CONSTITUTIONAL SCARS

A Comparative Legal Analysis of Three Former Warsaw Pact Member States and their Compliance with EU Legislation

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- Sem Berkhof

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ACRONYMS

EAW	European Arrest Warrant
ECHR	European Convention on Human Rights
EU	European Union
HJC	High Judicial Council
HJI	High Justice Inspectorate
HPC	High Prosecutorial Council
H.P.R.	Hungarian People's Republic
JAC	Justice Appointments Council
LI	Liberal Intergovernmentalism
NATO	North Atlantic Treaty Organization
RQ	Research Question
RSQ	Research Sub-Question
USSR	Union of Soviet Socialist Republics

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1. INTRODUCTION

1.1 Setting the scene of three former Warsaw Pact States

On 14 May 1955, five days after the West German accession to the North Atlantic Treaty Organization (hereafter: NATO), eight Soviet bloc states joined forces and signed the Warsaw Pact as a response to the Western European integration into NATO (Mastny & Byrne, 2005). The Warsaw Pact signatories were Albania, Czechoslovakia, Bulgaria, Hungary, East Germany, Poland, Romania, and the Soviet Union. Acting as a deterrent against the West, the Warsaw Pact made a significant impact on the course of events during the Cold War whilst functioning as the military machine of the Soviet Union (Mastny & Byrne, 2005). Serving the purpose of a political-military alliance between its signatories, the Warsaw Pact became pointless after the annulment of the Pact's military function and the collapse of several Eastern European communist regimes in 1989. Hence, the political and military remnants of the treaty were terminated on 1 July 1991 (Mastny & Byrne, 2005).

A few months later, the federal state of the Soviet Union was officially dissolved in December 1991 making an end to the communist reign in Eastern Europe (Walker, 2003). The nullification of the Warsaw Pact marked the end of the division of Europe into two opposing blocks and it paved the way for Eastern European integration into NATO. As the Soviet Union was no longer able to exert control over its satellite states after its downfall, the former member states of the Warsaw Pact became enabled to choose their own path disregarding the outdated Soviet ideology (Mastny & Byrne, 2005).

NATO can be considered the final winner of the battle between the two opposing blocks taking into account the fact that all former Warsaw Pact member states, except the Soviet Union, eventually joined NATO (Daalder & Goldgeier, 2006).

However, NATO did not remain the only supranational entity in Europe. With the Treaty of Maastricht, known as the Treaty on European Union, coming into effect two years after the dissolution of the Soviet Union, in January 1993, the contemporary structure of the European Union was founded based on the twelve treaty signatories. Ever since, taking into account that the EU is currently composed of 27 member states, as many as fifteen other states have completed their accession to the European Union (European Union, n.d.-b).

Evidently, the European Union is an essential partner of NATO as they cooperate on a large scale with one another. On the one hand, the EU and NATO share similar principles and values, and, on the other hand, they share the same challenges, as well (North Atlantic Treaty Organization, n.d.-a).

In this thesis, three former Warsaw Pact member states are presented with regard to their constitutional development concerning conformity with EU legislation and standards. The following states will be discussed: the Czech Republic (derived from the partition of Czechoslovakia into two states, the Czech Republic and Slovakia), Hungary, and Albania. All three are current members of NATO meaning they have made an extreme turn compared to their socialist-communist past. In 1999, the Czech Republic and Hungary joined NATO (Daalder & Goldgeier, 2006) and in 2009, Albania officially joined the intergovernmental alliance (Polak et al., 2009).

Nevertheless, as aforementioned, this thesis will mainly focus on the constitutional-legal development of these three former Warsaw Pact member states in light of the degree of conformity to EU legislation and standards. Nevertheless, their accession to NATO contributes to the objective of this research as it can be regarded as a constitutional-legal advance toward EU standards. Therefore, the year of accession as well as the constitutional amendments that attempt to align domestic legislation with the constitutional requirements of NATO will be discussed throughout this thesis, because it is purposeful to this research.

Two of the three former Warsaw Pact member states that are discussed throughout this thesis have already become member states of the European Union, the Czech Republic and Hungary; ten states, including those two, decided to settle their accession to the EU in 2004 bringing up the total number of EU member states to 25 (European Union, n.d.-b). Albania has not entered the European Union as of today, despite its concrete EU ambition as the state applied for membership in 2009, but received the official status of a candidate member state in 2014, and accession negotiations between the EU and the state of Albania began to advance in July 2020 (European Council, n.d.).

It is interesting to examine the constitutional developments and process of constitution-making of these former Warsaw Pact states as commonalities as well as differences may arise between the three applicable states, whereas the constitutional-legal development within a state may be intriguing, nevertheless.

These three former Warsaw Pact member states have not been picked randomly, nor have they been assigned to this thesis in one way or another. To the contrary, they have been thoughtfully selected.

The selection of the Czech Republic was primarily based on the assumption that the Czech Republic is a frontrunner in its democratic and political development in Central Europe. Several research data support this hypothesis.

First, the Czech Republic is the state with the lowest level of corruption out of all former Warsaw Pact states (not counting Eastern Germany) and one of the states with the lowest level of corruption in all of Central Eastern Europe (Transparency International, 2022).

Second, the Czech Republic secures a notable ranking in the Bertelsmann Transformation Index (BTI) which calculates, based on different criteria, the Status Index (subdivided into sections of economic and political transformation) and the Governance Index of 137 countries worldwide. BTI measures the transformation of developing and transitioning states towards democracy and market economy, two ground norms of the

European Union (Bertelsmann Transformation Index, n.d.). Out of all former Warsaw Pact states, the Czech Republic received the highest score for its governance, democracy, and economy. On the Status Index, the combination of political and economic transformation, the Czech Republic is ranked third overall worldwide with a distinguishing score of 9.31 (out of 10). For argument's sake, Hungary and Albania respectively score 6.6 and 6.7 on the Status Index, whereas the score of Hungary on the Governance Index is below 4 as it is ranked amongst the lowest-scoring developing states for this index (Bertelsmann Transformation Index, 2022).

The reason for selecting Hungary is that it has been the center of attention for recent international criticism. Ever since the 2010 elections, the level of democracy has dramatically dropped in Hungary. The suppression of opposition parties, breaches of the freedom of speech, and the manipulation of judges are common examples of democratic erosion in modern-day Hungary (Krekó & Enyedi, 2018). Hence, Bánkuti & Halmai (2012) argue that the state of Hungary has been undergoing an illiberal turn in which liberal freedoms and principles are restricted regularly, despite their liberal development in the years before the outcome of the 2010 elections where the right-winged party Fidesz gained popularity and called out a new constitution. Even though an EU member state, Hungary can be considered a state with a eurosceptic government. On these grounds, Hungary is selected as the second former Warsaw Pact state in which its constitutional development will be examined throughout this thesis.

Albania has been chosen as a third country for the following reasons. Albania is not a member state of the European Union, despite its application. Therefore, constitutional dissimilarities between Albania and the other two states may appear in terms of the content and degree of integration of EU legislation as well as the specific period these developments appear may vary presumably due to the non-membership of Albania or other factors.

Besides, taking into account that the Albanian judicial branch is a system that is renowned for its high levels of corruption and influence of organized crime (Skara & Hajdini, 2021), it is useful for the purpose of this research to analyze how Albania is coping with its domestic challenges whilst holding negotiations for EU accession with the European Union as of 2020 (Balliu, 2020).

1.2 Structuring the Thesis' Framework

To set out the scope of this research, three periodical benchmarks are put into practice to accentuate the constitutional-legal changes within these periods of time. These benchmarks are named subsequently "Benchmark A", "Benchmark B" and "Benchmark C". The first and the latter will demarcate the same periods for all three states; the middle benchmark, "Benchmark B" is state-dependent. At the end of every benchmark, a brief evaluation will be made whilst applying the theoretical framework across chapters 3, 4, and 5. These three chapters represent the main body of this thesis.

Occasionally, constitutional developments, such as amendments, that do not fall within the range of this research are of great importance to provide an accurate, outright analysis of the genuine constitutional-legal development of one of three states. For this reason, every now and then, the specific structure of benchmarks is different in order to sketch the complete picture of a state's constitutional development.

However, the structure is assumed to be leading and can only be deviated from if the constitutional alterations do not fall within the scope of research and are considered indispensable. These periodical demarcations should be considered *the rough edges* that cut the time periods into relevant pieces intending to limit this research in one way or another. Furthermore, working with benchmarks prevents an overload of constitutional amendments that do, for instance, contribute to the slightest of alignment with EU legislation

or never had the intention to align with EU legislation, because the European Union did not exist at the time.

In the first benchmark, the constitutional *status quo* of all three states is examined in light of constitutional development in the year 1991. The year was chosen as the first demarcation because it marks the dissolution of the Soviet Union. Mastny & Byrne (2005) hold that, from this event onwards, the Soviet Union was no longer able to exert control over its hegemony, hence satellite states were able to decide their future for themselves. This is a strict benchmark in the sense that post-1991 constitutional developments (that do not fall within other benchmarks) will not be covered, although pre-1991 constitutional alterations may be briefly examined for the sake of telling the whole story. In practice, these essential constitutional documents are usually constitutions that were in effect at the time and remained relatively unchanged for a while.

As for the second benchmark, the constitutional developments that took place within a time period rather than a single year will be examined in order to track constitutional-legal change with regard to EU integration and standardization. Four years prior and four years after the official accession to the European Union will be covered in Benchmark B, because this thesis assumes that lots of changes will happen around this period of time as the former Warsaw Pact states attempt to fulfill the last necessary changes and *wrap up their deal with the EU*. Likewise, this benchmark does not allow for any irregularities that fall out of its scope, with the exception of indispensabilities. Because the accession of the Czech Republic and Hungary to the European Union took place in the same year (2004), the same period of time concerning the middle benchmark will be applied for these two, that is, the year 2000 up to and including the year 2008. Since this benchmark is based on the accession date of a member state to the European Union, Albania can be considered an intruder being a non-member state. Though it received the special status of “candidate

member state” in 2014, the middle benchmark will take that event as a starting point meaning that “Benchmark B”, for the chapter of Albania, will last from the year 2010 up to and including the year 2018.

The final periodical demarcation, Benchmark C, offers us the constitutional perspective as of the time of writing, the year 2023. However, throughout the process of writing, it became apparent that due to the slow-paced nature of constitutional law and the irrelevance of some amendments, at least for this research, there are no relevant changes as of the year 2023 that contribute to providing an adequate answer to the research question. For this reason, the same allowance as the first benchmark is granted for Benchmark C, meaning that, in the case of the latter, relevant and indispensable constitutional alterations *up to and including* the year 2023 will be included in this legal research.

The following table displays a schematic version of the structure of this research:

-	the Czech Republic	Hungary	Albania
Benchmark A	year 1991		
Benchmark B	year 2000 to 2008		year 2010 to 2018
Benchmark C	year 2023		

Furthermore, this research will limit itself to the examination of mere constitutions or constitutional amendments. For this reason, lower legislation can merely be regarded as supplementary throughout this research. A constitution resembles the nature and leading principles of a nation-state. Because a constitution is changed through amendments, a constitution is suitable for examination for the sake of this research.

Not unimportant to mention, it is attempted to the fullest to include all relevant constitutional documents. As stated before, an overload of constitutional documents will be left out, though the situation may arise that some relevant constitutional amendments will not be covered. After careful consideration, it is then decided that these amendments remain uncovered as they do not penetrate the core of the constitutional narrative and are, therefore, not worth mentioning. For instance, some constitutional amendments are as short as a change of a phrase of a single provision, just for the record, one could say. Such amendments will be left out.

The fact that constitutional amendments and, in particular, constitutions are comprehensive makes the vast majority of the thesis rather descriptive as a result of the magnitude of (relevant) provisions.

Another reason for the remote, though the all-encompassing presentation of the constitutional development with regards to conformity with EU legislation may be the limitedness of time and unavailability of resources.

First, time is always limited, in particular when writing a thesis, and sometimes one cannot examine every single amendment that only scratches the surface and fails to penetrate the core.

Second, some constitutional amendments are not translated into English and have to be read in the domestic language. Since the Czech Republic and Hungary have made their accession to the European Union, more constitutional amendments became available in English, because most prominent amendments and constitutions must be available in English as they might be subordinate to judicial review or legal opinions carried out by legal experts of advisory bodies of supranational or international organizations.

However, especially in Albania, there is little availability of translated constitutional documents causing some to be read in the domestic language, which may cause errors along the way by mere use of the direct source. Therefore, the use of academic writings (in English) is stimulated and will be widely used throughout the chapters. Additionally, the use

of secondary academic sources is useful for the reason that there may be a discrepancy between the constitution and how a state genuinely acts, and to what extent a state actually adheres to its constitution.

By making a comparative *intra*- and *inter*-state analysis, the constitutional development concerning conformity with EU legislation of the three former Warsaw Pact states is brought to light. The purpose of this research contains academic and societal relevance.

Academically speaking, this thesis allows fellow scholars to look into the constitutional development of these three states, which share the same communist historical background. What distinguishes this thesis from other academic publications is the fact that three (former Warsaw Pact) states are extensively analyzed where it seems common to examine only one. For this reason, the structure allows a comparison between the three states as well as a comparison within the states across relevant periods of time, that is, the three benchmarks that will be applied for all three states. Therefore, this thesis, whilst also analyzing the constitutional development of all three nation-states using the application of benchmarks, can unveil the commonalities and differences between these three states.

This thesis is societally relevant because it provides other societies (than these three discussed states) an insight into the constitutional-legal realm of former Warsaw Pact states, which is a topic that most Western Europeans, for example, are not familiar with or do not know enough about the details. This thesis can be considered an attempt to cover the distance between the apathy and misunderstanding towards this topic and the genuine course of events in these nation-states and the consequences that followed. When looking into these constitutions, besides basic and, perhaps, dull provisions on legal systems and fundamental principles, among other things, it shows how the national legislator of a state views the world and how they act. Seeing these constitutional developments, it can be concluded that these states have come a long way and this thesis attempts to contribute to more understanding (from outside cultures) in why some states act the way they do.

Hence, this thesis seeks to answer the following research question (RQ):
"How have three former Warsaw Pact member states, the Czech Republic, Hungary, and Albania, developed their legal systems regarding conformity with the European Union, from 1991 onwards?"

Consequently, as this thesis pursues an *inter*-state comparison and the RQ is rather comprehensive three research sub-questions (RSQ) are formulated that deal with each former Warsaw Pact state:

RSQ1	How has the legal system of the Czech Republic developed since 1991 compared to 2000-2008, and 2023, regarding conformity with the European Union?
RSQ2	How has the legal system of Hungary developed since 1991 compared to 2000-2008, and 2023, regarding conformity with the European Union?
RSQ3	How has the legal system of Albania developed since 1991 compared to 2010-2018, and 2023, regarding conformity with the European Union

This thesis contains seven chapters, of which this introduction is the first chapter. The second chapter describes the used scientific methods, which are chiefly based on (primary and secondary) legal sources and legal comparisons. Additionally, the second chapter includes a theoretical framework as a justificatory factor for this thesis. The methodology section describes the means that contribute to answering the RQ and RSQs to come to conclusions. Chapters 3, 4, and 5 handle each RSQ accordingly and make in the end an *intra-state* comparison, that is, the constitutional-legal development *within* one of the former Warsaw Pact states between the different benchmarks. Thus, chapter 3 deals with the constitutional-legal development of the Czech Republic. Chapter 4 does the same for the case of Hungary, and so forth. Whilst first making rather short *intra-state* analyses, which will be comparing the constitutional-legal development between the different benchmarks within

the states themselves, the sixth chapter will make a comparison between the states. Thus, in chapter 6, an *inter-state* comparison will be made with regard to answering the RQ. After the examination of the constitutional-legal development of these three former Warsaw Pact states, the conclusion section, outlined in the penultimate chapter 7, will go through the findings and results of the chapters that handle the RSQs and attempts to provide an adequate, multi-layered answer to the RQ. The last and final chapter will be the recommendation section in which the results are evaluated, *blind eyes* of this thesis are discussed and recommendations for potential further research will be made.

1.3 The Integration of Legislation and Standards of the European Union

For answering the RQ and follow-up research sub-questions (RSQ), it is important to exemplify the requirements and standards of the European Union in order to establish whether, or to what extent, the three former Warsaw Pact meet (or once met) these criteria and standards.

The European Union has formulated several criteria for states that wish to join the EU; these conditions are called “the Copenhagen criteria” (EUR-Lex, n.d.-a). Any nation-state that meets these requirements is enabled to apply for membership. The Copenhagen criteria are (1) a stable institutionalized democracy that respects minorities and human rights together with the rule of law, (2) a functioning market economy that fits the EU single market by being able to cope with competitive pressure and market forces, and (3) the acceptance of the *acquis communautaire* of the European Union as well as “adherence to the aims of political, economic and monetary union”, which includes the implementation of the euro and accession to the euro area (EUR-Lex, n.d.-a).

This ever-changing *EU-acquis* is an assemblage of the EU’s common rights and duties, hence it requires to be accepted and implemented into the domestic legal systems of

all member states. It consists of (1) the EU Treaties, (2) all legislation that was adopted to apply the EU Treaties as well as the case law arising from the decisions of the Court of Justice of the European Union, (3) all EU declarations and resolutions, (4) common foreign, security policy, justice, and home affairs measures, and, lastly, (5) international agreements that are concluded by the European Union and interstate agreements between member states with regards to the activity of the EU (EUR-Lex, n.d.-b).

From the date of accession, member states are expected to apply the *acquis communautaire* into their domestic legal order after accepting the *Acquis* in the pre-accession period. Deviations are highly exceptional as the EU applies a limited scope for special circumstances (EUR-Lex, n.d.-b).

Furthermore, the 1992 Treaty on European Union, known as the Maastricht Treaty, formulates other fundamental principles that, according to Article 49 of the 1992 Treaty on European Union, must be abided by every single member state. Other than the principles that were mentioned in the leading Copenhagen criteria, the Treaty on the European Union states the following principles to be fundamental to the European Union: “pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men” (European Union, 1992, Art. 2).

Lastly, it is worth noting that the pre-accession period is a rather slow-paced complex process, in which multiple phases of negotiations take place “on a subject-by-subject basis” (European Union, n.d.-a). Usually, it takes years of negotiations and domestic legal amendments in order to align with EU legislation until an agreement between the candidate member states and the European Union has been reached and the accession can be finalized. Therefore, “Benchmark B” may be useful as it examines all constitutional amendments related to conformity with EU legislation four years prior and four years after the official accession of a former Warsaw Pact state, not taking into account the special status of Albania.

2. METHODOLOGY AND THEORETICAL FRAMEWORK

In this chapter, the research methods that will be used throughout this thesis are set out. In order to provide an answer to the RQ, a literature research in which primary and secondary sources are examined was performed. In legal terms, the primary sources are the actual laws that were written by the government entities of the three ex-Warsaw Pact states. This thesis will make strictly use of the constitutions and other constitutional documents, such as (constitutional) amendments.

Within the realms of scientific research, secondary sources analyze or take a stance on the content provided by primary sources. This thesis will examine several publications of scholarly writers that will shine a light on the constitutional-legal development of the three states discussed. These publications are of great essence for this thesis as the authors are commonly nationals of these former Warsaw Pact states. Hence, the authors can implement all relevant documents that are, for instance, not translated into English and are qualified to include their own expertise and experience in their story. Usually, most writers that were used as a reference in this thesis, are constitutional experts of their own country. The expertise and own experience of these national authors bridge the gap between what is written and how a state acts, whether or not a state is actually complying with its constitution, or, to take a step further, whether or not a state is actually complying with EU legislation. This leads to a less distant and dry approach as the actual state activity and the degree of compliance with the domestic law and EU legislation, can be captured through secondary sources.

Furthermore, a theoretical framework will serve as a scientific lens to establish a solid scientific foundation for this thesis. After every benchmark and during the whole thesis in general, the theory of liberal intergovernmentalism (LI) will be applied and is conducive to the formulation of grounded arguments whilst working towards an adequate answer to the RQ.

In the academic article “Grand theories of European integration in the twenty-first century”, Hooghe & Marks (2019) establish multiple theories in respect of supranational integration in Europe. Among others, the theory of (liberal) intergovernmentalism was set out. The intergovernmentalist school regards European integration from the perspective of nation-states that are generally looking for mutually advantageous bargains and cooperating with one another for the sake of common (economic) interests. This theory is convinced that (European) integration is the result of cooperation and competition between national governments (Hooghe & Marks, 2019).

Liberal intergovernmentalism will be applied as a theoretical framework throughout this thesis as it has added value for this research regarding its viewing point. As this research, in principle, will demarcate itself to national constitutions only, a theory that takes a stance from the perspective of national governments is significant, rather than a theory that applies a *bottom-up approach*.

Moreover, LI views European integration in the light of the expectation of positive gradual change from a European Union perspective, that is, national governments are amending its constitutions to the extent that it conforms with the EU legislation. The school of Liberal intergovernmentalism names the phenomenon of states conforming with European Union legislation “EU integration”. Liberal intergovernmentalism expands the basic idea of intergovernmentalism “by applying international political economy to member state bargaining” (Hooghe & Marks, 2019, p. 1115).

Frequently mentioned relating to intergovernmentalism is “the common interest” which entails the general idea of this theory, namely due to similar state interests two or more states can experience economic gain as a result of cooperation (Nugent, 2003, p. 475). The best-known example of common interest, in this sense, is a strong and thriving economy considering every nation-state craves for having a prosperous economy in the end.

Keohane’s functionalist theory of the formation of international regimes is applied throughout the liberal intergovernmentalist school of thought. Liberal intergovernmentalism

applies Keohane's precept that states may rationally establish collaboration regarding international institutionalization (Hooghe & Marks, 2019).

However, dissimilar to functionalism, intergovernmentalism regards international cooperation as a result of the national leaders and their mutual interests. Hooghe & Marks (2019) suggest the following: "[LI] combines a liberal theory of domestic preference formation with an institutionalist account of intergovernmental bargaining in which states are instrumental and driven chiefly by economic interests" (Hooghe & Marks, 2019, p. 1116).

LI dissects the process of integration into three stages (Hooghe & Marks, 2019). Firstly, the domestic formation of national preferences. In the first step, the priorities of the government are shaped by powerful domestic groups, primarily firms, rather than political parties. These government preferences are mainly economically motivated and shared through a national political agenda (Moravcsik, 1998).

The second stage entails the process of intergovernmental bargaining. According to Moravcsik and Schimmelfennig (2009), intergovernmental bargaining is formed by "asymmetrical interdependence" in which the nation-state that needs international cooperation the least has the strongest position and, accordingly, the nation-state that needs international cooperation the most has the weakest bargaining position. Concerning access to information, there is a level playing field that allows governments to decide without any involvement of any third parties, such as non-state policy entrepreneurs (Moravcsik & Schimmelfennig, 2009).

The final stage concerns the creation of European institutions to secure agreements. In practice, this third stage is the final step of EU integration, that is, the candidate member state officially becomes a member state of the European Union as the pre-accession negotiations have ended and *the deal is completed*. This stage can already be attributed to the Czech Republic and Hungary since they have already become member states of the EU (European Union, n.d.-b).

Furthermore, it assumes that nation-states will delegate authority inasmuch as sufficiently justified in order for governments to comply with the compromise. With the establishment of the European Union, the third and final stage has already been passed (Hooghe & Marks, 2019). Liberal intergovernmentalism considers international institutionalization an outcome of cooperation errors.

However, the accession of a new member state to the European Union should be regarded as a case on its own, because every time a candidate member state is willing to join the EU, new negotiations take place. Hence, the process of integration should not be regarded from the perspective of the European Union as a whole, but from the perspective of the individual nation-state. In this thesis specifically, the cases of the Czech Republic, Hungary, and Albania are covered. All in all, intergovernmentalism explains European integration with the dynamics between governments, with their national leaders and their interests, on the one hand, and interest groups, primarily (large-sized) companies, on the other hand. The influence and agenda of interest groups will be excluded from this research. The interests of national leaders and political parties will be extensively examined as this thesis is delineated to the mere examination of constitutional documents that were created by government entities.

Moravcsik, the father of LI, summarizes EU integration as the following: “EU integration can best be understood as a series of rational choices made by national leaders. These choices responded to constraints and opportunities stemming from the economic interests and relative power of powerful domestic constituents, the relative power of states stemming from asymmetrical interdependence, and the role of institutions in bolstering the credibility of interstate commitments” (Moravcsik, 1998, p. 18).

Generally, liberal intergovernmentalism can be considered a valuable addition to this thesis as it provides a scientific lens over the results coming from the primary and secondary literature review.

3. THE CZECH REPUBLIC

The nation-state of the Czech Republic, along with nine other states, joined the European Union on 1 May 2004. With the membership of Cyprus, Malta, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia, as well as, conveniently, the Czech Republic, the EU allegedly made an end to “the division of Europe after the Second World War” whilst having to finalize the *EU-25* (European Union, n.d.-b). As a former communist state that fell under Soviet dominion, several constitutional reforms have passed in order to establish the constitutional state it is today.

After the *schism of Czechoslovakia* in 1993, the Czech Republic made rapid advancements to become eligible for entering the European Union. As could be derived from the compatible research sub-question (“How has the legal system of the Czech Republic developed since 1991 compared to 2000-2008, and 2023, regarding conformity with the European Union?”), the applicable benchmarks for analyzing the constitutional development of the Czech Republic will be the following three (courses of) periods: the year 1991, when the Soviet Union was dismantled, the period from 2000 up to and including 2008, as well as the year 2023, which is, at the time of writing, considered *here and now*.

The unambiguous period between 2000 and 2008 is included since this course of time, starting four years before entering and ending four years after entering the EU, will further be analyzed for evaluating the constitutional development of all three European states and will be highly suitable for reporting Czech legal change, since it is assumed that lots of constitutional legal alterations took place in that period.

Concerning the points of reference that are stated above, several constitutional-legal documents are relevant due to the continuous constitutional revision.

When the Soviet Union fell apart in 1991, *the 1960 Constitution of Czechoslovakia*

was still in place. In 1992, it was declared that the state of Czechoslovakia came to an end by peaceful dissolution into the Czech Republic and Slovakia (Heimann, 2011). The date of 1 January 1993 will mark the birth of the state of the Czech Republic as well as the event that the outdated *1960 Constitution of Czechoslovakia* was finally repealed by *the 1993 Constitution of the Czech Republic*. Nowadays, the Constitution of the Czech Republic, which was enacted in 1993, still remains the supreme law of the country and provides the foundation for all other legislation.

Together with the constitutional amendments that took place within the scope of research, these relevant Constitutions (1960-1993) will be examined in this chapter.

Furthermore, this chapter attempts to analyze the constitutional development of the Czech Republic in the sense of conformity to European Union legislation. Constitutional development will be regarded from a liberal intergovernmentalist approach.

Last, remindful of the structure of this thesis, constitutional legal documents that fall within the aforementioned benchmarks will merely be covered throughout this chapter with the exception of crucial parts of the constitutional development that must be noted to make an extensive *intra*-state comparison within the Czech legal order and, ultimately, an *inter*-state comparison between the Czech Republic, Hungary, and Albania.

Benchmark A: year 1991

The first benchmark of the Czech Republic, the early socialist Constitution of Czechoslovakia of 1960 used to form the foundation of the Czech legal order at the time, will be discussed. Thereafter, the 1991 constitutional amendment that introduced the *Charter of Fundamental Rights and Freedoms* of the Czech Republic will be examined, which formed the foundation for the collective rights in the Czech Republic as of today.

I. The 1960 Constitution of Czechoslovakia

The Czechoslovak state ideology became primarily based on Marxist-Leninist principles, therefore its government maintained a socialist-communist regime. After the Second World War, Czechoslovakia became a satellite state of the Union of Soviet Socialist Republics (hereafter: USSR) and was a founding member of the 1955 Warsaw Pact (Mastny & Byrne, 2005). Despite the Czechoslovak characteristic of having a multi-party system, the Communist Party was practically the only party that held significant power (Skilling, 1962).

The 1960 Constitution of Czechoslovakia was largely influenced by Soviet ideology (Skilling, 1962). The constitution opens with a Declaration (the equivalent of a contemporary constitutional preamble) that portrays the main purpose and core principles of the Czechoslovak Constitution of 1960. It starts with the following sentence:

> We, the working people of Czechoslovakia, solemnly declare: The social order for which whole generations of our workers and other working people fought,(...), has become a reality in our country, (...), under the leadership of the Communist Party of Czechoslovakia. (1960 Czechoslovak Constitution, Declaration, p. 1)

This first sentence already provides the main purpose of this Constitution, namely announcing that socialism has been achieved with the guidance of the Communist Party. It illustrates the influence of Marxist-Leninist theory: the concept " working people" is used as a traditional term in the USSR to illustrate that the common working people are in power and that the country has entered a socialist stage of ideological development, ultimately striving to reach communism, which is reiterated in Article 2(1) of the 1960 Constitution.

Similarly to the equivalent class in the USSR, the Czechoslovak working class was presumed to be the ruling class within Czechoslovak society. This doctrine is further

expanded later in the 1960 Constitution. *The 1960 Constitution of Czechoslovakia* strives for building towards “an advanced socialist society” (1960 Czechoslovak Constitution, Declaration, p. 1).

Additionally, the Declaration explains the strong bond between Czechoslovakia and their “great ally, the fraternal Union of Soviet Socialist Republics”, or USSR, as well as any other friendly state within the socialist realm (1960 Czechoslovak Constitution, Declaration, p. 1). The Declaration of the Czechoslovak Constitution not only exclaims ties with the USSR and other socialist states, but it also emphasizes that the state of Czechoslovakia wants to initiate friendly relations with all states and contribute to global peace.

Moreover, the 1960 Constitution mentioned the 1948 Czechoslovak *coup d’état* as this was the first initial motion towards a communist-dominated government, as well as the strong desire to the creation of a communist welfare state, which can be read in the sentence: “All our efforts are now directed at creating the material and moral conditions for the transition of our society to communism” (1960 Czechoslovak Constitution, Declaration, p. 1).

It formulates a socialist principle: “From each according to his ability, to each according to his work.”. Along with this socialist principle, the Declaration also formulates its ultimate aspiration, namely the following communist doctrine which descends from Karl Marx: “From each according to his ability, to each according to his needs” (1960 Czechoslovak Constitution, Declaration, p. 3).

From studying the Declaration of the 1960 Czechoslovak Constitution, it can be concluded that the Constitution emphasizes the achievement of socialism and, therefore, the Czechoslovak nation abides by the socialist principle. Nevertheless, the aim of the state along with the Czechoslovakians ought to be to reach and be able to abide by this communist principle, which was established by Marx.

Lastly, statements are included on the harmonious dichotomy of Czechoslovakia. The Declaration underlines the “fraternal harmony” between the two nations, the Czechs

and the Slovaks, but at the same time acknowledges that the Slovak economy finds itself in a state of arrearage (1960 Czechoslovak Constitution, Declaration).

However, the 1960 Constitution underlines that due to the achievement and further advancements of socialism within state borders, the Czechoslovak economy will experience remarkable growth as it creates an opportunity for Slovakia to catch up with their backlog, or, in other words, to "rapidly [...] overcome its former backwardness and achieve an advanced level of industry and agriculture" (1960 Czechoslovak Constitution, Declaration, p. 2). These passages of the Declaration show that the Czechoslovak legislator had faith in the state ideology as it would guide them toward economic prosperity and strengthen both societies (of Czechs and Slovaks).

After the Declaration, the first chapter of *the 1960 Constitution of Czechoslovakia* depicts the Social Order of Czechoslovakia. Similar to the Declaration, it outlines the ruling of the working class. Article 2(1) of *the 1960 Constitution of Czechoslovakia* states: "All power in the Czechoslovak Socialist Republic shall belong to the working people." This is a common principle that can be seen in all former communist regimes all over the world. Article 1(3) of the 1960 Constitution reiterates Czechoslovak participation in the world socialist system and features its interest in having friendly relations with all countries and bringing world peace. This is to convince other nations that Czechoslovakia has inevitably gone the socialist route and to guarantee like-minded socialist states that Czechoslovakia is an ally with a similar socialist ideology. Likewise, chapter one underlines the importance of the Leninist-Marxist worldview in this constitution by reassuring that:

> [T]he entire cultural policy of Czechoslovakia, the development of all forms of education, schooling and instruction shall be directed in the spirit of the scientific world outlook, Marxism, Leninism, and closely linked to the life and work of the people. (1960 Czechoslovak Constitution, Art. 16(1))

Furthermore, similar to the Declaration and other parts of the Constitution, this chapter strictly forbids man-by-man exploitation (1960 Czechoslovak Constitution, Art. 7(1)).

The first chapter mentions the principle of democratic centralism in Art. 11(3) of *the 1960 Constitution of Czechoslovakia*. Democratic centralism, first introduced by Lenin, is a communist policy that unites democracy, which stands for free and open discussion, with central control, creating party unity and discipline. This policy stimulates free speech and debate to a certain extent, but once a majority decision has been reached, the discussion will be terminated. Therefore, the state allows the democratic aspect of free speech up until the majority takes a decision. At that point, the centralized state takes over the control and the central regime overrules the democratic element within the policy (Dagger & Ball, 2008).

The second chapter of *the 1960 Constitution of Czechoslovakia* explains the rights and duties of Czechoslovak citizens. Article 19(1) states that: "[...] the advancement and interests of each member are in accord with the advancement and interests of the whole community [...]" (1960 Czechoslovak Constitution, Art. 19(1)). This article dehumanizes the individuals of society and subsumes these individuals under *the gray mass*, leading to a collectivist approach, rather than an individualist approach.

Article 19(1) of *the 1960 Constitution of Czechoslovakia* emphasizes the unitary strength of the socialist regime as well as the conviction that no citizen can rise above the interests of the community, making every citizen equal to one another. Equality seems to be one of the main principles in socialist-communist Czechoslovakia.

The idea of "work" is centralized by the twentieth-century socialist society of Czechoslovakia. Article 19(2) of *the 1960 Constitution of Czechoslovakia* shows that the idea of "work" covers two sides of the same coin: "work" is considered a right of every citizen, but at the same time working is deemed the primary duty with regards to the community and this right (and duty) is protected by the state, according to Article 21(2).

Article 21(3) of the 1960 Constitution continues to build on the communist policy: the Constitution promises a reduction of working hours as a result of economic prosperity, yet preserving the monthly wages of the workers. This doctrine was commonly used by communist regimes as an incentive for the working people to stimulate them and have faith in the current government.

After the description of all applicable principles and values of the state in the first two chapters as well as the declaration, the third chapter up to and including the eighth chapter deal with the execution of state politics, the division of power (or the lack of this division), and the competences of institutions.

Chapter three mentions the legislative power of Czechoslovakia, the National Assembly, which consists of three hundred deputies that are chosen by the working people once every four years (1960 Czechoslovak Constitution, Art. 39) and shall convene at least twice per year (1960 Czechoslovak Constitution, Art. 50(1)). The National Assembly holds the right to propose bills. When laws or decisions that arise from alternative public institutions contravene the Constitution, the National Assembly has the right to annul the law or decision (1960 Czechoslovak Constitution, Art. 41(2)), fulfilling the task of judicial review, which is normally the competence of constitutional court (which did not exist in Czechoslovakia when *the 1960 Constitution of Czechoslovakia* first came into effect).

The National Assembly elects the members of the Supreme Court and the President of Czechoslovakia, according to Article 46(1) and Article 43(1) of the 1960 Czechoslovak Constitution. Following these articles, an excessive amount of power resides with the National Assembly making the other offices disproportionately dependent on the legislative branch.

The fourth chapter is concerned with the President of the Czechoslovakian Republic who serves for at least five years after gaining eligibility by receiving three-fifths of the votes in the National Assembly (1960 Czechoslovak Constitution, Art. 63(2)).

Among other competences, the Constitution reassures that “The President of the Republic shall also exercise authority which is not explicitly reserved to him in the Constitution if the law so provides” (1960 Czechoslovak Constitution, Art. 62(2)) which uncovers an option of boundless presidential power. However, taking into account that the President is submitted to the election and law-making competence of the National Assembly, the concentration of power remains with the National Assembly, whereas the power of the President stays limited.

The fifth chapter deliberates on “the supreme executive organ of state power”, or the Government of Czechoslovakia, consisting of the Premier and the Vice-Premiers, as well as the ministers (1960 Czechoslovak Constitution, Art. 67).

According to Article 68(6), “[The Government has] the right to introduce bills in the National Assembly and drafts of legal measures to the Presidium of the National Assembly” (1960 Czechoslovak Constitution, Art. 68(6)), which assumes the existence of a joint legal decision-making process.

As other parts of the Constitution also suggest, a clear-cut separation of powers is nowhere to be found in the 1960 Constitution. Article 70(2) of *the 1960 Constitution of Czechoslovakia* can support this ascertainment as it claims that “[t]he Government and its members shall fulfill their tasks in close co-operation with the National Assembly and its organs” (1960 Czechoslovak Constitution, Art. 70(2)).

Elected by the people of Slovakia is the Slovak National Council, which is the national organ of state power and administration within Slovakia (1960 Czechoslovak Constitution, Art. 73(2)). The Slovak National Council serves for four years and is further discussed in chapter six. They exercise control within the limits of their own authority, that is the Slovak territory, and have the right to introduce bills to the National Assembly. The Slovak National Council assigns commissions that hold executive power in Slovakia (1960 Czechoslovak Constitution, Art. 73).

Chapter seven describes the National Committees which hold state power within their region or district and signify decentralization and are chosen due to regional elections serving for four years (1960 Czechoslovak Constitution, Art. 86).

The eighth chapter discusses the Courts (and the Office of the Procurator) and assigns the Supreme Court as the highest and leading court of Czechoslovakia (1960 Czechoslovak Constitution, Art. 99(1)). The Courts and Office of the Procurator must protect the Socialist state as it is considered the judiciary state power (1960 Czechoslovak Constitution, Art. 97(1)). Decentralization of electoral power was realized in the judicial election procedures: members of the Supreme Court shall be elected by the National Assembly, members of the regional courts are chosen by the regional national committees, and district judges are elected by "by citizens by universal, direct, equal vote and by secret ballot" (1960 Czechoslovak Constitution, Art. 99(3)). As district judges are relatively insignificant, they serve no threat to impede the powers of any higher significant office.

Judges of Czechoslovakia shall be independent and merely bound by the national legal order of Czechoslovakia, according to Article 102 of *the 1960 Constitution of Czechoslovakia*. The Office of the Procurator shall supervise the complete set of laws and regulations. This office is appointed by the President and accountable to the National Assembly, according to Articles 104 and 105 of *the 1960 Constitution of Czechoslovakia*. Despite these promising provisions, it is known that the rule of law was not applied in a correct manner in Eastern European communist regimes (Sajo, 1995).

The final chapter concludes with some leftover provisions in the Constitution that do not contribute to the purpose of this research.

II. Constitutional Act no. 23/1991: the Charter of Fundamental Rights and Freedoms

“The Charter of Fundamental Rights and Freedoms" was introduced via *Constitutional Act no. 23/1991* and, as the name suggests, the 1991 Charter protected the rights of the Czech and Slovak citizens. The third provision of *Constitutional Act no. 23/1991* suggests that the Charter may be extended at some point, which, for instance, happened two years later through Constitutional Act no. 2/1993. This constitutional amendment was one of the first initiatives in Czechoslovak history to acknowledge international obligations. The primacy of international law over national statutes is deliberately recognized through the second provision of the Charter. The second provision of *Constitutional Act no. 23/1991* reads as follows:

> International conventions on human rights and fundamental freedoms, ratified and promulgated by the Czech and Slovak Federal Republic, shall be generally binding on its territory and take precedence over statutes. (Constitutional Act. no. 23/1991 of Czechoslovakia, Second Provision)

Despite this step in the right direction as Czechoslovakia progressively develops towards a system that respects human rights, in contemporary times, the 1991 Charter of Fundamental Rights and Freedoms is considered insufficient as this constitutional amendment introduces human rights and fundamental freedoms in an insufficient manner.

In fact, this constitutional amendment was drafted in a time when states had a different stance on human rights. The 1991 interpretation differs from the contemporary interpretations of what human rights and fundamental freedoms entail, especially in a post-communist state era. *Constitutional Act. no. 23/1991* briefly mentions rights though these can be marked as collective rights, rather than individual human rights.

To conclude, after analyzing *the 1960 Constitution of Czechoslovakia,* it becomes apparent that this legal document is not near the constitutional-legal standards of the European Union; unsurprisingly, as the European Union was founded decades after the establishment of this constitution in 1992 in the Maastricht Treaty (European Union, n.d.-c).

Not even after the enactment of the 1991 Charter, a sufficient individual human rights protection was established. Contrastingly, this constitution seems to value collective rights, or the rights of the working people as a unitary whole, rather than the rights of the individual. Hence, the first Copenhagen criterion which concerns respecting human and minority rights, is not met.

This constitution enshrined the socialist-communist ideology and created a planned economy in which, ultimately, every property is owned by the state, whereas, according to the second Copenhagen criterion, the European Union demands a market economy in order to ensure unconditioned competition that sets the prices. Following *the 1960 Constitution of Czechoslovakia*, Czechoslovakia ran a planned economy whereas the current European Union member states are part of the EU single market economy.

Several elements seem to be missing in light of EU standards, such as the adoption of European values. For example, Czechoslovakia does not establish itself as a solidarized state that acknowledges the duty of mutual support for non-socialist nation-states, since the Czechoslovak constitution strongly underlines the importance of cooperation within the international socialist realm.

Multiple modern democratic aspects that stabilize democratic institutions are missing. For instance, there is a concentration of power by the parliament as a result of its competences, which includes determining candidates for several high-ranked offices. The parliament seems to possess a large extent of the power and elects the President making the office of the President largely dependent on the parliament taking into account its limited competences. The President of the Republic of Czechoslovakia has limited influence due to its lack of competences and parliamentary dependence.

The Czechoslovak system is shaped in a way that multiple important offices, such as the President and the members of the Supreme Court are highly dependent on the grace of parliament as these members are selected by the Czechoslovak parliament. The legislative, the executive, and the judicial branch are unbalanced and dependent on one another. The 1960 Czechoslovak constitution does not sufficiently apply any form of separation of powers.

In practice, the Czechoslovak parliament was predominantly communist before the dissolution of the Soviet Union, disallowing other ideologies and minorities to have a share in power or to have a represented voice in parliament. The principle of the rule of law has not been established in a correct manner as the rule of law has never been applied adequately by Eastern European communist regimes (Sajo, 1995).

A sufficient amount of arguments are presented contra the alignment of this constitution and the standards of the European Union. The outcome, that is, the complete misalignment between *the 1960 Constitution of Czechoslovakia* and the (legislative) standards of the European Union, is nothing more than expected as this particular constitution was drafted more than three decades before the establishment of the EU. Furthermore, considering that Czechoslovakia, at the time, was ruled by communism and was chasing different end goals than the European Union once was established for, this outcome is no more than logical.

Despite its *novum* on the fact that international law may affect the Czechoslovak legal order, *Constitutional Act No. 23/1991* did not bring much about as its main aim was to establish collective rights, rather than modern individual human rights.

From a liberal intergovernmentalist approach, Czechoslovakia found itself even before the start of EU integration. Although its first small steps towards the hypothetical acceptance of the influence of international law, first, Czechoslovakia had to undergo a peaceful parting

into the Czech Republic and Slovakia in 1993 before the start of the EU integration process in the Czech Republic.

Although Hooghe & Marks (2019) divide the process of EU integration, from the perspective of LI, into three stages, it does not seem to fit into the situation of Czechoslovakia in 1991. Hitherto, Czechoslovakia has not advanced towards EU integration as it does not fulfill the requirements of a pluralist and tolerant society, nor does it meet the Copenhagen criteria. Therefore, no stage can be assigned to Benchmark A as EU integration *is still in its infancy* for the specific case of Czechoslovakia. In fact, the process of integration has not even begun as of Benchmark A. All of this can be explained as a matter of logic taking into consideration that the EU, in its current form, was not established until 1992 in the Maastricht Treaty (European Union, n.d.-c). As a matter of fact, the Copenhagen criteria were not laid down before 1993 (Hillion, 2014).

Benchmark B: year 2000 to 2008

Between the years 2000 and 2008, various amendments took place that are relevant to this research as the Czech accession was finalized in 2004.

However, before all else, a new constitution was proclaimed in 1993 that repealed the socialist Constitution of 1960. *The 1993 Constitution of the Czech Republic* blew a fresh wind into the Czech legal order.

Four relevant constitutional amendments took place within this periodical demarcation and, interestingly, all four came about in the time frame of 2000 to 2002. Thus, these relevant constitutional amendments all took place prior to the official EU accession of the Czech Republic in 2004. In chronological order, these amendments were *Constitutional Act no. 300/2000, Constitutional Act no. 448/2001, Constitutional Act no. 395/2001*, and *Constitutional Act no. 515/2002*.

I. The 1993 Constitution of the Czech Republic

Even though this legal document does not fall within the scope of our analysis due to its establishment in 1993, it is worth mentioning as it is of continuous relevance, due to the fact that, at the time of writing, *the 1993 Constitution of the Czech Republic* is still in place.

For this reason, the constitutional amendments that fall within the scope of analysis have altered the original version of the 1993 Constitution, rather than the repealed 1960 Czechoslovak Constitution, which makes an examination of the latest constitution inevitable. This Constitution intended to eradicate the Communist regime from the past (Kühn, 2019). First and foremost, this radical change of direction can be shown by comparing the use of wordings: whereas *the 1960 Constitution of Czechoslovakia* mentions “workers”, *the 1993 Constitution of the Czech Republic* calls its people “civilians”. The Communist era speaks of “a socialist State under the leadership of the Communist Party”, the *new* Constitution does not include such concepts, nor does it mention communism once. This Constitution attempted to wipe out the Communist legacy of the Czech Republic. It can be qualified as revolutionary (Kühn, 2019).

The 1993 Constitution was further modernized by including “the Charter of Fundamental Rights and Basic Freedoms” through Constitutional Act no. 2/1993 which was ultimately amended by Constitutional Act no. 162/1998. This original Charter contained 44 articles that established human rights as well as civil rights. In addition, chapters on (ethnic) minority rights and legal protection were added to the Charter.

The 1993 Constitution of the Czech Republic is the foundation of a free and democratic state in which the Czech state will be governed by the rule of law principle while respecting the freedom of citizens, human rights, and human dignity (1993 Czech Constitution, Preamble).

In *the 1993 Constitution of the Czech Republic,* a bicameral legislative power is established whilst considering the Czech Republic "as a part of the family of European and world democracies" (1993 Czech Constitution, Preamble, p. 1). Here, the Constitution assures that the Czech Republic is a democracy.

In this Czech bicameral system, the Assembly of Deputies and the Senate respectively are the lower and upper chambers, according to Article 15(2) of the 1993 Constitution. The Assembly of Deputies, initially consisting of two hundred deputies, elected once every four years, shall submit approved proposals (by the Assembly) to the eighty-one members of the Senate. The Senate, elected for six years (1993 Czech Constitution, Art. 16), will either adopt, reject or return proposed amendments to the Assembly, following Article 46(2) of the current Constitution of the Czech Republic. The Senate can also choose to express itself by declaring not to deal with a certain submitted proposal (1993 Czech Constitution, Art. 46(2)). The assent of both chambers is needed for treaty ratification, according to Article 49 of the Constitution. From these provisions, it can be derived that *the 1993 Constitution of the Czech Republic* establishes a parliamentary democracy.

According to the original 1993 Constitution, the President, the head of state, will be elected by both chambers of Parliament in a joint meeting (1993 Czech Constitution, Art. 54). In principle, the seat of the President enjoys the privilege of judicial immunity (even after the term, when committed during the term), though there is a provision included that declares an impeachment procedure in case of high treason (1993 Czech Constitution, Art. 65).

The Government, consisting of the Prime Minister, deputy prime ministers, and ministers, is the highest institution concerning the executive branch. According to Article 68(2) of *the 1993 Constitution of the Czech Republic*, the President appoints the Prime Minister and on the Prime Minister's proposal, the President will appoint the remainder of the significant governmental offices.

With regard to the Czech judicial power, *the 1993 Constitution of the Czech Republic* declares its courts to be impartial and independent in Article 82.

In addition, a Constitutional Court was established that must protect the constitutionality of domestic legislation (1993 Czech Constitution, Art. 83) and comprises fifteen judges that are elected by the President with senatorial consent (1993 Czech Constitution, Art. 84). A more proportionate division of power can already be seen, compared to the former communist regime in the Czech Republic, where the National Assembly would appoint such important offices. *The 1993 Constitution of the Czech Republic* provides greater competences for the President by taking these competences that initially belonged to the National Assembly.

In principle, Constitutional Court members enjoy the privilege of immunity, though an impeachment procedure has been inserted when a member is caught during or immediately after a criminal act (1993 Czech Constitution, Art. 86).

The Constitutional Court will also decide on matters of international law regarding the constitution and decide upon the necessary measures for the implementation of an international court decision, which is binding upon the Czech Republic, according to Article 87 of *the 1993 Constitution of the Czech Republic*. The members of the Constitutional Court are bound in their decisions by the constitution as well as international law, as stated in Article 88(2) of *the 1993 Constitution of the Czech Republic*.

The remainder of constitutional provisions and chapters were considered not relevant or contributing to the purpose of this research, therefore these provisions will not be covered in this thesis.

II. Constitutional Act no. 300/2000: "the Military Amendment"

The original Constitution which came into effect on 1 January 1993, did not allow any room for a transfer of competences to an external entity outside the Czech Republic. For this reason, constitutional alterations were deemed necessary in order to become eligible for entering the European Union.

Transfers of competences can already be seen in 1999. This year marks the event when the Czech Republic joined the intergovernmental organization of NATO (Daalder & Goldgeier, 2006). As argued before, the accession to NATO can be considered a step in the course of development towards EU integration. This event, that is, the Czech accession of NATO, initiated the 1993 Constitution to be amended by *Constitutional Act no. 300/2000*, which allowed, among other things, foreign armed forces to be stationed in the Czech Republic and vice versa, as stated in Article 39(3) and 43(3) of the current Constitution of the Czech Republic.

Furthermore, Constitutional Act no. 300/2000 called for Czech participation in international defense systems and complies with the NATO principle of collective self-defense against aggression, as stated respectively in Article 43(2) and Article 43(1) of the current Constitution of the Czech Republic.

III. Constitutional Act no. 448/2001: the purpose of the Czech National Bank

This rather slim constitutional amendment was brought to life due to nonconformity between national and EU legislation. In order to conform with the second paragraph of Article 119 of the Treaty on the Functioning of the European Union, the purpose of the Czech National Bank was amended in Article 98 of the current Constitution of the Czech Republic. By replacing the wording “maintenance of monetary stability” with “maintenance of price stability”, the (potential) future implementation of the euro currency is not impeded. The (potential) future implementation of the euro currency is implemented into

the Czech constitution to comply with the monetary aims of the European Union.

Through *Constitutional Act no. 448/2001*, the Czech Republic attempts to align its domestic legislation with EU legislation and leave space for the future adoption of the euro. The implementation of the currency of the European Union becomes reality once the conditions are met, because this is part of the Convergence criteria[1] in order to ensure convergence once a member state joined the European Union (European Commission, n.d.).

Constitutional Act no. 448/2001 is an example of a constitutional amendment that shows that, occasionally, the slightest twitch of nuance is necessary to comply with EU legislation.

IV. Constitutional Act no. 395/2001: the Euro-amendments of 2001

Constitutional Act no. 395/2001, known as *the Euro-amendment*, made drastic constitutional changes to the original text of *the 1993 Constitution of the Czech Republic*.

This Act altered and added articles that suggest a more positive stance toward international legal commitment. At the time, the Czech law-maker chose for creating succinct articles regarding the transfer of competences to international organizations.

Through *Constitutional Act no. 395/2001*, a second paragraph to the first article of the Constitution was added stating that the Czech Republic will abide by its obligations that arise from international law.

The 2001 amendment implemented two main purposes. Firstly, the amendment ensured that international law will be directly enforceable in the Czech legal order. Secondly, the 2001 amendment made way for a power transfer from the Czech Republic to the EU (Kühn, 2019).

Moreover, Articles 10a and 10b were added to construct a national legal backbone

[1] The Convergence criteria are not part of the accession criteria as multiple member states have not yet adopted the euro. Hence, these criteria are not included as a measure for EU integration.

regarding the transfer of competences to an international organization or multiple international organizations. Whereas Article 10b provides guidelines on the functioning of Parliament in relation to international law, Article 10a presents the main rule. Article 10a of the 1993 Constitution, as amended to *Constitutional Act no. 395/2001*, reads as follows:

(1) Certain powers of Czech Republic authorities may be transferred by treaty to an international organization or institution.
(2) The ratification of a treaty under paragraph 1 requires the consent of Parliament, unless a constitutional act provides that such ratification requires the approval obtained in a referendum.

Article 87(2) of the 1993 Constitution, as amended to *Constitutional Act no. 395/2001*, gives the Constitutional Court, which was already established back in the communist era through Constitutional Act no. 143/1968 Col., the right "to decide concerning the treaty's conformity with the constitutional order. A treaty may not be ratified prior to the Constitutional Court giving judgment".

Kühn (2019) mentions that the Constitutional Court decided in the Sugar Quota Case III (2006) to present the following domestic rules of law to be implemented into the Czech legal order; among other things, the primacy of the law of the European Union was acknowledged and the Constitutional Court claimed that Article 10a should merely be considered as a tool that bridges the gap between national and EU law.

In addition, the decision on the Sugar Quota Case III stresses the fact that EU law has a direct effect and, hence, immediately flows into the national legal order (Kühn, 2019).

With the 2001 *Euro-amendment* coming into effect, the Constitution discloses two distinct

paths toward the accession of the Czech Republic to the European Union. Looking at Article 39(4), it becomes evident that entering the European Union can be achieved by "constitutional supermajority": the rigid quota of three-fifths of the votes of both chambers of Parliament. Nonetheless, the second paragraph of Article 10a provides an alternative route for effectuating EU membership, namely through a referendum, although Czech legislation did not include general law regarding the holding of national referendums, at the time (Kühn, 2019).

V. Constitutional Act no. 515/2002: the Referendum Act

After several constitutional amendments from the enactment of *the 1993 Constitution of the Czech Republic* onwards, the current Constitution of the Czech Republic has incorporated several appendices. Through *Constitutional Act no. 515/2002*, Appendix C has been included to the Constitution, which concerns the 2002 Referendum on the accession to the EU. This constitutional amendment made Czech accession possible to the European Union through a popular referendum (Hanley, 2004). When the absolute majority (>50%) of those voting answer the referendum question in the affirmative, the Czech Republic would approve their accession to the European Union, according to Article 5(2) of Appendix C of the current Czech Constitution. In June 2003, the Czech European membership referendum was held; more than 77% of the voters answered the question in the affirmative, resulting in the Czech accession of the EU in May 2004 (Hanley, 2004).

In Benchmark B of the Czech Republic, a substantial constitutional change of direction can be noticed compared to Benchmark A of the Czech Republic. In less than five decades, the Czech constitutional narrative has shifted from a communist-based regime in which government control is its most important feature to a pro-Europeanist state that

respects fundamental human rights and, ultimately, finalized its accession to the EU through a popular referendum.

Bearing in mind that the Czech Republic became an EU member state in 2004, it can be argued that the Czech Republic (sufficiently) meets the Copenhagen criteria and the other remainder of the criteria formulated in the Treaty on European Union. These remaining criteria are pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men.

Regarding the Copenhagen criteria, it can be assured that, as “the Charter of Fundamental Rights and Basic Freedoms” was renewed multiple times, the constitutional protection of fundamental human rights, including the protection of minority rights, is of a sufficient level.

Following this line of thought, the European Union must regard the Czech democracy as sufficiently stabilized as well as it meets the condition of having a market economy that is suitable for joining the euro area in the future.

Looking at *Constitutional Act no. 448/2001* and *Constitutional Act no. 395/2001* in particular, it can be concluded that the Czech Republic attempted to align its national legislation with EU legislation (in order to become a member state). *Constitutional Act no. 448/2001* tries to align the Constitution with the European Union monetary policy that demands EU member states to adopt the euro currency and *Constitutional Act no. 395/2001* enforced international law in having an effect on the Czech legal order, which paved the way for the acceptance of the *acquis communautaire* of the European Union.

From a liberal intergovernmentalist approach, it can be cleared that, throughout Benchmark B, the Czech Republic achieved EU integration and was awarded its membership in the European Union. As the accession negotiations between the EU and the Czech Republic started in 1998 (Cameron, 2003), the national leaders were certain that becoming a member state of the EU was a step in the right direction economically speaking. Hence, the process of intergovernmental bargaining embarked as the Czech

Republic entered the second stage of EU integration, according to LI.

For this reason, the national leaders delegated (a certain degree of) their power to the supranational institutions of the EU in order to enjoy the economic benefit of their accession, because liberal intergovernmentalism argues that national leaders are mainly driven by economic motivations with regards to EU integration.

Last, taking into consideration that the Czech Republic has become an EU member state in 2004, it can be concluded that the Czech Republic has realized EU integration into the Czech legal order, since the Czech legislator has been determined to meet all conditions the European Union requires in order to become a member state during this the periodical demarcation (Benchmark B). Hence, it can be derived that the Czech Republic has passed this second stage of EU integration and entered the final stage, which concerns the securing of the agreements, that is, the accession of the Czech Republic to the EU.

Benchmark C: year 2023

Although, at the time of writing, the Czech legal order has not been pushed through major constitutional amendments in the year 2023, the Constitution of the Czech Republic has changed in recent years compared to the Constitution in the period between 2002 and 2008. Thus, important and relevant constitutional amendments that changed the nature of the Constitution will be considered hereunder.

The following constitutional amendments are relevant for this thesis' purpose: *Constitutional Act no. 71/2012* and *Constitutional Act no. 98/2013*, which respectively changed the presidential election procedure and reduced parliamentary immunity.

I. Constitutional Act no. 71/2012: Presidential Election by direct popular vote

Entering into force in 2012, this constitutional amendment has been included in the Constitution of the Czech Republic. In advance of this Constitutional Act, the President of the Czech Republic was elected on joint consensus by both parliamentary Chambers, the Assembly of Deputies, and the Senate.

From 2012 onwards, this Act allowed the President of the Czech Republic to be elected by direct popular vote. Whereas Article 54(2) of the original 1993 Constitution of the Czech Republic states that "[the] President of the Republic shall be elected at a joint meeting of both chambers", Article 56(1) of the contemporary Constitution of the Czech Republic, as amended to *Constitutional Act no. 71/2012*, which is binding upon all Czech citizens, claims that the presidential elections shall be held by means of a secret ballot, by direct (popular) vote.

II. Constitutional Act no. 98/2013: the reduction of parliamentary immunity

This constitutional amendment reduced privileges from (former) members of the bicameral parliament of the Czech Republic. This outdated parliamentary benefit emerged during Czechoslovak times and was still in place up until 2013.

Before this amendment came into effect, the Constitution gave members of Parliament the right to 'lifelong legal immunity', which entails a permanent exclusion from prosecution unless explicit approval from the relevant Chamber of which one was or used to be part of (Kudrna, 2017).

Through *Constitutional Act no. 98/2013*, parliamentary inviolability was finally relinquished after a multitude of political debates and numerous proposals that already attempted to repeal the Constitution regarding this matter years before (Kudrna, 2017).

As can be regarded in Article 27(5) of the current Constitution of the Czech Republic, as

amended to *Constitutional Act no. 98/2013*, members of the Deputies of Assembly as well as senators may be arrested whilst committing an act of crime or immediately thereafter. By following the right legal procedure, that is, the arresting authority must give notice to the chairman of the respective chamber and the chairman must give consent to the detainee being prosecuted, a member of Parliament can be prosecuted. However, Article 27(4) of the current Constitution of the Czech Republic declares the following:

> Deputies and Senators may not be criminally prosecuted except with the consent of the chamber of which they are a member. If a chamber withholds its consent, such criminal prosecution shall be suspended for the duration of the term [of the impugned Deputy or Senator].

Following the reasoning of Article 27(4) of the current Constitution of the Czech Republic, it can be noticed that a disputed Deputy or Senator may be prosecuted after the term of holding office at the Assembly of Deputies or Senate. This reasoning is further expanded in Article 86(1) of the current Constitution of the Czech Republic: a judge of the Constitutional Court may only be prosecuted with the consent of the Senate, although, whenever senatorial consent is withheld, prosecution of the disputed judge of the Constitutional Court is suspended until the end of its term.

Lastly, it is worth mentioning that this amendment, *Constitutional Act no. 98/2013*, was closely connected to the discussion around the desire for greater transparency in domestic politics and the enforcement of accountability of the political actors in the Czech Republic (Kudrna, 2017). That being said, it can be assured that this amendment relates to the call for an increase in transparency of authorities and political trust as this debate was “closely connected with requirements for greater transparency in politics and reinforcing the accountability of its actors” (Kudrna, 2017, p. 161).

These latest changes in the Constitution, established through *Constitutional Act no.*

71/2012 and *Constitutional Act no. 98/2013,* enhanced the democratic element in the Czech constitution as citizens are now able to directly vote for their President instead of choosing the people that elect the President of the Czech Republic and ensured that no parliamentarian enjoys a disproportionate amount of judicial immunity. In the end, by the installment of *Constitutional Act no. 71/2012*, the Czech people will experience a more righteous system by an increase of their speaking rights potentially allocating political trust to gain over time.

Similarly, *Constitutional Act no. 98/2013* repealed the old-fashioned “lifelong immunity” of current and former parliamentarians, which is a rather outdated legal rule. Instead, parliamentarians were in a position to be prosecuted (and punished) after their office term, which is far more fair considering that, prior to this constitutional amendment, (former) parliamentarians stood above the law as it was hardly possible to prosecute them for criminal acts. This amendment was closely related to the debate around greater transparency and accountability of public offices, according to Kudrna (2017).

With regards to the theory of liberal intergovernmentalism, the constitution of the Czech Republic has made no further advancements as it already finds itself in the final stage of EU integration, because the deal already went through and the Czech Republic officially became a member state of the European Union.

However, it can be reassured once more that, with these latest constitutional amendments, the Czech legislator attempts to create a more stabilized democracy along with higher degrees of political trust. With these amendments, the Czech Republic seems to make positive gradual changes that strengthen its democracy. These amendments contribute to continuing in meeting the first Copenhagen criterion that demands a stable institutionalized democracy.

4. HUNGARY

Like the Czech Republic, Hungary was one of the ten candidate member states that joined the European Union in 2004. With the newly acquired Central and Eastern European member states, the European subcontinent was unified (European Union, n.d.-b).

As could be derived from the compatible subquestion, the applicable benchmarks for analyzing the constitutional development of Hungary will be the following three (courses of) periods: the year 1991, when the Soviet Union was dismantled, the period from 2000 up to and including 2008, as well as the year 2023, which is, at the time of writing, considered *here and now*.

The unambiguous period between 2000 and 2008 is included since this course of time, starting four years before entering and ending four years after entering the EU, will further be analyzed for evaluating the constitutional development of all three European states and will be highly suitable for reporting Hungarian legal change, since it is assumed that lots of constitutional legal alterations take place in that period.

However, it must be emphasized that this specific period is dependent on the specific state since not every one of the three former Warsaw Pact states has joined the European Union.

Concerning the points of reference that are stated above, several legal documents are relevant due to the continuous constitutional revisions in the case of Hungary.

As hundreds of legal amendments have passed in Hungary in the last decades, Constitutional Acts that will contribute to answering the subquestion will merely be covered. Only relevant components of Hungarian constitutional history are included considering the abundance of amendments, the relevance, the degree of change as well as the lack of time for this Bachelor's thesis.

The 2011 Fundamental Law of Hungary superseded *the 1949 Constitution of Hungary*. After the Fall of Communism in 1989, when most communist regimes in the world came to an end, the nation-state of Hungary became the exception to the rule. Whereas all Central and Eastern European states adopted a new constitution within a short amount of time after 1989, Hungary did not succeed in naturalizing a new constitution (Krekó & Enyedi, 2018).

Despite multiple efforts, a new Hungarian constitution after 1989 (that would repeal the 1949 Hungarian Constitution) was never formally finalized until 2011, regardless of the drastic course change in regime from 1989 onwards. To be more specific, after the Fall of Communism in 1989, Hungary shifted from a communist welfare state towards a moderately capitalist state (Chronowski et al., 2019).

However, in 1989, radical constitutional amendments were made to *the 1949 Constitution of Hungary.* Numerous constitutional amendments were made in the past few decades, though Constitutional Act no. XXXI of 1989 seems to be the most drastic one (yet). As Constitutional Act no. XXXI of 1989 heavily edited Act XX of 1949, an unofficial Constitution of 1989 arose from the ashes of the former communist regime (Chronowski et al., 2019). Sajo (1995) named the 1989 constitutional amendments “the invisible constitution” due to the fact it was never officially approved as a constitution.

With regard to the first benchmark (A), both *the 1949 Constitution of Hungary* and *the* (unofficial) *1989 Constitution of Hungary* are relevant, because a comparison between the two constitutions will illustrate the constitutional-legal change. The transition between the two constitutions unveils the shift from communism to (moderate) capitalism.

In 2011, the newly elected government decided to adopt a new constitution. *The 2011 Fundamental Law of Hungary*, which was further amended over the years, will be further analyzed throughout this chapter as well as the 1949 constitution and the (“invisible”) 1989 Hungarian constitution. Additionally, relevant constitutional amendments that fall within the scope of this legal research will be discussed.

Furthermore, this chapter attempts to analyze the constitutional development of Hungary in the sense of conformity to European Union legislation. Constitutional development will be regarded from a liberal intergovernmentalist approach.

Last, remindful of the structure of this thesis, constitutional legal documents that fall within the aforementioned benchmarks will merely be covered throughout this chapter with the exception of crucial parts of the constitutional development that must be noted to make an extensive *intra*-state comparison within the Hungarian legal order and, ultimately, an *inter*-state comparison between the Czech Republic, Hungary, and Albania.

Benchmark A: year 1991

With regard to the constitutional-legal development of Hungary, two constitutions will be covered in Benchmark A: *the 1949 Constitution of Hungary* and *the* (unofficial) *1989 Constitution of Hungary*.

In Benchmark A, the Hungarian socialist Constitution of 1949 will be discussed as it officially remained in place for approximately six decades until it was finally repealed by *the 2011 Fundamental Law of Hungary*.

Because formally, this socialist constitution was heavily amended in 1989, rather than repealed. For the sake of clarity, this thesis will treat the 1989 amendments as a constitution on its own as these amendments altered the complete nature of the 1949 Constitution.

Nonetheless, it remains undisputed that formally no 1989 Constitution of Hungary has ever existed (Chronowski et al., 2019). Chronowski et al. (2019) utilize the term “the 1989 Constitution of Hungary” as an explanation for the drastic change that was realized due to the approved constitutional amending acts of 1989. Hence, the usage of this term is justifiable and will be used throughout this chapter and the thesis as a whole.

I. The 1949 Constitution of Hungary

As the end of the Second World War was nearing, the nation-state of Hungary was awaiting the same fate as some other Central and Eastern European states, including Czechoslovakia (later: the Czech Republic) and Albania. Being satellite states, these nation-states and their ideologies fell under the hegemony of the USSR (Mastny & Byrne, 2005).

For this reason, these Central and Eastern European states established constitutions that were modeled after the 1936 Soviet constitution (Lu, 2019), and therefore, these constitutions are dominated by Stalinist communist principles, which, in turn, are derived from the Marxist tradition. Likewise, this tendency applied to the case of Hungary (Boer, 2017). Modeled after the 1936 Soviet Constitution, *the 1949 Constitution of Hungary* was called into existence.

Formally, *the 1949 Constitution of Hungary* has been in place until the ratification of *the 2011 Fundamental Law of Hungary* (Chronowski et al., 2019).

Therefore, technically speaking, all constitutional acts that were proclaimed prior to the ratification of *the 2011 Fundamental Law of Hungary* formally amended this particular 1949 Constitution rather than the unofficial and nonexistent 1989 Constitution.

For the sake of integrity, this constitution will be extensively reviewed as it portrays the communist background of Hungary and unfolds the constitutional-legal change of Hungary. Hence, it is crucial to analyze *the 1949 Constitution of Hungary* in order to discuss the constitutional change with regard to conformity with European Union standards.

The 1949 Constitution of Hungary was initially named “the Constitution of the People’s Republic of Hungary” (of 1949). The Hungarian legislator gave the newfangled constitution the label "the Constitution of the People’s Republic”, which already implies the ideological direction of this constitution. Similar to the 1960 Czechoslovak Constitution, this

particular constitution is heavily influenced by the Soviets and, therefore, filled with socialist and communist values and principles (Lu, 2019). This *Stalizined* constitution of Hungary of 1949 consists of the discharge of the communist ideology and acclaims its communist beliefs. Hence, cohesion, that is, lots of similarities, can be found between *the 1949 Constitution of Hungary* and *the 1960 Constitution of Czechoslovakia*.

However, no such thing as a preamble or declaration was added to *the 1949 Constitution of Hungary,* whereas *the 1960 Constitution of Czechoslovakia* includes a relatively lengthy declaration that sets out the goals and beliefs of the Czechoslovak (communist) government.

Article 2(2) of the 1949 Constitution already exclaims the general idea of Hungarian communism and communism as a whole, namely all power in the Hungarian People's Republic (hereafter: H.P.R.) belongs to the working class and the working class exercises its power through elected representatives. The importance of communism is further reassured in the third article of the socialist constitution of 1949:

> The State of the H.P.R. defends the liberty and power of the Hungarian working people and the independence of the country, fights against every form of exploitation of man, and organises social forces for the building of socialism. The H.P.R. realises itself in the close alliance of workers and the working peasantry led by the workers' class. (1949 Hungarian Constitution, Art. 3)

Chapter two of the 1949 Constitution describes "the Social Order" of Hungary.

From Article 4(1) of the 1949 Constitution, it can be derived that Hungary was advancing towards the goal of communism, that is, all property is state-owned, though there is some room left for private ownership. It states the following with regards to the progression towards an advanced communist society: "The bulk of the means of production in the H.P.R., being the property of society, is in the ownership of the State, the community or

the co-operatives. The means of production may also be in private ownership" (1949 Hungarian Constitution, Art. 4(1)).

Per contra, this claim was further nuanced in the next paragraph which stated that "(...) The working class is gradually eliminating the capitalist elements and is consistently building the socialist order of economy" (1949 Hungarian Constitution, Art. 4(2)) which implies that communism has not been achieved and that, later, private ownership will be eradicated.

Moreover, the concept of state control seems to dominate this chapter (2) of the constitution, as can be regarded in Article 6 of the 1949 Constitution: "(...) All commercial transactions are directed by the State."

Comparable to the socialist principles that were included in the 1960 Czechoslovak Constitution, "The basis of the social order of the H.P.R. is work" (1949 Hungarian Constitution, Art. 9(1)).

Concludingly, following this second chapter, this constitution enshrines the idea of communism and aims to advance to a strictly communist society. Therefore, in one way or another, it resembles the aims and motives of *the 1960 Constitution of Czechoslovakia.*

The third chapter discusses "The Supreme Organ of State Power", or the National Assembly. The National Assembly is the primary legislator and serves for a four-year term (1949 Hungarian Constitution, Art. 11(1)).

Members of the National Assembly will elect the Hungarian "Council of Ministers", that is, the highest executive power of Hungary, and, from among its own members, it will elect "the Presidium of the People's Republic", which are responsible for the day-to-day governance of Hungary (1949 Hungarian Constitution, Art. 10(3)).

The President of the Republic will be elected by the National Assembly, as stated in Article 12(3) of the 1949 Constitution. This President will be elected from among the deputies of the National Assembly. Again, similar to 1960 Czechoslovak Constitution, a

disproportionately powerful legislative branch has the competence to appoint significant offices. As a result, there is no balance of power to be found.

Regardless of this concentration of power, all members of the National Assembly are inviolable to a certain degree: “No deputy may be arrested or have criminal proceedings instituted against him without the consent of the National Assembly, except when caught in *flagrante delicto*” (1949 Hungarian Constitution, Art. 11(2)).

At that time, a joint law-making procedure took place in Hungary as stated in Article 14(2) of the Constitution: “Bills may be initiated by the Presidium, the Council of Ministers or by any member of the National Assembly.”

Article 14(2) of the 1949 Constitution underlined the existence of a joint legislative power, because the highest executive body, the Council of Ministers, is able to propose bills. Likewise, Article 14(2) shows the 1949 Hungarian Constitution making a mockery of the separation of powers.

According to Article 15 of the Constitution, once the quorum of half of its members is present, the National Assembly can decide by majority vote. In the case of a constitutional alteration, the National Assembly is able to decide by two-thirds majority, alias “a (constitutional) supermajority” (1949 Hungarian Constitution, Art. 15).

The Presidium of the People’s Republic, consisting of twenty members among which a president and two vice-presidents, will be elected from among the members of the National Assembly by the National Assembly (1949 Hungarian Constitution, Art. 19(1)).

The Presidium of the People’s Republic, among other things, has the competence to “annul or amend any legal decision or measure adopted by any State or local authority which is liable to infringe the Constitution or gravely endanger the interests of the working people” (1949 Hungarian Constitution, Art. 20(2)). In other words, whilst being part of the legislative framework of Hungary, the Presidium acquired the primary competence of a constitutional court, which, at that time, did not exist in Hungary.

However, Article 20(4) of the 1949 Constitution declares that the Constitution cannot be altered by the Presidium of the People's Republic. A constitutional amendment falls under the competences of the National Assembly and can be finalized by reaching two-thirds of the votes (1949 Hungarian Constitution, Art. 15(3)).

From looking into the dynamics between the National Assembly and the Presidium of the People's Republic, it seems that the Presidium and National Assembly are having a relationship of dependency. The Presidium is able to constitutionally review proposals except the Presidium is unable to alter the constitution by itself; the National Assembly is.

However, the division of power works in favor of the National Assembly, which can be seen again in Article 21(3) of the 1949 Constitution. This article reads as follows: "The National Assembly is entitled to dismiss the Presidium of the People's Republic or any of its members" (1949 Hungarian Constitution, Art. 21(3)). Enabling the National Assembly to dismiss Presidium members creates an unequal distribution of power and creates a relationship of dependency from the Presidium of the People's Republic to the National Assembly.

In chapter four of the 1949 Hungarian Constitution, the Council of Ministers is discussed. As the main executive and administrative body of the H.P.R, the Council of Ministers consists of a Chairman, Vice-Chairman or Vice-Chairmen, Minister(s) of State as well as the Ministers in charge of Government Departments (1949 Hungarian Constitution, Art. 23(1)). This body is elected by the National Assembly and it can be dismissed by the National Assembly. The Council of Ministers is able to issue decrees (1949 Hungarian Constitution, Art. 25(2)).

The Council of Ministers can also function as a gatekeeper of the law as Article 25(4) formulates that "The Council of Ministers may annul or amend any legal measure or decision adopted by other executive and administrative organs of the State or by local authorities which infringe the Constitution or harm the interests of the working people".

This article indicates a competence of constitutional review as well as a centralized character of state power considering that the Council of Ministers can decide upon any other legal measure taken by a secondary (or lower) executive and administrative organ. Additionally, Article 28(2) of the Constitution further strengthens the claim of centralization of power for the reason that this particular paragraph enables the Council of Ministers to take direct control over any branch of State administration at any given point in time.

Chapter five of the Constitution addresses the local authority, divided into counties, districts, towns, and communities (1949 Hungarian Constitution, Art. 29(1)). The judicial authority is also hierarchically divided and is discussed in chapter six in which it is stated that the judiciary is arranged into four categories: the Supreme Court, the Courts of Appeal, the county courts, and the district courts (1949 Hungarian Constitution, Art. 36(1)).

As stated in Article 39(3) of the constitution, the National Assembly elects the Supreme Court and the president of the Courts of Appeal, although judges can be dismissed following Article 39(1) of the Constitution creating dependency from the judicial branch to the National Assembly.

The courts of the H.P.R. are required to “punish the enemies of the working people; they defend and support the State, economic and social order, the institutions and the rights of the workers in the People's Democracy, and they educate the workers to keep to the rules of socialist society” (1949 Hungarian Constitution, Art. 41(1)).

According to Article 41(2) of the 1949 Constitution, the independence of the H.P.R. judges is lawfully ensured. This article further stipulates that judges are *only* being subordinated by the law, which indicates a lack of space for international law involvement. Both national and international contemporary judges are reliant on international law, whereas this article implies the law of Hungary is the only source of law the national judges have to abide by.

The seventh chapter is devoted to the office of the Chief Public Prosecutor, which is responsible for ensuring the observance of law by the Ministries, local authorities, and citizens (1949 Hungarian Constitution, Art. 42(2)). Besides the observance of the law, the Chief Public Prosecutor is responsible for ensuring the public prosecution of domestic crime (1949 Hungarian Constitution, Art. 42(3)). According to Article 43(1) of *the 1949 Constitution of Hungary*, The Chief Public Prosecutor is elected for a period of six years by the National Assembly and can be dismissed by the National Assembly, which reassures the disproportionate power of the National Assembly across all institutions.

The eighth chapter mentions citizen rights and duties. This chapter formulates several rights, such as the right to work which preserves the communist ideology in Article 45(1) of the Constitution. The duties of the citizens of H.P.R. are stated as follows:

> The fundamental duties of the citizens of the Hungarian People's Republic are: protecting the property of the people, strengthening social property, increasing the economic power of the Hungarian People's Republic, raising the workers' standard of life, fostering their education and strengthening the order of the people's democracy. (1949 Hungarian Constitution, Art. 59)

Article 49(2) of the 1949 Constitution enshrines the idea of equality based on sex, religion, or nationality whilst being a building block of socialism and communism. Article 50(1) of the 1949 Constitution enshrines the idea of equality between men and women. More universal rights were established in chapter eight, such as freedom of press, freedom of speech, and freedom of assembly (1949 Hungarian Constitution, Art. 55(1)). Despite the fact that merely collective rights are included, a whole chapter devoted to the fundamental rights and duties of civilians seems ambitious at this stage.

All in all, these rights and duties were no more than a false sense of protection because, according to Sajo (1995), the rule of law was never applied in a correct manner in these Eastern European communist regimes.

In the ninth chapter, several electoral principles were formulated, such as voting on the basis of a secret ballot and the elector's privilege parliamentary deputies that were chosen by the electorate, though this procedure has not been specified in the constitution (1949 Hungarian Constitution, Art. 62).

Lastly, Article 63(2) affirms an interesting provision: "Enemies of the working people (...) are excluded by law from the right to vote". This provision creates an exceptionally unequal and undemocratic voting system, though it remains unclear when one is considered an enemy of the working people and therefore, encourages arbitrariness.

Regarding the last two chapters, chapters ten and eleven are not considered relevant to the aim of this thesis.

II. The 1989 Constitution of Hungary

Being a crucial, though unofficial *interim* constitution, *the 1989 Constitution of Hungary* demands some examination; as this document was once the constitutional-legal base of Hungary until the enactment of the 2011 Fundamental Law, the original and unamended version of this constitution and its most outstanding provisions will be reviewed hereunder.

In fact, for the realization of *the 1989 Constitution of Hungary*, the Hungarian legislator "borrowed" Act XX of 1949 and thoroughly amended it through Act No. XXXI of 1989 (Chronowski et al., 2019). This constitutional loophole was not reversed until *the 2011 Fundamental Law of Hungary* was promulgated and came into effect (Chronowski et al., 2019).

Initially, the preface of *the 1989 Constitution of Hungary* discloses its purposes; (1) a peaceful transition to a constitutional state, (2) the establishment of a system with multiple parties involved, (3) the establishment of a parliamentary democracy, and, lastly, (4) the establishment of a social market economy (1989 Hungarian Constitution, Preface). These motives are further elaborated in the first chapter of the 1989 Hungarian constitution establishing the general provisions of the Hungarian nation-state. Kovács & Tóth (2011) stated the following on the 1989 amendments coming into effect:

> Like other countries in the region, the peaceful, co-ordinated political transition resulted in revolutionary outcomes: democratic institutions replaced an authoritarian regime, pluralist society replaced the dominance of communist ideology. Compared to the speedy political transformation, the text of the Hungarian constitution was changed only gradually. In 1989-1990, amendments of the old Constitution created the legal frameworks of the new democracy that can be characterised by the main institutions of constitutionalism: representative government, a parliamentary system, an independent judiciary, ombudsmen to guard fundamental rights, and a Constitutional Court, to review the laws for their constitutionality. (Kovács & Tóth, 2011, p. 184)

In the first chapter of *the 1989 Constitution of Hungary*, a change in tone compared to the 1949 Constitution can easily be noticed. Whereas the 1949 Constitution tended to use “working people” or “workers” in order to address Hungarian citizens, the 1989 Constitution commenced using the unbiased denomination “(the) people” to describe their citizens.

This shift shows the way the constitution is progressively viewing their population and can also be seen in the transitional period in the Czech Republic.

Contrary to a communist perspective where work is considered the *raison d'etre* of (communist) society, the term "the people" brings the population to view in a rather neutral sense, which is more suitable for a democratic society with a multi-party system.

Moreover, several articles describe the explicit role of international law in the Hungarian legal order. For instance, Article 7(1) of the 1989 Constitution states the following: "The legal system of the Republic of Hungary shall adopt the generally accepted rules of international law, and shall ensure harmony between the assumed international law obligations and domestic law." Unlike the 1949 Constitution, this constitution does not position itself as hostile toward the influence of international law affecting the Hungarian legal order.

The 1989 Constitution positions Hungary as ready, willing, and able to cooperate on an international scale, as Article 6(2) of the 1989 Constitution states that: "The Republic of Hungary Shall strive for cooperation with all the peoples and countries of the world."

To put this into perspective, the 1949 Constitution puts Hungary as more hostile towards nation-states that do not apply similar ideology compared to Hungary by the usage of the term "enemies of the working people": the oldest of the two constitutions is anything but willing to cooperate with all nation-states.

Article 8 of *the 1989 Constitution of Hungary* mentions the protection of human rights as one of the primary obligations of the state of Hungary. These (fundamental) human rights are further established in chapter twelve of the constitution.

From the promulgation of the 1989 Constitution onwards, economically speaking, the nation-state of Hungary shifts from a communist-planned economy to a (social) market economy in which public and private property shall receive equal respect and legal protection, with the recognition of the right to enterprise and freedom of competition (1989 Hungarian Constitution, Art. 9).

Chapter two of the 1989 Constitution discusses the (revision of the) Parliament of Hungary. The revised Hungarian system has been derived from the system of Germany which contains likewise a rather symbolic president that is elected by the parliamentarians (Kovács & Tóth, 2011).

One important constitutional legal change included in *the 1989 Constitution of Hungary* is the establishment of a Constitutional Court in Article 19(3) of the *new* Constitution, of which its members will be elected by the Parliament. The establishment of a constitutional court is a drastic legal change for Hungary considering the fact that the functioning of such a court preserves the balancing of powers, on a constitutional scale (Kovács & Tóth, 2011).

After the 1989 amendments, the Parliament of Hungary remains a strong organ as most of the significant public offices will be selected by the Parliament, such as the office of the President, the Prime Minister, the members of the Constitutional Court, and the General Prosecutor (1989 Hungarian Constitution, Art. 19(3)).

Additionally, Article 20(3) of the Hungarian Constitution of 1989 declares that all members of parliament enjoy the privilege of judicial immunity which more or less corresponds to the *1949 perception* of parliamentary immunity established in Article 11(2) of *the 1949 Constitution of Hungary*.

Various attempts were made to ensure the balancing of state powers to a certain extent: for example, the constitution explicitly states that a member of parliament may not be a member of the Constitutional Court or a judge in general (1989 Hungarian Constitution, Art. 20(5)).

Equivalent to the 1949 Constitution, *the 1989 Constitution of Hungary*, nonetheless, applies the concept of a constitutional supermajority, that is, a two-thirds majority which is necessary to force an amendment to the constitution (1989 Hungarian Constitution, Art. 24(3)). For common decisions, a majority of half of the votes of Parliament is considered sufficient, according to Article 24(2) of the constitution.

The third chapter of the 1989 Constitution deliberates upon the presidential seat of the Hungarian Republic, which will be elected by the Parliament of the state for a term of five years (1989 Hungarian Constitution, Art. 29/A).

In principle, the President of the Republic is inviolable, meaning that the person of the President is protected from criminal prosecution, as stated in the first paragraph of Article 31/A of *the 1989 Constitution of Hungary*.

However, the following paragraphs of Article 31/A as well as Article 32 of the 1989 Constitution describe an impeachment procedure in case of a violation of the constitution by the President, that is, a procedure which initiates the person of the President to be removed from office. Whenever a potential breach of the constitution by the President of the Republic appears, a two-thirds majority within the Parliament will be needed to initiate impeachment proceedings (1989 Hungarian Constitution, Art. 31/A(3)).

When such a case occurs, the Constitutional Court will have jurisdiction to determine whether the Constitution has been violated by the President. Once this has been established by the Constitutional Court, the Constitutional Court is authorized to remove the President from office (1989 Hungarian Constitution, Art. 31/A(6)).

Chapter four contains an article (Article 32/A) that addresses the Constitutional Court of the Republic of Hungary, the court that reviews the constitutionality of inferior legislation. Elected by Parliament on the basis of a two-thirds majority, the Constitutional Court consists of fifteen members (1989 Hungarian Constitution, Art. 32/A(4)).

Chapter five of the Constitution manages the Civil Rights ombudsman and the ombudsman for the Rights of National and Ethnic Minorities. Similarly to, among others, the Constitutional Court, the ombudsmen will be elected by Parliament on the basis of a two-thirds majority (1989 Hungarian Constitution, Art. 32/B(4)). The ombudsmen are responsible for investigating (potential) infringements of rights, each for their specific field (1989 Hungarian

Constitution, Art. 32/B). The ombudsmen belong to the system of human rights protection and are a valuable addition to ensure the rule of law. Therefore, the introduction of these two offices is a positive development.

The sixth chapter (VI) examines the State Audit Office and the Hungarian National Bank, which is not relevant to this research. In like manner, chapter fourteen (XIV) and chapter fifteen (XV) are neither relevant for the establishment of constitutional legal development of Hungary with regards to conformity with legislation and standards of the European Union.

Chapter seven of the 1989 Constitution presents the main executive power, the Government of the Republic of Hungary. The Hungarian Republic's government consists of the Prime Ministers and the Ministers (1989 Hungarian Constitution, Art. 33(1)). The Parliament shall elect the Prime Minister by majority vote, according to Article 33(3) of *the 1989 Constitution of Hungary*. Within its sphere of competences, the President of the Republic is able to appoint and acquit the Ministers of the Hungarian Government, according to Article 33(4) of *the 1989 Constitution of Hungary*.

With its ability to issue decrees and pass resolutions according to Article 35(2) of *the 1989 Constitution of Hungary*, the government can be considered part of the joint law-making procedure.

Next in order are chapters eight until eleven. In chapter eight, the functioning of the Hungarian police and armed forces is set forth. Generally speaking, the primacy of international law and the international obligations of Hungary that arise from international law are recognized and respected in Article 40/B of *the 1989 Constitution of Hungary*.

The ninth chapter determines the concept of (limited) decentralization in which local self-governments play a prominent role. Throughout this chapter, local competences are realized, such as the independent management of local municipality revenues (1989

Hungarian Constitution, Art. 44/A(1)). In fact, it becomes clear that there is a high degree of decentralization to be found in Hungarian state practice and, hence, it is considered one of the states with the highest degree of decentralization in Central and Eastern Europe (Dethier, 2002).

Chapter ten of *the 1989 Constitution of Hungary* elaborates on the judicial branch of Hungary. Alongside the Constitutional Court, there is a hierarchy of courts that handle "common" cases, with the Supreme Court as the highest ruling court in the nation (1989 Hungarian Constitution, Art. 47).Members of the Supreme Court will be elected by the National Assembly (on the recommendation of the President of the Republic), as stated in Article 48(1) of *the 1989 Constitution of Hungary*.

In the second paragraph of that article, that is, Article 48(2) of the 1989 Constitution, the President of the Republic selects the professional judges.

The balance of powers is further ensured by Article 50(3) of the 1989 Constitution assuring the independence of judges and preventing them from affiliating with any political party.

The Procuracy, or the office of the public prosecutor, has been established in the eleventh chapter; this office is responsible for the protection of the rights of civilians and the initiation of criminal proceedings or investigations when deemed necessary (1989 Hungarian Constitution, Art. 51). Likewise to the 1949 Constitution, the head of the procuracy is elected by the National Assembly (1989 Hungarian Constitution, Art. 52(1)).

As mentioned earlier, Hungary's fundamental rights and civic duties are defined in chapter twelve which formulates the most important foundational principles of the Republic of Hungary: the right to life, stated in Article 54(1) of the 1989 Constitution, and the principle of presumption of innocence, stated in Article 57(2) of the Constitution, are modern examples of fundamental rights that are included in the Hungarian 1989 Constitution. In addition,

Article 66(1) of the 1989 Constitution ensures equality between men and women, whilst being one of the criteria that the EU demands for accession.

From the 1989 Constitution, chapter thirteen will be the last one covered as it formulates several electoral principles of the Republic of Hungary. It formulates principles that are deemed essential for the functioning of a democratic society in which the most important one is the reassurance that the parliament is being elected by means of a “direct and secret” ballot and every single voter will have “general and equal suffrage” (1989 Hungarian Constitution, Art. 71(1)).

All in all, in approximately four decades, the nation-state of Hungary has shifted from a communist regime (in *the 1949 Constitution of Hungary*) to a democratic multi-party system (in *the 1989 Constitution of Hungary*), which contains several *securities* for the protection of fundamental and minority rights, such as the office of Procuracy, the offices of ombudsmen that defend the civil rights (and the rights of minorities). In addition, the constitutionality of laws is protected through the establishment of a Constitutional Court in *the 1989 Constitution of Hungary*.

Whereas the 1949 Constitution excluded civilians that opposed the regime from voting, the 1989 Constitution was the constitutional basis for a parliamentary system with a representative government and an independent judicial branch (Kovács & Tóth, 2011).

Although the European Union was not established in 1991 as the Treaty on European Union, that is, the Treaty that created the foundation of the European Union in its current form, was signed by its signatories (of whom Hungary did not belong) in 1992, Hungary, looking merely at its constitution, was well on track towards conformity with EU legislation.

The unofficial Constitution of 1989 formulated several motives for the enactment of a *new* Constitution: the establishment of a multi-party system and the establishment of a parliamentary democracy with a (social) market economy.

Kovács & Tóth (2011) hold that several offices were created to protect fundamental rights, including minority rights, as well as *the 1989 Constitution of Hungary* marks the establishment of democratic institutions together with a pluralist society. This ascertainment marks the approach toward meeting the first criterion of the Copenhagen criteria.

Furthermore, as it is deemed one of the main purposes of the *interim* Constitution, Article 9 confirms the establishment of a market economy in which the right to enterprise and the freedom of competition are supported. Hence, the second condition regarding the suitability of the domestic market economy is met by *the 1989 Constitution of Hungary*.

The final condition, that is, the acceptance of all treaties and legislation regarding the EU, cannot be met due to the temporal aspect, because the current form of the European Union and the conditions it has established in order to become a member state have not been established until 1992, when the Treaty on European Union was signed by its signatories. With regard to EU integration and conformity with EU legislation, it can be concluded that the state of Hungary was ahead of the Czech Republic. One could argue that the *new* Constitution met two out of three conditions of the Copenhagen criteria and created a pluralist and non-discriminatory society.

Concerning the case of Hungary in this specific time frame from a liberal intergovernmentalist perspective, it can be assumed that the national leaders were already, either consciously or subconsciously, *flirting* with future accession considering *the 1989 Constitution of Hungary* already contained several elements that were needed for EU accession. LI divides the process of EU integration into three stages (Hooghe & Marks, 2019) and the first stage of EU integration can be attributed to Hungary in Benchmark A. This stage concerns the formation of governmental preferences toward EU integration, which is mainly economically motivated (Moravcsik, 1998). The second stage entails the process of intergovernmental bargaining and does not apply to this specific period in the constitutional history of Hungary, because accession negotiations did not commence until the year 1998 (Cameron, 2003) which lies outside the time span of Benchmark A.

Benchmark B: year 2000 to 2008

Between the years 2000 and 2008, various amendments took place that are relevant to this research as the Hungarian accession was finalized in 2004. Five constitutional amendments took place between 2000 and 2008 that shine a light on the degree of conformity between the Hungarian legal order and the legislation of the European Union. In chronological order, these constitutional amendments are *Act XCI* (2000)*, Act LXI* (2002)*, Act CXXX* (2003)*, Act L* (2005), and *Act CLXVII* (2007).

I. Act XCI of 2000: regarding the Armed Forces

As could be deduced from the chapter on the Czech Republic, former Warsaw Pact states tend to join NATO before they acceded to the EU. Hungary is no exception to this rule, because, like the Czech Republic, Hungary joined NATO in 1999 (Daalder & Goldgeier, 2006).

While bearing in mind that accession negotiations between Hungary and the European Union started in 1998 (Cameron, 2003), constitutional amendments that contribute to joining NATO are relevant for the purpose of this research as these amendments related to the accession to NATO show constitutional-legal progression and a step in the right direction concerning EU integration.

Soon after Hungary became a member state of NATO, in the year 2000, Act XCI was passed in order to amend articles in the eighth chapter of *the 1989 Constitution of Hungary* in order to meet the NATO guidelines for the functioning of domestic armed forces (Chronowski et al., 2019).

Act XCI of 2000 replaced the initial first paragraph of Article 40/A of the Constitution with the following sentence:

> The armed forces (Hungarian National Army, Border Guard) have the fundamental duty to provide military protection for the homeland, as well as to see to the joint defense objectives arising from international agreements. (Act XCI, 2000, Section 5)

Whereas the original text of Article 40/A, first paragraph, of the Constitution did not include a phrase that recognizes obligations arising from international agreements, Act XCI has appended a clause that acknowledges the involvement of the duty of joint defense duties which arise from an international agreement, such as the NATO.

As a result of *Act XCI of 2000*, from the enactment onwards, Article 19/B(1) of the Constitution permitted "the use of foreign armed forces in Hungary or departing from Hungarian territory, or their stationing (or quartering) in Hungary" in case of an emergency.

Furthermore, Article 40/C was added to the Constitution allowing the possibility of allied armed forces performing patrolling on Hungarian grounds (Act XCI, 2000, Section 6).

As already stated, *Act XCI of 2000* and its subsequent constitutional amendments were passed to meet NATO standards (Chronowski et al., 2019).

II. Act LXI of 2002: the EU-amendment

The next constitutional amendment that is relevant to this research is the groundbreaking *Act LXI of 2002*. Among other things, this innovative Act added a new article to the heavily revised Act XX of 194, in other words, *the 1989 Constitution of Hungary*, which will go down in history as Article 2/A of the, then, enforceable Constitution (Chronowski et al., 2019).

The first paragraph of Article 2/A is written as follows:

> By virtue of treaty, the Republic of Hungary, in its capacity as a Member State of the European Union, may exercise certain constitutional powers jointly with other Member States to the extent necessary in connection with the rights and obligations conferred by the treaties on the foundation of the European Union and the European Communities (hereinafter referred to as 'European Union'); these powers may be exercised independently and by way of the institutions of the European Union. The ratification and promulgation of the treaty referred to in subsection (1) shall be subject to a two-thirds majority vote of the Parliament. (1989 Constitution, Art. 2/A(1))

From reading this article, it can be deduced that the Hungarian legislator presupposes the European Union membership of Hungary. Although the constitutional amendment pretends Hungary to be part of the EU, *Act LXI of 2002* actually was passed two years prior to the official accession of Hungary to the European Union, which officially took place in 2004 (European Union, n.d.-b).

Moreover, Article 2/A(1) of the Constitution, as amended to *Act LXI of 2002*, delegates the state power in two different manners: firstly, in a collective manner, by means of sharing competences with the European Union of its institutions, and, secondly, by means of fully authorizing the EU or its institutions to independently exercise power. The practice of this provision has not been specified in Article 2/A of the Constitution, hence when one or the other applies remains unclear from solely reading the Constitution. The establishment of Article 2/A of the Constitution, or the so-called 'Europe Clause', is by a mile the most notable change within the 2002 amendment, but it was not the only change made to the Constitution (Chronowski et al., 2019).

In a like manner, the constitutional definition of the National Bank of Hungary was altered. At all times, the newly defined National Bank of Hungary needs to conform with

“specific other legislation”, according to Article 32/D(1) (Chronowski et al., 2019). In other words, from *Axt LXI of 2002* coming into force, the National Bank of Hungary was bound by the supranational provisions of the law of the European Union and was obliged to function accordingly. In the Copenhagen criteria, one criterion obliges candidate member states to conform with the monetary aims of the European Union. One of these aims is the assurance of candidate member states to implement the euro currency in the future. *Act LXI of 2002* left room for a future implementation of this currency in order to meet the monetary aims of the European Union and, consequently, to the Copenhagen criteria.

Lastly, with the European local and parliamentary elections in mind, the rules on voting rights were modified by this amendment to the extent that all adult Hungarian citizens became eligible to vote on a European level, for European local elections as well as European parliamentary elections, according to Chronowski et al. (2019).

III. Act CXXX of 2003: regarding the European Arrest Warrant

As an attempt to implement the European Council Framework Decision on the European Arrest Warrant, the Hungarian legislator enacted *Act CXXX of 2003* (Chronowski et al., 2019). The European Arrest Warrant (hereafter: EAW) arranged regulations regarding the extradition of criminals in all member states of the European Union. Among other things, the EAW allows an authorized member state to issue a request regarding the arrest and extradition of a criminal in order for the criminal to be put to trial or complete an imprisonment sentence (EUR-Lex, n.d.-c). *Act CXXX of 2003* pursued to align *the 1989 Constitution of Hungary* with the EAW.

Nonetheless, as this particular Act came into effect one year prior to the official accession of Hungary to the European Union, *Act CXXX of 2003* can be considered a crucial step towards the alignment of domestic Hungarian legislation with EU criminal law.

IV. Act L of 2005: regarding International Agreements

Through *Act L of 2005* on the Procedure Relating to International Treaties, Hungary's expression of consent to be bound by an international treaty is regulated.

With Act L, the bottom line is that the government has full discretion to decide upon the expression of consent for treaties, in general, (Bárd, 2020) with the exception of the treaties that lie within the competences of the National Assembly, that is, the Hungarian parliament (Chronowski et al., 2019).

Chronowski et al. (2019) specified that treaties regarding cooperation with the EU (member states) fall within the scope of competences of the National Assembly. Accordingly, the National Assembly decides upon the expression of consent with regard to treaties relating to cooperation with the European Union following the enactment of *Act L of 2005*.

This constitutional development, the parliamentary decision upon European Union treaties, enhances the democratic element of the state of Hungary with regard to their decisions on domestic EU policy. Because the Hungarian civilians elect the parliament, "the voice of the Hungarian" is heard to a larger extent compared to an instance where the government decides upon this matter as the Hungarian government is not directly elected, but chosen by the National Assembly. In the end, an additional step in the chain is skipped which eventually leads to a more democratic system with regards to the EU policy in Hungary.

V. Act CLXVII of 2007: nullum crimen sine lege

With the amendment Act CLXVII of 2007, the principle of *nullum crimen sine lege* was finally added in order to comply with EU criminal law. "The *nullum crimen* rule" was infused in Article 57(4) of *the 1989 Constitution of Hungary* (Chronowski et al., 2019).

Fundamentally, this principle implies that a person cannot be punished for a crime that does not have a legal basis. In other words, this principle in (international) criminal law demands a legal basis in order for an authority to hold a civilian responsible for the act and to proceed to criminal punishment. This legal doctrine is considered one of the building blocks of modern criminal law (Glaser, 1942).

Similar to *Act CXXX of 2003*, this constitutional amendments had the aim to align Hungarian criminal law with criminal law of the European Union.

Concluding, from examining these five constitutional amendments, it can be derived that Hungary has met all criteria that the EU demands for becoming an EU member state. Regarding the Copenhagen criteria, bearing in mind that the EU granted membership to Hungary in 2004, without a doubt *the 1989 Constitution of Hungary,* as amended to the five constitutional amendments discussed in Benchmark B, establishes an institutionalized democratic multi-party system with a safeguard for human rights as well as a market economy which is suitable for converging into the EU single market. Additionally, *Act LXI of 2002* cleared the way for the acceptance and implementation of the *acquis communautaire* of the EU, that is, the significant legislation and treaties of the European Union, into the Hungarian legal order.

From a liberal intergovernmentalist perspective, Benchmark B in the case of Hungary can be described as the transition from the second stage into the third stage. It is evident that accession negotiations between the European Union and Hungary commenced in 1998 (Cameron, 2003), hence the process of intergovernmental bargaining, that is, the second stage according to liberal intergovernmentalism, started that year. The year 2004, the year of the Hungarian accession to the EU, marked the conversion from the second into the third stage. While in Benchmark A, it was concluded that, either consciously or subconsciously, the Constitution was leaning towards meeting the Copenhagen criteria, with the exception of the third and last criterion which entails the acceptance of the *EU-Acquis*, in Benchmark B,

the Hungarian government's main aim was to become a member state of the European Union (as well as NATO). *Act LXI of 2002*, prior to the official accession, already speculates Hungary of becoming a member state of the European Union as well as the remainder of discussed constitutional amendments in Benchmark B aligns the Constitution with EU legislation in different economic and legal fields.

From examining these constitutional amendments and the constitutional-legal advancements of Hungary as a whole, it can be asserted that proper EU integration has been accomplished considering Hungary became a member state in 2004.

Benchmark C: year 2023

The search for constitutional amendments with regards to the alignment of Hungarian domestic legislation and EU legislation is relatively complicated for this benchmark, because of the small number of recent constitutional amendments in Hungary together with the narrowed scope of this thesis. Therefore, although these may not necessarily fall within the scope of this benchmark, Benchmark C entails the mere crucial constitutional alterations that are indispensable for the purpose of the complete portraying of constitutional change in Hungary and making a proper *intra-* and *inter-*state comparison (between the former Warsaw Pact states of Hungary, the Czech Republic, and Albania).

Officially, *the 2011 Fundamental Law of Hungary* repealed *the 1949 Constitution of Hungary* and will be discussed hereunder, because it marked a drastic change in Hungarian constitutional history. Nevertheless, this thesis assumes *the 1989 Constitution of Hungary* to have come into effect between *the 1949 Constitution of Hungary* and *the 2011 Fundamental Law of Hungary.* In addition, two compelling *post-2008* constitutional amendments will be examined in this Benchmark: *Act CLI* (2011) and *Act XXXVI* (2012).

I. The 2011 Fundamental Law of Hungary

First and foremost, after the right-winged Fidesz party came out as the clear winner of the 2010 elections, Fidesz was able to form an alliance with the Christian party KDNP whilst receiving more than two-thirds of the parliamentary seats as a coalition (Mansfeldová, 2011).

Ever since the 2010 elections, Fidesz has been dominating politics in Hungary, despite the national and international criticism it has received: generally, the Fidesz party is considered responsible for the democratic erosion in Hungary by means of its harsh acts against the opposition, limitedness of free speech and manipulating the judicial branch (Krekó & Enyedi, 2018).

The Hungarian constitution is rather flexible than rigid, meaning that the constitution is rather easily amendable due to the unicameral nature of parliament (Kovács & Tóth, 2011). Kovács & Toth (2011) claim the following on the amendability of the Hungarian constitution:

> As regards the constitutional principles and the institutional architecture, Hungary, like other central European states, belongs to the community of modern liberal democracies. [...] Compared to those of other European states, the Hungarian Constitution is easy to amend. The Constitution does not render any provision or principle unamendable and it requires only the votes of two-thirds of members of parliament. (Kovács & Tóth, 2011, p. 186)

As a result, the Fidesz party called out a new constitution in April 2011, which came into effect on 1 January 2012. *The 2011 Fundamental Law of Hungary* as it was officially named, repealed *the 1949 Constitution of Hungary* which was heavily altered by the 1989 amendments that are, in this thesis, labeled as *the 1989 Constitution of Hungary* (Chronowski et al., 2019).

With the coming of the Fundamental (or Basic) Law in 2011, the main principles of the state of Hungary were heavily modified: whereas *the 1989 Constitution of Hungary* symbolizes the principles of liberty, equality, and democracy, the new 2011 Fundamental Law finds its core essence in history and religion, with emphasis on the Catholic faith (Kovács & Tóth, 2011).

More specifically, the ideology of the dominating Fidesz party, which is Christianity, is enshrined in the document (Peterkin, 2013). In the fifth proclamation, the following was asserted which emphasized the important role of Christianity, according to the Fundamental Law: “We recognise the role of Christianity in preserving nationhood. We value the various religious traditions of our country.”

The initial text of *the 2011 Fundamental Law of Hungary* came as a shock for many and was deemed highly controversial by critics. Some may consider *the 2011 Fundamental Law of Hungary* “an attempt to trick the world” (Luckie, 2013) because of its controversial provisions. Additionally, it becomes clear that, within the process of constitution-making, the ruling coalition was not sufficiently transparent, nor satisfactory debate regarding a new Constitution with opposing parties was held (Kovács & Tóth, 2011).

Considerably, *the 2011 Fundamental Law of Hungary* was initially created by the ruling coalition in order for the post-communist transitional period to come to an end (Kovács & Tóth, 2011). Even so, one thing is clear: the ruling coalition disliked their communist *ancestors*. The expression of aversion against communism is undeniably sensible as the nineteenth proclamation of the 2011 Fundamental Law attempts to nullify the previous communist ruling in Hungary. This proclamation which was included in the Constitution’s preamble writes the following: “We do not recognise the communist constitution of 1949, since it was the basis for tyrannical rule; therefore we proclaim it to be invalid” (2011 Hungarian Fundamental Law, 19th proclamation). The conservative political ideology is directly sensible in the preamble as the *notable* history is emphasized all along the preamble of *the 2011 Fundamental Law of Hungary*.

The new Fundamental Law of Hungary kicks off with the description of fundamental principles and inalienable rights and duties in the respective sections “Foundations” and “Freedoms and Responsibilities”. For instance, through Article B(1) of section “Foundation” of *the 2011 Fundamental Law of Hungary*, the principle of the rule of law is guaranteed.

In addition, Article E(2) of *the 2011 Fundamental Law of Hungary* recognizes Hungarian membership to the European Union.

In Article Q(2) of *the 2011 Fundamental Law of Hungary,* in order to meet the obligations that arise from international law, Hungary implements international law into the domestic legal order.

In the section “Freedoms and Responsibilities”, it becomes evident that respecting and ensuring fundamental inalienable rights of man is considered the primary obligation of the state of Hungary“ (2011 Hungarian Fundamental Law, Art. I).

Among other things, this constitutional segment mentions several basic universal rights, such as freedom of speech and freedom of press (2011 Hungarian Fundamental Law, Art. IX).

Correspondingly, the section “State” is subdivided into different chapters which address different institutions and branches of the Hungarian state.

The majority of the content with regard to the constitutional provisions remained similar to the provisions that were presented in *the 1989 Constitution of Hungary*: most institutions remained their prominent competences and most initial Hungarian principles stayed in place. Likewise, constitutional amendments or the adoption of an entirely new constitution will require “a constitutional supermajority”, that is, two-thirds of the votes of the one-chamber parliament (2011 Hungarian Fundamental Law, Art. S(2)).

The Parliament, or the National Assembly, will still elect the President of the Republic along with most other prominent offices, including the Constitutional Court members and the Prime Minister (2011 Hungarian Fundamental Law, Art. 1(2)).

However, some crucialities have been altered, such as the aforementioned shift in constitutional narrative that cherishes the predominant party philosophy (Kovács & Tóth, 2011). *The 2011 Fundamental Law of Hungary* does institute some other constitutional adjustments.

One of the most prominent constitutional changes is that the 2011 Fundamental Law, by revising government policy, allows the two-thirds majority to regulate common policy decisions rather than a simple majority decision as was the case in *the 1989 Constitution of Hungary* (Kovács & Tóth, 2011). As a result, the ability to push a different agenda than the current agenda by the ruling coalition becomes more difficult and therefore, this constitutional change excludes opposing parties to a larger extent.

Moreover, *the 2011 Fundamental Law of Hungary* disturbs the independence and competences of the Constitutional Court whilst being "the most important institution to maintain the constitutional balance of powers" (Kovács & Tóth, 2011, p. 185). Taking into account the fact that the ruling coalition already obtained a two-thirds majority of the seats in parliament from the 2010 elections, on the basis of a two-thirds majority decision, the ruling coalition can decide the full composition of the Constitutional Court judges, each elected for twelve years, on its own (2011 Hungarian Fundamental Law, Art. 24(4)). Subsequently, the idea that the dominating Fidesz party had full discretion in deciding the formation of the Constitutional Court resulted in all Constitutional Court members sympathizing with Fidesz, leading to the jeopardization of the independence of the Constitutional Court (Krekó & Enyedi, 2018).

Although most competences of the Constitutional Court remained in place, another constitutional change is notable. Due to the new 2011 Fundamental Law, the functioning of the Constitutional Court is restricted: whereas every person used to be eligible for making a request to review the constitutionality of a piece of legislation after its enactment, *the 2011 Fundamental Law of Hungary* prohibits popular requests to the Constitutional Courts (Kovács & Tóth, 2011).

When *the 2011 Fundamental Law of Hungary* entered into force, “[o]nly the government, the ombudsperson and one-quarter of the members of parliament can turn to the Constitutional Court, which means that according to the existing seats in parliament all the opposition parties (from left to far right) would have to agree on a petition” (Kovács & Tóth, 2011, p. 201). As it currently stands in political climates, one would be ignorant to assume that parties that mutually distance each other the farthest on the political spectrum will find consensus to file a petition on a frequent basis, in order to bring to light potential unconstitutional legislation.

As a consequence, this measure proceeds to the functional disabling of the Constitutional Court for anything that does not seem to be in line with the prevalent ruling party ideology resulting in an even larger exclusion of the opposition and a larger dominance of the ruling coalition.

Hence, taking into consideration the comments on independence and the modified competences of the Constitutional Court, Kovács & Tóth (2011) regard this development as a significant withdrawal and illiberal turn for Hungarian democracy.

Lastly, Article 19 of *the 2011 Fundamental Law of Hungary* provides a new insight that is nowhere to be found in former constitutions. It reads as follows: “Parliament may ask the Government for information on its position to be adopted in the decision-making process of the European Union’s institutions operating with the Government’s participation, and may express its position about the draft on the agenda in the procedure. In the European Union’s decision-making process, the Government shall take Parliament’s position into consideration.” Article 19 serves as an example of the fuse between the (interests of the) legislative and the executive power; this time, the entanglement of interests between these two powers with regard to the process of decision-making of the European Union.

II. Act CLI of 2011: regarding the Constitutional Court

This 2011 constitutional amendment, better known as *Act CLI of 2011*, made changes to the competences and functioning of the Constitutional Court of Hungary, the safeguard of the Hungarian Fundamental Law and domestic legal order. Although not explicitly mentioned in the legal document, the Act encouraged harmony between domestic law and international law and ascertained the bindingness of the decision-making of international organizations (Chronowski et al., 2019). As *Act CLI of 2011* concerns the dynamic between international law and Hungarian law, this constitution amendment is relevant to this thesis.

Moreover, Section 23, third paragraph, of *Act CLI of 2011* allowed the Constitutional Court to execute a preliminary review on the conformity of provisions between international treaties and the Fundamental Law. The President or, in case of a government decree, the Government has the right to request such a review before the actual acknowledgment of the international treaty having binding force in the state of Hungary, according to Section 23, fourth paragraph, of *Act CLI of 2011*.

Whenever the Constitutional Court of Hungary is able to establish non-conformity between a piece of legislation and an international treaty, the Constitutional Court may annul an Act or any piece of legislation that is contrary to an international treaty, according to Section 42(1) and Section 50(2) of *Act CLI of 2011*.

As an example to underline the harmonizing character of this 2011 Act, the Constitutional Court is able to invite (institutions of) the European Union or other international organs to ask their opinion or judgment on a petition (Act CLI of 2011, Section 57(2)).

III. Act XXXVI of 2012: regarding the National Assembly

Following *Act XXXVI of 2012*, it turns out that a seat at the table was created for the National Assembly regarding Hungarian governmental activity with the European Union. It brings forward a protocol in which the Hungarian government is pushed to involve the National Assembly in matters regarding the European Union.

Act XXXVI of 2012 establishes means to perform parliamentary control on the government with regard to EU policy. In the constitutional amendment, it is assured that the Government must inform the National Assembly of EU affairs, such as informing on the outcomes of meetings of the European Council by means of an oral speech of the Prime Minister at the sitting of the National Assembly (Act XXXVI of 2012, Section 69(4)).

Similarly, through this amending Act, the National Assembly is permitted to utilize its common parliamentary privileges with regard to EU affairs, such as the right to interpellate, the right to ask questions, the right to hold a parliament, or the right to establish a committee of inquiry (Chronowski et al., 2019).

Nevertheless, the amending Act presupposes even stricter cooperation between the National Assembly and the Hungarian government in EU affairs, called “the scrutiny procedure” between parliament and government. Section 62, first paragraph, of Act XXXVI of 2012 enables the National Assembly to execute “its supervisory rights” concerning the cooperation between the institutions of the European Union and the domestic government of Hungary.

Through Act XXXVI of 2012, the National Assembly, the representative body or the Parliament of Hungary, gains access to the joint decision-making process in an indirect manner, “as the Government and the National Assembly cooperate according to special rules in formulating the national position regarding EU draft legislation” (Chronowski et al., 2019, p. 1450).

In order to further enhance this claim, in Act XXXVI of 2012, as it reiterates the assumption that the National Assembly indirectly plays a role in the domestic decision-making regarding EU affairs, the following was stated: “The Government shall elaborate its position to be represented in the course of the European Union’s decision-making process on the basis of the standpoint of the National Assembly” (Act XXXVI of 2012, Section 65(5)).

Involving the National Assembly in the decision-making regarding the European Union enhances the democratic element of the Hungarian legal order because the electorate is able to choose the formation of the National Assembly, rather than the Hungarian Government.

With the enactment of *the 2011 Fundamental Law*, the ruling coalition, primarily consisting of parliamentarians of the Fidesz party, made graphic changes to the Constitution, such as the switch to a particularly devout constitutional narrative in which Christianity is centralized.

Furthermore, *the 2011 Fundamental Law* complicated the involvement of the opposition with regard to government policy and granted full discretion to the ruling coalition concerning the formation of the Constitutional Court, which is the most significant judicial organ for the protection of the Constitution. As a result of these constitutional alterations, the opposition was *side-lined* as they were unable to push their agenda and, because the Constitutional Court was selected merely by the ruling coalition, members of the Constitutional Court were unconditionally loyal to *Fidesz*.

According to Krekó & Enyedi (2018), these changes in the domestic political landscape of Hungary, whilst being a result of the enactment of the 2011 Constitution and its consequential changes, led to the phenomenon of democratic erosion in Hungary. The nation-state of Hungary is now notorious for its frequency of incidents around the suppression of the opposition, the infringements on the freedom of speech and the manipulation of judges.

In a press release about a plenary session of 2022, the European Parliament reached a clear verdict regarding the decreasing levels of democracy in Hungary as “Hungary can no longer be considered a full democracy”, but rather an electoral autocracy (European Parliament, 2022). Taking into account the opinion of the European Parliament, it can be derived that Hungary has moved away from meeting the Copenhagen criteria, since Hungary should not be considered an institutionalized democracy due to the absence of democratic standards.

As stated before, in Hungary, human freedoms are limited in an unlawful manner and judges seem to have lost their independence as a result of manipulation and corruption (Krekó & Enyedi, 2018). Hence, the state of Hungary does not comply with the first criterion of the Copenhagen criteria, which requires member states to be “a stable institutionalized democracy that respects minorities and human rights together with the rule of law” as it undermines European values.

The first criterion and the last criterion of the Copenhagen criteria relate to one another in the sense that when the first criterion is not met, it means that the *EU-Acquis* is not adequately implemented into the domestic legal order of the particular state. In the case of Hungary, by not being considered a (full) democracy, it means the state of Hungary undermines European values that are developed in EU Treaties, which results in failing to meet the third criterion of the Copenhagen criteria. The third criterion of the Copenhagen criteria is the acceptance of the *EU-Acquis* and entails all related EU legislation.

The current political-legal status of Hungary is a textbook example of autocratic national leaders (ab)using constitutional identity to their advantage in order to solidify an autocracy whilst undermining the rule of law in the nation-state (Keleman & Laurent, 2019).

Whilst being a member state of the European Union, Hungary decreased their EU integration by gradually developing towards an autocracy. It becomes evident that when Hungary would not have been a member state, the European Union would not have granted membership to Hungary.

With regards to the recent constitutional amendments *Act CLI of 2011* and *Act XXXVI* of *2012*, the competences of, respectively, the Constitutional Court and the National Assembly are extended through these constitutional amendments. Chronowski et al. (2019) argue that, with the enactment of *Act CLI of 2011*, the harmonization between national and international (EU) law is encouraged, because this amendment recognizes the bindingness of decision-making of international organizations (Chronowski et al., 2019).

Act CLI of 2011 is not an EU-amendment *per se*, but reinstalled the system related to international organizations, which automatically applies to the dynamics between Hungary and the European Union for the better as it creates more harmony between their legislation.

Act XXXVI of *2012* implements supervisory rights for the National Assembly over the government with regard to the decision-making concerning the European Union. Therefore, the democratic element is enhanced, because the National Assembly consists of elected representatives.

The theory of liberal intergovernmentalism does not foresee an outcome other than (toward) EU integration, because it assumes the states and national leaders act primarily out of economic interests and the theory is convinced that cooperation will contribute to the common interest.

Therefore, liberal intergovernmentalism does not foresee an aftermath that is not in line with the European Union legislation and standards; it assumes that international cooperation is beneficial to national economies. The idea of national leaders acting against the common interest of their nation-state is excluded in LI as it explicitly emphasizes the economic motive of international cooperation.

On these grounds, the theory of liberal intergovernmentalism cannot be adequately applied to this specific benchmark in the case of Hungary.

5. ALBANIA

This chapter will devotedly discuss the constitutional-legal development of the former Warsaw Pact member state of Albania with regard to conformity between the Albanian constitution and the standards of the European Union. Taking into account the structure of this thesis, this nation-state is the odd one out, because the state of Albania, at the time of writing, has not entered the European Union as a member state, because the Albanians have not been approved for the status of a member state of the European Union.

Nevertheless, as Albania officially received the status of a candidate member state in 2014 after its application for membership five years earlier (European Council, n.d.), it becomes clear that Albania is willing to join the European Union and, consequently, is attempting to align its legislation with EU legislation in order to receive an official approval granting the Albanians accession to the European Union.

In all three former Warsaw Pact states, three periodical benchmarks are utilized for the purpose of tracking constitutional legal development by means of meaningful timestamps in order to present delineated and structured research.

The starting point, better known as “Benchmark A” will remain the same for every former Warsaw Pact member state, namely the year 1991 which marks the dissolution of the Soviet Union. The same goes for the last periodical demarcation, “Benchmark C”, for every state discussed throughout this research, during this benchmark, the constitutional alterations from the year 2023 will be discussed, which is, in practice, the relevant constitutional changes until the year 2023, because some recent crucial steps should be included in order to provide an adequate answer to the research question.

With their accession, Hungary and the Czech Republic enlarged the European Union along with seven other contemporary member states in 2004 (European Union, n.d.-b), therefore the same middle timestamp (Benchmark B) will be applied to those states.

However, aforementioned is the fact that Albania was not licensed to receive the status of a member state of the European Union and for that reason, the respective “Benchmark B”, which normally applies the period of four years before and four years after the accession of the state to the EU, is the period from the year 2010 up until the year 2018. This period of time marks four years before and four years after the state of Albania received the official status of a candidate member state in 2014.

In order to portray a complete overview of the constitutional legal change in Albania, some constitutional alterations that do not fall within the demarcated benchmarks will, nevertheless, be covered.

For instance, despite the fact that “Benchmark B” only examines the period from 2010 up until 2018 in the case of Albania, *the 1998 Constitution of Albania* is undoubtedly crucial to mention and elaborate upon in order to show the complete and precise road to or away from the alignment between domestic and EU legislation. *The 1998 Constitution of Albania* and other relevant constitutional amendments that do not fall within the demarcated timestamps will still be covered, if considered necessary.

After the dissolution of the Soviet Union, the Republic of Albania made impactful amendments to *the 1976 Constitution of Albania* in 1991, which regulated by means of a set of constitutional provisions the “fresh” democratic Albanian state (Jeha & Cabiri, 2017).

Not much later, in 1998, the final draft of the new Constitution of Albania was adopted by popular referendum, which is generally renowned for its lack of accountability to the judicial branch and its failure to combat high levels of corruption as these two issues are considered the main challenges of Albanian society (Jeha & Cabiri, 2017).

Several amendments were passed to conform with the legal standards of the European Union, in which the 2016 amendment that awakened the Albanian reform of justice is considered one of the most historically important (Çarkaxhiu, 2020).

Benchmark A: year 1991

During the whole of Benchmark A in the case of Albania, two constitutional legal documents will be discussed to gain an overview of the legal development of Albania across all three given benchmarks.

First, *the 1976 Constitution of Albania*, in which the Soviet communist heritage is most definitely noticeable, will be examined thoroughly as it forms the starting point of this chapter and is indispensable for telling the genuine development of Albanian constitutional-legal history.

Second, the important 1991 amendment, in full, *Amending Law no. 7491 of 1991*, which is considered the first step towards the renaissance of Albanian democracy, is covered. This 1991 amendment presents the fundamental principles of the democratic state of Albania in the form of the establishment of a set of basic constitutional provisions. *Amending Law no. 7491 of 1991* was brought to life with the intention to renew the state structure and it would be replaced by a new Constitution in the foreseeable future (Jeha & Cabiri, 2017).

I. The 1976 Constitution of Albania

Like most constitutions, *the 1976 Constitution of Albania* starts off with an introduction. This introduction describes the history of Albania in which the years of oppression and the ultimate Communist victory are emphasized (1976 Albanian Constitution, Introduction).

With the promulgation of the 1976 Constitution, a collectivist state ideology fueled by the political philosophy of the dominant Communist party created a state with a highly centralized nature that rejected the ideas of pluralist democracy and market economy (Carlson, 2010).

Similarly to the socialist constitutions of the Czech Republic and Hungary, *the 1976 Constitution of Albania* can be seen as the embodiment of the Communist dogma and principles. For instance, all discussed equivalent socialist constitutions, including this constitution, happen to regard the working class as the leading class in society (1976 Albanian Constitution, Art. 2).

Chapter one of the first part of the constitution elaborates upon the social order of the People's Socialist Republic of Albania. In this chapter, a single-party system was created and it was assured that the communist party, or the Party of Labour of Albania as it was labeled, will be "the guardian angel" of the working class and the only political party allowed in the People's Socialist Republic of Albania (1976 Albanian Constitution, Art. 3).

According to Article 5 of *the 1976 Constitution of Albania*, as socialism has proven its superiority over its capitalist counterbalance, the aim was to complete the structure of socialism and, ultimately, to achieve communism.

Furthermore, the constitution guarantees the elections of representative organs to be executed through "universal suffrage with equal, direct and secret voting" (1976 Albanian Constitution, Art. 8).

In order to prevent excessive bureaucracy and liberalism, the state of Albania persists in applying a combination of a (highly) centralized government with self-governing local entities, as claimed in Article 11 of the 1976 Constitution.

Article 14 of the Constitution declares the foreign policy of Albania: despite emphasizing the equality between all nations, the People's Socialist Republic of Albania and its communist party are ambitious to collaborate with other like-minded socialist states which are based on the stream of Marxism-Leninism.

Article 15 of the 1976 Constitution strictly forbids private property, which initiates a planned economy. From Article 15, it can be concluded that communism has penetrated the

Albanian domestic legal order because private property is completely banned, therefore every entity must have been owned by the government.

Albania's economic state policy consists mainly of state-owned property complemented with "cooperativist property in agriculture" (1976 Albanian Constitution, Art. 16) meaning that some property in agriculture is privately owned, but the vast majority of all property is owned (and controlled) by the state of Albania. As the economic policy is mainly focused on state control, foreign trade is completely monopolized by the state, and the vast majority of domestic trades is handled by the state, according to Article 18 of the Constitution.

Likewise, Article 15 of the 1976 Constitution strictly forbids man-to-man exploitation, which is a common provision in a socialist constitution. Similar provisions are included in the socialist constitutions of the other two states, respectively, *the 1960 Constitution of Czechoslovakia* and *the 1949 Constitution of Hungary*.

Similarly, all three states regard the concept of work as the primary foundation of the state, which, in the case of Albania, is stated in Art. 29 of *the 1976 Constitution of Albania*.

The 1976 Constitution positions the state of Albania as an atheist state that does not recognize any religion or puts one on a pedestal (1976 Albanian Constitution, Art. 36).

The second chapter of part one of *the 1976 Constitution of Albania* describes citizens' fundamental rights and duties. In this chapter, several rights are formulated including freedom of speech, freedom of press, freedom of organization, freedom of association, freedom of assembly, and the right to public manifestation, in Article 52 of the Constitution.

As stated in the chapter of the other two former Warsaw Pact states, these (collective) fundamental rights seem rather ambitious but did not have much of an effect because the rule of law was not adequately applied in these states (Sajo, 1995). For this reason, these fundamental rights can be breached as these would not have been protected by the Constitution, nor the state, nor the government.

However, the unconditional right to equality seems to be central in the Socialist People's Republic of Albania, as stated in Article 39 of the Constitution. In addition, Article 55 of the Constitution reads as follows:

> The State guarantees the inviolability of the person. Nobody can be arrested without the decision of the court or the approval of the prosecutor. In special cases, the competent organs can detain a person for a maximum of 3 days. Nobody can be sentenced penally without the verdict of the court or for an act which is not envisaged by the law as a crime. Nobody can be sentenced without being present at court apart from when it has been legally proved that he is missing. Nobody can be interned or expelled except in special cases envisaged by the law. (1976 Albanian Constitution, Art. 55)

Among other things, it can be concluded that Article 55 of the Constitution condemns arbitrariness, upholds the rule of law principle, and recognizes the concept of presumption of innocence, although Sajo (1995) still holds that "[t]here was no rule of law in Eastern Europe under communism" (p. 253).

Next, the Constitution announced a second part which starts off in the first chapter with "the supreme organs of state power", which consists of The People's Assembly and The Presidium of the People's Republic.

Basically, whenever the deputies of the People's Assembly were out of office, the Presidium was responsible for the day-to-day management. Members of the Presidium control other institutional offices, appoint or dismiss individual members of these offices, make interpretations of the law (that await approval of the Assembly), and were able to issue decrees (that await the approval of the Assembly) (1976 Albanian Constitution, Art. 80).

This interaction between the two parliamentary entities was similarly applied in the other socialist-communist constitutions of the Czech Republic and Hungary.

Nonetheless, The People's Assembly, as the supreme organ of state power, retains the exclusive right to create legislation, considering it is the sole law-making organ (1976 Albanian Constitution, Art. 65). Notwithstanding, the right to initiate legislation does reside with the Council of Ministers, the Presidium along with The People's Assembly, according to Article 76 of *the 1976 Constitution of Albania*.

Following Article 70 of the Constitution, deputies of the Assembly convene twice per year in normal sessions and, according to Article 68 of *the 1976 Constitution of Albania* are chosen by direct elections and serve a four-year term.

Article 67 states the following on the composition of the Assembly: "The People's Assembly is comprised of 250 deputies who are elected in constituencies with an equal number of inhabitants [...]". According to Article 66, among other things, their main competences are approving or amending the Constitutional and other laws, executing the state policy of the communist party of Albania, ratifying international treaties, and electing the ministers, members of the Supreme Court as well as other significant offices.

Last, the deputies of The People's Assembly enjoy the right to inviolability giving them the privilege of not being detained, arrested, or punished without the permission of the People's Assembly (1976 Albanian Constitution, Art. 75). The concept of parliamentary immunity appears inherent to socialism and communism as all discussed socialist-communist constitutions provide provisions that ensure the judicial protection of parliamentarians from prosecution.

Then, the second chapter of part two discusses the supreme executive and administrative institution of the Albanian state, the Council of Ministers, consisting of the Chairman, the Vice-Chairman, and the Ministers which the latter is appointed from among the Assembly's deputies (1976 Albanian Constitution, Art. 82).

Among other things, the Council of Ministers' main competences are being responsible for the execution of internal and external policies, taking security measures for the protection or strengthening of the socialist judicial order or citizen rights, and approval of treaties or other international agreements within its competences (1976 Albanian Constitution, Art. 84).

In the third chapter of the second part of the 1976 Constitution, the Albanian defense forces are set out, which are led by the Party of Labour of Albania (1976 Albanian Constitution, Art. 91). Additionally, Article 94 of *the 1976 Constitution of Albania* explicitly prohibits the stationing of foreign within the territory of Albania, therefore the provisions on the Albanian defense forces are not in line with NATO's terms and conditions.

In the fourth chapter of the second part of the 1976 Constitution, the local organs that are in charge are discussed, which are called "the people's councils" and govern the state on a local scale serving for three years straight through elections as "territorial administrative units" (1976 Albanian Constitution, Art. 95). According to Article 98 of the 1976 Constitution, the hierarchical setting allows higher people's councils to dissolve lower-ranked people's councils as these may dismiss lower executive committees and demand re-election.

In fact, nevertheless, the Socialist People's Republic of Albania remained highly centralized and was dominated by the Party of Labour of Albania, with local governments having meager jurisdiction and discretion (Carlson, 2010).

Chapter five of the second part discusses the judiciary power, that is, the People's Courts of Albania, which "protect the socialist juridical order, fight for the prevention of crimes, educate the masses of working people to respect and implement socialist law, relying on their active participation" (1976 Albanian Constitution, Art. 105). Similar to the people's councils, a hierarchy of courts is applied, which enables higher-ranked courts to annul or amend lower-level court decisions, according to Article 107 of the 1976 Constitution; the same article guarantees the independence of all courts.

With the exception of the Supreme Court which reigns over all other courts and directs and controls all courts' activities, the People's Courts are elected by the people, as stated in Article 105 of the Constitution.

To control the implementation of the laws by any central or local institutional organ, any citizen, or any enterprise, the office of the Attorney General is established in chapter six of part two of the 1976 Constitution. The Attorney General has the right to protest against an illegal act and demand a correctional measure (1976 Albanian Constitution, Art. 108).

Finally, in the third chapter, several final stipulations are set forth that attempt to tie up the loose ends, in which Article 115 is the only relevant provision for the purpose of this research. It reads that a two-thirds majority of all deputies of the People's Assembly is needed in order to accomplish a constitutional amendment or make an addition to the Constitution.

At first glance, *the 1976 Constitution of Albania* looks promising, although it has been argued before that Albania was notorious for its high levels of corruption, its high levels of organized crime, and its incorrect application of the rule of law. Most certainly, there is a discrepancy between what is guaranteed in this Constitution and how the state of Albania actually acted at the time.

II. Amending Law no. 7491 of 1991: "Law On Major Constitutional Provisions"

In order to fulfill an immediate shift away from the socialist structure of Albania and form the foundation of a modern democratic state, Amending Law no. 7491 was adopted in 1991 and its purpose was to remain in place until the official enactment of a new constitution (Jeha & Cabiri, 2017). Jones (1993) holds that *the Law On Major Constitutional Provisions of 1991* serves the purpose of a temporary constitution. *Amending Law no 7491 of 1991* carries a similar purpose as the 1989 amendments in Hungary, one could say. The terms *the Law On*

Major Constitutional Provisions of 1991 and *the Law On Major Constitutional Provisions of 1991* will be used interchangeably in this thesis but are the same thing.

The first article of *the Law On Major Constitutional Provisions of 1991* claims the state of Albania is a parliamentary republic. Based on the rule of law principle, the Republic of Albania has the obligation to respect the constitutional order, human dignity as well as fundamental rights and freedoms. According to Article 2 of *the Law On Major Constitutional Provisions of 1991*, and in Article 3, the separation of the legislative, executive, and judicial powers as well as the guarantee for free and equal election are acknowledged. Yet, according to Jeha & Cabiri (2017), the Republic of Albania still seemed to struggle with combatting the high levels of corruption and organized crime that affect the domestic legal order.

In Article 6 of *the Law On Major Constitutional Provisions of 1991*, the concept of political pluralism, that is, the recognition of political diversity, is mentioned as one of the building blocks of Albanian democracy, which is quite contrary to the idea of a single-party state which is established in *the 1976 Constitution of Albania*.

Article 4 and Article 8 of *the Law On Major Constitutional Provisions of 1991* acknowledge the influence and bindingness of international law, of which principles and norms may arise. Article 9 formulates the Albanian international position and friendly foreign state policy. Albania wants to cooperate in order to achieve international peace and security and will acknowledge the national and democratic principles of other states.

In *the Law On Major Constitutional Provisions of 1991*, the tenth article establishes some sort of hybrid economy that recognizes both serious state involvement as well as the right to free enterprise. It is incorrect to speak of a market economy, hence this amendment does not meet this Copenhagen criterion.

The reforms that were necessary for the creation of a market economy took place in 1992 (Hashi & Xhillari, 1999), although *Amending Law no. 7491/1991* can be considered to be the foundation that induced the transition to a market economy.

Articles 15 up to and including 23 describe the competences and functioning of the National Assembly, which comprises 250 deputies that are elected for a term of four years, following Article 17. Deputies of the National Assembly obtain the privilege of legal immunity, according to Article 22.

Reconvening at least four times per year (*the Law On Major Constitutional Provisions of 1991*, Art. 19), the 250 deputies remain the sole law-maker in Albania (*the Law On Major Constitutional Provisions of 1991*, Art. 15).

Furthermore, Articles 24 up to and including 32 address the role and functioning of the office of President of the Republic of Albania, which is elected by secret ballot for a term of five years, by a two-thirds majority vote of all deputies. The President enjoys the privilege of legal immunity, except for cases of treason and violation of the constitution, according to Article 31 of *the Law On Major Constitutional Provisions of 1991*.

Articles 33 up to and including 41 assert the Council of Ministers, which is the highest executive and legislative organ, according to Article 33. Considered as the Albanian government, the Council of Ministers consists of a Chairman, Vice-Chairman, and Ministers, and other persons that are defined by a specialized law, as stated in Article 35. Among other things, the Council of Ministers manages the foreign and domestic Albanian state policy and supervises ministerial activities (*the Law On Major Constitutional Provisions of 1991*, Art. 36).

One of the final provisions, Article 42 describes that *the Law On Major Constitutional Provisions of 1991* does not specify the functioning of several institutions and leaves it to existing law: “The creation, organisation and activity of the local organs, of power,

administration, courts and Attorney General are made according to certain regulations with existing legal provisions, excluding those that run contrary to this law. [...]" (*the Law On Major Constitutional Provisions of 1991*, Art. 42). Consequently, it can be said that this law reuses the provisions on the establishment of local organs, state administration, and courts that are made up in *the 1976 Constitution of Albania*.

Last, Article 43 of *the Law On Major Constitutional Provisions of 1991* claims that any amendment, in order to be adopted, requires a two-thirds majority vote of all deputies of the National Assembly.

Despite being the most recent initial Constitution discussed in Benchmark A of this thesis, *the 1976 Constitution of Albania* could not let go of its communist heritage considering it established a single-party system with a planned economy that was under complete state control. In 1976 Albania, communism, under the leadership of the communist party, was yet considered the ultimate achievement (1976 Albanian Constitution, Art. 4).

Time-wise and *constitution-wise*, it does not come as a surprise that the process of EU integration has not started in Albania. Neither of the Copenhagen criteria is met by the 1976 Constitution: there is no stable institutionalized democracy, no human rights protection or rule of law, no market economy, and no implementation of the *acquis communautaire* of the European Union (which is, given the time, not possible) to be found in Albania, at that time.

However, with the role of an *interim* constitution, *Amending Law no. 7491/1991* created a set of new constitutional provisions and served the purpose of fulfilling the transition from communism to a (moderate) democracy with immediate effect. This constitutional amendment created a parliamentary republic, based on democratic principles, that acknowledges the principle of political pluralism as well as the rule of law and recognized international law to be binding. Following this reasoning, one could argue that Albania, in this benchmark, is potentially leaning towards meeting at least one of the

Copenhagen criteria, namely “a stable institutionalized democracy that respects minorities and human rights together with the rule of law”. However, the high levels of corruption and organized crime seem to be the bottleneck in Albania (Jeha & Cabiri, 2017). One cannot really speak of a proper application of the rule of law taking into account the manipulation of the judicial branch as a result of these high levels of corruption and organized crime. As corruption and criminality undermine the Albanian domestic legal order, a stable democracy does not seem to exist during Benchmark A in Albania, not even after the 1991 amendment.

Regardless, there is no functioning market economy as of 1991, nor can be established, for the same reasons as *the 1976 Constitutions of Albania*, the acceptance and implementation of the *acquis.* Hence, it can be concluded from their constitutional development in Benchmark A that Albania does not conform to EU legislation.

From the stance of liberal intergovernmentalism, there is no formation of governmental preferences towards accession to the European Union. The first reason is simple because the current form of the European Union was not established at that time. The second reason is the fact that *the 1976 Constitutions of Albania* rather meets the (hypothetical) opposite end of what the European Union demands from states in order to become a member state of the supranational organization. The *interim* Constitution of 1991 (*Amending Law no. 7491/1991*) does establish a democratic state, though this is far from sufficient regarding conformity with the European Union and its legislation. Therefore, taking into account that the process of EU integration has nowhere near started, LI cannot attribute one of the three stages of EU integration to the case of Albania in this specific benchmark. Rather, it can be said that Albania found itself in *stage zero* regarding conformity with EU legislation. Unsurprisingly, because the domestic formation of interests is relatively in sync with the date of application to membership of the European Union, which started no later than the year 2009 (European Council, n.d.).

Benchmark B: year 2010 to 2018

As said earlier, the middle benchmark with regards to Albania will cover eight years, from 2010 up to and including 2018. During this time period, three constitutional amendments, or "amending laws" as they are called, were implemented in the Albanian domestic legal order that are relevant to this thesis: *Amending Law no. 88 of 2012, Amending Law no.137 of 2015*, and *Amending Law no. 76 of 2016.*

Besides, a crucial constitutional change is added at the start of this benchmark, because it forms the constitutional backbone of contemporary Albania. More specifically, the year 1998 marks the birth of a new Albanian constitution that would repeal "Law No. 7491, dated 29.4.1991, "On the Main Constitutional Provisions" as well as the other constitutional laws" (1998 Albanian Constitution, Art. 182). Hence, the three aforementioned amending laws made changes to *the 1998 Constitution of Albania*, rather than a previous constitution.

Because it is considered indispensable in order to tell the complete constitutional narrative of Albania and reveal the Albanian constitutional changes of direction, *the 1998 Constitution of Albania* will be covered in Benchmark B of Albania along with the three aforementioned constitutional amendments.

I. The 1998 Constitution of Albania

The 1998 Constitution of Albania, as it marks the adoption of democratic institutions in Albania, is to be considered a brand-new democratic constitution, according to Carlson (2010). Furthermore, Carlson (2010) is strongly convinced that "Albania took a significant step towards solidifying its democracy and joining the community of nations who rely on constitutions to structure and safeguard their democratic systems of government" (p. 1).

Per contra, *the 1998 Constitution of Albania* is renowned for offering insufficient protection to independent institutions considering the suppression that was carried out by the political majority in parliament (Jeha & Cabiri, 2017). Since this Constitution essentially does not fall within the scope of this research, it is attempted to only cover the bare minimum of the relevant chapters in this thesis.

The new Constitution is introduced by means of a preamble, in which democracy, international cooperation, religion, as well as human rights, and human dignity, are repeatedly emphasized (1998 Albanian Constitution, Preamble).

The first chapter of *the 1998 Constitution of Albania* formulates the state's basic principles, such as Albania being a unitary state with a parliamentary republic system of government, in which representatives are chosen through free, equal, general, and periodic elections (1998 Albanian Constitution, Art. 1).

Additionally, Article 5 of the Constitution assures the importance of international law and, besides, guarantees the national application of binding international law.

Likewise, Article 7 of the Constitution ensures the separation of, or, at least, the balancing of the executive power, the legislative power, and the judicial power.

Inequality on the basis of religion, race, ethnicity, or whatever motive, totalitarianism as well as the use of violence by a political party or any organization, is heavily condemned in the Constitution of 1998, as any organization must conform to democratic principles (1998 Albanian Constitution, Art. 9).

Despite not recognizing one religion as the official state religion, the Republic of Albania does guarantee the freedom of religion and underlines the equality of all religious communities (1998 Albanian Constitution, Art. 10). This provision can be seen across both constitutions, including amendments, for the case of Albania.

Based on a market economy system, both private and public property is the foundation of the Albanian economic system, in which the freedom of activity is considered an important value (1998 Albanian Constitution, Art. 11).

Despite the constitutional recognition of the application of international law in Article 5, the Constitution prohibits foreign troops to be stationed in Albania, nor does the Constitution allow Albanian armed forces to be sent to foreign states (1998 Albanian Constitution, Art. 12(3)). From Article 12(3) of the 1998 Constitution, it can be derived that the Albanian military provisions are not in line with the guidelines of NATO, which is not surprising taking into account that Albania joined NATO in 2009 (Polak et al., 2009).

The 1998 Constitution of Albania applies a decentralization of power, since it forms local governments following the principle of local autonomy, according to Article 13 of *the 1998 Constitution of Albania*.

In the second part of the 1998 Constitution, a multitude of fundamental human rights and freedoms are mentioned, in which it is assured that no limitation included in the Constitution may exceed the limitations of the European Convention on Human Rights (hereafter: ECHR), according to Article 17(2) of *the 1998 Constitution of Albania*. Supported by their accession to the Council of Europe, Article 17(2) of *the 1998 Constitution of Albania* recognizes the ECHR as leading and applies its provisions as the base of their limitations regarding the protection of human rights (Council of Europe, n.d.). In the 1998 Constitution, several personal, political, economic, social, and cultural rights are set forth, such as the freedom of expression, the freedom of press, and the prohibition of censorship, mentioned in Article 22, the legality principle, mentioned in Article 29(1), the right to work, mentioned in Article 49(1), and the right to strike, mentioned in Article 51(1) of *the 1998 Constitution of Albania*. From examining these chapters and taking into account the constitutional recognition of the ECHR, it could be derived that these provisions are along the lines of those fundamental rights that are set forth in the ECHR itself.

The Constitution's part three is devoted to the establishment of The Assembly, consisting of 140 deputies where 100 deputies are elected directly by popular vote, and the remainder of 40 deputies are selected from the political parties in respective order (1998 Albanian Constitution, Art. 64(1)). The tenure of parliamentarians totals a number of four years (1998 Albanian Constitution, Art. 65(1)) in which no deputy may be criminally prosecuted without the authorization of the Assembly, giving deputies the right of inviolability, with the exception when one deputy commits a serious crime and is caught during or immediately afterward (1998 Albanian Constitution, Art. 73).

When half of the deputies are present, the Assembly decides on the basis of a majority vote (1998 Albanian Constitution, Art. 78(1)), although a total majority of three-fifths of the votes of the Assembly is needed to make adoptions to the Constitution (1998 Albanian Constitution, Art. 81(2)).

In the fourth part of the Constitution, the Head of State, the President of the Republic is set forth. A majority of three-fifths of all deputies is needed for a candidate to gain the seat of the President (1998 Albanian Constitution, Art. 87(2)) for a term of five years (1998 Albanian Constitution, Art. 88(1)).

According to Article 90 of *the 1998 Constitution of Albania*, the President enjoys the privilege of inviolability, aside from the inclusion of an impeachment procedure for serious crimes in which the Constitutional Court will decide its discharge from duty.

Part five concerns the Council of Ministers, consisting of the Prime Minister, deputy prime minister, and ministers (1998 Albanian Constitution, Art. 95(1)), where the President appoints these members (1998 Albanian Constitution, Art. 98(1)).

Members of the Council of Ministers enjoy the similar privilege of immunity as the deputies of the Assembly, according to Article 103(3) of *the 1998 Constitution of Albania*.

The functioning and competences of local governments are discussed in the sixth part of the Constitution. Regions are divided into self-governing units (1998 Albanian

Constitution, Art. 110(1)) and their councils, which create regional policies that align with state policy, are elected every three years by general direct elections (1998 Albanian Constitution, Art. 109(1)).

In case of serious violations of the Constitution or the laws, the Council of Ministers may decide to dissolve or discharge a regional council, the Constitutional Court subsequently decides to uphold or disagree with the verdict of the Council of Ministers (1998 Albanian Constitution, Art. 115).

Part seven of the Constitution is dedicated to the influence of international law in the domestic legal order, where Article 116(1) claims that ratified international treaties are embedded in the Albanian legal order and, according to Article 122(2) of the Constitution, "has superiority over laws of the country that are not compatible with it". The delegation of power to international organizations is admitted to a certain extent, as stated in Article 123(1) of *the 1998 Constitution of Albania*.

However, the Albanian Constitutional Court decided that the delegation of power to an international organization may not be misaligned with the Albanian constitutional identity, as stated in Decision no. 186, 23.09.2002, V-186/02 of the Albanian Constitutional Court (Skara & Hajdini, 2021).

The structure and main competences of the Constitution Court, consisting of nine members that are appointed by the President through the Assembly's approval for a nine-year term (1998 Albanian Constitution, Art. 125), is explained in the eighth part of the Constitution. Despite the inclusion of an impeachment procedure for severe violations of the Constitution, in Article 128, in principle, members of the Constitutional Court are inviolable, according to Article 126 of *the 1998 Constitution of Albania*.

Lastly, parts ten up to and including part eighteen will not contribute to providing an adequate answer to the research question or one of the research sub-questions, because these chapters are irrelevant regarding the scope of this thesis.

II. Amending Law no. 88 of 2012

In 2012, the Albanian legislator, the Assembly, made constitutional amendments by means of *Amending Law no. 88 of 2012* with regards to Articles 73, 126, and 137 of *the 1998 Constitution of Albania*. This constitutional amendment is an example of an untranslated constitutional document. By the usage of secondary sources as well as translating devices, the inclusion of this amendment into this thesis succeeded. These articles constitute the immunity of state officials: the deputies of the Assembly, the members of the Constitutional Court, as well as High Court judges and regular judges.

Whereas *the 1998 Constitution of Albania* used to grant extensive immunity toward state officials, that is, in this case, the privilege of not being arrested or detained without the required authorization of the respective institution, was made limited (Leka, 2018). Neither were authorities allowed to criminally prosecute these state officials within the duration of their tenure, without approval, according to the original Articles 73, 126, and 137 of *the 1998 Constitution of Albania*.

From the implementation of *Amending Law no. 88 of 2012* onwards, the aforementioned state officials were no longer able to invoke their extensive immunity as it was made limited to the extent of mere function-related immunity.

As a consequence, these state officials were no longer constitutionally protected from, for instance, claims of defamation against them (Leka, 2018).

The idea that state officials' immunity shifts from complete to mere function-related matters can be considered a step in the right direction, because, that way, state officials cannot misuse their position to commit criminal acts (for personal benefit).

However, in practice, it turns out that members of parliaments got into lawsuits as claims of defamation were made against them for their expressions in the Assembly. This is a disastrous development as it limited the fundamental freedom of expression and the functioning of the Assembly with regard to the holding of free debate (Leka, 2018).

Jeha & Cabiri (2017) hold that the constitutional changes of 2012 did not penetrate the core of the issued constitutional challenges, meaning that the 2012 amendments did not affect the foundation of *the 1998 Constitution of Albania*.

III. Amending Law no. 137 of 2015

With the aim to establish an impartial democratic system, *Amending Law no. 137 of 2015* added two brand-new articles, Article 6/1 and Article 179/1. This constitutional amendment is an example of an untranslated constitutional document. By the usage of secondary sources as well as translating devices, the inclusion of this amendment into this thesis succeeded.

The newly added Article 6/1 contains a clause that demands public functionaries to execute their office with integrity as this article explicitly prohibits the election, appointment, or execution of public functionaries whenever the integrity of such an office is impaired.

Additionally, another paragraph was added to Articles 45 and 131. Another paragraph was added to Article 45 to apply restrictions to the Albanian voting rights for people in imprisonment where Albanian citizens lose the right to be elected when sentenced to imprisonment (Amending Law no. 137/2015, Art. 45(3)). An added paragraph to Article 131 expanded the jurisdiction of the Constitutional Court regarding “issues related to the electability and incompatibility in exercising the functions of the President of the Republic, members of the parliament, officials of the other organs mentioned in the Constitution, as well as to the verification of their election” (Amending law no. 137/2015, Art. 131(1e)). The latter relates to the new Article 179/1 because the Constitutional Court is now enabled to decide on such issues of integrity.

As an attempt to combat corruption and ensure public institutions to act with integrity, this constitutional amendment was adopted. Nevertheless, from the adoption of the 2016 amendments that completely reformed the Albanian system of justice, it can be derived that

the 2015 amendments did not realize the desired effect of achieving a highly impartial judicial system along with virtuous public institutions.

IV. Amending Law no. 76 of 2016

In a report of 2016, the European Commission concluded that the Albanian judicial system continued to be tremendously influenced by politicization, corruption, and miserable cooperation between judicial institutions (European Commission, 2016).

However, in 2016, the Albanian legislator carried out a complete justice reform by means of constitutional amendments whilst receiving pressure from the European Union as well as the United States of America (Balliu, 2020). This can be considered a large step towards EU integration considering that the EU opened accession negotiations four years later, in 2020 (European Council, n.d.). This constitutional amendment is an example of an untranslated constitutional document. By the usage of secondary sources as well as translating devices, the inclusion of this amendment into this thesis succeeded.

Revising as many as 45 articles of *the 1998 Constitution of Albania*, *Amending Law no. 76 of 2016* is illustrious for its complete reform of justice in Albania (Murati, 2019). The 2016 amendments implemented at least twelve new judicial institutions, including the Special Prosecutor's Office against Corruption and Organized Crime, or, known as SPAK (Balliu, 2020).

Along with the SPAK, other institutions were founded, such as Judicial Councils, the High Judicial Council (hereafter: HJC), the High Prosecutorial Council (hereafter: HPC), the Justice Appointments Council (hereafter: JAC), the High Justice Inspectorate (hereafter: HJI) as well as the Court against Corruption and Organized crime (Çarkaxhiu, 2020).

The HJC, established in Article 147 of the Constitution, as amended to the 2016 amendments, is responsible for ensuring the independence, judicial accountability as well as proper functioning of the Albanian Republic's judicial branch and consists of eleven

members of which only five are elected by the Assembly, as a response to politicization and corruption (Çarkaxhiu, 2020).

The HPC, established in Article 149 of the Constitution, likewise consists of eleven members of which only five are elected by the Assembly, following the constitutional provisions, must ensure independence, discipline, status, and career of the Albanian prosecutor (Çarkaxhiu, 2020).

The main competences of the HJI, established in the (new) Articles 147(d), 147(dh), 147(e), and 147(ë) of the Constitution, are the investigation of violations by judicial state officials, the verification and assessment of complaints, the initiation of punitive measures in case of a violation. For a term of nine years, this office requires a justice with no less than fifteen years of professional experience and is elected by three-fifths of the votes of the Assembly. A capable justice must have obtained a high degree of integrity to meet the criteria for this office (Çarkaxhiu, 2020).

The JAC, following Article 149(d) of the Constitution, is an important, independent organ that evaluates the legal, professional, and moral requirements for candidates for the HJI and Constitutional Court. By means of a lottery pick among justices and prosecutors, the JAC has nine members (Çarkaxhiu, 2020).This is to ensure a more impartial system that is not affected by politics as the JAC is responsible for an important task that will eventually lead to the appointment of two of the highest legal offices in Albania.

Moreover, the Special Prosecutor's Office against Corruption and Organized Crime and its Special Investigation Unit, called the National Investigation Bureau, "will prosecute and investigate criminal offenses of corruption, organized crimes and criminal charges against high state officials" (Balliu, 2020, p. 714).

Appointed by the HPC for a term of nine years, the Special Prosecutor's Office against Corruption and Organized Crime comprises at least ten prosecutors, of which its head is chosen on the basis of the majority of its members for three years (Çarkaxhiu, 2020).

Together with the special courts that decide upon high-level corruption and organized crimes, the Special Anti-Corruption and Organized Crime Structure of three entities, that is, the prosecutors, courts, and investigation unit, are known under the acronym SPAK.

Under the authority of the Special Prosecutor and appointed by the HPC, the National Bureau of Investigation is a special judicial police unit that accommodates inquiries regarding cases of corruption and organized crime. The corresponding Special Court decides on the respective charges against any high-level state official, including the President of the Republic, and heads of central or independent institutions (Çarkaxhiu, 2020).

With the creation of a complex multitude of '"layers of justice" that all have different competences as well as the establishment of a specialized anti-corruption and organized crime structure, known as SPAK, the Albanian legislator unanimously adopted these 2016 amendments in order to combat the high levels of corruption and organized crime within its domestic territory.

Regardless of their standpoint toward *Amending Law no. 88 of 2012*, Jeha & Cabiri (2017) hold that the constitutional amendments of 2016 did, in fact, penetrate the core of the issue of corruption, meaning that the 2016 amendments did affect the foundation of *the 1998 Constitution of Albania* for the better good.

The 2016 amendments that completely reconstructed the domestic system of justice can be considered a large step towards EU eligibility, taking into account that after these amendments, 4 years later, in 2020, accession negotiations between Albania and the European Union started (Balliu, 2020).

As amended to *Amending Law no. 76 of 2016*, *the 1998 Constitution of Albania* seems to have developed towards a modernized democratic state that respects human rights and the rule of law. The Republic of Albania is doing its utmost best to repel its main societal challenges, corruption and organized crime, and aims to prevent these challenges from

influencing the domestic judicial branch in order to uphold the principle of the rule of law, the independence of the courts, and the impartiality of the courts. Despite its commitments and advancements, Albania does not seem to have won the battle against corruption and organized crime (yet), because it is given a score of 36 (out of 100) in the Corruption Perceptions Index (CPI) of the year 2022, which is below the global average of 43 (Transparency International, 2022). A score of 100 is the highest score and transcends an extremely *clean* society, whereas a score of 0 represents a highly corrupt society. In comparison with the other two former Warsaw Pact states, the Czech Republic has been given a score of 56 out of 100 and Hungary scores an all-time low of 42 in CPI of 2022, which is a decrease of 13 points as of 2012.

According to the 2016 report of the European Commission, Albania is well on its way regarding the adoption of the *acquis* and the establishment of a market economy that suits the EU single market, although some progress has to be made in order to fulfill these two criteria of the Copenhagen criteria (European Commission, 2016). Overall, the protection of human rights is generally in line with European standards, despite some tweaks that have to be implemented including the protection of minority rights (European Commission, 2016).

Following this report, it can be concluded that Albania is making some advancement with regard to the integration of EU legislation into the Albanian legal order, though it cannot be considered sufficient as Albania fails to meet all three Copenhagen criteria.

Even though Albania does not meet the criteria for becoming a member state of the European Union, the stage of EU integration according to the liberal intergovernmentalist school differs: whereas in Benchmark A, Albania did not start the process of adoption towards EU eligibility, in Benchmark B, the Albanian national leaders have taken on the desire to become a member state to the European Union. Liberal intergovernmentalism argues that these national leaders are primarily driven by the economic benefits that come with accession to the EU. Throughout Benchmark B, Albania commenced adopting constitutional amendments in order to act accordingly to the requirements of the European

Union, despite the fact that some may not have given the desired effect. Hence, it can be assumed that, throughout Benchmark B, Albania enters the first stage of EU integration according to the liberal intergovernmentalist school.

Furthermore, as Albania applied for membership in 2009 and received the status of a candidate member state in 2014, it can be assumed that some sort of negotiations or talks between the EU and Albania have already taken place because the European Union has formulated its concerns as well as the bottlenecks of Albania that prevent the accession from happening (European Council, n.d.). Hence, Albania is in-between the two first stages of EU integration. The Albanian national leaders, for economic reasons, developed advanced interests in becoming a member state and the Republic of Albania is, throughout Benchmark B, transitioning towards the second stage of EU integration, that is, the process of (intergovernmental) bargaining. Following this reasoning, both the first and second stages of EU integration can be attributed to Benchmark B in the case of Albania.

Benchmark C: year 2023

In 2020, the Republic of Albania entered into negotiations with the European Union regarding Albanian accession to the EU (Balliu, 2020).

This benchmark examines the only relevant amendment until the year 2023, which happened in the same year as the commencement of the EU negotiations of Albania.

Amending Law no. 115/2020 made alterations to the electoral structure and procedure in an attempt to make a more just, unprejudiced system, stabilize the voting procedure and reconcile the functioning of parliament. In the end, *Amending Law no. 115/2020* strengthens the Albanian democracy and stabilizes the political climate, therefore, as it concerns one of the Copenhagen criteria, it is considered relevant to this thesis.

I. Amending Law no. 115/2020

The latest relevant constitutional amendments that will contribute to the purpose of this research, were adopted in 2020. *Amending Law no. 115/2020* revised Article 64 and Article 68 of *the 1998 Constitution of Albania*. The national electoral procedure was changed and, as a consequence, the dynamics of the composition of the parliamentary Assembly altered with the adoption of the 2020 constitutional amendments. This constitutional amendment is an example of an untranslated constitutional document. By the usage of secondary sources as well as translating devices, the inclusion of this amendment into this thesis succeeded.

First and foremost, it is worth noting that *Amending Law no. 9904/2008* already made changes to the original Article 64 of *the 1998 Constitution of Albania*. The 2008 constitutional amendments changed the Albanian electoral structure as the number of actually elected parliamentarians shifted from 100 to the whole total of 140. The Constitution of Albania no longer applied the majority-proportional electoral system and implemented a proportional electoral system, where all 140 deputies of the Assembly were elected on the basis of the outcomes in the constituencies (Tafani & Sina, 2020).

Through *Amending Law no.115/2020*, an electoral threshold was put into action and as a consequence, smaller parties are encouraged to form coalitions, or stay away from the political landscape, as they are likely unable to receive a sufficient percentage of votes to be granted any parliamentary seats on their own. Hence, this implementation promotes political cooperation and prevents political fragmentation (Reuchamps et al., 2014).

To balance things out, Article 68(1) no longer allows political coalitions to present candidates. From the 2020 amendments onwards, political parties and voters only are eligible to present parliamentary candidates. This constitutional development may prevent the political domination of the majority in Parliament because coalitions can no longer present candidates (Amending Law no. 115/2020, Art. 68(1)).

However, despite the fact that this is relatively common in Europe, an electoral threshold may cause an underrepresentation of minority groups as they are unable to pass the national threshold (Bochsler, 2010).

Additionally, preferential voting was introduced in the new Article 64, third paragraph, of *the 1998 Constitution of Albania* as amended to 2020, which may influence the parliamentary composition, although it was followed by restrictions, since the same article legally guarantees gender representation.

Preferential voting systems are considered rare in Central and Eastern Europe, although it is generally regarded as a solution "that might supposedly favor a more conciliating party configuration and support moderate voices" (Bochsler, 2010, p. 25-26).

All in all, *Amending Law no. 115 of 2020* can be considered an attempt to stabilize the electoral procedure as well as the parliamentary composition procedure. With the implementation of an electoral threshold and the right to give a preferential vote, these procedures become less pressurized, because political cooperation and cohesion are premised. On these grounds, the 2020 amendment is relevant in the light of conformity with EU legislation as it attempts to meet the first Copenhagen criterion, which entails a stable institutionalized democracy.

Taking into account the fact that accession negotiations between the EU and Albania in 2020 (Balliu, 2020), it can be concluded that, although *not out of the woods*, Albania is making a positive gradual change with regards to their constitutional-legal development in the light of conformity with EU legislation (European Council, n.d.). The accession negotiations between the parties refer to the concrete bargaining towards the finalization of the accession of Albania to the European Union.

Liberal intergovernmentalism divides EU integration into three stages and it can derived from the examination in this benchmark that, throughout Benchmark C, Albania officially left the first stage (of the formation of preferences), went on to the second stage (of

intergovernmental bargaining) in order to finalize the process of EU integration in the future and enter the third final stage. Therefore, the second stage of EU integration can be attributed to Benchmark C in the case of Albania as accession negotiations were opened by the European Union in 2020 (European Council, n.d.).

6. *INTER*-STATE COMPARISON

After the extensive examination of the constitutional-legal developments across the benchmarks of the three former Warsaw Pact states, the Czech Republic, Hungary, and Albania, an *inter*-state comparison will be made in order to provide an adequate answer to the research question. Although, before the *inter*-state comparison, a brief *intra*-state comparison of all three states will be provided, which is, in fact, an outline of what has already been worked out in the chapters. Thereafter, an *inter*-state comparison, that is, a constitutional-legal comparison *between* the three states, is made in relation to answering the research question in this chapter.

(1) *intra*-state analysis of constitutional development: the Czech Republic

From 1991 onwards, drastic legal changes appeared within Czech state borders. In approximately three decades, the Czech Republic made a 180-degree turn with regard to state ideology. Whereas the 1960 Czechoslovak Constitution's main focus was on spreading the socialist and communist message and advancing toward a communist state under the Communist Party, *the 1993 Constitution of the Czech Republic* does not mention either of these ideologies once.

Two years prior to the enactment of *the 1993 Constitution of the Czech Republic*, *Constitutional Act no. 23/1991* ensured the protection of human rights to a certain extent, although this Charter merely protected collective rights. It is evident that the mere protection of collective rights does meet the human rights standards of the European Union. The Charter that protects citizen rights has been altered multiple times (outside the benchmarks of this thesis). It is worth noting that most constitutional amendments regarding "The Charter of Fundamental Rights and Freedoms" relate to conformity with EU human rights standards.

The 1993 Constitution of the Czech Republic repealed *the 1960 Constitution of Czechoslovakia* and could be considered an attempt to eradicate the socialist-dominated past of the Czech Republic. The 1993 Constitution created a parliamentary republic with a bicameral parliament and waived the former federal structure. In contrast to *the 1960 Constitution of Czechoslovakia, the 1993 Constitution of the Czech Republic* recognizes the Czech Republic as an independent state separated from Slovakia.

With regards to human rights, the 1960 Constitution enacted little to no individual human rights as it seems to put emphasis on collective rights. This line of thought coheres with the socialist dogma. Opposed to its predecessor, the 1993 Czech Constitution puts greater emphasis on human rights through the inclusion of a developed charter of human rights. With the promulgation of the 1993 Constitution, the state of the Czech Republic became a more market-oriented society. Among other things, *the 1993 Constitution of the Czech Republic* established democracy with private property and allowed for competition, whereas the 1960 Constitution cherished a socialist planned economy under the constant control of the state with every property to be state-owned.

Regardless of the fact that the 1993 Constitution of the Czech Republic broke away from the socialist pack, the original version of the 1993 Constitution did not adhere to the regulatory standards of the European Union. After the establishment of the 1993 Constitution of the Czech Republic, the domestic legal order of the Czech Republic developed continuously in order to comply with EU legislation.

Constitutional amendments *Constitutional Act no. 300/2000*, *Constitutional Act no. 448/2001*, *Constitutional Act no. 395/2001*, and *Constitutional Act no. 515/2002* respectively amended the constitution regarding the Czech military regulations (for joining NATO), the domestic banking system, the influence of international law (and obligations of international law) as well as the introduction of the concept of holding a referendum (on the accession of the European Union). Ultimately, these constitutional amendments contributed to granting the state of the Czech Republic European Union membership.

The European Union, specifically the European Council, held that the Czech Republic met all Copenhagen criteria: (1) a stable institutionalized democracy that respects minorities and human rights together with the rule of law, (2) a functioning market economy that fits the EU single market by being able to cope with competitive pressure and market forces, (3) the acceptance of the *acquis communautaire* of the European Union as well as "adherence to the aims of political, economic and monetary union".

Additionally, two *post-2008* amendments that fall within the scope of this thesis made changes to the Czech legal order. These constitutional amendments contributed to the strengthening of democracy in the Czech Republic. Therefore, indirectly, these amendments are relevant to this thesis, since the European Union demands to maintain a stable democracy.

Constitutional Act No. 71/2012 enhanced Czech democracy in the sense that it strengthened *the voice of the people* as, through this amendment, the Czech population was able to choose its own President of the Republic, rather than the Parliament choosing the presidential seat.

Constitutional Act no. 98/2013 made the Czech Republic finally get rid of the "overprotection" of parliamentarians regarding their exclusion from prosecution creating a more fair system in which no parliamentarian is placed above the law. This constitutional amendment arranged that prosecution shall be suspended until after the duration of the term, instead of the dispensation of a criminal act, which used to be the norm.

After a fairly slow start, the Czech Republic managed to cope with its shortcomings relatively well: in a few decades, the Czech Republic managed to align its own legislation with the European Union's standard and meet the criteria that are demanded by the European Union for every member state in order to join the EU. For this, several amendments and a *renewal* of the Constitution were necessary.

(2) *intra*-state analysis of constitutional development: Hungary

The oldest constitution that is discussed in this thesis is *the 1949 Constitution of Hungary*, a deeply socialist constitution aiming to achieve communism in which work, equality, and state control are the most important state principles, to name a few. The 1949 Constitution describes the advancement towards communism, where every bit of property was owned by the state, every transaction was governed by the state, and the only political party in Hungary was to be the communist party. The initial ideology of *the 1949 Constitution of Hungary* lost significance after it was replaced by the radical amendments of 1989 which were promulgated with the purpose to overcome the transitional period from communism to capitalism, on a constitutional level.

Although, in fact, the constitutional alterations of 1989 went through as an amendment as the Hungarian parliament was unable to pass a new constitution, this thesis has treated it as a constitution (*the 1989 Constitution of Hungary*) because of the radical shift in state ideology and the resulting consequences. After dethroning the communist predecessors, *the 1989 Constitution of Hungary* established a parliamentary democracy and multi-party system with a (social) market economy, which goes completely against the aims and ideas of the repealed 1949 Hungarian Constitution. Despite being insufficient in meeting the terms of the EU, this *interim* Constitution of 1989 can be considered a serious step towards meeting the requirements for becoming a member state of the European Union in the future.

Constitutional amendments *Act XCI* (2000)*, Act LXI* (2002)*, Act CXXX* (2003)*, Act L* (2005), and *Act CLXVII* (2007) respectively changed the Hungarian military regulations (for joining NATO), included the involvement of international law into the domestic legal order, implemented EU criminal law into the domestic legal order, granted the parliament the discretion to decide upon expressing consent with regards to EU-related treaties, and applied the EU criminal law principle *nullum crimen sine lege*. Ultimately, these

constitutional amendments contributed to granting the state of Hungary European Union membership. The European Union, specifically the European Council, held that Hungary met all Copenhagen criteria: (1) a stable institutionalized democracy that respects minorities and human rights together with the rule of law, (2) a functioning market economy that fits the EU single market by being able to cope with competitive pressure and market forces, (3) the acceptance of the *acquis communautaire* of the European Union as well as "adherence to the aims of political, economic and monetary union".

However, with the enactment of *the 2011 Fundamental Law of Hungary*, the process of democratic erosion began as the judiciary became renowned to be biased, fundamental rights were unlawfully restricted and the opposition became suppressed. Several provisions were included in *the 2011 Fundamental Law of Hungary* that outplayed the opposing political parties as the opposition became unable to have an influence in policy-making.

Additionally, two *post-2008* amendments that fall within the scope of this thesis made changes to the Hungarian legal order. These constitutional amendments contributed to the strengthening of EU-related decision-making in Hungary, therefore these amendments are relevant to this thesis.

Act CLI of 2011 encourages the harmonization of international and domestic law in the state of Hungary by extending the competences of the Constitutional Court.

Act XXXVI of 2012 enhanced the democratic element in the state of Hungary by granting the Hungarian parliament supervisory rights over the decision-making policy regarding EU treaties in which the Hungarian parliament became largely involved in the decision-making procedure regarding the European Union.

Generally, Hungary can be considered one of the early adaptors in Central and Eastern Europe considering the advanced original 1989 Constitution that includes the establishment of a parliamentary democracy, a multi-party system, and a market economy. The five amendments discussed in this thesis made major adjustments to the Constitution

and, together with other amendments that fall outside the scope of research, led to the EU membership of Hungary. Despite all this, as a result of an uproaring political landscape, a massive power grab by the right-conservative Fidesz party took place as a new constitution was adopted by the ruling coalition. As a consequence, the state of Hungary has and is currently making an illiberal turn away from EU standards as fundamental freedoms are restricted, the judicial branch is to be manipulated and the political opposition is disarmed.

(3) *intra*-state analysis of constitutional development: Albania

The 1998 Constitution of Albania repealed *the 1976 Constitution of Albania*. Important to know is that the latter was primarily based on the communist stream of Marxism-Leninism and was heavily amended in 1991, the same year as the dissolution of the USSR. The purpose of this amendment, known as *the Law On Major Constitutional Provisions of 1991*, was to remain in place until the adoption of a new constitution, which happened seven years later. Therefore, it is to be considered an *interim* Constitution. *The Law On Major Constitutional Provisions of 1991* or, in other words, *Amending Law no. 7491/1991* ensured the immediate shift away from communism as it establishes a parliamentary democracy as well as this constitutional amendment brought about the roots for a future Albanian market economy.

Despite the establishment of a parliamentary democracy, a multi-party system, and the recognition of international law, *the Law On Major Constitutional Provisions of 1991* does not establish a market economy, nor does the Constitution seem to be ready in adopting the supranational legislation of the European Union[2]. *Amending Law no. 7491/1991* does not seem to meet the EU standards with regards to democratic principles.

[2] If assumed EU legislation would be existing at that time, which it did not.

The 1998 Constitution of Albania continues to build on the constitutional backbone of Albania as it takes a huge step towards solidifying Albania's democracy and recognizes the involvement of international law. The Constitution of 1998 explicitly recognizes the ECHR as it attempts to align its own human rights protection with the ECHR standard, which lies parallel with the European Union standard of human rights.

Constitutional amendments *Amending Law no. 88/2012*, *Amending Law no. 137/2015*, and *Amending Law no. 76/2016* respectively changed the immunity of state officials to merely function-related, created regulations that ensured state officials to act with integrity and reformed the system of justice in Albania completely as a response to combat corruption and organized crime.

Additionally, one *post-2018* amendment that falls within the scope of this thesis made changes to the Albanian legal order. This constitutional amendment contributed to the strengthening of democracy in Albania, therefore these amendments are relevant to this thesis.

Amending Law no. 115/2020 changed electoral regulations by the installment of an electoral threshold as an attempt to ease the political climate and prevent political fragmentation. This is to meet the membership criterion of the EU that requires a stable democratic state.

Concludingly, the Republic of Albania does not seem to meet the requirements for EU accession, despite its various attempts to fulfill the conditions through major constitutional amendments and reforms. However, it must be emphasized that Albania is well on its way because the European Union started accession negotiations with Albania in 2020 (Balliu, 2020). After the examination of especially the 2016 amendment that completely reformed the Albanian system of justice and taking into account that accession negotiations were opened in 2020 between Albania and the EU, the future of Albania concerning accession to the EU looks rather promising.

***inter*-state comparison between the Czech Republic, Hungary, and Albania**

As mentioned in the introduction, this thesis seeks to answer the research question: *"How have three former Warsaw Pact member states, the Czech Republic, Hungary, and Albania, developed their legal systems regarding conformity with the European Union, from 1991 onwards?"*

In order to answer this RQ, sub-questions that are compatible with each of the three former Warsaw Pact states are made as these contribute to providing a multi-layered answer to the RQ. A rather brief answer to the research sub-questions is given in the *intra*-state analyses. In chapters 3, 4, and 5, this thesis attempts to provide an extensive answer to the associated SQ.

This thesis delineates itself towards three specific benchmarks that are truly leading. In principle, constitutional alterations that fall outside the benchmarks are not discussed, with the exception of indispensable constitutional documents, which are essentially a lot. It is assumed that, especially in Benchmark B, constitutional changes come forward that are related to the degree of conformity with the European Union as states are preparing to officially become member states. The constitutional documents that fall within the scope of research are examined thoroughly, either through primary sources or secondary (academic) sources.

In 1955, approximately 65 years ago, the Czech Republic, Hungary, and Albania joined forces with five others and created the Warsaw Pact, a political-military alliance and NATO's opponent. The USSR, a Warsaw Pact signatory, exerted control over the other signatories as they *de facto* fell under the dominion of the Soviet Union meaning that these satellite states had little to no independence, with all the associated consequences (Mastny & Byrne, 2005). Consequently, most Central and Eastern European contemporary constitutions were primarily modeled after the 1936 Soviet Constitution and, as a result, these constitutions are

based on the Marxist-Leninist worldview and full of socialist-communist principles and ideas (Lu, 2019). The Czech Republic, Hungary, and Albania are no exception to this rule. The constitutions discussed in Benchmark A, enacted before the dissolution of the Soviet Union, are all deeply communist in nature. *The 1960 Constitution of Czechoslovakia*, *the 1949 Constitution of Hungary*, and *the 1976 Constitution of Albania* more or less all find themselves on the same wavelength: these constitutions establish single-party states that function under the dogma of socialism and are yet to achieve, under the leadership of their communist parties, the full transition to a communist welfare state.

In all three socialist-communist constitutions of the three former Warsaw Pact states, the concept of work is centralized and man-by-man exploitation is strictly forbidden as a result of years of oppression of the working class by the bourgeoisie.

All three constitutions seem to tell the same constitutional narrative, namely the story of the working class fighting back against oppression and overthrowing the *bourgeois regime* is strongly sensible in all three constitutions. With the victory of the working class over the oppressive elite, all power shall belong to the working class and every person is regarded to be equal and should be treated accordingly. Despite this clear-cut principle, the working class is not able to execute its powers in a direct manner, but the working class must elect its representatives that will exert the power for them. In fact, all the power remains with these representatives, since these representatives seem to appoint the most significant public offices, such as the presidents and the governments. In addition, the representatives that reside in the national assemblies are able to discharge the public functionaries from duty, which creates a relationship of dependency.

In all three former Warsaw Pact states, the (national) assembly, the legislative branch, possesses a disproportionate amount of power compared to the executive branch and the judicial branch. Following this reasoning, the separation of powers is out of balance, because, as a result of being the most powerful organs in the former Warsaw Pact states, the assemblies are able to exert control over the remainder of public offices.

All three socialist-communist constitutions position their states as willing to cooperate within the socialist realm of the world. *The 1960 Constitution of Czechoslovakia* even explicitly mentions the USSR as a fraternal ally. The constitutions clearly make a distinction between socialist states and states with other ideologies, but the former Warsaw Pact states insist on contributing to world peace.

None of the three socialist constitutions recognizes international law to be binding. All three socialist states reject the involvement of international law in the domestic legal order.

The establishment of a planned economy that is completely under the control of the state is apparent in all three socialist constitutions. Important to mention is that almost all property is to be owned by the state, with some minor exceptions. In *the 1960 Constitution of Czechoslovakia* and *the 1949 Constitution of Hungary*, private property does seem to be recognized on a small scale, whereas in *the 1976 Constitution of Albania,* private property is strictly banned. *The 1949 Constitution of Hungary* and *the 1976 Constitution of Albania* both have separate provisions that declare that foreign trade is monopolized by the state disallowing private entities to act in international trade.

Obviously, bearing in mind that the Warsaw Pact was a rival of NATO, the three socialist Constitutions do not comply with NATO standards because these constitutions reject the bindingness of international agreements. In the Czech and Hungarian socialist constitutions, no provisions are written on the functioning of the armed forces, the most recent constitution, *the 1976 Constitution of Albania*, does devote a chapter on the armed forces in which the stationing of foreign troops is explicitly forbidden and the inviolability of the borders is acknowledged.

Lastly, the oldest socialist constitution discussed, *the 1949 Constitution of Hungary*, has included an interesting provision that excludes “enemies of the working people” from their right to vote, which unveils the arbitrariness and undemocratic nature of this constitution.

However, the Fall of Communism in 1989 marked the end of most Central and Eastern European communist regimes, which encouraged states to make a change of direction toward another state ideology (Mastny & Byrne, 2005). When the satellite states were liberated as a result of the dissolution of the Soviet Union in 1991, the former Warsaw Pact states became enabled to choose a path for themselves (Mastny & Byrne, 2005).

Accordingly, the former Warsaw Pact states experienced a transitional period from a communist regime towards a (moderate) democratic state, and therefore, the constitution had to be changed. The Czech Republic and Albania both made impactful amendments in 1991 that moved away from the ideology of communism. The Czech Republic added a charter that declared (collective) human rights and, with the enactment of *Amending Law no. 7491/1991*, Albania finalized the transition from socialism and communism to forming the foundation of a modern democratic state. *Amending Law no. 7491/1991* can be considered an *interim* Constitution, which had the purpose to remain in place until the official approval of a new constitution. In 1989, Hungary had already established such a drastic amendment that serves the role of an *interim* constitution. Similar to the Albanian equivalent of 1991, *the 1989 Constitution of Hungary* rejected the communist dogma and ensured “a peaceful transition to a constitutional state” (1989 Hungarian Constitution, Preface) whilst establishing a parliamentary democracy. Despite this early adaptation of Hungary compared to the other two former Warsaw Pact states, Hungary was the only Central and Eastern European state that was not able to officially enact a new constitution after the Fall of Communism (Krekó & Enyedi, 2018). It was not until 2011 that Hungary adopted a new constitution.

It can be concluded that around the time of the dissolution of the Soviet Union, Hungary and Albania both renewed their constitution in order to ensure a peaceful transition away from communism. Rather than rewriting the whole constitution, which is a far more time-costly project as political parties may not pass through a new constitution, Hungary and Albania chose to adopt an impactful constitutional amendment that changes the direction of ideology in the respective former Warsaw Pact states. Regarding the integration of EU

legislation, which did not exist at the time, Czechoslovakia (the Czech Republic) and its constitution seem to lack behind the other two former Warsaw Pact states, since the Czech Republic is the only state discussed that did not make an impactful amendment in Benchmark A. Although when not strictly looking at the first benchmark, it can be derived that two years after the official dissolution of the Soviet Union, in 1993, the Czech Republic adopted a new constitution that was, either consciously or subconsciously, moving towards a more pro-EU stance, because it approves the rule of law and other democratic principles as well as it establishes a charter with fundamental rights. All in all, as stated before, the Czech Republic is behind the other two states regarding the constitutional advancements toward EU accession, but two years later, a new constitution was adopted. Although outside the scope of Benchmark A, two years should not be considered an outstanding anomaly considering that constitution-making is a rather slow-paced process. In addition, it is worth mentioning that during that period of time, Czechoslovakia first had to undergo the peaceful partition into the Czech Republic and Slovakia, which is a time-costly event for it to go well and can be an explanation for the brief delay.

Then, the constitutional-legal development within Benchmark B will be compared among the three former Warsaw Pact states. As stated in the introduction, this thesis assumes lots of impactful constitutional alterations with regard to EU integration have taken place during this benchmark. For the Czech Republic and Hungary, Benchmark B lasts from 2000 until 2008; for Albania, Benchmark B lasts from 2010 until 2018. As the same years are applied in Benchmark B for the case of the Czech Republic and Hungary, these states will be compared first. Afterward, the constitutional-legal development of Albania is involved and compared to the other two former Warsaw Pact states. As the EU opened accession negotiations with the Czech Republic and Hungary in 1998 (Cameron, 2003) and both states officially joined NATO in 1999 (Daalder & Goldgeier, 2006), it can be derived that the Czech Republic and Hungary experienced similar constitutional growth towards EU accession. This claim is further validated by the fact that both former Warsaw Pact states joined the

European Union in the same year (2004) (European Union, n.d.-b). The Czech *Constitutional Act no. 300/2000* and Hungarian *Act XCI of 2000* amended the constitutions in such a manner that they would comply with NATO guidelines.

Furthermore, the Czech Republic adopted amendments within Benchmark B through *Constitutional Act no. 448/2001*, *Constitutional Act no. 395/2001*, and *Constitutional Act no. 515/2002* in which the latter is rather a supplementary constitutional amendment that allowed for the holding of a referendum around the accession to the European Union. *Constitutional Act no. 448/2001* and *Constitutional Act no. 395/2001* did change the core of *the 1993 Constitution of the Czech Republic* with regard to conformity with the European Union. The latter is considered the Czech *EU-amendment* as it allowed for a transfer of competences to a supranational organization and acknowledged the influence of international into the Czech legal order. Similarly, *Act LXI of 2002* of Hungary had the same effect and, among other things, granted a transfer of competences to the European Union in order to delegate power to the supranational organization. In addition, Hungarian *Act LXI of 2002* completed the same desired effect as the Czech *Constitutional Act no. 448/2001* as they both were adopted in order to conform with EU monetary policy that requires member states to implement the euro currency at some point in the time. *Act CXXX of 2003* and *Act CLXVII of 2007* are Hungarian constitutional amendments that attempted to align Hungarian criminal law with EU criminal law. The Czech Republic did not make such amendments in Benchmark B. *Act L of 2005* enhanced the democratic element in Hungary, therefore indirectly contributing to more alignment with the EU as it requires to have a stable institutionalized democracy; the same goes for *Act XXXVI of 2012* of Benchmark C in the case of Hungary. Amendments with similar purposes have neither been passed in the Czech Republic in terms of Benchmark B.

What stands out is the fact that all constitutional amendments in the Czech Republic that contributed to conformity with the European happened before the actual accession in 2004, whereas, in Hungary, two constitutional amendments that relate to the topic of this

thesis took place after the accession making some alterations to the Constitution. This reveals that the Czech Republic has done a good job in implementing EU law into the Czech legal order, while Hungary seems to have been making some relatively minor tweaks to the Constitution after their accession.

The Czech Republic has not been struggling with the implementation of EU criminal law as much as Hungary taking into account that no separate constitutional amendments were passed to align the domestic criminal law with EU criminal law in the Czech Republic, within the specific benchmarks.

Comparing the final benchmarks of the two former Warsaw Pact states, both the Czech Republic and Hungary seem to have tried to enhance the level of democracy in their states. Whereas the Czech Republic strengthened its democracy through *Constitutional Act no. 71/2012* and *Constitutional Act no. 98/2013*, respectively, by implementing direct popular vote into the presidential elections and reducing the immunity of parliamentarians, Hungary involved the National Assembly, the Hungarian parliament, into EU policy-making through the adoption of *Act XXXVI of 2012*. In different fields and areas, the Czech Republic and Hungary endeavored to strengthen their democracies by means of constitutional amendments.

Chronowski et al. (2019) argue that *Act CLI of 2011* of Hungary, by changing the functioning of the Constitutional Court, led to the harmonization between international and domestic law in Hungary, whilst it can be assumed that, in the Czech Republic, the *Constitutional Act no. 395/2001* (*EU-amendment*) initially included sufficient measures that safeguard the harmonization between EU and Czech legislation.

Nonetheless, *the 2011 Fundamental Law of Hungary* marked the start of a phase of democratic erosion as human rights are violated, the judiciary is renowned to be manipulated and the opposing political parties become suppressed (Krekó & Enyedi, 2018). A massive illiberal seizure of power and political domination by the Fidesz party in Hungary after the 2010 elections has not (yet) happened in the Czech Republic, despite the

accusations of the Czech Republic making swerves towards illiberalism (Bustikova & Guasti, 2017). However, it is worth mentioning that Bustikova & Guasti (2017) hold that this (illiberal) trend is to be seen in Central Europe, in general, as well as they assure that *the Hungary of Orbán* "made the most significant steps in an illiberal direction" (Bustikova & Guasti, 2017, p. 170).

As already mentioned, Albania is the odd one out in this thesis, because the former Warsaw Pact state did not join NATO in 1999, nor did the state become a member state of the European Union in 2004, like the Czech Republic and Hungary. It is evident that Albania has had a (constitutional-legal) backlog to catch up with. Albania became a full member of NATO in 2009 (Polak et al., 2009). In the same year, the former Warsaw Pact state of Albania applied for becoming an EU member state of which the Albanians were granted the status of "candidate member state" in 2014 (European Council, n.d.). The European Union opened accession negotiations in 2020 (European Council, n.d.). In Albania, *Amending Law no. 88 of 2012* made similar changes to the Constitution as the Czech *Constitutional Act no. 98/2013*. Both amendments reduced parliamentary immunity limiting the criminal exclusion of parliamentarians in Albania and the Czech Republic.

Amending Law no. 137 of 2015 and *Amending Law no. 76 of 2016* both attempted to combat organized crime and corruption in Albania as the high levels of organized crime and corruption demand a complete reform of justice (Skara & Hajdini, 2021). Organized and corruption are considered two of the largest concerns in Albania that prevent EU accession from happening, though, with the complete justice reform implemented through *Amending Law no. 76 of 2016*, Albania is advancing towards EU eligibility (European Commission, 2016). *Amending Law no. 137 of 2015* obliged public functionaries to execute their duty with integrity. *Amending Law no. 137 of 2015* is a step in the right direction, although it does not get down to the root of the problems. Hence, *Amending Law no. 76 of 2016* completely reformed the system of justice in Albania. A complete justice reform in order to tackle organized crime and corruption cannot be seen in the other two former Warsaw Pact states

within the specific benchmarks. *Amending Law no. 115/2020* changed the electoral regulations in Albania to ensure a more stable political climate, which is one of the requirements in the Copenhagen criteria.

7. CONCLUSION

This thesis poses the question: *"How have three former Warsaw Pact member states, the Czech Republic, Hungary, and Albania, developed their legal systems regarding conformity with the European Union, from 1991 onwards?"* Answering the research sub-questions, briefly in the *intra*-state analyses and extensively in chapters 3, 4, and 5, has shown that, despite the fact that the Czech Republic and Hungary have walked similar paths with regard to NATO and EU accession, constitutional-legal change is subordinate to the domestic political climate and its subsequent societal challenges.

Although, indeed, there are similarities in constitutions and constitutional amendments to be found. Because all three former Warsaw Pact states fell under the dominion of the Soviet Union, all contemporary constitutions were based on the same Soviet model constitution (Lu, 2019). Therefore, the socialist-communist constitutions, *the 1960 Constitution of Czechoslovakia, the 1949 Constitution of Hungary*, and *the 1976 Constitution of Albania*, were all along the same lines. These constitutions formulated the same socialist and communist principles and applied similar state structures in which the parliament is relatively dominant and appoint (is able to dismiss) practically all significant offices. Consequently, public offices, such as the seat of the President, become rather symbolic and powerless as the public offices are heavily reliant on parliamentary sentiment. This tendency is enshrined in the constitutional identity of these former Warsaw Pact states and is (in one way or another) implemented in the current constitutions. The remains of this powerful parliamentary *credo* can be seen in the recent constitutional amendments that reduced parliamentary immunity in the Czech Republic and Albania. An insufficient separation of power, or, one could say, an imbalanced balance of powers *is the recipe for a poisonous cocktail* of abuse of power, which can be seen by the illiberal swerves of Central and Eastern European states. Bustikova & Guasti (2017) consider the current status of Hungary as alarming because it is considered to have taken the most illiberal steps.

Back to the vital question, how have these constitutional-legal systems developed over time? A turning point can be seen in the year 1991, which marks the dissolution of the Soviet Union, but already in 1989, which is the start of the Fall of Communism of 1989, the state of Hungary pushed through a revolutionary unofficial *interim* constitution that rejected the communist ideology and established a democracy in Hungary. Two years later, in 1991 Albania, a similar constitutional loophole was realized as a *safe haven* for transitioning towards a democratic state. Czechoslovakia seems to be falling behind compared to the other two, but no later than 1993, after first dealing with the peaceful split into the Czech Republic and Slovakia, a new constitution was enacted in the state of the Czech Republic. After the fall of communist regimes in Europe and the escape from the long arm of the USSR, former Warsaw Pact states were able to decide their future for themselves.

Thus, from 1991 onwards, constitutional anomalies can be seen between the former Warsaw Pact states, despite the same accession years between the Czech Republic and Hungary. Whereas the Czech Republic passed all relevant constitutional amendments before the official accession in 2004, Hungary has also adopted relevant constitutional amendments that were focused on legislative alignment after its accession.

Constitutional Act no. 395 of 2001 and *Act LXI of 2002* endorsed the same desired effect in, respectively, the Czech Republic and Hungary, namely enabling a transfer of competences to a supranational organization. Both these constitutional amendments had similar aim and structure. Likewise, the Czech Republic and Hungary passed similar amendments in order to conform with NATO guidelines through the adoption of the Czech *Constitutional Act no. 300 of 2000* and the Hungarian *Act XCI of 2000.* Accession to NATO can be considered an advancement with regards to conformity to the European Union. Albania did not pass an actual *EU-amendment* that delegated power to the European Union, like the Czech Republic and Hungary. However, Albania is the only discussed former Warsaw Pact state that passed a complete justice reform of this magnitude, within the applied benchmarks.

The similarities between the constitutional-legal development of the Czech Republic and Hungary can be explained by many factors, such as geographical proximity and the fact that these former Warsaw Pact states have often entered negotiations in the same year. Taking into account that the Czech Republic and Hungary have experienced a similar route towards EU eligibility, it might seem odd why one former Warsaw Pact state, the Czech Republic, can be considered successful in conforming with EU legislation, whereas the other former Warsaw Pact state has recently been moving away from conformity with EU legislation. What might even feel more unusual, from the perspective of the Albanians, is the fact that Albania is not (yet) allowed to become an EU member state, although a state like Hungary can enjoy the economic benefits of being a member state, because one could argue that, currently, Hungary is not particularly any better than Albania comparing the two constitutional-legal advancements in recent times.

Because every state is unique *per se*, every state has its own strong points, but also its shortcomings. One societal challenge can be considered more threatening than the other and all challenges are variable and dependent on multiple factors. States experience different constitutional-legal advancements as they are heavily dependent on these societal challenges and the political climate of the state.

Former Warsaw Pact states and their constitutional identity are characterized by suffering under the yoke of the Soviet Union, which put on them a huge backlog compared to Western democracies. Following the school of liberal intergovernmentalism, for the sake of economic benefits, national leaders wished and some still wish to join the European Union. Hence, states attempt to align their legislation with the European Union as swiftly as possible in order to join the EU and enjoy the benefits of being a member state. The desire for swift constitutional-legal alterations may mismatch with the slow-paced character of the legal realm and as a result states might go ahead of themselves. This can be one of the many explanations for the illiberal swerving and turns in Central and Eastern Europe.

Understanding the (constitutional-) legal language of these former Warsaw Pact states is one of the aims of this thesis. As the European community as a whole, we perhaps tend to overestimate some states in aligning their domestic legislation with EU legislation and, more importantly, keeping maintaining this alignment. Bearing in mind the communist pasts and the turbulent political climates, it seems that most former Warsaw Pact states have coped relatively well with the task of integrating EU legislation into the domestic legal order. The Czech Republic has thoughtfully constructed its legal backbone to the extent that it meets the requirements set by the EU, despite some recent illiberal swerves. Compared to the other two former Warsaw Pact states, the Czech Republic seems to be a rather late and mindful adapter as well as the least reliant on, or influenced by, its political climate. The current status of Hungary is an instance in which the successful integration of EU legislation has not yet worked out, despite attempts (and successes) in the past. Albania is well on its way to advancing towards a genuine democracy that is suitable for entering the EU but still struggles in its fight against the high levels of organized crime and corruption. It can be helpful to put ourselves in one's shoes, to know where one has come from, and how far one has already traveled to come this far. As a final note, it must be emphasized that understanding one's position makes no one worse in the end.

8. RECOMMENDATIONS

Recommendations for further studies and analyses are covered in this final chapter. Along with the recommendation of examining the constitutional development of other (former Warsaw Pact) states, it might be worth diving into the case of Albania a bit more as it is interesting to apply a different starting point for the middle benchmark in the case of Albania. Whereas this thesis goes from the year 2014, that is, the year of Albania officially received the status of a candidate member state, examining the constitutional amendments prior to the Albanian application for EU membership might give insightful results as well. Analyzing the relevant constitutional changes that happened four years prior to the year 2009, that is, the year of application of Albania to the European Union, and four years after the year 2009 surely provides different outcomes and perspectives.

Furthermore, another theoretical framework (alongside the already applied theory) might be useful as an extension to this thesis. Although complete in many aspects, the school of liberal intergovernmentalism does not provide an explanation for a (member) state moving away from the process of EU integration after the successful completion of all stages of integration. More specifically, liberal intergovernmentalism does not leave an explanation for the illiberal turn away from EU standards in the case of Hungary. Therefore, a theory that does include the process of disintegration is a recommendation for further research.

Definitely, one of the shortcomings of this thesis may be the matter of merely reviewing the constitutions and the consequent amendments of these former Warsaw Pact states. Surely, along with perhaps a boring set of provisions, a constitution does provide the constitutional narrative and identity of these states, but it must be underlined that a web of inferior legislation hangs below it. For further studies, It might be insightful to include lower legislation and decisions of the Constitutional and Supreme Court in order to bridge the gap between the constitutional realm and the real world making it more down-to-earth and tangible.

Lastly, one of the main issues of former communist regimes is the problem of transparency. During the process of completing this thesis, it came across that some relevant constitutional amendments are either hard to find or not translated into English. For this reason, some constitutional amendments could not be properly examined. Therefore, native scholars may extend this thesis by providing a proper examination of the untranslated pieces of constitutional legislation.

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