

THESIS COLLECTION

Tóthné Ferenci Adrienn

Power realism versus normative institutionalism in the Council of Europe
The responses of the Organisation to the political and legal challenges to effective
multilateralism

Doctoral dissertation

SUPERVISOR

DR. ERZSÉBET KARDOSNÉ KAPONYI DR. HABIL PHD

Professor emerita

I. Background of the research and relevance of the topic

The context of the current research is the crisis of the multilateral framework, since scepticism of effective multilateralism has been growing in recent years. Scholars of international relations mainly depict the crisis of international organisations as a result of the growing number of geopolitical conflicts, but challenging the primacy of supranational authorities or the Brexit can also be considered as the symptoms of the crisis. Petra Roter, former chair of the Advisory Committee of the Council of Europe Framework Convention for the protection of National Minorities refers to the worrying trend of bilateralisation, indirectly stating that this process could negatively affect the functioning of the human rights regime in general (Eleventh activity report, 2018, p. 14). Others actually examined the reasons leading the termination of international organisations (Eilstrup-Sangiovanni, 2018).

The role and future of multilateralism itself deserve a separate analysis, and the wide range of literature shows that this question is at the heart of scholars' interests (Lavelle, 2020; Hosli et al 2021). The Covid-19 pandemic also redirected attention to the question of effective multilateralism, but after the outbreak of the war in Ukraine on 24 February 2022, it is undeniably relevant to assess the current format of multilateralism. The structure of the thesis was determined in 2020, long before the war between the Russian Federation and Ukraine. However, this war in a neighbouring state has had a major impact on this research. It is impossible to ignore the most serious conflict in Europe since the end of the Second World War when presenting the political case study or analysing the mechanisms of the Council of Europe on how to motivate member states to comply with their international obligations. The exclusion of the Russian Federation from the Council of Europe is also an unprecedented political decision, the assessment of which will form an integral part of this research.

Accordingly, the present thesis focuses on the particular situation of the Council of Europe, and intends first to present the enlargement dilemma of the organisation in the mid-nineties: namely whether to invite the Eastern European countries to join before they were in compliance with the main standards or to delay their accession until their legal and institutional structures were closer to European standards. The decision on the early invitation determined the path of the organisation in subsequent decades, and besides institutional renewal, it led to a series of political and legal challenges. After the historic enlargement and institutional reform of the 1990s, the Council of Europe now faces another type of challenge. Soft power human rights

instruments, and “normative institutionalism” versus classical, “power realism”¹ demands new approaches and methods.

The dissertation aims to present one political and one legal case study to illustrate the financial crisis of the Council of Europe, by including statistical data to support the arguments. Therefore, both qualitative and quantitative analysis are conducted to seek an answer to the question, how the organisation can solve the challenges resulting from the reappearance of power realism in an intergovernmental organisation with the protection of human rights as a core mission. How, in other words, to solve its own Copenhagen dilemma.² As an overview, the dissertation also presents the latest development, the establishment of a new complementary joint procedure (see in detail in Chapter on Definitions of key concepts), as a possible solution to the challenges of not respecting the political and legal obligations.

The way I intend to conduct the research is largely based on my personal experiences in 1999 and between 2011 and 2016 in the Council of Europe. In 1999, I served as a contact diplomat in the Permanent Representation of Hungary to the Council of Europe, responsible for the organisation of Hungary’s chairing of the Committee of Ministers, including the 104th session of the Ministers for Foreign Affairs held in Budapest. A decade later I served again in Strasbourg, as deputy to the Permanent Representative of Hungary to the Council of Europe, and in this capacity I actively participated in the work of four rapporteur groups preparing the decision-making process of the Committee of Ministers and in the Human Rights (DH) sessions of the Ministers’ Deputies responsible for the supervision of the execution of the Strasbourg Court’s judgements, as well as the regular, weekly sessions of the Ministers’ Deputies (Committee of Ministers, the executive body of the Council of Europe). Besides, I regularly participated as an observer in the plenary sessions and the committee meetings of the Parliamentary Assembly. As to the activity of the Parliamentary Assembly, I also followed its work in recent years, between 2016 and 2020. In addition, I have been representing Hungary as government expert in the Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI) for two years. Since 1 January 2022 I have been the observer delegated by Hungary to the Governing Board of the Observatory on History Teaching in Europe, the new partial

¹ Expressions in quotation marks borrowed from Professor Ferenc Gazdag, unpublished reviser opinion to the Author’s article on similar subject of the present thesis.

² The phenomenon of not respecting the commitments undertaken before accession. A term used in the European Union (EU), referring to the “Copenhagen criteria, which applicant countries to EU have to meet for becoming member”, Glossary of Statistical Terms (see in detail under the chapter Definitions of Key Concepts of the thesis).

agreement of the Council of Europe.³ Thanks to these opportunities, I have gained a deeper and more direct insight to the work of the mechanisms and institutions of the Council of Europe; consequently, I have already developed some preliminary assessments. With the help of the thorough analysis of the case studies and the comprehensive scrutiny of the new complementary procedure, I intend to justify my hypothesis.

Although more and more papers, articles, and studies have dealt with the challenges of multilateralism in the recent years, the number of analyses dedicated specially to the political challenges of the Council of Europe have remained relatively low. Therefore, this research could on the one hand contribute to the general literature focusing on the future role of multilateral organisations, and especially on the future of the Council of Europe, on the other hand, the conclusions of the research intends to assist the actions of the diplomacy in multilateral frameworks; contribute to fine-tuning the general perception of manoeuvring room in multilateral diplomacy. The findings concerning the efficiency, capacity and real role of multilateral organisations could help to reconsider the relevance of multilateral diplomatic activity.

In addition, the adoption of the complementary joint procedure⁴ in the Council of Europe is a new element, and I have the opportunity to be the first to analyse it in a wider context, and to deliver not only an account of what is happening inside the Council of Europe but also of the political background and its pitfalls. However, the case studies of the thesis show that member states in the Council of Europe are far from equal, and enforcement opportunities differ substantially in the case of Russia and Turkey compared to the medium sized and politically less influential member states. The conclusions of the thesis highlight what kind of actions are forward looking, useful and appropriate as regards the enforcement of national interest in the international arena for those countries, whose futures depend on the interests of great powers. The general perception is that the Council of Europe is a human rights organisation but my goal is to follow a different approach towards the Council of Europe with the aim of highlighting the political aspects of its activity and to summarize all possible consequences having an impact on the functioning of the organisation. Although I intend to present specific judgments of the

³ Enlarged Partial Agreement on the Observatory on History Teaching in Europe with the aim to promote practices encouraging history teaching and learning in order to strengthen and promote the values of the Council of Europe. Resolution CM/Res(2020)34 establishing the Enlarged Partial Agreement on the Observatory on History Teaching in Europe.

⁴ The joint reaction procedure, as a new mechanism, complement the tools of the Statute of the Council of Europe when a state violates its obligations and does not respect fundamental principles and values (see in detail under the chapter Definitions of Key Concepts).

European Court of Human Rights, I will strictly focus on the description of the political context and the political challenges of the supervision of judgments. My objective is to consistently avoid any kind of legal analysis or legal interpretation of the Court's case law.

In Chapter I the thesis will first introduce the wider multilateral framework. After describing the methodological and research design, presenting the theoretical framework and the definitions of the key concepts, the present chapter provides a brief foundation of the issue by giving a general overview of the multilateral framework and the place of the Council of Europe in the system. A short outlook for the cooperation with other international organisations is also relevant to understanding the importance of the Council of Europe in the multilateral space.

In Chapter II the Eastern enlargement is examined with both the pre-enlargement considerations and the dilemma of the continued enlargement as well as the consequences of the early invitation. This Chapter is highly relevant for the initial hypothesis, which is that the Eastern enlargement with the accession of the Russian Federation as a great power largely contributed to the political and legal challenges of the Council of Europe.

Chapter III is for the presentation of the political and legal context, where the problems related to the European Court of Human Rights are described with special attention to the interstate cases reflecting geopolitical conflicts, as well as the most significant structural problems of individual cases. Both the political and legal case studies selected are appropriate to test the relevance of the core theories in international relations, and are good examples to generalize the conclusions to other multilateral organisations. Besides, the legal case raises the issue of the enforcement capability of the Council of Europe. The fact that the only formal sanction, the so-called "infringement procedure", the referral of the question to the Court to make a decision on non-implementation,⁵ has been launched against Azerbaijan in 2017 December for the first in the history of the Council of Europe (CMDH Interim Resolution CM/ResDH(2017)429, 2017)⁶ also provides an excellent demonstration for the analysis of the driving forces in the organisation.

Chapter IV introduces the term of "Copenhagen dilemma" used in the context of the European Union, referring to the problem of when a member state seems not to comply with the mandatory conditions set before its accession. The notion became widespread in the political

⁵ Article 46, indent 4 of the ECHR stating that "If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1."

⁶ CMDH Interim Resolution CM/ResDH(2017)429, Execution of the judgment of the European Court of Human Rights, Ilgar Mammadov against Azerbaijan, 5 December 2017.

discourse of the European Union and adequately describes the situation evolved by 2017 in the Council of Europe. As the latter one was an active part in the Euro-Atlantic integration process, considered as an ante-room of the European Union for many of its member states, it seems justified to borrow the expression describing so perfectly the syndrome which gradually appeared in the Council of Europe and nearly led indirectly to a large financial deficit, the planned reduction of CoE staff by cca. 10% and the to the inoperability of the organisation by 2019. This Chapter seeks to examine the different responses, the strengthening of the supervisory system, adoption of the joint reaction procedure, and the other possible tools for sanction, by which the Council of Europe intends to respond to the problem of non-implementation. This Chapter also aims to examine the exclusion of the Russian Federation and its consequences in the medium and long term.

Finally, Chapter V will assess the relationship between power realism and normative institutionalism, based on interviews prepared with high-ranking diplomats of the member states, officials of the Council of Europe, and with members of the Parliamentary Assembly of the Council of Europe. It shall also answer the first research question of the thesis: “Could the recent political and legal challenges to effective multilateralism endanger the functioning of the Council of Europe in the long run?” The analysis of the political and legal context with the opinion and experience of the politicians, diplomats and high-level officials will probably also provide an answer to the second research question: “Could normative institutionalism prevail over the great powers’ geopolitical interests, and if so, to what extent?” The personal semi-structured interviews prepared with the high-ranking officials serve as the focus of the research, I summarize and analyse their experiences and opinion to justify the hypothesis and to find a response to the research questions.

In Chapter VI the findings will be linked to the relevant international relations theories and general conclusions, including the interpretation of the wider context, the validity and reliability achieved, the evaluation of the contribution and implications of the research, as well as an evaluation of the limitations of the research will be drawn. An outlook will be devoted to the future of the newly established complementary procedure. The concluding section will give an evaluation of the efficiency of the procedure, whether it can be effective to sanction a less influential geopolitical but non-compliant player (see the explanation of this term in the chapter Definitions of Key Concepts).

II. Research methodology

As the objective of the thesis is to analyse the Council of Europe through concrete examples and indirectly assess the extent to which assertive national politics could affect the functioning of the institutional framework at international level, combined research methods will be applied. I rely largely on the observation gathered during my own field work, but the presentation of the political and legal case study will also help the examination, as well as semi-structured personal interviews with high-ranking officials of the Council of Europe statutory bodies, the Committee of Ministers and the Parliamentary Assembly, staff members of the European Court of Human Rights, diplomats and politicians, and members of the Parliamentary Assembly.

The semi-structured interviews included predefined questions chiefly concerned with the following: the preliminaries to the 2019 financial crisis; the impact and future treatment of global political and legal challenges; tools and means available to tackle the Copenhagen dilemma, and the role of the current monitoring mechanism as a form of screening; the possibilities and real opportunity to further strengthen the supervisory scheme; the role of the Parliamentary Assembly in detecting the dominance of political interests in the functioning of the organisation; and the future relationship between bilateralism and multilateralism. The specific interview questions are presented in Chapter V of the thesis, along with the answers given by interviewees (some of whom wish to remain anonymous), and the analysis of the issues that were raised.

The aim of the thesis is also to gain some insight into the possible reasons for the increasing influence of national government policy and to examine how the arguments of the classical theories function. The thesis will also focus on the question of whether the institutional crisis in the Council of Europe can be considered as its own Copenhagen dilemma. Both the European Union and the Council of Europe face the same problem of not having any instrument that could efficiently deal with violations of non-compliant member states, but to what extent is the "complementary joint procedure" an instrument to deal with the kind of continuous infractions seen in a number of member states? Is it a mechanism that can force member states in all cases to fully respect all norms and standards by enabling their possible exclusion or it is created for the sanctioning of unusual and large-scale violations such as the annexation of the territory of a member state by another of its members?

As to the complementary joint procedure, the research also implies the analysis of the political context. What happened and why? Which countries were instrumental in breaking the deadlock and made serious efforts to invite the Russian Federation back to the Parliamentary Assembly in 2019? Why did this happen after five years? Why did the Council of Europe give in while

the EU extended its sanctions against Russia at the same time? What role did money play? Did the Council of Europe simply give in to blackmail? Why did the Russians accept the deal to come back?

The questions formulated regarding the effectiveness of the new mechanism will help to analyse the political-geopolitical context of the financial crisis of the Council of Europe, and they will hopefully lead to answers of two main research questions highlighted in the previous point (Chapter I) above.

It should also be noted that the selection of the research topic – the analysis of the impact of political developments in the Council of Europe – was based on the fact that the issue is only slightly and superficially examined in the scientific literature, and its comprehensive analysis is completely lacking. Earlier researches have focused instead on the standard-setting activity of the Council of Europe, and has examined the rich case law of the European Court of Human Rights; however, a broad overview of the effect of geopolitical conflicts on the normative activity and enforcement capability of the Organisation has not yet been written. This is also the reason why the focus of the research is limited to an examination of the Council of Europe in the context of the future of effective multilateralism.

From a methodological point of view, the main subjects of the thesis are the rapid Eastern Enlargement, the emergence of political and legal challenges as a consequence of the increasing role of national policy and the appearance of a similar phenomenon as the Copenhagen dilemma in the European Union. As to conceptualisation, one direct observable to measure the rapid Eastern Enlargement is the chronological table with clear date of accession. The open-door policy dilemma can be observed through indirect signs, and by the declassified documents of the Council of Europe from 1994. The increasing impact of national politics is more difficult to measure, and is rather a construct observed on the ground during meetings. However, the adopted documents could help to transform them to indirect observables. Political challenges can be identified in the relevant documents, while legal challenges are measurable in the statistics of the European Court of Human Rights. The Copenhagen dilemma is an absolute construct, and the goal of this thesis is to prove its existence through direct and indirect observables.

During the process of operationalisation, the indicators to measure the main propositions and its identified parts or elements are independent, dependent variables and extraneous (statistical data of the European Court of Human Rights, official-primary documents adopted by the different institutions of the Council of Europe, personal experience and assessment of the developments in the Organisation based on more than five year of field work).

As the research field belongs to social science, the research philosophy which best reflects the objectives of the thesis is interpretivism. The goal is to focus on humans (at least human controlled political developments), to study and interpret meanings with the aim of creating new, richer understandings and interpretations of a particular political context. Taking into account the fieldwork already conducted and the preliminary assessments, which are followed by literature review, the method is inductive. Small, in-depths investigations will be used with the aim of finally conducting a qualitative analysis of the results. From the assumptions underlying the philosophies, epistemology and axiology are the best suited to meet the objectives of the research. Epistemology is about the communication of acceptable, valid legitimate knowledge, while axiology refers to the values and ethics within the research process, so both assumptions can be applied.

The research context is also double. On the one hand, the thesis could be useful in the context of the Council of Europe, by providing a careful screening of the new mechanism, the success of which in achieving the enforcement of norms and standards cannot be predicted now. On the other hand, the conclusions and findings of the thesis could be useful in respect of my home country, Hungary, related to the opportunities and approach of diplomatic activity in multilateral organisations.

The reason behind the selection of the case studies was to present those events which have raised serious identification question in recent years as regards the credibility, operation and functionality of the Council of Europe. Presentation of the specific legal case study will be preceded by a general description of the supervision system highlighting those core elements that one way or another have an impact on the efficient implementation of the judgments. Special attention will be dedicated to the inter-state cases and the questions they have raised relating to the successful execution of judgements.

The timeframe of the research is the period between 1990 and 2020, but new developments that decisively influence the possible outcome of the research will be incorporated to the thesis, so the Russian aggression against Ukraine and the exclusion of the Russian Federation from the Council of Europe is a development, which cannot be ignored. Both primary and secondary sources are examined and the database to the case law of the European Court of Human Rights (HUDOC) will be applied. To realize the above aims, content analysis of the documents, and processing a part of international and Hungarian scientific literature on the Council of Europe (Berger 1999; Schmahl and Breuer 2017; Vayssière 2022, Benoît-Rohmer and Klebes 2005; Busygina and Kahn 2020; Entin and Entina 2019; Greer et al 2018) on the raised issues will be an effective tool.

Thanks to the direct access to all databases and adopted documents of the Council of Europe, the research plan was feasible. The timeframe of the research is relatively long, but will focus on strategical questions, which are indispensable for drawing valid conclusions, to find the most appropriate answers possible to the research questions and to allow me to conduct deeper analysis of the available data.

As regards the possible limitations of the research, the participants' observation and engagement, as well as ethical issues explained below, had an impact on the results.

With regard to my own assessments, subjectivity cannot be absolutely excluded. The officials of the Council of Europe, as paid employees of the organisation, obviously had rather positive assessments of the future role of the Council of Europe's institutions, and most of them relativized the risks of the events and activities examined in the case studies. Having the vital interest to keep the visibility and functionality of the Council of Europe as long as possible, their opinion could be partly biased. The third element to consider as an ethical question is that the author currently also works in the Ministry of Foreign Affairs and Trade, and has aspirations of continued diplomatic service either to the Council of Europe or to other foreign missions of Hungary. This is the reason why any possible assessment on the current diplomatic activity of Hungary will be avoided, and the thesis focuses on non-European Union member states of the Council of Europe.

III. Results/conclusions of research

The Council of Europe celebrated its 70th anniversary in 2019 but the gradually increasing political and legal challenges combined with a financial crisis between 2017 and 2019 shows the relevance and the timeliness to test the classical theories regarding the role and future efficiency of international organisations. The research has some conclusions of general nature to the future functioning of all intergovernmental organisations in light of the possibly continuing and alarming trend that geopolitical interests and ethnic tensions prevail over the normative commitments. Institutionalist theories give an overview about the ordinary activity of international institutions highlighting that they are characterized by regulative, normative and cultural-cognitive pillar, within the rule-setting, monitoring and sanctioning activities are in the forefront of their mandates. However, these organisations face now challenges of completely different nature being far from their regularizing scope. The recent developments in Europe unfortunately show more than anything so far that the multilateral framework, the normative scheme of the international organisations, either the obligations undertaken could

not domesticate the great power reflex, the only tool is to send strong signals what is tolerated and what is beyond the red line in the international organisations. So in light of the recent aggression against Ukraine it seems to be impossible to disregard the main principles and findings of any realist approaches, whether offensive or defensive realism.

However normative the Council of Europe is, first and foremost its responsibility is to provide a certain guidance in fields, which are indispensable to establish a common European space of human rights and rule of law. So the lenient position the organisation took at several time when it faced another round of armed conflicts in the Council of Europe region, can be considered as a kind of encouragement for the aggressor, sending the message that apart from some vivid debates, a “business-as-usual” scenario continues at the end of the day. Actually, the organisation has neither role or tools to have an impact on such geopolitical developments, its arguments are rather linked to human rights related aspects. The Council of Europe argued in this vein when the Parliamentary Assembly decided to let the Russian parliamentary delegation come back to the Assembly in 2019. The human rights organisation referred to the 140 million Russian citizens who would lose the protection of the European Convention of Human Rights and the right to lodge an individual complaint with the Court of the Human Rights in the case if the Committee of Ministers would have taken the decision to exclude the Russian Federation at that time. This argument of the PACE leadership and Western European countries was immediately criticised when announced. Having in mind that the Russian Federation is the one of the two member states of the Council of Europe, who openly contested the supremacy of the Strasbourg Court and the implementation of the Court’s judgement depends on the willingness of the Russian government (it should be noted that the implementation is also a question of political will elsewhere, in old or new member states too), according to human rights defenders, the protection of Russian citizens does not seem a credible point. If the trust is eroded even in the intention of the human rights organisation, because there is already clear that its abilities are rather limited, how the member states could take seriously any principles later formulated?

The complementary procedure adopted by the Committee of Ministers contains so many assurances and rely on the different forms of dialogue to such a large extent that it is very difficult to disregard the all-time political motivations behind the possible future initiative to apply the procedure against a member state. At the same time the latest geopolitical developments, the war in Ukraine and the clear response of the Council of Europe, have exposed the earlier events in the PACE, the previous discussions and political efforts to maintain the Russian Council of Europe membership to a new extent. The Council of Europe

was the first and still the only international organisation, which categorically reacted to the Russian aggression by suspending first then expelling the Russian Federation from the organisation. To complete the picture, it should be also noted that Statute of the Council of Europe always contained this procedural possibility without unanimity, by voting two third majority, but the political will was not there until now, to take this firm decision. Without the aim of analysing the possibilities in other international organisations, where the unanimity is required to take decisions, this option was of course not available. The decision of the Council of Europe on the exclusion remedied in many sense the reputation of the organisation, which has suffered in 2019 when the Russian delegation returned to the PACE without complying the conditions set earlier for the full restoration of their rights in the Assembly. Foreign policy analysts also blamed earlier the international community, including the Council of Europe for not responding to smaller armed conflicts, arguing that this looking away lead to further geopolitical challenges.

At the same time this earlier ambiance around the Parliamentary Assembly described above and the historic decision of the Council of Europe on Russia, or the geopolitically motivated interventions presented in various chapters of the thesis could give a clear response to the research questions elaborated in Chapter I.

In my view, the political and legal challenges to effective multilateralism definitely affect the functioning of the institutions in the Council of Europe, but in two ways. The behaviour of the great powers to neglect their commitments towards the Council of Europe when this ignorance is in their interest or the selective implementation of the undertakings could be interpreted by the Council that its relevance is higher than ever before. Human rights and its defenders are in danger, the only possibility to remedy the situation is to keep an eye at least on the member states violating the rules, since it is still better than not disposing of any means for exerting some pressure. On the other hand, the fact that the Council could not prevent the continuation of the participation à la carte of the Russian Federation erodes to a large extent the credibility of the Organisation towards the small or medium-sized member states. Russia often accused the Council of applying double standards among the member states and this approach was already admitted by some experts and scholars. As already mentioning in Chapter 3 of the thesis, Petra Roter recalled that the question of national minorities is the best example for the double requirements, as the new members had to ratify the Framework Convention for the Protection of National Minorities before or right after their accession while the old members could afford to simply ignore the existence of minorities or national minorities as such (Roter

2017. p. 34). In my opinion this double-track attitude had also influenced the selective and arbitrary approach of Russia in the Council of Europe backed by its great power and great contributor status, which made possible to realize this behaviour in practice.

Thus, the recent political and legal challenges undeniably affected effective multilateralism and not only the perception about its usefulness but indeed dented its credibility. However, in the light of the well-known limits of multilateralism I consider that these events will not endanger the functioning of the Council of Europe in the long run. Until the leading members of the Council deem useful to maintain this regulatory and cooperation framework it will function and once, if ever the Council ceases to exist it will not be connected to this crisis but rather to the general utility of international institutions. Despite the fact that intergovernmental organisations are not able to enforce their normative rules, the growing need to handle transnational threats and global challenges where real international cooperation is required, the *raison d'être* of international institutions will be ensured. As it was highlighted in the interviews, the issue of reputation is a key aspect in the future functioning of the Council of Europe and if the success can be communicated more to the public, the perception about the usefulness will be strengthened. In my view, until there is either one non EU member state in the Council of Europe having the aspiration to become once the member of the European Union, the Council has its *raison d'être*. Even if the so-called sanctions available do not function properly or efficiently, the EU prospect could have a motivation for aspirant countries to cooperate with the organisation and comply with its norms and values.

As far as the efficiency of the complementary joint procedure is concerned, I am sceptical that this new tool, which rather complement the previous and already existing means set out in the Statute and used in the Assembly could ever remedy the situation and ensure the functioning of the Council of Europe according to its Statute. In comparison with the rule of law mechanism of the European Union, the differences and the weak points of the complementary procedure become even clearer. In very simple terms, the European Union when developing this new procedure decided to link the EU money to the respect of rule of law criteria (EU Regulation 2020/2092, 2020). On the contrary, the Council of Europe does not dispose of such an enforcing mechanism, moreover the great contributors could blackmail the Organisation any time if their interests so require as we witnessed in the political case study of the present thesis.

Taking into account that the initiative of the complementary joint procedure actually came from but at least strongly supported by the Parliamentary Assembly, it is presumed that the idea to

develop a „clearly defined complementary procedure” (CM Decision of 129th Session) was only a compensatory step, a so-called beauty spot to somehow overshadow the Assembly’s controversial decision, to save its face after inviting the parliamentarians of the Russian Federation back to the PACE without the expectations that they comply with some of the criteria set before. The interlocutors during the interviews confirmed that the idea of the complementary joint procedure was a compensatory element to be put into the window.

As regards the second research question, if the normative institutionalism prevails over the great powers’ geopolitical interests, and if so, to what extent, the responses of the interviewees were various but no answer in the affirmative was received. Most interlocutors were quite sceptical if the political and geopolitical challenges can be tackled by normative tools. However, the majority also pointed out to the necessity of such legal instruments and one interviewee drew the attention to the fact that enforcement of regulation in certain fields is constantly evolving, what was impossible some decades earlier, it is now the reality, e.g. the case-law of the European Court of Human Rights already tackles to some extent the environment-related aspects. On the other hand, as majority of the partners highlighted in Chapter 5 of the thesis, the standard-setting is of utmost importance to prevent further challenges. In the field of criminal law for examples we all see that crimes are still committed but the possible deterrent impact of the penalties cannot be underestimated. “Without legislations and norms, and this is valid in the field of international law, we might face even more challenges” as the high-ranking CoE official E recalled. The answer to the second research question is certainly not obvious as nothing is black and white either. The response of the Council of Europe to the Russian aggression sends a promising message in this respect that there is a hope to rule the world by law, (too). Obviously normative regulation is respected by those states who are willing to play by the rules, who have more interest in staying in the club. The current developments at global level, to introduce sanctions against the state who kicked over the regulations, show this direction that normative framework could prevail over the old, outdated power reflexes. My answer to the research question is twofold. Normative institutionalism and normative framework could only prevail in case the players have the interests to maintain the legal system and the it lasts until the interests to make the normative regime function are present. However, rules are needed as the interviewees also highlighted, if not in a preventive way, but at least remedial instruments are important. This approach implies of course the real answer that it still depends on the participants of the game if and until when they respect the rules. But the question has another aspect as well, the regional character. The intention to establish a European legal

space is connected to the Euro-Atlantic institutional system. Although the examination of other global players' policy outside Europe is not in the focus of the present thesis but without specific research the pure fact that many countries are not the state parties to the International Criminal Court at The Hague, could help to draw the conclusion about the real intentions of those who did not join this intergovernmental organisation. As the Director of the Private Office also reminded, three members out of five of the UN Security Council are not the party to the Criminal Court (Rome Statute, State Parties). However, Secretary General of the PACE referred to more examples where the international treaty brought a viable solution. She cited the Treaty of Lausanne⁷ between Greece and Turkey and Dayton Peace Agreement⁸, which closed the Bosnian war in 1995. However, we saw that actually all the treaties and agreements are binding upon its parties until they recognize them. Like Russia as a guarantor of the territorial integrity of Ukraine in the Budapest Memorandum⁹, was the first who breached this agreement. So the conclusion is in respect of the second research question that as the states are the subject to the treaties, it is their decision until when they accept their provisions. To conclude the answer to the research question I believe that geopolitical conflicts cannot be prevented by normative tools but as a remedy, a legal framework is able to settle the conflicts afterwards and in case of mutual interests of its parties it can bring durable solutions until the circumstances, which were valid at the time of the adoption of the treaty or agreement, are not changed.

Related to the hypothesis formulated in Chapter 1 of the thesis, I relied to a large extent on my findings and on the opinion of the interviewees. After analysing the Council of Europe documents, the discussions in the Committee of Ministers before the accession of the Russian Federation an assessing the process of the gradually appearing and deepening political and legal challenges I conclude that the initial hypothesis that the Eastern enlargement with the accession of the Russian Federation as a great power largely contributed to the political and legal challenges of the Council of Europe, is justified. Bearing in mind the circumstances around the accession of the Russian Federation, that the Council of Europe invited the country actually between its two military interventions in Chechnya, where Russia already violated the most fundamental accession criteria then the county was also a belligerent power in many other armed conflicts (Abkhazia, South-Ossetia in 2008 or Crimea and Easter part of Ukraine in 2014

⁷ Treaty of Lausanne (1923). Société des Nations, Recueil des Traités et des Engagements Internationaux enregistrés par le Secretariat de la Société des Nations

⁸ General Framework Agreement for Peace in Bosnia and Herzegovina (1995)

⁹ Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of nuclear weapons. Budapest, 5 December 1994.

and since then) the question arises what the Council of Europe was expecting in respect of Russia. The majority of the interlocutors also confirmed that the relation is clear between the Eastern enlargement and the political and legal challenges later. However, the issue is complex, since the problems were not only rooted in the absolutely different history, culture, language and democratic culture of the post-Soviet area but also in the sudden increase of the number of new members for a quite short period. The interlocutors also admitted that apart from Russia these are not the Central and Eastern European countries who challenge the norms and standards of the Council of Europe, but Turkey, which is nearly a founding member. As the Secretary to the Committee of Ministers reminded during the interview the principal issue for the organisation was that the growing geographical extent was inevitably accompanied by the decrease of the level of human rights and rule of law standards. But other worrying trends were also mentioned during the interviews. The Director of Human Rights pointed out to the societal developments in whole Europe, including the western part, in his view the alarming phenomenon is that the values, respect for others, tolerance, non-discrimination, what was unquestionable after WWII, are openly challenged and those who support these norms are considered as naïve or what is more dangerous they are regarded as not loyal citizens, who do not respect the national interests.

The issue of efficiency of the institutional tools and means are closely related to both research questions. Although the monitoring mechanism will certainly be strengthened, as the Director of the Private Office mentioned, tectonic changes should not be expected. The elaboration and adoption of the complementary joint procedure as a possible solution to the Copenhagen dilemma in the Council of Europe could be an argument that the organisation is keen very keen on finding effective solutions. However, with full knowledge of the background and reasons behind the new mechanism, I personally have reservations about the future success of the procedure. As we witnessed in the Russian case, when immediate political response is needed there is no time to launch a lengthy and complicated mechanism. In any case the new joint mechanism may not meet entirely the expectations but the success of the procedure will be largely depended on which member state will be the first in respect of which the Secretary General, the Committee of Ministers and the Parliamentary Assembly unanimously recommend the application of the procedure.

As a general conclusion I believe that the main tenets of the theory of neorealism are still valid when researching the prospects and the future effectiveness of the multilateralism, and more particularly the future functioning of the Council of Europe. In my opinion, these challenges do

not endanger the organisation, on the contrary the legal challenges and all responses to them could justify the need of such an organisation. However, states, mainly the major players act further along with their main interest, as it was also confirmed in the literature: “the lack of ‘world government’ means that states continue to act in ways which preserve their own interests as this is the only way to ensure their preservation.” (Jepson, 2012. p. 2.)

IV. Selected references

1. Alexandroff, A-S. (2020). The Possibilities for ‘Effective Multilateralism’ in the Coming Global Order, Global Summitry Project, Munk School of Global Affairs & Public Policy, University of Toronto, available at: <https://www.global-solutions-initiative.org/wp-content/uploads/2020/12/The-Possibilities-of-Effective-Multilateralism-Alan-Alexandroff-Draft-December-9-2020.pdf> (accessed: 7 May 2022).
2. Bellamy, A. (2005). (ed.) *International Society and its Critics*, Oxford, Oxford University Press
3. Benedek, W. (2020). The Effectiveness of Tools of the Council of Europe against Democratic Backsliding: What Lessons Can Be Learned from the "Greek Case"? In: *Austrian Law Journal*, Vol. 2020, Issue 1 (2020), pp. 1-21.
4. Berger, V. (1999). Az Emberi Jogok Európai Bíróságának Joggyakorlata. HVG Orac
5. Bull, H. (1977). *The Anarchical Society: a Study of order in world politics*, Macmillan, Basingstoke, p. 13
6. Busygina, I – Kahn, J. (2020). Russia, the Council of Europe, and “Ruxit,” or Why Non-Democratic Illiberal Regimes Join International Organizations. *Problems of Post-Communism*, vol. 67, no. 1, 2020, 64–77. available at: <https://eds.p.ebscohost.com/eds/pdfviewer/pdfviewer?vid=10&sid=5fda246a-209e-4e93-8644-bf14b3608126%40redis> (accessed: 30 April 2022).
7. Chikvaidze, D-A (2020). Multilateralism: Its Past, Present and Future. In: *Cadmus*, Vol 4, Iss 2, Pp 127-133; Risk Institute, Trieste- Geneva, available at: <http://www.cadmusjournal.org/files/pdfreprints/vol4issue2/Multilateralism-Its-Past-Present-and-Future-DChikvaidze-Cadmus-V4-I2-P2-Reprint.pdf> (accessed: 15 April 2022)
8. *CM Decision* on Complementary procedure between the Committee of Ministers and the Parliamentary Assembly in response to a serious violation by a member State of its

- statutory obligations, CM/Del/Dec(2020)1366/1.7. 2020, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809a5214 (accessed: 10 March 2021).
9. CoE Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 1950, Rome, European Treaty Series (ETS) No. 5, available at: <https://rm.coe.int/1680a2353d> (accessed: 30 April 2022).
 10. Cohen, H. G. (2018). Multilateralism's Life Cycle. *The American Journal of International Law*, 112(1), 47–66, available at: <https://www.jstor.org/stable/26568924> (accessed: 8 May 2022).
 11. Cristol, J. (2009). Morgenthau vs. Morgenthau? „The Six principles of Political Realism” in Context. *American Foreign Policy Interest*, Vol 31. Issue 4.
 12. Devitt, R. (2011). Liberal Institutionalism: An Alternative IR Theory or Just Maintaining the Status Quo? *E-International Relations*, available at: <https://www.e-ir.info/2011/09/01/liberal-institutionalism-an-alternative-ir-theory-or-just-maintaining-the-status-quo/> (accessed: 24 February, 2021).
 13. Doyle, M. W. (1997). *Ways of War and Peace: Realism, Liberalism, and Socialism*. New York: W.W. Norton and Company. pp. 41–48.
 14. Dzehtsiarou, K - Coffey, D- K. (2019). Suspension and expulsion of members of the Council of Europe: difficult decisions in troubled times. In: *I.C.L.Q.* 68(2), 443-476; Cambridge University Press.
 15. Eilstrup-Sangiovanni, M. (2018a) The Global Crisis of Multilateralism. Blog on Brexit: Global Perspectives. *E-International relations*, available at: <https://www.e-ir.info/2016/12/03/the-global-crisis-of-multilateralism> (accessed: 1 December 2021).
 16. Entin, M – Entina, E. (2019). Challenge for Europe: How to make the conflict between Russia and the Council of Europe beneficial for its future. *Rivista di Studi Politici Internazionali*, aprile-giugno 2019, Vol. 86, No. 2 (342) (aprile-giugno 2019), pp. 223-242, available at: https://www.jstor.org/stable/pdf/26761206.pdf?refreqid=excelsior%3Ae82b7aac4f8b39f6ec9d40961910406&ab_segments=&origin= (accessed: 30 April 2022).
 17. Feng, L – Ruizhuang, Z. (2006). The Typologies of Realism. *Chinese Journal of International Politics*, Volume 1, Issue 1, Summer 2006, pages 109–134 . 109–134 doi:10.1093/cjip/pol006, available at: <https://pdfs.semanticscholar.org/c530/a2f8c9c37f279b7e5fd90f2065e51c3f72da.pdf?>

- [ga=2.253045449.1524308433.1614008189-1113438058.1613164743](https://doi.org/10.25304/5449.1524308433.1614008189-1113438058.1613164743) (accessed: 26 March 2022).
18. Fioretos, O. (2011). "Historical Institutionalism in International Relations." *International Organization*, 65(2), 367–399.
 19. Gazdag F-Kovács P. (1999). *Az Európa Tanács 1949-1999*, SVKI
 20. Hoffmann, S. (1970). International Organization and the International System, *International Organization*, Vol. 24 No. 3 Summer.
 21. Hosli, A. O., Garrett, T., Niedecken, S. Verbeek, N eds. (2021). *The Future of Multilateralism - Global Cooperation and International Organizations*. Rowman & Littlefield Publishers
 22. Jepson, V. (2012). *The Differences Between Classical Realism and Neo Realism*, available at: <https://www.e-ir.info/2012/01/24/the-differences-between-classical-realism-and-neo-realism/> (accessed: 19 February 2022).
 23. Jupille, J - Caporaso J. A. (1999). Institutionalism and the European union: Beyond International Relations and Comparative Politics, *Annual Review of Political Science* Volume 2, available at: <https://www.annualreviews.org/doi/pdf/10.1146/annurev.polisci.2.1.429> (accessed: 24 February 2021).
 24. Keohane, R. O. (1984). *After Hegemony: Cooperation and Discord in the World Political Economy*, Princeton University Press.
 25. Kiss J. L. (1997). *Nemzeti érdek és integráció. A német EU-rópa politika történelmi gyökerei és dilemmái*. In *Közösségi politikák – nemzeti politikák. A Tizenötök EU-rópái*. 1997. szerk. Kiss J. L. Budapest
 26. Korab-Karpowicz, W. J., (2018). "Political Realism in International Relations", *The Stanford Encyclopedia of Philosophy* (Summer 2018 Edition), Edward N. Zalta, ed., available at: https://www.researchgate.net/publication/341026989_Political_Realism_in_International_Relations (accessed: 19 February 2021).
 27. Kwakwa, E. (2019). The Future of Multilateralism. *Proceedings of the ASIL Annual Meeting*, Volume 112, 2018, pp. 339-341. Published online by Cambridge University Press, available at: <https://www.cambridge.org/core/journals/proceedings-of-the-asil-annual-meeting/article/abs/future-of-multilateralism/D54961255956966C962116C810075B12> (accessed: 8 May 2022)

28. Labs, E. J. 1997. „Beyond Victory: Offensive Realism and the Expansion of War Aims”, *Security Studies* 6:4: p. 7-8. available at: <https://www.tandfonline.com/doi/abs/10.1080/09636419708429321> (accessed: 23 February 2021).
29. Leuprecht, P. (1998). “Innovations in the European System of Human Rights Protection: Is Enlargement Compatible with Reinforcement.” *Transnational Law and Contemporary Problems* 8:313
30. Lowndes, V. (1996). Varieties of new institutionalism: a critical appraisal. *Public Administration*, 74 (2): 181–97.
31. Lowndes, V. (2002). *The institutional approach*. Pp. 90–108 in *Theory and Methods in Political Science*, ed. D. Marsh and G. Stoker. Houndmills: Palgrave
32. Magliveras, K- D (1999). *Exclusion from Participation in International Organisations: The Law and Practice behind Member States' Expulsion and Suspension of Membership*. Martinus Nijhoff Publishers.
33. March, J. G.-Olsen, J-P. (1984). The New Institutionalism: Organizational Factors in Political Life. *The American Political Science Review*, 78(3), 734–749. available at: <https://doi.org/10.2307/1961840> (accessed: 7 May 2022).
34. Mearsheimer, J. J. (2001). *The Tragedy of Great Power Politics*. W.W. Norton & Company
35. Mearsheimer, J. J. (1994-1995). The False Promise of International Institutions, *International Security*, Vol. 19, No. 3 pp. 5-49, The MIT Press
36. Morgenthau, H-J. (1978). *Politics Among Nations: The Struggle for Power and Peace*, Alfred A. Knopf pp. 4–15.
37. Peters, G. (1999). *Institutional Theory in Political Science: The “New Institutionalism.”* London: Pinter
38. Ruggie, J-G. (1992). “The anatomy of an institution”. *IO*. Summer 1992. 46(3): 561-598, available at: <https://scholar.harvard.edu/files/john-ruggie/files/multilateralism.pdf> (accessed: 8 May 2022).
39. Scott, R. W. (2013). *Crafting an Analytical Framework I: Three Pillars of Institutions In Institutions and Organizations: Ideas, Interests, and Identities*. SAGE Publications Inc. p. 56, available at: https://www.sagepub.com/sites/default/files/upm-binaries/56769_Chapter_3_Scott_Institutions_and_Organizations_4e.pdf (accessed: 25 February 2021).

40. Snyder, G.H. (2002). Mearsheimer's World-Offensive Realism and the Struggle for Security: A Review Essay, *International Security*, Vol. 27, No. 1 (Summer, 2002), pp. 149-173 (25 pages) The MIT Press, available at: https://www.jstor.org/stable/3092155?seq=1#metadata_info_tab_contents (accessed: 26 February 2021).
41. Statute of the Council of Europe, European Treaty Series - No. 1, available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680935bd0>, (accessed: 26 February 2021).
42. Taliaferro, J-W. (Winter 2000–2001). "Security seeking under anarchy: defensive realism revisited". *International Security*. 25 (3): 128–161., available at: [doi:10.1162/016228800560543](https://doi.org/10.1162/016228800560543). [JSTOR 2626708](https://www.jstor.org/stable/2626708) (accessed: 27 February, 2021).
43. Thoenig, J.-C. (2003). Institutional theories and public institutions: traditions and appropriateness. Pp. 127–37 in *Handbook of Public Administration*, ed. B. G. Peters and J. Pierre. London: Sage.
44. Thouvenin, J-M. (2019). Questioning the future of Multilateralism. *Proceedings of the ASIL Annual Meeting*, Volume 112, 2018 pp. 332-333. Published online by Cambridge University Press in 2019., available at: DOI: <https://doi.org/10.1017/amp.2019.33> (accessed: 8 May 2022).
45. Toft, P. (2005). "John J. Mearsheimer: an Offensive Realist Between Geopolitics and Power." *International Relations and Development* 8.
46. Waltz, K. (2000). 'Structural Realism After the Cold War', *International Security*, Vol 25.

V. Publications on the issue

1. Tóth-Ferenci, Adrienn: The Copenhagen dilemma and its possible solutions in the Council of Europe. In Szerényi Zsuzsanna; Kaponyi Erzsébet, Benczes István (szerk) *Contemporary global challenges in geopolitics, security policy and world economy*. Budapest, Magyarország: Corvinus University of Budapest, International Relations Multidisciplinary Doctoral School (2020) http://unipub.lib.uni-corvinus.hu/6066/1/NKPDIGlobal_challenges20201.733.pdf, pp. 455-473. p. 19.
2. Tóth-Ferenci, Adrienn: Az Európa Tanács kormányzati kisebbségvédelmi monitoring mechanizmusának reformja, *Pro Minoritate* 2020-ősz. <https://prominoritate.hu/wp->

- [content/uploads/2020/12/Pro-Minoritate_2020_osz_04_Toth-Ferenci_web.pdf](#), pp. 43-56. p. 14.
3. Tóth-Ferenci, Adrienn: Az Európa Tanács szerepe Kelet-Közép-Európa demokratikus átalakulásában – Az Európai Unió előszobája, Külügyi Szemle 2021/1. Huszadik évfolyam <https://kki.hu/kulugyi-szemle-kulonszam-2021/>, pp. 27-58. p. 32
 4. Tóth-Ferenci, Adrienn: Kisebbségvédelem a nemzetközi fórumokon az elmúlt évtizedben. In: Szili, Katalin; Kalmár, Ferenc; Tóth-Ferenci, Adrienn; Varga, Csilla. Harmincből tíz – Kárpát-medencei autonómiatörekvések, szomszédságpolitíja és az európai kisebbségvédelem 2010-2020. Budapest, Magyarország: Bethlen Gábor Alapkezelő Zrt. (2021) pp. 130 -175. p. 46.
 5. Tóth-Ferenci Adrienn: Can international organisations save the environment? – The response of the Council of Europe to the global environment crisis. Corvinus University of Budapest, International Relations and Political Science Doctoral School, http://unipub.lib.uni-corvinus.hu/6738/1/environmental_social_2021.pdf, pp. 160-178. p. 19.
 6. Tóth-Ferenci Adrienn: Az Európa Tanács magyar elnökségének kisebbségvédelmi eredményei. Pro minoritate, 2021- tél, <https://prominoritate.hu/portfolio/2021-tel/> pp. 25-45 p. 21.
 7. Tóth-Ferenci Adrienn: Ki és milyen módon irányít a Nemzetközi kapcsolatokban? Az Európa Tanács válasza a COVID világjárványra. Corvinus, Politikatudomány Online, 9. szám 2022/1. <https://www.uni-corvinus.hu/fooldal/egyetemunkrol/tanszekek/politikatudomanyi-tanszek/kiadvanyaink/politikatudomany-online/> pp. 1-16. p. 16.
 8. Tóth-Ferenci, Adrienn: Az emberi jogi szervezet esete a nagyhatalmi politikával - Az *Európa Tanács dilemmája és döntése Oroszország kizárásáról*, Külügyi Szemle 2022. tavasz
 9. Tóth-Ferenci, Adrienn: The role of the Council of Europe in the democratic transition of Central Eastern Europe, In the ante-room of the European Union. Foreign Policy Review (ISSN 1588-7855), 2021/4
 10. Tóth-Ferenci, Adrienn: Minority protection in international fora during the Last Decade In: Szili, Katalin: Ten out of Thirty – Aspirations for autonomy, neighbourhood-policy and the European minority protection 2010-2020. Gábor Bethlen Foundation-Handling Zrt. Budapest, 2022. pp. 128-172. p. 44.