognize each other as parts of democratic functioning. These dynamics establish an interdependent relationship among political forces where consensus must be driving the political will. Consensus, therefore, is one of the pillars of the quality of democracy in Luxembourg. Consequently, consensus becomes outlined as a pillar for good democratic functioning. In comparison, both in the UK and in Hungary we see the opposite dynamic. Although Hungary, unlike the UK, is not a majoritarian system with two traditionally strong parties, the political forces are imbalanced. Since the beginning of the gradual eroding of the Hungarian Socialist Party (MSZP) after 2006 (Ferenc Gyurcsány's ominous Öszöd speech), Orbán's Fidesz has gained a disproportionate presence and relevance in Hungarian politics, while the opposition has been weakened. The Hungarian national elections of the 3rd of April 2022 broke the hopes of the united opposition as Fidesz, with a 70% turnout, took two-thirds of the seats of the Parliament by winning by 54% and 53% of the party list and constituency votes, respectively.[955] The two-thirds majority in the parliament does not leave room for the effective representation of different interest groups of society. The UK is the classic example of majoritarian democracy. The characteristics of its system allow for clear liability for political decision making which is beneficial for citizen scrutiny over government policies (vs a consensus or consociation system with a grand coalition where it is not so evident which political party is responsible for which decision). However, in a democracy with two strong political forces, there is less possibility for the representation of diverse interests.

The first practical example of the consensus-making capacity has been the Tripartite. The Tripartite (the permanent forum of the government, trade unions, and the representation of companies) is a key actor of the democratic practices in Luxembourg. Since the 1970s the Tripartite means an institutionalised dialogue between the government, employers, and trade

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[955] Országgyűlési képviselők választása 2022. Source: https://vtr.valasztas.hu/ogy2022 (Accessed on: 18/05/2022)

unions on certain economic and social issues in order to reach a consensus. There are three major trade unions in Luxembourg, namely, the left-wing OGBL, with more than 70,000 members[956]; the Christian-democrat LCBG, and the CGFP representing public workers and civil servants. During the Tripartite discussions, the three trade unions present themselves as one united group. This demands prior coordination to find a consensus to be able to present a unique standpoint towards the government and the group of employers. In 2018, for the purpose of a more efficient representation of interests, the OGBL expressed the "dream" of creating a single, unified trade union, and failing to succeed in overcoming the fragmentation would be a "historical mistake".[957] However, the Tripartite has been in decline, recently.

The second example is the Constitutional Reform package of 2020-2023, where the four fields of proposals for revision were created with the involvement of a wide range of the political groups of the country. For instance, the summary document of Constitutional Revision 7777 says the following:

> "The proposed text is the expression of a broad consensus, clearly going beyond the traditional divisions between the government majority and the opposition. The need for a compromise in order to be able to adopt the constitutional amendments by a reinforced majority of two-thirds of the members is obviously also reflected in the content of this proposal for revision and is expressed by the designation of the four co-authors from political groups different."[958]

As mentioned earlier, the four proposals of the recent constitutional reform were voted on two occasions in the Chamber of Deputies, with the support of four of the six parliamentary parties, besides rejection from one party, and abstention from another.

Through the lenses of the theoretical framework of this thesis, we assess the consensus-making capacity of Luxembourgish political forces a genuine characteristic of the political culture of Luxembourg, a grassroots evolutive trend of the political elite – in other words, a value of the political elites, beneficial for democratic quality.

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[956] L'OGBL rêve d'un « syndicat unifié » pour ses 40 ans. Source : https://www.wort.lu/fr/luxembourg/l-ogbl-reve-d-un-syndicat-unifie-pour-ses-40-ans-5c00e952182b657ad3b9ab14 (Accessed on: 15/12/2022)
[957] Ibid.
[958] Official website of the Chamber of Deputies of Luxembourg. 7777 Proposition de la revision des chapitres IV et IVbis de la Constitution. Résumé. p. 2

IV.1.3.2 A High-Level Acceptance of Internationalization and Europeanisation of the Domestic Legislation

We observe the trend that the Grand Duchy's political actors have continuous high-level support and acceptance for adapting international and European legal standards and principles. This characteristic has been reflected by the constitutional reforms from 2003 onward as well as, e.g., during the constitutionalisation of political parties and the regulation of their financial situation (which we present in a later chapter). The strong willingness to learn from other European democracies is an element of Luxembourgish political culture that has a beneficial influence on the quality of democratic functioning.

Luxembourg's role in the history of European integration is a factor that is worth observing for understanding how the country's proximity to other European democracies has influenced legislative practices. The cooperation within the EU as well as Luxembourg's important role in the integration (regardless of its size) both have further strengthened its willingness to learn the know-how (i.e., implementation of democratic practices and innovations) from other democracies. One of the six founding states, Luxembourg has steadily been a classic supporter of the communitarian method with regard to EU integration. As the first example, the Grand Duchy has been maintaining a classic partnership with the Netherlands and Belgium (known as the BENELUX countries).[959] Other two streamlines of intra-EU cooperation with active Luxembourgish participation are, first, Luxembourg's proximity to Germany, France, and Italy on budgetary questions; second, Luxembourg's devotion to finding a solution for the "Brexit problem", particularly in light of the traditional partnership between the UK and the Grand Duchy in the financial sector. Luxembourg is also strongly involved in the preparation of EU policies particularly in the fields of climate change and sustainability (for instance, the Paris agreements and the European Commission's Green Deal). The geographical and normative proximity to other strong European democracies as well as the fact that Luxembourg is so well and deeply integrated in the EU housing many of the organisation's key institutions, on the one hand, have had a positive influence on the country's democratic performance, and on the other hand, have provoked the process of diversification and multinationalisation of Luxembourgish

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[959] A noteworthy manifestation of this partnership in terms of European integration is the deliberation of the three states before each reform of the European Treaties. Before each amendment, following the consultations, the three governments published a common document about their point of view on the reforms. See: a series of BENELUX memoranda at https://www.cvce.eu/collections/unit-content/-/unit/02bb76df-d066-4c08-a58a-d4686a3e68ff/4f12131a-6cef-4db5-b877-dae21adc9ae8/Resources

society. These changes have given rise to new challenges to democracy, especially the question of the voting rights of non-citizen residents who constitute almost half of the society.

The referendum of July 2005 on the treaty establishing a Constitution for Europe showed public support for the process of Europeanisation, too: 56.52%[960] voted in favour of such an instrument of deepening the European integration in the normative-political dimension.

IV.1.3.3 A Highly Fragmented, Europeanized Society in Constant Growth

Demographics contribute to the unique character of Luxembourgish democracy. STATEC data on the Luxembourg census results show that between 2011 and 2021 the population of the Grand Duchy grew by 25.7%, reaching 643,941 habitants. [961] This is a remarkable growth in comparison with EU trends: the population of the EU27 grew by only 1.7% in the ten-years period. STATEC data on the changes of the population of Luxembourg shows an almost continuous growth. Since 1839, the number of habitants almost quadrupled. The average age of the Grand Duchy's population is 39.7 years which is 1 year higher than in 2011. The population of the active ages is strongly represented.[962] Data on the population on 1st January 2022, out of the circa 645,000 habitants, 304,000 are foreigners[963], which means more than 47% of the population. Along with the growing trend in the number of the population, Data also show a continuous decrease in the ratio of Luxembourgish citizens and foreigner-residents: -0.8% between 2018 and 2022, probably due to the acquisition of citizenship.[964] It is also remarkable that 87% of the foreigner-residents are Europeans (80% from other EU member states; 7% from other European states) with the highest numbers from Portugal (94,000) and France (49,000).[965]

When understanding the society in Luxembourg, one must consider that the country is one of the capitals of the EU. This manifests in notable social dynamics around the EU institutions

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[960] International Foundation for Electoral Systems: Grand Duchy of Luxembourg. Source: https://www.electionguide.org/countries/id/126/ (Accessed on: 27/02/2023)
[961] STATEC (2023): L'évolution de la population à travers les recensements. Source: https://statistiques.public.lu/fr/publications/series/rp-2021/2023/rp21-02-23.html (Accessed on: 14/02/2023)
[962] Ibid.
[963] STATEC (2022): Population par nationalités détaillées au 1er janvier. Source: https://lustat.statec.lu/vis?fs[0]=Thèmes%2C1%7CPopulation%20et%20emploi%23B%23%7CEtat%20de%20la%20population%23B1%23&pg=0&fc=Thèmes&df[ds]=ds-release&df[id]=DF_B1113&df[ag]=LU1&df[vs]=1.0&pd=2015%2C2022&dq=.A (Accessed on: 15/02/2023)
[964] STATEC (2022): La démographie luxembourgeoise en chiffres. Édition 2022. Source: https://statistiques.public.lu/dam-assets/catalogue-publications/en-chiffres/2022/demographie-en-chiffre-22.pdf (Accessed on: 15/02/2023). Graph 6: p. 18
[965] STATEC (2022): Population par nationalités détaillées au 1er janvier

with seats in the country. Luxembourg has a "real Europeanized society": a large segment of the employment sector is in the hands of foreigners. 75% of the workers are non-Luxembourgish citizens: either cross-border workers from France, Germany, and Belgium, or non-Luxembourgish citizens who reside in Luxembourg. The number of the cross-border workers exceeds 200,000. Furthermore, as Eurostat data shows, with over 50% of its population, the Grand Duchy has the highest proportion of foreign-born residents in the EU.[966]

The high level of fragmentation poses unique challenges to the Grand Duchy's democracy, which call for unique democratic innovations in the future. On this note, IS/G responded with the following:

> "We are concerned about living together in a country that is increasingly fragmented and under tension (housing shortage, emerging racism); this in a generalized context of the rise of individualism and secularization. These tendencies feed the dynamics of loss of orientation and of confidence in the authorities. (…) Hate speech is also on the rise and the non-regulation of social networks is a problem."

Luxembourgish law[967] defines integration as follows: "the term integration designates a two-way process by which a foreigner expresses his desire to participate in a lasting way in the life of the host society which, on the social, economic, political, and cultural level, takes all necessary steps to encourage and facilitate this process. Integration is a task that the state, municipalities, and civil society carry out together"[968].

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[966] Research Luxembourg (2022): Luxembourg has the highest proportion of foreign-born citizens in Europe. Source: https://www.researchluxembourg.org/en/luxembourg-has-the-highest-proportion-of-foreign-born-residents-in-europe/ (Accessed on: 30/12/2022)

[967] The law of 16 December 2008 which holds the definition was modified in 2019. The 2019 amendment created the Office National de l'Acceuil (national reception office with the following mission: 1) to organise the reception of applicants for international protection as defined by the law of 18 December 2015 on international protection and temporary protection; 2) to manage accommodation structures reserved for the temporary accommodation of applicants for international protection, refugees and persons eligible for subsidiary protection as defined by the aforementioned law of 18 December 2015; 3) collaborating with other bodies in the creation and management of accommodation structures reserved for the temporary accommodation of applicants for international protection, refugees and persons eligible for subsidiary protection; 4) to promote, with the competent authorities, the construction and development of accommodation structures reserved for the temporary accommodation of applicants for international protection, refugees and persons eligible for subsidiary protection. Source: Law of 4 December 2019 creating the National Reception Office (ONA) and amending: 1° the amended law of 21 September 2006 on leases for residential use and amending certain provisions of the Civil Code; 2° the amended law of 16 December 2008 concerning the integration of foreigners in the Grand Duchy of Luxembourg; 3° the amended law of 18 December 2015 on the reception of applicants for international protection and temporary protection. https://ec.europa.eu/migrant-integration/library-document/loi-du-4-decembre-2019-portant-creation-de-loffice-national-de-laccueil-ona_en (Accessed on: 28/02/2023)

[968] Chambre des Députés du Grand-Duché de Luxembourg (2008): Loi du 16 décembre 2008 concernant l'accueil et l'intégration des étrangers au Grand-Duché de Luxembourg. Source:

An important body for the representation of foreigners is the Conseil National pour Étrangers (National Council for Foreigners). As provided by the Law of 16 December 2008, the CNE is responsible for "studying, either on its own initiative or at the request of the Government, the problems concerning foreigners and their integration"[969]. The interaction between the government and the CNE is therefore of two ways: 1) the Government submits a draft legislation to the CNE and asks for its opinion; 2) or the CNE decides to submit to the government a proposal that it deems useful for improving the situation of foreigners and their families. The CNE provides the government with an annual report on the integration of foreigners in Luxembourg.[970] An example of the dialogue between the government and the consultative body is the process of the modification of the law on integration: the Ministry of Family and Integration asked for the opinion of the CNE. In its opinion of 2021 on the new integration law, the CNE explains that "(…) Luxembourg nationality, especially since the establishment of the principle of plurinationality, and therefore of recognition of the cultural identity of the other, and of the rights of full citizenship conferred on new Luxembourgers, constitutes a very positive integration factor among many others."[971] Despite the positive outlook, In 2022, CNE president M. Ramdedovic expressed worries regarding the future and the necessity "to see foreigners represented on a parliamentary level", since "there cannot be integration if there is not equality in political participation"[972]. The aim of the CNE is a minimum 50% registration rate of foreigner-residents for participation in the municipal elections.[973]

Two years after the referendum which clearly rejected the idea of allowing access to foreigner-residents to parliamentary elective rights, 2017 saw a new law regulating nationality. By the new legislation, foreigners can apply for citizenship through naturalisation after five years of residence instead of seven. The new law introduced the principle of *jus soli* enabling people born in Luxembourg to non-native parents to obtain nationality as of the age of 12 under certain

https://www.stradalex.lu/fr/slu_src_publ_leg_mema/toc/leg_lu_mema_200812_209/doc/mema_2008A3156A (Accessed on: 20/11/2022)

[969] Ibid.

[970] Conseil National pour Étrangers: Les mission de CNE. Source: https://mfamigr.gouvernement.lu/fr/le-ministere/attributions/integration/conseil-etrangers.html (Accessed on: 22/11/2022)

[971] Conseil National pour Étrangers (2021): Rédaction de 4 avis par le CNE suite á la demande de Madame le Ministre en vue de la nouvelle loi sur l'intégration. Source: https://mfamigr.gouvernement.lu/content/dam/gouv_mfamigr/le-ministère/attributions/intégration/révision-de-la-loi-sur-l'intégration/Les-4-avis-du-Conseil-National-pour-Etrangers-en-vue-de-la-nouvelle-loi-sur-l-integration-28092021.pdf (Accessed on: 28/02/2023)

[972] Heindrichs, T. (2022): Foreigners' council wants to become independent institution. Delano, 2022. Source: https://delano.lu/article/foreigners-council-wants-to-be (Accessed on: 28/02/2023)

[973] Ibid.

conditions. The new law provides easier access to naturalisation, which is a positive step towards tackling the democratic deficit and the challenges rooted in the lack of direct representation of foreigners at the parliamentary level.

IV.1.3.4 A Language-Based Multi-Level Public Sphere

Multilingualism is a significant characteristic of the political culture of the Grand Duchy. According to Eurobarometer data from 2012, 83% of the residents of Luxembourg are minimum trilingual.[974] According to a STATEC study from 2019, while French is the most important language at work, Luxembourgish remains the most used language of the households.[975]

Multilingualism, therefore, is an essential feature of Luxembourgish democracy. The results of the 2015 referendum reflect numerous characteristics regarding the state of democracy in Luxembourg. Luxembourg is a democracy with a multi-level public sphere, accompanied by different levels of linguistic diversity. Firstly, for Luxembourgish citizens (in Luxembourgish language), secondly, the common public sphere of Luxembourgish citizens and non-citizen residents (in the official national languages), and thirdly, the public sphere of the foreigners (in the official national as well as foreign languages). Luxembourg is a classic representative democracy; in the Lijphartian sense, a consociational democracy[976]. However, as mentioned before, almost half of the population who permanently live in the Grand Duchy have no right to vote for the national parliament since they do not hold citizenship. These residents, though, can run in the municipal elections for becoming mayor, but this is a rare practice. In the EU elections of 2019, only 14% of the foreigners who live in Luxembourg voted for the Luxembourgish list. One might consider this a limit of the Europeanisation process; IS/G pointed out the same issue as well.

An initiative to strengthen participation at the 2023 municipal elections is the icanvote.lu website which provides information on the elections in five languages: Luxembourgish, French, German, Portuguese, and English. According to the latest data (mid-March 2023), only

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[974] Ibid.

[975] STATEC (2019): Le luxembourgeois reste la langue la plus utilisée á domicile. Source: https://statistiques.public.lu/en/publications/series/regards/2019/09-19.html (Accessed on: 12/02/2023)

[976] Lijphart, A. (2007): Thinking about Democracy - Power Sharing and Majority Rule in Theory and Practice. p. 31-32; also, Lijphart, A. (1999): Patterns of Democracy - Government Forms and Performance in Thirty-Six Countries. pp. 244-245

12,5% of foreign residents are currently registered[977] on the list of electors for voting in June.[978] This shows a low enthusiasm for foreigner participation at the municipal elections, even though participation has been made much easier by the recent legal changes referred to above and the jepeuxvoter.lu website is advertised on several media platforms. The current numbers also fall far from the CNE's target of 50%. One can observe a regulation which might have the risk to hinder the participation of foreigners while their higher engagement is important to Luxembourgish democratic quality. If a foreigner resident registers on the list, the obligation of compulsory voting applies to them just like to Luxembourgish nationals, which might seem worrisome to those foreigners who must travel a lot for professional and personal reasons, even if compulsory voting is beneficial to democratic functioning. However, through the myguichet.lu governmental website for residents, registration for the municipal and European elections is possible at the same time (although these are two separate lists) which makes engagement smoother.

Figure 41: City Hall of Esch-sur-Alzette: National Day of Registration for the municipal elections

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[977] The deadline for registration is around mid-April.
[978] icanvote.lu. Source: https://jepeuxvoter.lu/en/ (Accessed on : 14/03/2023)

Although campaigns start in May, political party programmes started to be communicated months before the municipal elections of June 2023. One of the three traditional parties, the socialist LSAP shared their vision for the elections in early March, under the slogan "Zesummen" (EN: "together"), and "Time for strong social municipalities", and with incentives to raise the number of their young members and voters. However, the information on their website lsap.lu is only available in French and Luxembourgish[979]. The Green Party's website provides information on the elections in five languages (LU, FR, D, P, EN). Déi Gréng use the following motto: "your city, your decision" and pursues a young image, too[980]. "We must pass on the information (…) We must communicate, inform and motivate people", argued Claudie Reyland in an interview.[981] The Christian-Socialist CSV provides information on their candidates and their selection in three languages (LU, FR, EN).[982] Their manifesto is not available at the time of completion of the thesis). By March 2023, DP had already published a comprehensive programme for the elections on their website. The programme, available in Luxembourgish, German, and English, focuses on 'togetherness' in a durable community and modern environment.[983] However, their slogan which is to carry the essence of their programme and approach, "No bei dir" (EN: "Close to you" or "Next to you"), is only available in Luxembourgish, therefore unlikely to captivate and engage non-Luxembourgish speakers.

IS/G shared that "12-13% of non-nationals are registered to participate in municipal elections, although there is no longer any obstacle in law since the legislator dropped the bar of the residence clause (5 years) in July 2022". IS/L emphasised the upcoming municipal elections, as well as the importance and responsibility to inform the people about their right to participate. They pointed out that although the law changed and now everyone can vote in municipal elections, the participation of foreigners has certain barriers, such as language and differing concepts about democracy. IS/L found the following questions fundamental: "How do we want to organise the concept of living together? How do we plan the future together? How will we grow together?"

If one considers foreigner participation crucial for Luxembourgish democratic quality and legitimacy (especially in light of the lack of voting rights for foreigners to the national elections

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[979] LSAP. Source: https://lsap.lu/fr/ (Accessed on: 14/03/2023)
[980] Déi Gréng. Source: https://greng.lu/wevote/ (Accessed on: 14/03/2023)
981 Delano: 'City candidates seek expat vote'. Source: https://delano.lu/article/city-candidates-fired-up-for-e (Accessed on: 14/03/2023)
[982] CSV. Source: https://stad.csv.lu/en/walen-en/ (Accessed on: 14/03/2023)
[983] DP (2023): Programme-cadre en vue des élections communales 2023. Source: https://www.dp.lu/programme-cadre-en-vue-des-elections-communales-2023/?lang=fr (Accessed on: 14/03/2023)

and the strong resistance of nationals in the question demonstrated by the 2015 referendum), it is important that political parties, whose democratic role is conferred by the constitution, distribute information in multiple languages to access and involve as many people as possible. Especially in the case of the capital city, where the presence of foreigners has recently reached a striking 70%.[984]

IV.1.3.5 The Three Traditional Groups of the Political Culture

The three traditional segments of Luxembourgish political culture are the Christian-Socialists (corresponding party: CSV), the liberals (DP), and the socialists (LSAP). A division of the state by these three groups (e.g., the different ministries and municipalities) influenced the country's political culture and provides for a higher citizen affiliation with and engagement in politics in the past. Traditionally, citizen participation has been a general characteristic of the Luxembourgish culture.

However, the level of the political affiliation of citizens has been shifting in recent years. As STUDIALUX study's result show, young voters, especially the age group of 18-24 years, are less convinced of their votes. Research results show that in the 2018 general elections, a striking 40% of voters only decided in the last week before the election which parties and candidates they would support. The result was 63% in the age group of 18-24 years.[985] On the other hand, voters over the age of 65 already knew for a long time who they were going to vote for. The data indicate some level of fragility as the hesitant electors can change their choices easily from one election to the other. The study also shows that many of the voters have a high degree; 24% of the voters have a university degree which is twice as high as in 2013. CSV and LSAP were gaining the most support from the older voters. 31% of the socialist votes came from citizens of 65 years of age or older, while the number was 29% in the case of the CSV.[986]

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[984] Delano: 'City candidates seek expat vote'.
[985] Poirier, Philippe (2019): Éischt Analys vun de Chamberwahlen 2018. Radio 100,7. Source: https://www.100komma7.lu/article/aktualiteit/eischt-analys-vun-de-chamberwahlen-2018 (Accessed on: 13/01/2023)
[986] Ibid.

Table 39: LU: Elections 1999-2018: Sum of vote gain of CSV, LSAP, and DP

Elections	1999	2004	2009	2013	2018
CSV	29,73%	36,11%	37,32%	33,68%	28,31%
LSAP	23,74%	23,37%	23,00%	20,28%	17,60%
DP	21,59%	16,05%	14,30%	18,25%	16,91%
SUM	75,06%	75,53%	74,62%	72,21%	62,82%

Figure 42: LU: The Shift of the Prominence of the Three Major Parties 1999-2018
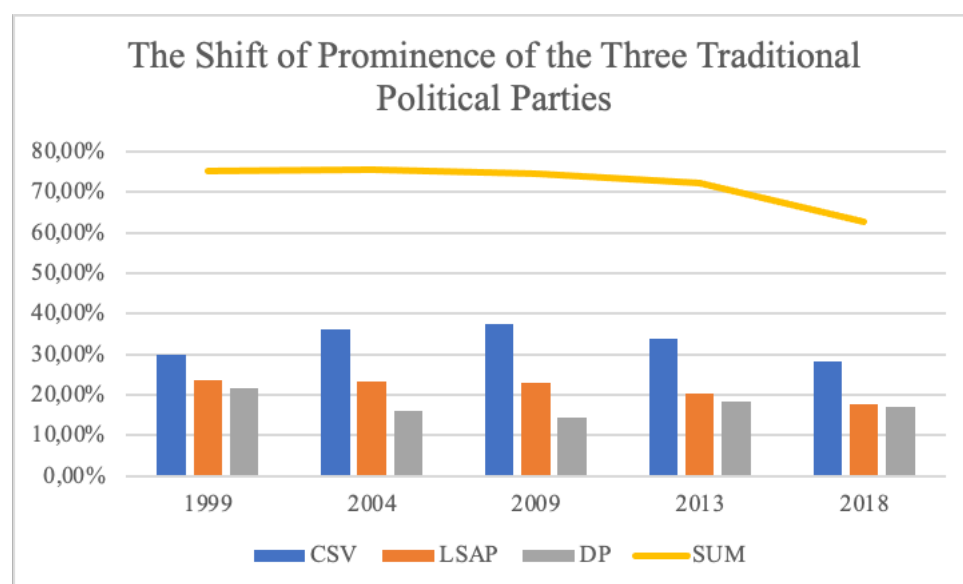
The table and chart above show the shift in the prominence of the three traditional political parties in light of voter preference. While in the 1999, 2004, 2008, and 2013 national elections, the three parties were able to maintain the preference of altogether 72-72% of the electorate, the 2018 elections show a drop; the traditional triad gained only 63% of the votes. The shifting strength of affiliation to the traditional parties and the diversification of the votes benefit smaller parties such as the Piratepartei ("Piraten") and déi Gréng.

Whether the latter trend continues will be confirmed by the national elections of October 2023. Opinion polls conducted by TNS-Ilres show that while CSV remains the most popular among voters, LSAP continues to be the most preferred political party of the governing coalition. Poll results also show a slight change between the popularity rate of the Piratepartei and déi Gréng,

to the benefit of the former.[987] According to other polls conducted by TNS-Ilres in late 2022, health minister Paulette Lenert, LSAP candidate for prime ministership, is the most popular politician in the Grand Duchy[988], which may further contribute to the recent growth of voter preference for the socialists.

IV.1.3.6 Media Affiliation to Politics

There are strong traditional links between the political sphere and the media in Luxembourg. The independence of the media differs in national and international regards: the media is independent when it comes to foreign policy and questions at the international level, but they have strong links to political actors when it comes to national political dynamics. The media is not independent from politics. The affiliation of media outlets to political parties has been a tradition in Luxembourg; however, in an unequal manner. As we see in the case of Hungary, a high governmental influence on the media has carries risks for political arbitrariness and for the creation of media oligarchies. However, the Luxembourgish case is different. While in Hungary, since 2010 the governing Fidesz-KDNP alliance has cemented an exclusive influence on public television and radio channels (even including the commercial television channel TV2) the political affiliation and dependence of the media are diversified. The papers Tageblatt and Luxembourg Wort are affiliated with the Democratic Party and the Christian-Socialist CSV, respectively. Until 2021, RTL was affiliated with the CSV; since 2021, RTL has had more proximity to the democrats. Radio Socio-Culturelle 100,7 is affiliated with the DP and the Greens. The system of state subsidies further provides for the dependency of media outlets on politics. One may suggest that a higher autonomy of media outlets would benefit the quality of democracy in the Grand Duchy.

IV.1.3.7 The Question of Resident Foreigners' Elective Rights

Hypothesis I seeks to understand the impact of political culture on democratic functioning. As Luxembourg has a highly diversified public sphere and political culture on the societal (meso/2) level, we observe a case where democracy appears in stagnation since the

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[987] Luxembourger Wort (2022): Le LSAP redevient la première force de la coalition. Source: https://www.wort.lu/fr/luxembourg/le-lsap-depasse-le-dp-dans-les-intentions-de-vote-638f6c6ade135b9236882608 (Accessed on: 03/03/2023)

[988] Luxembourger Wort (2022): Polimonitor: Voici vos personnalités politiques préférés. Source: https://www.wort.lu/fr/luxembourg/voici-vos-personnalites-politiques-preferees-637e5dd1de135b9236edd4ea (Accessed on: 03/03/2023)

representation of the foreigner-residents, bearing in mind their number, is not sufficient, as this segment of the public sphere does not have elective right to the national parliament. Luxembourgish citizens certainly set a clear limit for the political community by the 2015 referendum.

During the interview, IS/L expressed that the fact that almost 50% of the people do not hold citizenship challenges democratic quality in the Grand Duchy. "People are from all around the world, which is both a strength and a challenge." When asking about the challenges and vulnerabilities of the quality of democracy in the Grand Duchy, IS/G also pointed out "a democratic deficit: half of the population cannot take part in the legislative elections, as they do not have Luxembourgish nationality".

IS/K further emphasised the limited representation of foreigners:

> "The limited representation of foreigners in Luxembourg clearly is a challenge for Luxembourgish democracy, as it can limit the diversity of perspectives and experiences that are represented in the political decision-making process. This can limit non-Luxembourgish nationals' ability to participate in the political process and have a say in decisions that affect their lives. Furthermore, the limited representation of foreigners in the political process can perpetuate a sense of exclusion and marginalization among non-Luxembourgish residents, which could undermine social cohesion and trust in democratic institutions. This can be particularly problematic in a country like Luxembourg, which relies heavily on immigrant labour and has a diverse population. Therefore, efforts to promote the political participation of non-Luxembourgish residents, such as granting them voting rights in local and national elections, could be seen as a way to strengthen democracy in the country and ensure that a wider range of perspectives and experiences are represented in the political decision-making process."

The 2015 Referendum

Besides other proposals for democratic innovation, the 2015 Referendum attempted to give way to the extension of national elective rights to foreigners. All three questions were massively rejected by the Luxembourgish electorate, outlining a traditionalist character.[989]

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[989] Le Monde (2015): Les Luxembourgeois infligent un non massif au droit de vote des étrangers. Source: https://www.lemonde.fr/europe/article/2015/06/08/les-luxembourgeois-infligent-un-non-massif-au-droit-de-vote-des-etrangers_4649159_3214.html (Accessed on: 20/03/2023)

Table 40: Referendum 2015: Questions and Results[990]

	Questions	YES	NO
1	Do you approve of the idea that Luxembourgers aged 16-18 have the right to optionally register on the electoral lists to participate as voters in the elections for the Chamber of Deputies, in the European elections, in the municipal elections, as well as referendums?	19,13%	80,87%
2	Do you approve of the idea that non-Luxembourgish residents should have the right to optionally register on the electoral lists with a view to participating as voters in the elections for the Chamber of Deputies, on the specific double condition of having resided for at least ten years in Luxembourg and having previously taken part in municipal or European elections in Luxembourg?	21,98%	78,02%
3	Do you agree with the idea of limiting to ten years the maximum duration during which, on a continuous basis, a person can be a member of the government?	30,07%	69,93%

Kies explains that two camps formed regarding the question of elective rights of foreigners, based on the conditions of residing in the country for a minimum of 10 years and having previously participated in either European or municipal elections. On the one hand, the "NO" camp consisted of the sovereigntist-conservative party ADR and the largest traditional political party, the Christian-Socialist CSV. Besides the two political groups, the trade union of civil service works, CGFP was also against the extension of rights to foreigners. Kies collects three reasons which emerged amongst "NO" supporters. First, the argument that political citizenship (therefore, the right to vote in national elections) must remain tied to the acquisition of Luxembourgish nationality (entailing certain efforts from an individual to adopt the culture and language of the country). Second, the argument which was the essence of the Brexit debate, too: sovereignty and the risk to lose it. Third, the risk of the dispersion of the Luxembourgish

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[990] Government of the Grand Duchy of Luxembourg: Référendum du 7 juin 2015 Résultats officieux. Source: https://elections.public.lu/fr/referendum/2015.html (Accessed on: 20/03/2023)

language, not only in the political sphere but also in the civil service and education.[991] Language – a pillar of any culture – is a particularly important question for Luxembourgish citizens when it comes to 'Luxembourgish identity': EVS 2008 data shows that almost 90% of believe that "for being really Luxembourgish it is important to speak the Luxembourgish language"[992].

On the other hand, the three governing parties positioned themselves in support of "YES": DP, the socialist LSAP, and déi Gréng (the Greens). The coalition grouped with the major trade unions of the Grand Duchy (OGBL, LCGB, Syprolux, FNCTTFEL), and gained the support of the 'Wort' despite the journal's traditional affiliation to the Christian-Socialist party.[993] Catholic Archbishop of Luxembourg, Jean-Claude Hollerich expressed that those who contribute to the economic, social, cultural, and religious life daily shall not be excluded from political life. "All these people are part of our society, of its life, of its wealth, its beauty, the diversity of our country (…). However, this large part of our population is not really integrated into the political life of the Grand Duchy."[994] The "YES" camp further argued that the democratic deficit caused by the exclusion of foreigners from this level of the political life, especially in light of the growing immigration, risks that 'the minority without a voice' one day becomes 'the majority without a voice'. Questions at the heart of the public debate were about what is and what shall Luxembourgish society be like. According to "YES" supporters, it is characterised by features such as openness, multilingualism, and the ability to reinvent itself continuously.[995]

Among the reasons for the failure of the referendum, Kies mentions the strong media presence of the "NO" camp, fears relating to the labour market, the potential sanctioning of the government, and questions of national identity and language. Furthermore, post-referendum survey results showed that Luxembourgish citizens did not perceive a severe democratic deficit due to foreigners not having the right to vote: 34% of respondents believed that there was a problem with democratic legitimacy.[996]

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[991] Kies, R. (2019): Éteindre le droit de vote des étrangers aux élections législatives: Pourquoi les Luxembourgeois n'en veulent pas? in Poirier, P., Farhat, N. (eds.) (2019): 'Démocratie(s), parlementarisme(s) et légitimité(s)'. Bruylant, Brussels. pp. 265-266
[992] Ibid., p. 266
[993] Ibid., pp. 266-267
[994] Le Quotidien (2015) : Mgr Hollerich plaide en faveur du droit de vote des étrangers. Source: https://lequotidien.lu/politique-societe/mgr-hollerich-plaide-faveur-droit-vote-des-etrangers/ (Accessed on: 20/03/2023)
[995] Kies, R. (2019) : Éteindre le droit de vote des étrangers aux élections législatives : Pourquoi les Luxembourgeois n'en veulent pas? p. 267
[996] Ibid., pp. 269-273

Municipal Elections

A democratic innovation considering foreigner resident participation in municipal elections took place in 2021 in the Grand Duchy. To improve foreigner participation in the democratic system, the Chamber of Deputies passed a law (Bill 7877) which grants elective rights to foreigner residents in municipal elections without proving five year-long residency, as EU law prescribes for EU citizens since the entering into force of the Treaty of Maastricht. From the next election, all foreigners, whether they are from an EU country or not, will be able to vote. In the last municipal elections in 2017, one third of the resident foreigners (75,226) were not able to take part due to the five-year residency obligation. Thus, in the municipal elections of June 2023 will be open for tens of thousands of new electors. Published by the Chamber, the amendments of legislation 7877 "aim to abolish the five-year residence clause for foreign nationals wishing to register on the electoral lists for municipal elections and to postpone the deadline for registering on the said lists. The purpose of these changes is to facilitate the participation of foreign nationals in municipal elections". One of the motivations for the legislative act is the generally low participation of foreigners in municipal elections.

> "According to the general trend observed in all the municipalities of the country, the percentage of foreigners, over the last 50 years and even more so over the last 30 years, is on the rise. Indeed, the proportion of people of foreign nationality residing in the Grand Duchy has continuously increased, rising from 18.4% in 1970 to 26.3% in 1981, 29.4% in 1991, 36.9% in 2001, 43 % in 2011, then finally to 47.2% in 2021. However, the participation of our foreign fellow citizens in municipal elections is still very low, despite the many legislative changes made over the years for the purposes of a tangible increase, not to mention the many awareness campaigns and actions to promote registration. (…) Thus, on the occasion of the municipal elections of 14 July 2017, 151,938 citizens of foreign nationality met the conditions for registration on the electoral lists, i.e., were aged 18 and over and had been residing in Luxembourg for at least less than 5 years. On the day of the closing date for registration on the electoral lists, 34,638 people of foreign nationality were registered, which represents only an actual registration rate of 22.8% compared to the number of potential non-Luxembourgish voters."[997]

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[997] Chambre des Députés du Grand-Duché du Luxembourg (2022) : Projet de loi 7877 portant modification : 1ᵉ de la loi électorale modifiée du 18 février 2003. Source: https://wdocs-pub.chd.lu/docs/exped/0123/194/247943.pdf (Accessed on: 20/01/2023). p. 2.

Furthermore, the legislation expresses an opinion according to which it is the municipal elections which are the most important to the resident foreigners:

> "(…) it is at the local level that participation in the democratic process, through the designation of those who are called upon to govern, is the most important for the residents since the decisions taken at the local level are those that affect the resident population most closely."[998]

The legislation also refers to the fact that the reform of elective rights in municipal elections was identified as a government objective:

> "Easy access to municipal elections, as well as the promotion of the integration of nationals of another Member State of the European Union and of other foreign nationals, have been identified as a desire of the Government, (…) enshrined in the program Government 2018-2023: (…) 'means tending to improve the participation of foreign citizens in local elections will be studied'. (…) a reform of the electoral law on two axes, namely the abolition of the residence clause and the extension of the registration deadline by foreign nationals on the electoral lists."[999]

Bill 7877 represents a significant democratic innovation, as Luxembourg is the last of 27 where EU nationals had to wait five years before being able to vote in municipal elections. However, as shown above, we observe a political narrative which considers municipal elections more important to foreigners than national elections. Such a norm, though, shall stem from the level of society. It could be investigated by public consultations or research relying, for instance, on the deliberation of the citizens (electronic platform, focus groups, etc.). Another important recent change is the changing concept of the referendum in the constitution (proposal for revision no. 7777). The new article does not specify the circle of voters who may be called upon to participate in referenda, giving room for widening the scope of referenda.

Regarding other improvements at the level of civil society, in recent years, the number of public hearings in the Chamber of Deputies increased. This form of democratic practice is beneficial for the quality of democracy both at the institutional and civil levels of the political culture, as this way the Chamber of Deputies becomes open to all the society and not only to the citizens.

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[998] Ibid., p. 3.
[999] Ibid., p. 3

We conclude that the recent constitutional reforms do not solve the democratic deficit caused by the exclusion of resident foreigners from the national elections but opened the door for their better inclusion in the future.

IV.2 Comparison

IV.2.1 Continuity, Democratic Stability, and Democratic Vulnerability

Table 41: Findings – Fragmentation, Continuity, and Stability of Democratic Political Culture since the mid-19th Century

Democratic Political Culture	Fragmentation	Continuity	Stability
UK	Growing	Yes	Challenged
LU	Yes	Yes	Challenged
HU	Decreasing	No	No

The table above shows the conclusions regarding the independent variables of the research.

In the case of Hungary, the factor of political culture that appears to be the most impactful on democratic quality and stability was continuity. The evolution of a democratic political culture started in the Kingdom of Hungary in the mid-19th century, too. However, the breaks in this evolution (i.e., the two lost world wars and the 45-year-long authoritarian communist/socialist regime) did not permit the completion of democratisation at all levels of the political culture. The research concludes that despite the establishment of the bases for democracy at the macro and meso-institutional levels of political culture, the incompletion of democratisation at the meso-societal and micro levels left the entire process vulnerable. This vulnerability is the reason for the democratic deterioration (de-democratisation) in Hungary. Thus, we conclude the lack of a stable democratic political culture, due to the incomplete process of democratisation on the societal level (approval of democratic norms, political participation beyond the national elections, exchange about politics, interest in politics, efficient scrutiny over the government) in most part of the country. However, the rising trends of citizens' confidence in the government and the re-legitimization of Orbán's regime every four years provide for stability. **This stability does not mean a stable democratic culture.** The outlined

stability is a feature of a system that can barely be called genuinely democratic beyond the application of the minimum requirements of democracy. The illiberal "democracy", an electoral system with free and fair, contested, observed elections (Howard and Roessler, 2006), but with serious flaws regarding the rule of law, freedoms, social inclusion (e.g., LGBT+ and/or non-Christian persons), pluralism, real public dialogue, responsiveness, and the inclusion of civil society organisations in political decision-making. Finally, the political culture altogether is becoming more and more homogenous. Opposition parties are inefficient outside of the capital city. Despite the political cleavage between Budapest and the rest of the country, the thesis concludes that the continuous re-legitimisation of the two-third majority Fidesz-KDNP government (with high turnout) and the weakness of the opposition points in the direction of homogenisation.

The thesis argues that **democratisation in Hungary has never been completed**, thus the process of **democratisation remained vulnerable.** Democratisation started in 1989, particularly on the macro and meso-institutional levels of the country's political culture, i.e., by the adaption of a new democratic constitution and the establishment of democratic institutions, administration, and practices, as well as the principles of the rule of law. This process of democratisation permitted the country to become member of international organisations such as NATO or the EU. However, the country has been put on a path of decline since 2010-2011 due to a lack of sufficient democratisation at the level of meso-II and micro levels, i.e., the society and the individual citizens. The thesis's reasoning relies on some key lines of the general literature on democracy and political culture. Firstly, in 'Civic Culture' (1963), Almond and Verba argue that a democratic political system demands a political culture consistent with it. Following their argumentation, the democratic political system as well as democratisation, besides the macro and meso-institutional levels of political culture requires sufficiently functioning meso-societal and micro (individual citizen) levels as well, via the involvement of the participant-type citizens. The latter progress, as highlighted earlier, must be sustained by the institutional levels of the political culture, and, particularly in the case of countries on the path of democratisation, dependent on the political will of the elite. Secondly, in 'Between Facts and Norms', 1996, Habermas argues that basic rights can only grant the democratic freedoms of the citizens if the citizens also consider themselves as the authors of the law (through popular sovereignty). Thirdly, in Poliarchy (1971) Dahl lists 'enlightened understanding' as one of the five basic criteria for democratic processes. The Hungarian electorate is lagging in these aspects. The recent decline in the quality of democracy in Hungary

can be explained as follows: **democratisation has not experienced sufficient progress on the meso-societal and micro level of Hungarian political culture (grassroots level, bottom-up)**. Firstly, a sustainable democratic consolidation could not be completed in the country. Although Orbán and the Fidesz-KDNP party coalition started to reverse institutional democratisation in 2010, voters keep re-electing Viktor Orbán and his party and indices regarding trust in the government show significant growth in recent years. These imply that the citizenry is not ready to effectively scrutinize the government, which is one of the reasons for democratic decline in Hungary. Secondly, since the mid-19th century, the breaks in the evolution of the democratic constitution have provided for instability of the Hungarian political culture. The instability of the political culture at the constitutional level (meso/I) has affected the progress of the establishment of substantive liberal democracy and the performance of democratic quality today. Following this reasoning, the democratic decline of the last decade does not cause much surprise. One can observe **a double transition opposing in nature**: the first transition, starting in 1989 (the year of the democratic constitution putting an end to the decades-long authoritarian regime), and the second transition, starting in 2011 (the year of the new Fundamental Law): **a de-democratisation**.

On the other hand, both in the cases of Luxembourg and the United Kingdom we observe continuity regarding the development of democratic structures. However, the cases show two significantly different paths of democratic evolution which provide these countries with different democratic challenges today. In the case of the UK, the most crucial factor which provides for lesser stability is the lack of a canonised constitution. The strong constitutional tradition (which corresponds to the macro level of our political culture model), like in Luxembourg and unlike in Hungary, is a strong characteristic of the UK's political culture. However, the research on Brexit shows that the continuity concerning the macro-level structures of the UK's democracy (constitutional and parliamentary characteristics) appeared not to help democratic quality. Weak democratic representation of different interests and the overrepresentation of some elites (Etzioni-Halevy[1000]) is another characteristic of the UK's Westminster-type democracy which affects the quality of the country's democracy for the worse. The case study on the UK shows a series of both constitutional and societal issues emerging especially after the Brexit referendum, implying a **democratic decline**.

[1000] Etzioni-Halevy, E. (1993): The Elite Connection: Problems and Potential of Western Democracy. pp. 125-150

In the case of Luxembourg, democratic evolution towards a sustainable liberal democracy (with a consensus/consociational character, fitting its fragmented political culture) has been overall continuous and stable. One can observe an almost continuous democratic evolution on every level of the political culture since the mid-19th century. The Grand Duchy adapted the Belgian example to create its first modern constitution which was born in a political milieu permeated by liberal ideas, and which was amended several times keeping in mind firstly, European democratic trends in the different eras, and secondly, recommendations of international organisations such as the Council of Europe. Continuity and stability in the liberal democratic constitutional evolution provide for continuity and stability of political culture in Luxembourg, which is a factor for a higher quality of democracy in the Grand Duchy than in the UK and in Hungary. This entailed a strong approval of liberal democratic norms: one of the political cultural pillars of democratic stability in the country. Furthermore, what makes Luxembourgish political culture and democratic functioning unique is the consensus-making capacity which proves to improve democratic quality. Democratic stability, although it appears strong based on indices of international assessment frameworks, is challenged by the democratic deficit concerning the non-nationals, posing a vulnerability to Luxembourgish democracy. We conclude that the lack of representation of foreigner-residents in the national parliament (even though with the new citizenship law of 2018 it is easier for foreigners to access citizenship) indicates **democratic stagnation** in Luxembourg.

In conclusion, the concept of **the vulnerability of democratisation** emerges from the Hungarian case study. Besides the latter, it is also possible to observe **the vulnerability of the quality of democracy**, which concept emerges from the case study of liberal ("full") democracies: the UK and Luxembourg. The concept of democratic vulnerability serves a better understanding of democratic backsliding.

Figure 43: Democratic Vulnerability
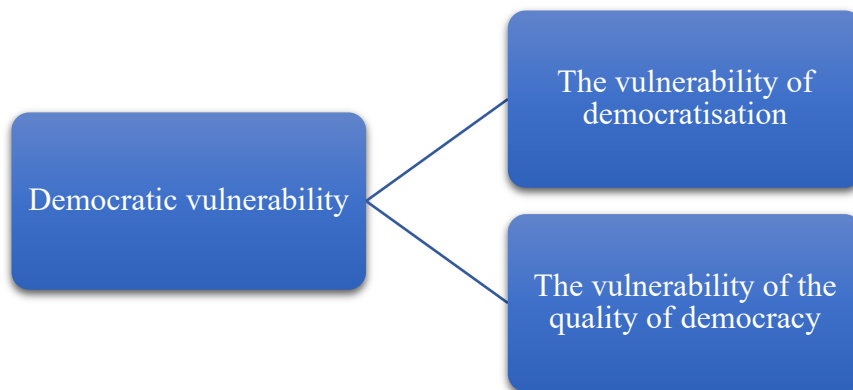
IV.2.2 Fragmentation

IV.2.2.1 Populism, Fearmongering, and the 'Us Against Them' Narrative

The '**us against them narrative**' is a political-psychological element of the historical context of Hungarian political culture which has been present since the mid-19th century, which characterises both left and right-wing populism throughout history, allowing us to understand the political psychology of today's Hungary in context. During the Revolution of 1848 'us against' the Habsburgs for sovereignty and identity, in the Horthy era 'us against' the Bolshevik red terror and the Jews, during the Socialist regime, **'us against' the enemies of the system** ("those who are not with us are against us", declared by Mátyás Rákosi, general secretary of the Hungarian Communist Party, later Hungarian Workers' Party), 'us against the Soviet oppression'[1001]; since the beginning of the democratic transition, 'us against' the communists, and recently, 'us against' against the liberals, and 'us against' Brussels. The '**Us against**' narrative is an **ever-relevant populistic political tool** in the hands of Orbán and his government. The political psychology of fear and 'fighting the enemy' spirit provided an ideal ground for authoritarian tendencies in Hungary in recent years. Viktor Orbán has been using this ground for the cementing of his power and creating his so-called and often quoted "illiberal democracy" since 2010 – after the world economic crisis which, under a socialist-liberal

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[1001] Hungary belonged to the group of countries of the Eastern Block which were reluctant in their devotion to the communist-socialist regime as well as to the Soviets. The reluctance manifested in the revolution of October 1956, repressed by the USSR within two weeks.

government which had not taken enough measures to lessen the economic damage, massively hit the Hungarian people too. The list of "enemies" is extensive: liberals, George Soros and "his" NGOs, migrants, the gender lobby, LGBTQ+ persons, and lately, the war in Ukraine. The narrative, as presented before in the brief investigation of the social media communication of Viktor Orbán, revolves around 'protection'. **Protecting** the country, the families, or the low price of the charges are everyday phrases in the prime minister's (and his team's) communication, taking on the role of a strong leader, 'the protector'.

According to IS/J, "**direct democratic tools** contribute to **political stability** if many actors (political parties, citizens, trade unions, democratic institutions, etc.) take part; it helps the expression of the relations of social interests and their continuous reconciliation, it helps ensure the checks and balances. Also, it is the guarantee that no one will be hopelessly lost and will not feel that they have no opportunity to pursue their interests". However, **the distorted use of these democratic instruments** is a familiar element of Orbán's illiberal regime. The first element of these is the use of referendum which happened twice in recent years: 1) the 2016 referendum on the EU migrant quota, 2) the 2022 referendum on the protection of children (as a part of the anti-LGBT+ government propaganda). The latter was communicated towards the EU as a response to the criticism received regarding the 2021 anti-LGBT law (Act LXXIX of 2021). The referendums, especially the one of 2022, included questions which were often confusing and difficult to understand to the citizens both due to the wording and the content. The parliamentary decision on holding the 2022 referendum was upheld by the constitutional court unanimously.[1002] The questions of the 2022 referendum: *Do you support holding information events on sexual orientation to minors, in public education institutions without parental consent? Do you support the promotion of gender-reassignment treatments to minors? Do you support the unrestricted exposure of minors to sexually explicit media content, that may influence their development? Do you support showing minors media content on gender-changing procedures?* Besides being an example of a distorted usage of direct democracy instruments, the referendum and the related law also reflect the incentive for socio-psychological homogenisation: *"We are setting the standards socially and legally for what 'normal' is, and divergence is unwelcome"*.

[1002] Hungary Today (2022): Constitutional Court Decided: There Will Be Referendum on "Child Protection". Source: https://hungarytoday.hu/hungarian-child-protection-law-referendum-questions-hungary/ (Accessed on: 09/03/2023)

The second example of the distorted use of democratic tools is the government's attempts at public dialogue. In 2015, the Fidesz-KDNP government announced a national consultation on migration and terrorism, followed by sending out 8 million copies of the national consultation questionnaire to all households. The campaign included the installation of giant posters in public spaces. The messages of the posters seemingly address migrants in an exclamatory way, in Hungarian language, but with the obvious intention of shaping national public opinion. The campaign of the national consultation probably gained inspiration from the UKIP party's EU elections success which followed the party's anti-EU (and EU migrants) campaign.

Figure 44: HU National Consultation on Migration and Terrorism (1)

Translation: 'If you come to Hungary, you must respect our laws!'

Figure 45: HU National Consultation on Migration and Terrorism (2)

Translation: 'If you come to Hungary, you cannot take away the job of Hungarians!'

Figure 46: HU National Consultation on Migration and Terrorism (3)

Translation: 'If you come to Hungary, you must respect our culture!'

Even though the United Kingdom shows a different path of constitutional evolution, and the development of its democratic political culture has been continuous, Brexit reflects that the populistic 'us against' narrative coming from certain political actors (Farage, UKIP) has had significant success among citizens, probably bigger than they would have imagined.

The below flyers are some examples for the **anti-migration propaganda** presented in UKIP's campaign for the 2014 European elections. The campaign worked: the Farage-led UKIP won the plurality (26,6%) of the votes. The messages on the flyers can be interpreted as examples for planting 'us against' sentiments in the British citizenry. Like the Hungarian examples, the messages suggest that immigrants are a threat to national workers. The flyers used techniques for establishing the sentiment of personal connection. Firstly, the image of a British citizen worker who is forced to beg for money due to the flood of "unlimited cheap labour" (message: 'because of the EU, Eastern-European migrants have the right to come to Britain and take away our jobs'). Secondly, Tony, who lost his business because of the EU (message: 'the EU is harmful for the British people and the national economy'); thirdly, a commonly used image of a finger pointed at the reader (addressing) with another example of threat and fearmongering about 'EU migrants taking away the jobs of the Brits'; and fourthly, the picture of EU technocratism: a message about the loss of sovereignty suffered due to EU membership.
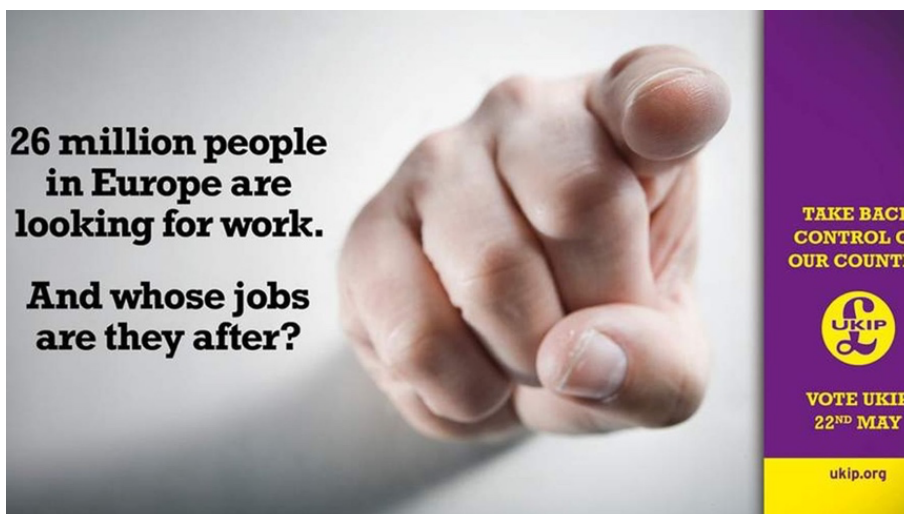
Figure 47: UKIP 1

Figure 48: UKIP 2

Figure 49: UKIP 3

The political debate and agenda on **claiming back sovereignty** is a common element in the UK and Hungarian case studies. In the case of the UK, after a membership of almost half a century, it resulted in leaving the European Union. However, foreign rule is not present in English/British history as in the case of Hungary. The 'opposition to the foreign rule' created a sentiment in Hungarian political psychology which is still able to give ground to political dynamics, such as the nationalistic sentiments which emerged in the country with regard to the role of 'Brussels' which in Fidesz campaigns is oftentimes compared to Moscow, implying a parallel of the Soviet-dominated communist/socialist era and the EU membership, especially with the conferred competences and the loss of sovereignty. Another common feature of the UK and Hungary cases is the overpowered government; however, on different grounds. While the UK government's (and parliament's) excessive powers rely on constitutional conventions and on the nature of the Westminster-style democratic system, in Hungary, it is due to voter preferences and recent changes in the electoral law which support the cementing of the reign of the Fidesz-KDNP party alliance.

Through the UK and Hungary comparison, we can observe **a link between authoritarianization and overpowered governments**. However, the **comparison of the Hungarian and UK cases** leaves us with **unclarity regarding the importance of authoritarian legacies for the success of such populistic narratives** since the UK does not have any.

IV.2.2.2 Fragmentation: Cherishing Cultural Diversity

The thesis discussed at several points the societal fragmentation and diversity of the Grand Duchy. We saw demographic trends in continuous growth, and a unique society with currently 47% foreigner-residents. The high level of social fragmentation challenges democratic quality and stability due to exclusive elective rights and demands democratic innovations. Although for the moment there is no explicit plan available for solving the democratic deficit that considers the 47%, the new Constitutional reforms give way to the inclusion of foreigner-residents in referendums, which has the potential to shape politics and redefine citizenship and/or elective rights in the long run. The reforms enshrined in the text of the Constitution the **values of multiculturalism and of European Integration**, which is an important step regarding normative democracy in the Grand Duchy, given that 85% of foreigners are from other EU countries. Constitutionalising the value of the European Integration transfers a different message than what we saw through the examples of British and Hungarian political communication: *'migration and diversity is valuable and to be cherished'*. These amendments provide for an **indirect representation of foreigner-residents at the constitutional level**.

IV.2.3 Political Apathy, Political Enthusiasm

The question of **political apathy** is an important factor regarding the **lack of evolution of a high-quality democratic political culture** in Hungary (Andrew Roberts, 2010) not only during but also after the socialist dictatorship. Political alienation determines the level of knowledge and understanding among the citizens, the level of interest in political dynamics, the need for information and transparency, demanding accountability. By the terminology of Sydney and Verba, the dominance of subject type of citizens; or, as Tábori points out, political cynicism, voters without any political identity, a low level of the political integration of individuals, an interpretation of the 'state' as the exercise of power and not as the instrument of popular sovereignty, and a general lack of trust in political leaders.[1003] IS/J also highlights in their interview answers regarding the Hungarian citizenry that "people's basic idea for a long time has been that they can't get involved in politics, it's some kind of mischievous thing, so it's better not to get involved". At the same time, the research observes a growing trend of

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[1003] Tábori, F. (2016): A magyar politikai kultúra hatása a magyar többpártrendszerre (1988-2010). Source: https://edit.elte.hu/xmlui/static/pdf-viewer-master/external/pdfjs-2.1.266-dist/web/viewer.html?file=https://edit.elte.hu/xmlui/bitstream/handle/10831/37426/Poltud_tan_2016_Tabori_Ferenc_30-38.pdf?sequence=1&isAllowed=y (Accessed on: 15/02/2023) pp. 34-36

people's confidence in democratic institutions, due to government policies which gave the perception of "protection", such as the governmental programme of lessening the cost of public utilities and artificially keeping the price of some products down, regarding the heavy rhythm inflation. IS/J explains that "due to the lack of autonomy, people rely on a government's assurance that it will take care of them in a materialistic sense. In addition to the large amount of stolen EU money, the current government gave everyone something, the poorest received potatoes, food, and tax concessions for the wealthiest. In addition, they spread awareness by saying that Hungarians are different from everyone else, as well as the lie that we are the most successful in the EU. Since the majority of the people gather information solely from the public television channels, this is enough".

As EVS and Eurobarometer data showed, UK citizens have a low interest in politics and as well as a low trust in politicians and democratic institutions. Participation results showed moderate turnouts; the Brexit referendum attracted slightly more interest. According to the outlined pattern, the parliament enjoys slightly more confidence. The underlying reason might be found in the features of the Westminster democracy model with two traditionally strong political groups. For nuancing the picture, two examples for higher civil engagement are the ever-active NGOs whose activities were related to Brexit, and the number and level of support of petitions around the Brexit process.

Luxembourg, on the other hand, shows the contra-example of political apathy. Participation is high, and surveys show that people (citizens and foreigner-residents included) are much interested in politics besides having a relatively high level of trust in both the national government and the Chamber of Deputies (well above the EU average in each survey, each relating question). Luxemburg thus provides us with trends of **political enthusiasm.** However, despite the beneficial legal changes, foreigner participation in municipal elections in June 2023 might still turn out to be low, providing for further stagnation. During the interview, IS/K also pointed out that the representation of women is limited in politics. "While women make up over 50% of the population in Luxembourg. They are underrepresented in politics, with only 23% of parliamentary seats held by women as of 2021. This can limit the diversity of perspectives and experiences in political decision-making processes."

IV.2.4 Summary of Findings

The purpose of the below table is to give a visual summary of the results of the empirical research, as well as of the outcomes regarding the challenged deficiency needs of democratic quality and the different levels of democratic backsliding. The first columns summarize the observations following the structure of the thesis's empirical research: constitutional traditions, the protection of fundamental rights and freedoms, political parties and NGOs, and the meso-societal and micro levels of the different political cultures. Also, the table identifies some democratic vulnerabilities which emerged during the study.

Table 42: Summary of Findings

	Constitutional Tradition	Fundamental Rights Protection	Parties and NGOs	Democratic Vulnerability	Civil Society and Citizens	Deficiency needs of democracy	Type of democratic stagnation / backsliding
UK	Lack of canonised constitution Constitution is based on parliamentary sovereignty, the rule of law Stable and continuous political culture	Risks and challenges Human Rights Act 1998 is a "gold standard" Reform bill of the HRA exposes risks	No constitutional role for political parties NGOs thriving in the Brexit era Legal difficulties for NGO activities	Power sharing and checks and balances Constitutional crisis caused by Brexit due to the lack of a written constitution Increasing fragmentation of the political culture challenges democracy	Cleavage between Brexit and Remain camps High scrutiny over government through petitions Moderately high participation	Rule of law: Challenged Civil: Partly challenged by the Brexit caused cleavages	Backsliding due to the constitutional crisis Brexit caused Risk of decline of human rights protection
LU	Strong liberal constitutional tradition Stable, continuous	High quality, entrenched in constitution, permeates political culture	Constitutional role for political parties	The fragmented society and political culture pose unique challenges	Generally high confidence in institutions, one of the highest in the EU	Rule of law: Strong Civil: challenged by the lack of	Democratic stagnation due to the lack of elective rights of resident-foreigners

	political culture and democratic evolution		Thriving sphere of civil society organisations High consensus making capacity	The lack of elective rights of foreigner-residents to parliament is not sustainable	Participant culture	elective rights of foreigner-residents to parliament	
HU	Lack of continuity and stability of the political culture	Declining: Academic freedom, freedom of the media, LGBT+ rights	Constitutional role for political parties Party financing system vulnerable to corruption Many NGOs left out from political consultations, legal difficulties of NGOs	Incomplete democratisation Lack of democratic political culture Weakened rule of law Weakened freedoms	Growing trust in democratic institutions in the Orbán era (from 2010) Lack of strong participant culture Demonstrations centralised in the biggest cities	Rule of law: Challenged Civil: Legal hindrance, Incomplete democratisation	The strongest example of backsliding: de-democratisation All the deficiency needs of democracy are insufficient or challenged

IV.3 Justification of Hypotheses Based on Findings

The thesis investigated a series of empirical elements for finding confirmation for its hypotheses. Hypothesis I, which proposed to investigate the influence of political culture on democratic performance, can be confirmed in each of the cases: we saw several empirical evidence for the impact of the continuity and the shifts in the level of fragmentation of the political culture on democratic performance. Hypothesis II/a, implying the role of the functioning of civil society in the quality of democracy, gained proof in all three cases. However, empirical research to confirm Hypothesis II/b and II/c relied on survey studies and did not clearly confirm the sub-hypotheses in all three countries. Hypothesis III outlines the influence of political culture on the level of democratic stagnation and/or backsliding,

emphasizing the role of the continuity of democratic constitutional traditions and identifying the weakening of the rule of law as the source of backsliding. Hypothesis III/a and III/c gained confirmation through the empirical evidence, however, Hypothesis III/b (the weakening of the rule of law is the *origo* of democratic backsliding) could not be proven.

The independent variables of the research methodology, the continuity, fragmentation, and stability of the political culture can be outlined as meta-factors: the influence of these factors on democratic performance is outlined in all three cases. The shifts and changes of the latter factors stem from different, sometimes external, sometimes internal sources. An example of external sources which impacted the continuity of the democratic political cultural evolution in Hungary were historical events (the 1848 revolution beaten down by the Habsburgs, the lost world wars, and the socialist-authoritarian rule imposed on the country by the Soviet Union). An internal factor is the vulnerability of democratic consolidation fed by lingering authoritarian legacies (weak civic culture, mostly 'subject type' citizens alienated from politics with a preference for a strong leader, a tradition of corruption). In the UK, an external factor is the process of Europeanisation and globalization counter-fought by a part of the UK's political elite, leading to the emergence of internal tensions (e.g., political populism, nationalism, and the weakening of the rule of law). The same phenomenon, however, has a different outlook in the Grand Duchy, where Europeanisation, social fragmentation, and multiculturalism became defining and cherished characteristics of the country's political culture. Despite the latter, fragmentation poses internal challenges to the democratic quality of the country.

The table below summarizes the results of the research, concluding whether the sub-hypotheses gained confirmation in each of the countries.

Table 43: Hypotheses results

Hypotheses	**Sub-Hypotheses**	**Result**
I Political culture affects democratic quality.	I/a The quality of democracy is affected by the constitutional settings and traditions of a democratic system, i.e., the macro level of political culture.	Confirmed: HU, LU, UK
	I/b The continuity of the political culture affects democratic quality.	Confirmed: HU, LU, UK

	I/c The fragmentation of the political culture affects democratic quality.	Confirmed: HU, LU, UK
II Democratic quality and democratic stability are dependent on the civil society and the citizenry, i.e., the meso and micro level of political culture.	II/a The quality of democracy is affected by the nature and functioning of the civil society.	Confirmed: HU, LU, UK
	II/b The perceptions of the citizens about their democracy, their values, their confidence in public institutions, and their general interest in politics affect democratic quality.	Confirmed: HU Not confirmed: LU, UK
	II/c The perceptions of the citizens about their democracy, their values, their confidence in public institutions, and their general interest in politics affect democratic stability.	Confirmed: HU Not confirmed: LU, UK
III Political culture affects the nature and extent of democratic backsliding.	III/a The nature of democratic backsliding is affected by a country's political culture.	Confirmed: HU, LU, UK
	III/b The main cause of democratic backsliding is the weakening of the rule of law.	Partly confirmed: UK, HU Not confirmed: LU
	III/c The strength of the constitutional traditions of a democracy influences democratic backsliding.	Confirmed: HU, LU, UK

IV.3.1 Hypothesis I

I/a

Throughout the comparative study, we saw three different examples of how the levels of the political culture (the four-level model we demonstrated) affect the quality of democracy. Hypothesis I/a focuses on the relationship between the macro level of political culture and democratic quality. The case of the UK showed that Brexit (including the political and social debates around it) had a significant impact on the quality of democracy, which could happen because of certain characteristics of the British political culture. The central issue is the lack of a canonised constitution, a question that belongs to the macro level of our political culture model. Our research shows that despite the long and continuous democratic traditions, the lack of canonised constitution permitted Brexit to cause a constitutional crisis. Furthermore, the above weakness of the constitutional structures also permits the divergence of common European norms in the protection of fundamental rights (i.e., the draft reform of the Human Rights Act 1998 enshrined in the Conservative Party's manifesto; Sunak's plan to quit the ECHR). The British constitutional structure was not able to provide for a smooth realisation of Brexit. It failed to limit governmental powers; it failed to oblige political groups to cooperate for achieving the highest possible level of representation of citizens' interests nationwide; and it failed to stimulate equal dialogue among the devolved assemblies and Westminster.

Hungary's new Fundamental Law of 2011 marks a significant setback in the democratic consolidation of the post-Eastern bloc country. The research presented national and international criticism of the new constitution and its list of amendments. A constitution drafted on an iPad; enacted without sufficient public consultation and cooperation with other political groups; in an exclusive way defining Christianity as the national religion; excluding LGBTQ+ persons from the constitutional definition of marriage and family; lacking the protection of minority languages; curbing the powers and the independence of the Constitutional Court; giving grounds for the future curbing of women's rights by protecting life from the moment of conception. The Fundamental Law was one of the first major steps of the cementing of Orbán's illiberal regime. The new constitutional order gives high importance to two-thirds majority legislation, making the passing of possible re-democratising acts more difficult in the future. The fact that the above de-liberalisation could happen at the constitutional level reveals the weakness of the democratic values of the political elite. Moreover, parliamentary debates

before the country's EU accession showed that the current prime minister's motivations for accession were more material-economic than normative-democratic.

The Luxembourgish case study allows us to observe a system where strong liberal constitutional traditions provide for a high-quality protection of rights, freedoms, equality, and democratic norms. In comparison, this level of protection is missing from the UK's democratic system. The constitutional reforms, entering into force in mid-2023, are a further step of constitutional evolution. Besides enshrining new rights and a set of state objectives for strengthening democracy, the reforms improve accountability and judicial independence. The Luxembourgish case is an example of how the constitutionalisation of democratic norms and practices can cherish democratic quality. The reforms were established following a series of public dialogue (including citizens and civil society organisations) and reflect a good level of responsiveness. The parliament and the government are functioning under the norms and rules prescribed by the constitution, which cannot be exchanged arbitrarily as Hungary's 1989 Constitution was — due to the embeddedness of democratic norms of the political elites and the consociative nature of the system.

I/b

Regarding the relationship between the continuity of political culture and democratic backsliding, we found that the broken continuity in both the democratic constitutional and the civic evolution has been influencing democratic stability and provoking backsliding in Hungary, i.e., a continuously worsening quality of democracy since 2010. The research concludes that democratic political culture could not be consolidated in Hungary due to the breaks in the continuity of the democratic constitutionalisation on the macro level of the political culture. The consolidation of democratisation must happen at all levels of political culture, even if with certain delays. While authoritarian legacies keep lingering in the society and political culture, the citizenry requires time to adapt to the new regime; with an adequate level of information and understanding. The success of the latter process, added to the success of institutional democratisation, influences the vulnerability of democratisation. In Hungary, the legacy of the breaks of democratic evolution is a society where the understanding, support, and acceptance of democratic norms appears to be concentrated in the biggest cities (especially Budapest). On the other hand, the cases of the UK and Luxembourg both show continuous democratic cultures, manifesting at all levels of their political cultures: continuity appears to be positively influencing democratic development.

I/c

In the case of the UK, we conclude that despite the long and continuous tradition of the country's democratic political culture, emerging fragmentation at the meso-societal level has been challenging democratic stability (i.e., the stability of the democratic political culture). The thesis demonstrated these challenges through the example of the Brexit debate and process, which revealed several weaknesses of the majoritarian democratic system. Despite the incredible parliamentary activity and heated debates, the weaknesses (including the lack of a canonised constitution, the overpowered status of the government, and the lack of consensus-making capacity with the opposition) made the Brexit process suffer democratic losses. The growing tendency of fragmentation at the meso-societal level challenged concepts of citizenship, national identity, Europeanness, and sovereignty. These dynamics, though, have not stopped with the UK leaving the EU in February 2020: regaining sovereignty remains the focal point of the political agenda. The last example of the latter is the incentive to withdraw from the European Court of Human Rights and the European Convention on Human Rights[1004] and the new Bill of Rights Bill proposal. These pose risks of diminishing the quality of fundamental rights protection in the UK — therefore, risks to the quality of democracy.

Despite all differences between the two countries' political cultures and democratic evolution, the findings on the Luxembourgish case show commonality with the ones in the UK. The common feature is the growing political cultural fragmentation on the meso-societal level, which keeps democracy challenged in both countries. There are, however, key differences regarding both the political milieu and the institutional background in terms of adapting democracy to the growing fragmentation. Luxembourgish democratic political culture started to develop in the mid-19th century and has maintained its continuity. Due to historical factors, being one of the two centres of the European Union, and its geographic position, the meso-societal level of its political culture has become highly fragmented. Moreover, demographic data from the Grand Duchy show continuous growth. According to the 2022 census results, currently more than 47% of the society is not holding citizenship, therefore, does not have elective rights. The latter causes a democratic deficit and challenges the stability of the democratic political culture in the long run. The Grand Duchy's democratic system is, however, devoted to multiculturalism (e.g., enshrining in the constitution the value of multiculturalism)

[1004] The Independent (2023): Rishi Sunak 'prepared to withdraw from European Convention on Human Rights'. Source: https://www.independent.co.uk/news/uk/politics/sunak-european-human-rights-migrants-b2276204.html (Accessed on: 21/02/2023)

and due to its consensus/consociational setup, much more inclusive regarding different political ideas than British democracy (e.g., grand-coalition government; consensus-making capacity). The new constitutional reforms give way to the inclusion of non-citizen residents in referenda, which, over time, has the potential to tackle the democratic deficit. Nevertheless, to strengthen its democratic functioning, a future task for Luxembourg is to redefine, first, citizenship, and second, the relationship between citizenship and political rights.

The relevance of the question of fragmentation in the Hungarian case study is to be found in the observation of the political elites' incentives for homogenisation, a further legacy of authoritarianism. First, the normative constitutionalisation of Christianity and a conventional family model, second, the propaganda against migrants and refugees, third, the propaganda and legislative changes against the rights of LGBT+ persons. Potential social fragmentation (in the form of diversity) is transformed into the political tool of 'threat', employing the socio-psychological legacy of the 'us against' narrative.

In light of the comparative study, shifts in the level of political cultural fragmentation appear to influence the quality of democracy. The nature of the influence depends on the type of democratic system (constitutional setting, the level of pluralism, type of representation, etc.) and on how deeply democratic norms are rooted among the political elites (how the political elite handles it).

IV.3.2 Hypothesis II

II/a

In the case of Hungary, we first observe that the democratisation which started in 1989 is vulnerable. Even though democratisation took off well at the macro and meso (constitutional and institutional) levels, it didn't achieve completion at the meso-societal and micro (individual citizens) levels. Thus, we conclude that the fact that Hungary hasn't achieved complete democratisation on all levels of its political culture, in other words, failed to establish a comprehensive democratic political culture, gave way to de-democratisation. A new transition started in 2010 with Orbán's re-election, and his two-thirds quasi omnipotent governments in the parliament ever since. We conclude that the lack of a well-established, grass-roots democratic political culture in Hungary gave grounds for the process of de-democratisation. The incompletion of social democratisation manifests in most factors: the lack of sufficient

understanding about democracy and fundamental rights, a generally weaker citizen engagement, low citizen scrutiny over political dynamics, low willingness to hold politicians accountable (due to the lack of understanding and awareness), and low willingness to express their demands to the decision-makers.

On the other hand, in Luxembourg, a country with strong democratic constitutional traditions, we observed a participant culture. The Luxembourgish empirical evidence is well in line with R. A. Dahl's concept about democratic criteria, i.e., participation and informed, "enlightened" citizens. First, we conclude that it is justified that the characteristics at the different levels of the Luxembourgish political culture are in direct relationship with high democratic quality in the country, i.e., the strong democratic constitutional tradition, the consensus-making ability of the political actors, the consensus-consociative settings, the level of citizen engagement all have a direct or indirect positive impact on the quality of democracy. Second, we found that the country's political culture at the meso-societal level due to its unique nature and high level of fragmentation pose challenges to quality of democracy in the country: a democratic stagnation.

In the UK, data showed low confidence in democratic institutions, especially in the period before the delivery of Brexit. On the one hand, Brexit raised debate not only about the definition of citizenship, but also about the fragmentation of the political culture which appeared as a "threat" (a common element with Hungary) which gave ground to success of populistic political strategies. It appeared that "threat" as a political psychological phenomenon has the potential to provoke authoritarian or illiberal socio-political tendencies both among political actors and the society. Through the example of Brexit, we see proof for the link between political culture and democratic quality (and democratic backsliding) not only at the macro level, but also on the meso, and micro levels of political culture. On the other hand, Brexit also provoked a higher level of engagement on the level of the civil society. Firstly, a rise in the activity of civil society organisations for the protection of rights. Secondly, the petitions to not prorogue Parliament, to revoke Article 50, or to have a second EU referendum mobilised and engaged millions of citizens. The ever-rising citizen scrutiny amid the Brexit crisis (sustained by citizen deliberation and exchange of information be it in person or online) is beneficial for democratic functioning in the long run, even if the mentioned petitions did not receive a positive governmental response.

II/b

In the case of Hungary, EVS and Eurobarometer data showed that there is a rising trend in the confidence in democratic institutions since Viktor Orbán's illiberal regime has been established. As EVS 2017 showed, satisfaction with the government also increased. The latter is accompanied by an ever-high participation in national elections, granting legitimacy to the system and its politicians. The role of democracy among citizen values along with the growing trust in the government and the parliament since Orbán became prime minister in 2010 reveals, firstly, that satisfaction and trust in the government are not dependent on democratic quality as prescribed by the school of liberal democracy, i.e., a diverging democracy concept among the Hungarian citizens Secondly, the relevance of authoritarian legacies at the meso/II and micro levels of the political culture are still relevant. Findings of the Hungarian case appear to confirm hypothesis II/b: the lack of deeply rooted democratic values in the society apart from Budapest and the lack of efficient scrutiny over the process of de-democratisation and understanding of democratic values (as outlined by the investigated data) contribute to the deterioration of democratic quality.

The Luxembourgish case provided us with a different lesson. Perceptions about democratic functioning and confidence in democratic institutions proved to be remarkably high shown by survey results, which include the opinions of not only citizens but resident-foreigners, too. People find politics important and are motivated to follow politics on different platforms. The case study of the UK, on the other hand, outlines a democracy where public opinion on democratic performance and trust in democratic institutions is relatively low, and where people are less interested in politics (however, the latter shows an increase due to Brexit, raising the level of interest in politics from low to a moderate level).

It is difficult to define the direction of the relationship between citizen perceptions and confidence and democratic quality through the British and Luxembourgish case studies, thus hypothesis II/b remains not confirmed in these cases. Nevertheless, we suggest that further study on political psychology, citizen scrutiny, and government responsiveness would help find out the nature of the relationship.

II/c

In the examined period, data on Hungary showed a stable growth of confidence in democratic institutions despite the self-declared illiberalism of the regime. The growing trust manifests in

the repetitive re-election of Victor Orbán and his party by the large geographic majority of the country. These contribute to the sense of stability, although this stability is not a liberal democracy-based 'democratic stability'. As mentioned, in the case of Hungary, growing trust and re-legitimization of the illiberal political system reveal an insufficiently democratised civil society and citizenry, which gives grounds to the stabilisation of the illiberal democracy and permits an overall de-democratisation. Based on elections and survey data, the research observes a phenomenon different from 'subjective democratic quality'. Since we cannot talk about a liberal democracy (or, according to the European Parliament's report from October 2022, not even a democracy), the thesis concludes a subjective political system quality that contributes to a specific sort of stability. However, this stability does not fulfil the criteria of democratic stability. The latter conclusion is strengthened by results from qualitative interviews too. Therefore, through the case study of Hungary, the sub-hypothesis gains confirmation.

Luxembourgish democratic institutions enjoy a stable high-level confidence among the people in the observed period, based on surveys which engaged nationals and non-national residents equally. Trust in political parties shows the lowest numbers, however, this is a commonality of EU societies (in EVS 2017 Sweden has the highest percentage: 32,4%). Strong confidence is coupled with a particularly high interest in politics, and willingness to follow politics on different platforms. Furthermore, the habit of discussing politics at home is common in Luxembourg (more among citizens than among non-citizen foreigners, though). High trust in the parliament and the government completed with (1) actively informing the people in a multilingual way, (2) sufficient inclusive public dialogue, (3) high-level government responsiveness, and (4) accountability towards both citizens and foreigner-residents, may help lessen or overbridge the democratic deficit due to the lack of representation of foreigners; therefore, help with the challenges of democratic stability caused by fragmentation. Luxembourgish political culture has many of the above features, which is promising. In the case of Luxembourg, the thesis concludes that challenges to democratic stability do not stem from negative perceptions of the people – the challenges are not reflected on the survey results. Foreigner-specific surveys are necessary to assess the perceptions of representation and the level of trust of that half of the society.

UK citizens show a slightly fluctuating but generally low-level of confidence in both the parliament and the government which reflects the system- and institutional-level problems which became more visible to the citizenry through the Brexit process.

This research may not be able to conclude if citizens' trust, values, perceptions, and whether they are interested in politics or not affect democratic stability, or rather tell information about democratic stability. If there is a higher trust in an undemocratic system, it helps the further cementing of that system and outlines a set of characteristics of the majority of the citizenry: the lack of deeply rooted democratic norms and democratic approval which entail insufficient scrutiny over politics. In these circumstances, the above list of variables indeed seems to affect democratic stability, by serving illiberal/undemocratic stability. In a liberal democracy, if the people's assessment shows a deteriorating picture, it shall be the task of the political elite to respond and act with responsibility and accountability. If the latter is a strong characteristic of the given political culture, and if the people do take the initiatives to challenge political decisions (and have the tools to do that), citizens' trust and perceptions appear to affect democratic quality.

IV.3.3 Hypothesis III

III/a

Findings: Typology of Democratic Stagnation / Backsliding

Table 44: Hypothesis III/a: Typology of Backsliding

CASE	TYPE OF STAGNATION/BACKSLIDING
Luxembourg	Democratic stagnation
United Kingdom	Democratic decline
Hungary	De-democratisation

As the table above shows, the comparative study saw three different types of democratic stagnation / backsliding. In the case of Luxembourg, our research does not conclude democratic decline. Nevertheless, it revealed stagnation in the sense of democratic participation and democratic inclusion. The source of the democratic stagnation is the unique nature of Luxembourgish society where almost half of the people are a foreigner without possessing

citizenship which is the condition for elective rights to the national assembly. The constitutional reforms of 2020-2023 enshrined in the constitution explicitly that the source of sovereignty is the 'nation', which wording excludes non-national residents. At the same time, it is promising that non-citizen residents might be able to participate in future referendums, thanks to new constitutional provisions. In the UK, the case of Brexit showed us the vulnerability of the British constitution. Based on our empirical research and literature, one can conclude, firstly, democratic backsliding in the UK in terms of the rule of law since the Brexit referendum. Secondly, although at the time of the conclusion of the results it is not possible to draw conclusions regarding the backsliding of fundamental rights protection in the UK, the draft Bill of Rights Bill, the reform of the 1998 Human Rights Act, poses a risk of further democratic backsliding.

The level of backsliding corresponds to the potential deterioration of deficiency needs of the quality of democracy. Firstly, in Luxembourg, the rule of law and the tradition of liberal constitutionalism are strong and further strengthened by the new reforms (with a couple of examples, such as the notion of the nation when defining sovereignty and the wording of the provision on equality). As data showed, participation is very high, the importance of politics is considered high by the people, who show a higher-than-average interest in politics, and confidence in institutions is particularly strong compared to other EU member states. Exclusivity on the level of parliamentary representation challenges the deficiency needs of the country's democracy. Secondly, in the case of the UK, both procedural and substantive deficiency needs of the quality of democracy have been challenged by Brexit. Growing fragmentation had initiated debates on sovereignty and migration which became a ground for populistic political narratives. Both the rule of law and parliamentarism suffered from the consequences of the consultative Brexit referendum, furthering cleavages, and raising serious questions on the future of the Union (a repeated Scottish referendum on independence is foreseeable; it was delayed due to the decease of H. M. Queen Elisabeth II). Thirdly, in Hungary, the institutional deficiency needs of democratic quality (i.e., the rule of law and the legal guarantees of freedoms and equality) have suffered a series of damages since 2010, while the grassroots deficiency needs, i.e., an aware and participant civil society of deeply rooted democratic values have not been completely established — permitting the process of de-democratisation at many levels of the political culture (institutional aspects such as the new constitution, the decreased judiciary independence, the damages on media and academic freedom, the destruction of channels for shaping public opinion, etc.).

III/b

The weakening of the rule of law causes democratic backsliding as we saw in the cases of Hungary and in the post-Brexit UK. However, our findings in the comparative case study show limited evidence for the theory that the rule of law is above all. At first glance, both the UK and Hungary suffer from democratic backsliding (or de-democratization in the case of Hungary) because of the weakening of the rule of law. However, in Hungary, the weakening of the rule of law can happen today because of the incomplete process of democratization. Regarding the UK case study, Brexit-related laws were criticized for their vagueness, ambiguity, and instability, for having the intention to confuse, and for not being guided by "open, stable, clear, and general rules"[1005], furthermore, the Northern Ireland Protocol was breached in several instances, meaning the breach of international law. We found, however, that the underlying reason is the above-mentioned vulnerability of the constitution. Thus, the weakening of the rule of law – while it evidently causes further democratic backsliding – is a consequence of the political cultural settings of the UK. In Luxembourg the rule of law is strong. We observe a democratic stagnation, but not a decline. Therefore, although there must be an unhindered rule of law in a democratic political culture (macro level), we found that other aspects of democratic quality (corresponding to the meso/II and micro level of political culture), such as civil society and citizen engagement, i.e., the grassroots, bottom-up dimension of democratisation is not less important. Firstly, the 'weakening of the rule of law' is already an effect, thus cannot be the origin of democratic backsliding. Second, without a thriving civil society and participating, "enlightened" citizens who are willing to hold their political decision makers accountable, democratic stability is vulnerable. In conclusion, there is no sufficient evidence for hypothesis III/b.

III/c

Hypothesis III/c can be confirmed in the case of Hungary and Luxembourg but cannot be clearly confirmed in the case of the UK. While we found continuous constitutional development and strong traditions in the cases of the UK and Luxembourg, the case of Hungary saw a broken constitutional evolution, therefore, insufficient continuity in the development of democracy. The lack of strong constitutional traditions in Hungary, and the lack of approval of the political elites of the democratic value and role of the constitution contributed to the easy

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[1005] McCrudden, C. (2022): *The post-Brexit Breakdown of the Rule of Law in the UK, Verfassungsblog. Source:* https://verfassungsblog.de/the-post-brexit-breakdown-of-the-rule-of-law-in-the-uk/ (Accessed on: 19/01/2023)

reform of the constitution in 2011 and thus to democratic backsliding. Luxembourg, on the other hand, shows altogether a continuous and stable constitutional evolution, showing a trend of adapting the 'best practices' from other developed European democracies throughout its reforms, serving the country's democratic quality. Constitutional traditions do not prove to be provoking democratic stagnation or decline in Luxembourg. The UK has a long and strong constitutional tradition, relying on parliamentary sovereignty and the rule of law, serving the majoritarian democratic system. The democratic decline in the UK is affected by the nature of these constitutional traditions, and not by the lack of a strong tradition.

V Conclusions

V.1 Discussion on the Relationship between Political Culture and the Quality of Democracy

The research concludes that **democratisation, as well as democratic stabilisation, must equally happen at all levels of political culture. Successful democratisation at the macro (constitutional), meso/I (institutional and ordinary law), meso/2 (societal) and micro levels (the individual citizen) can positively influence democratic quality performance.**

In the case of Luxembourg, the research concludes that the quality of democracy is well sustained by the macro level of the political culture, i.e., the constitutional settings and the consociative system. The major debate in the Grand Duchy focuses on citizenship, its definition, its different interpretations, and the engagement of foreigners in the national political culture for bridging the democratic deficit and establishing a more sustainable way of democratic functioning at the meso-institutional (representation and legitimacy) and meso-societal (civil engagement) levels. In Hungary, the debate concerns not only the unpreparedness of the civic culture (the meso-societal and micro levels of political culture) but also the macro and meso-institutional levels of political culture. 2010 marks the start of de-democratisation at the macro- and meso-institutional levels which set the previous achievements of institutional democratisation on a reversing path. We saw a list of elements of this reverse transition: incentives of social and political homogenisation based on nationalist narratives, the enacting of the new constitution and its amendments, the transformation of the media, the redesigning of the electoral system, the anti-LGBT+ law, etc. The latest example of de-democratisation is the new draft 'status law' on education which completely excludes the trade unions from dialogue and decision-making. Furthermore, Art. 8 of the law prescribes that teachers cannot criticise publicly the education system even outside of the institutions, which clearly goes against Art. 11 of the Fundamental Law on the freedom of speech, the ECHR, and the normative bases of the EU.[1006] Despite the objective democratic backsliding, the research, however, also observed a subjective quality of the political system which is not clearly

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[1006] Government of Hungary (2023): 2023. évi ... törvény a köznevelésben foglalkoztatottak jogállásáról és egyes kapcsolódó törvények módosításáról. Source: https://cdn.kormany.hu/uploads/document/3/38/38d/38d0ed8ae5bfcad4a18d4db2a072a3550ff01de5.pdf (Accessed on: 29/03/2023)

responding to the harms caused to democratic functioning. In the post-Brexit UK, the key elements of the debate are the relationship between citizens and Parliament, between citizens and the devolved parliaments, between citizens and decision-making, and the generally low subjective quality of democracy. The risk of democratic backsliding is furthered by governmental incentives to leave the ECHR and the ECtHR under sovereigntist political narratives.

The upcoming pages demonstrate the conclusive findings of the thesis considering the relationship between political culture and the quality of democracy which emerged during the comparative case study.

Conclusions: Political Culture and the Quality of Democracy

Table 45: Findings – The Influence of Political Culture on the Quality of Democracy

F1	Democratic stability is required at all levels of political culture for a high-quality democracy.
F2	The lesser the democratic stability at the different levels of the political culture, the higher the vulnerability of the process of democratisation.
F3	The different levels of political culture are intertwined and interdependent with each other.
F4	The rule of law as a characteristic of a democratic political culture empowers the other elements of democratic functioning.
F5	The rule of law / constitutionalism and the grassroots dimensions of the democratic political culture are equally important.
F6	Continuity is essential in the evolution of a democratic political culture.
F7	Growing fragmentation requires democratic innovations to maintain democratic stability.

Regarding the influence of the different levels of political culture on the quality of democracy (based on our four-level model of political culture), we found that (1) democratic stability is required at all the levels of political culture for a high-quality democracy; (2) the lesser the democratic stability at the different levels of the political culture, the higher the vulnerability of the process of democratisation; (3) that the different levels of political culture are intertwined and interdependent with each other, (4) the rule of law as a characteristic of a democratic political culture empowers the other elements of democratic functioning, (5) the rule of law,

although it is the very base of the democratic political culture and facilitates the realisation and improvement of other aspects of democratic quality, is not more important than the grassroots dimensions of the democratic political culture, (6) continuity is essential in the evolution of a democratic political culture. (7) Growing fragmentation requires democratic innovations to maintain democratic stability.

Findings (1) and (2) stem from our case study on Hungarian democratisation and de-democratisation. We observed in the case of Hungary that the incompletion of democratisation at the meso/societal and micro levels of political culture hindered the country to establish a genuine and sustainable democratic political culture. We found the achievements of democratisation at the macro and meso/institutional levels vulnerable due to the incomplete democratisation on the meso/social and micro levels. However, the thesis is limited in the aspect of this finding; further research is needed to establish a comprehensive model for the relationship between stability at the different levels of political culture and the vulnerability of democratisation.

Finding (3) reflects the interdependence of the levels of the democratic political culture. Although there are differences regarding their democratic system, the actual state of their democratic functioning, and the democratic challenges they are facing, both the Luxembourgish and British evidence show that some characteristics of the democratic political culture go hand in hand. In both cases, we saw a history of strong democratic tradition. In the case of the UK, we talk about an uncanonised constitution which was born along with fundamental rights and freedoms, while in the case of Luxembourg, a constitution established in the mid-19th century based on the liberal European norms of the era, which is currently under a reform process which relies on the cooperation and consensus-seeking of political parties and entails a wide dialogue with the meso/societal and micro (citizens) levels of the political culture. In the British and Luxembourgish examples, we observe that the long and strong tradition of democracy and democratic rights go together with higher citizen engagement. In the British case, we also find a link between the strong democratic tradition and the citizen scrutiny over the government, as reflected by the example of Brexit (e.g., the petitions mentioned earlier for revoking article 50 or to stop the prorogation of the UK parliament).

Findings (4) and (5) acknowledge, firstly, that without the rule of law, it is impossible to talk about democratic quality. Secondly, without a thriving meso/societal level of political culture, (i.e., organisations, parties, trade unions, think tanks) and participating and aware ("enlightened") citizens who are willing to gain understanding, to exchange, and to apply

scrutiny over political acts, the stability of the democratic political culture at the meso/institutional and macro levels are vulnerable. In the case of Hungary, the vulnerability of democratic achievements (i.e., the overall incomplete process of democratisation) permits illiberal propaganda and helps the 'illiberal' government cement itself and invent new ways of de-democratisation.

Finding (6) relies on our observation that the continuity and stability in the liberal democratic constitutional evolution provided for continuity and stability of the political culture in Luxembourg which, on the macro level, by the latest constitutional reforms, gained a recent boost. In Hungary, however, the broken continuity of democratic innovation starting in the mid-19th century contributed to the de-democratisation the country is facing today. The legacy of the authoritarian-communist and socialist regime on the meso/societal and micro levels is still a relevant hindrance to the quality of democracy in the country. Therefore, continuity may provide for democratic stability, given that we talk about a democratic political culture. However, in the case of the UK, we observe that the continuity of the norm-based political culture, lacking a canonised constitution, failed to guarantee stability for both internal and external factors.

Based on the lessons of the UK and Luxembourgish case studies, Finding (7) reflects the impact of the shifting fragmentation of the political culture on the quality of democracy. We observed that certain elements of the progress of societal fragmentation made UK citizens raise questions about sovereignty and national identity, and, along with right-wing populist narratives, and the questionable decision of the government to hold a referendum on the UK's EU membership, led to the Brexit crisis. In the case of Luxembourg, to point out the relevance of democratic innovations, we found that the constitutional reform opens the possibility to involve parts of the society in referenda who cannot be registered on the official list of voters, simply because they are not citizens. However, the reform, which was created bearing in mind the results of the 2015 referendum too, does not solve the democratic deficit caused by the fact that half of the society does not have elective rights to the Chamber of Deputies. Altogether, the Luxembourgish picture, despite democratic stagnation in the above aspect, is promising. Both the overall course of democratic evolution and the recent innovations allow us to believe in the continuation of the strengthening of the quality of democracy in the Grand Duchy.

Regarding the commonalities in the three cases, the research concludes that the democratic challenges in all three countries can be led back to the nature of their political cultures. More

specifically, the stability of the democratic political culture is challenged in all three cases, however, as explained above, to a significantly different extent.

Regarding the prevention and reversibility of democratic backsliding, the research revealed the following. In a relatively new democracy, such as Hungary, subjective democratic quality (or, political system quality) is not necessarily proportional to objective democratic quality. This permits the conclusion that strong public trust in democratic institutions and political parties may contribute to a stronger democratic quality on the condition that the citizens are aware and adequately informed about politics through education and democratic values are strongly rooted not only at the macro and meso-institutional levels but also at the meso-societal level of the political culture. Higher awareness may lead to a higher level of interest in politics and greater scrutiny of political actions. The greater the scrutiny, the stronger the demands, and the more responsive the institutions become. The above process also requires that social and economic inequalities are addressed. This can help prevent the rise of populist movements that might threaten democratic institutions. Besides the strengthening democratic institutions, civil engagement to enhance the active participation of citizens to hold decision-makers accountable shall ensure that elected officials remain committed to democratic norms. In the strong democracies of the case study, namely Luxembourg and the UK, despite the continuity of the democratic constitutional systems, democratic stagnation stems from certain characteristics of the macro-level of the countries' political cultures. First, in the UK, the constitutional order, which allows for an overly powerful government, could see revision in the future to ensure a greater balance between the executive and other branches, provided there is political will from both major political groups to do so. Second, in Luxembourg, the legal definition of citizenship may be revised in the future, as it no longer reflects the composition of the meso-societal level of the political culture of the Grand Duchy, causing a democratic deficit. However, the recent reforms of Luxembourg's constitution provide citizens and NGOs with a new instrument of direct democracy, the possibility of legislative initiative. The instrument goes beyond ordinary petitions and permits the submission of legislative ideas in a more precise and binding way. Employed together with citizen assemblies, which provide platforms for deliberation, the new instrument has the potential of a remarkable democratic innovation in the country.

V.2 Limitations

The core of the thesis is a theoretical framework based on the relationship between the different aspects of political cultures and the quality of democracy. In line with this, the research focused on a series of different empirical elements, including legal settings of the macro and meso levels of the political cultures of the selected countries. The three cases have substantially different constitutional-legal systems and traditions. On the one hand, the UK, with its common law tradition, and on the other hand, Luxembourg and Hungary, with a civil law type of legal system but with different paths of constitutional evolution. The three different systems proved to be difficult to compare. A **more comprehensive constitutional and legal comparative approach** would certainly benefit this research. The lack of this is one of the main weaknesses of the thesis.

Secondly, the **vastly different contexts** of the three case studies also posed challenges to the comparative study. While the UK and Luxembourg are considered to have traditionally strong democracies and are full democracies, the practices of democratisation in Hungary can be observed only after the fall of socialism — even if the process of liberal constitutionalisation had started in the mid-19th century. Therefore, the country is still a relatively new democracy, with some authoritarian legacies still relevant at all levels of its political culture. Thus, it might be considered a 'natural' phenomenon that the country sees some democratic backsliding and that democratic consolidation is not a linear process, if one takes the big picture. On the other hand, in the UK, under the sovereigntist narrative, the key debate is about de-Europeanisation and de-globalisation which can entail democratic backsliding in the future. The research did not conclude significant issues at the macro- and meso-institutional levels of political culture in the case of the Grand Duchy which might challenge democratic quality, nor we can talk about de-Europeanisation or authoritarian legacies. Quite the opposite: recent and current constitutional and ordinary-law level reforms aim at a better future integration of foreigners in the Luxembourgish political culture. The factor which is concluded to challenge the quality of democracy and cause stagnation is the current problem of the legitimation of the decision-making processes. All in all, it proved to be difficult to compare democratic backsliding and instability in countries with such different contexts.

The third element is the lack of a well-established assessment framework for democratic backsliding. During the theoretical work, creating the pyramid of democratic quality was motivated by establishing **a method to assess democratic backsliding**. Assessing the

deficiency and growth needs of democratic functioning in a structured, well-established way could contribute to defining better estimation and categorisation of democratic backsliding beyond the three observed forms (stagnation, backsliding, de-democratisation).

Fourthly, the thesis clearly has some **methodological-empirical limits**, too. The most important of these are the difficulties with operationalising the historical framework, over-reliance on survey data when assessing the micro dimension of political culture which sometimes are based on rather simple theoretical frameworks, and the difficulties with preparing a questionnaire applicable to respondents from all three countries.

V.4 Prospective

The thesis's theoretical framework – designed to investigate the links between political culture, democratic quality, and democratic backsliding – rediscovers the importance of political culture in democracy studies. Embedding the quality of democracy in political culture, the thesis points out the possibilities of future research methodologies for assessing the quality of democracy.

Secondly, the research shows the limitations of the analytical framework for empirical research based on surveys and may contribute to the discussion on redefining survey research methodology for assessing the state of democracy on the meso- and micro levels of political culture in a more substantial and realistic way.

Thirdly, the thesis offers two different interpretations of democratic quality (the two pyramids) which tries to go beyond the traditional analytical framework of the quality of democracy, identifying certain deficiency and growth needs. The latter might contribute to the establishment of a more specific assessment framework for democratic quality and / or backsliding.

Fourthly, the thesis raises the question of the Europeanisation of democracy standards which is not new in the field of democracy studies. However, interpreting the latter question through the analysis of the divergence of European political cultures and political cultural evolutions (through the continuity, stability, and shifting fragmentation of political culture) brings it to a different sphere which may contribute to the field of democracy research.

Annex

Interview Questions

1) **Citizens and the rule of law; citizen values, citizen participation.**

   a) How would you grasp rule of law and its importance in a democracy?

   b) To what extent do you think citizens in your country have sufficient knowledge and understanding about the rule of law and its role in a democracy? Are citizens interested in such matters? How to improve it?

   c) How would you evaluate the role of the values of the citizens in a democracy?

   d) When we talk about citizens' scrutiny, we can talk about e.g., petitions for the parliament, right to act before the const. court, directly or indirectly through MPs or magistrates, ombudsman, recall (revoke, motion of censure). What tools, and what sort of access do citizens have to scrutinize the respect of the rule of law in your country? Is there a high involvement? What improvements do you feel the need for?

   e) To what extent do you think the mobilisation of citizens (involvement, trade union or party membership) is well facilitated in your country?

2) **Citizen confidence based on data.**

   a) According to results found in EVS2017, Luxembourgish citizens have very high **interest in politics** (67%, the highest from all participating countries), while the UK and Hungary have drastically lower results, 16% and 11%, respectively. The importance of politics is relatively low in Hungary (30%), while relatively high in the UK (54%) and in Luxembourg (65%, in top 5 in the EU). What do you think the reason is behind this phenomenon?

   b) As EVS2008 data shows, with 68 %, citizens of Luxembourg have the highest **confidence in the national government,** however, with 17%, Hungary represents the second lowest result in the EU. Like Hungary and other CEE EU member states, the UK show a low rate too: only 19% of UK citizens find their government trustworthy. EVS2017, however, show a very slight decrease in the Luxembourgish results (67%), and significant increase in the Hungarian (39%) and UK (30%) results. What do you think the reason behind these results is? What factors can you think of that might (further) improve these data in the future?

   c) As EVS2008 data shows, regarding **confidence in the national parliament**, with

68%, Luxembourg demonstrates a high result. EVS2017 brings a similar result (68,5%). In EVS2008, both the UK and Hungary show weak results (around 20-23%), but we see improvement in the EVS2017 data (33-36%). What do you think the reason behind these results is? What factors can you think of that might improve these results in the future (HU and UK)?

d) As EVS2008 data shows, regarding the question of **confidence in political parties**, the majority of the EU member states shows remarkably low rates: UK 14%, HU 10%. 40% of Luxembourgish citizens, however, have confidence in political parties, which is the second highest rate in the EU. However, in EVS2017, Luxembourg shows a significant drop (27% have confidence in parties), while HU and the UK see some increase (16-17%). What do you think the reason behind these results is? What factors can you think of that might improve these data in the future (UK, HU)?

3) Democratic backsliding.

a) When we think of democratic backsliding at the level of the institutions, we can think of factors such as the functioning of the parliament, the power of the parliament to check and control the government, the power of the constitutional court (if there is any), institutions such as the ombudsman, state council, and the quality of the rule of law.

b) Can you explain the state of democratic improvements or decline in your country in the last 10-15 years? What are the reasons of this improvement or decline?

c) Do you think there is a decline in the protection of civil rights in your country?

d) Can you explain how effective is the control of the parliament over the government in your country?

e) Can you explain how effective is the control of the constitutional court over the legislature in your country?

f) What improvements should or could take place in terms of the functioning of the constitutional / Supreme Court?

4) Civil society and democracy.

a) **When we think of the dynamics of democratic quality or democratic backsliding at the civil level, we shall consider the civil society organisations (including NGOs), trade unions, and political parties, and the functioning of these.**

b) What do you think of the level of the self-organisation of the society in your country?

c) Do you agree with the following: a strong civil society (where we understand the groupings of citizens, e.g., trade unions, interest groups, civil society organisations,

and political parties) has an impact on democratic improvement (and on the quality of democracy)? Why?

d) In your opinion, which kind of innovations could be implemented in your political system at the level of the functioning of the civil society?

e) What is your opinion about the legal background for an effectively functioning civil society in your country? Does the law help sufficiently this effective functioning?

f) Do you think that the electoral law in your country facilitates effective and equal participation of political parties in the elections? How is the balance of current and new political parties? What about new actors? Does the electoral law allow the participation of new actors?

g) How do you evaluate the link between the civil society and the parliament of your country? Are civil society organisations and trade unions included in the legislation process? To what extent, and is that sufficient according to your opinion?

h) Pluralism of the media. What do you think about that? Shall civil society organisations participate in the programming of the public media?

5) **Relationship between political culture and the quality of democracy.**

a) My work includes a theory that links the quality of democracy with political culture. I distinguish 3 levels of political culture: a macro level (e.g., type of democracy, constitution), a meso level (e.g., democratic institutions and civil society organisations, political parties and their foundations, trade unions, political think tanks), and a micro level (the individual citizens, including their expectations, their confidence in the institutions, and their perception about their own democratic system).

b) What does political culture mean in your understanding? Is there a strong political culture in your country?

c) In the last years, was there some kind of transformation of political culture in your country? If so, can you give me some examples for such a transformation? What factors did contribute to this transformation?

d) What factors might contribute to political stability, and what are those that might be destructive?

e) What is the level of direct participation of the individual citizens (e.g., electronic petitions) in your country?

6) **Country Specific Questions.**

a) LU: What do you think the main challenges are to the quality of democracy in Luxembourg, and why? How do you assess these challenges in light of the

constitutional reform package adopted by the Chamber in December 2022?

b) HU: In your opinion, to what extent and in what ways does Hungary's political culture facilitate the cementation of the illiberal political regime introduced by the FIDESZ-KDNP coalition from 2010 on?

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